

4.15 Tribal Cultural Resources

4.15.1 Introduction

This section evaluates the potential for the proposed project, which includes the Housing Element Update (HEU), the Stanford Community Plan (SCP) update, and related rezonings (collectively, the “project”) to result in substantial adverse effects related to tribal cultural resources. Below, the Environmental Setting portion of this section includes descriptions of existing conditions relevant to tribal cultural resources. Further below, existing plans and policies relevant to tribal cultural resources associated with implementation of the project are provided in the Regulatory Setting section. Finally, the impact discussion evaluates potential impacts to tribal cultural resources that could result from implementation of the project in the context of existing conditions.

Notice of Preparation Comments

A Notice of Preparation (NOP) for the Draft EIR was circulated on August 8, 2022, and a scoping meeting was held on August 23, 2022. A revised NOP reflecting changes to the HEU’s list of opportunity sites was circulated on March 21, 2023. Both NOPs circulated for a period of 30 days, and the NOPs and the comments received during their respective comment periods can be found in **Appendix A** of this EIR. The County received comments from the Native American Heritage Commission (NAHC) which recommended, pursuant to PRC Section 21080.3.1(b), that the County conduct consultation with tribes that are affiliated with Santa Clara County. The NAHC also recommended that the County conduct a cultural resources records search of the California Historical Resources Information System (CHRIS) and that an archaeological inventory survey report be prepared along with a search of the NAHC’s Sacred Lands File (SLF). In response to those requirements, the County contacted applicable tribes on October 13, 2022, and again on March 21, 2023. As of the public circulation date of this EIR, no requests for consultation have been received from applicable tribes.

Information Sources

The primary sources of information referenced in this section included those listed below. Please note that a full list of references for this topic can be found at the end of this section.

- Santa Clara County General Plan (1994).
- Stanford University Community Plan (2000).

4.15.2 Environmental Setting

Tribal cultural resources are sites, features, places, cultural landscapes, sacred places or objects, which are of cultural value to a tribe or tribes. These resources may also be on, or eligible for, listing in the National Register of Historic Places (National Register), California Register of Historical Resources (California Register), or be determined by the lead agency to be considered tribal cultural resources. Tribal cultural resources also include pre-contact archaeological sites and human remains as discussed in Section 4.5 of this Draft EIR, *Cultural Resources*,

ethnographic sites, and historic-age landscapes and sites occupied, used, or spiritually and culturally valued by Native Americans. Section 4.5 of this Draft EIR, *Cultural Resources*, provides a comprehensive overview of the cultural setting including an archaeological, ethnographic, and historic overview of the County and surrounding area. Section 4.5 of this Draft EIR, *Cultural Resources*, also provides a review of the background research completed for the project.

Tribal Cultural Resources Identified in Areas Affected by the Project

Native American Outreach

In accordance with the requirements of Senate Bill 18 (SB 18) and AB 52 (Public Resources Code Section 21074(a)), City staff conducted Native American outreach and consultation efforts. On August 30, 2022, ESA submitted a request to the California Native American Heritage Commission (NAHC) for a search of the Sacred Lands File and a list of contacts for tribes with traditional lands or cultural places within or near the housing opportunity sites. The NAHC responded on October 6, 2022, stating that the file search was positive for sacred sites. The NAHC also provided the contact information for twelve tribal representatives from nine tribes for additional information.

Native American Consultation

The County sent tribal outreach letters to the twelve Native American representatives from nine tribes that were identified by the NAHC as having traditional lands or cultural places within or near the HEU opportunity sites. And an additional five Native American representatives from four additional tribes were contacted based on consultation lists received for other parts of Santa Clara County. Tribal consultation outreach letters were sent on October 14, 2022, and again on March 21, 2023. As of the public circulation date of this EIR, no requests for consultation have been received from applicable tribes.

Identification of Tribal Cultural Resources and Indigenous Cultural Resources

The results of the records search undertaken at the Northwest Information Center (NWIC) is detailed in Section 4.4, *Cultural Resources*. No pre-contact resources have been identified within the housing opportunity sites or in the general area identified as a potential future school site on the Stanford campus. However, there is one archaeological resource with a pre-contact component recorded within 0.25 mile of the housing opportunity sites, and there are six pre-contact resources recorded within 0.25 mile of the general area identified as a potential future school site on the Stanford campus. No additional tribal cultural resources have been identified as a result of tribal consultation.

4.15.3 Regulatory Setting

Federal

There are no federal laws or regulations specifically related to tribal cultural resources. Section 106 of the National Historic Preservation Act considers historic properties, which also

include traditional cultural properties.¹ Section 4.4.3, *Cultural Resources Regulatory Framework* provides a summary of Section 106 of the National Historic Preservation Act.

State

California Environmental Quality Act Statute and Guidelines

CEQA and the CEQA Guidelines include special procedures for identifying, analyzing, and disclosing significant impacts on Tribal Cultural Resources, which include all resources listed in or formally determined eligible for listing in the National Register, the California Register, or local registers.

California Register of Historical Resources

As with TCPs in the National Register, identification of Tribal Cultural Resources for the California Register emphasizes a place or feature's value and significance to living communities. AB 52, summarized in Section 3.6.1.2, *Regulatory Setting*, and discussed in more detail below, further clarified this designation process.

Native American Heritage Commission

The Native American Heritage Commission (NAHC) identifies and manages a catalog of places of special religious or social significance to Native Americans. This database, known as the Sacred Lands File, is a compilation of information on known graves and cemeteries of Native Americans on private lands and other places of cultural or religious significance to the Native American community. The NAHC also performs other duties regarding the preservation and accessibility of sacred sites and burials and the disposition of Native American human remains and burial items.

Public Resources Code sections 5097.9 through 5097.991 describe the duties and role of the NAHC and requires the cooperation of State and local agencies in carrying out their duties with respect to Native American resources.

California Public Resources Code and California Health and Safety Code Provisions Regarding Human Remains

California Health and Safety Code section 7050.5 protects human remains by prohibiting the disinterring, disturbing, or removing of human remains from any location other than a dedicated cemetery. Public Resources Code section 5097.98 and CEQA Guidelines Section 15064.5(e) also identify steps to follow in the event of the accidental discovery or recognition of any human remains in any location other than a dedicated cemetery. Health and Safety Code section 7052 states that the disturbance of Native American, or any other, human remains is a felony, unless the disturbance has been lawfully authorized.

¹ A Traditional Cultural Property is a property that is eligible for inclusion in the National Register of Historic Places based on its associations with the cultural practices, traditions, beliefs, lifeways, arts, crafts, or social institutions of a living community.

Public Resources Code Sections 21074, 21080, 21083 (Assembly Bill 52)

In September 2014, the California Legislature enacted Assembly Bill (AB) 52, which added provisions to the Public Resources Code regarding the evaluation of impacts on tribal cultural resources under CEQA, and consultation requirements with California Native American tribes. In particular, AB 52 requires lead agencies to analyze project impacts on tribal cultural resources (PRC Sections 21074 and 21083.09). The law defines tribal cultural resources in a new section, PRC Section 21074. AB 52 also requires lead agencies to engage in additional consultation procedures with respect to California Native American tribes (PRC Sections 21080.3.1, 21080.3.2, and 21082.3).

PRC Section 21084.3 addresses mitigation for tribal cultural resources impacts as follows:

- a) Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource.
- b) If the lead agency determines that a project may cause a substantial adverse change to a tribal cultural resource, and measures are not otherwise identified in the consultation process provided in Section 21080.3.2, the following are examples of mitigation measures that, if feasible, may be considered to avoid or minimize the significant adverse impacts:
 - Avoidance and preservation of the resources in place, including, but not limited to, planning and construction to avoid the resources and protect the cultural and natural context, or planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.
 - Treating the resource with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:
 - Protecting the cultural character and integrity of the resource.
 - Protecting the traditional use of the resource.
 - Protecting the confidentiality of the resource.
 - Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.
 - Protecting the resource

Assembly Bill 168 – Tribal Consultation under Streamlined Ministerial Approval Process (SB 35)

Assembly Bill 168 (AB 168), enacted in September 2020, amended the Government Code Sections 65400, 65913.4, and 65941.1, to add tribal consultation requirements to housing projects that would otherwise qualify for a streamlined ministerial approval process, which was mandated by Senate Bill 35 (SB 35) in 2017. SB 35 requires cities who are not meeting their demand for housing (as per the Regional Housing Needs Assessments) to allow developers to avoid the requirement of a CEQA document if the proposed housing meets specific requirements, such as

the number of units, zoning, affordability, and avoidance of specific environmental impacts. AB 168 added a requirement to SB 35 to prescribe that developers must submit a preliminary application with information about the project and the local government and must conduct tribal consultation with tribes, similar to what is required by CEQA and AB 52, to identify if there are tribal cultural resources that may be impacted by the project. If impacts to tribal cultural resources are identified, the project is ineligible for SB 35 streamlining and is subject to CEQA.

Senate Bill 18 – Tribal Consultation During Planning Decisions

Senate Bill 18 (Burton, Chapter 905, Statutes of 2004) requires local governments to consult with tribes prior to making certain planning decisions and to provide notice to tribes at certain key points in the planning process. These consultation and notice requirements apply to adoption and amendment of both general plans (defined in Government Code section 65300 et seq.) and specific plans (defined in Government Code section 65450 et seq.). The intent of SB 18 is to provide California Native American tribes an opportunity to participate in local land use decisions at an early planning stage, for the purpose of protecting, or mitigating impacts to, cultural places.

Local

Santa Clara County General Plan

The Santa Clara County General Plan is a comprehensive long-range general plan for the physical development of the County (County of Santa Clara, 1994). The General Plan contains the current County of Santa Clara Housing Element, which was adopted in 2015. The various elements within the General Plan include goals and policies for the physical development of the County. General Plan strategies and policies related to tribal cultural resources and relevant to implementation of the project are listed below.

Countywide and Rural Unincorporated Area Issues & Policies

Strategies and policies relating to tribal cultural resources, which include cultural resources and are described as heritage resources in the General Plan, are in two different sections of the document: countywide issues & policies and rural unincorporated area issues & policies. The strategies and policies for heritage resources in these two sections have very similar text, the main difference is the location of these resources within the County. Therefore, for the purposes of this list, for those strategies and policies which are similar, we have included the text from the countywide section, but provided the naming convention for both versions of the topic.

Strategy: The general approach to cultural heritage resource protection outlined by the General Plan consists of three basic strategies

Policy C-RC 49/R-RC 81: Cultural heritage resources within Santa Clara County should be preserved, restored wherever possible, and commemorated as appropriate for their scientific, cultural, historic and place values.

Policy C-RC 50/R-RC 82: Countywide, the general approach to heritage resource protection should include the following strategies:

1. Inventory and evaluate heritage resources.
2. Prevent or minimize adverse impacts on heritage resources.
3. Restore, enhance, and commemorate resources as appropriate.

Strategy #1: Inventory and Evaluate Heritage Resources.

Policy C-RC 51: Inventories of heritage resources should be maintained as the basis for local decision-making regarding such resources.

Policy R-RC 83: The County's Heritage Resources database shall be maintained and used to review private development projects and guide the design of public projects.

Strategy #2: Prevent or Minimize Adverse Impacts on Heritage Resources.

Policy C-RC 52: Prevention of unnecessary losses to heritage resources should be ensured as much as possible through adequate ordinances, regulations, and standard review procedures. Mitigation efforts, such as relocation of the resource, should be employed where feasible when projects will have significant adverse impact upon heritage resources.

Policy C-RC 53: Cities should balance plans for urban redevelopment with the objectives of heritage resource preservation in such cases where potential conflicting interest may arise. Case should be taken to integrate heritage resources with new development wherever possible.

Policy R-RC 85: No heritage resource shall knowingly be allowed to be destroyed or lost through a discretionary action (zoning, subdivision site approval, grading permit, building permit, etc.) of the County of Santa Clara unless:

- a. The site or resource has been reviewed by experts and the County Historic Heritage Commission and has been found to be of insignificant value; or
- b. There is an overriding public benefit from the project and compensating mitigation to offset the loss is made part of the project.

Policy R-RC 86: Projects in areas found to have heritage resources shall be conditioned and designed to avoid loss or degradation of the resources. Where conflict with the resource is unavoidable, mitigation measures that offset the impact may be imposed.

Policy R-RC 87: Land divisions in areas with heritage resources shall be encouraged to cluster building sites in locations which will minimize the impacts to heritage resources.

Policy R-RC 88: For projects receiving environmental assessment, expert opinions and field reconnaissance may be required if needed at the applicant's expense to determine the presence, extent, and condition of suspected heritage resources and the likely impact of the project upon the resources.

Policy R-RC 89: Demolition permits proposed for designated heritage resources shall be referred to the Historic Heritage Commission for review and recommendation to the Board of Supervisors.

Policy R-RC 92: The participation of concerned citizens and professionals dealing with heritage resources in the identification of sites and the review and conditioning of projects by its boards and commissions shall be encouraged by the County.

Strategy #3: Restore, Enhance and Commemorate Resources.

Policy C-RC 54/R-RC 93: Heritage resources should be restored, enhanced, and commemorated as appropriate to the value and significance of the resource. All historic rehabilitation activities should comply with the Secretary of the Interior’s Standards for Rehabilitation.

Policy C-RC 55/R-RC 94: Public awareness and appreciation of existing heritage resources and their significance should be enhanced through community organizations, neighborhood associations, the educational system, and governmental programs.

Policy C-RC 56/R-RC84: Heritage resource acquisition, preservation, restoration, and interpretation projects eligible for funding with County Parks Charter Funds are identified in the “Santa Clara County Heritage Resources Inventory” adopted by the Board of Supervisors.

Stanford University Community Plan

The current Stanford University Community Plan was adopted in 2000 (County of Santa Clara, 2000). The primary purpose of the Community Plan is to guide future use and development of Stanford lands in a manner that incorporates key County General Plan principles of compact urban development, open space preservation, and resource conservation. The Community Plan was adopted as an amendment of the General Plan in the manner set forth by California Government Code Section 65350 et seq. Any revisions to the Community Plan must also be made according to the provisions of State law for adopting and amending general plans. Community strategies and policies related to tribal cultural resources and relevant to implementation of the project are listed below.

Resource Conservation Strategy #7: Inventory and Evaluate Heritage Resources.

Policy SCP-RC-21: Maintain informational databases and formal inventories of heritage resources as the basis for local decision-making regarding historic buildings, archaeological and paleontological sites, heritage trees, and landscape features.

Resource Conservation Strategy #8: Protect Heritage Resources Through Avoidance, Adaptive Reuse and Sensitive Planning Design.

Policy SCP-RC 22: Protect heritage resources, including sites, structures, and trees in campus development through careful campus land use planning, individual project design, project review, use of appropriate guidelines, and other implementation plans.

Policy SCP-RC 23: Protect the integrity of significant archaeological sites and other heritage resources. Ensure the confidentiality of archaeological site locations in conformance with state laws.

Policy SCP-RC 24: Protect archaeological and paleontological resources in any environmental enhancement activities involving creek restoration and flood control.

4.15.4 Environmental Impacts and Mitigation Measures

Significance Thresholds

The thresholds used to determine the significance of impacts related to tribal cultural resources are based on Appendix G of the *CEQA Guidelines*. Implementation of the project would have a significant impact on the environment if it would:

- Cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code §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: (i) is listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code §5020.1(k), or (ii) is determined at the discretion of the lead agency to be significant pursuant to criteria set forth Public Resources Code §5024.1(c).

Methodology and Assumptions

This is a program-level EIR that considers the potential impacts from implementing the project. While the HEU would be applicable Countywide, special focus was given to the housing opportunity sites and the possible future potential school location on Stanford's campus. Impacts on tribal cultural resources are evaluated using the criteria listed above based on information included in the Santa Clara County General Plan (1994) and the Stanford University Community Plan (2000).

Impacts and Mitigation Measures

Impacts

Impact TCR-1: Implementation of the project would not cause a substantial adverse change to tribal cultural resources, as defined in Public Resources Code Section 21074(a). (*Less than Significant Impact, with Mitigation*)

HEU and Stanford Community Plan Update

As described above in the *Environmental Setting* and in *Section 4.5.2 Environmental Setting for Cultural Resources*, the County includes indigenous or pre-contact cultural resources that are listed in or eligible for listing in the National Register, and/or the California Register, and resources that have not been evaluated for the National Register or California Register but are potentially eligible. Additionally, there may be previously unknown buried archaeological resources and/or tribal cultural resources that have not been recorded. No tribal cultural resources have been identified during tribal consultation. However, the NAHC sacred lands file search did have a positive result for sacred lands within the housing opportunity sites.

The County is a mix of urban and agricultural landscapes. Implementation of the project would result in gradual physical changes throughout the County, including a potential increase of multi-

family residential dwelling units, primarily located in the opportunity sites near urban areas. These changes would comprise a substantial intensification or concentration of physical development and could lead to the demolition of indigenous archaeological resources and/or tribal cultural resources. Additionally, associated infrastructure or other public works improvements could result in damage to or demolition of these kinds of resources.

As detailed in the *Regulatory Setting* above, there are federal, state, and local regulations in place to protect tribal cultural resources, including archaeological resources and human remains. CEQA requires lead agencies to determine, prior to approval, if a project would have a significant adverse effect on historical resources, tribal cultural resources, or unique archaeological resources and requires the lead agency to make provisions for the inadvertent discovery of historical or unique archaeological resources during construction, including tribal cultural resources.

As described previously in this section, SB 18 requires local governments to consult with tribes prior to making certain planning decisions and provides California Native American tribes an opportunity to participate in local land use decisions at an early planning stage, for the purpose of protecting, or mitigating impacts to cultural places. In accordance with the requirements of SB 18, County staff conducted Native American outreach and consultation efforts. As a part the SB 18 process for the proposed project, County staff sent tribal outreach letters to the twelve Native American representatives from nine tribes that were identified by the NAHC as having traditional lands or cultural places within or near the HEU opportunity sites. An additional five Native American representatives from four additional tribes were contacted based on consultation lists received for other parts of Santa Clara County. Tribal consultation outreach letters were sent on October 14, 2022, and again on March 21, 2023, to reflect changes to the HEU's list of housing opportunity sites. As of the public circulation date of this EIR, no requests for consultation have been received from applicable tribes.

In addition, the proposed project and other applicable elements of the General Plan includes policies and implementation programs designed to identify and protect archaeological resources that could be adversely affected by development activities. For example, the General Plan's three basic strategies to inventory and evaluate heritage resources, prevent or minimize adverse impacts on heritage resources, and restore, enhance, and commemorate resources and associated policies aim to identify and protect cultural resources.

While the goal of the aforementioned policies proposed under the project is to protect archaeological resources and human remains, exact procedures are not outlined on how these policies are enacted. Therefore, there remains the potential for ground-disturbing construction activities to inadvertently damage or destroy tribal cultural resources because these policies and programs do not address tribal consultation of projects or tribal involvement during the inadvertent discovery of indigenous resources during project construction.

Revisions to the Public Resources Code and the Government Code by AB 52 and AB 168 require local governments to consult with tribes during the review process for CEQA and for housing development projects that would otherwise be exempt from CEQA under changes made to the Government Code by SB 35.

No tribal cultural resources have been identified with the housing opportunity sites or the potential future school site on Stanford's campus as a result of tribal consultation. However, there are tribal cultural resources and indigenous archaeological resources that may be eligible for the California Register and/or the National Register within the larger County. Construction of housing in these areas could involve activities that would damage or destroy tribal cultural resources. Therefore, the project is considered to have a **potentially significant** impact on tribal cultural resources. Implementation of Measures CR-2A, CR-2B, and CR-3 is prescribed below.

Mitigation Measure CR-2A: Cultural Resources Study Requirements.

See Section 4.5 of this Draft EIR, *Cultural Resources*, for the text of this measure.

Mitigation Measure CR-2B: Inadvertent Discovery of Cultural Resources.

See Section 4.5 of this Draft EIR, *Cultural Resources*, for the text of this measure.

Mitigation Measure CR-3: Inadvertent Discovery of Human Remains.

See Section 4.5 of this Draft EIR, *Cultural Resources*, for the text of this measure.

Significance After Mitigation: Implementation of Measures CR-2A, CR-2B, and CR-3 would establish protocol to identify, evaluate, and address any potential impacts to previously unknown tribal cultural resources. With implementation of these mitigation measures, any potential impacts to tribal cultural resources would be reduced to a **less than significant** level.

Cumulative Impacts

This section presents an analysis of the cumulative effects of the project in combination with other past, present, and reasonably foreseeable future projects that could cause cumulatively considerable impacts. Significant cumulative impacts related to tribal cultural resources could occur if the incremental impacts of the project combined with the incremental impacts of one or more of the cumulative projects or cumulative development projections included in the project description and described in Section 4.0.3, *Cumulative Impacts*.

Impact TCR-2: Implementation of the project, when combined with other past, present, or reasonably foreseeable projects, would not cause a substantial adverse change to tribal cultural resources, as defined in Public Resources Code Section 21074(a). (*Less than Significant Impact, with Mitigation*)

HEU and Stanford Community Plan Update

The geographic scope for cumulative impacts to tribal cultural resources comprises the entire County of Santa Clara. This geographic scope of analysis is appropriate because the tribal cultural resources within this radius are expected to be similar to those that occur on the housing opportunity sites and the "potential future school location" on Stanford's campus because their proximity, similar environments, landforms, and hydrology are expected to have resulted in similar land-uses over time. Based on the tribal consultation, the professional experience of the

EIR’s preparers, research, and the pre-contact context, there are no known tribal cultural resources within the housing opportunity sites or “potential future school location” on Stanford’s campus, but there are tribal cultural resources within the larger Santa Clara County boundaries. There may also be tribal cultural resources within the County of Santa Clara that have not been documented or recorded.

In this context, the incremental impacts of the project could combine with similar incremental impacts of other projects in the cumulative scenario to cause or contribute to a significant cumulative impact. However, the project would contribute a negligible **less-than-significant** incremental impact after the implementation of Measures CR-2A, CR-2B, and CR-3 which would require an Secretary of the Interior-qualified archaeologist conduct a review of the project prior to construction, the cessation of activities and buffering of archaeological finds or unanticipated human remains, and tribal consultation when indigenous resources or human remains are unexpectedly discovered during project construction. As a result, the project’s incremental impact would not be cumulatively considerable and would not result in a significant cumulative effect.

4.15.5 References

County of Santa Clara. 1994. *County of Santa Clara General Plan*. Available online: <https://plandev.sccgov.org/ordinances-codes/general-plan>. Accessed August 15, 2022.

County of Santa Clara. 2000. *Stanford University Community Plan*. Available online: https://stgenpln.blob.core.windows.net/document/SU_CP.pdf. Accessed August 15, 2022.

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