

## 4.10 Tribal Cultural Resources

This section evaluates the potential for impacts relating to Tribal Cultural Resources (TCRs) resulting from implementation of the OC River Walk project (project).

### 4.10.1 Environmental Setting

#### 4.10.1.1 Regulatory Setting

This section describes the federal, state, and local regulatory framework adopted to address TCRs.

#### Federal

##### ***National Historic Preservation Act (U.S. Code, Title 54, Section 300101 et seq.)***

The National Historic Preservation Act of 1966 established the National Register of Historic Places (NRHP) as the official federal list of cultural resources that have been nominated by state offices for their historical significance at the local, state, or national level. Listing in the NRHP provides recognition that a property is significant to the nation, the state, or the community and assumes that federal agencies consider historical value in the planning for federal and federally assisted projects. Properties listed in the NRHP or determined eligible for listing must meet certain criteria for historical significance and possess integrity of form, location, and setting. Structures and features must usually be at least 50 years old to be considered for listing in the NRHP, barring exceptional circumstances. Criteria for listing in the NRHP, which are set forth in Code of Federal Regulations, Title 36, Part 60.4, are the quality of significance in American history, architecture, archaeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association and that:

- A. Are associated with events that have made a significant contribution to the broad patterns of our history; or
- B. Are associated with the lives of persons significant in our past; or
- C. Embody the distinctive characteristics of a type, period, or method of construction; represent the work of a master; possess high artistic values; represent a significant and distinguishable entity whose components may lack individual distinction; or
- D. Have yielded, or may be likely to yield, information important in prehistory or history.

Eligible properties must meet at least one of the criteria and exhibit integrity, which is measured by the degree to which the resource retains its historic properties and conveys its historic character, the degree to which the original fabric has been retained, and the reversibility of changes to the property. The fourth criterion is typically reserved for archaeological and paleontological resources. These criteria have largely been incorporated into the California Environmental Quality Act (CEQA) Guidelines.

***Native American Graves Protection and Repatriation Act (U.S. Code, Title 25, Section 3001 et seq.)***

The Native American Graves Protection and Repatriation Act (NAGPRA) is a federal law passed in 1990. NAGPRA provides a process for museums and federal agencies to return certain Native American cultural items—human remains, funerary objects, sacred objects, or objects of cultural patrimony—to lineal descendants and culturally affiliated Native American Tribes and Native Hawaiian organizations. NAGPRA includes provisions for unclaimed and culturally unidentifiable Native American cultural items, intentional and inadvertent discovery of Native American cultural items on federal and Tribal lands, and penalties for noncompliance and illegal trafficking. Implementation of the project would be conducted in compliance with NAGPRA.

Federal curation regulations are also provided in Title 36, Part 79, of the Code of Federal Regulations and apply to collections that are excavated or removed under the authority of the Antiquities Act (16 USC 431–433), the Reservoir Salvage Act (16 USC 469–469c), Section 110 of the National Historic Preservation Act (16 USC 470h-2), or the Archaeological Resources Protection Act (16 USC 470aa–mm). Such collections generally include those that are the result of a prehistoric or historical resources survey, excavation, or other study conducted in connection with a federal action, assistance, license, or permit.

**State**

***Assembly Bill 52: Native Americans: California Environmental Quality Act***

Assembly Bill (AB) 52 (Chapter 532, Statutes of 2014) establishes a formal consultation process for California Native American Tribes as part of CEQA and equates significant impacts on TCRs with significant environmental impacts (California Public Resources Code, Section 21084.2). California Public Resources Code, Section 21074, defines TCRs as follows:

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 California Register of Historical Resources.
  - b. Included in a local register of historical resources as defined in subdivision (k) of Section 5020.1.
2. 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.

Sacred places can include Native American sanctified cemeteries, places of worship, religious or ceremonial sites, and sacred shrines. In addition, both unique and non-unique archaeological resources, as defined in California Public Resources Code, Section 21083.2, can be TCRs if they meet the criteria detailed above. The lead agency relies on substantial evidence to make the

determination that a resource qualifies as a TCR when it is not already listed in the California Register of Historical Resources (CRHR) or a local register.

AB 52 defines a “California Native American Tribe” as a Native American Tribe in California that is on the contact list maintained by the Native American Heritage Commission (NAHC) (California Public Resources Code, Section 21073). Under AB 52, formal consultation with Tribes is required before determining the level of environmental document if a Tribe has requested to be informed by the lead agency of proposed projects and if the Tribe, upon receiving notice of the project, accepts the opportunity to consult within 30 days of receipt of the notice. AB 52 also requires that consultation, if initiated, address project alternatives and mitigation measures for significant effects if specifically requested by the Tribe. AB 52 states that consultation is considered concluded when the parties agree to measures to mitigate or avoid a significant effect on TCRs or when either the Tribe or the lead agency concludes that mutual agreement cannot be reached after making a reasonable, good-faith effort. Under AB 52, any mitigation measures recommended by the lead agency or agreed on with the Tribe may be included in the final environmental document and in the adopted Mitigation Monitoring and Reporting Program if the mitigation measures were determined to avoid or lessen a significant impact on a TCR.

If the recommended measures are not included in the final environmental document, then the lead agency must consider the four mitigation methods described in California Public Resources Code, Section 21084.3(e). Any information submitted by a Tribe during the consultation process is considered confidential and is not subject to public review or disclosure. It will be published in a confidential appendix to the environmental document unless the Tribe consents to disclosure of all or some of the information to the public.

***California Government Code, Sections 6254(r) and 6254.10***

Sections 6254(r) and 6254.10 of the California Government Code were enacted to protect archaeological sites from unauthorized excavation, looting, or vandalism. Section 6254(r) explicitly authorizes public agencies to withhold information from the public relating to “Native American graves, cemeteries, and sacred places maintained by the Native American Heritage Commission.” Section 6254.10 specifically exempts from disclosure requests for “records that relate to archaeological site information and reports, maintained by, or in the possession of the Department of Parks and Recreation, the State Historical Resources Commission, the State Lands Commission, the Native American Heritage Commission, another state agency, or a local agency, including the records that the agency obtains through a consultation process between a Native American tribe and a state or local agency.”

***California Health and Safety Code, Section 7050.5, and California Public Resources Code, Section 5097.9***

California Health and Safety Code, Section 7050.5, addresses the protection of human remains discovered in any location other than a dedicated cemetery and makes it a misdemeanor for any

person who knowingly mutilates or disinters, wantonly disturbs, or willfully removes any human remains in or from any location other than a dedicated cemetery without authority of law, except as provided in California Public Resources Code, Section 5097.99. It further states that, in the event of discovery or recognition of any human remains in any location other than a dedicated cemetery, no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains will occur until the coroner of the county in which the human remains are discovered has determined that the remains are not subject to the provisions concerning investigation of the circumstances, manner, and cause of any death and that the recommendations concerning the treatment and disposition of the human remains have been made to the person responsible for the excavation, or to their authorized representative, in the manner provided in California Public Resources Code, Section 5097.98. If the county coroner determines that the remains are not subject to their authority and if the county coroner recognizes the human remains to be those of a Native American or has reason to believe that they are those of a Native American, they shall contact, by telephone and within 24 hours, the NAHC. Whenever the NAHC receives notification of a discovery of Native American human remains from the county coroner, the agency shall immediately notify the most likely decedents if it believes them to be the most likely descendants of the deceased Native American. The most likely descendants may inspect the site of the discovery and make recommendations on the removal or reburial of the remains.

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

The CRHR is a state government program for use by state and local agencies, private groups, and citizens to identify, evaluate, register, and protect California's historical resources. The CRHR is the authoritative guide to the state's significant historical and archaeological resources and encourages public recognition and protection of resources of architectural, historical, archaeological, 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 CEQA.

The term "historical resource" includes but is not limited to any object, building, structure, site, area, place, record, or manuscript that is historically or archaeologically significant or is significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California (California Public Resources Code, Section 5020.1[j]). Historical resources may be designated as such through three different processes:

- Official designation or recognition by a local government pursuant to local ordinance or resolution (California Public Resources Code, Section 5020.1[k])
- A local survey conducted pursuant to California Public Resources Code, Section 5024.1(g)
- Listing in or eligibility for listing in the NRHP (California Public Resources Code, Section 5024.1[d][1])

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

- **Criterion 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.
- **Criterion 2.** It is associated with the lives of persons important to local, California, or national history.
- **Criterion 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.
- **Criterion 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.

***Native American Historic Cultural Sites (California Public Resources Code, Section 5097 et. seq.)***

State law addresses the disposition of Native American burials in archaeological sites and protects such remains from disturbance, vandalism, or inadvertent destruction; establishes procedures to be implemented if Native American skeletal remains are discovered during construction of a project; and establishes the NAHC to resolve disputes regarding the disposition of such remains. In addition, the Native American Historic Resource Protection Act makes it a misdemeanor punishable by up to 1 year in jail to deface or destroy a Native American historical or cultural site that is listed or may be eligible for listing in the CRHR.

#### **4.10.1.2 Existing Conditions**

##### **Historical Resources**

A records search conducted as part of the OC River Walk Project Cultural Resources Survey Letter Report – Negative Findings (Harris 2024) found no resources meeting the CRHR or NRHP criteria within the project site boundaries. The previously recorded cultural resources on site and within a 0.5-mile buffer of the project site are described in Section 4.3, Cultural Resources.

##### **Tribal Cultural Resources**

The NAHC was contacted for a Sacred Lands File Check to determine if sacred lands are present on site. The response from the NAHC was negative, and outreach to the list of Tribes provided has been conducted to the following Tribes by Harris & Associates’ senior archaeologist (refer to Appendix E, Cultural Memo, of the Draft Environmental Impact Report [EIR]). However, no responses were received for the preparation of the Cultural Survey Letter Report.

- Cahuilla Band of Indians
- Gabrieleño Band of Mission Indians – Kizh Nation
- Gabrieleño/Tongva San Gabriel Band of Mission Indians
- Gabrielino Tongva Indians of California Tribal Council

- Gabrielino/Tongva Nation
- Gabrielino-Tongva Tribe
- Juaneño Band of Mission Indians Acjachemen Nation – Belardes
- Juaneño Band of Mission Indians Acjachemen Nation 84A
- Pala Band of Mission Indians
- Santa Rosa Band of Cahuilla Indians
- Soboba Band of Luiseño Indians

The government-to-government consultation notification per AB 52 was sent out in December 2024 by the City to the following Tribes and two Tribes responded to the notification letter: the Gabrieleño Band of Mission Indians – Kizh Nation, on January 31, 2025, and the Juaneño Band of Mission Indians, Acjachemen Nation - Belardes, on February 20, 2025.

#### 4.10.2 Thresholds of Significance

According to Appendix G of the CEQA Guidelines, the project would have a significant impact on TCRs if it would:

- **Threshold 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
  - 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.

#### 4.10.3 Plans, Programs, and Policies

This section addresses plans, programs, and policies relevant to the project.

- PPP CUL-1** The project shall comply with Section 7050.5 of the California Health and Safety Code in the event of discovery or recognition of any human remains in the project site. This provision states that no further disturbance would occur until the County Coroner makes a determination of origin and disposition pursuant to California Public Resources Code, Section 5097.98.

#### **4.10.4 Environmental Impacts**

The following sections address various potential impacts relating to TCRs that could result from implementation of the project.

##### **4.10.4.1 Threshold TCR-1: Tribal Cultural Resources**

###### **Impact Analysis**

###### ***Historic Tribal Cultural Resources***

As discussed in Section 4.10.1.2, Existing Conditions, no historical resources under the NRHP and CRHR criteria have been recorded on the project site. Therefore, the project would not cause a substantial adverse impact to TCRs as defined in the California Public Resources Code (PRC), Section 5020.1(k). Additionally, the NAHC's Sacred Lands File records search received a negative result (refer to Appendix E of the Draft EIR). No known historic TCRs exist on or near the project; therefore, impacts to historic TCRs would be less than significant.

###### ***Prehistoric/Archaeological Tribal Cultural Resources***

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 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]).

In accordance with AB 52, the City notified the Tribes on the City's Tribal Consultation list about the project in December 2024, for the government-to-government consultation to determine the potential for TCRs on site and to inquire if local knowledge of TCR is available about the project site. The following Tribes responded and requested consultation pursuant to AB 52:

- Andrew Salas from Gabrieleño Band of Mission Indians – Kizh Nation
- Joyce Stanfield Perry from Juaneño Band of Mission Indians, Acjachemen Nation

The City of Anaheim contacted and consulted with Mr. Salas and Ms. Perry. The consultation occurred via email, and both requested that a Tribal monitor from their respective Tribe. As discussed in Section 4.3, no historical resources meeting the NRHP criteria, as identified in subsection (c) of PRC Section 5024.1, were identified on the project site. Additionally, the project site has been previously disturbed by the construction of the Santa Ana River channel, the Santa Ana River Trail, a maintenance road, and other surrounding development. The riverbed is also regularly disturbed. The archaeological field survey conducted as part of the Cultural Resources Survey Report (Appendix E of the Draft EIR) determined that the potential for archaeological resources is low. Additionally, implementation of PPP CUL-1, which requires compliance with Section 7050.5 of the

California Health and Safety Code in the event of the discovery or recognition of any human remains on the project site, would reduce potential impacts to human remains.

However, because construction-related ground-disturbing activities could extend into previously undisturbed native soils, grading at depths exceeding 5 feet could potentially uncover TCRs. Therefore, impacts to subsurface TCRs could occur during grading and would be potentially significant without mitigation.

**Level of Significance Before Mitigation:** Potentially significant.

**Mitigation Measure:** Mitigation Measure TCR-1 is required.

#### **4.10.5 Cumulative Impacts**

##### **4.10.5.1 Cumulative Threshold TCR-1: Tribal Cultural Resources**

Cumulative impacts on TCRs would occur if the project, in combination with other developments in the Cities of Anaheim and Orange, resulted in multiple or cumulative impacts on TCRs in the area. The Sacred Lands File review did not identify any recorded TCRs on or near the project site. Similar to this project, each related cumulative project would be required to comply with AB 52 and PRC Section 21083.2(i), which address accidental discoveries of archaeological sites and resources, including TCRs. As with the project, other various projects in the Cities of Anaheim and Orange are required to comply with Section 7050.5 of the California Health and Safety Code (PPP RC-1). As a result, any TCR discoveries associated with the project or related projects would be mitigated to a less than significant level. Therefore, the project's contribution to cumulative impacts would not be considerable.

#### **4.10.6 Level of Significance Before Mitigation**

Without mitigation, the following thresholds would be potentially significant:

- **Threshold TCR-1:** Implementation of the project could cause a substantial adverse change in the significance of a Tribal Cultural Resource.

#### **4.10.7 Mitigation Measures**

**TCR-1:** Prior to the commencement of ground-disturbing activities in any area where soil disturbance is greater than the depth of current foundations present on a project site, or in areas where the disturbance activities extend into native soils exceeding a depth of 5 feet, and/or where there is documented resource presence, the City of Anaheim (lead agency) shall retain a single Native American Monitor at a time to monitor grading activities as described below. If multiple Tribes have requested monitoring, a lead Native American Monitor shall be designated to serve as the primary monitor. Only one monitor

shall be present on-site at any given time during grading activities, unless otherwise agreed upon by the lead agency and the designated lead Native American Monitor.

- A. The Native American Monitor shall be from the Gabrieleño Band of Mission Indians – Kizh Nation (Kizh) or Juaneño Band of Mission Indians, Acjachemen Nation – Belardes (Acjachemen). The lead Native American Monitor shall serve as the point of contact and coordinator for the project during monitoring activities.
- B. For the purposes of this requirement, “ground-disturbing activity” includes project locations inside the project boundary, excluding off-site work within existing public right-of-way. “Ground-disturbing activity” includes, but is not limited to, demolition, pavement removal, potholing, auguring, grubbing, tree removal, boring, grading, excavation, drilling, and trenching resulting in soil disturbance exceeding a depth of current foundations present on a project site, or in areas where the disturbance activities extend into native soils exceeding a depth of 5 feet.
- C. The City of Anaheim shall execute a monitoring agreement with the lead Native American Monitor Tribe prior to the earlier of the commencement of any ground-disturbing activity, or the issuance of any permit necessary to commence a ground-disturbing activity.
- D. The Native American Monitor shall complete daily monitoring logs that will provide descriptions of the relevant ground-disturbing activities, the type of construction activities performed, locations of ground-disturbing activities, soil types, cultural-related materials, and any other facts, conditions, materials, or discoveries of significance to the Tribe and the lead agency. Monitor logs shall identify and describe any discovered Tribal Cultural Resources, including but not limited to Native American cultural and historical artifacts, remains, places of significance, etc., as well as any discovered Native American (ancestral) human remains and burial goods. Copies of monitor logs will be provided to the City and the Kizh and Acjachemen Tribes.
- E. On-site Native American Monitor shall conclude upon the former of the following:
  - 1) Written confirmation from a designated point of contact for the lead agency to the lead Native American Monitor that all ground-disturbing activities resulting in soil disturbance exceeding a depth of current foundations present on a project site, or in areas where the disturbance activities extend into native soils exceeding a depth of 5 feet on the project site or in connection with the project are complete; or
  - 2) A determination and written notification from the lead Native American Monitor to the lead agency stating that no future planned construction or

development activity at the project site has the potential to impact Kizh and Acjachemen Tribal Cultural Resources.

- F. Upon discovery of any Tribal Cultural Resources, all construction activities in the immediate vicinity of the discovery shall cease (i.e., not less than the surrounding 50 feet) and shall not resume until the discovered Tribal Cultural Resource has been fully assessed by Kizh and Acjachemen monitors and an archaeologist retained by the lead agency. The Kizh or Acjachemen Tribe shall recover and retain all discovered Tribal Cultural Resources in the form and manner the affected Tribe deems appropriate, in the affected Tribe's sole discretion, and for any purpose the affected Tribe deems appropriate, including for educational, cultural and historical purposes.

#### **4.10.8 Level of Significance After Mitigation**

##### **4.10.8.1 Threshold TCR-1: Tribal Cultural Resources**

Implementation of PPP CUL-1 and Mitigation Measure TCR-1 would mitigate potential impacts associated with TCRs to a level that is less than significant. Mitigation Measure TCR-1 would require a Tribal monitor to be present if ground disturbance associated with the project exceeds 5 feet in depth. Therefore, no significant unavoidable adverse impacts relating to TCRs would remain.