

5. Environmental Analysis

5.14 TRIBAL CULTURAL RESOURCES

Tribal cultural resources (TCR) include landscapes, sacred places, or objects with cultural value to a California Native American tribe. This section of the Draft Environmental Impact Report (DEIR) evaluates the potential for implementation of the Proposed Project to impact TCR in the City of Anaheim. Potential impacts to other cultural resources (i.e., historic, archaeological, and paleontological) are evaluated in Section 5.4, *Cultural and Paleontological Resources*.

5.14.1 Environmental Setting

5.14.1.1 REGULATORY BACKGROUND

Federal

Archaeological Resources Protection Act

The Archaeological Resources Protection Act of 1979 regulates the protection of archaeological resources and sites on federal and Indian lands.

Native American Graves Protection and Repatriation Act

The Native American Graves Protection and Repatriation Act is a federal law passed in 1990 that mandates museums and federal agencies to return certain Native American cultural items—such as human remains, funerary objects, sacred objects, or objects of cultural patrimony—to lineal descendants or culturally affiliated Indian tribes.

State

Public Resources Code

Archaeological resources are protected pursuant to a wide variety of state policies and regulations enumerated under the California Public Resources Code (PRC). In addition, cultural resources are recognized as nonrenewable resources and therefore receive protection under the PRC and the California Environmental Quality Act (CEQA).

- **PRC Sections 5097.9 to 5097.991** provide protection to Native American historical and cultural resources and sacred sites and identify the powers and duties of the Native American Heritage Commission (NAHC). They also require notification to descendants of discoveries of Native American human remains and provide for treatment and disposition of human remains and associated grave goods.
- **PRC Section 5097.9** states that no public agency or private party on public property shall “interfere with the free expression or exercise of Native American Religion.” The code further states that:

No such agency or party [shall] cause severe or irreparable damage to any Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine... except on a

5. Environmental Analysis

TRIBAL CULTURAL RESOURCES

clear and convincing showing that the public interest and necessity so require. County and city lands are exempt from this provision, except for parklands larger than 100 acres.

Health and Safety Code

The discovery of human remains is regulated by California Health and Safety Code Section 7050.5, which states that:

In the event of discovery or recognition of any human remains in any location other than a dedicated cemetery, there shall be no further excavation...until the coroner...has determined...that the remains are not subject to...provisions of law concerning investigation of 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.... The coroner shall make his or her determination within two working days from the time the person responsible for the excavation, or his or her authorized representative, notifies the coroner of the discovery or recognition of the human remains. If the coroner determines that the remains are not subject to his or her authority and...has reason to believe that they are those of a Native American, he or she shall contact, by telephone within 24 hours, the Native American Heritage Commission.

Senate Bill 18

Prior to the enactment of Senate Bill 18 (SB 18) (California Government Code Sections 65352.3 et seq.) related to traditional tribal cultural places (TTCP) in 2004, state law provided limited protection for Native American prehistoric, archaeological, cultural, spiritual, and ceremonial places. These places may include sanctified cemeteries, religious and ceremonial sites, shrines, burial grounds, prehistoric ruins, archaeological or historic sites, Native American rock art inscriptions, or features of Native American historic, cultural, and sacred sites.

SB 18 placed new requirements on local governments for developments within or near TTCP. SB 18 requires local jurisdictions to provide opportunities for involvement of California Native Americans tribes in the land-planning process for the purpose of preserving traditional tribal cultural places. The Final Tribal Guidelines recommends that the NAHC provide written information as soon as possible but no later than 30 days after the receipt of the notification to inform the lead agency if the proposed project is determined to be in proximity to a TTCP, and another 90 days for tribes to respond to if they want to consult with the local government to determine whether the project would have an adverse impact on the TTCP. There is no statutory limit on the consultation duration. Forty-five days before the action is publicly considered by the local government council, the local government refers action to agencies, following the CEQA public review time frame. The CEQA public distribution list may include tribes listed by the NAHC who have requested consultation or it may not. If the NAHC, the tribe, and interested parties agree upon the mitigation measures necessary for the proposed project, it would be included in the project's EIR. If both the lead agency and the tribe agree that adequate mitigation or preservation measures cannot be taken, then neither party is obligated to take action.

SB 18 requires a city or county to consult with the NAHC and any appropriate Native American tribe prior to the adoption, revision, amendment, or update of a city's or county's General Plan. Although SB 18 does not

5. Environmental Analysis TRIBAL CULTURAL RESOURCES

specifically mention consultation or notice requirements for adoption or amendment of specific plans, the Final Tribal Guidelines advises that SB 18 requirements extend to specific plans as well, because state planning law requires local governments to use the same process for amendment or adoption of specific plans as general plans (defined in Government Code § 65453). In addition, SB 18 provides a new definition of TTCP that requires a traditional association of the site with Native American traditional beliefs, cultural practices, or ceremonies, or the site must be shown to actually have been used for activities related to traditional beliefs, cultural practices, or ceremonies. Previously, the site was defined to require only an association with traditional beliefs, practices, lifeways, and ceremonial activities. In addition, SB 18 law amended Civil Code Section 815.3 and added California Native American tribes to the list of entities that can acquire and hold conservation easements for the purpose of protecting their cultural places.

Assembly Bill 52

The Native American Historic Resource Protection Act (AB 52) took effect July 1, 2015, and incorporates tribal consultation and analysis of impacts to TCR into the CEQA process. It requires that impacts to TCRs be analyzed like any other CEQA topic and establishes a consultation process for lead agencies and California tribes. Projects that require a Notice of Preparation of an EIR or Notice of Intent to adopt a ND or MND are subject to AB 52. A significant impact on a TCR is considered a significant environmental impact, requiring feasible mitigation measures.

TCRs must have certain characteristics:

- 1) Sites, features, places, cultural landscapes (must be geographically defined), sacred places, and objects with cultural value to a California Native American tribe that are either included or determined to be eligible for inclusion in the California Register of Historic Resources or included in a local register of historical resources. (PRC § 21074[a][1])
- 2) The lead agency, supported by substantial evidence, chooses to treat the resource as a TCR. (PRC § 21074[a][2])

The first category requires that the TCR qualify as a historical resource according to PRC Section 5024.1. The second category gives the lead agency discretion to qualify that resource—under the conditions that it support its determination with substantial evidence and consider the resource’s significance to a California tribe. The following is a brief outline of the process (PRC §§ 21080.3.1–3.3).

- 1) A California Native American tribe asks agencies in the geographic area with which it is traditionally and culturally affiliated to be notified about projects. Tribes must ask in writing.
- 2) Within 14 days of deciding to undertake a project or determining that a project application is complete, the lead agency must provide formal written notification to all tribes who have requested it.
- 3) A tribe must respond within 30 days of receiving the notification if it wishes to engage in consultation.

5. Environmental Analysis

TRIBAL CULTURAL RESOURCES

- 4) The lead agency must initiate consultation within 30 days of receiving the request from the tribe.
- 5) Consultation concludes when both parties have agreed on measures to mitigate or avoid a significant effect to a TCR, OR a party, after a reasonable effort in good faith, decides that mutual agreement cannot be reached.
- 6) Regardless of the outcome of consultation, the CEQA document must disclose significant impacts on TCRs and discuss feasible alternatives or mitigation that avoid or lessen the impact.

5.14.1.2 EXISTING CONDITIONS

The Project Site is fully developed with neighborhood commercial uses. In Anaheim, most known archaeological sites are along creek areas, ridgelines, and vistas, and many of these types of landforms exist within the Hill and Canyon Area of the city. One registered site (i.e., CA-Ora-303) is adjacent to SR-91, where artifacts such as manos, hammerstones, choppers, lithic flakes, and some faunal bone were identified. SR-91 is over two miles north of the Project Site, and there are no known archaeological resources within a ½-mile radius of the Project Site (SCCIC 2019). There are no known TCRs in the Project Site.

5.14.2 Thresholds of Significance

According to Appendix G of the CEQA Guidelines, a project would normally have a significant effect on the environment if the project would:

- TCR-1 Cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code § 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 § 5024.1. In applying the criteria set forth in subdivision (c) of Public Resource Code § 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.

5.14.3 Plans, Programs, and Policies

Regulatory Requirements

- RR TCR-1 Pursuant to the California Health and Safety Code Section 7050.5, the Proposed Project will stop further excavation in the event of discovery or recognition of any human remains until a qualified coroner has made appropriate determination regarding the find. The coroner will make his or her determination within two working days from the time the person responsible

5. Environmental Analysis TRIBAL CULTURAL RESOURCES

for the excavation, or his or her authorized representative, notifies the coroner of the discovery or recognition of the human remains. If the coroner determines that the remains are not subject to his or her authority and...has reason to believe that they are those of a Native American, he or she shall contact, by telephone within 24 hours, the Native American Heritage Commission.

5.14.4 Environmental Impacts

5.14.4.1 METHODOLOGY

Conducting consultation early in the CEQA process allows tribal governments, public lead agencies, and project proponents to discuss the level of environmental review, identify and address potential adverse impacts to TRC, and reduce the potential for delay and conflict in the environmental review process. The intent of the consultations is to provide an opportunity for interested Native American contacts to work together with the City during the project planning process to identify and protect TCRs.

SB 18 Consultation

In accordance with SB 18 requirements, the NAHC provided a list of tribal representatives who may have knowledge of TRCs in the Project area. The City sent invitation letters in December 2018 to the Native American contacts provided by the NAHC, formally inviting tribes to consult with the City on the Proposed Project. Letters were sent to the following tribes:

- Campo Band of Mission Indians
- Ewiiapaayp Tribe
- Gabrieleno Band of Mission Indians - Kizh Nation
- Gabrieleno/Tongva San Gabriel Band of Mission Indians
- Gabrielino/Tongva Nation
- Gabrielino Tongva Indians of California Tribal Council
- Gabrielino-Tongva Tribe
- Jamul Indian Village
- Juaneño Band of Mission Indians
- Juaneño Band of Mission Indians Acjachemen Nation
- Juaneño Band of Mission Indians Acjachemen Nation - Romero
- La Posta Band of Mission Indians
- Manzanita Band of Kumeyaay Nation
- San Fernando Band of Mission Indians
- San Pasqual Band of Mission Indians
- Sycuan Band of the Kumeyaay Nation
- Viejas Band of Kumeyaay Indians

Response letters were received from one tribal representative—Andrew Salas of Gabrieleño Band of Mission Indians - Kizh Nation—requesting consultation per AB 52, and the consultation took place on January 9, 2019.

5. Environmental Analysis

TRIBAL CULTURAL RESOURCES

AB 52 Consultation

AB 52 requires meaningful consultation with California Native American tribes on potential impacts to TCRs, as defined in PRC Section 21074. 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. As part of the AB 52 process, Native American tribes must submit a written request to the lead agency to be notified of projects within their traditionally and culturally affiliated area. Pursuant to the AB 52 consultation requirement, Andrew Salas of Gabrieleno Band of Mission Indians - Kizh Nation, requested consultation in writing. Subsequently, on January 9, 2018, the City conducted a consultation with the Gabrieleno Band of Mission Indians - Kizh Nation in compliance with AB 52. The pertinent correspondence is included as Appendix O to this DEIR.

5.14.4.2 IMPACT ANALYSIS

The following impact analysis addresses thresholds of significance for which the Initial Study disclosed potentially significant impacts. The applicable thresholds are identified in brackets after the impact statement.

Impact 5.14-1: The Proposed 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). [Threshold TCR-1.i]

The Project Site is developed with seven 1-story neighborhood commercial buildings and associated parking lot that were constructed in the 1980s. The Project Site is not eligible or listed in the California Register of Historical Resources or local register of historical resources (Public Resources Code § 21074) (OHP 2019). Implementation of the Proposed Project would not result in any substantial adverse change in a TCR defined pursuant to PRC 5024.1 or PRC 5020.1(k). Impacts would be less than significant.

Level of Significance Before Mitigation: Less than significant.

Impact 5.14-2: The Proposed Project would cause a substantial adverse change in the significance of a tribal cultural resource that is determined by the lead agency to be significant pursuant to criteria in Public Resources Code section 5024.1(c). In applying the criteria per PRC Section 5024.1(c), the City considered the significance of the resource to a California Native American tribe. [Threshold TCR-1.ii]

There are no known TCRs within the boundaries of the Project Site. The Project Site was developed in the 1980s and is not listed in the California Register of Historical Resources or National Register of Historic Places (OHP 2019, NPS 2019). The Project Site does not meet any of the historical resources criteria outlined in the PRC 2024.1.

In considering the significance of the resource to a California Native American tribe, the City contacted the Native American Heritage Commission for the listing of tribes with traditional lands or cultural places located within the boundaries of the Project Site and to search the Sacred Lands File (SFL). The SFL search result was negative. And as described in Section 5.14.4.1, *Methodology*, the City contacted the listed tribes, and only one

5. Environmental Analysis TRIBAL CULTURAL RESOURCES

tribal one tribal representative responded—Andrew Salas of Gabrieleño Band of Mission Indians - Kizh Nation.

The Gabrieleño Band of Mission Indians - Kizh Nation considers the Project Site to be within its ancestral tribal territory, descending from a higher degree of kinship than traditional or cultural affiliation. They also indicated that the Project Site is in a sensitive area and may cause a substantial adverse change in the significance of their TCRs. As part of consultation, they provided links to three website articles reporting that some of the major Native American trails became modern day roadways, suggesting that the Project Area could be near one of those trails and therefore has potential to yield TCRs. For this reason, they recommended a tribal monitor(s) be present during ground-disturbing activities. Upon discovery, if the finds are determined to be Native American, the coroner will notify the NAHC as mandated by state law who will then appoint a Most Likely Descendent. The Gabrieleno Band of Mission Indians - Kizh Nation indicated that to the tribe, the term “human remains” encompasses more than human bones, but also the burial of funerary objects with the deceased, and the ceremonial burning of human remains. These remains are to be treated in the same manner as human bones that remain intact. Associated funerary objects are objects that are reasonably believed to have been placed with individual human remains either at the time of death or later as part of the death rite or ceremony of a culture; other items made exclusively for burial purposes or to contain human remains can also be considered associated funerary objects.

Because there is a possibility that grading and excavation activities during implementation of the Proposed Project could impact previously undisturbed TCRs, impacts to TCRs are considered potentially significant.

Level of Significance Before Mitigation: Potentially Significant.

5.14.5 Cumulative Impacts

Cumulative impacts to TCRs would occur when the impacts of the Proposed Project, in conjunction with other projects and development in the City, result in multiple and/or cumulative impacts to TCRs in the area. The Gabrieleno Band of Mission Indians - Kizh Nation, the ancestral tribal group, did not identify any recorded TCR on or near the Project Site. Since the potential for uncovering significant TCRs on the Project Site and in the vicinity of the Project Site are low, and additional mitigation measure has been provided to reduce the potential impacts to even lower, it is unlikely that the Proposed Project, in conjunction with other development projects in the City, would result in cumulatively significant TCR impacts.

Level of Significance Before Mitigation: Less than significant.

5.14.6 Level of Significance Before Mitigation

Upon implementation of regulatory requirements and standard conditions of approval, the following impacts would be less than significant: 5.14-1.

Without mitigation, the following impacts would be **potentially significant:**

5. Environmental Analysis

TRIBAL CULTURAL RESOURCES

- **Impact 5.14-2** Tribal cultural resources could be adversely impacted by grading activities associated with the Proposed Project.

5.14.7 Mitigation Measures

Impact 5.14-2

TCR-1 Prior to the issuance of any permits allowing ground-disturbing activities that cause excavation to depths greater than artificial fill, the City of Anaheim shall ensure that the Project Applicant/developer retain qualified Native American Monitor(s) during construction-related ground disturbance activities. 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 construction that involve ground disturbing activities. The Native American monitor(s) shall be responsible for the following activities during the monitoring, as appropriate:

- 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 the Project Site grading and excavation activities are completed, or when the tribal representatives and monitor have indicated that the site has a low potential for tribal cultural resources.
- Upon discovery, the tribal and/or archaeological monitor/consultant/consultant shall immediately divert work a minimum of 150 feet and place an exclusion zone around the burial. The monitor/consultant(s) shall then notify the tribe, the qualified lead archaeologist, and the construction manager who shall call the coroner.
- Work will continue to be diverted while the coroner determines whether the remains are Native American. The discovery is to be kept confidential and secure to prevent any further disturbance. If the finds are determined to be Native American, the coroner will notify the Native American Heritage Commission (NAHC), as mandated by state law, who will then appoint a Most Likely Descendent (MLD).

If the Gabrieleno Band of Mission Indians - Kizh Nation is designated MLD, the following treatment measures shall be implemented.

- Prior to the continuation of ground-disturbing activities, the land owner shall arrange a designated site location within the footprint of the Project Site for the respectful reburial of the human remains and/or ceremonial objects.
- In the case where discovered human remains cannot be fully documented and recovered on the same day, the remains shall be covered with muslin cloth and a steel plate that can be moved by heavy equipment placed over the excavation opening to protect the remains. If this type of steel plate is not available, a 24-hour guard should be posted outside of working hours.

5. Environmental Analysis TRIBAL CULTURAL RESOURCES

- The tribe shall make every effort to recommend diverting the Project and keeping the remains in situ and protected. If the Project cannot be diverted, it may be determined that the burials will be removed. The tribe will work closely with the qualified archaeologist to ensure that the excavation is treated carefully, ethically and respectfully.
- If data recovery is approved by the tribe, documentation shall be taken that includes, at a minimum, detailed descriptive notes and sketches. Additional types of documentation shall be approved by the tribe for data recovery purposes.
- Cremations will either be removed in bulk or by means as necessary to ensure completely recovery of all material. If the discovery of human remains includes four or more burials, the location is considered a cemetery and a separate treatment plan shall be created. Once complete, a final report of all activities is to be submitted to the tribe and the NAHC.
- Each occurrence of human remains and associated funerary objects shall be stored using opaque cloth bags. All human remains, funerary objects, sacred objects, and objects of cultural patrimony will be removed to a secure container on site if possible. These items should be retained and reburied within six months of recovery. The site of reburial/repatriation shall be on the Project Site but at a location agreed upon between the tribe and the landowner at a site to be protected in perpetuity. There shall be no publicity regarding any cultural materials recovered.

5.14.8 Level of Significance After Mitigation

The mitigation measure identified above would reduce potential impacts associated with tribal cultural resources to a level that is less than significant. Therefore, no significant unavoidable adverse impacts relating to tribal cultural resources remain.

5.14.9 References

Office of Historic Preservation (OHP) 2019, January 3 (accessed). Listed California Historical Resources, Orange County. <http://ohp.parks.ca.gov/ListedResources/?view=county&criteria=30>

National Park Service (NPS). 2019, January 3 (accessed). National Register of Historic Places, Digital Archive on NPGallery., California, Orange County, Anaheim. <https://npgallery.nps.gov/NRHP/SearchResults/>

South Central Coastal Information Center, California State University, Fullerton (SCCIC). 2019, February 20. California Historical Resources Information System, Los Angeles, Orange, Ventura and San Bernardino Counties, SCCIC File #: 19858.5844, Re: Records Search Results for the Residences at Nohl Ranch Project.

5. Environmental Analysis

TRIBAL CULTURAL RESOURCES

This page intentionally left blank.