

SECTION 4.8: TRIBAL CULTURAL RESOURCES

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This section of the draft subsequent environmental impact report (Draft SEIR) describes the tribal cultural resources (TCRs) at the project site and off-site mitigation sites, presents the regulatory framework within which TCRs are evaluated, and analyzes the potential impacts to TCRs that could occur as a result of the proposed changes to the project. Cultural resources are addressed in greater detail in Section 4.3, “Cultural Resources.”

The information in this section is based primarily on County correspondence with pertinent tribes per the AB 52 tribal notification process as well as the cultural resources report (2018 CRR) prepared for the US Gypsum Company Expansion/Modernization Project (Pacific Legacy, Inc. 2018) (Appendix E, “Cultural Resources Report”). The 2018 CRR investigates an Area of Potential Effect (APE) that encompasses both the project site (Quarry, Well No. 3 site, pipeline alignment) and an area to the south where a waterline replacement project has been completed. The following discussion summarizes information and findings from the 2018 CRR that pertain only to the project site.

4.8.1 Environmental Setting

This section summarizes the available information regarding TCRs on and in the vicinity of the project site including descriptions of the ethnography of the project area and the results of the tribal notification process completed for the 2008 EIR/EIS.

4.8.1.1 Tribal Cultural Resources Conditions at the Time of the 2008 EIR/EIS

Tribal Cultural Resources are defined as site features, places, cultural landscapes, and sacred places or objects that are of cultural value to a tribe and are either on or are eligible for listing on the California Historic Register or a local historic register. Tribal Cultural Resources were added as a resource category to the CEQA Guidelines Appendix G Environmental Checklist in 2016 per Assembly Bill 52 (AB 52). Thus, Tribal Cultural Resources were not explicitly addressed in the 2008 EIR/EIS. The 2002 CRR did; however, provide a description of the ethnography of the project area and include a summary of the County’s tribal notification efforts for the project.

Ethnography

According to the 2002 CCR, Kumeyaay inhabit the area currently encompassed by western Imperial County, and comprise groups formerly identified as Tipai and Ipai (Carrico 1983; Cline 1979; Hedges 1975; Ladastida and Caldeira 1995; Luomala 1978; and Shipek 1991, cited in Paleo Solutions 2018). Kumeyaay territory extends east nearly to Yuma, AZ, southwest to Todos Santos Bay, west to the Pacific Ocean, and northwest to the San Luis Rey River and San Felipe Creek. Quechan and Cahuilla border Kumeyaay territory to the east and north, respectively. Kumeyaay language, formerly called Diegueño, is part of the Hokan stock of the Yuman language family (Langdon 1990, cited in Paleo Solutions 2018). Kumeyaay were organized into autonomous tribelets under the control of a chief (kwaaypaay) who had at least one assistant (Ladastida and Caldeira 1995; Luomala 1978; and Shipek 1991, cited in Paleo Solutions 2018). The position of chief was inherited from father to eldest son. The chief directed ceremonies and resolved differences within the group. Kroeber (1925:712, cited in Paleo Solutions 2018) suggests that Tipai and Ipai populations numbered approximately 3,000 at the time of contact, circa 1770–1790. Subsequent to contact, the Native American

population decreased, and in 1821 Mission San Diego records document a population of 1,711, which would have included Kumeyaay (Luomala 1978, cited in Paleo Solutions 2018). Kumeyaay relied heavily on seasonally available vegetal foods on valley floors and in the foothills and mountains (Ladastida and Caldeira 1995, cited in Paleo Solutions 2018). In the spring, blossoms and buds were collected from blooming plants in the foothills. During the summer, cactus fruits, agave, and mesquite pods were collected in valleys. Small animals were hunted during both seasons. During the fall and winter months, Kumeyaay moved into the mountains seeking shelter and food. Rockshelters and overhangs provided shelter from winter rain and snow, and acorns, pinyon nuts, and small game provided food. Kumeyaay material culture includes: seed processing implements such as the mortar and pestle and milling stones; baskets which were used for seed winnowing and storage; plain and decorated reddish-brown ceramic vessels were used for both cooking and storing water; and the bow and arrow (Ladastida and Caldeira 1995, cited in Paleo Solutions 2018). Structures built by the Kumeyaay varied in form depending on the season. For example, summer residential structures often consisted only of a windbreak while winter residential structures were semi-subterranean pit houses with a with-tie pole framework and brush thatch. Kumeyaay also built ceremonial structures, such as rock-supported brush fence circles, for events such as harvest dances (Luomala 1978 and Shipek 1991, cited in Paleo Solutions 2018). Kumeyaay primarily interacted and traded among themselves but did involve neighboring groups in certain trading activities. For example, coastal groups traded salt, dried seafood, and abalone shells with interior valley groups for gourds, acorns, agave, and mesquite pods. Kumeyaay also traded for granite to manufacture mortar and pestles, and Quechans traded with the Kumeyaay for acorns and acorn flour (Luomala 1978 and Shipek 1991, cited in Paleo Solutions 2018).

Tribal Consultation

A sacred lands search was conducted as part of the 2002 CRR. A list of Native American contacts for the project area was obtained from the Native American Heritage Commission. The sacred lands search did not identify any cultural resources or culturally sensitive areas either within or near the project site. All groups and/or individuals on the list provided by the Native American Heritage Commission were contacted regarding the 2008 EIR/EIS but consultation was not requested.

4.8.1.2 Cultural Resources Conditions at Present

The following discussion is based primarily on the *Cultural Resources Report for the US Gypsum Company Expansion/Modernization Project Supplemental EIS, Imperial, California* prepared by Pacific Legacy, Inc. in 2018 (2018 CRR) (see Appendix E).

Ethnography

No changes have occurred, and no new information has become available regarding the ethnography of the project area since the 2008 EIR/EIS.

Tribal Consultation

NEPA does not require tribal notification or consultation; thus, no further correspondence with tribes occurred as part of the 2019 SEIS.

Viking Ranch Restoration Site

A records search for potential cultural resources was conducted by Dudek archeologists for the Viking Ranch Restoration Site. No cultural resources have been recorded on the site or within a 1-mile buffer area (Dudek 2021).

Old Kane Springs Road Preservation Site

The Old Kane Springs Road Preservation Site is undeveloped open space with no structures or other improvements.

4.8.2 Regulatory Setting

The following sections discuss federal, State, and local regulations pertaining to biological resources that warrant consideration during the environmental review of the project.

4.8.2.1 Federal

There are no applicable federal programs or policies related to TCRs.

4.8.2.2 State

Assembly Bill 52

Assembly Bill (AB) 52 specifies that a project that may cause a substantial adverse change in the significance of a TCR, as defined, is a project that may have a significant effect on the environment. AB 52 requires a lead agency to consult with a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project, if the tribe: (1) requests in writing consultation to the lead agency, (2) 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 EIR is required for a project pursuant to CEQA. AB 52 specifies examples of mitigation measures that may be considered to avoid or minimize impacts on TCRs.

California Public Resources Code (PRC) Section 21080.3.1 requires that prior to the release of a negative declaration, mitigated negative declaration, or EIR for a project, the lead agency shall begin consultation with a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project if:

- The California Native American tribe requested to the lead agency, in writing, to be informed by the lead agency through formal notification of proposed projects in the geographic area that is traditionally and culturally affiliated with the tribe, and
- The California Native American tribe responds, in writing, within 30 days of receipt of the formal notification, and requests the consultation.

Within 14 days of determining that an application for a project is complete or a decision by a public agency to undertake a project, the lead agency shall provide formal notification to the designated contact of, or a tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice, which shall be accomplished by means of at least one written notification that includes a brief description of the proposed project and its location, the lead agency contact information, and a notification that the California Native American tribe has 30 days to request consultation pursuant to PRC Section 21080.3.1.

These requirements do not apply to subsequent or supplement EIRs.

4.8.2.3 Local

Imperial County General Plan

The goals, objectives, and policies in the *Imperial County General Plan* are intended to inform decision makers, the general public, public agencies, and those doing business in the County of the County's position on land use-related issues and to provide guidance for day-to-day decision-making. The following objectives and policies contained within the *Imperial County General Plan Conservation Element* pertain to cultural resources for the proposed project:

Conservation and Open Space Element

Goal 3: Preserve the spiritual and cultural heritage of the diverse communities of Imperial County.

Objective 3.1: Protect and preserve sites of archaeological, ecological, historical, and scientific value, and/or cultural significance.

Objective 3.3: Engage all local Native American Tribes in the protection of tribal cultural resources, including prehistoric trails and burial sites.

Imperial County Surface Mining Ordinance

The Imperial County Surface Mining Ordinance was enacted to ensure the continued availability of important mineral resources, while regulating surface mining operations as required by SMARA, PRC Section 2207, and state regulations for surface mining and reclamation practice (California Code of Regulations [CCR], Title 14, Division 2, Chapter 8, Subchapter 1, Sections 3500 et seq.), to ensure prevention or mitigation of adverse effects on the environment, including damage to archaeological and historical resources.

San Diego County General Plan

The goals and policies of the *San Diego County General Plan* provide direction to future growth and development in the county. The following goals and policies from the *San Diego County General Plan Conservation Element* relate to tribal cultural resources and apply to proposed actions at the Viking Ranch Restoration Site and Old Kane Springs Road Preservation Site, located in unincorporated San Diego County.

Conservation and Open Space Element

Goal 3: Preserve the spiritual and cultural heritage of the diverse communities of Imperial County.

Goal COS-7: Protection and Preservation of Archaeological Resources. Protection and preservation of the County's important archeological resources for their cultural importance to local communities, as well as their research and educational potential.

Policy COS-7.1: Archaeological Protection. Preserve important archaeological resources from loss or destruction and require development to include appropriate mitigation to protect the quality and integrity of these resources.

- Policy COS-7.2:** Open Space Easements. Require development to avoid archeological resources whenever possible. If complete avoidance is not possible, require development to fully mitigate impacts to archaeological resources.
- Policy COS-7.3:** Archaeological Collections. Require the appropriate treatment and preservation of archaeological collections in a culturally appropriate manner.
- Policy COS-7.4:** Consultation with Affected Communities. Require consultation with affected communities, including local tribes to determine the appropriate treatment of cultural resources.
- Policy COS-7.5:** Treatment of Human Remains. Require human remains be treated with the utmost dignity and respect and that the disposition and handling of human remains will be done in consultation with the Most Likely Descendant (MLD) and under the requirements of Federal, State and County Regulations.

4.8.3 Significance Criteria and Analysis Methodology

4.8.3.1 Significance Criteria

2008 EIR/EIS Significance Criteria

The 2008 EIR/EIS evaluated the project's cultural resources impacts using the following significance criteria:

The project would be considered to have a significant effect on cultural resources if it would:

- Disturb cultural resources that are either listed or eligible to be listed in the NRHP; as registered or eligible to be registered as a state Historic Landmark; or included in any responsible local inventory of historical properties;
- Disturb previously unknown important archaeological or historical resources;
- Have the potential to cause physical change which would affect unique ethnic cultural values; or
- Restrict existing religious or sacred uses within the potential impact area.

CEQA Appendix G Significance Criteria

Based on Appendix G of the CEQA Guidelines, the proposed project would have a significant impact to cultural resources if it would:

- a) Cause a substantial adverse change in the significance of a historical resource pursuant to § 15064.5;
- b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to § 15064.5;
- c) Disturb any human remains, including those interred outside of dedicated cemeteries.

4.8.3.2 Analysis Methodology

The evaluation of potential impacts to cultural resources is based on the findings of the 2018 CRR (Appendix E). Through a combination of a comprehensive records search for previously identified cultural resources

and a field investigation to identify and record newly discovered resources the 2018 CRR confirmed the location of significant cultural resources within the APE for the project. Based on this information, the proposed locations of project activities were compared to determine potential impacts to resources.

4.8.4 Project Impacts and Mitigation Measures

4.8.4.1 2008 EIR/EIS Impact Analysis

The 2008 EIR/EIS determined that impacts to known prehistoric and historic resources within the USG Expansion/Modernization Project area would be less than significant. However, it was noted that excavation in previously undisturbed areas could uncover unknown resources. The 2008 EIR/EIS includes the following mitigation measure to address potential impacts to unknown cultural resources:

***Mitigation Measure 3.8-3:** If any archaeological resources are encountered during implementation of the Proposed Action, construction or any other activity that may disturb or damage such resources shall be halted, and the services of a qualified archaeologist shall be secured to assess the resources and evaluate the potential impact. Such construction or other activity may resume only after the archaeological resources have been assessed and evaluated and a plan to avoid or mitigate any potential impacts to a level of insignificance has been prepared and implemented.*

4.8.4.2 2019 SEIS Impact Analysis

The 2019 SEIS further evaluated the proposed project under the National Environmental Policy Act (NEPA) and provided the following additional mitigation to address the potential for inadvertent discovery of buried artifacts which may be considered significant tribal cultural resources:

***Mitigation Measure 3.6-1:** Develop and Implement a Plan for Archaeological Monitoring, Post-Review Discovery, and Unanticipated Effects. Avoidance and protection measures for cultural resources within the Project APE will be outlined in a Construction Monitoring and Inadvertent Discovery Plan. This Plan will be prepared and approved prior to the implementation of any of the action alternatives. It will describe worker awareness training, avoidance measures, and monitoring procedures that will be implemented to protect known cultural resources from Project impacts. It will also detail the procedures that will be used to assess, manage, and mitigate potential impacts on inadvertent discoveries during Project implementation.*

***Mitigation Measure 3.6-2:** Develop a Maintenance Notification Agreement for Future Maintenance of Pipeline Rights-of-Way. A Maintenance Notification Agreement will be outlined prior to the authorization of any pipeline right-of-way grant to ensure continued avoidance of archaeological resources during the life of the grant. This agreement will identify the schedule and data needs that will be submitted by USG to BLM when maintenance is needed on any of the pipelines authorized for this project. The BLM archaeologist will review this data to determine if and where archaeological monitors are needed during future maintenance activities.*

4.8.4.3 Substantial Project Changes

Project Revisions

The proposed Quarry expansion, and the proposed Well No. 3 and associated pipeline, are substantially in the same location and same configuration as the features that were evaluated in the 2008 EIR/EIS. Therefore,

any minor revisions would not create a new or increase a significant impact related to cultural resources. However, the restoration of the Viking Ranch site and preservation of the Old Kane Springs Road site are proposed in response to mitigation required by the 2019 SEIS, and these are new actions under the proposed project.

Changed Circumstances

No changed circumstances related to the project would create a new or increased significant impact related to cultural resources.

New Information

The BLM requires that areas not subject to cultural resources inventory survey for over 10 years must be re-examined. Therefore, areas that were investigated for the USG Expansion/Modernization Project in 2002 were again inventoried in 2018. An updated Cultural Resources Report (2018 CRR) was completed as part of the 2019 SEIS. The 2018 CRR included an archival and records search and a pedestrian inventory of the USG Expansion/Modernization Project APE. As a result of the pedestrian survey, 18 cultural resources were newly discovered including one archaeological site and 17 isolated finds within the Quarry and one prehistoric archaeological site and three isolated finds within the well site and associated pipeline alignment.

Due to the identification of newly discovered cultural resources within the project site, the 2019 SEIS recommended implementation of mitigation measures 3.6-1 and 3.6-2 to address the potential for inadvertent discovery of buried resources.

Significance Determination

Based on project revisions that may create a new or increased significant impact, the County has amplified and augmented the analysis contained in the 2008 EIR/EIS. This evaluation is provided in the following impact analysis.

4.8.4.4 Subsequent Environmental Analysis

Impact 4.8-1: Would the Project Adversely Affect the Significance of a Tribal Cultural Resources, As Defined in PRC § 21074

Quarry, Well No. 3, and Associated Pipeline

As discussed in Section 4.3, the 2002 CRR and 2018 CRR concluded that, with mitigation, the project would not result in any significant impacts to archeological sites. As discussed in greater detail in Impact 4.3-1, the two prehistoric archaeological sites (PLI-2018-1 and PLI-2018-2) identified in the APE would not be disturbed by project activities due to their locations away from active mining and proposed construction. Numerous isolated cultural resources were also identified within the APE; however, isolated finds are not eligible for listing in the NRHP and were not evaluated further. Furthermore, the tribal notification process completed for the project failed to identify any tribal cultural resources in the project area. As there are no known Tribal Cultural Resources within the APE, the project would have a less than significant impact and no mitigation is required. However, implementation of the existing mitigation measures listed below would further reduce the potential to disturb significant tribal cultural resources by requiring construction monitoring, work to halt in the event of a find and, requiring proper treatment of discovered resources.

Level of Significance Before to Mitigation: Less than significant

Mitigation Measures: *Implement the following existing mitigation measures:*

- 2008 EIR/EIS:
 - Mitigation Measure 3.8-3
- 2019 SEIS:
 - Mitigation Measure 3.6-1
 - Mitigation Measure 3.6-2

Level of Significance After Mitigation: Less than significant

Viking Ranch Restoration Sites

Implementation of Mitigation Measures 4.3-1 and 4.3-2 would reduce potential impacts to TCRs by requiring construction monitoring, requiring work to halt in the event of a find and, proper treatment of discovered resources. Mitigation Measure 4.3-2 requires work to halt in the event human remains are discovered and requires the remains to be properly treated in consultation with the most likely descendent (MLD) and in accordance with federal, state, and local laws. Therefore, this impact would be less than significant with mitigation.

Level of Significance Before Mitigation: Less than significant.

Mitigation Measures: *Implement Mitigation Measures 4.3-1 and 4.3-2.*

Level of Significance After Mitigation: Less than significant.

Old Kane Springs Road Preservation Site

No ground disturbing activities or development are proposed at the Old Kane Springs Road Preservation Site. Therefore, there would be no potential to adversely affect Tribal Cultural Resources at this site.

Level of Significant: No impact

Mitigation Measures: None required.