

IV. Environmental Impact Analysis

K. Tribal Cultural Resources

1. Introduction

This section of the Draft EIR provides an analysis of the Project's potential impacts on tribal cultural resources. Potential impacts to tribal cultural resources are based on coordination and consultation with California Native American tribes that are traditionally and culturally affiliated with the Project Site.

2. Environmental Setting

a. Regulatory Framework

Senate Bill 18 (SB 18) requires local governments to consult with California Native American tribes identified by the California Native American Heritage Commission prior to the adoption or amendment of a general plan or specific plan. In addition, California law protects Native American burials, skeletal remains, and associated grave goods regardless of the antiquity and provides for the sensitive treatment and disposition of those remains.

On September 25, 2014, Governor Brown signed into law Assembly Bill 52 (AB 52), which amended PRC Section 5097.94 and added Sections 21073, 21074, 21080.3.1, 21080.3.2, 21082.3, 21083.09, 21084.2, and 21084.3 to establish that an analysis of a project's impact on cultural resources include whether the project would impact "tribal cultural resources." As set forth in PRC Section 21074:

(a) "Tribal cultural resources" are either of the following:

(1) Sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe that are either of the following:

(A) Included or determined to be eligible for inclusion in the California Register of Historical Resources.

(B) Included in a local register of historical resources as defined in subdivision (k) of Section 5020.1.¹

(2) 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 Section 5024.1.² In applying the criteria set forth in subdivision (c) of Section 5024.1 for the purposes of this paragraph, the lead agency shall consider the significance of the resource to a California Native American tribe.

(b) A cultural landscape that meets the criteria of subdivision (a) is a tribal cultural resource to the extent that the landscape is geographically defined in terms of the size and scope of the landscape.

(c) A historical resource described in Section 21084.1, a unique archaeological resource as defined in subdivision (g) of Section 21083.2,³ or a “nonunique archaeological resource” as defined in subdivision (h) of Section 21083.2⁴ may also be a tribal cultural resource if it conforms with the criteria of subdivision (a).

For a project for which a notice of preparation for a Draft EIR was filed on or after July 1, 2015, the lead agency is required to consult with a California Native American tribe that is traditionally and culturally affiliated with the geographic area of a proposed project, if: (1) the tribe requested to the lead agency, in writing, to be informed by the lead agency of proposed projects in that geographic area; and (2) the tribe requests consultation, prior to the release of a negative declaration, mitigated negative declaration or environmental

¹ Per subdivision (k) of PRC Section 5020.1, “local register of historical resources” means a list of properties officially designated or recognized as historically significant by a local government pursuant to a local ordinance or resolution.

² Subdivision (c) of PRC Section 5024.1 provides the National Register criteria for listing of historical resources in the California Register.

³ Per subdivision (g) of PRC Section 21083.2, a unique archaeological resource means an archaeological artifact, object, or site about which it can be clearly demonstrated that, without merely adding to the current body of knowledge, there is a high probability that it meets any of the following criteria: (1) contains information needed to answer important scientific research questions and that there is a demonstrable public interest in that information; or (2) has a special and particular quality such as being the oldest of its type or the best available example of its type; or (3) is directly associated with a scientifically recognized important prehistoric or historic event or person.

⁴ Per subdivision (h) of PRC Section 21083.2, a nonunique archaeological resource means an archaeological artifact, object, or site which does not meet the criteria in subdivision (g). A nonunique archaeological resource need be given no further consideration, other than the simple recording of its existence by the lead agency if it so elects.

impact report for a project. The consultation procedures set forth in AB 52 largely parallel those in SB 18. Section 21080.3.1(b) of the PRC defines “consultation” with a cross-reference to Government Code Section 65352.4, which applies when local governments consult with tribes on certain planning documents and states the following:

“Consultation” means the meaningful and timely process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties’ cultural values and, where feasible, seeking agreement. Consultation between government agencies and Native American tribes shall be conducted in a way that is mutually respectful of each party’s sovereignty. Consultation shall also recognize the tribes’ potential needs for confidentiality with respect to places that have traditional tribal cultural significance.

The new provisions in Section 21080.3.2(a) of the PRC enumerate topics that may be addressed during consultation, including identification of the significance of tribal cultural resources, determination of the potential significance of Project impacts on tribal cultural resources and the type of environmental document that should be prepared, and identification of possible mitigation measures and Project alternatives.

Section 21084.3 of the PRC also states that public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource. This section of the PRC also includes examples of mitigation measures that may be considered to avoid or minimize the significant adverse effects.

Consultation ends when either of the following occurs prior to the release of the environmental document:⁵

1. Both parties agree to measures to avoid or mitigate a significant effect on a tribal cultural resource. Agreed upon mitigation measures shall be recommended for inclusion in the environmental document (PRC Section 21082.3(a); or
2. A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached (PRC Sections 21080.3.2(b)(1)-(2) and 21080.3.1(b)(1)).

⁵ Governor’s Office of Planning and Research, *Tribal Consultation Guidelines, Supplement to General Plan Guidelines*, November 14, 2005.

b. Existing Conditions

In compliance with the requirements of AB 52, the City provided formal notification of the Project on July 22, 2016. Letters were sent via FedEx and certified mail to the following California Native American tribes that requested notification:

- Tongva Ancestral Territorial Tribal Nation
- Gabrieleño Band of Mission Indians—Kizh Nation
- Gabrieleño /Tongva Nation
- Gabrieleño /Tongva San Gabriel Band of Mission Indians
- Gabrieleño-Tongva Tribe
- San Fernando Band of Mission Indians
- Soboba Band of Luiseno Indians
- Soboba Band of Mission Indians
- Fernandeño Tataviam Band of Mission Indians

In response, a letter dated August 23, 2016, was received from the Gabrieleño Band of Mission Indians—Kizh Nation requesting consultation. No communication or request for consultation was received from any other of the notified tribes within the 30-day response period, which ended on August 21, 2016.

In addition, in compliance with SB 18, a Sacred Sites/Lands File Search was conducted by the California Native American Heritage Commission (NAHC) for the Project on November 15, 2016 (see Appendix I of this Draft EIR). The results of the Sacred Sites/Lands File search indicated negative results. However, the records maintained by the NAHC and the California Resources Information System are not exhaustive, and a negative response to these searches does not preclude the existence of a cultural place. The NAHC recommended contacting tribes associated with the Project area in order to avoid unforeseen discoveries once the Project has started and provided a list of tribal representatives to contact for additional information. All tribal representatives identified by the NAHC, as provided in Appendix I, of this Draft EIR, were notified of the Project.

3. Project Impacts

a. Methodology

Consultation with California Native American Tribes was conducted to address potential impacts associated with Native American resources.

b. Significance Thresholds

Appendix G of the CEQA Guidelines provides a set of sample questions that address impacts with regard to cultural resources. These questions are as follows:

Would the project 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:

- i. 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*
- ii. 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.*

The *L.A. CEQA Thresholds Guide* does not specifically address tribal cultural resources. Thus, in the context of the above question from the proposed change by OPR to Appendix G of the CEQA Guidelines that incorporates tribal cultural resources, impacts to tribal cultural resources would be considered significant if the Project were to cause a substantial adverse change in the significance of a site, feature, place, cultural landscape, sacred place, or object with cultural value to a California Native American Tribe that is listed or determined eligible for listing on the California Register, listed on a local historical register, or otherwise determined by the lead agency to be a tribal cultural resource, as defined in PRC Section 21074.

c. Project Design Features

No specific project design features are proposed with regard to tribal cultural resources.

d. Analysis of Project Impacts

As previously discussed, in compliance with SB 18, a Sacred Sites/Lands File Search was conducted by the California Native American Heritage Commission (NAHC) for the Project on November 15, 2016 (see Appendix I of this Draft EIR). The results of the Sacred Sites/Lands File search indicated negative results. However, the records maintained by the NAHC and the California Resources Information System are not exhaustive, and a negative response to these searches does not preclude the existence of a cultural place. In compliance with the requirements of AB 52, the City provided formal notification of the Project on July 22, 2016, to the tribes listed above in Subsection 2.b. The 30-day response period for consultation requests concluded on August 21, 2016.

In response to the Gabrieleño Band of Mission Indians—Kizh Nation's request for consultation, the City held a phone consult with Mr. Andrew Salas, the Chairman of the Gabrieleño Band of Mission Indians—Kizh Nation and his team on September 9, 2016. Mr. Salas provided maps, articles, and book excerpts indicating that the Project Site was in an area that could impact tribal cultural resources. A second letter was received on November 28, 2016, via email from Mr. Salas, requesting the presence of a Native American monitor "during any and all ground disturbances (including but not limited to pavement removal, post holing, auguring, boring, grading, excavation and trenching) to protect any cultural resources which may be effected during construction or development." Subsequent to receipt of the second letter from Mr. Salas, a proposal for mitigation monitoring services was sent to the City via e-mail on December 1, 2016, by Dr. Christina Swindall, a representative from the Gabrieleño Band of Mission Indians—Kizh Nation. This was in response to the two letters sent by Mr. Salas related to AB 52 and SB18.

Copies of correspondence received from the NAHC and tribal representative for the Gabrieleño Band of Mission Indians—Kizh Nation are included as Appendix I of this Draft EIR.

Consultation under AB 52 and SB 18 with the Gabrieleño Band of Mission Indians—Kizh Nation has formally concluded. Based on the documentation provided by Mr. Andrew Salas, on behalf of the Gabrieleño Band of Mission Indians—Kizh Nation, there is evidence to warrant a Native American monitor on-site during the excavation process to identify tribal cultural resources should any be discovered during the excavation phase of construction, as detailed in Mitigation Measure K-1, below. In addition, the Project would be subject to

regulatory requirements, such as CEQA Guidelines Section 15064.5, PRC Section 21083.2, Health and Safety Code Section 7050.5, and PRC Section 5097.9, to ensure that in the event tribal cultural resources are found, the resources would be properly recovered and evaluated. No communication or request for consultation was received from any other the notified tribes within the 30-day response period. With implementation of Mitigation Measure K-1 and regulatory requirements, impacts relative to tribal cultural resources would be reduced to less than significant levels.

4. Cumulative Impacts

As provided in Section III, Environmental Setting, of this Draft EIR, a total of nine related projects have been identified in the vicinity of the Project Site through 2022 or 2025 (the Project buildout analysis year).⁶ These related projects consist of a variety of land uses, including office, residential, commercial, and mixed use.

Any cumulative impacts to tribal cultural resources would be reduced by compliance with applicable regulatory requirements in the event of inadvertent discovery. In addition, related projects would be required to comply with the consultation requirements of AB 52 to determine and mitigate any potential impacts to tribal cultural resources. Therefore, cumulative impacts to tribal cultural resources would be less than significant and would not be cumulatively considerable.

5. Mitigation Measures

Mitigation Measure K-1: Prior to commencing any ground disturbance activities including excavating, digging, trenching, plowing, drilling, tunneling, quarrying, grading, leveling, removing peat, clearing, pounding posts, augering, backfilling, blasting, stripping topsoil or a similar activity at the project site, the Applicant, or its successor, shall retain and pay for archeological monitors, determined by the City's Office of Historic Resources to be qualified to identify subsurface tribal cultural resources. The archeological monitors shall observe all ground disturbance activities on the project site at all times the ground disturbance activities are taking place. If ground disturbance activities are simultaneously occurring at multiple locations on the project site, an archeological monitor shall be assigned to each location where the ground disturbance activities are occurring.

⁶ *In order to provide a highly conservative forecast, the future baseline forecast assumes that all of the related projects are fully built out by 2022.*

Prior to the commencement of any ground disturbance activities at the project site, the Applicant, or its successor, shall notify any California Native American tribes that have informed the City they are traditionally and culturally affiliated with the geographic area of the proposed project that ground disturbance activities are about to commence and invite the tribes to observe the ground disturbance activities, if the tribes wish to monitor.

In the event that any subsurface objects or artifacts that may be tribal cultural resources are encountered during the course of any ground disturbance activities, all such activities shall temporarily cease within the area of discovery, the radius of which shall be determined by the qualified archeologist, until the potential tribal cultural resources are properly assessed and addressed pursuant to the process set forth below:

1. Upon a discovery of a potential tribal cultural resource, the Applicant, or its successor, shall immediately stop all ground disturbance activities and contact the following: (1) all California Native American tribes that have informed the City they are traditionally and culturally affiliated with the geographic area of the proposed project; (2) and the Department of City Planning, Office of Historic Resources.
2. If the City determines, pursuant to Public Resources Code Section 21074 (a)(2), that the object or artifact appears to be a tribal cultural resource in its discretion and supported by substantial evidence, the City shall provide any affected tribe a reasonable period of time, not less than 14 days, to conduct a site visit and make recommendations to the Applicant, or its successor, and the City regarding the monitoring of future ground disturbance activities, as well as the treatment and disposition of any discovered tribal cultural resources.
3. The Applicant, or its successor, shall implement the tribe's recommendations if a qualified archaeologist, retained by the City and paid for by the Applicant, or its successor, reasonably concludes that the tribe's recommendations are reasonable and feasible.
4. In addition to any recommendations from the applicable tribe(s), a qualified archeologist shall develop a list of actions that shall be taken to avoid or minimize impacts to the identified tribal cultural resources substantially consistent with best practices identified by the Native American Heritage Commission and in compliance with any applicable federal, state or local law, rule or regulation.
5. If the Applicant, or its successor, does not accept a particular recommendation determined to be reasonable and feasible by the

qualified archaeologist, the Applicant, or its successor, may request mediation by a mediator agreed to by the Applicant, or its successor, and the City. The mediator must have the requisite professional qualifications and experience to mediate such a dispute. The City shall make the determination as to whether the mediator is at least minimally qualified to mediate the dispute. After making a reasonable effort to mediate this particular dispute, the City may: (1) require the recommendation be implemented as originally proposed by the archaeologist; (2) require the recommendation, as modified by the City, be implemented as it is at least as equally effective to mitigate a potentially significant impact; (3) require a substitute recommendation be implemented that is at least as equally effective to mitigate a potentially significant impact to a tribal cultural resource; or (4) not require the recommendation be implemented because it is not necessary to mitigate any significant impacts to tribal cultural resources. The Applicant, or its successor, shall pay all costs and fees associated with the mediation.

6. The Applicant, or its successor, may recommence ground disturbance activities outside of a specified radius of the discovery site, so long as this radius has been reviewed by a qualified archaeologist and determined to be reasonable and appropriate.
7. The Applicant, or its successor, may recommence ground disturbance activities inside of the specified radius of the discovery site only after it has complied with all of the recommendations developed and approved pursuant to the process set forth in paragraphs 2 through 5 above.
8. Copies of any subsequent prehistoric archaeological study, tribal cultural resources study or report, detailing the nature of any significant tribal cultural resources, remedial actions taken, and disposition of any significant tribal cultural resources shall be submitted to the South Central Coastal Information Center (SCCIC) at California State University, Fullerton and to the Native American Heritage Commission for inclusion in its Sacred Lands File.
9. Notwithstanding paragraph 8 above, any information determined to be confidential in nature, by the City Attorney's office, shall be excluded from submission to the SCCIC or the general public under the applicable provisions of the California Public Records Act, California Public Resources Code, section 6254(r), and shall comply with the City's AB 52 Confidentiality Protocols.

6. Level of Significance After Mitigation

As discussed above, with implementation of Mitigation Measure K-1 and regulatory requirements, impacts relative to tribal cultural resources would be reduced to less than significant levels. In addition, cumulative impacts associated with tribal cultural resources would also be less than significant.