

This section evaluates the potential impacts on tribal cultural resources related to the construction and operation of the San Rafael Transit Center Replacement Project (proposed project) and other build alternatives. This section also describes the existing conditions at the project area as well as the regulatory framework for this analysis. The impacts of the proposed project are generally analyzed at a project level. Impacts resulting from implementation of the proposed project are described. Mitigation measures, where applicable, are also described. Impacts related to the No-Project Alternative are discussed in Chapter 5, Alternatives to the Project.

3.15.1 Existing Conditions

3.15.1.1 Regulatory Setting

This section provides a summary of the tribal cultural resources plans and policies of the City of San Rafael (City) as well as regional and state agencies that have policy and regulatory control over the project site.

State

Archaeological, paleontological, and historical sites are protected under to a variety of state policies and regulations, as enumerated under the California Public Resources Code (PRC). Tribal cultural resources, which are recognized as nonrenewable resources, receive additional protection under the California Environmental Quality Act (CEQA).

- PRC Section 5024 requires state agencies to identify and protect state-owned resources that meet the listing criteria of the National Register of Historic Places, including significant tribal cultural resources. It further specifically requires the California Department of Transportation to inventory state-owned structures in its rights-of-way. Sections 5024(f) and 5024.5 require state agencies to provide notice to and consult with the State Historic Preservation Officer before altering, transferring, relocating, or demolishing state-owned historical resources that are listed or eligible for listing in the National Register of Historic Places or registered or eligible for registration as California Historical Landmarks.
- PRC Sections 5097.9–5097.991 provide protection to Native American historical and cultural resources as well as sacred sites. These sections also identify the powers and duties of the Native American Heritage Commission (NAHC) and require notification of descendants when Native American human remains are discovered. They also provide for the treatment and disposition of human remains and associated grave goods.
- PRC Section 21084.2 outlines the key points of Assembly Bill (AB) 52 (Chapter 532, Statutes of 2014), which establishes a formal consultation process for California Native American tribes as part of CEQA. This section equates significant impacts on tribal cultural resources with significant environmental impacts.

Assembly Bill 52

Tribal cultural resources were originally identified as a distinct CEQA environmental category with the adoption of AB 52 in September 2014. For all projects that are subject to CEQA and received a notice of preparation, notice of negative declaration, or mitigated negative declaration on or after July 1, 2015, AB 52 requires the lead agency on a proposed project to consult with the geographically affiliated California Native American tribes. The legislation creates a broad new category of environmental resources, “tribal cultural resources,” which must be considered under CEQA. AB 52 requires a lead agency to not only consider the resource’s scientific and historical value but also whether it is culturally important to a California Native American tribe.

AB 52 defines tribal cultural resources as sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe that are included in or determined to be eligible for inclusion in the California Register of Historical Resources; included in a local register of historical resources, as defined in PRC Section 5020.1(k); or determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to the criteria of PRC Section 5024.1(c) (CEQA Section 21074).

The California Register of Historical Resources criteria for the listing of resources, as defined in PRC Section 5024.1(c), are the following:

1. The resource is associated with events that have made a significant contribution to the broad patterns of California’s history and cultural heritage.
2. The resource is associated with the lives of persons important in our past.
3. The resource embodies the distinctive characteristics of a type, period, region, or method of construction; represents the work of an important creative individual; or possesses high artistic values.
4. The resource has yielded, or may be likely to yield, information important in prehistory or history.

AB 52 also sets up an expanded consultation process. For projects initiated after July 1, 2015, lead agencies are required to provide notice of the proposed projects to any tribe that is traditionally and culturally affiliated with the geographic area that requested to be informed by the lead agency, following PRC Section 21018.3.1(b). If, within 30 days, a tribe requests consultation, the consultation process must begin before the lead agency can release a draft environmental document. Consultation with the tribe may include a discussion regarding the type of review necessary, the significance of tribal cultural resources, the significance of the project’s impacts on the tribal cultural resources, and alternatives and mitigation measures recommended by the tribe. The consultation process will be deemed concluded when either (1) the parties agree to mitigation measures or (2) any party concludes, after a good-faith effort, that an agreement cannot be reached. Any mitigation measures agreed to by the tribe and lead agency must be recommended for inclusion in the environmental document. If a tribe does not request consultation, or to otherwise assist in identifying mitigation measures during the consultation process, a lead agency may still consider mitigation measures if the agency determines that a project will cause a substantial adverse change to a tribal cultural resource.

Local

Marin County Ordinance 1589

The Marin County Code of Ordinances includes Ordinance 1589, which outlines procedures related to protecting archaeological resources in the county. Such protection procedures include the following:

- Requirement of a permit to excavate an Indian midden (Section 5.32.020)
- Designation of a liaison agency between institutions of higher learning or an association and the department of public works for the purpose of the study of Indian relics of archaeological significance (Section 5.32.030)
- Requirement of permits to excavate Indian middens to follow formats approved by the director of public works and to note that the excavation is for either archaeological or nonarchaeological purposes (Section 5.32.040)
- Requirement for the director of public works or designee to send the application for excavation to the liaison agency and, within 5 days of receipt, for the liaison agency to inform the director of public works if the midden is of archaeological significance; only non-archaeological midden sites will be issued a permit (Section 5.32.050)
- If the midden requesting permit for excavation is certified to have archaeological significance, allowance for the director of public works to issue a permit with certain conditions (Section 5.32.060)
- Requirement for actions done under an issued permit to follow the permit's terms and conditions (Section 5.32.070)
- Requirement that persons in violation of the chapter's provisions are guilty of a misdemeanor and shall incur punishments as listed under Section 1.04.270; violations that occur on multiple days will each be considered as separate violations per day (Section 5.32.090)

The conditions of Section 5.32.050 are:

- A. Prior to nonarchaeological excavation or removal of materials from the middens, the permittee shall not excavate for a period of sixty days in order to allow archaeological excavation of the site.
- B. The permittee or owner of the property shall be required to grant a license for the excavation, identification, and classification of artifacts and proper scientific analysis of materials having historical or archaeological significance to recognized institutions of higher learning or associations having as their major purpose the study of Indian relics and other sites having archaeological value. The terms of the license shall be such as are agreed to by the prospective licensee and property owner. (Ord. 1825 § 2, 1971: Ord. 1589 § 6, 1967)

Chapter 2.19 of the San Rafael Municipal Code, Archaeological Resources Projection

The City's municipal code outlines the duties of the Planning Commission, which oversees the implementation of an ordinance regarding archaeological resources.

2.19.010 - Purpose.

Certain lands and geographic areas within the city of San Rafael contain significant archeological resources, which include deposits and remains of the local Native Americans and other early inhabitants. These deposits and remains represent an important part of the early history of San Rafael and the culture of the Native American community. Without proper regulations and monitoring, continued excavation and grading activities within the city could significantly impact these resources.

In recognizing the importance of protecting significant archeological resources, the city of San Rafael has determined to:

(a) Establish a procedure for identifying, when possible, archeological resources and potential impacts to such resources prior to authorizing excavation and grading activities; (b) Provide valuable information and direction to property owners in the community in order to make them aware of these resources; (c) Implement measures that would preserve and protect valuable archeological resources, when there is a potential for encountering such resources; (d) Establish a procedure which would ensure that appropriate advisory agencies and organizations are contacted and consulted, when there is a probability that archeological resources could be encountered during an activity involving grading, excavation, and/or construction; (e) Establish and implement specific protection and preservation measure in the event archeological resources are encountered during grading, excavation and/or construction. (Ord. 1772 § 2 (part), 2001)

2.19.020 - Archeological sensitivity map.

Geographic areas of archeological sensitivity shall be depicted on a citywide map. This map shall be prepared by an archeologist and shall be maintained by and kept on file with the city department of community development. This map shall:

(a) Identify sensitivity level based on the criteria adopted by council resolution; (b) Be used as a reference by the city whenever considering or analyzing projects involving excavation and grading; and (c) Be reviewed and updated periodically as new information becomes available. (Ord. 1772 § 2 (part), 2001)

2.19.030 - Procedures and regulations for archeological resource protection.

Specific procedures and regulations shall be implemented by the city to ensure the protection of archeological resources as adopted by council resolution. (Ord. 1772 § 2 (part), 2001)

The City of San Rafael General Plan 2020 and Draft San Rafael General Plan 2040

In 2004, the City adopted *The City of San Rafael General Plan 2020* in order to guide future planning efforts and development in the city. *The City of San Rafael General Plan 2020* includes the following goal and policies related to the protection of built and archaeological resources (City of San Rafael 2016):

Goal 28, Protected Cultural Heritage: It is the goal for San Rafael to have protected and maintained historic buildings and archaeological resources as part of San Rafael's cultural heritage.

CA-15. Protection of Archaeological Resources. Recognize the importance of protecting significant archaeological resources by: identifying, when possible, archaeological resources and potential impacts on such resources; providing information and direction to property owners in order to make them aware of these resources; implementing measures to preserve and protect archaeological resources.

CA-15a. Archeological Resources Ordinance. Continue to implement the existing Archeological Resources Ordinance.

The City is in the process of updating *The City of San Rafael General Plan 2020*. Published in October 2020, the Draft *San Rafael General Plan 2040* includes goals and policies under the Community Design and Preservation Element relating to cultural resources. The plan includes the Goal CDP-5,

“Protect and maintain the city’s historic and archaeological resources,” and the following policies (City of San Rafael 2020:5-25–5-33):

- Policy CDP-5.1: Preserve buildings and areas recognized in the city’s architectural survey
- Policy CDP-5.2: Maintain and update the city’s historic resource inventory
- Policy CDP-5.3: Encourage historic or architectural conservation districts
- Policy CDP-5.4: Develop financial incentives for historic resource stewardship and maintenance
- Policy CDP-5.5: Encourage adaptive reuse redevelopment
- Policy CDP-5.6: Ensure integrity protections to historic resources
- Policy CDP-5.7: Maintain historic properties
- Policy CDP-5.8: Encourage local preservation advocacy
- Policy CDP-5.9: Encourage historic preservation education
- Policy CDP-5.10: Utilize historic resources for economic benefits
- Policy CDP-5.11: Acknowledge the sustainability component of historic preservation
- Policy CDP-5.12: Ensure a culturally inclusive approach to historic preservation efforts
- Policy CDP-5.13: Protect archaeological resources
- Policy CDP-5.14: Protect Native American resources through coordination with Native American community ambassadors

3.15.1.2 Environmental Setting

Information about the existing environmental setting, ethnographic lifeways, and the post-contact history of Native Americans who traditionally inhabited the vicinity of the project area is provided in Section 3.4, Cultural Resources.

3.15.2 Environmental Impacts

This section describes the impact analysis related to tribal cultural resources for the proposed project. It describes the methods and thresholds used to determine whether an impact would be significant. Measures to mitigate (i.e., avoid, minimize, rectify, reduce, eliminate, or compensate for) significant impacts accompany each impact discussion, as applicable. Four different build alternatives, the Move Whistlestop Alternative, the Adapt Whistlestop Alternative, the 4th Street Gateway Alternative, and the Under the Freeway Alternative—which are all in Downtown San Rafael within 500 feet of the existing transit center—are being evaluated. Impacts for the build alternatives are presented together unless they differ substantially among alternatives.

3.15.2.1 Methodology

Archaeological Resources in the Project Area

To identify the presence of previously recorded archaeological resources, including those potentially considered tribal cultural resources, ICF conducted a record search on May 21, 2020, at the Northwest Information Center (NWIC) in Rohnert Park, California, a part of the California Historic Resource Information System. Three previously recorded archaeological resources were identified within the study area, which is limited to the footprints of the four alternatives being considered, during the records search. All three resources (P-21-000113/CA-MRN-84, P-21-000114/CA-MRN-85, and P-21-002833/CA-MRN-711/H) are prehistoric shell middens that have been leveled down to the ground surface. Some historical artifacts have been observed in two of the sites (P-21-000114/CA-MRN-85, and P-21-002833/CA-MRN-711/H). These are described in Table 3.15-1.

Table 3.15-1. Previously Recorded Archaeological Resources within the Study Area

P-Number	Trinomial	Description
P-21-000113	CA-MRN-84	Originally recorded by N.C. Nelson in 1907 as the site of a “quite large” shellmound that “exists no longer.” At the time, Richard Thompson remembered unearthing mortars, pestles, charmstones, and bone needles (Baker and Shoup 2014). 2014 shovel test and augur survey observed black shell midden-type soil at the northwest corner of 3rd and Irwin Streets; however, subsequent testing was restricted and inconclusive (Kaptain and Jones 2012; Shoup 2014).
P-21-000114	CA-MRN-85	Originally recorded by Nelson in 1907; he took ethnographic accounts of the mound, now covered by a house on a perceptible rise of shell material, that was said to have been 20 feet high and rich in artifacts and human remains. A survey in 2008 noted dark gray midden, shell, and no human remains. Testing in 2008 and 2014 found 40–60 centimeters of shell midden containing prehistoric artifacts (Shoup and Baker 2014a). Historic-era artifacts were also recorded mixed into some trenches. The extent of the buried midden is better understood to the east and west; north and south areas are on private property (Kaptain and Jones 2012; Roop 1991; Shoup 2014).
P-21-002833	CA-MRN-711/H	Testing in 2011 and 2014 discovered a highly disturbed prehistoric deposit along Hetherton Street consisting of chert debitage and cores, an obsidian biface fragment (circa 614 years before present), patches of disturbed shell midden, human bone, and historic artifacts. A small lens of an intact shell midden was discovered near the eastern side of 5th Avenue and Hetherton Street. Likely redeposited elements or sparse scatters related to less-intense prehistoric uses (Shoup and Baker 2014b). 2014 monitoring along Tamalpais Avenue was negative, suggesting that the site does not extend this far west (Shoup 2014).

The NWIC record search results are included in Appendix G.

Native American Consultation

To determine sensitivity for Native American resources within the project area, consultation with NAHC and local Native American groups was conducted.

NAHC was contacted on October 16, 2018, with a request for the following information:

- CEQA Tribal Consultation List (AB 52)
- Identification by NAHC of any Native American resources within the subject lands that are listed in the Sacred Lands File

A response from NAHC was received on October 29, 2018, and stated that a search of the Sacred Lands File did not identify any sites; however, the letter specified that the area is sensitive for potential tribal resources.

The response from NAHC included the following list of individuals and tribal representatives who might have an interest in the proposed project:

- Gene Buvelot, Federated Indians of Graton Rancheria
- Greg Sarris, Chairperson, Federated Indians of Graton Rancheria

These individuals were contacted to initiate consultation under AB 52 if desired. Certified letters were mailed via priority mail on November 7, 2018. No responses were received from any of the contacts.

3.15.2.2 Thresholds of Significance

The following State CEQA Guidelines Appendix G thresholds identify significance criteria to be considered for determining whether a project could have significant impacts related to tribal cultural resources.

Would the proposed project:

- 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 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 section 5020.1(k)?
 - 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 § 5024.1. In applying the criteria set forth in subdivision (c) of Public Resource Code § 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe?

3.15.2.3 Impacts

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 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 Section 5020.1(k) or 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 § 5024.1

Construction

Construction of any of the build alternatives would likely affect tribal cultural resources. Two pre-contact archaeological sites (P-21-000113/CA-MRN-84 and P-21-000114/CA-MRN-85) are to the east of the freeway and one pre-contact archaeological site is just west of the freeway (P-21-002833/CA-MRN-711/H). Such resources have the potential to be considered tribal cultural resources. The presence of these resources suggests that ground disturbance associated with project construction has the potential to encounter as-yet-undocumented pre-contact archaeological resources, which can also be considered tribal cultural resources, and would result in potentially significant impacts. These impacts would be reduced to a less-than-significant level with the implementation of the mitigation measures outlined below.

All build alternatives would involve the removal of existing storm drain infrastructure and the installation of new inlets, manholes, and bioretention facilities. Utilities, including traffic signal poles, streetlights, and fire hydrants, would need to be relocated and/or removed.

Move Whistlestop Alternative/Adapt Whistlestop Alternative/4th Street Gateway Alternative

Project activities near these build alternative project sites would occur within the site boundary of P-21-002833/CA-MRN-711/H. These build alternatives would extend along Hetheron Street and would affect site P-21-002833/CA-MRN-711/H, a pre-contact midden containing human bone and Native American artifacts; historical artifacts were also found at the site during testing (Shoup and Baker 2014b). Subsurface testing at P-21-002833/CA-MRN-711/H identified a buried component including a small lens of an intact shell midden and patches of disturbed shell midden from 0–60 centimeters below surface (Shoup and Baker 2014b). The site has not been clearly demarcated, although its western border is believed to lie between Hetheron Street and Tamalpais Avenue (Shoup 2014).

Construction of these build alternatives would include ground disturbance within the resource boundary of P-21-002833/CA-MRN-711/H, a pre-contact midden deposit, which has the potential to be considered a tribal cultural resource. This impact would be **significant**. However, implementation of Mitigation Measures MM-CULT-CNST-4, MM-CULT-CNST-5, MM-CULT-CNST-6,

and MM-CULT-CNST-7 (as described in Section 3.4, *Cultural Resources*) would ensure that impacts related to tribal cultural resources would be ***less than significant with mitigation***.

Under the Freeway Alternative

The footprint of the Under the Freeway Alternative extends from Hetherton Street on the west side of the freeway to Irwin Street on the east side and overlaps archaeological sites P-21-000113/CA-MRN-84, P-21-000114/CA-MRN-85, and P-21-002833/CA-MRN-711/H.

Site P-21-000113/CA-MRN-84, a pre-contact shellmound, was originally large, but by the early 1900s was nonexistent, according to N.C. Nelson. Early explorations into the mound recovered various pre-contact artifacts including mortars, pestles, charmstones, and bone needles, but no human remains were noted (Baker and Shoup 2014). Historical artifacts were also observed during testing. Survey and testing in 2014 observed small amounts of shallow, black shell midden-type soil at the northwest corner of 3rd and Irwin Streets (Kaptain and Jones 2012; Shoup 2014).

Site P-21-000114/CA-MRN-85, another pre-contact shellmound, is located along Irwin Street near 5th Avenue and contained artifacts and human remains. The mound is reported to have stood 20 feet tall, although recent testing found 16 to 24 inches (40 to 60 centimeters) of midden containing pre-contact artifacts (Shoup and Baker 2014a). Historic-era artifacts were also recorded mixed into some trenches. The midden is well defined along its eastern and western sides, while the northern and southern ends are on private property and have not been fully delineated (Kaptain and Jones 2012; Shoup 2014). A 1989 visual survey found shell in flower beds along Irwin Street (Roop 1991).

The Under the Freeway Alternative extends along Hetherton Street and would affect site P-21-002833/CA-MRN-711/H, a pre-contact midden containing human bone and Native American artifacts; historical artifacts were also found at the site during testing (Shoup and Baker 2014b). Subsurface testing at P-21-002833/CA-MRN-711/H identified a buried component including a small lens of an intact shell midden and patches of disturbed shell midden from 0–60 centimeters below surface (Shoup and Baker 2014b). The site has not been clearly demarcated, although its western border is believed to lie between Hetherton Street and Tamalpais Avenue (Shoup 2014).

Construction of the Under the Freeway Alternative would include ground disturbance within the resource boundaries of P-21-000113/CA-MRN-84, P-21-000114/CA-MRN-85, and P-21-002833/CA-MRN-711/H, pre-contact midden deposits, which have the potential to be considered a tribal cultural resource. This impact would be **significant**. However, implementation of MM-CULT-CNST-4, MM-CULT-CNST-5, MM-CULT-CNST-6, and MM-CULT-CNST-7 (as described in Section 3.4, *Cultural Resources*) would ensure that impacts related to tribal cultural resources would be ***less than significant with mitigation***.

Operations

All Build Alternatives

Operation of the San Rafael Transit Center, under any build alternative, would not include ground disturbance and is therefore not anticipated to result in impacts on any tribal cultural resource.

Mitigation Measures

Four mitigation measures have been proposed (as described in Section 3.4, *Cultural Resources*) to reduce the impacts on tribal cultural resources to a ***less-than-significant*** level:

MM-CULT-CNST-4: Develop and Implement an Archaeological Testing Plan

MM-CULT-CNST-5: Conduct Cultural Resource Awareness Training Prior to Project-Related Ground Disturbance and Stop Work if Archaeological Deposits are Encountered During Ground-Disturbing Activities

MM-CULT-CNST-6: Develop and Implement a Tribal Cultural and Archaeological Monitoring Plan

MM-CULT-CNST-7: Comply With State Laws Relating to Human Remains