

## **IV. Environmental Impact Analysis**

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### **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. The evaluation of potential impacts to tribal cultural resources is based on coordination and consultation with California Native American tribes that are traditionally and culturally affiliated with the Project Site, as well as a review of the Sacred Land Files records search conducted by the Native American Heritage Commission (NAHC). This section is also based on the *Tribal Cultural Resources Report for the Paseo Marina Project* (Tribal Cultural Resources Report) prepared by Dudek (2017) included as Appendix N of this Draft EIR.

#### **2. Environmental Setting**

##### **a. Regulatory Framework**

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, which amended Public Resources Code (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.<sup>1</sup>*

*(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.<sup>2</sup> 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,<sup>3</sup> or a “nonunique archaeological resource” as defined in subdivision (h) of Section 21083.2<sup>4</sup> 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 impact report for a project. PRC Section 21080.3.1(b) defines “consultation” with a cross-

<sup>1</sup> *Per subdivision (k) of Public Resources Code 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.*

<sup>2</sup> *Subdivision (c) of Public Resources Code Section 5024.1 provides the National Register criteria for listing of historical resources in the California Register.*

<sup>3</sup> *Per subdivision (g) of Public Resources Code 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.*

<sup>4</sup> *Per subdivision (h) of Public Resources Code 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.*

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 PRC Section 21080.3.2(a) 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.

PRC Section 21084.3 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:<sup>5</sup>

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)).

With regard to human remains, CEQA Guidelines Section 15064.5 addresses consultation requirements if an initial study identifies the existence of, or the probable likelihood of Native American human remains within the project site. This section of the

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

CEQA Guidelines, as well as Health and Safety Code Section 7050.5 and PRC Section 5097.9, also address treatment of human remains in the event of accidental discovery.

## **b. Existing Conditions**

### **(1) Current Project Site Conditions**

As discussed in Section II, Project Description, of this Draft EIR, the Project Site is currently developed with three structures, including a two-story Barnes and Noble bookstore located along the northeastern corner of the Project Site, a single-story building providing a variety of retail uses located generally within the southern portion of the Project Site, a two-story commercial and retail building located generally within the western portion of the Project Site, and surface parking and circulation areas. Historic topographic maps do not reveal any development within the Project Site prior to the construction of the shopping center.

The Project Site is located in the Palms–Mar Vista–Del Rey Community Plan area of the City of Los Angeles, southwest of the City of Culver City, north of the Ballona Wetlands, and 1.75 miles east of the Pacific Ocean. According to the Tribal Cultural Resources Report, historical maps indicate the presence of the extensive Ballona Lagoon (currently in the location of Marina Del Rey) to the south of the Project Site. In addition, this area falls within the ancient floodplain of the Los Angeles River in a low-lying area between the Ballona Bluffs to the south and the Santa Monica plain to the north. With regard to the underlying geological and soil conditions, existing development in the vicinity of the Project Site is underlain by soils classified by the U.S. Department of Agriculture as Urban Land or Commercial Complex, which is associated with discontinuous human-transported material over young alluvium derived from sedimentary rock.<sup>6</sup> Due the size and nature of past development associated with the surrounding structures and existing paved area, all native subsurface soils with potential to support the presence of cultural deposits have likely been disturbed. However, there is always some possibility that subsurface Native American resources could be present, as have been encountered in areas near the Project Site.

### **(2) City of Los Angeles Ethnographic Context**

As provided in the Tribal Cultural Resources Report, based on ethnographic information, it is believed that at least 88 different languages were spoken from Baja California Sur to the southern Oregon state border at the time of Spanish contact in the 16th century. Tribes in the Los Angeles region have traditionally spoken Takic languages

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<sup>6</sup> U.S. Department of Agriculture, *Natural Resources Conservation Service Soils Soil Survey Geographic Database*, available at <https://casoilresource.lawr.ucdavis.edu/gmap/>, accessed on December 5, 2017.

that may be assigned to the large Uto-Aztecan family. These groups include the Gabrieleño, Cahuilla, and Serrano.

The archaeological record indicates that the Gabrieleño arrived in the Los Angeles Basin around 500 B.C. Surrounding native groups included the Chumash and Tataviam to the northwest, the Serrano and Cahuilla to the northeast, and the Juaneño and Luiseño to the southeast. The name “Gabrieliño” or “Gabrieleño” denotes those people who were administered by the Spanish from the San Gabriel Mission, which included people from the Gabrieleño area proper, as well as other social groups. Therefore, in the post-Contact period, the name does not necessarily identify a specific ethnic or tribal group. The names by which Native Americans in southern California identified themselves have, for the most part, been lost. Many modern Gabrieleño identify themselves as descendants of the indigenous people living across the plains of the Los Angeles Basin and refer to themselves as the Tongva, within which there are a number of regional bands. This term (Tongva) is used in the remainder of this section to refer to the pre-Contact inhabitants of the Los Angeles Basin and their descendants.

Tongva lands encompassed the greater Los Angeles Basin and three Channel Islands: San Clemente; San Nicolas; and Santa Catalina. The Tongva established large, permanent villages in the fertile lowlands along rivers and streams, and in sheltered areas along the coast, stretching from the foothills of the San Gabriel Mountains to the Pacific Ocean. A total tribal population has been estimated of at least 5,000, but recent ethnohistoric work suggests a number approaching 10,000.

The large ethnographic Tongva village in the region was that of Yanga (also known as Yaangna, Janga, and Yabit), which was in the vicinity of the Pueblo of Los Angeles. This village was reportedly first encountered by the Portola expedition in 1769. In 1771, Mission San Gabriel was established and Mission records indicate that 179 Gabrieleño inhabitants of Yanga were recruited to San Gabriel Mission. Based on this information, Yanga may have been the most populated village in the Western Gabrieleño territory.

The Tongva subsistence economy was centered on gathering and hunting. The surrounding environment was rich and varied, and the tribe exploited mountains, foothills, valleys, deserts, riparian, estuarine, and open and rocky coastal eco-niches. Like that of most native Californians, acorns were the staple food (an established industry by the time of the early Intermediate Period). Acorns were supplemented by the roots, leaves, seeds, and fruits of a wide variety of flora (e.g., islay, cactus, yucca, sages, and agave). Fresh water and saltwater fish, shellfish, birds, reptiles, and insects, as well as large and small mammals, were also consumed.

A wide variety of tools and implements were used by the Tongva to gather and collect food resources. These included the bow and arrow, traps, nets, blinds, throwing

sticks and slings, spears, harpoons, and hooks. Groups residing near the ocean used oceangoing plank canoes and tule balsa canoes for fishing, travel, and trade between the mainland and the Channel Islands.

Tongva people processed food with a variety of tools, including hammerstones and anvils, mortars and pestles, manos and metates, strainers, leaching baskets and bowls, knives, bone saws, and wooden drying racks. Food was consumed from a variety of vessels. Catalina Island steatite was used to make ollas and cooking vessels.

At the time of Spanish contact, the basis of Tongva religious life was the Chinigchinich cult, centered on the last of a series of heroic mythological figures. Chinigchinich gave instruction on laws and institutions, and also taught the people how to dance, the primary religious act for this society. He later withdrew into heaven, where he rewarded the faithful and punished those who disobeyed his laws. The Chinigchinich religion seems to have been relatively new when the Spanish arrived. It was spreading south into the Southern Takic groups even as Christian missions were being built. The Chinigchinich religion may represent a mixture of native and Christian belief and practices.

Deceased Tongva were either buried or cremated, with burial more common on the Channel Islands and the neighboring mainland coast and cremation predominating on the remainder of the coast and the interior. Cremation ashes have been found buried within stone bowls and in shell dishes, as well as scattered among broken ground stone implements. These archaeological finds correspond with ethnographic descriptions of an elaborate mourning ceremony that included a wide variety of offerings, including seeds, stone grinding tools, otter skins, baskets, wood tools, shell beads, bone and shell ornaments, and projectile points and knives. Offerings varied with the sex and status of the deceased. At the behest of the Spanish missionaries, cremation essentially ceased during the post-Contact period.

### (3) Assembly Bill 52 Consultation

In compliance with the requirements of Assembly Bill (AB) 52, Department of City Planning staff provided formal notification of the Project on April 19, 2017. Letters were sent via FedEx and certified mail to the following California Native American tribes that requested notification:

- Fernandeño Tataviam Band of Mission Indians
- Gabrieleño Band of Mission Indians—Kizh Nation
- Gabrielino Tongva Indians of California Tribal Council

- Gabrielino/Tongva Nation
- Gabrielino/Tongva San Gabriel Band of Mission Indians
- San Fernando Band of Mission Indians
- Soboba Band of Luiseño Indians
- Torres Martinez Desert Cahuilla Indians

One response was received by the City on May 2, 2017, from Mr. Andrew Salas, Chairman of the Gabrieleño Band of Mission Indians—Kizh Nation, who asserted the following:

*Your project lies within our ancestral tribal territory, meaning descending from, or a higher degree of kinship than traditional or cultural affiliation. Your project is located within a sensitive area and may cause a substantial adverse change in the significance of our tribal cultural resources.*

On July 26, 2017, consultation occurred between the City and the representatives from the Gabrieleño Band of Mission Indians—Kizh Nation by teleconference. Department of City Planning staff and representatives from the tribe participated in the teleconference to discuss the tribe's concerns regarding tribal cultural resources as they relate to the Project Site. During the teleconference, the tribal representatives provided an oral history of the areas near the Project Site, including the following:

- The Playa Vista area is a highly sensitive area.
- There is a traditional trading route that went through the area – the Gaucha trading route (as shown in the 1938 LA County Map and included as Figure 3 in the Tribal Cultural Resources Report).
- The burial site at Lincoln Boulevard is named after the Saangna village.
- There were 360 burials in this one location (a quick Google search for 'Playa Vista human remains cultural resources' would yield information on this large burial site).
- Ballona Creek, the wetlands, marshes, and the coastal area were a highly used area. Villages had a presence at the bluffs.
- The area is known for its oil resources, including the tar pits at Baldwin Hills.

Copies of notification letters, verification of mailing, and correspondence received from the tribal representative, as well as a summary of the conference call, are included as Appendix N of this Draft EIR.

#### (4) Background Research

##### *(a) Sacred Lands File Review*

A Sacred Sites/Lands File Searches were conducted by the California NAHC for the Project on June 12, 2017, and the results of these records searches, are included in Appendix N of this Draft EIR. The results of the Sacred Sites/Lands File searches indicated negative results.

##### *(b) California Historical Resources Information System Review*

A California Historical Resources Information System records search at the South Central Coastal Information Center (SCCIC) was conducted as part of the preparation of the Tribal Cultural Resources Report for the Project. The records search included SCCIC's collections of mapped prehistoric, historic, and built environment resources, Department of Parks and Recreation site records, technical reports, and ethnographic references. Additional consulted sources included historical maps of the Project Site vicinity, the National Register, the California Register, the California Historic Property Data File, and the lists of California State Historical Landmarks, California Points of Historical Interest, and the Archaeological Determinations of Eligibility.

##### *(i) Previously Conducted Cultural Resource Studies*

Results of the cultural resources records search indicated that 30 previous cultural resource studies have been conducted within 0.5 mile of the Project Site between 1969 and 2015. None of these have intersected the Project Site. Four studies (LA-00253, LA-02558, LA-02673, and LA-03495) directly address the prehistoric site P-19-00047, recorded approximately 750 feet outside the Project Site.<sup>7</sup> A brief summary of these four studies is provided below.

**LA-00253:** This study describes an archaeological investigation for proposed Admiralty Place Development completed by Brian D. Dillon, PhD in 1988. The investigation included a surface collection of site P-19-000047 which produced shells, debitage, cores, handstones, choppers, and bowl fragments. In addition, subsurface

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<sup>7</sup> *The exact location of this resource may not be disclosed in order to ensure its location remains confidential.*

testing revealed midden soils as shallow as 30 centimeters below the disturbed overburden surface.

**LA-02558:** This study was completed by Statistical Research in 1989 for the Channel Gateway Project within the boundaries of site P-19-00047. Trenching excavations revealed intact midden soils on the site. Four fragments of human remains were positively identified.

**LA-02673:** This study was completed by Statistical Research in 1992 as the continuation of LA-02558, as described above. The report documents a more rigorous investigation of site P-19-00047 at the request of the Southern California Gabrielino Indian Band. A combination of hand excavation and monitored machine excavation yielded similar artifacts to previous investigations as well as revealed the midden layer. This study succeeded in establishing clear boundaries to P-19-00047.

**LA-03495:** This study provides a brief article by Harvey S. Levine written in 1969. Levine reported two burials found that year, both of which were excavated by UCLA. The article also summarized artifacts that were found in the vicinity in the past, which included additional burials, large stone bowls, mortars, pestles, projectile points, fish bones, and shells.

*(ii) Previously Recorded Cultural Resources*

SCCIC records indicate a total of five previously recorded cultural resources fall within the 0.5-mile records search buffer around the Project Site; none of these recorded resources are on the Project Site. Of these, three are historic-era buildings or structures, one is a historic era trash midden, and one is a prehistoric site (P-19-00047).

P-19-00047 was recorded as a large shell midden in 1961, approximately 750 feet away from the Project Site. The site reportedly yielded numerous artifacts associated with food preparation and tool manufacture including stone bowls, projectile points, debitage, bone tools, beads, antler harpoons, choppers, hammerstones, scrapers, and pestles. Two burials were reported at the site based on site forms on file with the SCCIC. The Southern California Gabrieleño People tribe identified the site as a sacred village site Sa'anga (LA-00253). Portions of the site have undoubtedly been destroyed due to development. However, the possibility of intact portions of the site exists. As discussed in the Tribal Cultural Resources Report included in Appendix N of this Draft EIR, based on a review of historical aerials (available since 1952) and topographic maps (available since 1896), aerials indicate that as far back as 1952 the parcel was used for agriculture. By 1972, the parcel appears to be unused and undeveloped. By 1980, the present layout of buildings had been constructed. Historic topographic maps do not reveal any development within the Project Site prior to the construction of the shopping center.

P-19-000047 is a listed Historic-Cultural Monument (HCM-490), which is a database maintained by the City of Los Angeles Office of Historic Resources. The resource is considered to meet the criteria for HCM designation, having yielded, or may be likely to yield, information important in prehistory or history. The inventory notes that the site has yielded “upwards of a dozen human burials and unique harpoon heads.”

(c) *Ethnographic Research and Review of Academic Literature*

As part of the preparation of the Tribal Cultural Resources Report for the Project, academic and ethnographic literature and materials were reviewed for information pertaining to past Native American use of the Project area. This review included consideration of sources identified by the Gabrieleño Band of Mission Indians—Kizh Nation during past consultations with the City. Figure 3 of the Tribal Cultural Resources Report, included in Appendix N of this Draft EIR, shows the general location of the Project Site (in blue) relative to features identified on a 1938 Kirkman-Harriman historical map. Based on this map, the Project Site is south of an old road that skirted around what is now Marina del Rey, along the general route of today’s Washington Boulevard. Heading northeast along the side of Ballona Creek, through houses associated with Rancho Ballona, the route would have intersected the historic location of El Pueblo de Los Angeles, approximately 13 miles northeast of the Project Site.

According to the Tribal Cultural Resources Report, one study made an effort to map the traditional Gabrieleño/Tongva cultural use area through documented family kinships and Native American recruitment numbers documented in mission records.<sup>8</sup> Working under the assumption that missionization affected the region’s population relatively evenly, this process allowed the researchers to identify the relative size of tribal villages (settlements) based on the number of individuals reported in these records. Traditional cultural use area boundaries, as informed by other ethnographic and archaeological evidence, were then drawn around these clusters of villages. Based on that study, the nearest village site to the Project Site was Guaspét, located in a portion of today’s Culver City that fell within what was once the eastern portion of Rancho Ballona. An additional village named Waachnga was also identified in the vicinity of what is now Marina del Rey. Therefore, it is likely that there were at least two named Gabrieleño communities between present day Culver City and the mouth of Ballona Creek during the Spanish and Mexican eras. It should be noted that these villages have also been represented on the 1938 Kirkman-Harriman map discussed above, which was prepared independently of the studies identifying the surrounding villages.

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<sup>8</sup> Northwest Economic Associates (NEA) and King, Chester, *Ethnographic Overview of the Angeles National Forest: Tataviam and San Gabriel Mountain Serrano Ethnohistory*, 2014.

The most common name for the village in the Marina del Rey area is Sa'anga (also the name used by the Gabrieleño Kizh in previous consultation). The 1938 map represents this village to the south of the mouth of Ballona Creek. This village location is consistent with information presented in a Los Angeles Times article reporting the identification of significant cultural deposits indicative of habitation activities and high numbers of Native American burials that were encountered 1 mile south of the Project Site during construction of the Playa Vista housing community. Regardless of the exact location of Sa'anga, which would likely have been subject to change over many hundreds of years in response to variable environmental conditions, it is clear from the archaeological record that area around the Project Site was subject to past Native American use. This is indicated by the presence of a previously recorded prehistoric habitation site (P-19-000047) identified within approximately 750 feet of the Project Site.

Based on review of pertinent academic and ethnographic information, the Project Site falls within the boundaries of the Gabrieleño/Tongva traditional use area. While sensitive cultural resources have been previously recorded in the surrounding vicinity, none have been identified within the Project Site. As such, no Native American tribal cultural resources have been previously documented in areas that may be impacted by the Project.

### **3. Project Impacts**

#### **a. Methodology**

A California Historical Resources Information System records search was conducted for the Project Site and a 0.5-mile radius around the Project Site to determine potential impacts associated with tribal cultural resources. The records search included a review of mapped prehistoric, historic, and built environment resources; Department of Parks and Recreation Site Records; technical reports; ethnographic references; historical maps; the California Historic Property Data File; the National Register of Historic Places, California Register of Historical Resources, California State Historical Landmarks, and California Points of Historical Interest listings; and the Archaeological Determinations of Eligibility. Pertinent academic and ethnographic literature was also reviewed for information pertaining to past Native American use of the Project area. Consultation with California Native American Tribes was conducted to address potential impacts associated with Native American resources. In addition, a Sacred Lands Files search was conducted by the NAHC to determine the presence of any recorded tribal cultural resources on the Project Site.

#### **b. Thresholds of Significance**

In accordance with the State CEQA Guidelines Appendix G, the Project would have a significant impact related to tribal cultural resources if it would:

**Threshold (a): 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 include any criteria to evaluate tribal cultural resources impacts. Thus, the potential for the Project to result in impacts related to tribal cultural resources is based on the State CEQA Guidelines Appendix G thresholds provided above.

## **c. Analysis of Project Impacts**

### **(1) Project Design Features**

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

### **(2) Project Impacts**

**Threshold (a): 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)?**

As discussed above in Subsection 2.b.(4), no pre-historic archaeological sites, or other resources documented to be related to past Native American activity, have been

previously identified within the Project Site. SCCIC records indicate that a total of five previously recorded cultural resources fall within the 0.5-mile records search buffer around the Project Site. These include three historic-era buildings or structures, one historic era trash midden, and one prehistoric site (P-19-000047, the Sa'anga). P-19-000047, identified as the village of Sa'anga, is located approximately 750 feet from the Project Site and reportedly included human burials and had a rich subsurface deposit with cultural material indicative of habitation and tool manufacture. P-19-000047 is a listed Historic-Cultural Monument (HCM-490). The resource is considered to meet the criteria for HCM designation, having yielded, or may be likely to yield, information important in prehistory or history. The inventory notes that the site has yielded "upwards of a dozen human burials and unique harpoon heads." However, none of the five previously recorded cultural resources that fall within the 0.5-mile records search buffer around the Project Site, including P-19-000047,<sup>9</sup> are located on the Project Site. As the Project Site is not 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), the Project would not cause a substantial adverse change in the significance of a tribal cultural resource listed or eligible for listing in the California Register or in a local register. **As such, impacts to such resources would be less than significant.**

***Threshold (a): 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:***

- 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.***

As presented above in Subsection 2.b.(4), the results of the records searches (i.e., SCCIC and NAHC) conducted for the Project Site and the independent analysis of

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<sup>9</sup> While site P-19-000047 has not been specifically identified as a tribal cultural resource by Native American representatives through the process of AB 52 consultation, it is designated as an HCM, and documented to be a sensitive and important archaeological resource. As noted above, the Gabrieleño Band of Mission Indians—Kizh Nation identified a known area containing a number of human burials approximately 1 mile away and has also observed the general project area to be of traditional cultural and natural importance to the tribe. Management approaches for both tribal cultural resources and cultural resources have taken these considerations into account.

correspondence and materials relative to potential tribal cultural resources on the Project Site and vicinity included in the Tribal Cultural Resources Report prepared for the Project demonstrate that while a large shell midden (P-19-000047, the Sa'anga)<sup>10</sup> has been recorded approximately 750 feet from the Project Site, no known tribal cultural resources have been identified within the Project Site. However, in consideration of the known sensitivity of the surrounding area regarding cultural resources and due to the proximity of the Project Site to the Sa'anga, Mitigation Measure TCR-MM-1 is included below to provide for periodic Native American monitoring. As set forth in Mitigation Measure TCR-MM-1, a qualified archaeologist, meeting the Secretary of the Interior's Professional Qualification Standards, would oversee and adjust monitoring efforts as needed (increase, decrease, or discontinue monitoring frequency) based on the observed potential for construction activities to encounter tribal cultural deposits or related materials and as approved by the City. Following completion of construction, the qualified archaeologist would provide an archaeological monitoring report to the City and SCCIC with the results of the cultural monitoring program.

#### d. Cumulative Impacts

As indicated in Section III, Environmental Setting, of this Draft EIR, there are a total of 39 related projects in the vicinity of the Project Site. The Project and the related projects are located within an urbanized area that has been disturbed and developed over time. In the event that tribal cultural resources are uncovered, each related project would be required to comply with the applicable regulatory requirements discussed in detail above in Subsection 2.a on page IV.K-1. 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.**

#### e. Mitigation Measures

The following mitigation measure is proposed with regard to tribal cultural resources:

**Mitigation Measure TCR-MM-1:** Prior to commencing any initial ground disturbance activities, including excavating, digging, trenching, plowing, drilling, tunneling, quarrying, grading, leveling, removing asphalt, clearing, pounding posts, augering, blasting, stripping topsoil or a similar activity at the Project Site, the Applicant, or its successor,

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<sup>10</sup> P-19-000047, identified as the village of Sa'anga during previous consultation with the Gabrieleño tribal community, reportedly included at least two burials and had a rich subsurface deposit with cultural material indicative of habitation and tool manufacture.

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. A qualified archaeological principal investigator (qualified archaeologist), meeting the Secretary of the Interior's Professional Qualification Standards, should oversee and adjust Native American monitoring efforts as needed (increase, decrease, or discontinue monitoring frequency) based on the observed potential for construction activities to encounter tribal cultural resources and as approved by the City. The archeological monitors shall observe all initial ground disturbance activities on the Project Site with potential to encounter significant tribal cultural resources, which shall be defined as ground-disturbing activities beneath existing asphalt parking areas and landscaping to depths of 10 feet. Monitoring of depths deeper than 10 feet or within areas presently occupied by existing buildings may occur based on the recommendation of the archaeological principal investigator and observed potential to encounter tribal cultural resources. If initial ground disturbance activities are simultaneously occurring at multiple locations on the Project Site, an archaeological monitor shall be assigned to each location where the ground disturbance activities are occurring.

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 Project Site 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 archaeologist, 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 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.

## **f. Level of Significance After Mitigation**

Implementation of Mitigation Measure TCR-MM-1 would reduce potential impacts to tribal cultural resources to a less-than-significant level. Therefore, Project-level impacts related to tribal cultural resources would be less than significant after mitigation. Cumulative impacts to tribal cultural resources would be less than significant without mitigation.