

5. Environmental Analysis

5.14 TRIBAL CULTURAL RESOURCES

Tribal cultural resources 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 Beach Boulevard Specific Plan (Proposed Project) to impact tribal cultural resources in the City of Anaheim. Potential impacts to other cultural resources (i.e., historic, archaeological, and paleontological) are evaluated in Section 5.3, *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 requires 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

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on a 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 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.

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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 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 tribal cultural resources (TCR) into the CEQA process. It requires TCRs to 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.

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- 3) A tribe must respond within 30 days of receiving the notification if it wishes to engage in consultation.
- 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 Area is heavily urbanized and developed with various urban uses, including hospitality, commercial, residential, office, recreational, and institutional facilities. In the City of 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. There are no known TCRs in the Project Area.

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 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. In applying the criteria set forth in subdivision (c) of Public Resource Code 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.

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5.14.3 Environmental Impacts

The following impact analysis addresses thresholds of significance that may be potentially significant impacts. The applicable thresholds are identified in brackets after the impact statement.

Impact 5.14-1: Implementation of the Proposed Project could cause a substantial adverse change in the significance of a tribal cultural resource as defined in Section 21074. [Threshold TCR-1]

Impact Analysis: 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 tribal cultural resources, 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 tribal cultural resources in the project area. The City sent invitation letters on April 4, 2017, 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:

- Agua Caliente Band of Cahuilla Indians
- Juaneño Band of Mission Indians
- Gabrieleno Band of Mission Indians - Kizh Nation
- Juaneño Band of Mission Indians Acjachemen Nation
- Gabrieleno/Tongva San Gabriel Band of Mission Indians
- Juaneño Band of Mission Indians Acjachemen Nation
- Gabrielino/Tongva Nation
- Soboba Band of Luiseno Indians
- Gabrielino Tongva Indians of California Tribal Council

Response letters were received from one tribal representative—Andrew Salas of Gabrieleño Band of Mission Indians - Kizh Nation—requesting consultation per AB 52 in a letter dated April 7, 2017.

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. There are no known TCRs within the boundaries of the Project Area. 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

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affiliated area. Pursuant to the AB 52 consultation requirement, Andrew Salas of Gabrieleno Band of Mission Indians - Kizh Nation, requested consultation in writing on April 7, 2017. Subsequently, on June 22, 2017, the City conducted a telephone consultation with the Gabrieleno Band of Mission Indians - Kizh Nation in compliance with AB 52. The Gabrieleno Band of Mission Indians - Kizh Nation considers the Project Area 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 Area 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. Because there is a possibility that implementation of the Proposed Project through grading and excavation activities could impact previously undisturbed TCRs, impacts to TCRs are considered potentially significant.

5.14.4 Cumulative Impacts

Cumulative impacts to TCRs would occur when the impacts of the Proposed Project, in conjunction with other projects and development in the region, 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 Area. However, it is possible that buried TCRs could be present within the area during ground-disturbing activities. With implementation of MM TCR-1, each future project considered for approval by the City would be required to protect these resources if they are uncovered during grading activities. The discovery of buried resources within the project site would not contribute cumulatively to potential TCRs impacts in the region. Consequently, impacts to TCRs would not be cumulatively considerable.

5.14.5 Applicable Regulations

This analysis assumes compliance with all applicable laws. The following codes, rules, and regulations pertain to TCRs and were described in detail in Sections 5.14.1.1.

Federal

- Archaeological Resources Protection Act
- Native American Graves Protection and Repatriation Act

State

- California Public Resources Code Sections 5079–5079.65
- California Senate Bill 18
- Assembly Bill 52

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5.14.6 Level of Significance Before Mitigation

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

- **Impact 5.14-1** Tribal cultural resources could be adversely impacted by grading activities associated with the Proposed Project.

5.14.7 Mitigation Measures

Impact 5.14-1

See Mitigation Measure CUL-2 in Section 5.3, *Cultural and Paleontological Resources*.

TCR-1 Prior to the issuance of any permits allowing ground-disturbing activities that cause excavation to depths greater than current foundations, the City of Anaheim shall ensure that the project applicant/developer to 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.
- If the monitoring site has hazardous materials concerns, the monitor(s) shall possess Hazardous Waste Operations and Emergency Response (HAZWOPER) certification. 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.

5.14.8 Level of Significance After Mitigation

Impact 5.14-1

Implementation of Mitigation Measures CUL-2 and TCR-1 would ensure the project applicant/developer and construction contractors are cognizant of potential TCRs onsite and have specified procedures to implement to ensure these potentially uncovered resources are not damaged during grading and construction activities. The mitigation measures require that any TCRs and archaeological resources encountered during project ground-disturbing activities be recovered and/or preserved in place, evaluated and curated if necessary, by a qualified archaeologist, thus reducing potential impacts to TCRs to a level that is less than significant. Therefore, no significant unavoidable adverse impacts relating to tribal cultural resources have been identified.

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5.14.9 References

Anaheim, City of. 2004, May 25. Anaheim General Plan and Zoning Code Update Environmental Impact Report No. 330, SCH #2003041105.

Kizh Gabrieleno Band of Mission Indians. 2017, June 22. Email Correspondence, Cultural Resources Mitigation Measures, regarding Tribal Cultural Resources and Human Remains and associated funerary objects within Kizh Gabrieleño Tribal Territory.