
4.9 TRIBAL CULTURAL RESOURCES

This section evaluates the Proposed Project's and Alternative 1's potential to have adverse effects on tribal cultural resources. The analysis in this section is based on the results of consultation with California Native American Tribes conducted by Airport staff, as required by the California Environmental Quality Act ("CEQA") (Public Resources Code ["PRC"] §§ 21080.3.1, 21080.3.2, 21082.3, 21084.2, and 21084.3).

4.9.1 REGULATORY SETTING

Native American Historic Resource Protection Act

Established in 2002, the Native American Historic Resource Protection Act (PRC § 5097.993, *et seq.*) 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 California Register of Historic Resources ("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.

Assembly Bill 52

Assembly Bill ("AB 52") applies to projects that file a Notice of Preparation ("NOP") of an Environmental Impact Report ("EIR"), or adopt a Negative Declaration ("ND") or Mitigated Negative Declaration ("MND") on or after July 1, 2015. Under AB 52, the lead agency for any CEQA project must initiate consultation with all California Native American tribes that (i) are traditionally and culturally affiliated with the geographic area of the project and (ii) have requested such consultation prior to determining the type of CEQA documentation that is applicable to the project. (PRC § 21080.3.1(b).) AB 52 allows tribes 30 days after receiving notification to request consultation. The lead agency then has 30 days to initiate consultation. (*Ibid.*) Note that the consultation must commence prior to the public release of the CEQA document in question (i.e., the Negative Declaration, Mitigated Negative Declaration, or EIR). (*Ibid.*) The legislation also directs "the Office of Planning and Research to prepare and develop, and the Secretary of the Natural Resources Agency to certify and adopt, guidelines for the implementation of CEQA that include, among other things, criteria for public agencies to follow in determining whether or not a proposed project may have a significant effect on the environment." The Natural Resources Agency incorporated tribal cultural resources into the CEQA Environmental Checklist in September 2016.

PRC Section 21074 identifies what qualifies as a Tribal Cultural Resource. This section states:

- (a) “Tribal Cultural Resources” are either of the following:
 - (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 5021.1.
 - (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. In applying the criteria set forth in subdivision (c) of Section 5024.1 for purposes of this paragraph, the Lead Agency shall consider the significance of the resource to a California Native American tribe.
- (b) A cultural landscape that meets the criteria of subdivision (a) is a tribal cultural resource to the extent that the landscape is geographically defined in terms of the size and scope of the landscape.
- (c) A historical resource described in Section 21084.1, a unique archaeological resource as defined in subdivision (g) of Section 21083.2, or a “nonunique archaeological resource” as defined in subdivision (h) of Section 21083.2 may also be a tribal cultural resource if it conforms with the criteria of subdivision (a).

With the above definition of a Tribal Cultural Resource, the CEQA statutes also provides criteria for public agencies to follow through the consultation process. PRC Section 21080.3.2 provides that as a part of the consultation process,

. . . the parties may propose mitigation measures, . . . capable of avoiding or substantially lessening potential significant impacts to a tribal cultural resource or alternatives that would avoid significant impacts to a tribal cultural resource. If the California Native American tribe requests consultation regarding alternatives to the project, recommended mitigation measures, or significant effects, the consultation shall include those topics. . . .

The consultation shall be considered concluded when either of the following occurs:

- (1) The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource.
- (2) A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached.

PRC Section 21082.3 states that any mitigation measures agreed upon in the consultation process shall be recommended for inclusion in the environmental document and in an adopted mitigation monitoring and reporting program, if determined to avoid or lessen the impact and shall be fully enforceable.

PRC Section 21084.2 states that a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant

effect on the environment. Furthermore, PRC Section 21084.3 directs, when feasible, the lead agency shall try and avoid damaging effects to any tribal cultural resource. When avoidance is not feasible, this section of the statutes also provides guidance on mitigation by providing examples of mitigation. An emphasis is to treat the resource “with culturally appropriate dignity considering the tribal cultural values and meaning of the resource”.

4.9.2 METHODOLOGY

The Native American Heritage Commission (“NAHC”) conducted a Sacred Lands File (“SLF”) search for the GAIP area. Results were received on December 20, 2017. The search failed to identify any sacred places or objects with cultural value to a California Native American tribe on the Airport property. Consistent with requirements of AB 52, on December 23, 2016 the County of Orange sent letters to tribes that have expressed an interest in being consulted regarding Native American resources for the projects being undertaken in unincorporated Orange County. Letters were sent to the following tribal organizations on December 23, 2016:

- Gabrielino Band of Mission Indians – Kizh Nation Juaneño Band of Mission Indians – Acjachemen Nation
- San Gabriel Band of Mission Indians
- Soboba Band of Luiseño Indians

One tribe, the Gabrielino Band of Mission Indians – Kizh Nation responded by letter dated January 12, 2016. Mr. Salas (Tribal Chair), representing the Kizh Gabrielino Tribe, provided information regarding potential tribal resources in his letter. He indicated that the JWA Project site lies within an area where ancestral territories of Kizh Gabrielino Tribe villages adjoined and overlapped, at least during the Late Prehistoric (before European contact) and Protohistoric Periods (Post-contact). Mr. Salas recommended that a certified Native American monitor be onsite during ground disturbing activities related to the Project components, including but not limited to pavement removal, post holing, auguring, boring, grading, excavation and trenching to protect any cultural resources which may be affected during construction or development.

In response to Mr. Salas’s letter, in February 2017, JWA requested a teleconference meeting. Mr. Salas and JWA discussed the Project components and JWA provided to Mr. Salas an aerial photograph of the airport boundary. Mr. Salas will provide the map to the tribe’s in-house archaeologist and tribal elders for further discussion. JWA also agreed to provide Mr. Salas the proposed depths of grading related to construction activities as soon as the depths have been confirmed.

4.9.3 EXISTING CONDITIONS

Section 4.4 of this Program EIR provides an evaluation of cultural resources, including archaeological resources and human remains. As noted in that section, a cultural resources records search and literature review was conducted at the California Historical Resources Information System (“CHRIS”), which maintains records and literature regarding cultural resources within California. The CHRIS office for Orange County is located at California State University, Fullerton California. Although at least 50 cultural resources studies have been undertaken within ½ mile of the Project Site, only two of these studies included a portion of the

GAIP Site and only one recorded site is located within ½ mile of the GAIP Site. This site, ORA-1223, is a prehistoric site identified by shellfish remains and lithic implements and manufacturing debris. The site is not within the GAIP limits. As noted in Section 4.4, the GAIP site is heavily disturbed having been used for aviation uses since the 1920s.

Regional Ethnographies

Ethnography is a cultural anthropologic research method that strives to answer anthropological questions about different cultures' ways of life (University of Pennsylvania 2008), and the following described the ethnographic setting of the GAIP site. The Orange County region, including the GAIP site, was a contact point between two separate ethnolinguistic groups immediately prior to the arrival of Euro-Americans in California. These groups include the Gabrielino/Tongva and the Juaneño/Acjachemen. These groups, while maintaining their own respective cultural identity, did have similar traditions, beliefs systems, and languages, which were a result of intertribal interactions over several centuries.

Another tribe that influenced the cultures of the region is the Luiseño/Payomkawichum. They too, shared similar linguistic and cultural traits like the Juaneño/Acjachemen and the Gabrielino/Tongva. However, the Luiseno/Payomkawichum territory is located just outside the shared territory of the Gabrielino/Tongva and Juaneño/Acjachemen, along the Northern San Diego County coastline and inland Riverside County. Therefore, this Program EIR focuses on the Gabrielino/Tongva and the Juaneño/Acjachemen.

Gabrielino/Tongva

At the time of European contact, this part of Orange County was the home of the Gabrielino. The Gabrielino and their descendants are those people who became associated with Mission San Gabriel Arcángel, which was established in south-central Los Angeles County on September 8, 1771, in what has ever since been called the San Gabriel Valley. Today, these people are sometimes referred to as the *Tongva*, although the term apparently originally (i.e., before the arrival of Euro-Americans) referred to the inhabitants of the San Gabriel Valley only. In either case, the inhabitants of Santa Catalina Island and San Clemente Island are often included as being parts of this tribe, as are the Fernandño, who inhabited most of the San Fernando Valley. Note that the Eastern Gabrielino refers to those who lived south of the San Gabriel Mountains, mainly in the San Gabriel Valley, while the Western Gabrielino refers to those who lived along the western coast of Los Angeles County, from Malibu to Palos Verdes, and includes the people living in the San Fernando Valley.

The ancestral Gabrielino arrived in the Los Angeles Basin probably before 500 BCE as part of the so-called Shoshonean (Takic speaking) Wedge from the Great Basin region and gradually displaced the indigenous peoples, probably Hokan speakers. Large, permanent villages were established in the fertile lowlands along rivers and streams and in sheltered areas along the coast. Eventually, Gabrielino territory encompassed the watersheds of the Los Angeles, San Gabriel, Rio Hondo, and Santa Ana Rivers (which includes the greater Los Angeles Basin) to perhaps as far south as Aliso Creek, as well as portions of the San Fernando, San Gabriel, and San Bernardino Valleys. Gabrielino territory also included the islands of San Clemente, San Nicholas, and Santa Catalina. Recent studies suggest the population may have numbered as many as 10,000 individuals at their peak in the Pre-contact Period.

The subsistence economy of the Gabrielino was one of hunting and gathering. The surrounding environment was rich and varied, and the natives were able to exploit mountains, foothills, valleys, deserts, and coasts. As was the case for most native Californians, acorns were the staple food (by the Intermediate Horizon), supplemented by the roots, leaves, seeds, and fruit of a wide variety of flora (i.e., cactus, yucca, sage, and agave). Fresh and saltwater fish, shellfish, birds, insects, and large and small mammals were exploited.

A wide variety of tools and implements were employed by the Gabrielino to gather, collect, and process food resources. The most important hunting tool was the bow and arrow. Traps, nets, blinds, throwing sticks, and slings were also employed. Fish were an important resource and nets, traps, spears, harpoons, hooks, and poisons were utilized to catch them. Ocean-going plank canoes and tule balsa canoes were used for fishing and for travel by those groups residing near the Pacific Ocean.

The processing of food resources was accomplished in a variety of ways: nuts were cracked with hammer stone and anvil; acorns were ground with mortar and pestle; and seeds and berries were ground with mano and metate. Yucca, a valuable resource in many areas, was eaten by the natives and exploited for its fibers.

Strainers, leaching baskets and bowls, knives, bone saws, and wooden drying racks were also employed. Food was consumed from a variety of vessels. Catalina Island steatite was used to make ollas and cooking vessels.

Gabrielino houses were circular domed structures of willow poles thatched with tule. They were actually quite large and could, in some cases, hold 50 individuals. Other structures served as sweathouses, menstrual huts, and ceremonial enclosures.

Anthropologist Alfred Kroeber considered the Gabrielino:

... to have been the most advanced group south of Tehachapi, except perhaps the Chumash. They certainly were the wealthiest and most thoughtful of all the Shoshoneans of the State, and dominated these civilizations wherever contacts occurred.

Juaneño/Acjachemen

During the Late Prehistoric and Contact Periods, the GAIP area was located also within the Juaneño territory. As with the Gabrielino, whose name signifies their mission association, the name Juaneño designates those peoples that fell under the control of the Mission at San Juan Capistrano. Specifically, it denotes the indigenous Native Americans living in and near the San Juan and San Mateo creek drainages, who called themselves the Acjachemen.

The Acjachemen population during the Precontact Period is thought to have numbered upwards of 3,500. It is known that 1,138 local Native Americans, consisting primarily of Acjachemen but including Gabrielino, coastal and interior Luiseño, Serrano, and Cahuilla, resided at Mission San Juan Capistrano in the year 1810. The Mission's death register shows as many as 1,665 native burials in its cemetery by this time, a number in addition to those who died unrecorded at the remaining villages from natural causes and introduced infectious diseases.

Overall, the Acjachemen territory consisted of the eastern Santa Ana Mountains to the coast and southward to San Juan Capistrano. The majority of the known ethnographic village sites are located primarily in this region. To this day, the San Juan Capistrano area has seen continuous habitation by the Juaneño people.

The Juaneño lived in structured villages, populated variously by 35 to 300 people, consisting of a single lineage to multiple clans in larger settings. While each village unit maintained economic and social ties to neighboring villages, they also maintained a well-defined resource area.

The Juaneño exploited a wide variety of resources for their dietary needs. These consisted primarily of plant foods, including seeds, nuts, fruits, tubers, and greens. Marine resources constituted the largest sources of meat and consisted mostly of shellfish and fish. Marine resources were collected from open water, bay, and estuary habitats. Birds and mammals made up most of the remainder of the diet. Many common bird species and most small rodents were exploited where available. Seasonal rounds of exploitation formed the basis for the successful procurement of various food types as evident by the settlement patterns still identifiable today from the remains of simple campsites to complex village sites.

4.9.4 THRESHOLDS OF SIGNIFICANCE

In accordance with the County's Environmental Analysis Checklist and Appendix G of the CEQA Guidelines, the applicable thresholds of significance with regard to tribal cultural resources are included below. The GAIP could have a significant impact if it would:

Threshold 4.9-1 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, sacred place, or object with cultural value to a California Native American tribe, and that is:

- i. Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code section 5020.1 (k), or
- ii. A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resource Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.

4.9.5 REGULATORY REQUIREMENTS AND STANDARD CONDITIONS OF APPROVAL

There are no regulatory requirements or standard conditions of approval that are applicable to tribal cultural resources.

4.9.6 IMPACT ANALYSIS

Threshold 4.9-1

- ***Would the Project cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code Section 21074 as either a site, feature, place, cultural landscape, sacred place, or object with cultural value to a California Native American tribe, and that is:***
 - i. Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code Section 5020.1(k), or***
 - ii. A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resource Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.***

Proposed Project and Alternative 1

For purposes of impact analysis, a tribal cultural resource 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 CRHR¹ or a local register. As indicated in Section 4.4 of this Program EIR, based on a record search there are no resources on the GAIP site that are currently listed on the CRHR. One archaeological site, CA-ORA-1223, is a prehistoric site identified by shellfish remains and lithic implements and manufacturing debris. This site is located approximately $\frac{1}{3}$ mile south of the Airport in a developed area. The site will not be affected from GAIP related activities. Therefore, the Proposed Project and Alternative 1 would not have an impact on tribal cultural resources associated with an impact to a resource that is listed or eligible for listing on the CRHR. The County of Orange does not have a local listing.

The second component of this threshold is if the GAIP would impact “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, the lead agency shall consider the significance of the resource to a California Native American tribe.” Subdivision (c) states:

A resource may be listed as an historical resource in the California Register if it meets any of the following National Register of Historic Places criteria:

- (1) Is associated with events that have made a significant contribution to the broad patterns of California’s history and cultural heritage.
- (2) Is associated with the lives of persons important in our past.

¹ 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.”

- (3) Embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values.
- (4) Has yielded, or may be likely to yield, information important in prehistory or history.

Based on information available through the record search at the SCCIC and the long-term past use of the GAIP site for aviation purposes, there is no information available that indicates there are significant tribal resources on site that would be significant pursuant to criteria set forth in subdivision (c) of Public Resource Code Section 5024.1. However, as noted in Section 4.9.2, Methodology, the County requested consultation with tribes that had notified the County of Orange of a desire to be consulted with for projects in unincorporated Orange County.

The County received one response. Mr. Andrew Salas, the Tribal Chair for the Gabrielino Band of Mission Indians – Kizh Nation, responded on January 12, 2017.² He indicated that the GAIP site lies within an area where ancestral territories of Kizh Gabrielino Tribe villages adjoined and overlapped, at least during the Late Prehistoric (i.e., before European contact) and Protohistoric Periods (i.e., Post-contact). Mr. Salas did not identify specific known tribal cultural resources at the Airport; however, he stated “when the Native American Heritage Commission states there are ‘no records of sacred sites in the project area’ the NAHC will always refer lead agencies to the respective Native American Tribe because the NAHC is only aware of general information and are not the experts on each California Tribe.” Mr. Salas recommended that a certified Native American monitor be onsite during ground disturbing activities related to the GAIP components, including but not limited to pavement removal, post holing, auguring, boring, grading, excavation and trenching to protect any cultural resources which may be affected during construction or development.

In response to Mr. Salas’s letter, in February 2017, the Airport requested a teleconference meeting. Mr. Salas and JWA discussed the GAIP components and the likelihood of impacts given the disturbed nature of the site. The Airport provided Mr. Salas an aerial photograph of the Airport boundary. Mr. Salas was to provide the map to the tribe’s in-house archaeologist and tribal elders for further discussion. The Airport also agreed to provide Mr. Salas the proposed depths of grading related to construction activities as soon as estimated depths have been confirmed. This information was provided to Mr. Salas on December 18, 2017. Additionally, as part of that same contact, Airport staff inquired if Mr. Salas had additional information based on his consultation with the tribe’s in-house archaeologist and tribal elders. Mr. Salas contacted the Airport on December 29, 2017; however, no specific information regarding known tribal resources on the Airport has been provided. The Airport staff contacted Mr. Salas again on January 18, 2017 via email.

Based on coordination to date, Native American representatives have not provided information indicating there are resources that are significant to a California Native American tribe or otherwise qualify as Tribal Cultural Resources, as defined in Public Resources Code Section 21074. Notwithstanding the current lack of evidence of the known resources on site, it is acknowledged this portion of Orange County was inhabited by Native American tribes. Although

² The actual letter from Mr. Salas is dated January 12, 2016; however, since the inquiry on interest to consult was December 23, 2016, the actual date should have been January 12, 2017.

limited amounts of archaeological resources important to Native Americans have been identified near the GAIP site, there is always the possibility that undiscovered intact cultural resources, including tribal cultural resources may be present below the surface in native sediments. To minimize the potential direct impacts, a Minimization Measure (MN) has been included requiring Native American monitoring when construction activities are disturbing native soil.³ Implementation of MN TCR-1 would provide for appropriate protection of tribal cultural resources that may be discovered during construction. Therefore, this impact would be less than significant.

Impact Conclusion: *The Proposed Project and Alternative 1 have a low potential to cause a substantial adverse change in the significance of a tribal cultural resource as defined by Section 21074 of the Public Resources Code. Implementation of MN TCR-1 would further minimize the potential for impacts should buried tribal cultural resources be discovered as part of grading activities. Under Threshold 4.9-1, impacts would be less than significant.*

4.9.7 CUMULATIVE IMPACTS

Although tribal cultural resources impacts are site-specific with regard to any given resource (e.g. resources of important cultural value to Native Americans), impacts may be considered cumulative simply because they relate to the loss of tribal cultural resources in general over time throughout the region. There are no tribal cultural resources listed or determined eligible for listing, on the national, state, or local register of historical resources on the Airport property. However, should buried resources be identified, the Proposed Project and Alternative 1 could lead to accelerated degradation of previously unknown tribal cultural resources. None of the cumulative projects identified on the Airport (see Section 4 for a discussion of cumulative projects) are expected to disturb unknown tribal cultural resources because of the shallow depth of excavation.

Cumulative development associated with regional growth (i.e., development off Airport property) would have similar potential for impacts to unknown resources. However, each of these development proposals would undergo environmental review and would be subject to similar resource protection requirements as determined by the local lead agency. Through the implementation of MN TCR-1 the Proposed Project and Alternative 1 would minimize the potential contribution to cumulative impacts on tribal cultural resources. Therefore, the Proposed Project and Alternative 1's contribution to cumulative impacts associated with tribal cultural resources would be less than significant.

³ As discussed in Section 4.4, the site is heavily disturbed because of the long-term aviation use on site. Most of the construction associated with the Project is not expected to extend into native soils; however, the footing for larger buildings may extend down as deep as 25 feet. In certain locations on the Airport, this may be native soils. A minimization measure is a condition proposed to reduce an adverse effect of the Project even when that effect does not result in a significant impact.

4.9.8 MITIGATION PROGRAM

Though no significant impacts have been identified, the following minimization measure would further reduce the potential for an impact to currently unknown tribal cultural resources should construction extend into native soil.

MN TCR-1 Tribal Cultural Resources Observation and Salvage. Prior to the issuance of any grading permit in which native soil is disturbed, the applicant shall provide written evidence to the Manager, Permit Services, that a Native American monitor has been retained to observe grading activities in native sediment and to salvage and catalogue tribal cultural resources as necessary. The Native American monitor shall be present at the pre-grade conference, shall establish procedures for tribal cultural resource surveillance, and shall establish, in cooperation with the County, procedures for temporarily halting or redirecting work to permit the sampling, identification, and evaluation of the tribal cultural resource as appropriate. If the tribal cultural resources are found to be significant, the Native American observer shall determine appropriate actions, in cooperation with the County for exploration and/or salvage.

4.9.9 LEVEL OF SIGNIFICANCE AFTER MITIGATION

Project-specific and cumulative impacts to tribal cultural resources associated with the Proposed Project and Alternative 1 would be less than significant. Additionally, the GAIP proposes a minimization measure to further protect currently unknown resources.

4.9.10 REFERENCES

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