

4.4 CULTURAL RESOURCES

This section evaluates the potential for the Tirador Residential Development Project to impact cultural resources. Cultural resources are sites, buildings, structures, objects, and districts over 50 years old that may have traditional or cultural value for the historical significance they possess. The information and analysis presented in this section are based on the City of San Juan Capistrano (City) General Plan Cultural Resources Element (1999) and Section 4.8, Cultural/Scientific Resources, of the City's *Ventanas Business Center Environmental Impact Report (2007)*. The Ventanas Business Center Project was proposed for a 19.43-acre site that included the current project site in its entirety.

The term "site" is used in two contexts in this section:

- "Project site" should be interpreted to mean the approximately 16.1-acre site currently proposed for development under the Tirador Residential Development Project.
- "Cultural resources site" should be interpreted to mean the specific locations of documented cultural materials or artifacts.

4.4.1 Scoping Process

The City of San Juan Capistrano received 11 comment letters during the public review period of the Initial Study/Notice of Preparation (IS/NOP). For copies of the IS/NOP comment letters, refer to Appendix A of this Environmental Impact Report (EIR). None of the comment letters included comments related to Cultural Resources.

4.4.2 Methodology

A cultural resources assessment was conducted on the project site in 2007 in conjunction with the City's *Ventanas Business Center Environmental Impact Report*. The study included a record search at the South Central Coastal Information Center (SCCIC), a pedestrian survey, and archaeological testing. The purpose of the 2007 records search at the SCCIC was to determine the extent of previous cultural resources investigations within a 0.25-mile radius of the project site, and whether any previously recorded archaeological sites or other historic resources exist within or near the project site. Materials reviewed included reports of previous cultural resources investigations, archaeological site records, historical maps, and listings of resources on the National Register of Historic Places (National Register), the California Register of Historical Resources (California Register), and the San Juan Capistrano *Inventory of Historic and Cultural Landmarks* (updated October 2018).

Subsequent to the record search, a field survey was conducted on the project site in August 2007. Modern debris was observed, including trash piles, sod piles, a guard rail, asphalt, concrete, and aluminum cans. A single prehistoric deposit was identified on the property during the pedestrian survey, which was recorded at the SCCIC as site CA-ORA-1672. This site consisted of a small scatter (4 x 4 meters) of chipped stone (chert flake tool, argillite flake, and possible schist ground stone fragment) and marine shell (chione and pecten). Because the significance of the site could not be

determined by the field survey, additional archaeological testing was conducted at the cultural resources site in October of 2007.

In addition to the previous cultural resources assessment, a recent search of the Sacred Lands File (SLF) was requested and conducted by the Native American Heritage Commission (NAHC) and provided on December 28, 2018, in conjunction with the currently proposed project. The 2018 SLF search was requested to determine whether there are sensitive or sacred Native American resources in the vicinity of the project area that could be affected by the proposed project.

4.4.2.1 Results

Results of the August 9, 2007, SCCIC records search indicated that a total of 9 cultural resources occur in the project vicinity (i.e., within 0.25 mile of the 2007 Ventanas Business Center project boundary). These known cultural resources in the project vicinity include two significant historic properties that are listed on the National Register that occur within 0.25 mile of the currently proposed project site: Mission San Juan Capistrano and the Frank Forster Mansion. However, no historic period cultural resources were revealed in the literature search within the currently proposed project site.

Additional archaeological testing was conducted in 2007 at CA-ORA-1672. Although the site had been heavily disturbed through prior development activities, the testing produced a few stone (or lithic) artifacts and a small sample of ecofacts. A total of 18 artifacts and ecofacts were recovered at the site. The recovered artifacts were limited both in number (n=15) and type (one lithic tool, 14 waste flakes). They provide no data to answer important research questions in prehistory, such as regional or local chronology, settlement and subsistence patterns, technological change, or social interactions. The ecofacts present at the site were shell. The amount of recovered shellfish was very small (n=3) and fragmentary, with only two species represented. Such a small and limited sample does not provide data to answer important research questions in prehistory, such as procurement patterns, seasons of exploitation, or climate/ecosystem changes in the region. The site was also found to lack integrity; specifically, the small scatter of lithic artifacts and shell fragments was embedded in a completely disturbed context (i.e., fill dirt and asphalt debris). Therefore, archaeological testing at CA-ORA-1672 concluded that the site did not appear to qualify as a significant cultural resource due to its lack of integrity and the absence of data to answer important research questions in prehistory.

Finally, an SLF search was requested from the NAHC to determine whether there are sensitive or sacred Native American resources on or near the site that could be affected by the proposed project. The NAHC responded on December 28, 2018, to say that the SLF search was positive for the project area. However, no responses were received from Native American representatives with regard to Assembly Bill (AB) 52 consultation and outreach. Please refer to Section 4.12, Tribal Cultural Resources, of this EIR, for more detail regarding tribal consultation results.

4.4.3 Existing Environmental Setting

The project site is currently undeveloped and vacant. The project site is located in the City east of Interstate 5 (I-5), south of Calle Arroyo, west of the Ortega Equestrian Center, and north of the San Juan Creek. A floodplain associated with San Juan Creek, the primary regional drainage,

encompasses a portion of the project site. The existing project site is primarily characterized by dirt and scattered ruderal vegetation, is irregular in shape, and is relatively flat with a slight slope to the east/southeast. In 2007, it was noted that some minor improvements along Calle Arroyo were present including a paved bicycle path. In addition, the 2007 pedestrian survey associated with the Ventanas EIR cultural resources assessment noted that debris of modern origin occurred on the project site.

4.4.4 Regulatory Setting

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

4.4.4.1 Federal Regulations

There are no federal regulations that are applicable to cultural resources relevant to the proposed project.

4.4.4.2 State Regulations

California Environmental Quality Act Requirements. CEQA defines a “historical resource” as a resource that meets one or more of the following criteria: (1) listed in, or determined eligible for listing in, the California Register; (2) listed in a local register of historical resources as defined in Public Resources Code (PRC) Section 5020.1(k); (3) identified as significant in a historical resource survey meeting the requirements of PRC Section 5024.1(g); or (4) determined to be a historical resource by a project’s Lead Agency (PRC Section 21084.1 and *State CEQA Guidelines* Section 15064.5(a)). A historical resource consists of:

“Any object, building, structure, site, area, place, record, or manuscript which a lead agency determines to be historically significant or significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California.... Generally, a resource shall be considered by the lead agency to be ‘historically significant’ if the resource meets the criteria for listing on the California Register of Historical Resources” *State CEQA Guidelines* Section 15064.5(a)(3).

In accordance with *State CEQA Guidelines* Section 15064.5(b), a substantial adverse change in the significance of a historical resource is a significant effect on the environment.

CEQA requires a Lead Agency to determine whether an archaeological cultural resource meets the definition of a historical resource, a unique archaeological resource, or neither (*State CEQA Guidelines* Section 15064.5(c)). Prior to considering potential impacts, the Lead Agency must determine whether an archaeological cultural resource meets the definition of a historical resource in *State CEQA Guidelines* Section 15064.5(c)(1). If the archaeological cultural resource meets the definition of a historical resource, it is treated like any other type of historical resource in accordance with *State CEQA Guidelines* Section 15126.4. If the archaeological cultural resource does not meet the definition of a historical resource, then the Lead Agency determines whether it meets the definition of a unique archaeological resource as defined in *State CEQA Guidelines* Section 21083.2(g). In practice, however, most archaeological sites that meet the definition of a unique

archaeological resource will also meet the definition of a historical resource. Should the archaeological cultural resource meet the definition of a unique archaeological resource, it must be treated in accordance with *State CEQA Guidelines* Section 21083.2. If the archaeological cultural resource does not meet the definition of a historical resource or an archaeological resource, the effects to the resource are not considered significant effects on the environment (*State CEQA Guidelines* Section 15064.5(c)(4)).

CEQA also requires that a determination be made as to whether a project would directly or indirectly destroy a unique paleontological resource or site or unique geological feature (*State CEQA Guidelines* Appendix G (v)(c)). If an impact is significant, CEQA requires feasible measures to minimize the impact (California Code of Regulations [CCR] Title 14(3) Section 15126.4 (a)(1)).

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

California Health and Safety Code Section 7050.5. California Health and Safety Code (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 coroner must notify the 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.

California Register of Historical Resources (PRC Section 5020 et seq.) State law also protects cultural resources by requiring evaluations of the significance of prehistoric and historic resources in CEQA documents. A cultural resource is an important historical resource if it meets any of the criteria found in Section 15064.5(a) of the *State CEQA Guidelines*. These criteria are nearly identical to those of the National Register.

The State Historic Preservation Officer (SHPO) maintains the California Register. Properties listed, or formally designated eligible for listing, on the National Register are nominated to the California Register and then selected to be listed on the California Register, as are the State Landmarks and Points of Interest.

4.4.4.3 Regional Regulations

There are no regional or county regulations applicable to cultural resources relevant to the proposed project.

4.4.4.4 Local Regulations

City of San Juan Capistrano General Plan. The City's General Plan Cultural Resources Element (1999) addresses the protection and sustainability of the City's historic, archaeological, and

paleontologic resources. Goals and policies presented within the Cultural Resources Element are intended to encourage the conservation, and protection of cultural resources. The following goal related to cultural resources is presented in the Cultural Resources Element and is applicable to the proposed project:

Goal 1: Preserve and protect historical, archaeological, and paleontological resources.

City of San Juan Capistrano Historical and Cultural Landmarks Ordinance. The City has adopted the Historical and Cultural Landmarks Ordinance, which prohibits the damage of any resource listed in the City's Inventory of Historical and Cultural Landmarks without first obtaining approval from the City. Applications to remove such a resource are reported to the Cultural Heritage Commission, which must then make a decision within 30 days. Decisions made by the Cultural Heritage Commission can subsequently be appealed to the City Council.

City of San Juan Capistrano Historic Preservation Ordinance. The City has adopted the Historic Preservation Ordinance that establishes permitting and conditional uses of properties located within a designated historic district. This ordinance also prohibits the damaging of any designated historic resource in any way.

City of San Juan Capistrano Historical, Archaeological, and Paleontological Resource Management Guidelines. In 1997, the City revised City Council Policy 601 and renamed this policy, "Historical, Archaeological, and Paleontological Resource Management Guidelines." These guidelines aim to ensure that cultural resource evaluations for projects within the City are conducted by qualified individuals. The policy also establishes procedures for reviewing these reports and mitigation measures to address potential impacts to previously unknown cultural resources during construction activities. In the event cultural resources are discovered, these guidelines require that the locations of all significant historic resources within the City be recorded.

City of San Juan Capistrano Municipal Code. Article 3, Development Review Procedures, establishes regulations for the conservation of historic resources and requires City approval for any construction or alteration of designated historic structures.

4.4.5 Thresholds of Significance

The thresholds for cultural resources impacts used in this analysis are consistent with Appendix G of the *State CEQA Guidelines* and the City's *Local Guidelines for Implementing the California Environmental Quality Act* (2019). The proposed project may be deemed to have a significant impact with respect to cultural resources if it would:

Threshold 4.4.1: Cause a substantial adverse change in the significance of a historical resource pursuant to §15064.5 of CEQA.

Threshold 4.4.2: Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5 of CEQA.

Threshold 4.4.3: Disturb any human remains, including those interred outside of formal cemeteries.

The Initial Study, provided in Appendix A, substantiates that there would be no impact associated with Threshold 4.4.1 because the Office of Historic Preservation and the City's Inventory of Historic and Cultural Landmarks indicate that there are no historic buildings or structures on the project site.¹ Therefore, the proposed project would not result in any impacts related to historical resources, and no mitigation would be required. This threshold will not be addressed in the following analysis.

4.4.6 Project Impacts

Threshold 4.4.2: Would the project cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5 of CEQA?

Less Than Significant with Mitigation Incorporated. As indicated previously, the project site is located in an area of the City of San Juan Capistrano that is archaeologically sensitive for cultural resources. Implementation of the proposed project will necessitate project site preparation and grading that would result in the destruction of one known, prehistoric archaeological site (CA-ORA-1672) that was identified during the 2007 cultural resources assessment. However, as concluded in the 2007 *Ventanas Business Center Environmental Impact Report*, prehistoric site CA-ORA-1672 neither possesses significant cultural materials nor represents a significant cultural resource. The previous recordation, analysis, and collection of the artifacts and ecofacts contained within CA-ORA-1672 adequately removed the potential impacts posed by implementation of the current project; further, the archaeological testing at CA-ORA-1627 concluded that the prehistoric site neither possesses significant cultural materials nor represents a significant cultural resource. Therefore, the project would not cause a substantial adverse change in the significance of a cultural resource pursuant to Section 15064.5 of the *State CEQA Guidelines*. However, it is possible that potentially significant prehistoric deposits and/or cultural artifacts could be encountered during construction because the project site is located within an area that is archaeologically sensitive. As a result, it remains possible that buried, previously unrecorded cultural resources could be present in native soils on the project site and disturbed during project construction.

In order to address the discovery of unknown and unrecorded cultural resources, Mitigation Measure CUL-1 is proposed and requires monitoring by both a qualified archaeologist and a Native American monitor. The measure includes procedures for recovering any significant or unique archaeological resource and for preparation of a report that documents any cultural resource recovery at the current project site. All procedures conducted as part of Mitigation Measure CUL-1 would comply with the applicable provisions for the management of historic, archaeological, and paleontological resources as described in City Council Policy 601. With implementation of Mitigation Measure CUL-1, impacts to previously unrecorded cultural resources would be less than significant.

Threshold 4.4.3: Would the project disturb any human remains, including those interred outside of formal cemeteries?

¹ City of San Juan Capistrano. 1999. General Plan Cultural Resources Element. Figure CR-1, Locations of Historic Buildings and Structures. December.

Less Than Significant with Mitigation Incorporated. Although no human remains are known to be on the project site or are anticipated to be discovered during project construction, the archaeological sensitivity of the project site is high. There is always a possibility of encountering unanticipated cultural resources, including human remains. Precautionary mitigation is required to ensure that the proposed project does not impact or disturb any human remains.

Mitigation Measure CUL-2 requires compliance with CCR Section 15064.5(e) in the unlikely event that human remains are encountered during project grading. Upon discovery of the remains, the Orange County (County) Coroner would be notified immediately, and no further disturbance would occur until the County Coroner makes a determination of origin and disposition pursuant to PRC Section 5097.98. If the remains are determined to be Native American, the County Coroner would notify the NAHC, which would then determine and notify the MLD. With permission from the City, the MLD would complete inspection within 48 hours of notification by the NAHC. Implementation of Mitigation Measure CUL-2 would reduce potential impacts related to the discovery of human remains on the project site to a less than significant level.

4.4.7 Level of Significance Prior to Mitigation

No impacts to historical resources would occur. Prior to mitigation, the proposed project has the potential to result in significant impacts to archaeological resources and previously undiscovered buried human remains.

4.4.8 Regulatory Compliance Measures and Mitigation Measures

4.4.8.1 Regulatory Compliance Measures

No regulatory compliance measures are required for the proposed project.

4.4.8.2 Mitigation Measures

The proposed project is required to implement the following mitigation measures to reduce potential impacts to cultural resources.

Mitigation Measure CUL-1 Cultural Resources Monitoring and Accidental Discovery. Prior to the issuance of grading permits, the Project Applicant shall retain, with approval of the City of San Juan Capistrano (City) Development Services Director, or designee, a qualified archaeological monitor. A monitoring plan should be prepared by the archaeologist and implemented upon approval by the City. Prior to issuance of grading permits, the Project Applicant, with City approval, shall also retain a Native American monitor after consultation with interested tribal and Native American representatives. Both monitors shall be present on the project site during ground-disturbing activities to monitor rough and finish grading, excavation, and other ground-disturbing activities in the native soils. Because cultural resources were previously identified on the project site, both monitors are required to be present on a full-time basis during initial site preparation and initial ground-disturbing activities. Further, each

monitor shall spot check any ground-disturbing activities (e.g., finish grading) to ensure that no cultural resources are impacted during construction activities.

If cultural materials are discovered during site preparation, grading, or excavation, the construction contractor shall divert all earthmoving activity within and around the immediate discovery area until a qualified archaeologist can assess the nature and significance of the find. Project personnel shall not collect or move any archaeological materials or human remains and associated materials. To the extent feasible, project activities shall avoid these deposits. Where avoidance is not feasible, the archaeological deposits shall be evaluated for their eligibility for listing on the California Register of Historical Resources. If the deposits are not eligible, avoidance is not necessary. If the deposits are eligible, adverse effects on the deposits must be avoided, or such effects must be mitigated. Mitigation can include, but is not necessarily limited to: excavation of the deposit in accordance with a data recovery plan (see California Code of Regulations [CCR] Title 14(3) Section 15126.4(b)(3)(C)) and standard archaeological field methods and procedures; laboratory and technical analyses of recovered archaeological materials; production of a report detailing the methods, findings, and significance of the archaeological site and associated materials; curation of archaeological materials at an appropriate facility for future research and/or display; an interpretive display of recovered archaeological materials at a local school, museum, or library; and public lectures at local schools and/or historical societies on the findings and significance of the site and recovered archaeological materials. The City Development Services Director, or designee, shall be responsible for reviewing any reports produced by the archaeologist to determine the appropriateness and adequacy of the findings and recommendations.

Mitigation Measure CUL-2

Human Remains. Consistent with the requirements of CCR Section 15064.5(e), if human remains are encountered during site disturbance, grading, or other construction activities on the project site, the construction contractor shall halt work within 25 feet of the discovery; all work within 25 feet of the discovery shall be redirected and the Orange County (County) Coroner notified immediately. No further disturbance shall occur until the County Coroner has made a determination of origin and disposition pursuant to Public Resources Code Section 5097.98. If the remains are determined to be Native American, the County Coroner shall notify the Native American Heritage Commission (NAHC), which will

determine and notify a Most Likely Descendant (MLD). With the permission of the City, the MLD may inspect the site of the discovery. The MLD shall complete the inspection within 48 hours of notification by the NAHC. The MLD may recommend scientific removal and nondestructive analysis of human remains and items associated with Native American burials. Consistent with CCR Section 15064.5(d), if the remains are determined to be Native American and an MLD is notified, the City shall consult with the MLD identified by the NAHC to develop an agreement for the treatment and disposition of the remains.

Upon completion of the assessment, the consulting archaeologist shall prepare a report documenting the methods and results and provide recommendations regarding the treatment of the human remains and any associated cultural materials, as appropriate, and in coordination with the recommendations of the MLD. The report shall be submitted to the City Development Services Director, or designee, and the South Central Coastal Information Center. The City Development Services Director, or designee, shall be responsible for reviewing any reports produced by the archaeologist to determine the appropriateness and adequacy of the findings and recommendations.

4.4.9 Level of Significance after Mitigation

No impacts to cultural resources would occur. Mitigation Measures CUL-1 and CUL-2 would reduce potential impacts to archaeological resources and previously undiscovered buried human remains to a less than significant level. No significant unavoidable impacts to archaeological resources or human remains would occur with implementation of these measures. After mitigation has been implemented, all anticipated impacts to cultural resources would be considered less than significant.

4.4.10 Cumulative Impacts

As defined in Section 15130 of the *State CEQA Guidelines*, cumulative impacts are the incremental effects of an individual project when viewed in connection with the effects of past, current, and probable future projects within the cumulative impact area for cultural resources. The cumulative impact area for cultural resources for the proposed project is the City of San Juan Capistrano.

Potential impacts of the proposed project to unknown cultural resources, when combined with the impacts of past, present, and reasonably foreseeable projects in the City of San Juan Capistrano, could contribute to a cumulatively significant impact due to the overall loss of archaeological artifacts and cultural remains unique to the region. However, each development proposal received by the City is required to undergo environmental review pursuant to CEQA. If there were any potential for significant impacts to archaeological resources, an investigation would be required to determine the nature and extent of the resources and identify appropriate mitigation measures. When resources are assessed and/or protected as they are discovered, impacts to these resources are less than significant.

As such, implementation of Mitigation Measures CUL-1 and CUL-2 would ensure that the proposed project, together with cumulative projects, would not result in a significant cumulative impact to unique archaeological resources and previously undiscovered buried human remains.