

5. Environmental Analysis

5.15 TRIBAL CULTURAL RESOURCES

Tribal cultural resources include landscapes, sacred places, or objects with cultural value to a California Native American tribe. This section of the Draft Environmental Impact Report (DEIR) evaluates the potential for implementation of the City of Hope Campus Plan (Campus Plan) to impact tribal cultural resources in the City of Duarte and the City of Irwindale. Other potential impacts to cultural resources (i.e., prehistoric, historic, paleontological, and disturbance of human remains) are evaluated in Section 5.4, *Cultural Resources*. The analysis in this section is based in part on the following report:

- *Cultural Resources Technical Report for the City of Hope Specific Plan, City of Duarte, Los Angeles County, California*, SWCA Environmental Consultants, July 2017.

A complete copy of this study is included in Appendix E1 of this DEIR.

5.15.1 Environmental Setting

5.15.1.1 REGULATORY BACKGROUND

Federal

Archaeological Resources Protection Act

The Archaeological Resources Protection Act of 1979 regulates the protection of archaeological resources and sites which are on Federal lands and Indian lands.

Native American Graves Protection and Repatriation Act

The Native American Graves Protection and Repatriation Act (NAGPRA) 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 non-renewable 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 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.

5. Environmental Analysis

TRIBAL CULTURAL RESOURCES

- **California Public Resources Code 5097.9** states that no public agency or private party on public property shall “interfere with the free expression or exercise of Native American Religion.” The code further states that:

No such agency or party [shall] cause severe or irreparable damage to any Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine... except on a clear and convincing showing that the public interest and necessity so require. County and city lands are exempt from this provision, except for parklands larger than 100 acres.

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

Prior to the enactment of Senate Bill 18 (SB 18; California Government Code Sections 65352.3 et seq.) related to traditional tribal cultural places (TTCP) in 2004, state law provided 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.

SB 18 placed new requirements upon local governments for developments within or near 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 recommends that the NAHC provide written information as soon as possible but no later than 30 days to inform the lead agency if the proposed project is determined to be in proximity to a TTCP and another 90 days for tribes to respond to 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

5. Environmental Analysis TRIBAL CULTURAL RESOURCES

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 lead agency and the tribe agree that adequate mitigation or preservation measures cannot be taken, then neither party is obligated to take action.

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. While SB 18 does not specifically mention consultation or notice requirements for adoption or amendment of specific plans, the Final Tribal Guidelines advises that SB 18 requirements extend to specific plans as well, because state planning law requires local governments to use the same process for amendment or adoption of specific plans as general plans (defined in Government Code § 65453). In addition, SB 18 provides a new definition of TTCP that requires 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 amended Civil Code § 815.3 and added California Native American tribes to the list of entities that can acquire and hold conservation easements for the purpose of protecting their cultural places.

Assembly Bill 52

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 support its determination with substantial evidence and consider the resource's significance to a California tribe. The following is a brief outline of the process (PRC §§ 21080.3.1–3.3).

5. Environmental Analysis

TRIBAL CULTURAL RESOURCES

- 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.
- 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.

5.15.1.2 EXISTING CONDITIONS

The project site is heavily urbanized and developed with medical and research buildings ranging from 46 to 81 years old, surface parking lots, parks and open space. No tribal cultural resources onsite were identified during field survey or in responses to inquiries by Native American tribal representatives, both conducted as part of the cultural resources investigation for the Campus Plan; or in a Sacred Lands File search conducted by the Native American Heritage Commission (NAHC) referenced in a letter by the NAHC dated February 17, 2016 (SWCA 2017).

5.15.2 Thresholds of Significance

According to Appendix G of the CEQA Guidelines, a project would normally have a significant effect on the environment if the project would:

- 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 for the purposes of this paragraph, the lead agency shall consider the significance of the resource to a California Native American tribe.

5.15.3 Environmental Impacts

Methodology

In order to identify tribal cultural resources and analyze any potentially significant adverse impacts, SWCA conducted records searches, site inspections, intensive-level surveys, background research, and Native American consultation per SB 18 and AB 52 requirements. The National Register of Historic Places and CRHR criteria were also used and a sacred lands file search from NAHC was conducted. Please refer to Appendix E1 “Methods” for specific details on methodology.

The following impact analysis addresses thresholds of significance that may be potentially significant impacts. The applicable thresholds are identified in brackets after the impact statement.

Impact 5.15-1: Grading activities associated with implementation of the Campus Plan have the potential to encounter tribal cultural resources. [Threshold TCR-1]

Impact Analysis: 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. The intent of the consultations is to provide an opportunity for interested Native American contacts to work together with the City during the project planning process to identify and protect tribal cultural resources.

Sacred Lands File Search and Consultation

As stated in Section 5.4, *Cultural Resources*, and Appendix E1 of this DEIR, no prehistoric sites have been recorded on the project site or within a quarter-mile radius of the site (SWCA 2017). On February 17, 2016, a Sacred Lands File search was conducted by NAHC to determine if any sacred lands or traditional cultural properties had been identified near the project site (SWCA 2017). The NAHC response did not identify any properties deemed significant by local Native American groups in the vicinity of the project. The NAHC also provided a list of five Native American groups and individuals who may have knowledge of cultural resources in the project area. SWCA sent letters to each of the contacts, identifying the project location and requesting input, via U.S. mail on February 26, 2016. SWCA conducted one follow-up telephone call with each contact on March 5, 2016. Four tribes responded to SWCA:

- *Gabrielino/Tongva San Gabriel Band of Mission Indians.* Chairperson Anthony Morales stated via telephone on February 26, 2016, that he considered the area to be sensitive for prehistoric and historic

5. Environmental Analysis

TRIBAL CULTURAL RESOURCES

archaeological resources and recommended Gabrieleño/Tongva San Gabriel Band of Mission Indians tribal monitors be present during ground-disturbing activities. No follow-up communication has been received from the tribe as of the date of this DEIR.

- ***Gabrielino Tongva Indians of California Tribal Council:*** Tribal Chair Robert Dorame stated via telephone on February 26, 2016, that he was not aware of any cultural resources within the project area, but planned on speaking with local residents with direct knowledge of the area and would call SWCA should he have any additional concerns
- ***Gabrieleño Band of Mission Indians - Kizh Nation:*** Chairperson Salas responded via email that the project is located within the ancestral and traditional territories of the Kizh (Kite) Gabrieleño villages and that their tribal monitors should be on-site during any ground-disturbing activities.
- ***Soboba Band of Mission Indians:*** Cultural Resources Program Director Joseph Ontiveros sent SWCA a letter via U.S. mail indicating no specific concerns regarding known cultural resources in the specified project area.

Representatives from the Gabrielino/Tongva San Gabriel Band of Mission Indians and Gabrieleño Band of Mission Indians – Kizh Nation identified that there are tribal cultural resources in the vicinity of the project site, and that there is a potential to encounter buried prehistoric deposits on the project site. Buried or obscured archaeological resources may be encountered during construction. Therefore, there remains a possibility that the development of the project site through grading and excavation activities could impact previously undisturbed prehistoric archaeological resources. Thus, impacts to tribal cultural resources are potentially significant.

AB 52 and SB 18 Consultation

In accordance with AB 52 and SB 18 requirements, NAHC provided a list of tribal representatives who may have knowledge of tribal cultural resources in the project area. The City sent invitation letters to representatives of the Native American contacts provided by the NAHC on January 4, 2016, formally inviting tribes to consult with the City on the City of Hope Campus Plan. The intent of the consultations was to provide an opportunity for interested Native American contacts to work together with the City during the project planning process to identify and protect tribal cultural resources. Letters were sent to the following Tribes:

AB 52

- Andrew Salas, Chairman, Gabrieleño Band of Mission Indians – Kizh Nation
- Joseph Ontiveros, Cultural Resource Director, Soboba Band of Luiseño Indians

SB 18

- John Tommy Rosas, Tribal Admin, Tongva Ancestral Territorial Tribal Nation
- Ron Andrade, Director, LA City/County Native American Indian Community

5. Environmental Analysis

TRIBAL CULTURAL RESOURCES

- Anthony Morales, Chairperson, Gabrieleno/Tongva San Gabriel Band of Mission Indians
- Sandonne Goad, Chairperson, Gabrielino/Tonga Nation
- Robert F. Dorame, Tribal Chair/Cultural Resources, Gabrielino Tongva Indians of California Tribal Council
- Bernie Acuna, Co-Chairperson, Gabrielino-Tongva Tribe
- Linda Candelaria, Co-Chairperson, Gabrielino-Tongva Tribe
- Andrew Salas, Chairman, Gabrieleño Band of Mission Indians – Kizh Nation
- Conrad Acuna, Gabrielino-Tongva Tribe
- Sam Dunlap, Cultural Resources Director, Gabrielino/Tongva Nation

Response letters were received from two tribal representatives Andrew Salas of Gabrieleño Band of Mission Indians - Kizh Nation and John Tommy Roasas, Tongva Ancestral Territorial Tribal Nation.

- ***Gabrieleño Band of Mission Indians - Kizh Nation:*** Chairman Andrew Salas notes that the entire City of Duarte lies on top of a Gabrieleño Prehistoric Village, which later became known as Rancho De Duarte. States that due to concerns related to potential impacts to cultural resources, that they would like to request one of their tribal monitors to be onsite at the project site during all ground disturbance.
- ***Tongva Ancestral Territorial Tribal Nation:*** Confirmed receipt of the City's consultation letter and provided a list of billing rates.

In response to the letter received from the Gabrieleño Band of Mission Indians - Kizh Nation, the City of Duarte sent a follow up letter on September 22, 2016, providing the tribe with cultural resources results and requesting additional documentation related to the cultural significance attributed to the project site and surrounding area (see Appendix E1). The letter requested an in-person or telephone consultation to go over this additional data to confirm the need for a Native American monitor to be present during all ground disturbances. As of the date of this DEIR, no response has been received from the tribe. Nevertheless, tribal cultural resources could be present in soils under the Campus Plan site, and project ground-disturbing activities could damage such resources. This impact would be potentially significant. Implementation of Mitigation Measure CUL-2 set forth in Section 5.4, Cultural Resources, of this DEIR and reproduced below has been incorporated into the project.

5.15.4 Cumulative Impacts

Cumulative impacts to cultural resources would occur when the impacts of the Campus Plan, in conjunction with other projects and development in the region, result in multiple and/or cumulative impacts to tribal cultural resources in the area. No prehistoric sites have been recorded on the project site or within a quarter-mile radius of the site, and no sacred sites are documented within or adjacent to the project area. However, it is possible that buried prehistoric artifacts or tribal cultural resources could be present within the area. Each future project considered for approval by the Cities of Duarte and Irwindale would be required to include mitigation measures to protect these resources if they are uncovered during grading activities. The proposed

5. Environmental Analysis

TRIBAL CULTURAL RESOURCES

project also includes mitigation measures to ensure proper identification, treatment, and preservation of cultural resources. Implementation of these measures would reduce the potential for adverse impacts on tribal cultural resources both individually and cumulatively. Therefore, cumulative impacts to cultural resources would be less than significant.

5.15.5 Existing Regulations

This analysis assumes compliance with all applicable laws. The following codes, rules, and regulations pertain to tribal cultural resources and were described in detail in Sections 5.15.1.1 of this DEIR and are listed below.

Federal

- Archaeological Resources Protection Act
- Native American Graves Protection and Repatriation Act

State

- California Public Resources Code Sections 5079–5079.65
- California Senate Bill 18
- Assembly Bill 52

5.15.6 Level of Significance Before Mitigation

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

- **Impact 5.15-1** Tribal cultural resources could be adversely impacted by grading activities associated with the Campus Plan.

5.15.7 Mitigation Measures

Impact 5.15-1

Mitigation Measure CUL-2 in Section 5.4, *Cultural Resources*, of this DEIR applies and is reproduced below.

CUL-2 Prior to issuance of any permits allowing ground-disturbing activities within the Campus Plan area, the City of Duarte and/or City of Irwindale, as appropriate, shall ensure that an archeologist who meets the Secretary of the Interior's Standards for professional archaeology has been retained for the project and will be on call during all grading and other significant ground-disturbing activities. The Qualified Archaeologist shall ensure that the following measures are followed for the project:

- Prior to any ground disturbance, the Qualified Archaeologist, or their designee, shall provide Worker Environmental Awareness Protection (WEAP) training to construction personnel regarding regulatory requirements for the protection of cultural (prehistoric and historic) resources. As part of this training, construction personnel shall be briefed

5. Environmental Analysis TRIBAL CULTURAL RESOURCES

on proper procedures to follow should unanticipated cultural resources be made during construction. Workers will be provided contact information and protocols to follow in the event that inadvertent discoveries are made. The WEAP training can be in the form of a video or PowerPoint presentation. Printed literature (handouts) can accompany the training and can also be given to new workers and contractors to avoid the necessity of continuous training over the course of the project.

- In the event that unanticipated cultural material is encountered during any phase of project construction, all construction work within 50 feet (15 meters) of the find shall cease and the Qualified Archaeologist shall assess the find for importance. Construction activities may continue in other areas. If, in consultation with the appropriate City, the discovery is determined to not be important, work will be permitted to continue in the area.
 - If a find is determined to be important, additional work may be warranted, or the find can be preserved in place and construction allowed to proceed.
 - Additional work can include scientific recording and excavation of that portion of the find making the find important.
 - If excavation of a find occurs, the Qualified Archaeologist shall draft a report within 60 days of conclusion of excavation that identifies the find and summarizes the analysis conducted. The completed report shall be approved by the City and filed with the County and with the South Central Coastal Information Center at California State University, Fullerton.
 - Excavated finds shall be curated at a repository determined by the Qualified Archaeologist and approved by the City.

5.15.8 Level of Significance After Mitigation

Impact 5.15-1

Implementation of Mitigation Measure CUL-2 would ensure the project applicant and construction contractors are cognizant of potential tribal cultural resources onsite and have specified procedures to implement to ensure these potentially uncovered resources are not damaged during grading and construction activities. The mitigation measure requires that any archaeological resources encountered during project ground-disturbing activities be recovered, evaluated and curated, if necessary, by a qualified archaeologist, thus reducing 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 have been identified.

5.15.9 References

GPA Consulting (GPA). 2016, March. Historical Resource Report: City of Hope Specific Plan.

5. Environmental Analysis

TRIBAL CULTURAL RESOURCES

SWCA Environmental Consultants (SWCA). 2016, March 16. Summary of Cultural Resources Identification Efforts and Preliminary Results for the City of Hope Specific Plan and Environmental Impact Report, Cities of Duarte and Irwindale, Los Angeles County, California.

———. 2017, July. Cultural Resources Technical Report for the City of Hope Specific Plan, City of Duarte, Los Angeles County, California.