

3.18 TRIBAL CULTURAL RESOURCES

This section of the Program Environmental Impact Report (PEIR) describes the tribal cultural resources in the SCAG region, identifies the regulatory framework with respect to laws and regulations that govern tribal cultural resources, and evaluates and discusses the potential impacts of the Connect SoCal Plan (“Connect SoCal”; “Plan”). In addition, this PEIR provides regional-scale mitigation measures as well as project-level mitigation measures to be considered by lead agencies for subsequent, site-specific environmental review to reduce identified impacts as appropriate and feasible.

3.18.1 ENVIRONMENTAL SETTING

3.18.1.1 Definitions

California Historical Resources Information System (CHRIS): The California Historical Resources Information System (CHRIS) consists of the California Office of Historic Preservation (OHP), nine Information Centers (ICs), and the State Historical Resources Commission (SHRC). The OHP administers and coordinates the CHRIS and presents proposed CHRIS policies to the SHRC, which approves these policies in public meetings. The CHRIS Inventory includes the State Historic Resources Inventory maintained by the OHP as defined in California Public Resources Code [PRC] § 5020.1(p), and the larger number of resource records and research reports managed under contract by the nine ICs.

Tribal Cultural Resources: Pursuant to Assembly Bill (AB) 52, a site feature, place, cultural landscape, sacred place or object, which is of cultural value to a Tribe and is either on or eligible for the California Historic Register or a local historic register, or such a resource that the lead agency, at its discretion, chooses to treat the resource as a Tribal Cultural Resources (see PRCPRC §§ 21074 (a)(1)(A)-(B)). A tribal cultural resource may also include a unique archaeological resource (see PRC § 21083.2(g)) or a “nonunique archaeological resource” (see PRC § 21083.2(h), subject to the provisions of PRC § 21074 (a)) may also be a tribal cultural resource if it conforms with the criteria of subdivision (a).

Unique archeological resource: Pursuant to Section 21083.2 of the PRC, a unique archaeological resource includes artifacts or sites that meet any one or all of the following criteria:¹

- It has made a significant contribution to the broad patterns of local or regional history or the cultural heritage of California or the United States;
- It is associated with the lives of persons important to California’s past;

¹ California Legislative Information. 1972. *Chapter 2.6. General [21080-21098], Section 21083.2.*

- It 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; and/or
- It has yielded, or may be likely to yield, information important to the prehistory or history of California.

Unique geologic feature: An important and irreplaceable geological formation. Such features may have scientific and/or cultural values.

3.18.1.2 Existing Conditions

Detailed information regarding the prehistoric occupation is presented in **Section 3.5, Cultural Resources**, of this PEIR. As noted in **Section 3.5**, the SCAG region once was the home to at least 11 distinct Native American groups. These include the Cahuilla, Chumash, Gabrielino, Halchidhoma, Kitanemuk, Luiseno, Mohave, Quechan, Serrano, Southern Paiute, Tataviam, and Tipai. The territorial boundaries of the Native Americans who were residing in Southern California at the time of first European contact do not coincide with today's political boundaries. Moreover, many tribal boundaries overlapped and most groups migrated within their general boundaries throughout the years.

The federal government established reservations in Southern California between 1875 and 1891. This includes the Martinez, Fort Yuma, and Colorado River reservations in Imperial County. In Riverside County are Torres, Cabazon, Augustine, Santa Rosa, Ramona, Pechanga, Soboba, Agua Caliente, Mission Creek, and Morongo. The reservations in San Bernardino County are the San Manuel, Chemehuevi, Fort Mojave, Twentynine Palms reservations. No reservations were established in Los Angeles, Ventura, or Orange Counties. It was believed that the local Native American groups in those counties had become extinct.²

As of July 2019, over 109,000 archaeological resource locations have been identified in the SCAG region (**Table 3.18-1, Archeological Resources Listed in the CHRIS**). In order to protect these archaeological sites, and the artifacts contained within their boundaries, from scavenging and looting, their locations are confidential. Under state law, detailed information about these sites, especially their location, is considered confidential.

² Environmental Protection Agency, Region 9 – Air. 2011. *California Tribal Lands*. Available online at: https://www3.epa.gov/region9/air/maps/pdfs/air1100040_3.pdf, accessed August 27, 2019.

Table 3.18-1
Archeological Resources Listed in the CHRIS

County	Archeological Resources	Archeological Resources Listed in CHRIS
Imperial*	12,398	16,500 (approx.)
Los Angeles	4,886	18,599
Orange	1,775	5,498
Riverside**	20,200 (approx.)	28,612
San Bernardino	8,236	36,924
Ventura	1,864	3,226
SCAG Region Total	49,359	109,359

Source:

SWCA Environmental Consultants, Inc. (2019).

* The SCIC database is currently being revised and the count of total resources is an approximation based on current listings. The number of resources with archaeological components is taken from the 2016 General Plan, Open Space & Conservation Element. The total number of resources was approximated by SCIC staff and provided to SWCA via email on July 1, 2019.

** The EIC database is not currently configured to distinguish historic-period archaeological resources from non-archaeological historic resources (i.e., buildings, structures, etc.). Instead, the EIC provided tallies of resources with components dating to the respective periods as follows: 13,993 Prehistoric archaeological sites; 1 Protohistoric archaeological site; 15,313 Historic period cultural resources (archaeological sites and historic resources); 202 sites of unknown cultural or temporal affiliation. Because an individual resource may have components that fall into multiple periods, the sum of all resources listed for each period is greater than the total number of resources. The total number of archaeological sites was estimated for Riverside County to allow for comparison with other counties across the SCAG region. This was done for Riverside County by taking the 13,994 archaeological sites listed as Prehistoric and Protohistoric (because these resources can only be archaeological sites) and adding an estimated fraction of those listed as Historic and Unknown Period, which could consist of historic resources (i.e., non-archaeological). The estimate provided here assumes 40 percent of those resources listed as Historic or Unknown Period have archaeological components that are not multi-component resources (and already tallied as Prehistoric or Protohistoric).

Native American Sacred Sites

Within the SCAG region there are 16 federally recognized tribes (84 Fed. Reg. § 1200) with lands administered as federal Indian reservations, also known as pueblos, rancherias, missions, villages, communities, etc.:³

- Agua Caliente Band of Cahuilla Indians
- Augustine Band of Mission Indians
- Cabazon Band of Mission Indians
- Cahuilla Band of Indians
- Chemehuevi Indian Tribe

³ Federal Register. *Indian Entities Recognized by and Eligible To Receive Services From the United States Bureau of Indian Affairs*. Updated 02/01/2019. Available at: <https://www.federalregister.gov/d/2019-00897>, accessed September 13, 2019.

- Colorado River Indian Tribe
- Fort Mojave
- Morongo Band of Mission Indians
- Quechan Indian Tribe
- Pechanga Band of Luiseño Indians
- Ramona Band of Cahuilla Mission Indians
- San Manuel Band of Mission Indians
- Santa Rosa Band of Cahuilla Indians
- Soboba Band of Luiseno Indians
- Torres-Martinez Desert Cahuilla Indians
- Twenty-Nine Palms Band of Mission Indians

Recognizing that tribal groups may have expertise with regard to their tribal history and practices that others may not, Assembly Bill 52 (AB 52) (as will be discussed in more detail below) requires lead agencies to provide notice to all tribal groups that are traditionally, culturally, and historically affiliated with the geographic area of a proposed project if they have requested such notice. Some of these groups are not federally recognized, have had their federal recognition revoked, or are in the processes of requesting federal recognition. The Native American Heritage Commission (NAHC) maintains the list of tribes that are traditionally and culturally affiliated within a specified geographic area.

Native American sacred sites reflect the evolution of the Southern California landscape, reflecting the rich cultural heritage of Native American cultures that predate and continued beyond European contact. Native American sacred sites may be related to a range of topics, including origins of the universe, the shifting of tectonic plates, and an evolving array of plants and animals that give Southern California its unique features today. Some sites are associated with the migration of humans into the region, where they settled, and how they lived. These sites document the view of Native American cultures of their own history and way of life.

The NAHC is charged with identifying, cataloging, and protecting Native American cultural resources and sacred sites, which is maintained as the SLF. **Table 3.18-2, Sacred Lands Recorded by the NAHC in the SCAG Region**, shows the total number of listings within each county. The nature and precise location of these resources is confidential.

**Table 3.18-2
Sacred Lands Recorded by the NAHC in the SCAG Region**

County	Sacred Lands
Imperial	84
Los Angeles	38
Orange	45
Riverside	123
San Bernardino	61
Ventura	12
SCAG Region Total	363

Source: NAHC, (provided July 5, 2019).

Tribal Consultation

SWCA Environmental Consultants (SWCA) led the AB 52 process undertaken by SCAG. SWCA contacted the NAHC on behalf of SCAG on December 5, 2018 to request a Sacred Lands File Search and CEQA Tribal Consultation List under AB 52. The NAHC responded in a letter dated December 18, 2018 and indicated that the SLF search yielded positive results; the letter also included a list of 61 contacts for tribal consultation. SCAG sent letters to all 61 of these contacts via certified mail on January 8, 2019. SCAG's letter described the Plan and PEIR, and invited tribal parties to consult under AB 52. On behalf of SCAG, SWCA subsequently followed up by email on March 13, 2019 with those contacts who had not responded. In total, seven parties responded to SCAG's outreach effort. Two of these, the Pala Band of Mission Indians and the Big Pine Paiute Tribe of the Owens Valley, declined consultation. Five parties – the Agua Caliente Band of Cahuilla Indians, the Fernandeno Band of Mission Indians, the Gabrieleno Band of Mission Indians – Kizh Nation, the Juaneño Band of Mission Indians Acjachemen Nation, and the San Manuel Band of Mission Indians – requested consultation and additional details, including the cultural resources technical study, once completed. SCAG replied to the five parties who requested consultation and provided a timeline for the cultural resources technical study, which it anticipates sharing in late 2019. SCAG also invited the interested tribes to attend project scoping meetings.

3.18.2 REGULATORY FRAMEWORK

3.18.2.1 Federal Regulations

Antiquities Act of 1906

The Antiquities Act of 1906 (16 U.S. Code [U.S.C.] §§ 431–433), which aimed to protect important historic and archaeological sites, initiated historic preservation legislation. It established a system of permits for conducting archaeological studies on federal land, as well as setting penalties for noncompliance. This permit process controls the disturbances that may be caused to archaeological sites.⁴ New permits are currently issued under the Archaeological Resources Protection Act (ARPA) of 1979. The purpose of ARPA is to enhance preservation and protection of archaeological resources on public and Native American lands.⁵

Historic Sites Act of 1935

The Historic Sites Act (16 U.S.C. §§ 461–467) became law on August 21, 1935, and declared that it is national policy to “Preserve for public use historic sites, buildings, and objects of national significance.”⁶ The National Historic Preservation Act (NHPA) expanded the scope to include important state and local resources. Provisions of NHPA established the National Register maintained by the National Park Service, advisory councils on Historic Preservation, State Historic Preservation Offices, and grants-in-aid programs. Section 106 of the NHPA requires all federal agencies to consult the Advisory Council before continuing any activity affecting a property listed on or eligible for listing on the National Register.⁷ The Advisory Council has developed regulations for Section 106 to encourage coordination of agency cultural resource compliance requirements (Executive Order 11593).⁸

National Register of Historic Places (National Register)

The National Register recognizes properties that are significant at the national, state, and/or local levels. Although administered by the National Park Service, the federal regulations explicitly provide that

⁴ National Park Service. *American Antiquities Act of 1906*, 16 U.S.C. 431-433. Available online at: <https://www.nps.gov/history/local-law/anti1906.htm>, accessed August 27, 2019.

⁵ National Park Service. *Archaeological Resources Protection Act*. Available online at: https://www.nps.gov/history/local-law/FHPL_ArchRsrcsProt.pdf, accessed August 27, 2019.

⁶ National Park Service. *Historic Sites Act of 1935*, 16 U.S.C. sec. 461-467. Available online at: <https://www.nps.gov/history/local-law/hsact35.htm>, accessed August 27, 2019.

⁷ National Park Service. *National Historic Preservation Act of 1966*, Public Law 102-575. Available online at: <https://www.nps.gov/history/local-law/nhpa1966.htm>, accessed August 27, 2019.

⁸ Federal Register. *Executive Order 11593 – Protection and enhancement of the cultural environment*. Available online at: <https://www.archives.gov/federal-register/codification/executive-order/11593.html>, accessed August 27, 2019.

National Register listing of private property “does not prohibit under federal law or regulation any actions which may otherwise be taken by the property owner with respect to the property.” Listing in the National Register assists in preservation of historic properties through: recognition that a property is of significance to the nation, the state, or the community; consideration in the planning for federal or federally-assisted projects; eligibility for federal tax benefits; consideration in the decision to issue a surface coal mining permit; and qualification for federal assistance for historic preservation, when funds are available. In addition, for projects that receive federal funding, a clearance process must be completed in accordance with Section 106 of the NHPA. Furthermore, state and local regulations may apply to properties listed in the National Register.⁹

The criteria for listing in the National Register follow the standards for determining if properties, sites, districts, structures, or landscapes of potential significance are eligible for nomination. In addition to meeting any or all of the following criteria, properties nominated must also possess integrity of location, design, setting, feeling, workmanship, association, and materials that:¹⁰ A property is eligible for the NRHP if it is significant under one or more of the following criteria:

Criterion A: It is associated with events that have made a significant contribution to the broad patterns of our history;

Criterion B: It is associated with the lives of persons who are significant in our past;

Criterion C: It embodies the distinctive characteristics of a type, period, or method of construction, or represents the work of a master, or possesses high artistic values, or represents a significant and distinguishable entity whose components may lack individual distinction; and/or

Criterion D: It has yielded, or may be likely to yield, information important in prehistory or history.

Ordinarily cemeteries, birthplaces, or graves of historic figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, and properties that are primarily commemorative in nature, are not considered eligible for the NRHP, unless they satisfy certain conditions. In general, a resource must be 50 years of age to be considered for the NRHP, unless it satisfies a standard of exceptional importance.

In addition to meeting these criteria, a property must retain historic integrity, which is defined in National Register Bulletin 15 as the “ability of a property to convey its significance” (NPS 1990). In order

⁹ Government Publishing Office. 2019. *Title 36: Parks, Forests, and Public Property, Part 60 – National Register of Historic Places*.

¹⁰ Ibid.

to assess integrity, the NPS recognizes seven aspects or qualities that, considered together, define historic integrity. To retain integrity, a property must possess several, if not all, of these seven qualities, which are defined in the following manner in National Register Bulletin 15:

Location: the place where the historic property was constructed or the place where the historic event occurred;

Design: the combination of elements that create the form, plan, space, structure, and style of a property;

Setting: the physical environment of a historic property;

Materials: the physical elements that were combined or deposited during a particular period of time and in a particular pattern or configuration to form a historic property.

Workmanship: the physical evidence of the crafts of a particular culture or people during any given period in history or prehistory;

Feeling: a property's expression of the aesthetic or historic sense of a particular period of time;

Association: the direct link between an important historic event or person and a historic property.

Procedures for listing a property in the NRHP are outlined in Procedures for State, Tribal, and Local Government Historic Preservation Programs (36 C.F.R. § 61) and in Determinations of Eligibility for Inclusion in the National Register (36 C.F.R. § 63). The Secretary of the Interior's Professional Qualifications Standards for who is allowed to conduct cultural resources studies and evaluations are outlined in 36 C.F.R. § 61.

Procedures for artifact curation are noted in Curation of Federally Owned and Administered Archeological Collections (36 C.F.R. § 79) for artifacts recovered under the authority of the Antiquities Act (16 U.S.C. §§ 431- 433), the Reservoir Salvage Act (16 U.S.C. §§ 469-469c), Section 110 of the NHPA (16 U.S.C. § 470h-2), or the ARPA (16 U.S.C. §§ 470aa-mm).

National Historic Preservation Act of 1966 (NHPA)

The NHPA, as amended (54 U.S.C. § 470 *et seq.*), established guidelines to "preserve important historic, cultural, and natural aspects of our national heritage, and to maintain, wherever possible, an environment that supports diversity and a variety of individual choice." The NHPA includes requirements (Section 106) which pertain to all projects that are funded, permitted, or approved by any federal agency and which have the potential to affect cultural resources. Under the Section 106

consultation process (36 C.F.R. § 800 *et seq.*), federal agencies taking such actions are required to consult with the Advisory Council on Historic Preservation (ACHP), State Historic Preservation Officer (SHPO), local agencies, and Indian tribes, and avoid or mitigate adverse effects on National Register-listed or -eligible properties. Provisions of NHPA establish a National Register of Historic Places (National Register); see above for details.¹¹

Archaeological and Historic Preservation Act of 1974

Passed and signed into law in 1974, The Archaeological and Historic Preservation Act of 1974 (AHPA), 16 U.S.C. § 469 *et seq.*) amended and expanded the Reservoir Salvage Act of 1960. The AHPA as amended requires that federal agencies provide for the preservation of historical and archaeological data (including relics and specimens) which might otherwise be irreparably lost or destroyed as the result of any alteration of the terrain caused by any federal construction project or federally-licensed activity or program.¹²

Archaeological Resources Protection Act of 1979

The ARPA (16 U.S.C. § 470aa *et seq.*) applies when a project may involve archaeological resources located on federal or tribal land. ARPA requires that a permit be obtained before excavation of an archaeological resource on such land can take place.¹³

The American Indian Religious Freedom Act of 1978

The American Indian Religious Freedom Act of 1978 (AIRFA) (42 U.S.C. § 1996) proclaims that the US Government will respect and protect the rights of Indian tribes to the free exercise of their traditional religions; the courts have interpreted this as requiring agencies to consider the effects of their actions on traditional religious practices.

Native American Graves Protection and Repatriation Act of 1990

The Native American Graves Protection and Repatriation Act of 1990 (NAGPRA) (25 U.S.C. § 3001 *et seq.*) also applies if human remains of Native American origin are discovered on federal or tribal land. NAGPRA requires federal agencies and federally-assisted museums to return “Native American cultural

¹¹ National Park Service. *National Historic Preservation Act of 1966 as amended through 1992*. Available online at: <https://www.nps.gov/history/local-law/nhpa1966.htm>, accessed August 27, 2019.

¹² National Park Service. *Archeological and Historic Preservation Act as Amended*. Available online at: https://www.nps.gov/history/local-law/FHPL_ArchHistPres.pdf, accessed August 27, 2019.

¹³ National Park Service. *The Archaeological Resources Protection Act of 1979 (ARPA)*. Available online at: <https://www.nps.gov/archeology/tools/Laws/ARPA.htm>, accessed August 27, 2019.

items” to the federally recognized Indian tribes or Native Hawaiian groups with which they are associated. Regulations (43 C.F.R. Part 10) stipulate the following procedures be followed. If Native American human remains are discovered, the following provisions would be followed to comply with regulations:

- Notify, in writing, the responsible federal agency;
- Cease activity in the area of discovery and protect the human remains;
- Certify receipt of the notification;
- Take steps to secure and protect the remains;
- Notify the Native American tribes or tribes likely to be culturally affiliated with the discovered human remains within one working day; and
- Initiate consultation with the Native American tribe or tribes in accordance with regulations described in 43 C.F.R., Part 10, Subpart B, Section 10.5.

Archaeology and Historic Preservation; Secretary of the Interior’s Standards and Guidelines

Offers non-regulatory technical advice about the identification, evaluation, documentation, study, and other treatment of cultural resources. Notable in these Guidelines are the Standards for Archaeological Documentation, Professional Qualifications Standards for Archaeology, and Standards for the Treatment of Historic Properties.

3.18.2.2 State

Office of Historic Preservation

As an office of the California Department of Parks and Recreation, the Office of Historic Preservation (OHP) implements the policies of the NHPA on a statewide level. The OHP also carries out the duties set forth in the Public Resources Code and maintains the California Historic Resources Inventory.

The State Historic Preservation Officer (SHPO) is an appointed official who implements historic preservation programs within the state’s jurisdiction.

California Register of Historical Resources (California Register)

The California Register is “an authoritative listing and guide to be used by state and local agencies, private groups, and citizens in identifying the existing historical resources of the state and to indicate

which resources deserve to be protected, to the extent prudent and feasible, from substantial adverse change.”¹⁴ The criteria for eligibility for the California Register are based upon National Register criteria. These criteria are:

- Criterion 1 – Associated with events that have made a significant contribution to the broad patterns of local or regional history or the cultural heritage of California of the United States;
- Criterion 2 – Associated with the lives of persons important to local, California or national history;
- Criterion 3 – Embodies the distinctive characteristics of a type, period, region or method of construction or represents the work of a master or possesses high artistic values; and
- Criterion 4 – Has yielded, or has the potential to yield, information important to the prehistory or history of the local area, California or the nation.

The California Register consists of resources that are listed automatically and those that must be nominated through an application and public hearing process. The California Register automatically includes the following:

- California properties listed in the National Register of Historic Places (Category 1 in the State Inventory of Historical Resources) and those formally Determined Eligible for listing in the National Register of Historic Places (Category 2 in the State Inventory);
- California Registered Historical Landmarks from No. 0770 onward; and
- Those California Points of Historical Interest that have been evaluated by the Office of Historic Preservation (OHP) and have been recommended to the State Historical Resources Commission for inclusion in the California Register.

Other resources which may be nominated for listing in the California Register include:

- Historical resources with a significance rating of Categories 3 through 5 in the State Inventory. (Categories 3 and 4 refer to potential eligibility for the National Register, while Category 5 indicates a property with local significance);
- Individual historical resources;
- Historical resources contributing to historic districts; and

¹⁴ Public Resources Code Section 50241 (e)

- Historical resources designated or listed as a local landmark.

Additionally, a historic resource eligible for listing in the California Register must meet one or more of the criteria of significance described above and retain enough of its historic character or appearance to be recognizable as a historic resource and to convey the reasons for its significance. Historical resources that have been rehabilitated or restored may be evaluated for listing.

California Public Resources Code, Sections 5097.5, 5097.9, 5097.98–99, and 50907.9

Section 5097.5 of the PRC defines as a misdemeanor the unauthorized disturbance or removal of archaeological, historical, or paleontological resources located on public lands. This Section also prohibits the knowing destruction of objects of antiquity without a permit (expressed permission) on public lands, and provides for criminal sanctions. In 1987, the Code was amended to require consultation with the California Native American Heritage Commission whenever Native American graves are found. It also established that violations for taking or possessing remains or artifacts are felonies.

PRC Section 5097.9 establishes the California Native American Heritage Commission to make recommendations to encourage private property owners to protect and preserve sacred places in a natural state and to allow appropriate access to Native Americans for ceremonial or spiritual activities. The Commission is authorized to assist Native Americans in obtaining appropriate access to sacred places on public lands, and to aid state agencies in any negotiations with federal agencies for the protection of Native American sacred places on federally-administered lands in California.

PRC sections 5097.98 through 5097.99 require that the Governor's California Native American Heritage Commission be consulted whenever Native American graves are found. According to these sections, it is illegal to take or possess remains or artifacts taken from Native American graves; however, it does not apply to materials taken before 1984. Violations occurring after January 1, 1988 are felonies.

PRC Section 50907.9 (Section 7050 of the Health and Safety Code) authorizes the NAHC to regulate Native American concerns regarding the excavation and disposition of Native American cultural resources. Among its duties, the Commission is authorized to resolve disputes relating to the treatment and disposition of Native American human remains and items associated with burials. Upon notification of the discovery of human remains by a county coroner, the Commission notifies the Native American group or individual most likely descended from the deceased. PRC 5097.98(b) requires that landowners ensure that the immediate vicinity (according to generally accepted cultural or archaeological standards of practices) are not damaged or disturbed by further development until the landowner has discussed and conferred with most likely descendants.

AB 52 and Tribal Cultural Resources

Approved by Governor Brown on September 25, 2014, AB 52 establishes a formal notification and, when requested, consultation process for California Native American Tribes to identify significant impacts to Tribal Cultural Resources (TCRs), as defined in PRC section 21074, as part of CEQA. Tribal cultural resources are defined in PRC section 21074, subdivision (a), as either: (1) sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe that are included or determined to be eligible for inclusion in the California Register of Historical Resources, or included in a local register of historical resources (as defined by statute); or (2) resources determined by the lead agency, and supported by substantial evidence, to be significant pursuant to subdivision (c) of Section 5024.1. If the following resources meet the requirements of subdivision (a), they also be considered “tribal cultural resources”: (1) a cultural landscape that is geographically defined in terms of the size and scope of the landscape; or (2) a historical resource described in Section 21084.1, or a unique archaeological resource defined in subdivision (g) of Section 21083.2, or a “nonunique archaeological resource” as defined in subdivision (h) of Section 21083.2.

In the project planning stage, AB 52 requires the Lead Agency to consult with any California Native American tribe that requests consultation and is traditionally and culturally affiliated with the geographic area of the proposed project, prior to the release of a negative declaration, mitigated negative declaration, or environmental impact report. If the Lead Agency has not been contacted by any tribal parties who wish to consult on projects, the Lead Agency may contact the NAHC to obtain a list of traditionally and culturally affiliated groups affiliated with the geographic area of the proposed project to contact.

Consultation may include discussion concerning the type of environmental review necessary, the significance of the project’s impacts on the tribal cultural resources, and, if necessary, project alternatives or the appropriate measures for preservation and mitigation that the California Native American tribe may recommend to the lead agency. The consultation should be considered concluded when either the parties agree to measures to mitigate or avoid a significant effect, if one exists, on a tribal cultural resource; or a party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached (PRC Section 21082.3.2[b]).

Pursuant to Government Code Sections 6254 and 6254.10, and PRC Section 21082.3(c), information submitted by a California Native American tribe during consultation under AB 52 should not be included in the environmental document or otherwise disclosed to the public by the lead agency, project applicant, or the project applicant’s agent, unless written permission is given. Exemptions to the confidentiality provisions include any information already publicly available, in lawful possession of the project

applicant before being provided by the tribe, independently developed by the project applicant or the applicant's public agent, or lawfully obtained by a third party (PRC Section 21082.3[c]).

California Coastal Act

The California Coastal Act (CCA; PRC Sections 30000 et seq.) includes protection of archaeological resources into Land Conservation Plans that regulate land uses within the coastal zone.

California Health and Safety Code, Section 7050 and Sections 18950 through 18961

Consistent with the provisions of Section 50907.9 of the PRC, Section 7050 of the Health and Safety Code (HSC) authorizes the NAHC to regulate Native American concerns regarding the excavation and disposition of Native American cultural resources. Among its duties, the Commission is authorized to resolve disputes relating to the treatment and disposition of Native American human remains and items associated with burials. Upon notification of the discovery of human remains by a county coroner, the Commission notifies the Native American group or individual most likely descended from the deceased.

The State Historic Building Code (HSC; Sections 18950–18961) provide alternative building regulations and building standards for the rehabilitation, preservation, restoration (including related reconstruction), or relocation of buildings or structures designated as historic buildings. Such alternative building standards and building regulations are intended to facilitate the restoration or change of occupancy so as to preserve their original or restored architectural elements and features, to encourage energy conservation and a cost-effective approach to preservation, and to provide for the safety of the building occupants.

California Penal Code Section 622 – Destruction of Historical Properties

This section of the California Penal Code makes it a misdemeanor for anyone (except the owner) to willfully injure or destroy anything of archaeological interest or value whether on private lands or within any public park or place. In addition, Penal Code Section 622.5 sets the penalties for the damage or removal of cultural resources.

Senate Bill 18 – Traditional Tribal Cultural Places

Senate Bill (SB) 18, enacted in 2004, requires local governments to consult with Native American groups at the earliest point in the local government land use planning process. The consultation intends to establish a meaningful dialogue regarding potential means to preserve Native American places of prehistoric, archaeological, cultural, spiritual, and ceremonial importance. It allows for tribes to hold conservation easements and for tribal cultural places to be included in open space planning.

Executive Order B-10-11

Executive Order B-10-11 states that it is the policy of the administration that every state agency and department subject to executive control is to encourage communication and consultation with California Native American tribes. It established the position of Governor's Tribal Advisor in the Office of the Governor of California. This position will serve as a direct link between the Governor's Office and tribal governments on matters including legislation, policy, and regulation.

3.18.2.3 Local

County General Plans

In addition to federal and state regulations, cities and counties in the SCAG region may also provide regulatory protection and advisement regarding cultural resources (**Table 3.18-3, County Policies and Ordinances Relevant to Tribal Cultural Resources in the SCAG Region**). California law requires that a general plan include seven elements (land use, open space, conservation, housing, circulation, noise, and safety). Many jurisdictions incorporate policies related to cultural and historical resources into the conservation element. Other jurisdictions choose to prepare a separate (optional) element dealing with cultural and/or historic preservation issues. Many jurisdictions also prepare ordinances addressing cultural resources and historic preservation.

**Table 3.18-3
County Policies and Ordinances Relevant to Tribal Cultural Resources in the SCAG Region**

County	County Policies and Ordinances
Imperial	<p>Conservation and Open Space Element of General Plan Policy Numbers: Only one policy, Section IV.B.2 Policies Specific to Archaeological Resources: Yes, brief Policies Specific to Paleontological Resources: No Policies Specific to Historic Resources: No</p>
Los Angeles	<p>Chapter 9: Conservation and Natural Resources Element of General Plan Policy Numbers: C/NR 14.1 – C/NR 14.6 Policies Specific to Archaeological Resources: Yes, very brief Policies Specific to Paleontological Resources: Yes, very brief Policies Specific to Historic Resources: Yes, very brief</p>
Orange	<p>Chapter VI: Resources Element of General Plan Policy Numbers: Goals 1, 2 and 3, each with multiple policy numbers Policies Specific to Archaeological Resources: Yes, extensive Policies Specific to Paleontological Resources: Yes, extensive Policies Specific to Historic Resources: Yes, extensive</p>
Riverside	<p>Chapter 5: Multipurpose Open Space Element of General Plan Policy Numbers: 19.1 – 19.9 Policies Specific to Archaeological Resources: Yes, brief Policies Specific to Paleontological Resources: Yes, brief Policies Specific to Historic Resources: Yes</p>
San Bernardino	<p>Conservation Element (Subchapter C2) of General Plan Policy Numbers: CO 3.1 – CO 3.18 Policies Specific to Archaeological Resources: No – together with historic resources, extensive Policies Specific to Paleontological Resources: Yes, extensive Policies Specific to Historic Resources: No – together with archaeological resources, extensive</p>
Ventura	<p>Chapter 1: Resources (Subchapter 1.8) of General Plan Policy Numbers: 1 – 6 Policies Specific to Archaeological Resources: Yes, Policies 1-3 Policies Specific to Paleontological Resources: Yes, Policies 4 & 5 Policies Specific to Historic Resources: Yes, Policy 6</p>

City General Plans and Ordinances

In accordance with Sections 6530(c) and (d) of the California Government Code, like the six counties in the SCAG region, all cities are required to have a conservation element and an open space element, as mandatory elements of their general plans. Many city general plans have provisions for historic districts and protection of locally important cultural resources that may or may not meet the criteria for eligibility for listing in the NRHP or CRHR.

3.18.3 ENVIRONMENTAL IMPACTS

3.18.3.1 Thresholds of Significance

For the purposes of this PEIR, SCAG has determined that the Connect SoCal Plan could result in significant impacts to tribal cultural resources, if the project would cause a substantial adverse change in the significance of a tribal cultural resource, defined in PRC section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is:

- Listed or eligible for listing in the California Register of Historical Resources, or in the 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 PRC 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.

3.18.3.2 Methodology

The methodology for determining the significance of impacts to tribal cultural resources compares the existing conditions to the future (2045) Connect SoCal conditions, as required by *CEQA Guidelines* Section 15126.2(a). The known tribal cultural resources (i.e. historical or archeological), Native American sacred sites, and human remains located within the SCAG region were evaluated using criteria set forth by the OHP, the CRHR, and the State CEQA Guidelines. Native American sacred sites were analyzed using information provided by the NAHC from the SLF. The NAHC does not disclose the location or nature of the SLF listings, which limits the analysis to a count of resources within respective counties.

Nearly 50,000 archaeological resources have been identified in the SCAG region. Each of these sites is documented at an Archaeological Information Center, which holds location information on archaeological sites for each region in California. These known resources are limited to areas that have been subject to various levels of research or investigation. Areas that have been subject to pedestrian surveys or sub-surface explorations represent only a fraction of the total area with the potential to yield such resources. Therefore, the analysis focuses on the potential for major transportation projects to necessitate ground-disturbing activities in areas where significant archeological resources have been previously recorded or require work in sediments that have not been previously investigated.

As described in **Section 3.18.2.1**, SWCA Environmental Consultants (SWCA) led the tribal consultation process undertaken by SCAG. SWCA contacted the NAHC to request a Sacred Lands File Search and CEQA Tribal Consultation List.

The mitigation measures in the PEIR are divided into two categories: SCAG mitigation and project-level mitigation measures. SCAG mitigation measures shall be implemented by SCAG over the lifetime of the Plan. For projects proposing to streamline environmental review pursuant to SB 375, SB 743, or SB 226 (as described in **Chapter 1.0, Introduction**), or for projects otherwise tiering off this PEIR, the project-level mitigation measures described below (or comparable measures) can and should be considered and implemented by Lead Agencies and Project Sponsors during the subsequent, project- or site-specific environmental reviews for transportation and development projects as applicable and feasible. However, SCAG cannot require implementing agencies to adopt mitigation, and it is ultimately the responsibility of the implementing agency to determine and adopt project-specific mitigation.

3.18.3.3 Impacts and Mitigation Measures

- Impact TCR-1** **Cause a substantial adverse change in the significance of a tribal cultural resource defined in Public Resources Code 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 Public Resources Code section 5020.1(k), or**
 - 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 Public Resources Code Section 5024.1.**

Significant and Unavoidable - Mitigation Required.

Transportation projects and anticipated growth under the Plan have the potential to cause a substantial adverse change in the significance of tribal cultural resources in the SCAG region, defined in Public Resources Code section 21074, as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe.

To assist in this analysis, pursuant to AB 52, SCAG contacted NAHC and is currently consulting with five parties – the Agua Caliente Band of Cahuilla Indians, the Fernandeno Band of Mission Indians, the Gabrieleno Band of Mission Indians – Kizh Nation, the Juaneño Band of Mission Indians Acjachemen

Nation, and the San Manuel Band of Mission Indians – who requested consultation and additional details. SCAG will be providing the cultural resources technical study to these parties once it is completed and will incorporate any information received from the parties as appropriate in the Final EIR.

Direct permanent impacts to TCRs (resources either listed or eligible for listing in the California Register of Historical Resources, or local register of historical resources, or resources determined by the lead agency to be significant) may result from ground disturbance associated with construction, such as grading and excavation. The development of new transportation facilities, construction of additional lanes, or the projected land use pattern stemming from the Plan may have a relatively higher potential to directly impact TCRs, primarily by grading or excavation in previously undisturbed soil and by the disturbance of buried resources that have not been previously identified. The potential for direct impacts to TCRs may be comparatively less for improvements to existing facilities and modifications to existing rights-of-way since these areas have been previously disturbed. Regardless of prior disturbance, however, any excavation has the potential to directly impact undocumented TCRs of an archaeological nature.

Tribal cultural resources are likely to be encountered near areas of prior Native American occupation and activity, which includes areas both within and outside areas of current development. Surficial archaeological deposits that are TCRs are more likely to be heavily disturbed within urban areas and more intact in rural settings; however, this does not preclude the presence of buried archaeological resources that may be significant in urban settings. Archaeological sites that may meet the TCR definition that have been buried below grade have no surface manifestations, making accurate prediction of their location during project planning problematic.

Direct permanent impacts would be significant if TCRs cannot be avoided or preserved in place by project design or redesign and are destroyed or substantially altered. Disturbance of TCR features or places would compromise the traditional use of or the cultural character and integrity of the resource and may result in a significant impact if its contributing characteristics or the character of its physical setting is destroyed or substantially altered. Permanent direct impacts may be addressed by advance project planning and consulting with tribes that have requested consultation to ensure known TCRs are avoided and preserved in place, or to develop project alternatives that would minimize impacts to known TCRs. Permanent direct impacts to TCRs of an archaeological nature discovered inadvertently during project construction may be addressed by project redesign to avoid and preserve the TCR, and by requested tribal consultation focused at minimizing the impact.

Permanent indirect impacts from construction and operational improvements may result from potential access-related damage to TCRs when public accessibility is increased due to changes in land use or new

or improved transportation networks stemming from the Plan. The likelihood of unauthorized artifact collecting and destruction (intentional or unintentional) of TCRs of an archaeological nature, or of damage to or destruction (intentional or unintentional) of TCRs that are traditional places for gathering natural resources, cultural landscapes or sacred places, increases with ease of access. Recreational use, overland vehicle travel, and vandalism would degrade the integrity and traditional use of the TCRs. Ensuring appropriate measures that would minimize or reduce damage to TCRs are devised during project planning, coupled with requested tribal consultation, may reduce indirect access-related impact.

While there are state requirements in place to minimize adverse impacts to TCRs, there is still the potential for access-related damage associated with construction and operation of projects under the Plan. Therefore, the potential direct regional impacts on TCRs related to the transportation projects and growth under the Plan could result in substantial alteration or removal of a TCR. Indirect impacts from access-related damage from construction projects and ongoing operations resulting from the Plan are also considered significant requiring the consideration of mitigation measures.

Mitigation Measures

SCAG Mitigation Measure

SMM TCR-1: Impacts to tribal cultural resources shall be minimized through cooperation, information sharing, and SCAG's ongoing regional planning efforts such as web-based planning tools for local governments including CA LOTS, and other GIS tools and data services, including, but not limiting to, Map Gallery, GIS library, and GIS applications; and direct technical assistance efforts and sharing of associated online Training materials. SCAG shall consult with the Native American Heritage Commission, as well as Native American tribes, to identify opportunities for early and effective consultation to identify tribal cultural resources to avoid such resources wherever practicable and feasible and reduce or mitigate for conflicts in compatible land use to the maximum extent practicable.

Project Level Mitigation Measures

See PMM CULT-1.

PMM TCR-1: In accordance with provisions of sections 15091(a)(2) and 15126.4(a)(1)(B) of the *State CEQA Guidelines*, a Lead Agency for a project can and should consider mitigation measures to reduce substantial adverse effects on tribal cultural resources. Such

measures may include the following or other comparable measures identified by the Lead Agency:

- a) Avoidance and preservation of the resources in place, including, but not limited to, planning and construction to avoid the resources and protect the cultural and natural context, or planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria;
- b) 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: protecting the cultural character and integrity of the resource; protecting the traditional use of the resource; and protecting the confidentiality of the resource;
- c) Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places; and protecting the resource.

Level of Significance after Mitigation

As discussed above, regulations and policies would reduce each of the impacts but given the regional scale of the analysis in this PEIR, it is not possible to determine if all impacts would be fully mitigated by existing regulations and policies. Therefore, this PEIR identifies project-level mitigation measures consistent with applicable regulations and policies designed to reduce impacts. Lead Agencies may choose to include project-level mitigation measures in environmental documents as they determine to be appropriate and feasible. However, because of the regional nature of the analysis and lack of project-specific detail, including project locations and locations of the unknown tribal cultural resources, and SCAG's lack of authority to impose project-level mitigation measures, this PEIR finds impacts to tribal cultural resources could be significant and unavoidable even with implementation of mitigation.

3.18.4 SOURCES

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