

5. Environmental Analysis

5.18 TRIBAL CULTURAL RESOURCES

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

- *Paleontological and Cultural Resources Assessment for the Brea 265 Specific Plan*, City of Brea, Orange County, California, Cogstone, March 2019

A complete copy of this study is in the technical appendices of this Draft EIR (Appendix E).

5.18.1 Environmental Setting

5.18.1.1 REGULATORY BACKGROUND

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.

PRC Sections 5097.9 to 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 descendants about discoveries of Native American human remains, 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

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and 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 (CRHR) is the state version of the National Register of Historic Resources program (see also Section 5.5, *Cultural Resources*). It was enacted in 1992 and became official January 1, 1993. CRHR 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 CRHR 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 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.

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 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 Section 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

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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 (TCR) 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 TCRs 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 after 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, after a reasonable effort in good faith, a party 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

There are no local regulations pertaining to tribal cultural resources.

5.18.1.2 EXISTING CONDITIONS

The project site is within the traditional tribal territory of the Gabrielino (Tongva). Much of the southern California archaeological literature asserts that the Gabrielino moved into southern California from the Great Basin around 4,000 years ago, wedging themselves between the Hokan-speaking Chumash to the north, and the Yuman-speaking Kumeyaay to the south. This theory is counter to the Gabrielino community's knowledge about their history and origins. Oral tradition states that the Gabrielino have always lived in their traditional territory, with their emergence into this world occurring at Puvungna in Long Beach. The Tongva territory stretched from Topanga Canyon in the northwest to the base of Mount Wilson in the north to San Bernardino in the east, Aliso Creek in the southeast, and the four southern Channel Islands—an area of more than 2,500 square miles.

5.18.2 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:

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- 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.

5.18.3 Plans, Programs, and Policies

Regulatory Requirement

- PPP CUL-2 All construction activities will be conducted in accordance with Section 7050.5 of the California Health and Safety Code regarding the potential discovery of human remains. 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 or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains until the County Coroner has been contacted. If applicable, the Native American Heritage Commission will be responsible for designating the most likely descendant (MLD), as required by Section 5097.98 of the California Public Resources Code. If the landowner rejects the recommendations of the MLD, the burial location would be determined in compliance with California Public Resources Code, Section 5097.98.

5.18.4 Environmental Impacts

5.18.4.1 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 with the City during the project planning process to identify and protect TCRs.

A sacred lands file (SLF) search conducted by the NAHC for the project site did not identify any sacred lands. The NAHC identified 17 local Native American representatives as potentially having local knowledge:

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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 to these representatives on March 13, 2019, formally inviting tribes to consult with the City on the proposed project. Letters were sent to the following 17 tribes:

- Gabrielino-Tongva Tribe
- Gabrielino Tongva Indians of California Tribal Council
- Jamul Indian Village
- Ewiiapaayp Tribe
- Gabrielino /Tongva Nation
- Campo Band of Mission Indians
- Juaneño Band of Mission Indians
- San Pasqual Band of Mission Indians
- Sycuan Band of the Kumeyaay Nation
- La Posta Band of Mission Indians
- Gabrieleno/Tongva San Gabriel Band of Mission Indians
- La Posta Band of Mission Indians
- Ewiiapaayp Tribe
- Juaneño Band of Mission Indians Acjachemen Nation
- Gabrieleno Band of Mission Indians - Kizh Nation
- Manzanita Band of 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, and the consultation per SB 18 took place on June 13, 2019.

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 CRHR 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 June 13, 2019, the City conducted a consultation with the Gabrieleno Band of Mission Indians—Kizh Nation in compliance with AB 52.

5.18.4.2 IMPACT ANALYSIS

The following impact analysis addresses the thresholds of significance; the applicable thresholds are identified in brackets after the impact statement.

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Impact 5.18-1: 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 has been continuously used for oil production and to a lesser degree for agriculture since the 1880s. Review of existing historical documents, maps, and literature and the results of the intensive pedestrian survey indicate that Areas A and B of the project site—as shown on Figure 5.5-1, *Cultural Resources Survey Area*—represent an extension of the previously recorded historic district, the Brea-Olinda Oil Field District (P-30-177012). Area C of the project site has been used for agricultural uses, including Peltzer Christmas Tree Farm and Mannaserro Strawberry Farm. The project site contains five previously recorded archaeological and historical resources and three newly identified archaeological resources (Cogstone 2019). However, these resources are not eligible or listed in the CRHR or local register of historical resources (Public Resources Code Section 21074) (Cogstone 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.

Impact 5.18-2: 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). [Threshold TCR-1.ii]

In considering the significance of the resource to a California Native American tribe, the City contacted the NAHC for the listing of tribes with traditional lands or cultural places located within the boundaries of the project site and to search the SLF. The SLF search result was negative.

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 Section 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.

There are no known TCRs within the boundaries of the project site that are determined by the City of Brea to be significant pursuant to criteria in PRC Section 5024.1(c). Although there is no known or identified TCRs within the project site, 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, and the Gabrieleño Band of Mission Indians–Kizh Nation requested the presence of a tribal cultural monitor on-site during ground-disturbing activities.

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Ground-disturbing activities, such as excavation and grading, may encounter undisturbed native soils, and it is possible that subsurface TCRs could be discovered. The disturbance of these could cause a substantial adverse change in the significance of the resource(s) if not mitigated. Therefore, impacts to TCRs are considered potentially significant.

Level of Significance Before Mitigation: Potentially significant impact.

5.18.5 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. The potential for uncovering significant TCRs on the project site and in the vicinity of the project site is low, but additional mitigation measure has been provided to reduce the potential impacts of discovery, so it is unlikely that the proposed project, in conjunction with other development projects in the city, would result in cumulatively significant TCR impacts.

5.18.6 Level of Significance Before Mitigation

The following impact would be less than significant: 5.18-1.

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

- **Impact 5.18-2** Tribal cultural resources could be adversely impacted by grading activities associated with the proposed project.

5.18.7 Mitigation Measures

Impact 5.18-2

TCR-1 Prior to the commencement of any ground disturbing activity at the project site, the project applicant shall retain a Native American Monitor approved by the Gabrieleno Band of Mission Indians-Kizh Nation—the tribe that consulted on this project pursuant to Assembly Bill 52 (the “Tribe” or the “Consulting Tribe”)—and in concurrence with the City of Brea as the CEQA lead agency. A copy of the executed contract shall be submitted to the City of Brea Planning and Building Department prior to the issuance of any permit necessary to commence a ground-disturbing activity.

- The Tribal monitor shall only be present on-site during the construction phases that involve ground-disturbing activities. Ground disturbing activities are defined by the Tribe as activities that may include, but are not limited to, pavement removal, potholing or auguring, grubbing, tree removals, boring, grading, excavation, drilling, and trenching, within the project area.

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- The Tribal Monitor shall complete daily monitoring logs that provide descriptions of the day's activities, including construction activities, locations, soil, and any cultural materials identified.

The on-site monitoring shall be concluded when all ground-disturbing activities on the project site are completed, or when the Tribal Representatives and Tribal Monitor have indicated that all upcoming ground-disturbing activities at the project site have little to no potential for impacting Tribal Cultural Resources.

TCR-2 If tribal cultural resources are inadvertently discovered during ground disturbing activities for this project. The following procedures will be carried out for treatment and disposition of the discoveries:

- Upon discovery of any Tribal Cultural Resources, construction activities shall cease in the immediate vicinity of the find (not less than the surrounding 100 feet) until the find can be assessed.
- All Tribal Cultural Resources unearthed by project activities shall be evaluated by the qualified archaeologist and Tribal monitor approved by the Consulting Tribe. If the resources are Native American in origin, the Consulting Tribe will retain it/them in the form and/or manner the Tribe deems appropriate, for educational, cultural and/or historic purposes.
- If human remains and/or grave goods are discovered or recognized at the Project Site, all ground disturbance shall immediately cease, and the county coroner shall be notified per Public Resources Code Section 5097.98, and Health & Safety Code Section 7050.5. Human remains and grave/burial goods shall be treated alike per California Public Resources Code section 5097.98(d)(1) and (2).
- Work may continue on other parts of the Project Site while evaluation and, if necessary, mitigation takes place (CEQA Guidelines Section 15064.5[f]). If a non-Native American resource is determined by the qualified archaeologist to constitute a "historical resource" or "unique archaeological resource," time allotment and funding sufficient to allow for implementation of avoidance measures, or appropriate mitigation, must be available. The treatment plan established for the resources shall be in accordance with CEQA Guidelines Section 15064.5(f) for historical resources and PRC Sections 21083.2(b) for unique archaeological resources.

Preservation in place (i.e., avoidance) is the preferred manner of treatment. If preservation in place is not feasible, treatment may include implementation of archaeological data recovery excavations to remove the resource along with subsequent laboratory processing and analysis. Any historic archaeological material that is not Native American in origin shall be curated at a public, non-profit institution with a research interest in the materials, such as the Natural History Museum of Los Angeles County or the Fowler Museum, if such an institution agrees

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to accept the material. If no institution accepts the archaeological material, it shall be offered to a local school or historical society in the area for educational purposes.

5.18.8 Level of Significance After Mitigation

The mitigation measures 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.

5.18.9 References

Cogstone. 2019, March. Paleontological and Cultural Resources Assessment for the Brea 265 Specific Plan, City of Brea, Orange County, California. DEIR Appendix E.

National Park Service (NPS). 2021, December 20 (accessed). National Register of Historic Places, NPGallery Digital Asset Search: Brea, Orange County, California. <https://npgallery.nps.gov/NRHP>.

Office of Historic Preservation (OHP) 2021, December 20 (accessed). Listed California Historical Resources, Orange County. <http://ohp.parks.ca.gov/ListedResources/?view=county&criteria=30>.

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