

5. Environmental Analysis

5.10 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 the Mercury Lane Residential project to impact TCR in the City of Brea. Other potential impacts to cultural resources (i.e., prehistoric, historic, paleontological, and disturbance of human remains) are evaluated in Section 5.2, *Cultural and Paleontological Resources*.

The analysis in this section is based on the following information:

- *California Historical Resources Information System Records Search*, South Central Coast Information Center, June 19, 2018

A complete copy of the records search is included as Appendix C to this DEIR.

5.10.1 Environmental Setting

5.10.1.1 REGULATORY BACKGROUND

Federal Regulations

Archaeological Resources Protection Act

The Archaeological Resources Protection Act (United States Code, Title 16, Sections 470aa–mm) became law on October 31, 1979, and has been amended four times. It regulates the protection of archaeological resources and sites that are on federal and Indian lands.

Native American Graves Protection and Repatriation Act

The Native American Graves Protection and Repatriation Act (United States Code, Title 25, Sections 3001 et seq.) is a federal law passed in 1990 that provides a process for 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 and culturally affiliated Indian tribes.

State Regulations

California 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 a nonrenewable resource and therefore receive protection under the California PRC and CEQA.

- **California Public Resources Code 5097.9–5097.991** provides protection to Native American historical and cultural resources, and sacred sites and identifies the powers and duties of the Native American Heritage Commission (NAHC). It also requires notification of discoveries of Native American human

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remains, descendants and provides for treatment and disposition of human remains and associated grave goods.

California Health and Safety Code

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 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 NAHC.

California Register of Historical Resources

The California Register of Historic Resources is the state version of the National Register of Historic Resources program (see also Section 5.2, *Cultural and Paleontological Resources*). It was enacted in 1992 and became official January 1, 1993. The California Register was established to serve as an authoritative guide to the state's significant historical and archaeological resources. Resources that may be eligible for listing include buildings, sites, structures, objects, and historic districts. According to subsection (c) of PRC Section 5024.1, a resource may be listed as a historical resource in the California Register if it meets any of the four National Register criteria.

California Senate Bill 18

Existing law provides limited protection for Native American prehistoric, archaeological, cultural, spiritual, and ceremonial places. These places may include sanctified cemeteries, religious, 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.

Senate Bill 18 was signed into law in September 2004 and went into effect on March 1, 2005. It places new requirements upon local governments for developments within or near "traditional tribal cultural places" (TTCP). Per SB 18, the law 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 recommend that the NAHC provide written information as soon as possible but no later than 30 days after receiving a request 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 a local government if they want to consult 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, they would be included in the project's EIR. If both the City of

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Brea and the tribe agree that adequate mitigation or preservation measures cannot be taken, neither party is obligated to take action.

SB 18 is triggered before 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 requiring 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 also amended Civil Code Section 815.3 and adds 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

AB 52 took effect July 1, 2015, and requires inclusion of a new section in CEQA documents titled Tribal Cultural Resources, which include heritage sites. Under AB 52, a tribal cultural resource is defined similar to tribal cultural places under SB 18—sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe that are either included or eligible for inclusion in the California Register of Historic Resources or included in a local register of historical resources. Or the lead agency, supported by substantial evidence, chooses at its discretion to treat the resource as a tribal cultural resource.

Similar to SB 18, AB 52 requires consultation with tribes at an early stage to determine whether the project would have an adverse impact on the TCR and define mitigation to protect them. Per AB 52, 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. The tribe then has 30 days of receiving the notification to respond if it wishes to engage in consultation. The lead agency must initiate consultation within 30 days of receiving the request from the tribe. Consultation concludes when both parties have agreed on measures to mitigate or avoid a significant effect to a tribal cultural resource, or a party, after a reasonable effort in good faith, decides that mutual agreement cannot be reached. Regardless of the outcome of consultation, the CEQA document must disclose significant impacts on tribal cultural resources and discuss feasible alternatives or mitigation that avoid or lessen the impact.

Local Regulations

City of Brea General Plan

The Community Development chapter of the City of Brea General Plan provides goals and policies on the preservation of historic resources in the City.

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5.10.1.2 EXISTING CONDITIONS

A sacred lands file search conducted by the NAHC for the project site did not identify any sacred lands. The NAHC identified 16 local Native American representatives as potentially having local knowledge:

- Campo Band of Mission Indians
- Ewiiapaayp Tribe
- Gabrieleno Band of Mission Indians – Kizh Nation
- Gabrielino-Tongva Tribe
- Gabrielino Tongva Indians of California Tribal Council
- Gabrielino/Tongva Nation
- Gabrielino/Tongva San Gabriel Band of Mission Indians
- Jamul Indian Village
- Juaneno Band of Mission Indians
- Juaneno Band of Mission Indians Acjachemen Nation
- 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

The City notified all 16 tribal representatives about the proposed project and asked for information about potential resources at or near the project site. Responses were received from the Viejas Band of Kumeyaay Indians (Viejas) and the Gabrieleno Band of Mission Indians – Kizh Nation (Kizh Nation).

5.10.2 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

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Resource Code § 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.

5.10.3 Plans, Programs, and Policies

RR TCR-1 Pursuant to California Health and Safety Code Section 7050.5, 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 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 NAHC.

5.10.4 Environmental Impacts

5.10.4.1 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 5.10-1: The proposed project could 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). [Threshold TCR-1]

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.

Effective July 1, 2015, AB 52 added TCRs as a resource subject to review under CEQA. AB 52 requires meaningful consultation between lead agencies and California Native American tribes on potential impacts to TCRs, as defined in PRC Section 21074. A TCR is a site, feature, place, cultural landscape, sacred place, or object with cultural value to a California Native American tribe that is either on or eligible for inclusion in the California Historic Register or a local historic register, or is a resource that the lead agency, at its discretion and supported by substantial evidence, determines should be treated as a TCR (PRC §§ 21074[a][1–2]).

TCRs may be found throughout Orange County, but information about them is much more difficult to obtain than for most archaeological resources. Currently, there is no database of such resources, and most cannot be identified by surveying the land. Identification of TCRs requires coordination with Native American tribes, and their precise location is often difficult to determine because they are often only documented through the oral history of the tribe.

Sacred Lands File Search

The project site is vacant and surrounded by developed uses. The NAHC's Sacred Lands File record search found no record of tribal resources on the project site (see Appendix C).

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SB 18 and AB 52 Consultation

In accordance with SB 18 and AB 52, the City notified local tribes about the proposed project on June 4, 2018, to determine the potential for tribal resources on-site and to determine if local knowledge of TCR is available about the project site and surrounding area. Two tribes responded:

- **Viejas Band of Kumeyaay Indians (Viejas).** The Viejas stated that the proposed site does not have cultural significance or ties to the tribe and that they did not require consultation.
- **Gabrieleno Band of Mission Indians – Kizh Nation (Kizh Nation).** The Kizh Nation requested consultation with the City pursuant to AB 52. On June 20, 2018, the City scheduled consultation with the Kizh Nation for August 8, 2018, which was rescheduled to September 19, 2018. During the meeting on September 19 the Kizh Nation identified that the City of Brea is within its tribal cultural area and requested mitigation to reduce potential impacts to tribal cultural resources.

Based on the records search and previous disturbance associated with the surrounding commercial development, the potential to uncover tribal cultural resources for the site is low. However, since the existing site is vacant and the proposed project would require excavations for construction, there is a potential to uncover tribal cultural resources during excavations. The Kizh Nation requested the presence of a tribal cultural monitor on-site during ground-disturbing activities.

Ground-disturbing activities, such as excavation and grading, may encounter undisturbed native soils, and it is possible that discovery of subsurface TCRs could occur, the disturbance of which could cause a substantial adverse change in the significance of the resource(s) if not mitigated.

Level of Significance before Mitigation: Based on the analysis above, Impact 5.10-1 would be potentially significant.

5.10.5 Cumulative Impacts

As with the proposed project, each related cumulative project would be required to comply with AB 52 and PRC Section 21083.2(i), which addresses accidental discoveries of archaeological sites and resources, including tribal cultural resources. Therefore, any discoveries of TCRs caused by the project or related projects would be mitigated to a less than significant level; therefore, project impacts would not be cumulatively considerable.

5.10.6 Level of Significance Before Mitigation

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

- **Impact 5.10-1** Project implementation could result in an adverse change in Native American resources during construction activities.

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5.10.7 Mitigation Measures

Impact 5.10-1

Mitigation Measure CUL-1 from Section 5.1, *Cultural and Paleontological Resources*, applies here and would reduce tribal cultural resources impacts associated with the proposed project.

- CUL-1 Prior to issuance of grading permits, a qualified archaeological monitor shall be identified to be on call during ground-disturbing activities. If archeological resources are discovered during excavation and/or construction activities, construction shall stop within 25 feet of the find, and the qualified archeologist shall be consulted to determine whether the resource requires further study. The archeologist shall make recommendations to the City of Brea to protect the discovered resources. Archeological resources recovered shall be provided to an accredited museum such as the John D. Cooper Center in Fullerton or any other local museum or repository willing and able to accept and house the resource to preserve for future scientific study.
- TCR-1 If the professional archaeologist implementing Mitigation Measure CUL-1 believes that a cultural resource encountered onsite is of Native American origin, the archaeologist shall notify representatives of Native American tribes with traditional territories in the project region. If requested by the Native American tribe(s), the developer or archaeologist on-call shall, in good faith, consult on the discovery and its disposition (e.g., avoidance, preservation, return of artifacts to tribe). If the resources are Native American in origin, a tribal monitor from the consulting tribe shall be present during the remaining site-grading activities.
- TCR-2 During construction activities, the project applicant shall allow archaeological monitors of Native American tribes to access the project site on a volunteer basis to monitor grading and excavation activities.

5.10.8 Level of Significance After Mitigation

Impact 5.10-1

Mitigation Measures CUL-1, TCR-1, and TCR-2 would reduce potential impacts associated with tribal cultural resources to a level that is less than significant. Mitigation Measure TCR-1 would require a tribal monitor present if cultural resources of Native American origin are discovered onsite. In accordance with Mitigation Measure CUL-1, resources recovered would be deposited at a local museum or repository to ensure their preservation. Therefore, no significant unavoidable adverse impacts relating to tribal cultural resources remain.

5.10.9 References

South Central Coastal Information Center (SCCIC). 2018, June 9. Records Search Results for BREA-03.1, Berry Street and Mercury Lane in the City of Brea.

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