
4.3 Tribal Cultural Resources

4.3.1 Introduction

This section addresses the proposed project impacts on tribal cultural resources. The existing tribal cultural resources in the project area are described below, along with the methodology and the regulatory framework that guided the evaluation of tribal cultural resources. Impacts to tribal cultural resources that would result from the proposed project are identified, along with any measures to mitigate significant effects of the proposed project if needed.

4.3.2 Methodology

A Sacred Lands File (SLF) records search for the project site was requested from the California Native American Heritage Commission (NAHC) to determine whether any Native American cultural resources in the NAHC database were located within the project site or within a half-mile radius. An SLF records search is one tool a lead agency can use to determine whether tribal cultural resources may exist within the vicinity of a project. The results of the SLF records search are discussed in Section 4.3.3.2.2 below.

As discussed in Section 4.3.3.1.1 below, Assembly Bill 52 (AB 52) establishes a consultation process between California Native American tribal governments and lead agencies applicable to any project for which a Notice of Preparation, Notice of Intent to Adopt a Mitigated Negative Declaration, or Notice of Intent to Adopt a Negative Declaration is filed on or after July 1, 2015. In accordance with AB 52, when LAWA initiated preparation of the Notice of Preparation for the proposed project, LAWA had not received a written request from any tribe indicating its wish to be notified of projects within its traditionally and culturally affiliated areas, as required by Public Resources Code Section 21080.3.1(b). Nevertheless, in a letter dated November 24, 2015, NAHC recommended that, as an AB 52 best practice, agencies should initiate consultation with the tribes that are culturally and traditionally affiliated with their jurisdictions.^{116,117} LAWA initiated the proposed project prior to the July 1, 2016 date by which NAHC was required to provide each tribe with a list of all public agencies that may be lead agencies under CEQA within the geographic area with which the tribe is traditionally and culturally affiliated. In light of the timing of project initiation, LAWA initiated consultation with tribes identified by NAHC in accordance with NAHC-suggested “best practice” procedures. The results of the consultation process, which is intended to fulfill “best practices” as recommended by NAHC, is discussed in Section 4.3.3.2.3 below.

4.3.3 Existing Conditions

4.3.3.1 Regulatory Context

4.3.3.1.1 Assembly Bill 52

AB 52, approved by Governor Brown on September 25, 2014, establishes a new category of resources in CEQA called “tribal cultural resources” that considers tribal cultural values in addition to scientific and archaeological values when determining impacts and mitigation. Further, AB 52 establishes a consultation process between California Native American tribal governments and lead agencies applicable to any project for which a Notice of Preparation, Notice of Intent to Adopt a Mitigated Negative Declaration, or Notice of Intent to Adopt a Negative Declaration is filed on or after July 1, 2015.

¹¹⁶ Wood, Rob, Associate Environmental Planner, State of California Native American Heritage Commission, Letter to Angelica Espiritu, City of Los Angeles, Los Angeles World Airports, *RE: Los Angeles International Airport (LAX) Terminal 1.5 Project, City and County of Los Angeles*, November 24, 2015.

¹¹⁷ Although the subject of the November 24, 2015 letter from NAHC was the LAX Terminal 1.5 Project, in a subsequent electronic mail message received from NAHC on January 14, 2016, NAHC indicated that their November 24, 2015 correspondence could be used for other LAX projects. See Wood, Rob, Associated Environmental Planner, State of California Native American Heritage Commission, Electronic Mail Message to Robin Ijams, CDM Smith, *Subject: RE: AB 52 Local Government Tribal Consultation List Request for LAX Projects*, January 14, 2016.

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Section 1 of AB 52 states the legislature's intent as follows:

"In recognition of California Native American tribal sovereignty and the unique relationship of California local governments and public agencies with California Native American tribal governments, and respecting the interests and roles of project proponents, it is the intent of the Legislature, in enacting this act, to accomplish all of the following:

- (1) Recognize that California Native American prehistoric, historic, archaeological, cultural, and sacred places are essential elements in tribal cultural traditions, heritages, and identities.
- (2) Establish a new category of resources in the California Environmental Quality Act called "tribal cultural resources" that considers the tribal cultural values in addition to the scientific and archaeological values when determining impacts and mitigation.
- (3) Establish examples of mitigation measures for tribal cultural resources that uphold the existing mitigation preference for historical and archaeological resources of preservation in place, if feasible.
- (4) Recognize that California Native American 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. Because the California Environmental Quality Act calls for a sufficient degree of analysis, tribal knowledge about the land and tribal cultural resources at issue should be included in environmental assessments for projects that may have a significant impact on those resources.
- (5) In recognition of their governmental status, establish a meaningful consultation process between California Native American tribal governments and lead agencies, respecting the interests and roles of all California Native American tribes and project proponents, and the level of required confidentiality concerning tribal cultural resources, at the earliest possible point in the California Environmental Quality Act environmental review process, so that tribal cultural resources can be identified, and culturally appropriate mitigation and mitigation monitoring programs can be considered by the decisionmaking body of the lead agency.
- (6) Recognize the unique history of California Native American tribes and uphold existing rights of all California Native American tribes to participate in, and contribute their knowledge to, the environmental review process pursuant to the California Environmental Quality Act (Division 13 (commencing with § 21000) of the Public Resources Code).
- (7) Ensure that local and tribal governments, public agencies, and project proponents have information available, early in the California Environmental Quality Act environmental review process, for purposes of identifying and addressing potential adverse impacts to tribal cultural resources and to reduce the potential for delay and conflicts in the environmental review process.
- (8) Enable California Native American tribes to manage and accept conveyances of, and act as caretakers of, tribal cultural resources.
- (9) Establish that a substantial adverse change to a tribal cultural resource has a significant effect on the environment."¹¹⁸

Tribal cultural resources, as defined in Public Resources Code Section 21074, are a site, feature, place, or 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 either:

- Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code Section 5020.1(k), or
- A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in Public Resources Code Section 5024.1(c). In applying the

¹¹⁸ State of California, Governor's Office of Planning and Research, *Discussion Draft Technical Advisory: AB 52 and Tribal Cultural Resources in CEQA*, May 2015. Available: https://www.opr.ca.gov/docs/DRAFT_AB_52_Technical_Advisory.pdf.

criteria set forth in Public Resource Code Section 5024.1(c) for the purposes of this paragraph, the lead agency shall consider the significance of the resource to a California Native American tribe.

The specific steps and timelines governing the notice and consultation process under AB 52 are as follows:

- “1) The Native American Heritage Commission will provide each tribe with a list of all public agencies that may be lead agencies under CEQA within the geographic area with which the tribe is traditionally and culturally affiliated, the contact information of those public agencies, and information on how the Tribe may request consultation. This list must be provided on or before July 1, 2016 (Public Resources Code Section 5097.94(m)).
- 2) If a tribe wishes to be notified of projects within its traditionally and culturally affiliated area, the tribe must submit a written request to the relevant lead agency (Public Resources Code Section 21080.3.1(b)).
- 3) Within 14 days of determining that a project application is complete, or to undertake a project, the lead agency must provide formal notification, in writing, to the tribes that have requested notification of proposed projects as described in step 2, above. That notice must include a description of the project, its location, and must state that the tribe has 30 days to request consultation.
- 4) If it wishes to engage in consultation on the project, the tribe must respond to the lead agency within 30 days of receipt of the formal notification described in step 3, above. The tribe’s response must designate a lead contact person. If the tribe does not designate a lead contact person, or designates multiple people, the lead agency shall defer to the individual listed on the contact list maintained by the Native American Heritage Commission.
- 5) The lead agency must begin the consultation process with the tribes that have requested consultation within 30 days of receiving the request for consultation.
- 6) Consultation concludes when either: 1) the parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource, or 2) a party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached (Public Resources Code Section 21080.3.2(b)(1) and (2)). Note that consultation can also be ongoing throughout the CEQA process.”¹¹⁹

4.3.3.2 Baseline Conditions

4.3.3.2.1 Previously Recorded Archaeological Resources

The LAX Master Plan Final EIR identified 36 previously recorded archaeological sites within a radius of approximately two miles of LAX, including eight sites located on LAX property.¹²⁰ None of the eight sites identified on LAX property are located within the boundaries of the project site or in the immediate vicinity.

Results of the records search conducted for the 2017 LAX Landside Access Modernization Program from the South Central Coastal Information Center (SCCIC) indicated that no archaeological resources have been recorded at or within a half-mile radius of the proposed SAAP project site.¹²¹ The project site is a highly disturbed area that has long been, and is currently being, used for airport uses. Any resources that may have existed on the site at one time are likely to have been displaced and, as a result, the overall sensitivity of the site with respect to buried resources is low.

¹¹⁹ State of California, Governor’s Office of Planning and Research, *Discussion Draft Technical Advisory: AB 52 and Tribal Cultural Resources in CEQA*, May 2015. Available: https://www.opr.ca.gov/docs/DRAFT_AB_52_Technical_Advisory.pdf.

¹²⁰ City of Los Angeles, *Final Environmental Impact Report for Los Angeles International Airport (LAX) Proposed Master Plan Improvements*, (SCH 1997061047), Section 4.9.1 – Historic/Architectural and Archaeological/Cultural Resources, April 2004.

¹²¹ The study area for the archaeological and paleontological resources assessment for the LAX Landside Access Modernization Program included areas within the western portion of LAX, some of which are in close proximity to the project site; refer to City of Los Angeles, *Los Angeles World Airports, Draft Environmental Impact Report for the Los Angeles International Airport (LAX) Landside Access Modernization Program*, (SCH 2015021014), Appendix I, *Archaeological and Paleontological Resources Assessment Report*, prepared by PCR Services Corporation, September 2016. Available: http://connectinglax.com/files/LAMP_DEIR_Appendix%20I.pdf.

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4.3.3.2.2 Sacred Lands File Search

As noted in Section 4.3.2, an SLF records search for the project site was requested from the NAHC. On February 17, 2017, the NAHC indicated that the SLF records search was completed with negative results. The NAHC results also noted, however, that the absence of resource information in the SLF inventory does not preclude the discovery of cultural resources within any project area.¹²²

4.3.3.2.3 AB 52 Tribal Consultation

As discussed in Section 4.3.2 above, when LAWA initiated preparation of the Notice of Preparation for the proposed project, LAWA had not received a written request from any tribe indicating its wish to be notified of projects within its traditionally and culturally affiliated areas, as required by Public Resources Code Section 21080.3.1(b). Nevertheless, consistent with NAHC-suggested “best practice” procedures, letters were sent via certified mail on May 27, 2016 to the six Native American individuals and organizations identified by the NAHC in November 2015 as being affiliated with the vicinity of the project area to request information or concerns they may have about Native American cultural resources that may be affected by the proposed project.^{123,124,125} Each Native American group and/or individual listed was sent a project notification letter and map and was asked to convey any knowledge regarding prehistoric or Native American resources (archaeological sites, sacred lands, or artifacts) located within the project area or surrounding vicinity. The letter included information such as project location, a brief description of the proposed project, and results of a previous cultural resources assessment conducted at LAX. A response was received on May 28, 2016 from one Native American tribe. That response did not identify any known tribal cultural resources that may be affected by the proposed project but did state that there is a possibility that unknown, yet significant, cultural resources could be encountered during ground disturbance activities. Per the mutual agreement of LAWA and the tribe in a telephone conversation and via electronic mail, formal consultation, which was initiated to fulfill the intent of Public Resources Code Section 21080.3.1(b), concluded on May 30, 2017.

4.3.4 Thresholds of Significance

A significant impact on tribal cultural resources would occur if the proposed project would:

- Cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code Section 21074 as a site, feature, place, or 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

¹²² Totton, Gayle, Associate Governmental Program Analyst, State of California Native American Heritage Commission, Letter to Robin Ijams, CDM Smith, *RE: Proposed LAX Secured Area Access Post Project, City of Los Angeles; Los Angeles County, California*, February 17, 2017.

¹²³ Public Resources Code Section 21080.3.1(c) states “To expedite the requirements of this section, the Native American Heritage Commission shall assist the lead agency in identifying the California Native American tribes that are traditionally and culturally affiliated with the project area.”

¹²⁴ Per the notification steps specified in AB 52, the NAHC is required to provide each tribe with a list of all public agencies that may be lead agencies under CEQA within the geographic area with which the tribe is traditionally and culturally affiliated, the contact information of those public agencies, and information on how the Tribe may request consultation. This list must be provided on or before July 1, 2016 (Public Resources Code Section 5097.94(m)). If a tribe wishes to be notified of projects within its traditionally and culturally affiliated area, the tribe must submit a written request to the relevant lead agency (Public Resources Code Section 21080.3.1(b)). Although not required by AB 52, in accordance with “best practice” suggested by NAHC to ensure that tribes are consulted, on May 27, 2016, LAWA sent letters of “Formal Notification of Determination of a Decision to Undertake a Project and Notification of Consultation Opportunity” for the proposed project to the Gabrielino/Tongva tribes and the Soboba Band of Mission Indians.

¹²⁵ Per an electronic mail message received from NAHC on January 14, 2016, the Native American consultation list received from NAHC for the LAX Terminal 1.5 Project on November 24, 2015, was approved for use for the proposed project.

- 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 Resources Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.

This threshold is derived from Public Resources Code Section 21074, Section 5020.1(k), and Section 5024.1.

4.3.5 Impacts Analysis

As noted in Section 4.3.3.2.3, there are no known tribal cultural resources, as defined in Public Resources Code Section 21074, on the project site or the proposed construction staging area, or in their immediate vicinity. The project site and the proposed construction staging area are highly disturbed. In accordance with “best practice” suggested by NAHC to ensure that tribes are consulted commensurate with the intent of AB 52, LAWA sent letters of “Formal Notification of Determination of a Decision to Undertake a Project and Notification of Consultation Opportunity” to California Native American tribes with a traditional or cultural affiliation with the geographic area of the proposed project, as identified by the NAHC. Although LAWA received one response to LAWA’s initial request for consultation, no Native American tribes have identified any known tribal cultural resources that may be affected by the proposed project. As noted under Section 4.3.3.2.3 above, the one response received from a Native American tribe did not identify any known tribal cultural resources that may be affected by the proposed project. Per the mutual agreement of LAWA and the tribe in a telephone conversation and via electronic mail, formal consultation, which was initiated to fulfill the intent of Public Resources Code Section 21080.3.1(b), concluded. Based on the previously-described baseline conditions and consultation, the proposed project would not cause a substantial adverse change in the significance of a tribal cultural resource as defined in Public Resources Code Section 21074 as a site, feature, place, or cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American Tribe, and that is:

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

As described above, the project site and construction staging area are within a highly urbanized area that has been subject to disturbance by airport operations and development, placement of artificial fill, grading, and other on-going construction activities. There are no known tribal cultural resources at the project site and construction staging area or in the vicinity, and no Native American tribes have identified any known tribal cultural resources that may be affected by the proposed project. Therefore, the discovery of tribal cultural resources within the project site is unlikely. While discovery of tribal cultural resources in artificial fill deposits within the project area is unlikely, proposed excavations that would occur below the fill levels could impact previously unknown tribal cultural resources. Thus, impacts on tribal cultural resources would be significant.

4.3.6 Cumulative Impacts

The cumulative impacts analysis evaluates the impacts of the project on tribal cultural resources in conjunction with past, present, and reasonably foreseeable probable future projects at LAX, as listed in Table 3-1. The implementation of the project when combined with these other projects could result in cumulative impacts to tribal cultural resources if the combined impacts would exceed the identified threshold of significance.

There are no known tribal cultural resources on, or adjacent to, the proposed project site. The project area is located within a highly urbanized area and has been subject to disturbance by airport operations and development, and other on-going construction activities. As discussed in Section 4.3.5, the discovery of tribal cultural resources within the project site is unlikely. However, proposed excavations that would occur below the fill levels could impact previously unknown tribal cultural resources. Therefore, impacts of the proposed project on tribal cultural resources would be significant.

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Table 3-1 identifies other projects and improvements at LAX. None of the cumulative projects would result in a direct physical impact to any known tribal cultural resources. The same potential for encountering previously undiscovered tribal cultural resources that is associated with the proposed project exists for other cumulative projects at LAX that would include construction excavations. The project area is located within a highly urbanized area and has been subject to disturbance by airport operations and development, and other on-going construction activities. Thus, surficial Tribal cultural resources that may have existed at one time have likely been displaced by these disturbances. However, proposed excavations that would occur below the fill levels could impact previously unknown tribal cultural resources. These potential impacts would be cumulatively significant when viewed in combination. The proposed project's contribution to significant cumulative impacts to tribal cultural resources, without mitigation, would be cumulatively considerable.

4.3.7 Mitigation Measures

As indicated in Section 4.3.5, impacts to tribal cultural resources would be significant. Standard Control Measures (Mitigation Measures) LAX-AR-1, Conformance with LAWA's Archaeological Treatment Plan (ATP), and LAX-AR-2, Archaeological Resources Construction Personnel Briefing, are proposed as mitigation measures to reduce significant impacts to archaeological resources and would also reduce the potential significant impacts on tribal cultural resources.¹²⁶ Standard Control Measures (Mitigation Measures) LAX-AR-1 and LAX-AR-2 require conformance with LAWA's ATP, which contains detailed monitoring procedures and other protocols regarding the treatment of previously unidentified archaeological resources or Native American remains that may be encountered during construction, and briefing by a qualified archaeologist to construction personnel in the identification of archaeological resources and in the correct procedures for notifying the relevant individuals should such a discovery occur. Section 5.2 of LAWA's ATP includes protocols for Native American monitoring in the event of the discovery during construction of an archaeological resource or discovery of Native American remains.

4.3.8 Level of Significance After Mitigation

With implementation of Standard Control Measures (Mitigation Measures) LAX-AR-1 and LAX-AR-2, potentially significant impacts to tribal cultural resources would be reduced to a level that is less than significant and the contribution of the proposed project to potentially significant cumulative impacts on tribal cultural resources would not be cumulatively considerable.

¹²⁶ City of Los Angeles, Los Angeles World Airports, *Final LAX Master Plan Mitigation Monitoring & Reporting Program: Archaeological Treatment Plan*, prepared by Brian F. Smith and Associates. June 2005.