

5.11. Tribal Cultural Resources

This section addresses potential tribal cultural resource impacts that may result from construction, operation, closure and post-closure maintenance of the Desert Valley Company Monofill Expansion Project, Cell 4. The following discussion addresses the existing conditions in the project area, identifies applicable regulations, identifies and analyzes environmental impacts, and recommends measures to reduce or avoid adverse impacts anticipated from implementation of the project, as applicable.

The analysis in this section is based on the *Phase I Cultural Resources Study* and the *Phase II Archaeological Testing Report* prepared by Chambers Group in 2019, and 2020, respectively. The Phase I and Phase II Cultural Reports were peer reviewed by ASM Affiliates and BRG Consulting, Inc. and are included as Appendix H-1 and Appendix H-2 of the EIR, respectively. A Native American monitor representing the Viejas Band of Kumeyaay Indians, accompanied the Chambers Group during the subsurface archaeological testing of six (6) archaeological site.

Scoping Issues Addressed

During the scoping period for the Project, a scoping meeting was conducted, and written comments were received from regulatory agencies. The following issues related to Cultural Resources and Native American Tribal Consultations were raised by the Native American Heritage Commission and are addressed in this section:

- AB 52 applies to any project for which a NOP, a notice of negative declaration, or a mitigated negative declaration is filed on or after July 1, 2015.
- NAHC recommends that lead agencies consult with California Native American Tribes that are traditionally and culturally affiliated with the geographic area of the Project.
- Both SB 18 and AB 52 have tribal consultation requirements.
- NAHC provided recommendations for preparing cultural resource assessments.

Issues Scoped Out

None.

5.11.1. Environmental Setting

Please refer to Section 5.3 Cultural Resources of this EIR for a detailed description of the history and background of the Project site. The Project area was occupied by the Kumeyaay, and Cahuilla, Cocopah and Quechan people. The three general time periods accepted in the region are the San Dieguito Complex, the Archaic period, and the Late Prehistoric period.

5.11.2. Regulatory Setting

Federal

Native American Graves Protection and Repatriation Act (United States Code, Title 25, Sections 3001 et seq.)

The Native American Graves Protection and Repatriation Act is a federal law passed in 1990 that provides a process for museums and federal agencies to return certain Native American cultural items, such as human remains, funerary objects, sacred objects, or objects of cultural patrimony, to lineal descendants and culturally affiliated Indian tribes.

State

Assembly Bill 52

California Assembly Bill 52 of 2014 (AB 52) was enacted on July 1, 2015 and expands CEQA by defining a new resource category, “tribal cultural resources.” AB 52 establishes that “A project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment” (PRC Section 21084.2). It further states that the lead agency avoid impacts that would alter the significant characteristics of a tribal cultural resource, when feasible (PRC Section 21084.3). PRC Section 21074 (a)(1)(A) and (B) defines tribal cultural resources:

1. “Sites, features, places, cultural landscapes, sacred places and objects with cultural value to a California Native American tribe” and meets either of the following criteria: 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
2. A cultural 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 Resource Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.

AB 52 also establishes a formal consultation process for California tribes regarding those resources. The consultation process must be completed before a CEQA document can be certified. AB 52 requires that lead agencies “begin consultation with a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project.” Native American tribes to be included in the formal consultation process are those that have requested notice of projects proposed within the jurisdiction of the lead agency.

Senate Bill 18 (SB 18)

SB 18 of 2004 (California Government Code §65352.3) requires local governments to contact, refer plans to and consult with tribal organizations prior to making a decision to adopt or amend a general or specific plan. The tribal organizations eligible to consult have traditional lands in a local government's jurisdiction and are identified, upon request, by the Native American Heritage Commission (NAHC). As noted in the California Office of Planning and Research's Tribal Consultation Guidelines (2005), "The intent of SB 18 is to provide California Native American tribes an opportunity to participate in local land use decisions at an early planning stage, for the purpose of protecting, or mitigating impacts to, cultural places."

Native American Historic Resource Protection Act

Public Resources Code Sections 5097 et seq. codify the procedures to be followed in the event of the unexpected discovery of human remains on nonfederal public lands. Section 5097.9 states that no public agency or private party on public property shall "interfere with the free expression or exercise of Native American Religion." The code further states that:

"No such agency or party [shall] cause severe or irreparable damage to any Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine... except on a clear and convincing showing that the public interest and necessity so require. County and city lands are exempt from this provision, except for parklands larger than 100 acres."

California Health and Safety Code

California Health and Safety Code, Section 7050.5 requires that if human remains are discovered in the project site, disturbance of the site shall halt and remain halted until the coroner has conducted an investigation into the circumstances, manner, and cause of any death, and the recommendations concerning the treatment and disposition of the human remains have been made to the person responsible for the excavation, or to his or her authorized representative. If the coroner determines that the remains are not subject to his or her authority and recognizes or has reason to believe the human remains are those of a Native American, he or she shall contact, by telephone within 24 hours, the Native American Heritage Commission.

Local

County of Imperial General Plan

The County of Imperial General Plan (General Plan) provides goals, objectives, and policies for the identification and protection of significant cultural resources. Specifically, the Conservation and Open Space Element of the General Plan calls for the protection of cultural resources and scientific sites and contains requirements for cultural resources that involve the identification and

documentation of significant historic and prehistoric resources and the preservation of representative and worthy examples. The Conservation and Open Space Element also recognizes the value of historic and prehistoric resources and the need to assess current and proposed land uses for impacts upon these resources.

**TABLE 5.11-1: CONSISTENCY WITH APPLICABLE GENERAL PLAN
TRIBAL CULTURAL RESOURCES GOALS AND POLICIES**

General Plan Policies	Consistency	Analysis
Conservation and Open Space Element (COSE)		
Conservation of Environmental Resources for Future Generations, COSE Goal 1: <ul style="list-style-type: none"> Environmental resources shall be conserved for future generations by minimizing environmental impacts in all land use decisions and educating the public on their value 	Yes, with mitigation	Cultural resource investigations and testing have been conducted for the proposed Project and potential impacts have been minimized. The Project is in compliance with this goal through incorporation of mitigation measures MM CUL-1 through MM CUL-4 .
Preservation of Cultural Resources, COSE Goal 3: <ul style="list-style-type: none"> Objective 3.1: Protect and preserve sites of archaeological, ecological, historical, and scientific value, and/or cultural significance. 	Yes, with mitigation	Cultural resource investigations and testing have been conducted for the proposed Project. The Project is in compliance with this goal through incorporation of mitigation measures MM CUL-1 through MM CUL-4 .
Preservation of Cultural Resources, COSE Goal 3: <ul style="list-style-type: none"> Objective 3.3: Engage all local Native American Tribes in the protection of tribal cultural resources, including prehistoric trails and burial sites. 	Yes	Pursuant to Assembly Bill 52 and Senate Bill 18, letters were distributed to 18 local Native American tribes and their representatives to engage and offer them of an opportunity to consult with the County on the Project’s potential to impact Tribal Cultural Resources, to determine whether or not Tribal Cultural Resources are present within the project area, and if so, to determine the most appropriate way to avoid or mitigate impacts. Copies of the letters are included in Appendices H-2 and H-3 of the EIR. Appendix H-4 includes a summary of tribal outreach efforts conducted for the Phase II Archaeological Testing Report.

Source: County of Imperial, 2016.

While this Draft EIR analyzes the Project’s consistency with the County of Imperial General Plan pursuant to California Environmental Quality Act (CEQA) Guidelines, Section 15125(d), the Imperial County Planning Commission ultimately determines consistency with the General Plan.

5.11.3. Analysis of Project Effects and Significance Determination

This section presents the significance criteria used for considering project impacts related to tribal cultural resources, the methodology employed for the evaluation, an impact evaluation, and mitigation requirements, if necessary.

Guidelines for Determination of Significance

A project would be considered to have a significant impact if it would:

1. Cause a substantial adverse change in the significance of a tribal cultural resource, 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, and 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.

Impact 5.11-1: Cause a substantial adverse change in the significance of a Tribal Cultural Resource

Pursuant to Public Resources Code (PRC) Section 21080.3.1, upon determining that an Initial Study (IS) would be prepared for the proposed Project, the County initiated a plan to conduct consultation with California Native American Tribes traditionally and culturally affiliated with the project area. In addition to the Native American contact program conducted for the cultural resource investigations, and in conformance with rules enacted under AB 52 and SB 18, the County, as CEQA lead agency for the proposed Project, initiated consultation with local Native American representatives to identify tribal cultural resources that may be affected by the Project. On November 19, 2018, the County sent notification letters to two (2) California Native American Tribes and/or their representatives initiating the 30-day period required by AB 52. Similarly, on November 21, 2018 the County sent notification letters to seventeen (17) federally-recognized California Native American Tribes and/or their representatives initiating a 45-day period required under SB 18. Copies of the AB 52 and SB 18 notification letters and responses are provided in Appendix H-3 and H-4, respectively.

As of the date of publication of the Draft EIR, no responses have been received and formal consultation has been closed. However, based on knowledge of areas used by their ancestors and the stated potential to encounter resources during project construction, construction monitoring required under **MM CUL-1** includes a Qualified Archaeologist who meets or exceeds the Secretary

of the Interior Professional Qualifications Standards as an archaeologist and a TCA (traditionally and culturally affiliated) Native American Monitor. With implementation of **Mitigation Measures CUL-1** through **CUL-4**, the Project's impact on tribal cultural resources would be less than significant.

Impact 5.11-2: Substantial adverse change in the significance of a tribal cultural resource with cultural value to a California Native American tribe determined to be significant the County of Imperial.

Based on coordination to date, Native American representatives have not provided information indicating there are resources that are significant to a California Native American tribe or otherwise qualify as Tribal Cultural Resources, as defined in Public Resources Code Section 5024.1. Nevertheless, based on the number of archaeological resources recorded in the project vicinity, the Project site is considered sensitive for potential buried cultural resources and/or subsurface deposits. Therefore, there is the potential for inadvertent discovery of a resource that could be impacted by project implementation. Impacts would be considered potentially significant. With implementation of Mitigation Measures **MM CUL-1** through **MM CUL-4**, potential impacts to buried cultural resources and/or subsurface deposits would be less than significant.

5.11.4. Mitigation Measures

Implementation of Mitigation Measures **MM CUL-1** through **MM CUL-4** would reduce potentially significant impacts to tribal cultural resources to below a level of significance because these measures require the performance of professionally accepted and legally compliant procedures for the discovery of previously undocumented significant archaeological resources and human remains.

Level of Significance After Mitigation

Less than significant.