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## 19. TRIBAL CULTURAL RESOURCES

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This EIR chapter describes tribal cultural resources conditions in the planning area. The chapter includes the regulatory framework necessary to evaluate potential environmental impacts resulting from the 2040 General Plan, describes potential impacts that could result from the General Plan, and discusses General Plan goals, policies, and implementation programs that would avoid or reduce those potential impacts.

### 19.1 SETTING

The environmental and regulatory setting of the planning area with respect to tribal cultural resources is described in chapter 6.8 (Cultural Resources and Urban Forests) of the General Plan Existing Conditions Report (City of Burlingame, 2015). Pursuant to section 15150 of the State CEQA Guidelines, the Existing Conditions Report is incorporated into the Draft Program EIR by reference. The Existing Conditions Report is available at the City of Burlingame 2040 General Plan website at:

<http://www.Burlingame.org/GENERALPLAN/>

Copies of the Existing Conditions Report may be viewed during regular business hours (8:00 a.m. to 5:00 p.m.), Monday through Friday, at the City of Burlingame Planning Division, 501 Primrose Road, Burlingame, CA 94010.

#### 19.1.1 Environmental Setting

The Cultural Resources and Urban Forest Chapter (Section 6.8) of the Existing Conditions Report describes tribal cultural resources within the planning area. The major findings below describe the tribal cultural resources present or potentially present in the planning area.

Burlingame is situated within the historic territory of many discrete tribes of Native Americans known collectively as the Ohlone (also known as Costanoans). The Ohlone inhabited a natural environment of grasslands and oak forests in the Burlingame area. The planning area contains 10 recorded Native American sites; 31 historic-period buildings, structures, or objects; and one other historic-period resource. Additionally, the State Office of Historic Preservation Historic Property Directory (OHP HPD) lists 32 recorded buildings or structures within the planning area, and Caltrans lists six San Mateo County bridges eligible for National Register of Historic Places (NRHP) listing.

#### 19.1.2 Regulatory Setting

The laws and policies that pertain to the tribal cultural resources potentially present in the planning area or affected by the General Plan are discussed below.

#### State

**Native American Graves Protection and Repatriation Act of 1990.** The Native American Graves Protection and Repatriation Act (NAGPRA) of 1990 sets provisions for the intentional removal and inadvertent discovery of human remains and other cultural items from federal and

tribal lands. It clarifies the ownership of human remains and sets forth a process for repatriation of human remains and associated funerary objects and sacred religious objects to the Native American groups claiming to be lineal descendants or culturally affiliated with the remains or objects. It requires any federally funded institution housing Native American remains or artifacts to compile an inventory of all cultural items within the museum or with its agency and to provide a summary to any Native American tribe claiming affiliation.

**Native American Heritage Commission, Public Resources Code Sections 5097.9 – 5097.991.** Section 5097.91 of the Public Resources Code (PRC) established the Native American Heritage Commission (NAHC), whose duties include the inventory of places of religious or social significance to Native Americans and the identification of known graves and cemeteries of Native Americans on private lands. Under Section 5097.9 of the PRC, a State policy of noninterference with the free expression or exercise of Native American religion was articulated along with a prohibition of severe or irreparable damage to Native American sanctified cemeteries, places of worship, religious or ceremonial sites or sacred shrines located on public property. Section 5097.98 of the PRC specifies a protocol to be followed when the NAHC receives notification of a discovery of Native American human remains from a county coroner. Section 5097.5 defines as a misdemeanor the unauthorized disturbance or removal of archaeological, historic, or paleontological resources located on public lands.

**California Native American Graves Protection and Repatriation Act of 2001.** Codified in the California Health and Safety Code Sections 8010–8030, the California Native American Graves Protection Act (NAGPRA) is consistent with the federal NAGPRA. Intended to “provide a seamless and consistent state policy to ensure that all California Indian human remains and cultural items be treated with dignity and respect,” the California NAGPRA also encourages and provides a mechanism for the return of remains and cultural items to lineal descendants. Section 8025 established a Repatriation Oversight Commission to oversee this process. The act also provides a process for non–federally recognized tribes to file claims with agencies and museums for repatriation of human remains and cultural items.

**Senate Bill 18.** Senate Bill (SB) 18 (California Government Code, Section 65352.3) incorporates the protection of California traditional tribal cultural places into land use planning for cities, counties, and agencies by establishing responsibilities for local governments to contact, refer plans to, and consult with California Native American tribes as part of the adoption or amendment of any general or specific plan proposed on or after March 1, 2005. SB18 requires public notice to be sent to tribes listed on the Native American Heritage Commission’s SB18 Tribal Consultation list within the geographical areas affected by the proposed changes. Tribes must respond to a local government notice within 90 days (unless a shorter time frame has been agreed upon by the tribe), indicating whether or not they want to consult with the local government. Consultations are for the purpose of preserving or mitigating impacts to places, features, and objects described in the Public Resources Code that may be affected by the proposed adoption or amendment to a general or specific plan.

**Assembly Bill 52.** Assembly Bill (AB) 52 specifies that a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource, as defined, is a project that may have a significant effect on the environment. AB 52 requires a lead agency to begin consultation with a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project, if the tribe requested to the lead agency, in writing, to be informed by the lead agency of proposed projects in that geographic area and the tribe requests consultation, prior to determining whether a negative declaration, mitigated negative declaration, or environmental impact report is required for a project. AB 52

specifies examples of mitigation measures that may be considered to avoid or minimize impacts on tribal cultural resources. The bill makes the above provisions applicable to projects that have a notice of preparation or a notice of negative declaration filed or mitigated negative declaration on or after July 1, 2015.

## 19.2 ENVIRONMENTAL EFFECTS

This section describes potential impacts related to tribal cultural resources that could result from the General Plan, and discusses General Plan goals, policies, and implementation programs that would avoid or reduce those potential impacts.

### 19.2.1 Significance Criteria

Based on the CEQA Guidelines, implementation of the City of Burlingame 2040 General Plan would have a significant impact related to tribal cultural resources if it would:

- (a) Cause a substantial adverse change in the significance of a tribal cultural resources, defined in Public Resources Code section 21074<sup>1</sup> 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:
- i) Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code section 5020.1(k)?
  - ii) A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1? In applying the criteria set forth in subdivision (c) of Public Resources Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American Tribe.

### 19.2.2 Analysis Methodology

The methodology for evaluating potential environmental impacts related to tribal cultural resources followed this basic sequence:

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<sup>1</sup> **California Public Resources Code 21074.** (a) "Tribal cultural resources" are either of the following: (1) Sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe that are either of the following: (A) Included or determined to be eligible for inclusion in the California Register of Historical Resources. (B) Included in a local register of historical resources as defined in subdivision (k) of Section 5020.1. (2) A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Section 5024.1. In applying the criteria set forth in subdivision (c) of Section 5024.1 for the purposes of this paragraph, the lead agency shall consider the significance of the resource to a California Native American tribe. (b) A cultural landscape that meets the criteria of subdivision (a) is a tribal cultural resource to the extent that the landscape is geographically defined in terms of the size and scope of the landscape. (c) A historical resource described in Section 21084.1, a unique archaeological resource as defined in subdivision (g) of Section 21083.2, or a "nonunique archaeological resource" as defined in subdivision (h) of Section 21083.2 may also be a tribal cultural resource if it conforms with the criteria of subdivision (a) (Added by Stats. 2014, Ch. 532, Sec. 4. Effective January 1, 2015.)

- 1) The General Plan Existing Conditions Report was evaluated to identify existing environmental conditions and problems related to tribal cultural resources, including the regulatory framework that applies to these issues.
- 2) The CEQA Statute and Guidelines (2017), including Appendix G (Environmental Checklist Form), were consulted to identify environmental impact topics and issues that should be addressed in the program EIR. In part, this process resulted in the significance criteria listed in subsection 19.2.1 above.
- 3) The General Plan Policy Document, including the associated development capacity assumptions (see EIR Section 3.6), was analyzed to identify goals, policies, implementation programs (“policies” for short), and potential outcomes that address the significance criteria. This analysis resulted in two basic conclusions regarding policies and outcomes: (a) many policies would avoid or reduce potential environmental impacts, and (b) some policies or outcomes could result in new environmental impacts or increase the severity of existing environmental problems.
- 4) For potential environmental impacts that would result from the 2040 General Plan, mitigations were designed to avoid or reduce each impact to a less-than-significant level. If implementation of all identified feasible mitigations cannot reduce the impact to a less-than-significant level, then the impact is considered significant and unavoidable.

### **19.2.3 Environmental Impacts**

#### **Potential Impacts of Future Development Pursuant to the 2040 General Plan**

Future development, where new development supplants older development, subject to the goals and policies of the General Plan could impact tribal cultural resources with cultural value to a California Native American tribe, and which are listed or eligible for listing in the California Register of Historical Resources or in a local register of historical resources. Impacts associated with the destruction or alteration of tribal cultural resources can affect a city’s sense of place and lose important information relevant to the city, the region, and/or State history. (Significance Criteria 19.2.1 [a. i])

Future development could impact tribal cultural resources that are of concern to a California Native American tribe where excavation and other earthmoving activities are required. Failure to properly survey development sites and, if necessary, monitor earthmoving activities to ensure identification and recovery of tribal cultural resources could result in a significant impact due to the loss of information related to tribal cultural resources of local Native American tribes. (Significance Criteria 19.2.1 [a. ii])

As described under the Regulatory Framework above, AB 52 requires a lead agency to begin consultation with a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project, if the tribe requested to the lead agency, in writing, to be informed of proposed projects in that geographic area, and if the tribe requests consultation prior to determining whether a negative declaration, mitigated negative declaration, or environmental impact report is required for a project. Since the General Plan is not authorizing the development of a specific project where ground-disturbing activities would take place, the requirement under AB52 for tribal consultation is not applicable in this case. However, as part of the CEQA process, the City initiated the consultation process pursuant to SB 18. Five tribes that are active in San Mateo County were sent letters and the NOP for the General Plan

EIR by City staff. No tribes responded to the NOP. Tribes affiliated with the planning area will be notified by the City when specific development proposals are submitted to the City. (Significance Criteria 19.2.1 [a. i and a. ii])

### How Existing Regulations and General Plan Policies Reduce Impacts

Table 19-1 is aligned with relevant Existing Regulations and General Plan policies that relate to tribal cultural resources. Column 1 (Objective) lists each Regulation and General Plan goal, policy, and implementation program (“policy” for short), organized by General Plan element, that addresses the potential impact identified in Table 19-1. Column 2 is a summary of the regulation/policy and the text of the policy. Column 3 answers the question, “How does the regulation/policy avoid or reduce the potential impact?” Column 4 identifies the applicable significance criteria that is addressed by the regulation/goal/policy.

The verbs in Column 3 are intended to be applied consistently. The verb “ensures” means that the policy is sufficient to guarantee the result identified in the policy. The verb “helps” means that the policy contributes to avoiding or reducing the identified potential impact; in many cases, “helps” is used for a policy that can be applied to avoid or reduce a wide range of potential impacts.

**Table 19-1: Proposed Burlingame Existing Regulations and General Plan Policies to Avoid or Reduce Impacts on Tribal Cultural Resources**

Regulation/Policy	Description of Regulation/Policy	How Does It Avoid or Reduce Impact?	Applicable Significance Criteria
<b>Existing Regulations</b>			
Native American Heritage Commission, Public Resources Code Sections 5097.9 – 5097.991.	Section 5097.91 of the Public Resources Code (PRC) established the Native American Heritage Commission (NAHC), whose duties include the inventory of places of religious or social significance to Native Americans and the identification of known graves and cemeteries of Native Americans on private lands.	Helps ensure preservation of Burlingame’s listed or eligible tribal cultural resources.	(a. i) Cause a substantial adverse change in the significance of a state listed or eligible tribal cultural resource (a. ii) Cause a substantial adverse change in the significance of a local tribal cultural resource
Native American Graves Protection and Repatriation Act of 1990.	The Native American Graves Protection and Repatriation Act (NAGPRA) of 1990 sets provisions for the intentional removal and inadvertent discovery of human remains and other cultural items from federal and tribal lands.	Helps ensure preservation of any buried tribal human remains.	(a. i) Cause a substantial adverse change in the significance of a state listed or eligible tribal

**Table 19-1: Proposed Burlingame Existing Regulations and General Plan Policies to Avoid or Reduce Impacts on Tribal Cultural Resources**

Regulation/Policy	Description of Regulation/Policy	How Does It Avoid or Reduce Impact?	Applicable Significance Criteria
			cultural resource (a. ii) Cause a substantial adverse change in the significance of a local tribal cultural resource
California Native American Graves Protection and Repatriation Act of 2001.	The California Native American Graves Protection Act (NAGPRA) is intended to “provide a seamless and consistent state policy to ensure that all California Indian human remains and cultural items be treated with dignity and respect,” the California NAGPRA also encourages and provides a mechanism for the return of remains and cultural items to lineal descendants.	Helps ensure preservation of any buried tribal human remains and provides a way to return remains or cultural items to lineal descendants.	(a. i) Cause a substantial adverse change in the significance of a state listed or eligible tribal cultural resource (a. ii) Cause a substantial adverse change in the significance of a local tribal cultural resource
Senate Bill (SB) 18 (California Government Code, Section 65352.3)	SB 18 incorporates the protection of California traditional tribal cultural places into land use planning for cities, counties, and agencies by establishing responsibilities for local governments to contact, refer plans to, and consult with California Native American tribes as part of the adoption or amendment of any general or specific plan. SB18 requires public notice to be sent to tribes listed on the Native American Heritage Commission’s SB18 Tribal Consultation list within the geographical areas affected by the proposed changes.	Ensures that local Native American tribes are consulted on any City-authorized land use changes that could affect a tribal cultural resource. Required as part of the adoption or amendment of the General Plan or any specific plan.	(a. ii) Cause a substantial adverse change in the significance of a local tribal cultural resource
Assembly Bill (AB) 52	AB 52 specifies that a project with an effect that may cause	Ensures that local Native American tribes	(a.ii) Cause a substantial

**Table 19-1: Proposed Burlingame Existing Regulations and General Plan Policies to Avoid or Reduce Impacts on Tribal Cultural Resources**

Regulation/Policy	Description of Regulation/Policy	How Does It Avoid or Reduce Impact?	Applicable Significance Criteria
	a substantial adverse change in the significance of a tribal cultural resource, as defined, is a project that may have a significant effect on the environment. AB 52 requires a lead agency to begin consultation with a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project, if the tribe requested to the lead agency, in writing, to be informed by the lead agency of proposed projects.	are consulted on any City-authorized land use related disturbance which could affect a tribal cultural resource.	adverse change in the significance of a local tribal cultural resource

**Conclusions**

In most cases, no one goal, policy, or implementation measure is expected to completely avoid or reduce an identified potential environmental impact. However, the collective, cumulative mitigating benefits of the policies listed in Table 19-1 will result in a less-than-significant impact related to the identified significance criterion and tribal cultural resources. This conclusion is consistent with the purpose and use of a program EIR for a general plan (see EIR Introduction, Chapter 1).

Based on the methodology described above, 2040 General Plan impacts related to tribal cultural resources would be **less than significant** (see criteria [a. i], and [a. ii] in subsection 19.2.1, “Significance Criteria,” above).