

5.15 Tribal Cultural Resources

5.15.1 INTRODUCTION

This section addresses potential impacts to tribal cultural resources associated with implementation of the proposed Project. Information within this section is based upon data from the California Native American Heritage Commission (NAHC) Sacred Lands File search, the Geotechnical EIR Due-Diligence Level Report (Geotechnical Report) that was prepared by LGC Geotechnical (GEO 2019) (Appendix C), the Phase I Environmental Site Assessment (ESA) prepared by Stantec in 2018 (Phase I 2018) (Appendix D), and project-specific coordination and consultation with California Native American tribes that are traditionally and culturally affiliated with the Project region.

5.15.2 REGULATORY SETTING

California Senate Bill 18

Senate Bill 18 (SB 18) (California Government Code Section 65352.3) sets forth requirements for local governments to consult with California Native American tribes identified by the California Native American Heritage Commission (NAHC) to aid in the protection of tribal cultural resources. The intent of SB 18 is to provide California Native American tribes an opportunity to participate in local land use decisions at an early stage of planning to protect, or mitigate impacts on, tribal cultural resources. The Tribal Consultation Guidelines: Supplement to General Plan Guidelines (OPR, 2005), identifies the following 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).

Because the proposed Project includes a General Plan Amendment, it is subject to the statutory requirements of SB 18 Tribal Consultation Guidelines.

California Assembly Bill 52

Assembly Bill 52 (AB 52) established a requirement under CEQA to consider "tribal cultural values, as well as scientific and archaeological values when determining impacts and mitigation." Public Resources Code (PRC) Section 21074(a) defines "tribal cultural resources" (TCRs) as "[s]ites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe" that are either "[i]ncluded or determined to be eligible for inclusion in the California Register of Historical Resources" or "in a local register of historical resources." Additionally, defined cultural landscapes, historical resources,

and archaeological resources may be considered tribal cultural resources. PRC Section 21074(b), (c). The lead agency may also in its discretion treat a resource as a TCR if it is supported with substantial evidence.

Projects for which a notice of preparation for a Draft EIR was filed on or after July 1, 2015 are required to have lead agencies offer California Native American tribes traditionally and culturally affiliated with the project area consultation on CEQA documents prior to submitting an EIR in order to protect TCRs. PRC Section 21080.3.1(b) defines “consultation” as “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 must “be conducted in a way that is mutually respectful of each party’s sovereignty [and] recognize the tribes’ potential needs for confidentiality with respect to places that have traditional tribal cultural significance.” The consultation process is outlined as follows:

1. California Native American tribes traditionally and culturally affiliated with the project area submit written requests to participate in consultations.
2. Lead agencies are required to provide formal notice to the California Native American tribes that requested to participate within 14 days of the lead agency’s determination that an application package is complete or decision to undertake a project.
3. California Native American tribes have 30 days from receipt of notification to request consultation on a project.
4. Lead agencies initiate consultations within 30 days of receiving a California Native American tribe’s request for consultation on a project.
5. Consultations are complete when the lead agencies and California Native tribes participating have agreed on measures to mitigate or avoid a significant impact on a TCR, or after a reasonable effort in good faith has been made and a party concludes that a mutual agreement cannot be reached (PRC Sections 21082.3(a), (b)(1)-(2); 21080.3.1(b)(1)).

AB 52 requires that the CEQA document disclose significant impacts on TCRs and discuss feasible alternatives or mitigation to avoid or lessen an impact.

California Health and Safety Code, Section 7050.5

This code requires that if human remains are discovered on a project site, disturbance of the site shall halt and remain halted until the coroner has conducted an investigation into the circumstances, manner, and cause of any death, and the recommendations concerning the treatment and disposition of the human remains have been made to the person responsible for the excavation, or to his or her authorized representative. If the coroner determines that the remains are not subject to his or her authority and recognizes or has reason to believe the human remains are those of a Native American, he or she shall contact, by telephone within 24 hours, the Native American Heritage Commission.

5.15.3 ENVIRONMENTAL SETTING

Native American Tribes

The territory of the Gabrieleño at the time of Spanish contact covers much of current-day Los Angeles, San Bernardino, and Orange Counties, which includes the Project site in the City of Santa Ana. The southern region of this cultural area is bound by Aliso Creek, the eastern region is located east of San Bernardino along the Santa Ana River, the northern region includes the San Fernando Valley, and the western region includes portions of the Santa Monica Mountains. The Gabrieleño also occupied several Channel Islands including Santa Barbara Island, Santa Catalina Island, San Nicholas Island, and San Clemente Island. Because of their access to certain resources, including a steatite source from Santa Catalina Island, this group was among the wealthiest and most populous aboriginal groups in southern California. Trade of materials

and resources controlled by the Gabrieleño extended as far north as the San Joaquin Valley, as far east as the Colorado River, and as far south as Baja California.

The Gabrieleño lived in permanent villages and smaller, resource-gathering camps occupied at various times of the year depending upon the seasonality of the resource. Larger villages comprised of several families or clans, while smaller, seasonal camps typically housed smaller family units. Gabrieleño houses were domed, circular structures made of thatched vegetation. Houses varied in size, and could house from one to several families. Sweathouses—semicircular, earth covered buildings—were public structures used in male social ceremonies. Other structures included menstrual huts and a ceremonial structure called a yuvar, an open-air structure built near the chief's house.

Hunting implements included wooden clubs, sinew-backed bows, slings, and throwing clubs. Maritime implements included rafts, harpoons, spears, hook and line, and nets. A variety of other tools included deer scapulae saws, bone and shell needles, bone awls, scrapers, bone or shell flakers, wedges, stone knives and drills, metates, mullers, manos, shell spoons, bark platters, and wooden paddles and bowls. Baskets were made from rush (*Juncus sp.*), deer grass (*Muhlenbergia rigens*), and skunkbush (*Rhus trilobata*).

The social structure of the Gabrieleño is little known; however, there appears to have been at least three social classes: 1) the elite, which included the rich, chiefs, and their immediate family; 2) a middle class, which included people of relatively high economic status or long-established lineages; and 3) a class of people that included most other individuals in the society. Villages were politically autonomous units comprised of several lineages. During times of the year when certain seasonal resources were available, the village would divide into lineage groups and move out to exploit them, returning to the village between forays.

Each lineage had its own leader, with the village chief coming from the dominant lineage. Several villages might be allied under a paramount chief. Chiefly positions were of an ascribed status, most often passed to the eldest son. Chiefly duties included providing village cohesion, leading warfare and peace negotiations with other groups, collecting tribute from the village(s) under his jurisdiction, and arbitrating disputes within the village(s). The status of the chief was legitimized by his safekeeping of the sacred bundle, a representation of the link between the material and spiritual realms and the embodiment of power. Shamans were leaders in the spirit realm. The duties of the shaman included conducting healing and curing ceremonies, guarding of the sacred bundle, locating lost items, identifying and collecting poisons for arrows, and making rain. Marriages were made between individuals of equal social status and, in the case of powerful lineages, marriages were arranged to establish political ties between the lineages. Men conducted the majority of the heavy labor, hunting, fishing, and trading with other groups. Women's duties included gathering and preparing plant and animal resources, and making baskets, pots, and clothing.

Rivers and streams were used as trading routes and travel routes as they provided resources. Thus, many tribal cultural resources are found along rivers, streams, and other known travel or trade routes. The Project site does not include, and is not located near a river, stream, or identified corridor that could have been a travel or trade route.

Project Site Ground Disturbances

The Phase I Environmental Site Assessment that was prepared for the Project site (ESA 2018) describes that between the years of 1938 and 1972, prior to development of the existing site structures, the Project site and adjacent areas were used for agriculture, which resulted in shallow soil disturbances.

The Geotechnical Report that was prepared for the Project describes that the previous excavation for development of the existing 3 buildings and removal of previous underground storage tanks involved removal of soils and backfill with artificial compacted fill soils ranging between 5 feet and 13 feet in depth, as described below (GEO 2019):

- During development of the 2300 Red Hill Avenue building, soils were excavated to depths of approximately 5 feet below existing grade and compacted fill soils were used to backfill the excavation area for the building foundation.
- During development of the 2310 Red Hill Avenue building, approximately 9 feet of fill was placed in the building pad area and fill soils were backfilled up to 15 feet beyond the limit of the building foundation (GEO 2019).
- The area of the 2320 Red Hill Avenue building pad was excavated to approximately 10 to 13 feet below the existing grade. The foundation was stabilized with approximately 24 inches of gravel and approximately 13 feet of artificial fill was placed under the building and up to 5 feet beyond the building foundations.
- During removal of an underground storage tank located between 2310 and 2320 Red Hill Avenue buildings, approximately 10 feet of crushed miscellaneous base and approximately 5 feet of onsite soils were backfilled into the previous underground storage tank location.

5.15.4 THRESHOLDS OF SIGNIFICANCE

Appendix G of State CEQA Guidelines indicates that a project could have a significant effect if it were to 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); or
- A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1, that considers the significance of the resource to a California Native American tribe.

5.15.5 METHODOLOGY

A Sacred Lands File search was requested from the NAHC on February 1, 2019. The NAHC responded on February 6, 2019, stating that there are no known/known sacred lands within 0.5 mile of the Project area, and requested that 18 Native American individuals be contacted for further information regarding the general area vicinity.

In compliance with SB 18, AB 52, and the NAHC request, on September 24, 2019, the City sent letters to the following Native American tribes that may have knowledge regarding tribal cultural resources in the Project vicinity.

- Agua Caliente Band of Cahuilla Indians
- Gabrieliño-Tongva Tribe
- Gabrieleño/Tongva San Gabriel Band of Mission Indians
- Gabrieleño Band of Mission Indians – Kizh Nation
- Gabrieleño/Tongva Indians of California Tribal Council
- Juaneno Band of Mission Indians
- Juaneno Band of Mission Indians Acjachemen Nation

- Juaneno Band of Mission Indians Acjachemen Nation – Romero
- La Jolla Band of Luiseno Indians
- Pala Band of Mission Indians
- Pauma Band of Luiseno Indians
- Pechanga Band of Luiseno Indians
- Rincon Band of Luiseno Indians (2 contacts)
- San Fernando Band of Mission Indians
- San Luis Rey Band of Mission Indians
- Soboba Band of Luiseno Indians

Three responses were received. The Rincon Band of Luiseño Indians responded on October 14, 2019 stating that the Project site is not within the Luiseño Aboriginal Territory. The Pala Band of Mission Indians responded on November 20, 2019 stating that the Project site is not within the boundaries of the recognized Pala Indian Reservation. The project is also beyond the boundaries of the territory that the tribe considers its Traditional Use Area.

Mr. Andrew Salas, Chairman of the Gabrieleño Band of Mission Indians – Kizh Nation, responded on October 1, 2019. A conference call between a City representative and Mr. Salas occurred on October 30, 2019 during which the history of uses and development of the Project site and the depth of previous and existing infrastructure on the site was discussed. Mr. Salas did not provide any specific information or substantial evidence indicating that potential Tribal Cultural Resources could be located within the Project site.

5.15.6 ENVIRONMENTAL IMPACTS

IMPACT TCR-1: THE PROJECT WOULD NOT CAUSE A SUBSTANTIAL ADVERSE CHANGE IN THE SIGNIFICANCE OF A TRIBAL CULTURAL RESOURCE 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).

Less than Significant Impact. SB 18 and AB 52 require meaningful consultation between lead agencies and California Native American tribes regarding potential impacts on TCRs. As described above, TCRs are sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe that are either eligible or listed in the California Register of Historical Resources or local register of historical resources (PRC Section 21074). As outlined above, the City sent letters to 18 Native American representatives identified by NAHC, notifying them of the proposed Project in accordance with SB 18 and AB 52. One California Native American tribe request for consultation, the Gabrieleño Band of Mission Indians – Kizh Nation. Mr. Andrew Salas provided oral information about the use of the Orange County area for Native American village sites and the City provided the history of uses and development of on the Project site, including the depth of previous and existing infrastructure and foundation systems on the site. Based on the consultation conducted, no TCRs were identified.

The Project site includes three modern industrial buildings that were developed in the early 1980s and do not involve tribal cultural resources. As described previously, the site has a long history of ground disturbance from previous agricultural uses and development. As detailed previously, artificial fill was observed in geotechnical field explorations up to 7.5 feet below existing grade and previous excavation and recompaction ranged from 5 feet to 13 feet for development of the existing buildings. It is likely that the site disturbance included the undeveloped portion of the site at the corner of Red Hill and Warner Avenue.

The extensive previous excavation, recompaction, and fill soils onsite have limited the potential of the site to contain tribal cultural resources.

Also, as described in Section 3.0, *Project Description*, the proposed Project would excavate onsite soils to a minimum of 5 feet below the bottom of the building foundations and 5 feet beyond the building perimeters. The soils would be reconditioned and recompact as engineered fill to support the proposed building structures. The depth of the excavation is within the previously disturbed soil depths, which further reduces the potential of the Project to result in impacts related to tribal cultural resources.

Overall, the Project site does not include resources that are listed or eligible for listing in the California Register of Historical Resources or in a local register of historical resources; and due to the extent and depth of previous ground disturbances throughout the site, the potential for tribal cultural resources is limited. Therefore, Project impacts to tribal cultural resource that are listed or eligible for listing in the California Register of Historical Resources, or other register of historical resources would be less than significant.

IMPACT TCR-2: THE PROJECT WOULD NOT CAUSE A SUBSTANTIAL ADVERSE CHANGE IN THE SIGNIFICANCE OF 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 THE PUBLIC RESOURCES CODE SECTION 5024.1, THAT CONSIDERS THE SIGNIFICANCE OF THE RESOURCES TO A CALIFORNIA NATIVE AMERICAN TRIBE.

Less than Significant Impact with Mitigation. As described in the previous response, the Project site has been heavily disturbed to substantial depths. The proposed Project involves excavation; however, as discussed in Impact TCR-1 above, no substantial evidence exists that TCRs are present in the Project site. Although, no TCRs have been identified, during the SB 18/AB 52 consultation, the Gabrieleño Band of Mission Indians – Kizh Nation stated that the Project lies within its ancestral tribal territory within a potentially sensitive area. Therefore, to avoid potential adverse effects to tribal cultural resources, Mitigation Measure TCR-1 has been included to provide for Native American resource sensitivity training, monitoring, and to prescribe activities should any inadvertent discoveries of tribal cultural resources be unearthed by Project construction activities.

Additionally, as described previously, California Health and Safety Code, Section 7050.5 requires that if human remains are discovered in the Project site, disturbance of the site shall halt and remain halted until the coroner has conducted an investigation. If the coroner determines that the remains are those of a Native American, he or she shall contact, by telephone within 24 hours, the Native American Heritage Commission. Therefore, with implementation of Mitigation Measure TCR-1 and the existing regulations, impacts to TCRs would be less than significant.

5.15.7 CUMULATIVE IMPACTS

The cumulative study area for tribal cultural resources includes the southern California region, which contains the same general tribal historic setting of the Gabrieleño, as detailed previously in Section 5.15.3, *Environmental Setting*. Other projects in the vicinity of the Project would involve ground disturbances that could reveal buried TCRs.

Cumulative impacts to TCRs would be reduced by compliance with applicable regulations and consultations required by SB 18 and AB 52. As described above, the Project site and vicinity is not known to contain TCRs; however, Mitigation Measure TCR-1 would be implemented to ensure that impacts would not occur in the case of an inadvertent discovery of a potential TCR. This mitigation measure would provide that the Project

would not contribute to a cumulative loss of TCRs. Therefore, cumulatively impacts would be less than significant.

5.15.8 EXISTING STANDARD CONDITIONS AND PLANS, PROGRAMS, OR POLICIES

- California Government Code Sections 5097.9-5097.99
- California Health and Safety Code Section 7050.5
- California Public Resources Code Sections 21073 et seq. (AB 52)

5.15.9 LEVEL OF SIGNIFICANCE BEFORE MITIGATION

Upon implementation of regulatory requirements, Impact TCR-1 would be less than significant.

Without mitigation, Impact TCR-2 would be **potentially significant**:

5.15.10 MITIGATION MEASURES

Mitigation Measure TCR-1: Native American Monitoring. Prior to the issuance of any permits for initial site clearing (such as pavement removal, grubbing, tree removals) or issuance of permits allowing ground-disturbing activities that cause excavation to depths greater than artificial fill (including as boring, grading, excavation, drilling, potholing or auguring, and trenching), the City of Santa Ana shall ensure that the project applicant/developer retain qualified Native American Monitor(s). The monitor(s) shall be approved by the tribal representatives of the Gabrieleno Band of Mission Indians - Kizh Nation and be present on-site during initial site clearing and construction that involves ground disturbing activities that cause excavation to depths greater than artificial fill identified herein. The monitor shall conduct a Native American Indian Sensitivity Training for construction personnel. The training session includes a handout and focus on how to identify Native American resources encountered during earthmoving activities and the procedures followed if resources are discovered. The Native American monitor(s) shall complete monitoring logs on a daily basis, providing descriptions of the daily activities, including construction activities, locations, soil, and any cultural materials identified. The on-site monitoring shall end when grading and excavation activities of native soil (i.e., previously undisturbed) are completed, or when the tribal representatives and monitor have indicated that the site has a low potential for tribal cultural resources, whichever occurs first.

In the event that tribal cultural resources are inadvertently discovered during ground-disturbing activities, work must be halted within 50 feet of the find until it can also be evaluated by a qualified archaeologist in cooperation with a Native American monitor to determine if the potential resource meet the CEQA definition of historical (State CEQA Guidelines 15064.5(a)) and/or unique resource (Public Resources Code 21083.2(g)). Construction activities could continue in other areas. If the find is considered an “archeological resource” the archaeologist, in cooperation with a Native American monitor shall pursue either protection in place or recovery, salvage and treatment of the deposits. Recovery, salvage and treatment protocols shall be developed in accordance with applicable provisions of Public Resource Code Section 21083.2 and State CEQA Guidelines 15064.5 and 15126.4. If unique a tribal cultural resource cannot be preserved in place or left in an undisturbed state, recovery, salvage and treatment shall be required at the Project applicant’s expense. All recovered and salvaged resources shall be prepared to the point of identification and permanent preservation in an established accredited professional repository.

5.15.10 LEVEL OF SIGNIFICANCE AFTER MITIGATION

The mitigation measure and existing regulatory programs described previously would reduce potential impacts associated with TCRs for Impact TCR-2 to a level that is less than significant. Therefore, no significant unavoidable adverse impacts related to TCRs would occur.

REFERENCES

Bean, Lowell John and Charles R Smith. 1978 Gabrielino IN *Handbook of North American Indians, California*, edited by R.F. Heizer, Smithsonian Institution Press, Washington D.C., pp 538-549.

Geotechnical EIR Due-Diligence Level Report (Geotechnical Report). Prepared by LGC Geotechnical. 2019 (GEO 2019).

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