

## 4.17 TRIBAL CULTURAL RESOURCES

This section provides a discussion of the existing tribal cultural resource environment and an analysis of potential impacts to tribal cultural resources from implementation of the proposed Nakase Nursery/Toll Brothers Project (proposed Project). According to California Public Resources Code (PRC) Section 21080.3.1 and Chapter 532, Statutes 2014 (i.e., Assembly Bill [AB] 52), “tribal cultural resources” are defined as the following:

1. Sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe that are either: (A) included or determined to be eligible for inclusion in the California Register of Historical Resources; or (B) included in a local register of historical resources as defined in subdivision (k) of Section 5020.1
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

This section summarizes information obtained from Senate Bill [SB] 18 and AB 52 Native American consultation efforts. The record of these consultation efforts is contained in Appendix O of this Environmental Impact Report (EIR).

### 4.17.1 Scoping Process

The City of Lake Forest (City) received 28 comment letters during the public review period of the Initial Study/Notice of Preparation (IS/NOP). For copies of the IS/NOP comment letters, refer to Appendix A of this EIR. One comment letter included comments related to cultural resources and tribal cultural resources.

The letter from the Native American Heritage Commission (NAHC) (August 8, 2018) outlines the City’s tribal consultation requirements under AB 52 and SB 18. The NAHC recommended the City consult with Native American Tribes and analyze impacts and include mitigation for tribal cultural resources in the EIR.

### 4.17.2 Existing Environmental Setting

The area that is now Lake Forest was prehistorically occupied by Native Americans. This area is primarily within traditional boundaries of the Gabrielino but is also along the boundary of the territory of the Juaneño. Aliso Creek—located approximately 0.65 mile (mi) southeast of the Project site—is generally accepted as the boundary of the territory between the two groups, with Gabrielino territory to the northeast and Juaneño territory to the southwest (Kroeber 1925). However, because the proposed Project is located close to the current alignment of Aliso Creek, it is in an area of potential overlap between the two tribal territories.

### 4.17.3 Regulatory Setting

#### 4.17.3.1 Federal Regulations

There are no federal regulations that are applicable to tribal cultural resources relevant to the proposed Project.

#### 4.17.3.2 State Regulations

**Senate Bill 18 Tribal Consultation.** California Government Code Section 65352.3 (adopted pursuant to the requirements of SB 18) requires local governments to contact, refer plans to, and consult with tribal organizations prior to making a decision to adopt or amend a General or Specific Plan. The tribal organizations eligible to consult have traditional lands in a local government's jurisdiction and are identified, upon request, by the NAHC. As noted in the California Office of Planning and Research's Tribal Consultation Guidelines (2005), "The intent of SB 18 is to provide California Native American tribes an opportunity to participate in local land use decisions at an early planning stage, for the purpose of protecting, or mitigating impacts to, cultural places."

**Assembly Bill 52 Tribal Consultation.** California PRC Section 21080.3.1 and Chapter 532, Statutes 2014 (i.e., AB 52), require that a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource, as defined, is a project that may have a significant effect on the environment. The bill requires a lead agency to begin consultation with a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project, if the tribe requested to the lead agency, in writing, to be informed by the lead agency of proposed projects in that geographic area and the tribe requests consultation, prior to determining whether a negative declaration, mitigated negative declaration, or environmental impact report is required for a project. The bill specifies examples of mitigation measures that may be considered to avoid or minimize impacts on tribal cultural resources. The bill makes the above provisions applicable to projects that have an NOP or a notice of negative declaration or Mitigated Negative Declaration filed on or after July 1, 2015. By requiring the lead agency to consider these effects relative to tribal cultural resources and to conduct consultation with California Native American tribes, this bill imposes a State-mandated local program.

#### 4.17.3.3 Regional Regulations

There are no regional regulations that are applicable to tribal cultural resources relevant to the proposed Project.

#### 4.17.3.4 Local Regulations

There are no local regulations that are applicable to tribal cultural resources relevant to the proposed Project.

### 4.17.4 Methodology

#### 4.17.4.1 Senate Bill 18

The NAHC was contacted on February 8, 2018, to conduct a Sacred Lands File (SLF) search and provide a Native American Contact List for the Project site. The NAHC responded on February 9, 2018, stating that an SLF search was completed for the Project site with negative results. The NAHC also recommended that 20 Native American individuals representing the Kumeyaay, Gabrielino, Juaneño, Luiseño, and Kitanemuk Serrano Tataviam groups be contacted for information regarding cultural resources that could be affected by the proposed Project. These 20 individuals were contacted via a letter sent on April 19, 2018, and contacted again on May 15, 2018, via email or phone as a follow-up. With the exception of Andrew Salas, Gabrieleno Band of Mission Indians—

Kizh Nation, no responses were received. Mr. Salas's group had already reached out directly to the City of Lake Forest to participate in consultation per AB 52 (discussed below).

#### 4.17.4.2 Assembly Bill 52

The NAHC was contacted on February 8, 2018, to conduct an SLF search and provide a Native American Contact List for the Project site. The NAHC responded on February 9, 2018, stating that an SLF search was completed for the Project site with negative results. The NAHC also recommended that 20 Native American individuals representing the Kumeyaay, Gabrielino, Juaneño, Luiseño, and Kitanemuk Serrano Tataviam groups be contacted for information regarding cultural resources that could be affected by the proposed Project. These 20 individuals were contacted by the City of Lake Forest via a letter sent on April 24, 2018. On May 4, 2018, Mr. Salas contacted the City of Lake Forest directly via email, stating that the Project site is located within the tribal territory of the Gabrieleno Band of Mission Indians—Kizh Nation and that they would like to consult with the agency. A consultation phone call was held on July 19, 2018, with a follow-up memorandum prepared on July 25, 2018. As a result of this consultation phone call, Mr. Salas's group sent a document on August 28, 2018, containing recommended mitigation measures for tribal cultural resources for the proposed Project. As discussed below, the recommendations have been incorporated into this document.

#### 4.17.5 Thresholds of Significance

The thresholds for tribal cultural resources impacts used in this analysis are consistent with Appendix G of the *State CEQA Guidelines*. The proposed Project may be deemed to have a significant impact with respect to tribal cultural resources if it would:

- Threshold 4.16.1:** 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 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).
- Threshold 4.16.2:** 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 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.

None of the thresholds for tribal cultural resources were scoped out in the Initial Study, which is included in Appendix A. Therefore, all of the thresholds listed above are addressed in the following analysis.

#### 4.17.6 Project Impacts

**Threshold 4.16.1: 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 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)?**

**No Impact.** A cultural resources records search was completed on February 28, 2018, at the South Central Coastal Information Center (SCCIC) of the California Historical Resources Information System (CHRIS) at California State University, Fullerton. It included a review of all prehistoric and historic archaeological sites within a 0.5 mi radius of the proposed Project, as well as a review of known cultural resource survey and excavation reports in that area. The California State Historic Resources Inventory (HRI), National Register of Historic Places (National Register), California Historical Landmarks (SHL), California Points of Historical Interest (SPHI), and various local historical registers were examined. In addition, a Historical Resources Evaluation Report (HRER) was prepared to assess the eligibility of buildings currently occupying the Project site for the National Register and the California Register of Historical Resources (California Register). The SCCIC records search results identified no previously recorded cultural resources in the Project site, and the HRER concluded that the current property on the Project site is not a historical resource. As such, there are no historical resources as defined in Section 15064.5 of the *State CEQA Guidelines* or PRC 5020.1(k) on the Project site.

Native American consultation was conducted in compliance with SB 18 and AB 52. During the consultation process, the Gabrieleno Band of Mission Indians – Kizh Nation stated that the Project site is located within their tribal territory and requested consultation with the Lead Agency. During a July 19, 2018, phone consultation meeting with the City, Mr. Salas stated that the Project site is adjacent to historic waterways and, as such, the tribe has concerns about the project unearthing buried cultural resources, including burials and/or cremations. No information regarding specific known tribal cultural resources on the Project site was provided by the tribe.

Therefore, no tribal cultural resources listed or eligible for listing in the California Register or in a local register exist within the Project area, and there are no known tribal cultural resources on the Project site. The proposed Project would not cause a substantial adverse change in the significance of a tribal cultural resource defined as 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

or in a local register of historical resources as defined in PRC Section 5020.1(k), and no mitigation is required.

**Threshold 4.16.2:** **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 a resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1? In applying the criteria set forth in subdivision (c) of Public Resources Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.**

**Potentially Significant Impact.** Native American consultation was conducted in compliance with SB 18 and AB 52. During the consultation process, the Gabrieleno Band of Mission Indians – Kizh Nation stated that the Project site is located within their tribal territory. During a July 19, 2018, phone consultation meeting with the City, Mr. Salas of the Gabrieleno Band of Mission Indians – Kizh Nation stated that the Project site is adjacent to historic waterways, and, as such, the Tribe has concerns about the project unearthing unknown buried cultural resources, including burials and/or cremations. The Tribe requested Native American monitoring during ground-disturbing activities and provided recommended mitigation measures to the City via email on August 28, 2018. The Tribe's recommendations have been incorporated into mitigation measures for the proposed Project.

Mitigation Measure 4.5.1 requires the retention of a qualified Native American Monitor (Monitor) and requires the presence of the approved Monitor during all grading activities. Mitigation Measure 4.5.1 further requires that all archaeological and tribal cultural resources encountered during construction activities be evaluated by the Monitor. In the event that previously unidentified tribal cultural resources are discovered, all material collected during the grading monitoring program shall be processed and curated at a facility that meets federal standards per 36 Code of Federal Regulations (CFR) Part 79.

Mitigation Measure 4.5.1 also requires diversion of construction work in the event any human skeletal material or related funerary objects are encountered during ground disturbance and notification of the County Coroner. If the remains are determined to be Native American, the County Coroner will notify the NAHC, which will determine and notify a Most Likely Descendant (MLD). Mitigation Measure 4.5.1 details steps for the treatment of previously unknown Native American burials. Implementation of Mitigation Measures 4.5.1 would reduce potential impacts related to unknown buried tribal cultural resources to a less than significant level.

#### **4.17.7 Cumulative Impacts**

Potential impacts of the proposed Project to unknown tribal cultural resources, when combined with the impacts of past, present, and reasonably foreseeable projects in the City of Lake Forest, could contribute to a cumulatively significant impact due to the overall loss of tribal cultural

resources in the region. However, each development proposal received by the City is required to undergo environmental review pursuant to CEQA. If there were any potential for significant impacts to tribal cultural resources, an investigation would be required to determine the nature and extent of the resources and identify appropriate mitigation measures that would reduce or avoid significant impacts.

#### 4.17.8 Level of Significance Prior to Mitigation

No impacts to known tribal cultural resources listed or eligible for listing in the California Register or in a local register would occur. Prior to mitigation, the proposed Project has the potential to result in significant impacts to previously undiscovered tribal cultural resources.

#### 4.17.9 Regulatory Compliance Measures and Mitigation Measures

##### 4.17.9.1 Regulatory Compliance Measures

There are no regulatory compliance measures applicable to tribal cultural resources.

##### 4.17.9.2 Mitigation Measures

For clarity, Mitigation Measure 4.5.1 is provided below.

#### Mitigation Measure 4.5.1

**Archaeological Resources, Tribal Cultural Resources, and Human Remains.** Prior to issuance of a grading permit for any site within the Project area, a qualified archaeologist shall be retained by the Applicant for that grading permit to provide professional archaeological services. The archaeologist shall be present at the pre-grading conference to establish procedures for archaeological resource surveillance. Those procedures shall include provisions for temporarily halting or redirecting work to permit sampling, identification, and evaluation of resources deemed by the archaeologist to potentially be historical resources or unique archaeological resources under the California Environmental Quality Act (CEQA). The archaeologist also shall conduct on-site archaeological monitoring for the grading operation. Should historical resources or unique archaeological resources be discovered during the grading operation, grading activities shall be modified to allow expeditious and proper analysis and/or salvage of the resources. Disposition of the resources shall be within the discretion of the City of Lake Forest.

Prior to Approval of Grading or Improvement plans, the Applicant shall implement a grading monitoring plan to mitigate potential impacts to undiscovered buried archaeological resources and tribal cultural resources on the Nakase Nursery/Toll Brothers Project to the satisfaction of the City of Lake Forest. This program shall include, but shall not be limited to, the following actions:

1. Provide evidence to the Lead Agency that a qualified archaeologist and Native American monitor have been contracted to implement a grading monitoring program to the satisfaction of the City of Lake Forest. A letter from the Project Archaeologist shall be submitted to the City of Lake Forest Director of Community Development. A letter from the Native American Monitor shall also be submitted to the City of Lake Forest Director of Community Development. The letter shall include the following guidelines:
  - a. The qualified archaeologist/historian and Native American monitor shall attend the pre-grading meeting with the contractors to explain and coordinate the requirements of the monitoring program.
  - b. The consulting archaeologist and Native American monitor shall monitor all areas identified for development.
  - c. An adequate number of monitors (archaeological/historical/Native American) shall be present to ensure that all earth-moving activities are observed and shall be on site during all grading activities.
  - d. During the original cutting (used in this mitigation to refer to the “cut” part of “cut and fill”) of previously undisturbed deposits, the archaeological monitor(s) and Native American monitor(s) shall be on site full time. Inspections will vary based on the rate of excavation, the materials excavated, and the presence and abundance of artifacts and features. The frequency and location of inspections shall be determined by the Principal Investigator.
  - e. During the cutting of previously disturbed deposits, the archaeological monitor(s) and Native American monitor(s) shall be on site as determined by the Principal Investigator of the excavations. Inspections will vary based on the rate of excavation, the materials excavated, and the presence and abundance of artifacts and features. The frequency and location of inspections shall be determined by the Principal Investigator in consultation with the Native American monitor.
  - f. Isolates and clearly non-significant deposits shall be minimally documented in the field, and the monitored grading can then proceed.

- g. In the event that previously unidentified, potentially significant cultural resources (including tribal cultural resources) are discovered, the archaeologist, in consultation with the Native American monitor(s), shall have the authority to divert or temporarily halt ground disturbance operations in the area of discovery to allow for evaluation. The archaeologist shall contact the City of Lake Forest Director of Community Development at the time of discovery. After consultation with the property owner, archaeologist, and Native American monitor(s), disposition of the resources shall be within the discretion of the City of Lake Forest. For significant cultural resources, a Research Design and Data Recovery Program to mitigate impacts shall be prepared by the archaeologist, in consultation with the Native American monitor(s), then carried out using professional archaeological and culturally sensitive methods.
- h. If any human bones are discovered, the Principal Investigator shall contact the County Coroner. In the event the remains are determined to be of Native American origin, the Most Likely Descendant, as identified by the Native American Heritage Commission, shall be contacted in order to determine proper treatment and disposition of the remains.
- i. Before construction activities are allowed to resume in the affected area, the artifacts shall be recovered and features recorded using professional archaeological methods. The Principal Investigator shall determine the amount of material to be recovered for an adequate artifact sample for analysis.
- j. In the event that previously unidentified non-tribal cultural resources are discovered, those resources shall be processed and curated at a facility that meets federal standards per 36 CFR Part 79, and therefore shall be professionally curated and made available to other archaeologists/researchers for further study. The collections and associated records shall be transferred, including title, to the John D. Cooper Archaeological and Paleontological Curation Center, to be accompanied by payment of the fees necessary for permanent curation. Evidence shall be in the form of a letter from the curation facility identifying that

the materials have been received and that all fees have been paid.

- k. In the event that previously unidentified cultural resources are discovered, a report documenting the field and analysis results and interpreting the artifact and research data within the research context shall be completed and submitted to the satisfaction of the City of Lake Forest prior to the issuance of any building permits. The report shall include California Department of Parks and Recreation Primary and Archaeological Site Forms.
  - l. In the event that no cultural resources are discovered, a brief letter to that effect shall be sent to the City of Lake Forest by the consulting archaeologist that the grading monitoring activities have been completed.
2. Provide evidence to the City of Lake Forest that the following notes have been placed on the Grading Plan:
- a. The qualified archaeologist/historian and Native American monitor shall attend the pre-construction meeting with the contractors to explain and coordinate the requirements of the monitoring program.
  - b. During the original cutting of previously undisturbed deposits, the archaeological monitor(s) and Native American monitor(s) shall be on site to perform full-time monitoring as determined by the Principal Investigator of the excavations. The frequency of inspections shall depend on the rate of excavation, the materials excavated, and the presence and abundance of artifacts and features.
  - c. During the cutting of previously disturbed deposits, the archaeological monitor(s) and Native American monitor(s) shall be on site as determined by the Principal Investigator of the excavations. Inspections will vary based on the rate of excavation, the materials excavated, and the presence and abundance of artifacts and features. The frequency and location of inspections shall be determined by the Principal Investigator in consultation with the Native American monitor.
  - d. In the event that previously unidentified, potentially significant cultural resources (including tribal cultural

resources) are discovered, the archaeologist, in consultation with the Native American monitor(s), shall have the authority to divert or temporarily halt ground disturbance operations in the area of discovery to allow for evaluation. The archaeologist shall contact the City of Lake Forest Director of Community Development at the time of discovery. After consultation with the property owner, archaeologist, and Native American monitor(s), disposition of the resources shall be within the discretion of the City of Lake Forest. For significant cultural resources, a Research Design and Data Recovery Program to mitigate impacts shall be prepared by the archaeologist, in consultation with the Native American monitor(s), then carried out using professional archaeological and culturally sensitive methods.

- e. The consulting archaeologist shall monitor all areas identified for development.
- f. If any human bones are discovered, the Principal Investigator shall contact the County Coroner. In the event the remains are determined to be of Native American origin, the Most Likely Descendant, as identified by the Native American Heritage Commission, shall be contacted in order to determine proper treatment and disposition of the remains.
- g. Prior to rough grading inspection sign-off, provide evidence that the field grading monitoring activities have been completed to the satisfaction of the City of Lake Forest. Evidence shall be in the form of a letter from the Project Archaeologist.
- h. Prior to final grading release, submit to the satisfaction of the City of Lake Forest a final report that documents the results, analysis, and conclusions of all phases of the Archaeological Monitoring Program. The report shall also include the following:
  - 1) California Department of Parks and Recreation Primary and Archaeological Site Forms.
  - 2) Evidence that all non-tribal cultural materials collected during the grading monitoring program have been curated, and therefore shall be professionally curated

and made available to other archaeologists/researchers for further study. The collections and associated records shall be transferred, including title, to the John D. Cooper Archaeological and Paleontological Curation Center, to be accompanied by payment of the fees necessary for permanent curation. Evidence shall be in the form of a letter from the curation facility identifying that the materials have been received and that all fees have been paid.

3. In the event that no cultural resources are discovered, a brief letter to that effect shall be sent to the City of Lake Forest by the consulting archaeologist that the grading monitoring activities have been completed.
4. The qualified archaeologist retained shall prepare monthly progress reports to be filed with the site developer(s) and the City of Lake Forest.
5. Artifacts recovered shall be prepared, identified, and cataloged before donation to the Gabrieleno Band of Mission Indians – Kizh Nation. If the Tribe does not want custody, an accredited repository designated by the City of Lake Forest shall be utilized. Any artifacts determined to be insignificant shall be offered to local schools for use in educational programs.
6. The qualified archaeologist retained shall prepare a final report to be filed with the site developer(s) and the City of Lake Forest. The report shall include a list of specimens recovered, documentation of each locality, and interpretation of artifacts recovered, and shall include all specialists' reports as appendices.

#### **4.17.10 Level of Significance after Mitigation**

No impacts to known tribal cultural resources listed or eligible for listing in the California Register or in a local register would occur. Mitigation Measure 4.5.1 would reduce potential impacts to newly discovered tribal cultural resources to a less than significant level.

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