

5. Environmental Analysis

5.13 TRIBAL CULTURAL RESOURCES

This section of the Draft Environmental Impact Report (DEIR) evaluates the potential for implementation of the Connect Southwest LA project to impact tribal cultural resources in the County of Los Angeles. Tribal cultural resources include landscapes, sacred places, or objects with cultural value to a California Native American tribe. Other potential impacts to cultural resources (i.e., historic, archaeological, and paleontological) are evaluated in Section 5.3, *Cultural Resources*. The analysis in this section is based in part on the following information:

- *Cultural Resources Overview and Assessment: The City of Los Angeles, West Athens-Westmont TOD Specific Plan Project Area, Los Angeles County, California*, McKenna et al., July 20, 2016.
- Native American Consultation Documentation per Senate Bill 18 and Assembly Bill 52

A complete copy of this study and the Native American consultation documentation are included in the Technical Appendices of this Draft EIR (Volume II, Appendices D1 and D2).

5.13.1 Environmental Setting

5.13.1.1 RELEVANT PROGRAMS AND REGULATIONS

Federal

Archaeological Resources Protection Act

The Archaeological Resources Protection Act of 1979 regulates the protection of archaeological resources and sites that are on federal lands 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 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

Public Resources Code

Archaeological resources are protected pursuant to a wide variety of state policies and regulations enumerated under the California Public Resources Code. In addition, cultural resources are recognized as a nonrenewable resource and therefore receive protection under the California Public Resources Code 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

5. Environmental Analysis

TRIBAL CULTURAL RESOURCES

duties of the Native American Heritage Commission (NAHC). It also requires notification to descendants of discoveries of Native American human remains and provides for treatment and disposition of human remains and associated grave goods.

Health and Safety Code

The discovery of human remains is regulated per 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

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 on Traditional Tribal Cultural Places 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). 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 recommend that the NAHC provide written information as soon as possible but no later than 30 days after receiving notice of the project 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 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 County of Los Angeles and the tribe agree that adequate mitigation or preservation measures cannot be taken, then neither party is obligated to take action.

5. Environmental Analysis TRIBAL CULTURAL RESOURCES

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 § 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.

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 requirements for adoption or amendment of specific plans, the Final Tribal Guidelines advise extending SB 18 requirements to specific plans as well, since state planning law requires the same process for amendment or adoption of specific plans as general plans (defined in Government Code § 65453).

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 on or after July 1st 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 supports its determination with substantial evidence and considers 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.

5. Environmental Analysis

TRIBAL CULTURAL RESOURCES

- 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.
- 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.

5.13.1.2 EXISTING CONDITIONS

Natural Setting

The project site is located within the western extent of the Los Angeles Basin (Basin), which is part of the Peninsular Range Geomorphic Province of California. The Los Angeles Basin is a coastal plain extending from the Pacific Ocean on the south to the Santa Monica Mountains and Puente Hills on the north. The Basin is also described as consisting of thousands of meters of post-Jurassic sediment overlying crystalline basement rocks.

The project area is within the southwestern block of the Basin, of which the basement is the distinguishing feature. Although the basement of the block is exposed only in the Palos Verdes Hills, it has been encountered in numerous oil wells at depths of 5,000 to 14,000 feet below sea level. The basement rocks belong to the Catalina schist facies of the Franciscan Formation and are chiefly green chlorite and blue glaucophane schists.

Important streams include the San Gabriel River, which drains the central San Gabriel Mountains. The San Gabriel River forks downstream near Duarte into the San Gabriel River proper and the Rio Hondo River, which joins the Los Angeles River near Downey, so that the two drainages intermingle. The Los Angeles River reaches the Pacific Ocean near Long Beach and the San Gabriel River discharges near Seal Beach.

The project area is west of the Los Angeles River channel and associated with the Newport-Inglewood Fault. The nature of the loose, sandy deposits of the older and younger Quaternary Alluvium are subject to liquefaction and ground failures (sinking/rising/expanding, etc.), but less likely to result in landslides, given the current flat terrain. Although the project area is considered to be within an urban setting, there are still some areas of open space.

5. Environmental Analysis TRIBAL CULTURAL RESOURCES

Tribal Cultural Setting

The project area is associated with the traditional territory of the prehistoric and protohistoric Native American populations generally referred to as the Gabrieliño/Tongva. The Gabrieliño/Tongva are identified by Late Prehistoric/Protohistoric ethnographic records and archaeological data as occupying southern California in the Late Prehistoric.

The term Gabrieliño is a reference to Native American populations under the jurisdiction of the historic Mission San Gabriel de Archangel (in the City of San Gabriel). The Mission San Gabriel serviced the entire Los Angeles Basin and into the San Bernardino area. Present-day City of Los Angeles is somewhat centrally located in the Gabrieliño's ethnographic boundaries.

The core of the area of the Los Angeles Basin was the site of the historic city of Los Angeles and the ethnographic village of Yangna. Following the founding of the Pueblo de Los Angeles, a large Catholic church (The Church of Our Lady the Queen of the Angels) was constructed to service the small but sedentary population of the pueblo, including Native Americans and early European settlers (primarily Spanish/Mexican, but also many others). Evidence of the prehistoric occupation of the area, including the village of Yangna, has been sporadically identified, and the native populations became known as Gabrieliños. The project area is within the inland areas of Gabrieliño territory.

Consultation Process

Three separate consultation processes were conducted: the Sacred Land Files search, SB 18 consultation, and AB 52 consultation. Summaries of the consultations are provided below.

Sacred Land Files Search

As part of the cultural resources assessment prepared by McKenna et al., a Sacred Land Files (SLF) request was submitted to the Native American Heritage Commission (NAHC) in 2015 to inquire about the presence/absence of sacred or religious sites in the vicinity of the project area. On November 18, 2015, the NAHC responded that there are no sacred lands within the project area or a half-mile radius, and provided a list of Native American tribes with traditional lands or cultural places within the boundaries of the proposed project. These tribes include the Soboba Band of Mission Indians, Gabrieleno/Tongva San Gabriel Band of Mission Indians, Gabrielino/Tongva Nation, Gabrielino Tongva Indians of California Tribal Council, Gabrielino-Tongva Tribe, and Gabrieleno Band of Mission Indians–Kizh Nation. On November 30, 2015, McKenna et al., on behalf of the County of Los Angeles, sent letters to the six Native American contacts notifying them of the proposed project and requesting comments or concerns for the project area.

McKenna et al. received only one response from Anthony Morales, Chair of the San Gabriel Band of Gabrielino/Tongva Mission Indians, requesting to be kept informed and permitted to comment on any resources that may be identified at a later date. No other responses were received.

SB 18

In accordance with SB 18 requirements, the County submitted a Local Government Tribal Consultation List Request to the NAHC in May 2017 to obtain a list of SB 18-specific Native American tribes. The NAHC

5. Environmental Analysis

TRIBAL CULTURAL RESOURCES

provided a list of tribal representatives who may have knowledge of Native American cultural resources in the project area. The County sent invitation letters to the Native American representatives provided by the NAHC on May 24, 2017, formally inviting tribes to consult with the County on the Connect Southwest LA project. Letters were sent to the following five tribes: Gabrieleno Band of Mission Indians–Kizh Nation, Gabrieleno/Tongva San Gabriel Band of Mission Indians, Gabrielino/Tongva Nation, Gabrielino Tongva Indians of California Tribal Council, and Gabrielino-Tongva Tribe.

Only one response letter was received from Andrew Salas of the Gabrieleño Band of Mission Indians - Kizh Nation on June 9, 2017. The letter stated that the project site lies within the Tribe's ancestral tribal territory and may cause a substantial adverse change in the significance of their tribal cultural resources. Although records searches typically result in no identified resources, the Tribe states that their Elder Committee and tribal historians are able to provide more complete histories regarding the location of historic villages, trade routes, cemeteries, and sacred/religious sites in the project area. The Tribe requested consultation with County staff to discuss the potential project impacts on their tribal cultural resources. A summary of the consultation between the County and the Gabrieleño Band of Mission Indians - Kizh Nation is provided below under Impact 5.13-1.

AB 52

Per AB 52 requirements, the County is also required to initiate consultation with AB 52-specific Native American tribes. Native American tribes are required to request to be notified of projects within any jurisdiction. For the County of Los Angeles, only the Gabrieleño Band of Mission Indians - Kizh Nation is identified as an AB 52-specific tribe. Thus, the County sent an invitation letter to the tribal representative of the Gabrieleño Band of Mission Indians - Kizh Nation on May 24, 2017, formally inviting the Tribe to consult with the County on the Connect Southwest LA project.

Andrew Salas of the Gabrieleño Band of Mission Indians - Kizh Nation replied to the County's invitation letter on June 9, 2017 and stated similar concerns as their letter in response to the SB 18 consultation. A summary of the consultation between the County and the Gabrieleño Band of Mission Indians - Kizh Nation is provided below under Impact 5.13-1.

5.13.2 Thresholds of Significance

In accordance with Appendix G of the CEQA Guidelines and the County of Los Angeles Environmental Checklist Form, 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

5. Environmental Analysis TRIBAL CULTURAL RESOURCES

- 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.

The County of Los Angeles Environmental Checklist also includes the following threshold as part of Section 5.3, *Cultural Resources*.

C-5 Cause a substantial adverse change in the significance of a tribal cultural resource as defined in the CEQA Public Resources Code Section 21074.

Per AB 52, tribal cultural resources must be analyzed in its own EIR section. Thus, analysis of this threshold is included in this section—Section 5.13, *Tribal Cultural Resources*.

5.13.3 Plans, Programs, and Policies

5.13.3.1 REGULATORY REQUIREMENTS

RR CUL-1 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. If applicable, the Native American Heritage Commission will be responsible for designating the most likely descendant, as required by Section 5097.98 of the California Public Resources Code. If the landowner rejects the recommendations of the most likely descendant, the burial location would be determined in compliance with California Public Resources Code, Section 5097.98.

5.13.4 Environmental Impacts

5.13.4.1 IMPACT ANALYSIS

The following impact analysis addresses thresholds of significance for which the Notice of Preparation disclosed potentially significant impacts. The applicable thresholds are identified in brackets after the impact statement.

Impact 5.13-1: The proposed project may cause a substantial adverse change in the significance of a tribal cultural resource. [Threshold TCR-1 and C-5]

Impact Analysis: Public Resources Code Section 21074 defines “tribal cultural resources” as 1) listed or determined to be eligible for listing on the national, state, or local register of historic resources; or 2) a resource that the lead agency chooses, in its discretion, to treat as a tribal cultural resource. In the second instance, the lead agency must determine that the resource meets the criteria for listing in the state register of historic resources pursuant to PRC Section 5024.1. The cultural resources assessment prepared by McKenna et al. did not identify any resources listed or eligible for listing on the national, state, or local register of

5. Environmental Analysis

TRIBAL CULTURAL RESOURCES

historic places, and the County has not identified any tribal cultural resource that meets the criteria for listing in the state register of historic resources.

However, the project area is within the territory inhabited by Native Americans (Gabrielino/Tongva) and may have sensitive undiscovered tribal cultural resources. 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.

Thus, as summarized above in Section 5.13.1.2 “Consultation Process,” the County consulted the NAHC and applicable Native American tribes under three separate consultation processes—the SLF search, SB 18, and AB 52. The intent of the consultations are to provide an opportunity for interested Native American contacts to work together with the County during the project planning process to identify and protect tribal cultural resources.

- **SLF Search:** Under the SLF search consultation process which occurred in 2015, Anthony Morales, Chair of the San Gabriel Band of Gabrielino/Tongva Mission Indians responded by telephone to discuss the project details. Mr. Morales had no specific information pertaining to the project area, but requested to be kept informed and permitted to comment on any resources that may be identified at a later date.
- **AB 52:** Per AB 52 consultation requirements, the County sent invitation letters on May 24, 2017 to the Gabrieleño Band of Mission Indians - Kizh Nation and Chairman Andrew Salas responded by e-mail on June 9, 2017 requesting consultation to discuss the project’s potential impacts on tribal cultural resources. The County contacted Andrew Salas via email on June 15 and June 20, 2017 to schedule consultation but did not receive a response. The County sent a certified letter to Andrew Salas on August 10, 2017 (received on August 14th), stating that consultation would conclude if no response was received within seven days of receipt of the letter. No response was received within the seven days and thus, consultation was concluded on August 23, 2017.
- **SB 18:** Per SB 18, the County sent invitation letters on May 24, 2017 to applicable tribal representatives. Chairman Andrew Salas of the Gabrieleño Band of Mission Indians - Kizh Nation responded by e-mail on June 9, 2017 requesting consultation, which started the 90-day response window to close on September 7, 2017. No response was received before the response window, thus, consultation was concluded on September 7, 2017.

Development in accordance with the proposed project may require additional grading below current ground surfaces and could uncover or adversely impact previously undiscovered tribal cultural resources. The archaeological records searches conducted by McKenna et al. did not find any cultural resources of significance in the project area. Nevertheless, there is always potential to uncover previously undiscovered resources, including tribal cultural resources, particularly in areas of deeper excavation. Regulatory requirement RR CUL-1 requires that all construction activities be conducted in accordance with Section 7050.5 of the California Health and Safety Code regarding the potential discovery of human remains. If

5. Environmental Analysis TRIBAL CULTURAL RESOURCES

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.

Level of Significance before Mitigation: With implementation of regulatory requirement RR CUL-1, Impact 5.13-1 would still be potentially significant.

5.13.5 Cumulative Impacts

Cumulative impacts to tribal cultural resources 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 tribal cultural resources in the area. There are no known tribal cultural resources in the project area. Each future project in accordance with the County of Los Angeles 2035 General Plan would be required to evaluate that project's impacts to site-specific tribal cultural resources as part of CEQA review, including tribal consultation with AB 52-specific Native American tribes (e.g., Gabrielino/Tongva). Where significant impacts to tribal cultural resources are identified, projects would be required to either avoid impacts or implement feasible mitigation measures to reduce impacts. Consequently, impacts to tribal cultural resources would not be cumulatively considerable.

5.13.6 Level of Significance Before Mitigation

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

- **Impact 5.13-1** Tribal cultural resources may be adversely impacts by development in accordance with the proposed Specific Plan.

5.13.7 Mitigation Measures

Impact 5.13-1

Mitigation Measures CUL-2 and CUL-3 from Section 5.3, *Cultural Resources*, would also be applicable to Impact 5.13-1.

TCR-1 During project-level construction, should prehistoric or historic subsurface cultural resources be discovered and be determined to be significant, the archaeologist shall determine, in consultation with the County, and local Native American groups expressing interest (e.g., Gabrieleño Band of Mission Indians - Kizh Nation), appropriate avoidance measures or other appropriate mitigation. Per CEQA Guidelines Section 15126.4(b)(3), project redesign and preservation in place shall be the preferred means to avoid impacts to significant cultural resources. Methods of avoidance may include, but shall not be limited to, project re-route or redesign, project cancellation, or identification of protection measures such as capping or fencing. Consistent with CEQA Guidelines Section 15126.4(b)(3)(C), if it is demonstrated that resources cannot be avoided, the qualified archaeologist shall develop additional treatment measures in consultation with the County, which may include data recovery or other appropriate measures. All significant cultural materials recovered will be, as

5. Environmental Analysis

TRIBAL CULTURAL RESOURCES

necessary and at the discretion of the consulting archaeologist and in consultation with local Native American groups expressing interest, subject to scientific analysis, professional museum curation, and documentation according to current professional standards.

TCR-2 If human remains are encountered, the County or its contractor shall halt work in the vicinity (within 100 feet) of the find and contact the Los Angeles County Coroner in accordance with PRC Section 5097.98 and Health and Safety Code Section 7050.5. If the County Coroner determines that the remains are Native American, the Native American Heritage Commission (NAHC) will be notified in accordance with Health and Safety Code Section 7050.5, subdivision (c), and PRC Section 5097.98. The NAHC will designate a most likely descendant (MLD) for the remains per PRC Section 5097.98. Until the landowner has conferred with the MLD, County shall ensure that the immediate vicinity where the discovery occurred is not disturbed by further activity, is adequately protected according to generally accepted cultural or archaeological standards or practices, and that further activities take into account the possibility of multiple burials.

5.13.8 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.

5.13.9 References

McKenna et al. (McKenna). 2016, July 20. Cultural Resources Overview and Assessment: The City of Los Angeles, West Athens-Westmont TOD Specific Plan Project Area, Los Angeles County, California.