

3.16 Tribal Cultural Resources

3.16.1 Introduction

This section evaluates the potential for the proposed project to result in adverse impacts related to tribal cultural resources. The analysis is based on the results of consultation with California Native American tribes conducted by the City for the project, as required by CEQA as recently amended by Assembly Bill (AB) 52, the relevant regulatory ordinances, and a discussion of the methodology and thresholds used to determine whether the proposed project would result in significant impacts. This section analyzes the potential for both project-level and cumulative environmental impacts.

Tribal cultural resources are defined by California Public Resources Code (PRC) Section 21074 as sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe that are either included or determined to be eligible for inclusion in the California Register of Historical Resources (California Register) or included in a local register of historical resources, or a resource determined by the Lead Agency, in its discretion and supported by substantial evidence, to be significant. A cultural landscape that meets these criteria is a tribal cultural resource to the extent that the landscape is geographically defined in terms of the size and scope of the landscape. Historical resources, unique archaeological resources, or non-unique archaeological resources may also be tribal cultural resources if they meet these criteria.

All information sources used are included as citations within the text; sources are listed in Section 3.16.5, References.

3.16.2 Environmental Setting

3.16.2.1 Ethnographic Setting

The project site is located in a region traditionally occupied by the Native American group known as the Gabrielino-Tongva. The term “Gabrielino” is a general term that refers to those Native Americans who interacted with the Spanish at the Mission San Gabriel Arcángel. Many contemporary Gabrielino identify themselves by the name “Tongva.” Prior to European colonization, the Gabrielino-Tongva occupied a diverse area that included: the watersheds of the Los Angeles, San Gabriel, and Santa Ana Rivers; the Los Angeles basin; and the islands of San Clemente, San Nicolas, and Santa Catalina (Kroeber 1925). Their neighbors included the Chumash and Tataviam to the north, the Juaneño to the south, and the Serrano and Cahuilla to the east. The Gabrielino-Tongva are reported to have been second to only the Chumash in terms of population size and regional influence (Bean and Smith 1978). The Gabrielino language is part of the Takic branch of the Uto-Aztecan language family.

The Gabrielino-Tongva lived in permanent communities located near the presence of a stable food supply. Community populations generally ranged from 50 to 100 inhabitants, although larger settlements may have existed. The Gabrielino-Tongva are estimated to have had a population numbering around 5,000 in the pre-contact period, prior to the arrival of the Spanish in the late 18th century (Kroeber 1925). Villages are reported to have been the most abundant in the San Fernando Valley, the Glendale Narrows area north of downtown Los Angeles, and around the Los Angeles River’s coastal outlets (Gumprecht 2001).

Gabrielino-Tongva society was characterized by patrilineal, non-localized clans, with each clan consisting of several lineages. The Gabrielino-Tongva inhabited large, circular, domed houses constructed of willow poles thatched with tule (Bean and Smith 1978). These houses could sometimes hold up to 50 people. Other village structures of varying sizes served as sweatshouses, ceremonial enclosures, and granaries.

Subsistence consisted of hunting, fishing, and gathering. Small terrestrial game were hunted with deadfall traps and rabbit drives and by burning undergrowth, while larger game, such as deer, were hunted using bows and arrows. Fish were taken by hook and line, nets, traps, spears, and poison (Bean and Smith 1978). The primary plant resources were the acorn, gathered in the fall and processed in mortars and pestles, and various seeds that were harvested in late spring and summer and ground with manos and metates. The seeds included chia and other sages, various grasses, and islay or holly-leaved cherry.

At the time of Spanish contact, many Gabrielino-Tongva practiced a religion that was centered around the mythological figure Chinigchinich (Bean and Smith 1978). This religion may have been relatively new when the Spanish arrived and was spreading at that time to other neighboring Takic groups. The Gabrielino-Tongva practiced both cremation and inhumation of their dead. A wide variety of grave offerings, such as stone tools, baskets, shell beads, projectile points, bone and shell ornaments, and otter skins, were interred with the deceased.

Coming ashore on Santa Catalina Island in October 1542, Juan Rodriguez Cabrillo was the first European to make contact with the Gabrielino-Tongva; the 1769 expedition of Portolá also passed through Gabrielino-Tongva territory (Bean and Smith 1978). Native Americans suffered severe depopulation and their traditional culture was radically altered after Spanish contact. Nonetheless, Gabrielino-Tongva descendants still reside in the greater Los Angeles and Orange County areas and maintain an active interest in their heritage.

3.16.2.2 Native American Heritage Commission Sacred Lands File

As reported in the archaeological resources technical report prepared for the project (Fulton and Fulton 2017), a Sacred Lands File (SLF) search for the project was requested from the Native American Heritage Commission (NAHC) on May 2, 2016. The response provided by the NAHC on May 5, 2016, states that “Sites have been recorded in the Los Alamitos Quadrangle of the area of potential effects (APE) you provided that may be impacted by the project.” The NAHC recommended consultation with appropriate tribes.

3.16.2.3 Native American Consultation

The City has on file two requests from California Native American tribes traditionally and culturally affiliated with the project area who have requested notice pursuant to PRC Section 21080.3.1(d). As required by PRC Section 21080.3.1 (added to the PRC by AB 52), and by Senate Bill (SB) 18, the City initiated consultation with these tribes by letters dated May 6, 2016. SB 18 was enacted in 2004 (Chapter 905, Statutes of 2004) and requires local governments to consult with California Native American tribes to aid in the protection of traditional tribal cultural places through local land use planning. SB 18 requires local governments to consult with tribes prior to adoption and amendment of both General Plans and Specific Plans.

As a result of the letters sent by the City, three responses have been received from two tribal groups.

In a letter dated May 22, 2016, Mr. Andy Salas, Chairman of the Gabrieleño Band of Mission Indians—Kizh Nation, provided a summary on the role of the Tribe and the City in AB 52 consultation, noting the Tribe’s ancestral ties to the region of the project and providing notification that they should be considered a consulting

party for AB 52. In a second letter dated June 14, 2016, Mr. Salas expressed concerns with the project site, which falls in an area where the Gabrieleño Band of Mission Indians—Kizh Nation ancestral villages were known to occur; the Tribe considers the area sensitive for cultural resources. Mr. Salas further requested that a certified Native American monitor from their group be represent during all ground-disturbing construction activity associated with the project. In response to the request for consultation, the City held a consultation meeting with the Gabrieleño Band of Mission Indians—Kizh Nation on May 4, 2017.

In a letter dated June 6, 2016, Mr. Joseph Ontiveros, Cultural Resources Director of the Soboba Band of Luiseño Indians, indicated that while the project area lies outside the Tribe’s reservation, it does occur in their traditional use area, and that, while they do not have any specific concerns regarding the project, they do request that appropriate consultation occur between the City and concerned tribes. In this regard, the letter indicates that they defer to Gabrieleño Tribal representatives, who are closer to the project area. Mr. Ontiveros also requested that an approved Native American monitor be represent during all ground-disturbing construction activity associated with the project.

As a result of these outreach and consultation efforts, the City has agreed to implement Native American monitoring during project-related ground-disturbing activities, as incorporated into the mitigation measures presented in Section 3.4, *Cultural Resources*.

3.16.3 Regulatory Framework

3.16.3.1 Assembly Bill 52

AB 52 was approved by California State Governor Edmund Gerry “Jerry” Brown Jr. on September 25, 2014. The legislation amended PRC Section 5097.94, and added PRC Sections 21073, 21074, 21080.3.1, 21080.3.2, 21082.3, 21083.09, 21084.2, and 21084.3. AB 52 applies specifically to projects for which an NOP of an EIR or a notice of intent to adopt a negative declaration or mitigated negative declaration (MND) was filed on or after July 1, 2015. Although the NOP for this EIR was published in April 2015, the City has complied with the requirements of AB 52 in the preparation of this EIR. The primary intent of AB 52 was to include California Native American tribes early in the environmental review process and to establish a new category of resources related to Native Americans that require consideration under CEQA, known as tribal cultural resources (as defined in PRC Section 21074(a)). On July 30, 2016, the California Natural Resources Agency adopted the final text for the tribal cultural resources update to *CEQA Guidelines* Appendix G, which was approved by the Office of Administrative Law on September 27, 2016.

PRC Section 21080.3.1 requires that within 14 days of a Lead Agency determining that an application for a project is complete, or a decision by a public agency to undertake a project, the Lead Agency provide formal notification to the designated contact, or a tribal representative, of California Native American tribes that are traditionally and culturally affiliated with the geographic area of the project (as defined in PRC Section 21073) and who have requested in writing to be informed by the lead agency (PRC Section 21080.3.1(b)). Tribes interested in consultation must respond in writing within 30 days from receipt of the Lead Agency’s formal notification, and the Lead Agency must begin consultation within 30 days of receiving the tribe’s request for consultation (PRC Sections 21080.3.1(d) and 21080.3.1(e)).

PRC Section 21080.3.2(a) identifies the following as potential consultation discussion topics: the type of environmental review necessary; the significance of tribal cultural resources; the significance of the project’s

impacts on the tribal cultural resources; project alternatives or appropriate measures for preservation; and mitigation measures. Consultation is considered concluded when either (1) the parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource, or (2) a party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached (PRC Section 21080.3.2(b)).

If a California Native American tribe has requested consultation pursuant to Section 21080.3.1 and has failed to provide comments to the Lead Agency, or otherwise failed to engage in the consultation process, or if the Lead Agency has complied with Section 21080.3.1(d) and the California Native American tribe has failed to request consultation within 30 days, the Lead Agency may certify an EIR or adopt an MND (PRC Section 21082.3(d)(2) and (3)).

PRC Section 21082.3(c)(1) states that any information, including but not limited to the location, description, and use of the tribal cultural resources, that is submitted by a California Native American tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed by the Lead Agency or any other public agency to the public without the prior consent of the tribe that provided the information. If the Lead Agency publishes any information submitted by a California Native American tribe during the consultation or environmental review process, that information shall be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public.

3.16.3.2 Senate Bill 18

SB 18, which went into effect January 1, 2005, requires local governments (city and county) to consult with Native American tribes before making certain planning decisions and to provide notice to tribes at certain key points in the planning process. The intent 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” (OPR 2005).

The purpose of involving tribes at these early planning stages is to allow consideration of cultural places in the context of broad local land use policy, before individual site-specific, project-level land use designations are made by a local government. The consultation requirements of SB 18 apply to the adoption and amendment of General Plans or Specific Plans proposed on or after March 1, 2005.

According to the *Tribal Consultation Guidelines: Supplement to General Plan Guidelines* (OPR 2005), the following are the contact and notification responsibilities of local governments:

- Prior to the adoption or any amendment of a general plan or specific plan, a local government must notify the appropriate tribes (on the contact list maintained by the NAHC) of the opportunity to conduct consultations for the purpose of preserving, or mitigating impacts to, cultural places located on land within the local government’s jurisdiction that is affected by the proposed plan adoption or amendment. Tribes have 90 days from the date on which they receive notification to request consultation, unless a shorter timeframe has been agreed to by the tribe (Government Code Section 65352.3).
- Prior to the adoption or substantial amendment of a general plan or specific plan, a local government must refer the proposed action to those tribes that are on the NAHC contact list and have traditional lands located within the city or county’s jurisdiction. The referral must allow a 45-day comment period (Government Code Section 65352). Notice must be sent regardless of whether prior consultation has taken place. Such notice does not initiate a new consultation process.

- Local government must send a notice of a public hearing, at least 10 days prior to the hearing, to tribes who have filed a written request for such notice (Government Code Section 65092).

3.16.4 Analysis of Impacts

This section describes the impact analysis relating to tribal cultural resources for the proposed project. It describes the methods and applicable thresholds used to determine the impacts of the proposed project.

3.16.4.1 Significance Criteria

CEQA Guidelines Appendix G provides that a project would have a significant tribal cultural resources impact if it 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, the Lead Agency shall consider the significance of the resource to a California Native American tribe.

3.16.4.2 Methodology

As noted in PCR Section 21084.2, 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 21084.3 states that:

- (a) Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource.
- (b) If the lead agency determines that a project may cause a substantial adverse change to a tribal cultural resource, and measures are not otherwise identified in the consultation process provided in Section 21080.3.2, the following are examples of mitigation measures that, if feasible, may be considered to avoid or minimize the significant adverse impacts:
 - (1) Avoidance and preservation of the resources in place, including, but not limited to, planning and construction to avoid the resources and protect the cultural and natural context, or planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.
 - (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) 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.

As stated in Chapter 1, *Introduction*, on April 28, 2016, the City sent an NOP to responsible, trustee, and federal agencies, as well as to organizations and individuals potentially interested in the project to identify the relevant environmental issues that should be addressed in the EIR. No issues related to tribal cultural resources were identified. As described above, the City has on file two requests from California Native American tribes traditionally and culturally affiliated with the project area who have requested notice pursuant to PRC Section 21080.3.1(d). As required by PRC Section 21080.3.1 (added to the PRC by AB 52) and by SB 18, the City initiated consultation with these tribes by letters dated May 6, 2016.

Also, one response was received. In a letter dated May 5, 2016, the NAHC provided detailed information and guidance on Native American consultation under CEQA, as modified by AB 52, as well as information on consultation under SB 18. Consultation under both AB 52 and SB 18 were conducted for the project and are described above.

3.16.4.3 Impact Evaluation

Impact TCR-1: The project would not cause a substantial adverse change in the significance of a tribal cultural resource, as defined in CEQA PRC Section 21074(a) or (b). (Less than Significant with Mitigation)

Construction

The results from the search of the SLF at the NAHC indicated that potential tribal cultural resources have been recorded within the Los Alamitos US Geological Survey 7.5' topographic map, within which the project occurs. As required by AB 52, further consultation between the City and the Gabrieleño Band of Mission Indians—Kizh Nation and the Soboba Band of Luiseño Indians—occurred. As a result of this consultation, no tribal cultural resources, as defined in both (a) and (b) of PRC Section 21074, were identified within the project area; however, both Tribes stressed the cultural resources sensitivity of the project site, and the Gabrieleño Band of Mission Indians—Kizh Nation indicated that ancestral village sites are known to have been located in the area. No tribal cultural resources as defined in PRC Section 21074(a)(1), resources determined by the lead agency in its discretion and supported by substantial evidence to be significant as defined in PRC Section 21074(a)(2), or a cultural landscape as defined in PRC Section 21074(b) have been identified as a result of the consultation. Nonetheless, because both Tribes recommended Native American monitoring of all ground-disturbing activities, the City has included Native American monitoring as a mitigation measure in Section 3.4, *Cultural Resources*, for the discovery of archaeological resources, and it is included here as mitigation for tribal cultural resources. With implementation of Mitigation Measures CUL-5 through CUL-7 from Section 3.4, *Cultural Resources*, project impacts to tribal cultural resources as a result of construction would be less than significant with mitigation.

Operations

No tribal cultural resources as defined at PRC Section 21074(a) and (b) have been identified as a result of the consultation conducted for the project. Project impacts as a result of operations would be less than significant.

Mitigation Measures: Mitigation Measures CUL-5 and CUL-7 would apply.

Significance Determination: Less than Significant with Mitigation.

3.16.4.4 Cumulative Impacts

This analysis of cumulative impacts takes into consideration impacts on tribal cultural resources from implementation of the project. The geographic scope of analysis for tribal cultural resources is difficult to define, given the sensitive, confidential and oftentimes unknown nature of the resources; however, given that tribal cultural resources consist of resources important to a particular tribal group or groups, it can be assumed that the scope of analysis would encompass the ethnographically and historically defined territory of those tribal groups. In this case, this would correspond to the ancestral territory for the Gabrieleño, which covers the broader Los Angeles Basin, and within that, the coastal zone of Los Angeles and Orange Counties. This would correspond to the geographic scope of analysis for cultural resources as well, as discussed in Section 3.4, *Cultural Resources*.

Cumulative Impacts during Project Construction

Multiple projects, mostly development within urban settings, are proposed throughout the geographic scope of analysis. Cumulative impacts to tribal cultural resources could occur if any of these projects, in conjunction with the proposed project, would have impacts on resources that, when considered together, would be significant. Since no tribal cultural resources were identified within the project site, there would be no cumulative impacts to known tribal cultural resources; however, the Gabrieleño Band of Mission Indians—Kizh Nation has indicated that the project area is sensitive for archaeological and other resources that might be identified as tribal cultural resources, and both the Gabrieleño and the Soboba Band of Luiseño Indians have requested Native American monitoring during project construction. While there is the potential for impacts to unknown tribal cultural resources, such as those that might be discovered during ground-disturbing activities during project construction, Mitigation Measures CUL-5 through CUL-7, which provide for cultural resources sensitivity training, Native American monitoring, and treatment protocols for unanticipated discoveries, would ensure that impacts are reduced to a less-than-significant level. Taken together, implementation of these mitigation measures would ensure that the project would not have an impact on tribal cultural resources. Therefore, cumulative impacts during construction would not be cumulatively considerable.

Cumulative Impacts during Project Operations

No impacts to tribal cultural resources are anticipated during project operations. Therefore, cumulative impacts during operations would not be cumulatively considerable.

3.16.5 References

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