

### **3.14 TRIBAL CULTURAL RESOURCES**

Tribal cultural resources are defined in Public Resources Code (PRC) Section 21074.1 as sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a tribe. This analysis briefly describes the existing tribal setting of the Project area and the surrounding vicinity and discusses known tribal cultural resources within the Project area and surrounding vicinity. Additionally, this section analyzes the potential effects of the proposed Fountain Valley Crossings Specific Plan (FVCSP) Project (Project) on cultural resources based on criteria of the California Environmental Quality Act (CEQA). Some data for this section were obtained from the City of Fountain Valley General Plan Conservation Element (1995), and the I-405 Improvement Project Environmental Impact Statement (EIS)/ Environmental Impact Report (EIR).

#### **3.14.1 Environmental Setting**

The City of Fountain Valley (City) is in the Santa Ana Valley-Capistrano Valley Province, which is a lowland strip separating the coastal hills from the Santa Ana Mountains. This province dominates the inner portion of Orange County and includes the flood plain in the Santa Ana River in the northern segment near the City.

The moderate climate, fertile soils, and abundant natural resources made the southern California, including Orange County and the Fountain Valley area, ideal for human habitation, which may have begun in the areas as much as 11,000 years ago. During the late prehistoric period, the Gabrieleño and the Juaneño groups occupied Orange County. The Gabrieleño inhabited a large area of the Los Angeles Basin including the watersheds of Los Angeles, San Gabriel, and Santa Ana Rivers, several streams in the Santa Monica and Santa Ana Mountains, the coast from Aliso Creek to Topanga Creek and the islands of San Clemente, San Nicholas, and Santa Catalina. The Juaneño territory extended from Northern San Diego County to the San Joaquin Hills along Orange County's central coast, and inland from the Pacific Ocean into the Santa Ana Mountains. Both groups lived in residential villages along the County's rivers and traveled to seasonal camps for hunting, fishing, shellfish collecting, and hard seed processing. Initial Spanish settlement in the Orange County region came in the late 1500s, and the Mission San Juan Capistrano was established in Orange County in 1775. Prior to Spanish migration the native population had been decimated by diseases, likely spread via coastal stopovers by early Spanish maritime explorers (Tac 1930). Additionally, multiple epidemics took a great toll on Native American populations between approximately 1800 and the early 1860s (Porretta 1983), along with the cultural and political upheavals that came with European, Mexican, and American settlement (Goldberg 2001). The mission period was followed by the Mexican period as colonists moved into California and occupied land granted to them by the Mexican government. By the end of the Mexican period and as California moved towards statehood in 1850, the populations of Native Americans in California as a whole declined.

From the 1880s to the early 1900s, the Fountain Valley area was inundated by large areas of wetlands. Early settlers constructed drainage canals to drain the land and make it usable for

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agriculture and other development. Agriculture dominated the area in the early 1900s. The City was incorporated in 1957. The large population growth that the City experienced in the 1960s took place within the framework of a Master Plan adopted before any developments had begun. The Project area was developed primarily in the 1970s with a range of public and private structures and industrial areas.

No known archeological resources are within the boundaries of the Project area. However, the Project area has some potential for undiscovered Native American archaeological resources, as well as other known regional resources to occur. There are four recorded archaeological sites within the vicinity of the Project area. The potential for such subsurface resources, which may not have been evaluated during original development of the Project area, may exist.

#### **3.14.2 Regulatory Framework**

##### **3.14.2.1 State Regulations**

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

Assembly Bill (AB) 52 amends PRC Section 5097.94 (CEQA) and adds eight new sections to the PRC relating to Native Americans. It was passed and signed into law in 2014 and took effect on July 1, 2015. This law establishes a new category of resource called tribal cultural resources (PRC Section 21074) and establishes a process for consulting with Native American tribes and groups regarding those resources. The consultation process must be completed before a CEQA document can be certified. Native American tribes to be included in the process are identified through consultation with the Native American Heritage Commission (PRC Section 21080.3.1).

Tribal cultural resources are “[s]ites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe...” (PRC Section 21074.1). A tribal cultural resource can be on, or eligible for, the CRHR as described above for historical resources, or must be included in a local register of historical resources. Also, the lead agency can determine that a tribal cultural resource is significant even if it has not been evaluated as eligible for the CRHR or is not on a local register.

AB 52 establishes 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” (PRC Section 21084.2). It further states that the lead agency shall establish measures to avoid impacts that would alter the significant characteristics of a tribal cultural resource, when feasible (PRC Section 21084.3).

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

Passed in 2004, Senate Bill (SB) 18 requires cities and counties to consult with Native American tribes to help protect traditional tribal cultural places through the land use planning process. Unlike AB 52, SB 18 is not an amendment to, or otherwise associated with, CEQA. Instead, SB 18 requires cities and counties to consult with Native American tribes early during broad land

use planning efforts on both public and private lands, prior to site- and project-specific land use decisions. The bill applies to general plan adoption or amendments and to specific plan adoption or amendments.

A Native American tribe is defined as “a federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the Native American Heritage Commission” (Governor’s Office of Planning and Research 2005:6). Traditional tribal cultural places are defined in PRC §5097.9 and §5097.993 to include sanctified cemeteries, places of worship, religious or ceremonial sites, or sacred shrines, or any historic, cultural, or sacred site that is listed on or eligible for the California Register of Historic Resources including any historic or prehistoric ruins, burial grounds, or archaeological site (Governor’s Office of Planning and Research 2005:4)

Under SB 18, cities and counties must notify the appropriate Native American tribe(s) of intended adoption or amendments to general plans or specific plans, and offer the opportunity for the tribe(s) to consult regarding traditional tribal cultural places within the proposed plan area. Consultation is intended to encourage preservation and protection of traditional tribal cultural places by developing treatment and management plans that might include incorporating the cultural places into designated open spaces (Governor’s Office of Planning and Research 2005:15).

### **Codes Governing Human Remains**

CEQA Guidelines Section 15064.5 also assigns special importance to human remains and specifies procedures to be used when Native American remains are discovered. The disposition of human remains is governed by the California Health and Safety Code Section 7050.5 and the PRC Sections 5097.94 and 5097.98, and falls within the jurisdiction of the NAHC. If human remains are discovered, the County Coroner must be notified within 48 hours and there should be no further disturbance to the site where the remains were found. If the remains are determined by the coroner to be Native American, the coroner is responsible for contacting the NAHC within 24 hours. The NAHC, pursuant to Section 5097.98, will immediately notify those persons it believes to be most likely descended from the deceased Native Americans so they can inspect the burial site and make recommendations for treatment or disposal.

### **3.14.3 Impact Assessment and Methodology**

#### **3.14.3.1 Thresholds for Determining Significance**

The following thresholds of significance for Tribal Cultural resources are based on Appendix G of the 2017 CEQA Guidelines. For the purposes of the EIR, the proposed Project would have a significant adverse impact on a tribal cultural resource if:

- a) The project would 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

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scope of the 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 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.

CEQA provides recommendations for mitigating impacts to tribal cultural resources in Section 21080.4.3 of the PRC. According to these guidelines, public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource. If the lead agency determines that a project may cause a substantial adverse change to a tribal cultural resource, and measures are not otherwise identified in the consultation process provided in PRC Section 21080.3.2, the following examples of mitigation measures that, if feasible, may be considered to avoid or minimize the significant adverse impacts:

- 1) Avoidance and preservation of the resources in place, including, but not limited to:
  - a) Planning and construction to avoid the resource and protect the cultural and natural context; and
  - b) Planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.
- 2) Treating the resource with culturally appropriate dignity taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:
  - a) Protecting the cultural character and integrity of the resource;
  - b) Protecting the traditional use of the resource; and
  - c) Protecting the confidentiality of the resource.
- 3) Permanent conservation easements of other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.
- 4) Protecting the resource.

### 3.14.3.2 Native American Outreach and Tribal Cultural Resources

Pursuant to the requirements of Senate Bill (SB) 18, the City contacted the Native American Heritage Commission (NAHC) in Sacramento on October 7, 2015, to request a list of Native American individuals and organizations to be contacted to collect information and/or hear concerns regarding cultural resources issues related to the proposed Project. The NAHC responded to the City's request on October 14, 2015, and on October 19, 2015, the City submitted invitations for tribal consultation to the five tribes listed by NAHC.

Additionally, in compliance with Assembly Bill (AB) 52 (Public Resources Code [PRC] Section 21080.3.1), the City offered an opportunity to consult with the City on the potential effects of the proposed Project on tribal cultural resources to three tribes that had requested notification by the City on all CEQA projects (one of whom had also received an invitation to consult pursuant to SB 18): the Gabrieleño Band of Mission Indians-Kizh Nation, the Soboba Band of Luiseno Indians, and the Juaneño Band of Mission Indians Acjachemen Nation. This was done via letters sent on October 8, 2015 (see Appendix F). Under AB 52, the tribes had 30 days from receipt of the City's October 8, 2015 letter to request consultation.

Of the seven unique groups and/or individuals contacted under SB 18 and AB 52 (including one tribe that was included on both AB 52 and SB 18 notification lists), only one response was received. Mr. Andrew Salas of Gabrieleño Band of Mission Indians-Kizh Nation responded via email on October 25, 2015 (see Appendix F). Mr. Salas did not request consultation with the City, or identify any tribal cultural resources in the Project area, but did request that a tribal monitor from the Gabrieleño Band of Mission Indians-Kizh Nation be present during ground disturbing construction work.

In addition to Native American consultation, the City submitted a request for review of the NAHC's Sacred Lands Inventory File on November 12, 2015 (see Appendix F). NAHC responded to the City's request on December 8, 2015, and identified four recorded archaeological sites within the USGS Quadrangle in which the Project is located. Review of these sites was conducted and concluded that all known sites are located outside the Fountain Valley city limits and, thus, also outside of the Project area.

On January 6, 2017, the City mailed the Notice of Availability of the Draft EIR for the Project to the tribes. The only tribe to submit comments on the Draft EIR was, again, Mr. Salas of the Gabrieleño Band of Mission Indians-Kizh Nation on February 9, 2017. Mr. Salas again requested the presence of a tribal monitor during construction. Mr. Salas' February 9, 2017 comments did not request consultation with the City, or identify any tribal cultural resources in the Project area.

### 3.14.4 Project Impacts and Mitigation Measures

#### Impact TRC-1 Description

**TCR-1 Implementation of the proposed Project has the limited potential to result in the disturbance of tribal cultural resources; however, with implementation of**

**mitigation requiring the presence of a Native American Monitor, impacts to potentially undiscovered tribal cultural resources would be *less than significant with mitigation*.**

As described in Section 3.14.3.2, *Native American Outreach and Tribal Cultural Resources*, according to the results of the NAHC's Sacred Lands Inventory File request and outreach with Native American representatives, there have been no previously identified tribal cultural resources within the boundaries of the FVCSP area or in the immediate Project vicinity. Additionally, given the developed nature of the site and that development activities associated with the Project would occur in previously disturbed areas, it is unlikely that tribal cultural resources would be encountered within the Project area. Additionally, none of the Native American tribes contacted through the SB 18 and AB 52 processes described above identified any tribal cultural resources in the Project area. However, the Project vicinity was a favorable environment for Native American settlement. The Gabrieleño Band of Mission Indians-Kizh Nation noted in a response to the City's consultation process that the area is considered sensitive. Therefore, it is possible that the Project area contains buried tribal cultural resources, which could be preserved beneath the existing buildings and paved surfaces. Effects on tribal cultural resources are highly dependent on the individual project site conditions and the characteristics of future projects that may be proposed with the FVCSP. If such resources were discovered, any activity that would cause a substantial adverse change in the significance of a tribal cultural resource would be a significant impact. However, with the implementation of MM TCR-1a, -1b, and -1c, impacts to tribal cultural resources to *less than significant*.

#### ***Mitigation Measure***

***MM TCR-1a Pre-Construction Training:*** *For individual discretionary development projects, pre-construction training for construction personnel shall be conducted prior to commencement of any grading or other development activities. A qualified archaeologist, meeting the Secretary of the Interior's Professional Qualifications Standards for archaeology (2008) and approved by the City, shall conduct tribal cultural resources identification and protocol training prior to site disturbance activities. Construction personnel shall be informed of the types of archaeological or tribal cultural resources that may be encountered, and of the proper protocols for agency notification. Construction personnel shall attend the training and shall retain documentation demonstrating attendance.*

***MM TCR-1b Inadvertent Discovery:*** *In the event of any inadvertent discovery of archaeological or tribal cultural resources during construction, ground-disturbing activities shall be suspended until an evaluation is performed. The project applicant shall retain a qualified registered professional archaeologist (RPA) and a qualified Native American Monitor selected by the City. The City's selection of a Native American Monitor will be based on cultural affiliation with the project area, which may include consultation with the NAHC. In the event of discovery, construction personnel shall notify the City, the RPA, and Native American Monitor. The RPA and Native American Monitor shall evaluate the significance of the discovery pursuant to the Treatment Plan procedures outlined in MM TCR-1c, below. Work shall not resume until*

authorization is received from the City. If human remains are found, in compliance with California Health and Safety Code Section 7050.5, all ground disturbances must cease and the County Coroner must be contacted to determine the nature of the remains. In the event the remains are determined to be Native American in origin by the Coroner, the Coroner is required to contact the NAHC within 24 hours to relinquish jurisdiction.

**MM TCR-1c Archaeological Data Recovery:** *If cultural resources are encountered during development activities, the City shall implement a Cultural Resources Treatment Plan to address resource identification, significance evaluation, and any necessary mitigation. The Treatment Plan shall be prepared by a City-approved RPA and a City-approved Native American Monitor, and at a minimum shall include:*

- *A review of historic maps, photographs, and other pertinent documents to predict the locations of former buildings, structures, and other historical features and sensitive locations within and adjacent to the specific development area;*
- *A context for evaluating resources that may be encountered during construction;*
- *A research design outlining important prehistoric and historic-period themes and research questions relevant to the known or anticipated sites in the study area;*
- *Specific and well-defined criteria for evaluating the significance of discovered remains; and*
- *Data requirements and the appropriate field and laboratory methods and procedures to be used to treat the effects of the project on significant resources.*

*The City, in its discretion and supported by substantial evidence, may also determine that a resource is significant pursuant to criteria set forth in subdivision (c) of PRC Section 5024.1. If the RPA determines that the find may qualify for listing in the California Register, the site shall be avoided or the resource preserved in place, or if avoidance or preservation in place is not determined feasible, a data recovery plan shall be developed. The preferred mitigation shall be to avoid the resource or preserve in place. Any required testing or data recovery shall be directed by a qualified RPA and Native American Monitor prior to construction being resumed in the affected area. The Treatment Plan shall also include submission of a final technical report, funded by the developer and approved by the City.*

### **Residual Impact**

While the potential to encounter undiscovered tribal cultural resources within the Project area remains low, implementation of MM TCR-1a, -1b, and -1c would ensure that in the unlikely event Native American artifacts or human remains are encountered, construction would halt and an onsite Native American Monitor would be consulted, and a Treatment Plan would be developed with input from the Native American Monitor. The methodology used for resource analysis and documentation could vary depending on the findings for cultural significance; however, necessary mitigation to reduce impacts to a less than significant level should first evaluate the feasibility of resource avoidance (e.g., development redesign). Impacts associated with tribal cultural resources would subsequently be reduced to a *less than significant* level.

**3.14.4.1 Cumulative Impacts**

A cumulative impact to tribal cultural resources would result if the impacts associated with the proposed Project, when combined with other past, present, and future projects, would cumulatively increase the potential for tribal cultural resources to be altered or damaged. The potential to create adverse cumulative impacts to such resources depends on the nature of each project, including its specific site and surroundings.

As indicated in the results of the Sacred Lands Inventory File request, the Project vicinity has the potential for buried tribal cultural resources. Development of the proposed Project may result in excavation or grading that could potentially affect archaeological resources or human remains, which would contribute to a collective loss of these tribal cultural resources. However, with the implementation of MM TCR-1a, -1b, and -1c, the Project's contribution to cumulatively considerable impacts to tribal cultural resources would be mitigated. Further, compliance with existing regulations prescribed in California Health and Safety Code Section 7050.5, CEQA Section 15064.5, and Public Resources Code Section 5097.98, would effectively mitigate adverse impacts to human remains. Therefore, the proposed Project would not have a substantial contribution to cumulatively significant impacts to tribal cultural resources.