

18 TRIBAL CULTURAL RESOURCES

This chapter provides an evaluation of the potential effects to tribal cultural resources by implementing the proposed City of Folsom 2035 General Plan (2035 General Plan). As established in the Notice of Preparation for the proposed 2035 General Plan (see Appendix A, *Notice of Preparation*), urban development and other activities subject to the plan may result in adverse effects to tribal cultural resources.

The following environmental assessment includes a review of tribal cultural resources potentially affected by the implementation of the 2035 General Plan, including existing resources within the City of Folsom. This analysis includes a review of regulations, requirements, plans, and policies applicable to tribal cultural resources, and considers the results of tribal consultation under AB 52 as part of the preparation of this Draft PEIR.

The existing condition of tribal cultural resources in the City of Folsom was determined by information obtained from the California Native American Heritage Commission, and consultation with Native Americans. Potential impacts related to tribal cultural resources were determined by comparing potential urban development activities to the existing environment, based on CEQA assessment criteria, and by considering the policies, regulations, and guidelines adopted by the City of Folsom and state resource agencies.

18.1 SETTING

The environmental and regulatory setting of the City of Folsom with respect to tribal cultural resources is described below for both the physical environment and the body of state and local policies and regulations with respect to such resources.

18.1.1 ENVIRONMENTAL SETTING

The 2035 General Plan Planning Area, including the 2035 Plan Evaluation Area, lies within a region traditionally occupied by the Nisenan (also referred to as Southern Maidu). A full discussion of the prehistoric and ethnographic setting of the region is presented in Chapter 10, *Cultural Resources*.

18.1.2 REGULATORY SETTING

The following regulations of federal, state, and local agencies govern various aspects of tribal cultural resources.

FEDERAL LAWS AND REGULATIONS

None applicable.

CALIFORNIA LAWS AND REGULATIONS

Assembly Bill 52

As of July 1, 2015, California Assembly Bill 52 of 2014 (AB 52) was enacted and expands CEQA by defining a new resource category, “tribal cultural resources.” Assembly Bill 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” (PRC Section

21084.2). It further states that the lead agency shall establish measures to avoid impacts that would alter the significant characteristics of a tribal cultural resource, when feasible (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 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.

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. 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 within the jurisdiction of the lead agency.

Consistent with the requirements of AB 52, three tribes (Wilton Rancheria, the Ione Band of Miwok Indians, and the United Auburn Indian Community of the Auburn Rancheria) have requested formal notice and information pursuant to California Public Resources Code, Section 21080.3.1(b) regarding projects for which the City of Folsom is lead agency. (See Table 18-1.)

Senate Bill 18

California Government Code §65352.3 (adopted pursuant to the requirements of SB 18) requires local governments to contact, refer plans to, and consult with tribal organizations prior to making a decision to adopt or amend a general or specific plan, or to designate open space that includes Native American Cultural Places. The tribal organizations eligible to consult have traditional lands in a local government’s jurisdiction, and are identified, upon request, by the Native American Heritage Commission (NAHC). As noted in the California Office of Planning and Research’s Tribal Consultation Guidelines (2005), “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.”

To comply with California Government Code requirements, the City of Folsom contacted the Native American Heritage Commission to obtain a list of tribes with cultural and traditional affiliations within the area encompassed by the City of Folsom 2035 General Plan. The NAHC identified 10 tribal representatives to be notified of the City’s proposed 2035 General Plan. (See Table 18-1.)

LOCAL LAWS AND REGULATIONS

The City of Folsom has adopted standard conditions and adopted mitigation measures to protect tribal cultural resources during the construction and operation of urban development. These requirements are found in the City’s Standard Construction Specifications.

Standard Construction Specifications

Requirements of the City's Standard Construction Specifications and Details, General Provisions related to cultural resources include:

- Article 11. Cultural Resources

Applicable excerpts from Article 11 are presented in Chapter 10, *Cultural Resources*.

Folsom Plan Area/Russell Ranch Adopted Mitigation Measures

Mitigation measures adopted by the City during its approval of the Folsom Plan Area Specific Plan and the Russell Ranch project related to tribal cultural resources include:

Folsom Plan Area Specific Plan EIR/EIS

- Mitigation Measure 3A.5-2: Conduct Construction Personnel Education, Conduct On-Site Monitoring if Required, Stop Work if Cultural Resources are Discovered, Assess the Significance of the Find, and Perform Treatment or Avoidance as Required.
- Mitigation Measure 3A.5-3: Suspend Ground-Disturbing Activities if Human Remains are Encountered and Comply with California Health and Safety Code Procedures.

Russell Ranch Project EIR

- Mitigation Measure 4.4-2(a): Conduct Construction Worker Awareness Training, Conduct On-Site Monitoring if Required, Stop Work if Cultural Resources are Discovered, Assess the Significance of the Find, and Perform Treatment or Avoidance as Required.
- Mitigation Measure 4.4-2(b): Suspend Ground-Disturbing Activities if Human Remains are Encountered and Comply with California Health and Safety Code Procedures.

18.1.3 PROPOSED GENERAL PLAN POLICIES

The following policies from the proposed 2035 General Plan address historical and cultural resources, as well as guide the location, design, and quality of development to minimize impacts to traditional cultural resources.

NATURAL AND CULTURAL RESOURCES ELEMENT

Policy NCR 1.1.4 Native and Drought Tolerant Vegetation. Encourage new developments to plant native vegetation, including those species important to Native American lifeways and values, and drought tolerant species and prohibit the use of invasive plants.

Goal NCR 5.1: Encourage the preservation, restoration, and maintenance of cultural resources, including buildings and sites, to enrich our sense of place and our appreciation of the city's history.

Policy NCR 5.1.2: Cultural Resources Inventory. Maintain an inventory of prehistoric and historic resources, including structures and sites.

Policy NCR 5.1.3: Nominate Additional Cultural Resources. Nominate additional buildings and sites to the City of Folsom Cultural Resources Inventory of locally significant cultural resources.

Policy NCR 5.1.4: Applicable Laws and Regulations. Ensure compliance with City, State, and Federal historic preservation laws, regulations, and codes to protect and assist in the preservation of historic and archeological resources, as listed in the City of Folsom Historic Preservation Master Plan, including the use of the California Historical Building Code as applicable, including, but not limited to, Senate Bill 18, Assembly Bill 52, Appendix G to the CEQA Guidelines, and, where applicable, Section 106 of the National Historic Preservation Act.

18.2 ENVIRONMENTAL EFFECTS

18.2.1 SIGNIFICANCE CRITERIA

As established by AB 52 and set forth in Appendix G, Question XVII of the State CEQA Guidelines, the following criterion has been established to quantify the level of significance of an adverse effect to tribal cultural resources evaluated pursuant to CEQA. An impact would exceed an impact threshold under these circumstances:

- 1) If the project would 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 Resources Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe. (*XVIIa*)

Under SB 18, the following criterion has been established to quantify the level of significance of an adverse effect to Native American Cultural Places pursuant to the Public Resources Code. An impact would exceed an impact threshold under these circumstances:

If, either directly through physical impacts or indirectly through loss of confidentiality, the adoption of the General Plan would cause a substantial adverse change in the significance of a Native American Cultural Place as defined in Public Resources Code Section 5097.9 and 5097.993 (to the greatest extent that it applies to property within the city) as:

1. a Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine; or
2. a Native American historic, cultural, or sacred site, that is listed or may be eligible for listing in the California Register of Historical Resources pursuant to Section 5024.1, including any historic or prehistoric ruins, any burial ground, any archaeological or historic site, any inscriptions made by Native Americans at such a site, any archaeological or historic Native American rock art, or any archaeological or historic feature of a Native American historic, cultural, or sacred site.

18.2.2 ANALYSIS METHODOLOGY

The tribal cultural resources analysis evaluates whether implementation of urban development and the construction of infrastructure that would occur under the 2035 General Plan could result in adverse effects to tribal cultural resources. These potential impacts could occur throughout the city, although the majority of the land available for new urban development (77 percent of the citywide total or 2,218 acres) would be located within the FPASP area south of Highway 50. North of Highway 50, 441 acres in 453 parcels are planned for urban uses by 2035.

AB 52 and SB 18 Consultation

In accordance with AB 52 and SB 18, the City of Folsom notified the Native American tribes listed in Table 18-1 of the proposed General Plan and invited them to participate in consultation. AB 52 notification letters were sent to each tribe on August 22, 2017. SB 18 letters were sent to 10 tribal representatives on September 7, 2017. The results of the AB 52 and SB 18 requests, notification letters, guidance, and tables will be provided prior to certification of the Draft PEIR.

Table 18-1 Native American Tribes Notified and Requesting Consultation Pursuant to AB 52 and SB 18

Tribe	Notified Pursuant to:		Requested and Completed Consultation
	AB 52	SB 18	
United Auburn Indian Community of the Auburn Rancheria	X	X	Yes
Buena Vista Rancheria of Me-Wuk Indians		X	No
Colfax-Todds Valley Consolidated Tribe		X	No
Ione Band of Miwok Indians - Martinez		X	No
Ione Band of Miwok Indians - Yonemura	X	X	No
Tsi Akim Maidu - Coney		X	No
Tsi Akim Maidu - Ryberg		X	No
Nashville-El Dorado Miwok		X	No
Shingle Springs Bank of Miwok Indians		X	No
Wilton Rancheria	X	X	Yes

Source: City of Folsom, 2018.

The City notified the three requesting tribes under AB 52 on August 22, 2017, which was within 14 days of its determination that it was ready to undertake CEQA review. Tribes were afforded the statutory 30 days to respond to request consultation.

The United Auburn Indian Community (UAIC) responded to the City's AB 52 notification of an opportunity to consult on September 7, 2017 and requested consultation regarding potential impacts to Tribal Cultural Resources associated with the adoption of the 2035 General Plan. The City initiated consultation with the UAIC on September 8, 2017 in accordance with AB 52 and Section 21080.3.1(e) of the California Public Resources Code. To initiate consultation, the City provided the Tribe with existing and proposed General Plan documents as requested. To further consultation, City staff met with Tribal representatives on October 26, 2017, during which time the tribe stated its desire to consult with the City on project-level CEQA review under the General Plan to identify any project specific impacts to tribal cultural resources. On November 27, 2017 the UAIC submitted recommended policies and modifications of draft policies to be incorporated into the 2035 General

Plan. The UAIC additionally suggested procedures for identifying and protecting tribal cultural resources to be implemented by the City. The City has agreed to make the suggested edits to 2035 General Plan policies as shown above.

Separately, under SB 18, on September 7, 2017, the City sent notification letters to the tribes named by the NAHC. On September 20, 2017, Wilton Rancheria responded to request consultation. On September 29, the City initiated consultation with Wilton Rancheria and provided information about the General Plan and links to documents. The City scheduled a meeting with Wilton Rancheria to discuss the General Plan, to which Wilton Rancheria did not attend. No communication from the Wilton Rancheria has been received by the City since that time.

Also under SB 18, on September 25, 2017, UAIC responded to the notification letter and requested consultation. City staff met with Tribal representatives on October 26, 2017. This meeting was held in conjunction with the AB 52 consultation meeting described above.

None of the other tribes listed in Table 18-1 responded to the City’s AB 52 or SB 18 notifications.

18.2.3 LESS-THAN-SIGNIFICANT IMPACTS

There are no impacts of this type for this issue area.

18.2.4 POTENTIALLY SIGNIFICANT ENVIRONMENTAL IMPACTS

The following discussion examines the potential impact of the proposed project based on the impact threshold criterion described above.

Impact TCR-1 Interference with tribal cultural resources	
Applicable Regulations	SB 18, AB 52, PRC §21080.3.1(e).
Adopted Mitigation Measures	FPASP 3A.5-1a, 3A.5-1b, 3A.5-2, 3A.5-3; RR 4.4-1, 4.4-2a, 4.4-2b.
Proposed GP Policies that Reduce Impacts	NCR 1.1.4, 5.1.2 - 5.1.4.
Significance after Implementation of GP Policies	Significant; mitigation required.
Mitigation Measures	None available.
Significance after Mitigation	Significant and unavoidable.

The AB 52/SB 18 notification and consultation process completed for this Draft PEIR did not identify specific tribal cultural resources and Native American cultural places that may be of cultural or religious significance to California Native American tribes. Effects on tribal cultural resources are only knowable once a specific project has been proposed because the effects are highly dependent on both the individual project site conditions and the characteristics of the proposed activity. Because project-level CEQA review during implementation of the General Plan would result in a determination as to whether or not tribal cultural resources are present and will be impacted. Similarly, where specific plan adoptions or amendments, or General Plan amendments are proposed in the future, SB 18 consultation would determine whether or not those specific actions will affect Native American cultural places. If tribal cultural resources or cultural places are identified during future AB 52 or SB 18 consultation efforts, impacts to any such tribal cultural resources would be potentially significant unless mitigation is incorporated. Therefore, implementation of the proposed

2035 General Plan would lead to urban development and other activities that could damage traditional cultural resources or Native American cultural places. This would be a significant impact.

Table 18-2 includes existing federal, state, and City regulations, in addition to policies from the 2035 General Plan and mitigation measures for development of the FPASP area that protect tribal cultural resources and Native American cultural places. The table also sets forth how each cited regulation acts to protect sensitive resources.

Table 18-2 Regulatory Requirements and Proposed 2035 General Plan Goals/Policies Related to Tribal Cultural Resources	
Measure Identification	How the Regulation or Policy Avoids or Reduces Impact
FEDERAL REGULATIONS	
<i>None applicable</i>	--
STATE REGULATIONS	
<i>SB 18</i>	Requires local governments to contact, refer plans to, and consult with tribal organizations prior to making a decision to adopt or amend a general or specific plan, or when dedicating open space that contains Native American cultural places.
<i>AB 52 / PRC §21080.3.1(e)</i>	Requires local and state governments to consult with California Native American tribes as part of CEQA review.
CITY REQUIREMENTS	
<i>Standard Construction Specifications and Details, Article 11. Cultural Resources</i>	Requires contractors to stop work upon the discovery of unknown cultural or historic resources. An archaeologist must then be retained to evaluate the significance of the resource to establish mitigation requirements if the resource is determined to be significant.
FOLSOM PLAN AREA SPECIFIC PLAN EIR/EIS	
<i>Mitigation Measure 3.A.5-2</i>	Requires construction worker awareness training, on-site monitoring if required, and stopping work if cultural or potentially historic resources are discovered. Requires assessing the significance of the find and performing treatment or avoidance as required.
<i>Mitigation Measure 3.A.5-3</i>	Requires suspending ground-disturbing activities if human remains are encountered and compliance with California Health and Safety Code Procedures
RUSSELL RANCH PROJECT EIR	
<i>Mitigation Measure 4.4-2(a)</i>	Requires construction worker awareness training, on-site monitoring if required, and stopping work if cultural or potentially historic resources are discovered. Requires assessing the significance of the find and performing treatment or avoidance as required.
<i>Mitigation Measure 4.4-2(b)</i>	Requires suspending ground-disturbing activities if human remains are encountered and compliance with California Health and Safety Code Procedures
2035 GENERAL PLAN GOALS AND POLICIES	
<i>Policy NCR 1.1.4: Native and Drought Tolerant Vegetation</i>	Encourages new developments to plant native vegetation, including that which is important to Native American lifeways and values, and drought tolerant species and prohibit the use of invasive plants.
<i>Goal NCR 5.1</i>	Encourages the preservation, restoration, and maintenance of cultural resources, including buildings and sites.

Table 18-2 Regulatory Requirements and Proposed 2035 General Plan Goals/Policies Related to Tribal Cultural Resources

Measure Identification	How the Regulation or Policy Avoids or Reduces Impact
<i>Policy NCR 5.1.2: Cultural Resources Inventory</i>	Requires the maintenance of an inventory of prehistoric and historic resources, including structures and sites, which would minimize the chance that a historic resource would unknowingly be adversely impacted.
<i>Policy NCR 5.1.3: Nominate Additional Cultural Resources</i>	Calls for the nomination of additional buildings and sites to the City of Folsom Cultural Resources Inventory of locally significant cultural resources, which would lead to protection of additional resources.
<i>Policy NCR 5.1.4: Applicable Laws and Regulations</i>	Requires compliance with federal, state, and City historic preservation laws, regulations, and codes to protect and assist in the preservation of historic and archeological resources, as listed in the City of Folsom Historic Preservation Master Plan, including the use of the California Historical Building Code as applicable, including, but not limited to, Senate Bill 18, Assembly Bill 52, Appendix G to the CEQA Guidelines, and, where applicable, Section 106 of the National Historic Preservation Act

Source: Planning Partners 2018.

The 2035 General Plan contains a policy requiring compliance with SB 18 and AB 52 by reference (NCR 5.1.4). The City’s Standard Construction Specifications, Article 11 require compliance with regulations related to the treatment of human remains of Native American origin. The 2035 General Plan provides numerous policies that are intended to protect cultural and historic resources, including tribal cultural resources. However, proposed policies could still permit the loss of tribal cultural resources and landscapes that may be of cultural or religious significance to California Native American tribes as a result of urban and infrastructure development. This would be a significant impact.

Significance of Impact: Significant.

Mitigation Measure TCR-1: None available.

Level of Significance After Mitigation: Significant and unavoidable.

Because effects on tribal cultural resources are only knowable once a specific project has been proposed since the effects are highly dependent on both the individual project site conditions and the characteristics of the proposed activity, there is no feasible available mitigation the City can implement, either individually or in conjunction with other agencies, that would reduce this impact to a less-than-significant level. This impact would therefore remain significant and unavoidable.