

3.19 Tribal Cultural Resources

3.19.1 Introduction

The Tribal Cultural Resources (TCR) section describes the environmental setting and regulatory setting for TCRs in the vicinity of the proposed Project. It also describes the impacts on TCRs that would result from construction and operation of the proposed Project and mitigation measures that would avoid or reduce significant impacts, where feasible. Pursuant to the requirements of AB 52, this section also summarizes consultation efforts conducted with the Native American tribes, organizations, and individuals listed with the NAHC's as having traditional and cultural affiliations with the proposed Project's geographic area.

3.19.2 Regulatory Setting

This section summarizes state regulations related to TCRs and applicable to the proposed Project.

3.19.2.1 State

Tribal Cultural Resources (PRC Section 21074)

As defined at PRC Section 21074, a TCR is a site, feature, place, cultural landscape, sacred place or object that is of cultural value to a California Native American tribe and is either: (1) in or eligible for the CRHR or a local historic register; or (2) the lead agency, at its discretion, chooses to treat the resource as a TCR. TCRs are similar to traditional cultural properties in terms of their characteristics, identification, and treatment, and may include a cultural landscape to the extent that the landscape is geographically defined in terms of the size and scope of the landscape. Additionally, as defined at PRC Section 21074, a historical resource, a unique archaeological resource, or a non-unique archaeological resource may also be a TCR if it conforms to the criteria of a TCR in PRC Section 21074(a). CEQA mandates that lead agencies determine whether a project will have a significant impact on TCRs that are eligible for listing in the CRHR (i.e., a historical resource), or are determined to be significant by the lead agency in order to appropriately mitigate any such impacts.

Consultation with California Native American tribes is an integral component of each of the cultural resources investigation steps described above.

Assembly Bill 52 and Consultation

The lead agency for CEQA, in this case CCJPA, is responsible for consultation with Native American tribes regarding the potential for a project to impact TCRs, pursuant to AB 52 and PRC Sections 21073, 21074, 21080.3.1, 21080.3.2, 21082.3, 21083.09, 21084.2, 21084.3, and 5097.94(m). AB 52 recognizes that "... tribes may have expertise with regard to their tribal history and practices, which concern the tribal cultural resources with which they are traditionally and culturally affiliated ..." and that consultation will occur between a lead agency and Native American tribes for covered projects.

As described in Section 3.6, Cultural Resources, a proposed project may induce a significant impact to a historical resource, unique archaeological resource, or a TCR if it causes a substantial adverse

change (i.e., physical demolition, destruction, relocation, or alteration) to the resource or immediate surroundings (14 CCR Section 15064.5[b]), thereby demolishing or significantly altering the physical characteristics that qualify it for listing on the CRHR or local registers (PRC Sections 5020.01[k] and 5024.1[g]). A project that may cause a substantial adverse change in the significance of a TCR is a project that may have a significant effect on the environment (PRC Section 21084.2). A lead agency will establish measures to avoid impacts that would alter significant characteristics of a TCR, when feasible (PRC Section 21084.3).

Health and Safety Code 7050.5: Human Remains

Section 7050.5 of the California Health and Safety Code 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 or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains until the coroner of the county in which the remains are discovered has determined whether the remains are subject to the coroner's authority. If the human remains are of Native American origin, the coroner must notify the NAHC within 24 hours of this identification.

Public Resources Code 5097.98: Notification of Most Likely Descendant

PRC Section 5097.98 states that the NAHC, upon notification of the discovery of Native American human remains pursuant to Health and Safety Code Section 7050.5, shall immediately notify the MLD of the deceased. With permission of the landowner or a designated representative, the MLD may inspect the remains and any associated cultural materials and make recommendations for treatment or disposition of the remains and associated grave goods. The MLD shall provide recommendations or preferences for treatment of the remains and associated cultural materials within 48 hours of being granted access to the site.

California Native American Graves Protection and Repatriation Act (California Health and Safety Code Section 8010 et seq.)

The California Native American Graves Protection and Repatriation Act establishes a state repatriation policy consistent with, and facilitates implementation of, the federal Native American Graves Protection and Repatriation Act. The act strives to ensure that all California Native American human remains and cultural items are treated with dignity and respect, and asserts intent for the state to provide mechanisms for aiding California Native American tribes, including non-federally recognized tribes, in repatriating remains and cultural items.

Native American Historical, Cultural, and Sacred Sites

Pursuant to PRC Section 5097.94 the NAHC has authority and duty to "identify and catalog places of special religious or social significance to Native Americans and known graves and cemeteries of Native Americans on private lands" and has the power and duty to make recommendations for acquisition by the state or other public agencies regarding Native American sacred places that are located on private lands, are inaccessible to Native Americans, and have cultural significance to Native Americans.

3.19.3 Methods for Evaluating Environmental Impacts

3.19.3.1 Resource Study Area

As defined in Section 3.1, Introduction, RSAs are the geographic boundaries within which the environmental investigations specific to each resource topic were conducted. The RSA includes TCRs identified through cultural resources identification efforts combined with consultation with California Native American tribes.

3.19.3.2 Data Sources

Native American Heritage Commission

The NAHC is a state agency that maintains the Sacred Lands File, an official list of sites that are of cultural and religious importance to California Native American tribes.

ICF requested a review of the NAHC Sacred Lands File on July 15, 2020, for any Native American cultural resources within the 2019 proposed station areas. ICF received a response on July 16, 2020, from Sarah Fonseca, Cultural Resources Analyst at the NAHC, stating that, "The results of any Sacred Lands File (SLF) check conducted through the NAHC was positive. Please contact the North Valley Yokuts and the Ohlone Indian Tribes on the attached list for more information." A list of nine tribal contacts and their information was also provided with the NAHC's response.

On September 20, 2021, ICF requested a subsequent and expanded search and contact list from the NAHC that encompassed the entire project footprint. ICF received a response on October 25, 2021, from Kathy Sanchez, Associate Environmental Planner at the NAHC, stating that, "The results of any Sacred Lands File (SLF) check conducted through the NAHC was positive. Please contact the Ohlone Indian Tribe and the Northern Valley Yokuts Tribe on the attached list for more information." A list of 12 tribal contacts and their information was also provided with the NAHC's response.

Consultation Outreach per Public Resources Code Section 21080.3.1

ICF conducted initial information scoping and outreach for the proposed station areas. CCJPA conducted tribal outreach pursuant to the requirements of consultation for the proposed Project footprint pursuant to PRC Section 21080.3.1(i.e., AB 52) and PRC Section 21084.3.

Station Area Information Scoping and Outreach

On July 24, 2020, letters were sent to each of the nine contacts on the list provided by the NAHC notifying them of the proposed Project, per PRC Section 21080.3.1(i.e., AB 52).

On August 10 and 12, responses were received from representatives of the North Valley Yokuts Tribe and The Confederated Villages of Lisjan, formally requesting tribal consultation with regard to alternatives, mitigation measures, and significant impacts of the proposed Project. They further recommended that the proposed Project be monitored by both a Native American monitor and a qualifying archaeological firm. They also recommended:

1. Tribal cultural resources be preserved through avoidance;
2. Tribal cultural resources be treated with culturally appropriate dignity;

3. Permanent conservation easements be established; and
4. Tribal cultural resources be protected.

Also requested were archaeological maps of the known cultural resources within the proposed Project area, the results of any record searches, the results of any archaeological inventory surveys, the results of any Sacred Lands File searches, any ethnographic studies conducted in the proposed Project area, and any geotechnical reports.

2022 CCJPA Tribal Consultation

On February 10, 2022, letters were sent to each of the 12 contacts on the list provided by the NAHC informing them of updates to the Project and formally inviting them to consultation pursuant to PRC § 21080.3.1 (i.e., AB 52). In addition to the formal invitation for consultation, the positive results of the NAHC SLF search were included in the letters to the Ohlone Indian Tribe and the Northern Valley Yokuts Tribe.

On February 15, 2022, the North Valley Yokuts Tribe responded. The tribe indicated that the area that would be affected by the proposed Project is considered sensitive and recommended that the proposed Project be monitored by both a qualified archaeologist and Native American monitor. No additional information was requested.

On March 8, 2022, the Confederated Villages of Lisjan responded that the tribe would like to consult for the proposed Project. On August 18, 2022, CCJPA met virtually with their representative. and provided a presentation on the Project, which included 1) project location, purpose, and need; 2) record search and survey results; and 3) current project alternatives under consideration.

Following the presentation, an open discussion was held in which the tribe expressed concern and interest in hearing more about where and how much track replacement will be occurring as the railroads have had a history of disturbing native sites. CCJPA responded that the team anticipated having that information available to share in the fall of 2023.

2023 CCJPA Tribal Consultation

On December 1, 2023, letters were sent to each of the 12 contacts on the list provided by the NAHC informing them of a change to the proposed Project and formally inviting them to consultation pursuant to PRC § 21080.3.1 (i.e., AB 52).

On December 7, 2023, the Ohlone Indian Tribe responded via email that there are numerous locations along the Project corridor that they would like to discuss and requested a meeting with the lead agency regarding the Project. On January 11, 2024, CCJPA met virtually with the Ohlone Tribe. An overview of the Project and the proposed Project was provided and recorded site information was discussed in detail. The tribe's representative emphasized the Project area is situated in his family's traditional lands. He discussed nearby finds discovered in past housing development projects and other locations along the Project alignment, which he considered highly sensitive. He felt the identification efforts were sufficient and asked to be kept apprised of future developments.

On January 8, 2024, the Confederated Villages of Lisjan responded via email requesting to schedule a consultation meeting. On February 28, 2024, a virtual meeting was held with Corrina Gould of the Confederated Villages of Lisjan to update her on the changes in the proposed Project.

Consultation is ongoing.

3.19.3.3 CEQA Thresholds

To satisfy CEQA requirements, Tribal Cultural Resources impacts were analyzed in accordance with Appendix G of the CEQA Guidelines. According to the CEQA Guidelines, CCR, Title 14, Section 15002(g), “a significant effect on the environment is defined as a substantial adverse change in the physical conditions which exist in the area affected by the proposed project.” As stated in CEQA Guidelines Section 15064(b)(1), the significance of an activity may vary with the setting. The impact analysis identifies and analyzes construction (short-term) and operation (long-term) impacts, as well as direct and indirect impacts (see PRC Section 21065). The proposed Project would have significant Tribal Cultural Resources impacts under CEQA if it would:

- a. Cause a substantial adverse change in the significance of a TCR, defined in PRC Section 21074 that is (a) listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in PRC Section 5020.1(k); or
- b. Cause a substantial adverse change in the significance of a TCR, defined in PRC Section 21074 that is (b) 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 PRC Section 5024.1. In applying the criteria set forth in subdivision c) of PRC Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.

3.19.4 Affected Environment

3.19.4.1 Environmental Setting

The environmental setting for TCR is consistent with that described in Section 3.6, Cultural Resources, and is further detailed in the precontact, ethnohistoric, and historic cultural chronology Appendix D. The cultural resources records searches results identified three previously recorded precontact period archaeological resources within the RSA, of which surface evidence of three sites were located. These resources are assumed eligible for the CRHR for the purposes of the proposed Project. The NAHC SLF check was positive and consultation with tribes was conducted to help identify any resources of concern. No TCRs were identified through consultation with Tribes.

3.19.5 Best Management Practices

No TCRs were identified for the proposed Project; therefore, no BMPs for TCRs are included for the proposed Project.

3.19.6 Environmental Impacts

TCRs are defined as resources that are eligible for or listed in the CRHR, or resources that the lead agency determines to be a TCR with a substantial burden of evidence. No TCRs have been identified within the RSA of the proposed Project.

No Project Alternative

The No Project Alternative would not impact any tribal cultural resources because no TCRs have been identified through consultation.

Proposed Project

Construction

Since no TCRs were identified through consultation, impacts on TCRs would only be associated with new and unanticipated discovery of an eligible archaeological resource during construction of the proposed Project. Therefore, there is potential for inadvertent discovery of TCRs, including human remains, previously unknown as a result of the historic and ongoing tribal use of the Project Study area, as well as indirect impacts through increased access to the area. Impacts would be potentially significant (Impact TCR-1) during construction.

Operation

Once in operation, the proposed Project would not involve additional ground-disturbing activities that could impact potential TCRs. Therefore, impacts during operation would be less than significant.

3.19.7 Mitigation Measures

The potential for discovery of tribal cultural resources, including human remains, during construction of the proposed Project would be mitigated to less than significant with incorporation of mitigation measures MM-CUL-1 through MM-CUL-5, as discussed in Section 3.6.

3.19.8 Cumulative Impact Analysis

As described above, no TCRs have been identified during consultation with tribes. Therefore, no known TCRs would be impacted by the proposed Project. As such, it is determined that the proposed Project would not contribute to a significant cumulative impact to TCRs and cumulative impacts would not be cumulatively considerable.

3.19.9 CEQA Significance Findings Summary

Table 3.19-1 summarizes the tribal cultural resources impacts of the proposed Project.

Table 3.19-1. Tribal Cultural Resources Impacts Summary

Impact	Level of Significance Before Mitigation	Incremental Project Contribution to Cumulative Impacts	Mitigation	Level of Significance with Mitigation Incorporated	Incremental Project Cumulative Impact after Mitigation
<p>Would the Project cause a substantial adverse change in the significance of a TCR, defined in PRC Section 21074 that is (a) listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in PRC Section 5020.1(k).</p>	SI	NCC	MM-CUL-1 MM-CUL-2 MM-CUL-3 MM-CUL-4 MM-CUL-5	S/M	NCC
<p>Would the Project cause a substantial adverse change in the significance of a TCR, defined in PRC Section 21074 that is (b) 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 PRC Section 5024.1. In applying the criteria set forth in subdivision c) of PRC Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.</p>	SI	NCC	MM-CUL-1 MM-CUL-2 MM-CUL-3 MM-CUL-4 MM-CUL-5	S/M	NCC

Notes: SI = Significant Impact, S/M = Significant Impact but Mitigable to a Less than Significant Level, NCC = Not Cumulatively Considerable.