

## **4.16 TRIBAL CULTURAL RESOURCES**

### **4.16.1 EXISTING CONDITIONS**

#### **Native American Heritage Commission**

Psomas submitted a request to the Native American Heritage Commission (NAHC) for a Sacred Lands File (SLF) search for the Project Site and 0.5-mile radius on November 2, 2022. Results were received on November 29, 2022. The result of the SLF check conducted through the NAHC was negative, meaning there were no known sacred lands within the Project Site. The SLF results summary from the NAHC is presented in Appendix G.

#### **Tribal Consultation**

On September 21, 2023, the City sent an invitation to consult pursuant to Assembly Bill 52 and Senate Bill 18 for the Project to 19 tribal contacts that were identified on the Native American Heritage Commission Tribal Consultation List. The letter included a description of the Project, maps depicting the Project's location, and a request for the tribes to request consultation within 90 days if they wish to consult pursuant to AB 52 and/or SB 18.

As of December 20, 2023, the 90<sup>th</sup> day since September 21, 2023, the Gabrieleno Band of Mission Indians-Kizh Nation were the only Tribe to request to consult with the City on this Project. During consultation, the Gabrieleno Band of Mission Indians-Kizh Nation identified the Project Site as being located within their Ancestral Tribal Territory, which included much of Los Angeles and Orange County; however, they did not identify any known tribal cultural resources (TCRs) or other historical resources within or near the Project Site.

### **4.16.2 REGULATORY SETTING**

#### **Federal**

##### ***Archaeological Resources Protection Act***

The Archaeological Resources Protection Act (ARPA) amended the Antiquities Act of 1906 (16 United States Code [USC] 431–433) and set a broad policy that archaeological resources are important to the nation and should be protected, and required special permits before the excavation or removal of archaeological resources from public or Native American lands. The purpose of ARPA was to secure, for the present and future benefit of the American people, the protection of archaeological resources and sites that are on public lands and Native American lands, and to foster increased cooperation and exchange of information between governmental authorities, the professional archaeological community, and private individuals having collections of archaeological resources and data that were obtained before October 31, 1979.

### ***American Indian Religious Freedom Act***

The American Indian Religious Freedom Act (AIRFA) established federal policy to protect and preserve the inherent rights of freedom for Native groups to believe, express, and exercise their traditional religions. These rights include but are not limited to access to sites, use and possession of sacred objects, and freedom to worship through ceremonials and traditional rites.

### ***Native American Graves Protection and Repatriation Act***

The Native American Graves Protection and Repatriation Act (NAGPRA) of 1990 sets forth provisions for the intentional removal and inadvertent discovery of human remains and other cultural items from federal and tribal lands. It clarifies the ownership of human remains and sets forth a process for repatriation of human remains and associated funerary objects and sacred religious objects to the Native American groups claiming to be lineal descendants or culturally affiliated with the remains or objects. It requires any federally funded institution housing Native American remains or artifacts to compile an inventory of all cultural items within the museum or with its agency and to provide a summary to any Native American tribe claiming affiliation.

## **State**

### ***California Register of Historical Resources***

The California Register of Historical Resources (CRHR) program encourages public recognition and protection of resources of architectural, historical, archaeological, TCRs, and cultural significance; identifies historical resources for State and local planning purposes; determines eligibility for State historic preservation grant funding; and affords certain protections under the California Environmental Quality Act (CEQA). The criteria established for eligibility for the CRHR are directly comparable to the national criteria established for the National Register of Historic Places (NRHP). See Section 4.4, Cultural Resources, for more information on the NRHP.

To be eligible for listing in the CRHR, a building, object, or structure must satisfy at least one of the following four criteria:

- 1) It is associated with events that have made a significant contribution to the broad patterns of local or regional history or the cultural heritage of California or the United States.
- 2) It is associated with the lives of persons important to local, California, or national history.
- 3) It embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of a master or possesses high artistic values.
- 4) It has yielded, or has the potential to yield, information important to the prehistory or history of the local area, California, or the nation.

Archaeologists and Tribal Representatives assess sites based on all four of the above criteria but usually focus on the fourth criterion provided above. Historical resources eligible for listing in the CRHR must also retain enough of their historic character or appearance to be recognizable as historical resources and to convey the reasons for their significance. For the purposes of eligibility for the CRHR, integrity is defined as “the authenticity of an historical resource’s physical identity evidenced by the survival of characteristics that existed during the resource’s period of significance”. This general definition is generally strengthened by the more specific definition offered by the NRHP—the criteria and guidelines on which the CRHR criteria and guidelines are based upon.

### ***Assembly Bill 52***

AB 52, which was approved in September 2014 and became effective on July 1, 2015, requires that CEQA lead agencies consult with a California Native American tribe that is traditionally and culturally affiliated with the geographic area of a project, if so requested by the tribe. A provision of the bill, chaptered in CEQA, Public Resources Code Section 21084.2, also specifies that a project with an effect that may cause a substantial adverse change in the significance of a TCR is a project that may have a significant effect on the environment. Under prior law, TCRs were typically addressed under the umbrella of “cultural resources,” more generally. AB 52 formally added the category of “tribal cultural resources” to CEQA and extends the consultation and confidentiality requirements to all projects, rather than just projects subject to SB 18 as discussed below.

Defined in Section 21074(a) of the Public Resources Code, TCRs are:

1. Sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe that are either of the following:
  - a. Included or determined to be eligible for inclusion in the CRHR; or,
  - b. Included in a local register of historical resources as defined in subdivision (k) of Section 5020.1.
  - c. 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 Section 5024.1. In applying the criteria set forth in subdivision (c) of Section 5024.1 for the purposes of this paragraph, the lead agency shall consider the significance of the resource to a California Native American tribe.
2. TCRs are further defined under Section 21074 as follows:
  - a. A cultural landscape that meets the criteria of subdivision (a) is a TCR to the extent that the landscape is geographically defined in terms of the size and scope of the landscape; and,
  - b. 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 TCR if it conforms with the criteria of subdivision (a).

Mitigation measures for TCRs must be developed in consultation with the affected California Native American tribe(s) pursuant to newly chaptered Section 21080.3.2, or according to Section 21084.3. The parties must consult in good faith, and consultation is deemed concluded when either: (1) the parties agree to measures to mitigate or avoid a significant effect on a TCR (if such a significant effect exists); or (2) when a party concludes that mutual agreement cannot be reached. Mitigation measures agreed upon during consultation must be recommended for inclusion in the environmental document. AB 52 also identifies mitigation measures that may be considered to avoid significant impacts if there is no agreement on appropriate mitigation. Section 21084.3 identifies mitigation measures that include, among others, avoidance and preservation of TCRs and treating TRCs with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource. The City's consultation with tribes pursuant to AB 52 is described above in this Section 4.16 of this EIR, Tribal Cultural Resources.

### ***Senate Bill 18***

SB 18 (Government Code Section 65352.3) incorporates the protection of California traditional tribal cultural places into land use planning for cities, counties, and other public agencies by requiring local governments to contact, refer plans to and consult with California Native American tribes identified by the NAHC for the purpose of protecting and/or mitigation impacts to cultural places as part of the adoption or amendment of any general or specific plan proposed on or after March 1, 2005. SB 18 stipulates that, "Prior to the adoption or any amendment of a general or specific plan, a local government must notify the appropriate tribes (on the contact list maintained by the NAHC) of the opportunity to conduct consultations for the purposes of preserving, or mitigating, impacts to cultural places located on land within the local government's jurisdiction that is affected by the proposed plan adoption or amendment..." (OPR 2017b). SB 18 requires public notice to be sent to tribes listed on the NAHC SB 18 Tribal Consultation list within the geographical areas affected by the proposed changes. Tribes must respond to a local government notice within 90 days (unless a shorter time frame has been agreed upon by the tribe), indicating whether or not they want to consult with the local government. Consultations are for the purpose of preserving or mitigating impacts to places, features, and objects described in Sections 5097.9 and 5097.993 of the Public Resources Code that may be affected by the proposed adoption or amendment to a general or specific plan.

### ***Native American Historic Resource Protection Act***

Established in 2002, the Native American Historic Resource Protection Act, establishes a misdemeanor for unlawfully and maliciously excavating upon, removing, destroying, injuring, or defacing a Native American historic, cultural, or sacred site that is listed or may be eligible for listing in the CRHR. The focus of this legislation was to provide additional legal protection for Native American historical and cultural sites, art, and other cultural artifacts found at those sites. The Act also encourages collaborative relationships for the protection of Native American cultural resources between Native Americans and landowners. Funding and other State assistance should be encouraged for support of voluntary agreements to

conserve, maintain, and provide physical access for Native Americans to these cultural resources.

### ***California Health and Safety Code (Sections 7050.5, 7051, and 7054)***

These sections of the California Health and Safety Code collectively address the illegality of interference with human burial remains (except as allowed under applicable sections of the [California Public Resources Code (PRC)]). These sections also address the disposition of Native American burials in archaeological sites and protect such remains from disturbance, vandalism, or inadvertent destruction. Procedures to be implemented are established for (1) the discovery of Native American skeletal remains during construction of a project; (2) the treatment of the remains prior to, during, and after evaluation; and (3) reburial.

Section 7050.5 of the California Health and Safety Code specifically provides for the disposition of accidentally discovered human remains. Section 7050.5 states that if human remains are found, no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains shall occur until the County Coroner has determined the appropriate treatment and disposition of the human remains.

### ***California Public Resources Code Section 5097.91—Native American Heritage Commission***

Section 5097.91 of the Public Resources Code established the NAHC, whose duties include the inventory of places of religious or social significance to Native Americans and the identification of known graves and cemeteries of Native Americans on private lands. Under Section 5097.91 of the Public Resources Code, a State policy of noninterference with the free expression or exercise of Native American religion was articulated along with a prohibition of severe or irreparable damage to Native American sanctified cemeteries, places of worship, religious or ceremonial sites or sacred shrines located on public property. Section 5097.98 of the Public Resources Code specifies a protocol to be followed when the NAHC receives notification of a discovery of Native American human remains from a County Coroner. Section 5097.5 defines as a misdemeanor the unauthorized disturbance or removal of archaeological, historic, or paleontological resources located on public lands.

### ***California Public Resources Code (Section 5097.98)***

Section 5097.98 of the PRC provides protocol for the discovery of human remains. It states that, if remains are determined by the County Coroner to be of Native American origin, the County Coroner must notify the NAHC within 24 hours. When the NAHC receives this notification from a County Coroner, it shall immediately notify those persons it believes to be most likely descended from the deceased Native American. The descendants may, with the permission of the owner of the land or his or her authorized representative, inspect the site of the remains and may recommend to the owner or the person responsible for the excavation work means for treatment or disposition, with appropriate dignity, of the human remains and any associated grave goods. The descendants shall complete their inspection and make recommendations or preferences for treatment within 48 hours of being granted access to the site. This law also requires that, upon the discovery of Native American remains, the landowner shall ensure that the immediate vicinity, according to generally accepted

cultural or archaeological standards or practices, where the Native American human remains are located, is not damaged or disturbed by further development activity until the landowner has discussed and conferred with the most likely descendants regarding their recommendations and all reasonable options regarding their preferences for treatment. It also sets forth provisions for what should be done if the commission is unable to identify a descendant. This section of the PRC has been incorporated into Section 15064.5(e) of the State CEQA Guidelines.

### ***State CEQA Guidelines Section 15064.5(d)—Effects on Human Remains***

Native American human remains and associated burial items may be significant to descendant communities and/or may be scientifically important for their informational value. They may be significant to descendant communities for patrimonial, cultural, lineage, and religious reasons. Human remains may also be important to the scientific community, such as prehistorians, epidemiologists, and physical anthropologists. The specific stake of some descendant groups in ancestral burials is a matter of law for some groups, such as Native Americans (State CEQA Guidelines § 15064.5(d); Public Resources Code [PRC] § 5097.98). CEQA and other State laws and regulations regarding Native American human remains provide the following procedural requirements to assist in avoiding potential adverse effects on human remains within the contexts of their value to both descendant communities and the scientific community:

- When an initial study identifies the existence or probable likelihood that a project would affect Native American human remains, the lead agency is to contact and work with the appropriate Native American representatives identified through the NAHC to develop an agreement for the treatment and disposal of the human remains and any associated burial items (State CEQA Guidelines § 15064.5(d); PRC § 5097.98).
- If human remains are accidentally discovered, the County Coroner must be contacted. If the County Coroner determines that the human remains are Native American, the Coroner must contact the NAHC within 24 hours. The NAHC must identify the Most Likely Descendant (MLD) to provide the opportunity to make recommendations for the treatment and disposal of the human remains and associated burial items.
- If the MLD fails to make recommendations within 24 hours of notification or the project applicant rejects the recommendations of the MLD, the Native American human remains and associated burial items must be reburied in a location not subject to future disturbance within the project site (PRC § 5097.98).
- If potentially affected human remains or a burial site may have scientific significance, whether or not it has significance to Native Americans or other descendant communities, then under CEQA, the appropriate mitigation of effect may require the recovery of the scientific information of the remains/burial through identification.

### 4.16.3 THRESHOLDS OF SIGNIFICANCE

In accordance with the City of Anaheim’s Environmental Checklist, a project would result in significant impacts related to TCRs if it would:

- a) Cause a substantial adverse change in the significance of a TCR, 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
- b) Cause a substantial adverse change in the significance of a TCR, 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 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 Resource 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.

### 4.16.4 IMPACT ANALYSIS

- a) ***Would the project cause a substantial adverse change in the significance of a TCR, defined in Public Resources Code section 21074 as either a site, feature, place, cultural 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)?***

**Less Than Significant Impact.** For purposes of CEQA impact analysis, as noted above, a TCR is considered a site, feature, place, cultural landscape, sacred place, or object which is of cultural value to a California Native American Tribe and is either eligible for the CRHR<sup>1</sup> or a local register. A significant impact would occur if the Project’s grading, excavation, and/or demolition activities were to disturb TCR(s).

Based on tribal consultation conducted pursuant to SB 18 and AB 52, background research, and a pedestrian site survey, there are no known TCRs within the Project Site. The cultural resources records search and literature review conducted for the Project identified the presence of three archaeological resources within one mile of the Project Site, all of which

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<sup>1</sup> Section 5020.1 of the Public Resources Code established the California Register of Historic Resources, as “an authoritative guide in California to be used by state and local agencies, private groups, and citizens to identify the state’s historical resources and to indicate what properties are to be protected, to the extent prudent and feasible, from substantial adverse change.”

are outside of the Project Site. As described in Section 4.4, Cultural Resources, pedestrian survey was conducted by an archaeologist at the Project Site in 2023, during which no potential historical or potential TCRs were observed. The SLF search did not identify any known resources or sacred lands within the Project Site. Finally, there were no known TCRs or other historical resources that were identified by the consulting tribes during the AB 52 and SB 18 tribal consultations that were conducted for this Project. During tribal consultation the Gabrieleno Band of Mission Indians-Kizh Nation identified the Project Site as being located within their Ancestral Tribal Territory, which included much of Los Angeles and Orange County, but they did not identify any particular resources known to occur within the Project Site. In summary, the Project would not cause a substantial adverse change in the significance of a known TCR.

Therefore, the Project would have a less than significant impact related to this threshold and no mitigation is required.

***b) Would the project would cause a substantial adverse change in the significance of a TCR, defined in Public Resources Code section 21074 as either a site, feature, place, cultural landscape, sacred place, or object with cultural value to a California Native American tribe, and that is 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 Resource 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?***

**Less Than Significant With Mitigation Incorporated.** On September 21, 2023, the City sent an invitation to consult pursuant to Assembly Bill 52 and Senate Bill 18 for the Project to 19 tribal contacts that were identified on the Native American Heritage Commission Tribal Consultation List. The letter included a description of the Project, maps depicting the Project's location, and a request for the tribes to request consultation within 90 days if they wish to consult pursuant to AB 52 and/or SB 18.

The Gabrieleno Band of Mission Indians-Kizh Nation were the only Tribe to request to consult with the City on this Project. During consultation, the Gabrieleno Band of Mission Indians-Kizh Nation identified the Project Site as being located within their Ancestral Tribal Territory, which included much of Los Angeles and Orange County; however, they did not identify any known TCRs or other historical resources within or near the Project Site.

Although consultation did not reveal the existence of known TCRs on the Project site, unknown TCRs could be unexpectedly discovered during construction activities given that the Project Site is within the Ancestral Tribal Territory of at least one tribe. Also, there is potential for Native American human remains and funerary items to be discovered during Project construction.

If evidence of human remains be discovered during Project construction, the Project would be required to comply with **MM CUL-1** which includes mandatory compliance with the provisions of State Health and Safety Code Section 7050.5.



To avoid and minimize, to the extent feasible, potential impacts related to unknown tribal cultural resources that could be encountered during construction, the Project would be required to implement **MM TCR-1**, which requires tribal monitoring during construction activities that could potentially encounter tribal cultural resources.

With implementation of **MM CUL-1** and **MM TCR-1**, the Project would result in a less than significant impact related to this threshold.

#### **4.16.5 CUMULATIVE IMPACTS**

Projects considered in the cumulative impact analysis consist of eight projects within the City of Anaheim. These cumulative projects include new industrial, commercial, and residential land uses on a mix of previously developed and undeveloped project sites. These cumulative projects are described in more detail in Table 4-1, which is provided in Section 4.0.

As described above, there is a possibility that undiscovered TCRs may be present within the Project Site. As such, **MM TCR-1** is included as part the Project, which requires a Tribal Monitor is present to observe grading activities within native sediments. If TCRs were to be encountered, the Project's archaeologist (see **MM CUL-2**) in consultation with the Tribal Monitor would handle treatment and curation of the encountered resource(s). Also, although no known cemeteries exist within or near the Project Site, there is the possibility that human remains could be uncovered during construction. Therefore, **MM CUL-1** has been incorporated as part of the Project, which requires that if suspected human remains are uncovered, that all activities near the remains be ceased and that the Corner be notified until the remains can be assessed and recovered.

Other cumulative projects involving grading and other types of ground disturbance within previously undisturbed soils would be required to evaluate their potential impacts related to TCRs and to implement mitigation measures, such as tribal monitoring, as appropriate. Therefore, cumulative impacts from the Project and other cumulative projects related to TCRs would be less than significant.

#### **4.16.6 MITIGATION PROGRAM**

**MM TCR-1** Prior to the issuance of the first grading permit, the Property Owner/Developer or contractor as designee shall provide evidence in the form of an executed Agreement to the City of Anaheim Planning and Building Department that they have retained a qualified Native American tribal monitor to provide third-party monitoring (Monitor) during specified excavation and grading activities and to evaluate any previously unknown TCRs that are discovered during Project ground-disturbing activities, and also to provide recommended mitigation measures, such as, for example, recovery and catalogue, as necessary to the extent the find is determined to be significant. The Monitor shall be from or approved by the Gabrieleño Band of Mission Indians – Kizh Nation, and shall be a qualified professional based on

generally accepted professional qualifications and/or certifications, as may be applicable.

The Agreement shall include (i) professional qualifications of Monitor; (ii) a reasonably detailed scope of services to be provided including but not limited to pre-construction education, observation, evaluation, protection, salvage, notification, and/or curation requirements, as applicable, with final documentation/report to Public Works Inspector; (iii) contact information; (iv) communication protocols between Contractor and Monitor for scheduling to facilitate timely performance; (v) acknowledgment that if the Monitor is unavailable or unresponsive based on terms stipulated in the Agreement, Property Owner/Developer or Contractor as designee may contract with another qualified Monitor reasonably acceptable to the City.

The cover sheet of the grading plans shall include a note to identify that (a) third party monitoring for tribal cultural resources is required during specified excavation and grading activities in accordance with the Agreement; and (b) contact information for the Tribe-approved Monitor shall be provided by the Contractor to the City inspector at the pre-construction meeting.

#### **4.16.7 SIGNIFICANCE AFTER MITIGATION**

With implementation of mitigation measures **MM CUL-1** and **MM TCR-1**, the Project would result in a less than significant impact related to TCRs.