

IV. Environmental Impact Analysis

J. Tribal Cultural Resources

1. Introduction

This section of the Draft EIR addresses potential impacts to tribal cultural resources. The analysis of tribal cultural resources provided in this section is based on a Sacred Lands File (SLF) search conducted by the California Native American Heritage Commission (NAHC), project notification letters submitted by the City to California Native American Tribal governments and representatives, Tribal consultations pursuant to Assembly Bill (AB) 52, as well as the Cultural Resources Assessment Report prepared by Environmental Science Associates (ESA), dated July 2019, and provided in Appendix D of this Draft EIR. The findings of these studies are presented in the 656 South San Vicente Medical Office Project Assembly Bill 52 Consultation Summary Report, which is provided in Appendix K, of this Draft EIR.

Tribal cultural resources are defined by the California Public Resources Code (PRC) Section 21074 as sites, features, places, cultural landscapes, 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 Historical Resources (California Register) or included in a local register of historical resources, or a resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant.¹ Historical resources, unique archaeological resources, or non-unique archaeological resources may also be tribal cultural resources if they meet these criteria.

2. Environmental Setting

Requirements and guidelines regarding tribal cultural resources at the state level are described below and include the following:

- Assembly Bill 52
- California Public Resources Code Section 5097
- California Penal Code

¹ A cultural landscape that meets these criteria is a tribal cultural resource to the extent that the landscape is geographically defined in terms of the size and scope of the landscape.

a) Regulatory Framework

(1) State

(a) *Assembly Bill 52*

AB 52 was approved on September 25, 2014. AB 52 amended PRC Section 5097.94 and added PRC Sections 21073, 21074, 21080.3.1, 21080.3.2, 21082.3, 21083.09, 21084.2, and 21084.3. The primary intent of AB 52 is to involve California Native American Tribes early in the environmental review process and to establish a category of resources related to Native Americans known as tribal cultural resources, that require consideration under the California Environmental Quality Act (CEQA). PRC Sections 21074(a)(1) and 21074(a)(2) define tribal cultural resources as “sites, features, places, cultural landscapes, 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 or included in a local register of historical resources, or a resource that is determined to be a tribal cultural resource by a lead agency, in its discretion and supported by substantial evidence. A tribal cultural resource is further defined by Section 21074(b) as a cultural landscape that meets the criteria of subdivision (a) to the extent that the landscape is geographically defined in terms of the size and scope of the landscape. PRC Section 21074(c) provides that 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). PRC Section 21080.3.1 requires that, within 14 days of a lead agency determining that an application for a project is complete, or a decision by a public agency to undertake a project, the lead agency provide formal notification to the designated contact, or a tribal representative, of California Native American Tribes that are traditionally and culturally affiliated with the geographic area of concern.² Tribes interested in consultation must respond in writing within 30 days from receipt of the lead agency’s formal notification and the lead agency must begin consultation within 30 days of receiving the tribe’s request for consultation.³

PRC Section 21080.3.2(a) identifies the following as potential consultation discussion topics: the type of environmental review necessary; the significance of tribal cultural resources; the significance of the project’s impacts on the tribal cultural resources; project alternatives or appropriate measures for preservation; and mitigation measures. Consultation is considered concluded when either (1) the parties agree to measures to mitigate or avoid a significant effect, if a significant

² Public Resources Code (PRC), Section 21080.3.1(b) and (c).

³ PRC, Sections 21080.3.1(d) and 21080.3.1(e).

effect exists, on a tribal cultural resource or (2) a party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached.⁴

In addition to other CEQA provisions, the lead agency may certify an EIR or adopt a MND for a project with a significant impact on an identified tribal cultural resource, only if a California Native American tribe has requested consultation pursuant to Section 21080.3.1 and has failed to provide comments to the lead agency, or requested a consultation but failed to engage in the consultation process, or the consultation process occurred and was concluded as described above, or if the California Native American tribe did not request consultation within 30 days.⁵

PRC Section 21082.3(c)(1) states that any information, including, but not limited to, the location, description, and use of the tribal cultural resources, that is submitted by a California Native American tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public without the prior consent of the tribe that provided the information. If the lead agency publishes any information submitted by a California Native American tribe during the consultation or environmental review process, that information shall be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public.

Confidentiality does not, however, apply to data or information that are, or become publicly available, are already in lawful possession of the project applicant before the provision of the information by the California Native American tribe, are independently developed by the project applicant or the project applicant's agents, or are lawfully obtained by the project applicant from a third party that is not the lead agency, a California Native American tribe, or another public agency.⁶

(b) California Public Resources Code Section 5097

PRC Section 5097.98, as amended by Assembly Bill 2641, provides procedures in the event human remains of Native American origin are discovered during project implementation. PRC Section 5097.98 requires that no further disturbances occur in the immediate vicinity of the discovery, that the discovery is adequately protected according to generally accepted cultural and archaeological standards, and that further activities take into account the possibility of multiple burials. PRC Section 5097.98 further requires the Native American Heritage Commission (NAHC), upon notification by a County Coroner, designate and notify a Most Likely Descendant (MLD) regarding the discovery of Native American human remains. Once the MLD has been granted access to the site by the landowner and inspected

⁴ PRC, Section 21080.3.2(b).

⁵ PRC, Section 21082.3(d)(2) and (3).

⁶ PRC, Section 21082.3(c)(2)(B).

the discovery, the MLD then has 48 hours to provide recommendations to the landowner for the treatment of the human remains and any associated grave goods. In the event that no descendant is identified, or the descendant fails to make a recommendation for disposition, or if the land owner rejects the recommendation of the descendant, the landowner may, with appropriate dignity, reinter the remains and burial items on the property in a location that will not be subject to further disturbance.

PRC Section 5097.99 prohibits acquisition or possession of Native American artifacts or human remains taken from a Native American grave or cairn after January 1, 1984, except in accordance with an agreement reached with the Native American Heritage Commission.

PRC Section 5097.5 provides protection for tribal resources on public lands, where Section 5097.5(a) states, in part, that:

No person shall knowingly and willfully excavate upon, or remove, destroy, injure, or deface, any historic or prehistoric ruins, burial grounds, archaeological or vertebrate paleontological site, including fossilized footprints, inscriptions made by human agency, rock art, or any other archaeological, paleontological or historical feature, situated on public lands, except with the express permission of the public agency having jurisdiction over the lands.

(c) *California Penal Code*

California Penal Code Section 622½ provides the following: “Every person, not the owner thereof, who willfully injures, disfigures, defaces, or destroys any object or thing of archeological or historical interest or value, whether situated on private lands or within any public park or place, is guilty of a misdemeanor.”

California Penal Code Section 623 provides the following: “Except as otherwise provided in Section 599c, any person who, without the prior written permission of the owner of a cave, intentionally and knowingly does any of the following acts is guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding one year, or by a fine not exceeding one thousand dollars (\$1,000), or by both such fine and imprisonment: (1) breaks, breaks off, cracks, carves upon, paints, writes or otherwise marks upon or in any manner destroys, mutilates, injures, defaces, mars, or harms any natural material found in any cave. (2) disturbs or alters any archaeological evidence of prior occupation in any cave. (3) kills, harms, or removes any animal or plant life found in any cave. (4) burns any material which produces any smoke or gas which is harmful to any plant or animal found in any cave. (5) removes any material found in any cave. (6) breaks, forces, tampers with, removes or otherwise disturbs any lock, gate, door, or any other structure or obstruction designed to prevent entrance to any cave, whether or not entrance is gained.

b) Existing Conditions

(1) Ethnographic Setting

The Project Site is located in a region traditionally occupied by the Takic-speaking Gabrielino Indians. The term “Gabrielino”⁷ is a general term used by the Spanish to refer to Native Americans who were administered at the Mission San Gabriel Arcángel. Prior to European colonization, the Gabrielino occupied a diverse area that included the watersheds of the Los Angeles, San Gabriel, and Santa Ana rivers; the Los Angeles basin; and the islands of San Clemente, San Nicolas, and Santa Catalina.⁸ Their neighbors included the Chumash to the north, the Juañeno to the south, and the Serrano and Cahuilla to the east. The Gabrielino are reported to have been second only to the Chumash in terms of population size and regional influence.⁹ The Gabrielino language is part of the Takic branch of the Uto-Aztecan language family.

The Gabrielino were hunter-gatherers, who lived in permanent communities located near the presence of a stable food supply. Community populations generally ranged from 50 to 100 inhabitants, although larger settlements may have existed. The Gabrielino are estimated to have had a population numbering around 5,000 in the pre-colonization period.¹⁰ Villages are reported to have been the most abundant in the San Fernando Valley, the Glendale Narrows area north of downtown, and around the Los Angeles River’s coastal outlets.¹¹ The nearest villages to the Project Site were *Kuruvungna* and *Yangna* located approximately five miles southwest and seven miles east of the Project Site, respectively.¹²

The Project Site is also located approximately 0.25 miles west of the La Brea Tar Pits, a prized resource visited by the Gabrielino prior to and after colonization for the purpose of extracting tar for making weapons, vessels and jewelry, and

⁷ The term first appears, spelled Gabrieleños, in an 1876 report by Oscar Loew. Two indigenous terms are commonly used by tribal groups refer to themselves and are preferred by descendant groups: Tongva and Kizh. The term Tongva was recorded by ethnographer C. Hart Merriam in 1903. The term Kizh was first published by ethnologist Horatio Hale in 1846. Since there are two terms that are used by different groups to refer to themselves, the term Gabrielino is used in this section to encompass both Tongva and Kizh groups. In the modern era, individual tribal entities have adopted various spellings of the word “Gabrielino.”

⁸ Kroeber, A. L., Handbook of the Indians of California, Bureau of American Ethnology, Bulletin 78, Smithsonian Institution, Washington, D. C., 1925, page 620.

⁹ Bean, Lowell J., and Charles R. Smith, Gabrielino, in California, edited by R.F. Heizer, pages 538-549 Handbook of North American Indians, Vol. 8, W. C. Sturtevant, general editor, Smithsonian Institution, Washington, D.C., 1978, page 538.

¹⁰ Kroeber, A. L., Handbook of the Indians of California, Bureau of American Ethnology, Bulletin 78, Smithsonian Institution, Washington, D. C., 1925, page 620.

¹¹ Gumprecht, Blake, The Los Angeles River: Its Life, Death, and Possible Rebirth, 2001.

¹² McCawley, William, The First Angelinos: The Gabrielino Indians of Los Angeles, Malki Museum Press, Banning, California, 1996, page 55.

waterproofing for canoes and roofing.¹³ The alignment of present-day Wilshire Boulevard, which is located immediately south of the Project Site, was constructed on a trail established by the Gabrielino which connected the village of *Yangna* to the tar pits.¹⁴

(2) Archival Research Summary

As noted in the Cultural Resources Assessment Report, provided in Appendix D of this Draft EIR, archival research was conducted for the Project, which included a records search at the California Historical Resources Information System (CHRIS) South Central Coastal Information Center (SCCIC).

The records search results indicate that seven cultural resources studies have been conducted and are presently on-file with the SCCIC within a 0.5-mile radius of the Project Site. Approximately 25 percent of the 0.5-mile records search radius and the entirety of the Project Site has been included in previous cultural resources survey. In addition, the records search results indicate that no archaeological resources have been recorded within the Project Site or a 0.5-mile radius. However, 11 historic architectural resources have been previously recorded within the 0.5-mile records search study area, none of which are within the Project Site. Further details of these resources can be found in the Cultural Resources Assessment Report, provided in Appendix D of this Draft EIR.

(3) Identification of Tribal Cultural Resources

(a) *Sacred Lands File Search*

The California NAHC maintains a confidential SLF, which contains sites of traditional, cultural, or religious value to the Native American community. The NAHC was contacted on June 21, 2017, to request a search of the SLF. The NAHC responded to the request in a letter dated June 22, 2017. The results of the SLF search conducted by the NAHC indicate that Native American cultural resources are not known to be located within the Project Site.¹⁵

(b) *Assembly Bill 52 Tribal Consultation*

In compliance with the requirements of AB 52, the City of Los Angeles Department of City Planning provided formal notification of the Project via FedEx and certified mail to the following Native American groups that are listed on the City's AB 52 contact list. The notification was provided on February 6, 2020, with a 30-day response period ending on March 9, 2020.

¹³ Selden, Paul A. and John R. Nudds, *Evolution of fossil ecosystems*, Manson, London, 2004.

¹⁴ Roderick, Kevin and J. Eric Lynxwiler, *Wilshire Boulevard: Grand Concourse of Los Angeles*, Santa Monica: Angel City Press, 2005.

¹⁵ ESA, 656 San Vicente, City of Los Angeles California, *Cultural Resources Assessment Report*, July 2019, Appendix C. Provided in Appendix D of this Draft EIR.

- Torres-Martinez Desert Cahuilla Indians
- Soboba Band of Luiseno Indians
- San Fernando Band of Mission Indians
- Gabrielino-Tongva Tribe
- Gabrielino/Tongva San Gabriel Band of Mission Indians
- Gabrielino/Tongva Nation
- Gabrielino Tongva Indians of California Tribal Council
- Gabrieliño Band of Mission Indians - Kizh Nation
- Fernandeano Tataviam Band of Mission Indians

The letters included a description of the Project, the Project location, and a notification of the type of consultation being initiated. The City received a formal consultation request from one of the 10 Native American groups: Gabrieliño Band of Mission Indians - Kizh Nation (Kizh Nation). To date, the other Native American groups contacted by the City have not responded.

On February 10, 2020, an email was received by the City from “Admin Specialist” for the Kizh Nation, requesting AB 52 consultation. Included in the email was a formal letter response from Tribal Chairman Andrew Salas and an attachment of the Bean and Smith 1978 map. On March 19, 2020, representatives from the City and the Kizh Nation consulted via telephone conference. During the call, the Kizh Nation provided their knowledge of the Project Site and their concerns about the Project, including but not limited to the Project Site’s proximity to villages, waterways, and trade routes. The Kizh Nation provided the City, via e-mail on March 19, 2020 and in a follow up e-mail on March 21, 2020, with several maps, from 1881, 1898, 1920, and 1938, that illustrate the location of the Project Site in relation to various points on the map, including villages, waterways, and trade routes. The Kizh Nation also provided excerpts from various texts including *The Ancient America: American Indians at Rancho La Brea*, and *The California Ranchos* as well as the AB 52 and Tribal Cultural Resources in CEQA Technical Advisory. The City responded with a follow up email on March 25, 2020 providing the Kizh Nation a summary of the consultation that occurred on March 19, 2020 and providing the Kizh Nation a copy of the Project’s Geology and Soils Report, Phase I Environmental Site Assessment (ESA), and Utility Report, as requested by the Kizh Nation. The Kizh Nation responded to the e-mail from March 25, 2020 and stated that, based on the Utility Report, which indicates the need for new sewage lines to be connected to the main line, this would cause ground disturbance beyond three feet that may be grounds for possibly including mitigation measures to protect tribal cultural resources, and provided their recommended mitigation measures.

To date, no further correspondence, beyond what is described above, has been received by the City from the Kizh Nation. A record or letters, mailing, and correspondence is included as Appendix K of this Draft EIR. The City issued a letter closing consultation coinciding with the publication of this Draft EIR.

3. Project Impacts

a) Thresholds of Significance

In accordance with the Appendix G of the CEQA Guidelines, a project would have a significant impact related to tribal cultural resources if it would:

Threshold (a): 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 Resources Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.***

b) Methodology

Under CEQA, the evaluation of impacts to tribal cultural resources consists of two-parts: (1) identification of tribal cultural resources within the project site or immediate vicinity through AB 52 consultation, as well as a review of pertinent academic and ethnographic literature for information pertaining to past Native American use of the project area, SLF search, and SCCIC records review; and (2) a determination of whether the project may result in a “substantial adverse change” in the significance of the identified resources.

c) Project Design Features

No specific project design features are proposed with regard to tribal cultural resources.

d) Analysis of Project Impacts

Threshold (a): 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)?***
- 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 Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe?***

(1) Impact Analysis

As previously discussed, the SCCIC records search results indicate that no archaeological resources have been recorded within the Project Site or within a 0.5-mile radius of the Project Site. In addition, the results of the SLF search conducted by the NAHC indicate that Native American cultural resources are not known to be located within the Project Site.¹⁶

During the consultation process with the Kizh Nation, Tribal Chairman Andrew Salas provided detailed information pertaining to the Tribe's traditional use of the area. This information includes a number of publically available or accessible historic maps dating to 1881, 1898, 1920, and 1938. The maps depict the Project Site in relation to villages, ranchos, railroad lines, and waterways. The Kizh Nation stated that these were places where their ancestors lived, traveled, traded, and

¹⁶ ESA, 656 San Vicente, City of Los Angeles California, Cultural Resources Assessment Report, July 2019, Appendix C. Provided in Appendix D of this Draft EIR.

used for natural resources. The Kizh Nation indicated that since the Project Site is located within and around sacred villages, water courses, and trade routes that were used by their ancestors for thousands of years, there is a high potential to impact tribal cultural resources that could be present within the soil. While the Kizh Nation indicated that the Project Site was in proximity to villages, waterways, and trade routes, no substantial evidence indicating that the Project Site contains identified tribal cultural resources was provided. Likewise, no identified tribal cultural resources have been identified as a result of the research conducted for this Project (see the Cultural Resources Assessment Report in Appendix D). Therefore, the Project would not cause a substantial adverse change in the significance of a tribal cultural resource, as defined in PRC Section 21074.

While no tribal cultural resources are anticipated to be affected by the Project, the City has established a standard Condition of Approval under its police power and land use authority to address any inadvertent discovery of a tribal cultural resource. In the unlikely event that tribal cultural resources are inadvertently encountered during Project construction, the Project Applicant would be required to comply with the City's standard Condition of Approval for the treatment of inadvertent tribal cultural resource discoveries. This City's standard Condition requires the immediate halt of construction activities in the vicinity of the discovery, coordination with appropriate Native American tribes and the City, and development and implementation of appropriate actions for treating the discovery.

As such, the Project would not cause a substantial adverse change in the significance of a tribal cultural resource, as defined in PRC Section 21074. Therefore, impacts to unknown tribal cultural resources would be less than significant.

(2) Mitigation Measures

Impacts regarding tribal cultural resources would be less than significant. Therefore, no mitigation measures are required.

(3) Level of Significance After Mitigation

Impacts regarding tribal cultural resources were determined to be less than significant without mitigation. Therefore, no mitigation measures were required or included, and the impact level remains less than significant.

e) Cumulative Impacts

(1) Impact Analysis

As demonstrated above, the Project would have a less-than-significant impact on tribal cultural resources. Specifically, there are no tribal cultural resources listed or determined eligible for listing, on the national, State, or local register of historical resources, and the Lead Agency determined that no resources were identified

during AB 52 tribal consultation that are eligible for listing under the criteria in PRC Section 5024.1(c). As with the Project, each related project would also be required to engage in AB 52 consultation with Native American tribes in order to identify any tribal cultural resources that could potentially be impacted by the related project and to address potentially significant impacts, if identified. The related projects would also be required to comply with the City's standard Condition of Approval for the treatment of inadvertent tribal cultural resource discoveries. **Accordingly, because no known tribal cultural resources are located within the Project Site, and given the low potential to encounter unknown resources, the Project's contribution to cumulative impacts would not be cumulatively considerable and the Project, and cumulative impacts would be less than significant.**

(2) Mitigation Measures

Cumulative impacts to tribal cultural resources would be less than significant. Therefore, no mitigation measures are required.

(3) Level of Significance After Mitigation

Cumulative impacts to tribal cultural resources were determined to be less than significant without mitigation. Therefore, no mitigation measures were required or included, and the impact level remains less than significant.

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