

3.14 Tribal Cultural Resources

This section discusses tribal cultural resources that may be potentially impacted by the proposed project. The following identifies the existing cultural resources within the project site, analyzes potential impacts of the proposed project, and recommends mitigation measures to avoid or reduce potential impacts of the proposed project.

Information for this section is summarized from the *Archaeological and Paleontological Assessment Report for the Brawley Solar Project* prepared by Chambers Group, Inc. This report is included in Appendix E of this EIR.

3.14.1 Existing Conditions

Tribal cultural resources are defined as sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe that are either included or determined to be eligible for inclusion in the California Register of Historical Resources (CRHR); or included in a local register of historical resources; or a resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant. Historical resources, unique archaeological resources, or non-unique archaeological resources may also be tribal cultural resources if they meet these criteria (PRC Section 21074).

Tribal Cultural Setting

See Section 3.6, Cultural Resources of this EIR and the *Archaeological and Paleontological Assessment Report for the Brawley Solar Project* (Appendix E of this EIR) for a description of the regional ethnohistory.

Sacred Lands File Results

The California Native American Heritage Commission (NAHC) identifies, catalogs, and protects Native American cultural resources on private and public lands in California. Cultural resources include graves, cemeteries, and places of special religious or social significance to Native Americans. The NAHC also records the historical territories of state recognized tribes into a database called the Sacred Lands File (SLF). A records search of the SLF is conducted to ensure that the tribes potentially affected by a project are properly notified and consulted.

A SLF search request was submitted on October 2, 2020 to the California NAHC. The search results were received on October 28, 2020, and were positive. The NAHC response provided contact information for Native American tribes that may have information on cultural resources on the project site.

Tribal Notification

Pursuant to Assembly Bill (AB) 52, California Native American tribes traditionally and cultural affiliated with the project area can request notification of projects in their traditional cultural territory. The NAHC enclosed a list of Native American groups and individuals who may be able to provide information about Native American cultural resources in the vicinity of the project site.

Pursuant to Senate Bill (SB) 18, prior to the approval or any amendment of a general plan or specific plan, a local government must notify the appropriate tribes (on the contact list maintained by the NAHC) of the opportunity to conduct consultations for the purpose of preserving, or mitigating impacts on, cultural places on land within the local government's jurisdiction that is affected by the proposed plan adoption or amendment.

In accordance with AB 52 and SB18, the County provided notification of the proposed project to the following Native American tribes via certified mail on August 4, 2021:

- Barona Group of the Capitan Grande
- Campo Band of Diegueno Mission Indians
- Ewiiapaayp Band of Kumeyaay Indians
- Lipay Nation of Santa Ysabel
- Inja-Cosmit Band of Indians
- Jamul Indian Village
- Kwaaymii Laguna Band of Mission Indians
- La Posta Band of Diegueno Mission Indians
- Manzanita Band of Kumeyaay Nation
- Mesa Grande Band of Diegueno Mission Indians
- Quechan Tribe of the Fort Yuma Reservation
- San Pasqual Band of Diegueno Mission Indians
- Sycuan Band of Kumeyaay Nation
- Viejas Band of Kumeyaay Indians

The County requested for tribes to provide any information regarding any Traditional Cultural Properties, Sacred Sites, resource collecting areas, or any other areas of concern known to occur in the project area. No tribes have responded that indicate the potential for traditional cultural properties or sacred sites.

3.14.2 Regulatory Setting

This section identifies and summarizes federal, state, and local laws, policies, and regulations that are applicable to the project.

Federal

Native American Graves Protection and Repatriation Act (1990); Title 25, United States Code Section 3001, et seq.

The Native American Graves Protection and Repatriation Act defines "cultural items," "sacred objects," and "objects of cultural patrimony;" establishes an ownership hierarchy; provides for review; allows excavation of human remains, but stipulates return of the remains according to ownership; sets penalties; calls for inventories; and provides for the return of specified cultural items.

State

Assembly Bill 52

AB 52 amends PRC 5097.94, and adds eight new sections to the PRC relating to Native Americans. AB 52 was passed in 2014 and took effect on July 1, 2015. It establishes a new category of environmental impacts that must be considered under CEQA called tribal cultural resources (PRC 21074) and establishes a process for consulting with Native American tribes and groups regarding potential impacts to tribal resources. Under AB 52, a project that may substantially change the significance of a tribal cultural resource is a project that may have a significant impact on the environment. If a project may cause a significant impact on a tribal cultural resource, the lead agency shall implement measures to avoid the impacts when feasible.

Senate Bill 18

SB 18 requires local governments to consult with tribes prior to making certain planning decisions and to provide notice to tribes at certain key points in the planning process. These consultation and notice requirements apply to approvals and amendments of both general plans (defined in Government Code §65300 et seq.) and specific plans (defined in Government Code §65450 et seq.).

Prior to the approval or any amendment of a general plan or specific plan, a local government must notify the appropriate tribes (on the contact list maintained by the NAHC) of the opportunity to conduct consultations for the purpose of preserving, or mitigating impacts on, cultural places on land within the local government's jurisdiction that is affected by the proposed plan adoption or amendment. Tribes have 90 days from the date on which they receive notification to request consultation, unless a shorter timeframe has been agreed to by the tribe (Government Code §65352.3).

Public Resources Code Section 21074

PRC Section 21074 defines a tribal cultural resource as a site, feature, place, cultural landscape, sacred place, and any object with cultural value to a California Native American Tribe. A tribal cultural resource must be on or eligible for the CRHR or must be included in a local register of historical resources. The lead agency can determine if a tribal cultural resource is significant even if it has not been evaluated for the CRHR or is not included on a local register.

Assembly Bill 4239

AB 4239, passed in 1976, established the NAHC as the primary government agency responsible for identifying and cataloging Native American cultural resources. The bill authorized the Commission to act in order to prevent damage to and insure Native American access to sacred sites and authorized the Commission to prepare an inventory of Native American sacred sites located on public lands.

Public Resources Code Section 21074

PRC Section 21074 defines a tribal cultural resource as a site, feature, place, cultural landscape, sacred place, and any object with cultural value to a California Native American Tribe. A tribal cultural resource must be on or eligible for the CRHR or must be included in a local register of historical resources. The lead agency can determine if a tribal cultural resource is significant even if it has not been evaluated for the CRHR or is not included on a local register.

Public Resources Code 5097.97

No public agency and no private party using or occupying public property or operating on public property under a public license, permit, grant, lease, or contract made on or after July 1, 1977, shall in any manner whatsoever interfere with the free expression or exercise of Native American religion as provided in the U.S. Constitution and the California Constitution; nor shall any such agency or party cause severe or irreparable damage to any Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine located on public property, except on a clear and convincing showing that the public interest and necessity so require.

Public Resources Code 5097.98 (b) and (e)

PRC 5097.98 (b) and (e) require a landowner on whose property Native American human remains are found to limit further development activity in the vicinity until he/she confers with the NAHC-identified most likely descendants (MLD) to consider treatment options. In the absence of MLDs or of a treatment acceptable to all parties, the landowner is required to reenter the remains elsewhere on the property in a location not subject to further disturbance.

California Health and Safety Code, Section 7050.5

California HSC 7050.5 makes it a misdemeanor to disturb or remove human remains found outside a cemetery. This code also requires a project owner to halt construction if human remains are discovered and to contact the County Coroner.

3.14.3 Impacts and Mitigation Measures

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.

Thresholds of Significance

Based on CEQA Guidelines Appendix G, project impacts related to tribal cultural resources are considered significant if the project causes 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 CRHR, or in a local register of historical resources as defined in PRC section 5020.1(k)
- 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 PRC Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe

Impact Analysis

Impact 3.14-1 *Would the project 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:*

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)

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?

The NAHC maintains the confidential SLF which contains sites of traditional, cultural, or religious value to the Native American community. A SLF search request was submitted on October 2, 2020 to the California NAHC. The search results were received on October 28, 2020 and were positive.

In accordance with AB 52 and SB18, the County provided notification of the proposed project to 14 Native American tribes (see complete list in Section 3.14.1) via certified mail on August 4, 2021. The County requested for tribes to provide any information regarding any Traditional Cultural Properties, Sacred Sites, resource collecting areas, or any other areas of concern known to occur in the project area. No tribes have responded that indicate the potential for traditional cultural properties or sacred sites. Therefore, the project is not anticipated to 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 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, and, per the criteria set forth in Section 5024.1, considering the significance of the resource to a California Native American tribe. As stated in Section 3.6 Cultural Resources, potential impacts to archaeological resources would be less than significant with implementation of Mitigation Measures CUL-1 through CUL-6. Impacts specifically related to tribal cultural resources would be less than significant.

Mitigation Measure(s)

No mitigation measures are required.

3.14.4 Decommissioning/Restoration and Residual Impacts

Decommissioning/Restoration

If at the end of the PPA term, no contract extension is available for a power purchaser, no other buyer of the energy emerges, or there is no further funding of the project, the project will be decommissioned and dismantled. No grading or significant landform modifications would be required during decommissioning activities upon site restoration in the future. No impact on tribal cultural resources would occur.

Residual

As described above, impacts specifically related to tribal cultural resources would be less than significant. No mitigation is required and no residual unmitigated impacts would occur with implementation of the proposed project.