

## 3.13 Tribal Cultural Resources

This chapter evaluates potential Tribal Cultural Resources (TCRs) impacts associated with the continuation of construction and operational activities of the proposed Project (Project). The applicable laws, regulations, and methods for historic and archaeological resources, as described in Chapter 3.4, *Cultural Resources*, may also apply to TCRs. This chapter first describes the ethnographic setting of the surrounding region and project area. This chapter also describes the TCR regulations pertinent to the Project and evaluates the potential for impacts involving TCRs. The discussion of TCRs relies upon a Sacred Lands File Search obtained from the Native American Heritage Commission (NAHC), and consultation conducted between LABOE and the Gabrieleño Band of Mission Indians-Kizh Nation (see Confidential Appendix K, retained in the files of BOE).

TCRs are defined as sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe that are either: (1) included or determined to be eligible for inclusion in the California Register of Historical Resources (CRHR) or included in a local register of historical resources; or (2) a resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant, considering the significance of the resource to a California Native American tribe. A cultural landscape that meets these criteria is a TCR to the extent that the landscape is geographically defined in terms of the size and scope of the landscape.

### 3.13.1 Regulatory Setting

#### 3.13.1.1 Federal

Federal regulations that apply to the Project are provided in the Chapter 3.4, *Cultural Resources*.

#### 3.13.1.2 State

##### California Environmental Quality Act Historic Resources

In accordance with Section 21084.1 of the California Environmental Quality Act (CEQA), the Project would have a significant adverse environmental impact if it “causes a substantial or potentially substantial adverse change in the significance of an historical resource.” Because TCRs are considered historical resources for the purposes of CEQA, Public Resources Code (PRC) Section 21084.1 applies and is described further in Chapter 3.4, *Cultural Resources*.

##### California Register of Historical Resources

Established by PRC Section 5024.1(a) in 1992, the CRHR serves as “an authoritative guide in California to be used by state and local agencies, private groups, and citizens to identify the state’s historical resources and to indicate what properties are to be protected, to the extent feasible, from substantial adverse change.” Because TCRs are considered historical resources for the purposes of CEQA, PRC Section 5024.1(a) applies and is described in Chapter 3.4, *Cultural Resources*.

## State Assembly Bill 52—Tribal Cultural Resources

Assembly Bill (AB) 52 amended CEQA to require that the analysis of project impacts on cultural resources include a specific analysis of impacts on TCRs. AB 52 was signed into law on September 25, 2014, and it requires lead agencies to evaluate a project’s potential to affect TCRs and establishes a consultation process for California Native American Tribes as part of CEQA. TCRs include sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American Tribe that are eligible for inclusion in the CRHR or included in a local register of historical resources. AB 52 also gives Lead Agencies the discretion to determine whether a resource qualifies as a TCR on the basis of criteria for listing in the CRHR. The lead agency must support such a determination with substantial evidence.

The intent of AB 52 is to “set forth a process and scope that clarifies California tribal government involvement in the CEQA process, including specific requirements and timing for lead agencies to consult with tribes on avoiding or mitigating impacts to tribal cultural resources.” It applies to projects with Notices of Preparation or Notices of Negative Declaration/Mitigated Negative Declaration released on or after July 1, 2015.

AB 52 defines TCRs, amends Appendix G of the CEQA Guidelines to include a separate section for TCRs, and creates a formal requirement for consultation with California Native American Tribes in the CEQA process. Pursuant to PRC Section 21080.3.2, Tribal Governments can request consultation with a lead agency and give input regarding potential impacts on TCRs before the agency decides what type of environmental review is necessary for a project. The PRC further requires avoiding damage to TCRs, if feasible. If not, Lead Agencies must mitigate impacts on TCRs to the extent feasible.

As set forth in PRC Section 21074, TCRs are defined as follows.

- (a) “Tribal cultural resources” are either of the following:
  - (1) Sites, features, places, and objects with cultural value to descendant communities or cultural landscapes, that are any of the following:
    - (A) Included in or 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.
  - (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. 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, or a “nonunique archaeological resource” as defined in subdivision (h) of Section 21083.2 may also be a tribal cultural resource if it conforms with the criteria of subdivision (a).

For projects with a Notice of Preparation after July 1, 2015, the lead agency is required to consult with California Native American Tribes that are traditionally and culturally affiliated with the project area if (1) the tribe requests to the lead agency in writing to receive notification of projects; and (2) the tribe requests consultation on a specific project prior to the release of a negative declaration, mitigated negative declaration, or environmental impact report. Consultation is:

“...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.” (Government Code Section 65362.4)

PRC Section 21080.3.2(a) lists consultation topics that may be discussed, including TCRs, project alternatives, project impacts, and possible mitigation measures.

Consultation ends when one of the following outcomes occurs:

1. Both parties agree to measures to avoid or mitigate significant effects on a TCR. The agreed-upon mitigation measures are included 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)).

### **California Native American Graves Protection and Repatriation Act (Act) (2001)**

In the California Health and Safety Code (HSC), Division 7, Part 2, Chapter 5 (Sections 8010–8030), broad provisions are made for the protection of Native American cultural resources. The Act sets the state policy to ensure that all California Native American human remains and cultural items are treated with due respect and dignity. The Act also provides the mechanism for disclosure and return of human remains and cultural items held by publicly funded agencies and museums in California. Likewise, the Act outlines the mechanism with which California Native American tribes not recognized by the federal government may file claims to human remains and cultural items held in agencies or museums.

### **State Health and Safety Code 7050.5/California Public Resources Code Section 5097.9**

HSC Section 7050.5 and PRC Section 5097.9 contain provisions for the treatment of human remains contained in archaeological sites. Under HSC Section 7050.5, if human remains are discovered during any project activity, the county coroner must be notified immediately. If human remains are exposed, HSC Section 7050.5 states that no further disturbance shall occur until the county coroner has made the necessary findings as to origin and disposition pursuant to PRC Section 5097.98. Construction must halt in the area of the discovery of human remains, the area of the discovery shall be protected, and consultation and treatment shall occur as prescribed by law. If the remains are determined by the coroner to be Native American, the coroner is responsible for contacting the NAHC within 24 hours. NAHC, pursuant to Section 5097.98, will immediately notify those persons it believes to be most likely descended from the deceased person(s) so they can inspect the burial site and make recommendations for treatment or disposal.

### **California Health and Safety Code, Section 7051**

Under this code, every person who removes any part of any human remains from any place where it has been interred, or from any place where it is deposited while awaiting interment or cremation, with intent to sell it or to dissect it, without authority of law, or written permission of the person or persons having the right to control the remains under Section 7100, or with malice or wantonness, has committed a public offense that is punishable by imprisonment in the state prison.

### **California Code of Regulations, Title 14, Section 4307**

Under this state preservation law, no person shall remove, injure, deface, or destroy any object of paleontological, archaeological, or historical interest or value.

#### **3.13.1.3 Local**

##### **City of Los Angeles Cultural Heritage Ordinance**

The City of Los Angeles (City) maintains a list of all sites, buildings, and structures that have been designated through the Cultural Heritage Ordinance as Historic-Cultural Monuments (HCMs). TCRs may be included in a local register of historical resources and therefore would be considered to be historical resources for the purposes of CEQA. The City Cultural Heritage Ordinance is described in Chapter 3.4, *Cultural Resources*. Table 3.4-2 displays a list of HCMs that may be of potential concern to local consulting tribes.

##### **City of Los Angeles Conservation Element**

The Conservation Element of the City General Plan (adopted September 2001) is designed to enhance, preserve, and protect the City's existing natural resources and other resources. TCRs may include archaeological sites, and the Conservation Element specifically addresses archaeological resources in Section 3 of Chapter 2, with the objective to "protect the City's archaeological...resources for historical, cultural, research and/or educational purposes." Moreover, its policy is to "continue to identify and protect significant archaeological...sites and/or resources known to exist or that are identified during land development, demolition or property modification activities."

### **3.13.2 Environmental Setting**

#### **3.13.2.1 The Gabrieleño**

The project area lies within the territory of the Gabrieleño Native American people, a Uto-Aztecan (or Shoshonean) group that may have entered the Los Angeles Basin as recently as 1500 before present (Bean and Smith 1978). The Gabrieleño are characterized as one of the most complex societies in native Southern California, along with the Chumash, their coastal neighbors to the northwest. This complexity derives from their overall economic, ritual, and social organization (Bean and Smith 1978:538; Kroeber 1925:621).

The Gabrieleño spoke a language that falls within the Cupan group of the Takic subfamily of the Uto-Aztecan language family. This language family is extremely large and includes the Shoshonean groups of the Great Basin. Given the geographic proximity of Gabrieleño/Tongva and Serrano bands living in the area and the linguistic similarities, ethnographers have suggested that they shared the same ethnic origins (Kroeber 1925).

In early protohistoric times, the Gabrieleño occupied a large territory including the entire Los Angeles Basin. This region encompasses the coast from Malibu to Aliso Creek, parts of the Santa Monica Mountains, the San Fernando Valley, the San Gabriel Valley, the San Bernardino Valley, the northern parts of the Santa Ana Mountains, and much of the middle to the lower Santa Ana River. They also occupied the islands of Santa Catalina, San Clemente, and San Nicolas. Within this large territory were more than 50 residential communities with populations ranging from 50 to 150 individuals. The Gabrieleño had access to a broad and diverse resource base. This wealth of resources, coupled with an effective subsistence technology, well-developed trade network, and ritual system, resulted in a society that was among one of the most materially wealthy and culturally sophisticated cultural groups in California at the time of contact (Bean and Smith 1978).

Very little is known about early Gabrieleño social organization because the band was not studied until the 1920s and had already been greatly influenced by missionaries and settlers by that time (Kroeber 1925). Kroeber's (1925) work indicates that the Gabrieleño were a hierarchically ordered society with a chief who oversaw social and political interactions both within the Gabrieleño culture and with other groups. The Gabrieleño had multiple villages ranging from seasonal satellite villages to larger, more permanent settlements. Resource exploitation was focused on village-centered territories and hunting ranged from deer, rabbits, birds, and other small game to sea mammals. Fishing for freshwater fish, saltwater mollusks, and crustaceans, and gathering acorns and various grass seeds were also important (Bean 1978:538–549). Fishing technology included basket fish traps, nets, bonefish hooks, harpoons, and vegetable poisons, and ocean fishing was conducted from wooden plank canoes lashed and asphalted together. Gabrieleño houses were large, circular, thatched, and domed structures of tule, fern, or carrizo that were large enough to house several families. Smaller structures were also present in the villages and were used in a variety of ways. These structures were earth covered, and different ones were used as sweathouses, meeting places for adult males, ritual huts, and ceremonial enclosures (Heizer 1962:289–293). Recorded ethnographic and archaeological sites associated with Gabrieleño settlements are few. This is directly attributable to the extensive and prolonged urban development of the City region over the last one and a half centuries (California Department of Parks and Recreation 2005:16).

### **3.13.2.2 The Tataviam**

The Tataviam belong to the family of Serrano peoples who migrated down into the Antelope, Santa Clarita, and San Fernando Valleys some time before 450 A.D. The Tataviam may be among the larger "Shoshonean" migration into Southern California that occurred 2,000 to 3,000 years ago (Johnson and Earle 1990). The Tataviam people lived primarily on the upper reaches of the Santa Clara River drainage system, east of Piru Creek, but they also marginally inhabited the upper San Fernando Valley, including the present-day City of San Fernando and neighborhood of Sylmar (which they shared with their inland Gabrieleño/Tongva neighbors).

The Tataviam were hunter-gatherers who were organized into a series of clans throughout the region, living in small villages and becoming semi-nomadic when food was scarce. They were hunters and gatherers who prepared their foodstuffs in much the same way as their neighbors. Jimsonweed, native tobacco, and other plants found along the local rivers and streams provided raw materials for baskets, cordage, and netting. Larger game was generally hunted with the bow and arrow, while snares, traps, and pits were used for capturing smaller game. These resources were supplemented with roots, bulbs, shoots, and seeds that, if not available locally, were obtained in trade with other groups. At certain times of the year, communal hunting and gathering expeditions were held. Meat was generally prepared by cooking in earthen ovens, boiling, or sun drying. Cooking

and food preparation utensils consisted primarily of lithic (stone) knives and scrapers, mortars and metates, pottery, and bone or horn utensils. Resources available to the desert-dwelling Tataviam included honey mesquite, piñon, yucca, mesquite, and cacti fruits (Solis 2008).

There is little information regarding Tataviam social organization, although information from neighboring groups shows similarities among Tataviam, Chumash, and Gabrieleño ritual practices. At first contact with the Spanish in the late 18th century, the population of this group was estimated at less than 1,000 persons. By 1810 nearly all the Tataviam population had been baptized at San Fernando Mission (King and Blackburn 1978).

No NRHP or CRHR listed TCRs were identified in the City as a result of the records search. A review of the City HCM list identified two prehistoric archaeological sites, a Gabrieleño Indian site in the vicinity of Griffith Park (HCM #112) the Gabrieleño village of Sa'angna near the Ballona wetlands (HCM #490).

### **3.13.3 Environmental Impact Analysis**

#### **3.13.3.1 Approach**

CEQA requires lead agencies to notify California Native American Tribes who have formally requested notification on CEQA projects under AB 52 that the City proposes to undertake the Project. Analysis of potential impacts related to TCRs was based on information from the NAHC and from confidential tribal consultation conducted under the provisions of AB 52.

On May 25, 2017, pursuant to the requirements of AB 52 that require tribal consultation, the City as the lead agency for the Project sent consultation notification letters via certified mail to the California Native American Tribes that requested notification of any projects in the area. The formal notification of the Project was provided to representatives of 11 tribes/tribal organizations on May 25, 2017. The letters included a description and location of the Project and the City's contact information. Letters were sent via certified mail to the following tribes identified by the NAHC:

- Fernandeno/Tataviam Band of Mission Indians
- Gabrielino/Tongva San Gabriel Band of Mission Indians
- Gabrielino-Tongva Tribe
- Gabrielino Tongva Indians of California Tribal Council
- Soboba Band of Luiseno Indians
- Ti'At Society/Inter Tribal Council of Pimu
- Los Angeles City/County Native American Indian Commission
- Gabrielino/Tongva Nation
- California Native American Heritage Commission
- San Fernando Band of Mission Indians
- Gabrieleño Band of Mission Indians—Kizh Nation

A record of these letters is included as Confidential Appendix K of this Draft EIR.

The City received a letter response from one tribe, the Gabrieleño Band of Mission Indians—Kizh Nation (Kizh Gabrieleño Tribe) (Andrew Salas, Tribal Chair), on June 27, 2017. Consultation began on September 20, 2017. A qualified archaeologist reviewed and researched the documentation provided by the tribe as well as the evaluation of impacts presented in this chapter. Any maps and other evidentiary consultation materials provided by the tribe are considered confidential and are retained in the City’s administrative files for the Project. On October 5, 2018, the City sent a letter to the Gabrieleno Band of Mission Indians – Kizh Nation indicating that mutual agreement cannot be reached on measures to mitigate or avoid a significant effect, if a significant effect exists, on a TCR and that AB 52 consultation would be considered concluded. The letter also indicated that the Tribe could submit further information to the City regarding the Draft EIR and Project.

### **Project Design Features**

No project design features specific to TCRs are proposed, although project design features related to cultural resources (see Chapter 3.4, *Cultural Resources* for further detail) may affect TCRs and are referenced where appropriate.

#### **3.13.3.2 Thresholds of Significance**

The City’s 2006 *L.A. CEQA Thresholds Guide* does not specifically address TCRs. However, Appendix G of the CEQA Guidelines identifies sample questions regarding potential impacts on TCRs to assist in determining thresholds of significance.

A project’s impacts would be considered significant if the Project would result in the following:

**TCR-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:

- 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?

*Appendix G of the 2019 CEQA Guidelines.*

#### **3.13.3.3 Construction Impacts**

Potential impacts on TCRs during the construction and operational activities of the Project are analyzed below separately. In this regard, impacts on TCRs are analyzed by determining if the proposed activities have the potential to affect TCRs; identifying if the work would be located at or near a TCR; in consultation with one or more consulting parties, applying the criteria for determining the significance of impacts on TCRs set forth in Section 15064.5 of the CEQA Guidelines; and relating them to the relevant plans and policies. For a description of the activities under each of the three construction scenarios, please see Chapter 2, *Project Description*.

**TCR-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?**

**This impact would be potentially significant during construction.**

TCRs may be found throughout the City. Information on TCRs is much more difficult to obtain than most archaeological resources. Currently, there is no database of such resources and they cannot be identified by simply conducting a cultural resources records search, contacting the NAHC, or surveying the land. Identification of such resources requires coordination with consulting Native American tribes and the tribes themselves may need to confer with elders and other tribal members in their identification. Furthermore, the precise location of TCRs is often difficult to determine, as they are often only documented through the oral history of the tribe.

The City has conducted and concluded AB 52 consultation with the Gabrieleño Band of Mission Indians—Kizh Nation. Consultation details are in a confidential Appendix K. The confidentiality is to maintain the integrity and respect of the detail information provided by and to the Gabrieleño Band of Mission Indians-Kizh Nation. The consultation was concluded when the City, acting in good faith and after reasonable effort, concluded that mutual agreement could not be reached as to whether a significant effect exists and/or any measures to mitigate or avoid a significant effect to TCRs. Nevertheless, the information from the tribal consultation was thoroughly considered in the analysis of TCRs presented in this chapter.

As described in the analysis of excavation activities during construction in Chapter 3.4, *Cultural Resources*, because construction activities under Scenarios 1 and 2 would occur throughout the City on existing sidewalks, it is unlikely that native fill will be involved. Utility relocation would also be on previously disturbed soil and where utilities were placed by previous trenching and construction activities. Therefore, the impact is less than significant to TCRs under Scenarios 1 and 2. In addition, Standard BOE Specifications in PDF-CUL-5, as described in Chapter 3.4, *Cultural Resources*, is in place for such routine construction activities to manage unforeseen circumstances, such as the unexpected discovery of TCRs.

Notwithstanding, as discussed in Chapter 3.4, *Cultural Resources*, there may be rare instances during construction activities in a Construction Scenario 3 where, after the assessment of TCRs in PDF-CUL-1 and despite the implementation of PDF-CUL-2 of the Secretary of the Interior's Standards for the Treatment of Historic Properties and PDF-CUL-3 of archaeological treatment plans, the integrity and significance of TCRs cannot be maintained, such impacts would be significant.

### **Mitigation Measures**

As discussed in Chapter 3.4, *Cultural Resources*, for the large majority of the Project in Scenarios 1 and 2, impacts to TCRs are less than significant, and no mitigation is required. However, in Scenario 3 where the significance of a TCR cannot be maintained despite the implementation of PDFs, no other feasible mitigation measures have been identified and thus impacts to significant TCRs would remain significant and unavoidable.

### 3.13.3.4 Operational Impacts

The continuation of operational activities from the Project would include sidewalk inspection and street tree monitoring and watering with a hose that is attached to a water tank on a pick-up truck. During construction activities, the street trees would have been planted in a 4- by 6-foot street tree well, per the proposed Revised Street Tree Retention, Removal and Replacement Policy for the Sidewalk Repair Program. As discussed Chapter 2, *Project Description*, the street trees will be manually watered 33 times annually. For the times when manual watering is not feasible, two 15-gallon water bags would be placed in the street tree well for the new street trees until the next scheduled manual watering. Other than routine watering and inspection, there are no additional operations associated with the Project. As a result of the proposed Revised Street Tree Retention, Removal and Replacement Policy for the Sidewalk Repair Program, there would be an increase in the number of street trees from the baseline count of 711,248 to 728,793 and an approximate 0.72 percent net increase of the street tree canopy cover.

**TCR-1. Would the proposed 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?**

**This impact would be less than significant during operations.**

The operational activities under the Project would include visual site inspections and street tree watering. No ground disturbance activities would take place as a result of the Sidewalk Repair Project operation. Impacts would be less than significant.

#### **Mitigation Measures**

No mitigation measures related to operational activities are required.

### 3.13.4 Significant Unavoidable Adverse Impacts

For most of the Project (Scenario 1 and 2), the findings for TCRs would be less than significant. However, if through a rare chance there is an adverse change to the significance of a TCR under Scenario 3 due to significant historical and/or unique archaeological impacts, there would also be a significant unavoidable adverse impact.

