

4.15 Tribal Cultural Resources

This section evaluates potential impacts to tribal cultural resources from development facilitated by the proposed 2022 RTP/SCS.

4.15.1 Setting

a. Ethnographic Context

The SJCOG region is centrally located between the Sacramento and San Joaquin Valleys in the Delta and Eastside Streams region of California (USGS 2021). The area was primarily inhabited by two aboriginal California Native American groups: the Plains Miwok and the Northern Valley Yokuts.

Plains Miwok

Most of the SJCOG region is located in the traditional tribal territory of the Plains Miwok, members of the larger Miwokan subgroup of the Utian language family inhabiting an area along the lower reaches of the Mokelumne and Cosumnes rivers and both banks of the Sacramento River roughly from Rio Vista north to Freeport (Levy 1977). Plains Miwok subsistence practices centered on the use of acorns and of seeds as primary plant food sources and on hunting of mule deer, tule elk, pronghorn antelope, and various species of waterfowl. Hunting was typically done with a sinew-backed bow and arrow. Fishing was a particularly important activity for the Plains Miwok, primarily with various types of nets. Seines were used in large rivers and sloughs where the pace of water flow was slow. Hook and line was typically used to take sturgeon, while harpoons were the most common implement for salmon fishing (Levy 1977).

The Plains Miwok made both twined and coiled basketry, usually from will and redbud. They also manufactured tule mats used as floor covering. Woven blankets were often made of rabbit skin strips or feathers attached to cordage woven from plant fibers. Tule balsa rafts were crafted and used to navigate rivers and sloughs (Levy 1977).

Plains Miwok settlements typically included thatched, conical houses and semisubterranean earth-covered dwellings in winter, constructed by higher-status families. Houses generally had a central hearth and an earth oven for cooking purposes. Large, semisubterranean assembly houses were constructed for use as a ritual and social gathering place. In summer, a circular brush hut was constructed for use in mourning ceremonies. Other structures included sweathouses for curing disease and purification prior to hunting, small conical structures used by menstruating women, and grinding houses built over bedrock mortars to permit food processing in inclement weather. Acorn granaries were constructed for long-term acorn storage (Levy 1977).

Political organization centered on small tribelets of approximately 300 to 500 people and several distinct settlements. Each tribelet was headed by a chief, and each settlement had a representative of the chief overseeing local affairs. Chiefs acted as advisors and managed use of natural resources by preventing trespassing on tribelet territory and determining the appropriate time to begin acorn harvest each season. The chief also arbitrated any disputes and sanctioned the punishment of criminal offenders.

Miwok social organization followed the moiety pattern, with all living things belonging to one of two categories: land and water. Moieties were typically exogamous and played an important role in many ceremonies (Levy 1977).

Northern Valley Yokut

The southern portion of the SJCOG region is located at the very northern end of the San Joaquin Valley, an area historically occupied by the Penutian-speaking Yokuts (Kroeber 1925, Wallace 1978, Latta 1999). Three geographical divisions of the Yokuts are the Northern Valley, Southern Valley, and Foothill Yokuts. The distinction between the three groups is primarily based on language dialect (Mithun 2001).

The Yokuts established large permanent village settlements, or closely associated smaller settlements, such as the Tulamniu village. Residential structures were most often of two types: single-family dwellings and larger communal residences that housed ten families or more. Villages frequently included mat-covered granaries and a sweathouse (Mithun 2001; Sutton et al. 2016).

The basic economic unit among the Yokuts was the nuclear family. The nuclear family was linked to totemic lineages based on patrilineal descent. Totem symbols were passed from father to offspring. Families that shared the same totem formed an exogamous lineage. Totems were associated with one of two moieties. This moiety division played a role during ceremonies and other social events (Wallace 1978).

Yokuts were split into self-governing local groups that included several villages. Each group had a chief who directed ceremonies, mediated disputes, handled punishment of those doing wrong, hosted visitors, and provided aid to the impoverished. In certain cases, settlements had two chiefs, one for each moiety. Other political positions included the chief's messenger and the spokesman (Wallace 1978).

Shamans were an important part of Yokut village life. A Yokut Shaman gained power through a dream or vision. If, after this vision, the man accepted the role as shaman, he would pray, fast, and acquire talismans to aid him in his future work. Shamans had the ability to heal the sick and served a primary role in religious life (Wallace 1978).

Yokuts subsistence strategy was based on a mixed economy focused on fishing, collecting, and hunting small game. Fishermen employed tule rafts and caught fish with nets, spears, basket traps, and bow and arrow. They often gathered mussels and hunted turtles in lakes, rivers, and streams. Wild seeds and roots contributed a large portion to the Yokuts diet. Tule roots were gathered, dried, and pounded into a flour which was prepared as a mush. Tule seeds and grass and flowering herb seeds were prepared in the same way. Leaves and stems of certain plants, such as clover and fiddle-neck, were also collected. Acorns, a staple of most California Native Americans, were not readily available in the ethnographic territory of the Yokuts. Some Yokuts tribes traded for acorns with neighboring groups, such as the Salinan and Chumash to the west, the Foothill Yokuts to the east, and the Kawaiisu and Kitanemuk to the southeast (Kroeber 1925). Waterfowl was frequently hunted with snares, nets, and bow and arrow. Land mammals and birds contributed a smaller part of the Yokuts diet. Small game was occasionally taken in snares or traps or shot with bows and arrows (Wallace 1978; Sutton et al. 2016).

Yokuts technology depended primarily on tule. Stems of the plant served as the raw material for baskets, cradles, boats, housing, and many other items. Manos and metate were used to process food and animal hides (Sutton et al. 2016). Tools such as knives, projectile points, and scraping tools were made from imported lithic materials because stone was not readily available in the Central Valley. Some tools, such as bead drills, could be made from local obsidian (Sutton et al. 2016). Marine shells secured through trade with coastal groups were used as shell money and personal adornment items, such as Olivella beads (Sutton et al. 2016; Wallace 1978).

b. Tribal Cultural Resources

Tribal cultural resources that could be present within the SJCOG region include but are not limited to Native American burial sites, village or occupation sites, traditional resource gathering locations and natural landforms such as mountain peaks, ridge tops, or rivers. Such resources are present throughout the SJCOG region, including known and documented sites as well as undocumented sites that will be identified through cultural resources survey or ground disturbance. Tribal cultural resources are likely to be encountered near areas of prior Native American occupation and activity, which includes areas both within and outside of areas of current development. Surficial archaeological deposits that are tribal cultural resources are more likely to be heavily disturbed within urban areas and more intact in rural settings; however, this does not preclude the presence of buried archaeological resources that may be significant in urban settings.

4.15.2 Regulatory Setting

a. Federal Laws, Regulations, and Policies

The Department of Transportation Act

Passed in 1966, the Department of Transportation Act (49 United States Code 303, formerly 49 United States Code 1651(b)(2) and 49 United States Code 1653(f) includes Section 4(f), which states that the Federal Highway Administration and other U.S. Department of Transportation agencies cannot approve the use of land from public and private historical sites unless certain conditions apply. These conditions are the following: If there is no feasible and prudent avoidance alternative to the use of land, and if the action includes all possible planning to minimize harm to the property resulting from such use; or if the Federal Highway Administration determines the use of the property will have a *de minimis* impact.

Archaeological Resources Protection Act of 1979 (ARPA)

This statute was enacted to protect archaeological resources and sites that are on public lands and tribal lands, to foster increased cooperation and exchange of information between government representatives, the professional archaeological community, and private individuals. Section 4 of the statute and Sections 16.5-16.12 of the uniform regulations describe the requirements that must be met before federal authorities can issue a permit to excavate or remove any archaeological resource on federal or tribal lands. The curation requirements of artifacts, other materials excavated or removed, and the records related to the artifacts and materials are described in Section 5 of the ARPA. This section also authorizes the Secretary of the Interior to issue regulations describing in more detail the requirements regarding these collections.

American Indian Religious Freedom Act of 1978

The American Indian Religious Freedom Act of 1978 (AIRFA) (42 U.S. Code Section 1996) pledges to protect and preserve the traditional religious rights of American Indians, Aleuts, Eskimos, and Native Hawaiians. It establishes a national policy that traditional Native American practices and beliefs, sites (and right of access to those sites), and the use of sacred objects shall be protected and preserved. If a place of religious importance to American Indians could be affected by a federal undertaking, AIRFA promotes consultation with Indian religious practitioners, which could be coordinated with Section 106 consultation. Amendments to Section 106 of the NHPA in 1992 strengthened the interface between AIRFA and the NHPA by clarifying the following: (1) properties

of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization could be determined to be eligible for inclusion in the NRHP; and (2) in carrying out its responsibilities under Section 106, a federal agency shall consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to properties described under (1).

Archeological Resources Protection Act of 1979

The Archeological Resources Protection Act of 1979 (ARPA) (43 CFR Section 7) establishes uniform definitions, standards, and procedures to be followed by all federal land managers in providing protection for archaeological resources located on public lands and Native American lands. Under ARPA, additional requirements could apply to agency action if federal or Indian lands are involved. ARPA (1) prohibits unauthorized excavation on federal and Indian lands, (2) establishes standards for permissible excavation, (3) prescribes civil and criminal penalties, (4) requires agencies to identify archeological sites, and (5) encourages cooperation between federal agencies and private individuals.

Native American Graves Protection and Repatriation Act of 1990

The intent of the Native American Graves Protection and Repatriation Act of 1990 (25 U.S. Code Section 3001) is to identify Native American affiliation or lineal descent and ensure the rightful disposition, or repatriation, of Native American human remains, funerary objects, sacred objects, and items of cultural patrimony that are in federal possession or control. The regulations implementing the requirements of Native American Graves Protection and Repatriation Act relating to the inadvertent discovery of human remains and objects of cultural patrimony of Native American origin on federal or tribal lands are described in 43 CFR Section 10.4.

b. State Laws, Regulations, and Policies

Assembly Bill 52

AB 52 expanded CEQA by defining a new resource category, “tribal cultural resources.” AB 52 establishes that “a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment” (Public Resources Code [PRC] Section 21084.2). AB 52 further states when feasible, the lead agency shall establish measures to avoid impacts that would alter the significant characteristics of a tribal cultural resource (PRC Section 21084.3). PRC Section 21074 (a)(1)(A) and (B) defines tribal cultural resources as “sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe,” and meets either of the following criteria:

- a. Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in PRC Section 5020.1(k).
- b. A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of PRC Section 5024.1. In applying the criteria set forth in subdivision (c) of PRC Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.

AB 52 also establishes a formal consultation process for California tribes regarding those resources. The consultation process must be completed before a CEQA document can be certified or adopted.

AB 52 requires that lead agencies “begin consultation with a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project.” Native American tribes to be included in the process are those that have requested notice of projects proposed in the jurisdiction of the lead agency.

AB 52 (PRC Section 21084.3(b)) describes mitigation measures that may avoid or minimize the significant adverse impacts to TCRs. Examples include:

(1) Avoiding and preserving the resources in place, including, but not limited to, planning and constructing 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

(2) 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:

(A) protecting the cultural character and integrity of the resource

(B) protecting the traditional use of the resource

(C) protecting the confidentiality of the resource

(3) Establishing 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

(4) Protecting the resource

SJCOG has conducted AB 52 consultation as the lead agency for implementation of the 2022 RTP/SCS. SJCOG sent letters on June 25, 2021 to eleven Native American organizations (Buena Vista Rancheria of Me-Wuk Indians, Chicken Ranch Rancheria of Me-Wuk Indians, Guidiville Indian Rancheria, Muwekma Ohlone Tribe of the SF Bay Area, Nashville Enterprise Miwok-Maidu-Nishinan Tribe, Northern Valley Yokuts Tribe, Wuksache Indian Tribe/Eshom Valley Band, Tule River Indian Tribe, United Auburn Indian Community of the Auburn Rancheria, Wilton Rancheria, and The Confederated Villages of Lisjan) who had previously requested formal notice to consult. No responses have been received as of the date of this EIR.

4.15.3 Impact Analysis

a. Methodology and Significance Thresholds

In accordance with the requirements of AB 52, SJCOG conducted AB 52 consultation for the proposed 2022 RTP/SCS, which consisted of written communication with the: Big Sandy Rancheria of Western Mono Indians, Dunlap Band of Mono Indians, Wuksache Indian Tribe/Eshom Valley Band, Kern Valley Indian Community, Santa Rosa Rancheria Tachi Yokut Tribe, Tubatulabals of Kern Valley, and Tule River Indian Tribe. No response was received. Therefore, AB 52 consultation has concluded.

Appendix G of the State CEQA Guidelines identifies the following criteria for determining whether a project’s impacts would have a significant impact to tribal cultural resources:

1. Cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code section 21074 as either a site, feature, place, cultural landscape that is

geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is:

- a. Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code section 5020.1(k), or
- b. A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code section 5024.1. In applying the criteria set forth in subdivision (c) of Public Resource Code section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.

b. Project Impacts and Mitigation Measures

The following section discusses potential impacts and mitigation measures that may be associated with projects contained within the 2022 RTP/SCS. Section 4.13.3.c summarizes the impacts associated with capital improvement projects proposed in the 2022 RTP/SCS. Due to the programmatic nature of 2022 RTP/SCS, a precise, project-level analysis of the specific impacts associated with individual transportation and land use projects is not possible at this time. In general, however, implementation of proposed transportation improvements and future projects under the land use scenario envisioned by the 2022 RTP/SCS could result in the impacts as described in the following section.

Threshold 1: Cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is:

- a. Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code section 5020.1(k), or
- b. A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code section 5024.1. In applying the criteria set forth in subdivision (c) of Public Resource Code section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.

Impact TCR-1 IMPLEMENTATION OF PROPOSED TRANSPORTATION IMPROVEMENTS AND FUTURE PROJECTS INCLUDED IN THE LAND USE SCENARIO ENVISIONED IN THE 2022 RTP/SCS HAS THE POTENTIAL TO IMPACT TRIBAL CULTURAL RESOURCES. IMPACTS WOULD BE LESS THAN SIGNIFICANT WITH MITIGATION INCORPORATED.

AB 52 Consultation has closed for this project as no tribes responded to the AB 52 notification during the consultation process. Tribal cultural resources are very likely present throughout the SJCOG region. These may include, but are not limited to, Native American burial sites, village or occupation sites, traditional resource gathering locations, and natural landforms. Therefore, tribal cultural resources could be encountered during implementation of the transportation improvement projects included in the 2022 RTP/SCS and the land use scenario envisioned by the 2022 RTP/SCS. Effects on tribal cultural resources are highly dependent on the individual project site conditions and the characteristics of a project. Impacts to tribal cultural resources may include damage or

destruction of the resources. Adherence to the requirements of AB 52 encourages tribal consultation with local Native Americans and requires the identification of project-specific substantial adverse effects on tribal cultural resources and appropriate project-specific mitigation measures. If the transportation project sponsor agencies determine that a specific transportation or land use project could cause a substantial adverse change in the significance of a tribal cultural resource, the impact would be potentially significant.

Mitigation Measures

For transportation projects under their jurisdiction, SJCOG shall implement, and transportation project sponsor agencies can and should implement, in addition to CR-2 (a, b), the following mitigation measures for applicable transportation projects that would result in tribal cultural resource impacts, and where feasible and necessary based on site-specific considerations. San Joaquin County and incorporated cities in the County should implement these measures, where relevant to land use projects implementing the 2022 RTP/SCS. Project specific environmental documents may adjust these mitigation measures as necessary to respond to site specific conditions.

TCR-1(a) Identified Tribal Cultural Resources Impact Minimization

Implementing agencies shall, or can and should, comply with AB 52, which may require formal tribal consultation. If the implementing agency determines that a project may cause a substantial adverse change to a tribal cultural resource, they shall implement mitigation measures identified in the consultation process required under PRC Section 21080.3.2, or shall implement the following measures where feasible to avoid or minimize the project-specific significant adverse impacts:

- Avoidance and preservation of the resources in place, including, but not limited to: designing and building the project 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
- Establishment of permanent conservation easements or other culturally appropriate property management criteria for the purposes of preserving or utilizing the resources or places.
- Native American monitoring by the appropriate tribe during soil disturbance for all projects in areas identified as sensitive for potential tribal cultural resources and/or in the vicinity (within 100 feet) of known tribal cultural resources.

TCR-1(b) Unanticipated Tribal Cultural Resources Impact Minimization

If unanticipated potential tribal cultural resources are encountered during ground-disturbing activities, work in the immediate area must halt and the appropriate tribal representative(s), the implementing agency, and an archaeologist meeting the Secretary of the Interior's Professional Qualifications Standards for archaeology (National Park Service [NPS] 1983) shall be contacted immediately to evaluate the find. If, in consultation with the implementing agency, the

archaeologist and/or tribal representative determines the discovery to be a tribal cultural resource and thus, significant under CEQA, a mitigation plan shall be prepared and implemented in accordance with state guidelines and in consultation with tribal representatives. If the resource cannot be avoided, a mitigation plan shall be developed to address tribal concerns.

Implementing Agencies and Timing

Implementing agencies for transportation projects are SJCOG and transportation project sponsor agencies. Implementing agencies for land use projects are cities and the County. These mitigation measure shall, or can and should, be applied during permitting and environmental review and implemented during construction where appropriate.

Significance After Mitigation

Mitigation Measure TCR-1(a) would require implementation of mitigation identified through tribal consultation or other feasible mitigation to avoid impacts to identified tribal cultural resources. These measures would protect the resource's character, traditional use, and confidentiality. Mitigation Measure TCR-1(b) would ensure that impacts to unanticipated tribal cultural resources activities would be mitigated in consultation with tribal representatives. Implementation of the above measures would reduce impacts to tribal cultural resources to a less than significant level.

c. Specific RTP/SCS Projects that May Result in Impacts

All 2022 RTP/SCS projects that require construction may result in impacts to tribal cultural resources and, therefore, are not specifically identified in table format below. All 2022 RTP/SCS transportation projects that require ground disturbance outside of existing right-of-way may result in impacts discussed in Impact TCR-1, such as those listed in Table 2-1 in Section 2, *Project Description*. Additional analyses and AB 52 consultation with local tribes would be needed as the individual projects are implemented to determine the project-specific impact. The mitigation measures discussed above and potentially others requested by tribal representatives on a project-by-project basis would apply to these specific projects.

4.15.4 Cumulative Impacts

The cumulative impact analysis area for tribal cultural resources consists of the SJCOG region and adjoining counties. Information regarding these adjoining counties can be found in Section 3.1 – Environmental Setting, Table 3-1. Future development in this region that could impact cultural resources is considered in the analysis. This cumulative extent is used to evaluate potential direct and indirect, and permanent and temporary impacts to tribal cultural resources within the context of regional diminishment of these resources.

Tribal cultural resources are regionally specific and determined by the local tribes. However, development in the cumulative impact analysis area would increasingly extend into previously undeveloped areas. The SJCOG region would continue to develop under the SCS and could result in expansion of urban areas into undeveloped land and that development could encourage development in adjoining counties that have the potential to impact tribal cultural resources. Tribal cultural resources are often associated with areas near water, such as rivers, because Native American Tribes congregated near water. The increase in growth in previously undisturbed areas would contribute to regional impacts on tribal cultural resources.

Development in the SJCOG area would increase under the 2022 RTP/SCS by increasing mobility and growth. The increase in growth in previously undisturbed areas contributes to regional impacts on tribal cultural resources. If there may be tribal cultural resources at the location of a project site, tribal consultation in accordance with AB 52 would help ensure protection of tribal cultural resources. However, tribal territory often crosses the boundaries of multiple jurisdictions within and outside of the SJCOG region, and there could be several minor impacts to tribal cultural resources that together would result in a significant cumulative impact. But with the potential for cumulative impacts related to tribal cultural resources under the 2022 RTP/SCS are less than significant with mitigation, its contribution would not be cumulatively considerable. Mitigation Measures CR-2 (a, b), TCR-1(a), and TCR-1(b) would reduce these impacts to a less-than-cumulatively-considerable level.

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