

## 3.5 Cultural Resources

This section discusses cultural resources and 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 *Cultural Resources Survey of 640-Acres Proposed for Alternative Energy Exploration* prepared by Tierra Environmental Services. This report is included in Appendix H of this EIR.

### 3.5.1 Existing Conditions

#### Cultural Setting

##### *Paleoindian Period*

The earliest well documented prehistoric sites in southern California are identified as belonging to the Paleoindian period, which has locally been termed the San Dieguito complex/tradition. The Paleoindian period is thought to have occurred between 9,000 years ago, or earlier, and 8,000 years ago in this region.

Although varying from the well-defined fluted point complexes, such as Clovis, the San Dieguito complex is still seen as a hunting focused economy with limited use of seed grinding technology. The economy is generally seen to focus on highly ranked resources, such as large mammals and relatively high mobility, which may be related to following large game. Archaeological evidence associated with this period has been found around inland dry lakes, on old terrace deposits of the California desert, and near the coast. The San Dieguito complex, as seen in the desert region, is generally comprised of lithic scatters and rock features associated with activities of the hunting economy. Such resources are typically located on desert pavement terraces or along ancient shorelines or major drainages (Appendix H of this EIR).

##### *Early Archaic Period*

Native Americans during the Archaic period had a generalized economic focus on hunting and gathering. In many parts of North America, Native Americans chose to replace this economy with others based on horticulture and agriculture. Southern California economies remained largely based on wild resource use until European contact. Changes in hunting technology and other important elements of material culture have created two distinct subdivisions within the Archaic period in southern California.

The Early Archaic period is differentiated from the earlier Paleoindian period by a shift to a more generalized economy and an increased focus on use of grinding and seed processing technology. At sites dated between approximately 5,000 and 1,500 years BP, the increased use of groundstone artifacts and atlatl dart points, along with a mixed core-based tool assemblage, identify a range of adaptations to a more diversified set of plant and animal resources. Variations of the Pinto and Elko series projectile points, large bifaces, manos and portable metates, and core tools are characteristic of this period. However, archaeological evidence for the Archaic period is minimal throughout the desert region and major changes in technology within this relatively long chronological unit appear limited. Several scientists have considered changes in projectile point styles and artifact frequencies

within the Early Archaic period to be indicative of population movements or units of cultural change, but these units are poorly defined locally due to poor site preservation.

#### *Late Prehistoric Period*

Around 2,000 BP, Takic-speaking people from the Great Basin region began migrating into southern California, marking the beginning of what is called the Late Prehistoric period in the southern California region. The Late Prehistoric period in this portion of Imperial County is recognized archaeologically by smaller projectile points, the replacement of flexed inhumations with cremation, the introduction of ceramics, and an emphasis on inland plant food collection and processing, especially acorns and mesquite. Inland semi-sedentary villages were established along major water courses and around springs, and montane areas were seasonally occupied to exploit mesquite, acorns, and piñon nuts. Mortars for mesquite and acorn processing increased in frequency relative to seed grinding basins.

The most numerous of the archaeological resources in the Imperial Valley date to the Late Prehistoric period. The majority of sites recorded in the region have been small temporary campsites related to processing food resources or manufacturing tools. Larger habitation sites were less common, but displayed a wider range of activities and longer periods of occupation. Typical artifacts at these sites include Desert Side-notched and Cottonwood Triangular projectile points and Lower Colorado buffware and Tizon brownware ceramics. Lithic artifacts are typically made from chert, volcanic, or quartz material.

#### *Historic/Contact Period*

Cultural activities within Imperial County between the late 1700s and the present provide a record of Native American, Spanish, Mexican, and American control, occupation, and land use.

Native American control of the southern California region ended in the political views of western nations with Spanish colonization of the area beginning in 1769. However, Native American control of the majority of California did not end until several decades later. In southern California Euroamerican control was firmly established by the end of the Garra uprising in the early 1850s.

The Spanish Period (1752-1821) represents a period of Euroamerican exploration and settlement. The first Europeans to arrive in this region were the Spanish, who traveled along the California Coast by ships establishing settlements and missions to secure their hold on California. Using these same ships, they traveled around the Golfo de California and up the Colorado River, establishing additional settlements at inland locations, such as Tubac south of modern Tucson. In 1772, Pedro Fages, Commandante of California, pursued several deserters into the arid territory from his headquarters in San Diego. Fages was perhaps the first white person to see the Imperial Valley.

At about the same time, Juan Bautista de Anza was Commandante of the Spanish settlement of Tubac. In 1774, Anza received permission to explore the Gila and Colorado rivers in search of a trans-desert route. His journey from Tubac to the San Gabriel Mission in California took approximately three months. Portions of Anza's route were used for mail delivery by the Spanish and ran through Imperial Valley to what is now Riverside County and beyond. However, hostilities broke out between the Spanish and Colorado River tribes in 1781 and the route was abandoned. The cultural and institutional systems established by the Spanish continued beyond the year 1821, when California came under Mexican rule. During this period the Native American populations of the Colorado Desert remained relatively unaffected due to their isolation from the coast.

The Mexican Period (1821-1848) includes the retention of many Spanish institutions and laws. During this period the Romero Expedition passed through Cahuilla territory looking for a new route to the

Colorado River. They provided some of the earliest records of Cahuilla culture. The mission system was secularized in 1834 which dispossessed many Native Americans and increased Mexican settlement. After secularization, large tracts of land were granted to individuals and families and the rancho system was established. Cattle ranching dominated other agricultural activities during the early part of this period. The Mexican Period ended when Mexico ceded California to the United States after the Mexican-American War of 1846-48.

The American Period (1848-Present) began following the Mexican-American War, the U.S. assumed control of the area. Not much changed with transfer of governmental power until 1849 when gold was discovered in California. The ensuing gold rush brought an estimated 70,000 people through the desert on their way to the gold fields of northern California. Many of these people traveled along the Southern Emigrant Trail which itself was an appropriation of older Native American trails. Afterwards, gold strikes in the eastern portion of Imperial County during the early 1850s attracted some mining interests. However, few settled in the Imperial Valley.

In the 1870s, interest in the area began to pick up as the U.S. Government sent out surveying parties to investigate the potential agricultural uses of the Colorado River. It was during this time that Southern Pacific Railroad completed its line through the desert to Yuma. During the 1880s and 1890s, Imperial Valley was used as grazing lands for herds that would feed on grasses grown in areas fed by overflow from the Colorado River. However, there were few wells in Imperial Valley and most of the water had to be imported by rail from Coachella Valley. It was not until the shortage of water in the valley was overcome that white settlement in the valley began to rise.

As early as the 1850s, plans to irrigate the valley using water from the Colorado River had been developed but it wasn't until the turn of the 20th century that work was begun on the Alamo Canal. The Alamo Canal coursed along the U.S-Mexico border, crossing into Mexico then back into the U.S. This required cooperation and permission from both nations' governments. From the completion of the Alamo canal in 1902 to the year 1905, the population of Imperial Valley jumped from a few hundred to 12,000 and arable land increased from 1,500 acres to 67,000 acres. The new water source helped to establish cities such as El Centro, Imperial, Brawley and Niland.

The Salton Sea was created in 1905 when the Colorado River breached an Imperial Valley diversion channel and began to fill the Salton Sink. It took two years before the course of the river was restored to the Gulf of California. Imperial County was established in 1907. Political instability in Mexico necessitated the construction of another canal built completely on United States soil to ensure a reliable source of water to the farmers of the Imperial Valley.

The All-American canal was built to meet this need in years from 1934-1940. The completion of the All-American canal and its four tributaries, the Coachella Canal, East Highline Canal, Central Canal, and Westside Main Canal finally established a stable source of water that would reach throughout the valley. The Coachella Canal, completed in 1949, runs adjacent to portions of the project area. The construction of these canals allowed for the expansion of agriculture and reclamation of the land. Agriculture continues to dominate the region's land use, including neighboring sections.

## Local Setting

The project area is located in Township 10 South, Range 14 East on the Wister and Iris Wash USGS 7.5' Quadrangles, Section 27. The project area is located on one parcel of land approximately 640 acres in size. The proposed project would be located on approximately 100 acres within the northwest portion of the 640-acre parcel.

The project site is located on the eastern edge of active agricultural lands with desert lands located immediately to the east and beyond. Road construction, off-road activity and the construction of the Coachella Canal have disturbed the project area to varying degrees.

The cultural resources survey report prepared for the project included archival and other background studies, in addition to a field survey. The archival research consisted of a literature and records search conducted for the project in addition to identifying previously recorded resources and to determine the types of resources that might occur in the survey area.

### Records Search

The records search indicated that 10 archaeological studies have been conducted within a one mile radius of the project. Five of those studies covered a portion of the project area. Four of these were regional overviews of the general area and only one, Sowell 2005, surveyed a portion of Section 27. This survey covered less than five percent of the project area.

### Previously Recorded Resources

Eighteen previously recorded resources have been identified within a one-mile radius of the project area (Table 3.5-1). This includes CA-IMP-68, which was originally recorded as site C-20 in 1920 and 1939 by Malcolm Rogers.

Since that time, seven other resources (CA-IMP-118, CA-IMP-6659, CA-IMP- 7866, and CA-IMP-8479 through 8482) were identified nearby and subsumed into the record for CA-IMP-68. The site is located at the edge of West Mesa along the old shoreline of Lake Cahuilla and extending west and below sea level. The resource was identified as a village site of approximately 0.75-mile long, along the 10-foot contour line. The site included housepits and freshwater mussel shell deposits. In 1951, the site was further recorded. Cremations were located within the site's boundaries along with projectile points, knives, scrapers, pottery, shell, bone, metates, manos and painted pebbles. The artifacts were collected and stored at the San Diego Museum of Man. It appears that the site forms were updated in the 1990s using information from a 1951 update to fill in some of the data that was missing when the site was first recorded. The records show the site to be 1400m long east/west and 800m north/south with the sea level contour being its furthest extent west. The site was identified as nearly destroyed at that time and later forms record this as well. It should be noted that CA-IMP-118 is the same as CA-IMP- 68 but was erroneously given a new trinomial.

The remaining sites subsumed under CA-IMP-68 (sites CA-IMP-6659, CA-IMP-7866, and CA-IMP-8479 through 8482) are located in Section 26. With the exception of CA-IMP-6659, the sites were recorded during a BLM survey of land which was transferred to the County of Imperial for the currently operating Niland Landfill in 1999. The sites are comprised of individual sparse lithic and ceramic scatters.

**Table 3.5-1. Previously Recorded Cultural Resources Located Within a 1-Mile Radius of the Project Area**

Site No.	Description	CEQA Eligibility
CA-IMP-00068	Habitation Site: Cremation, Groundstone, Lithic-Pottery Scatters, Shell, Painted Pebbles, Points, Hearths, Slabs	Not Eligible
CA-IMP-00118	Subsumed under CA-IMP-00068, Shell Midden and House Pits	Not Eligible
CA-IMP-01142	Trail and Lithic Scatter	Unknown
CA-IMP-06506	Lithic Scatter	Unknown
CA-IMP-06507	Occupation Site	Unknown
CA-IMP-06653	Ceramic Scatter	Not Eligible
CA-IMP-06654	Occupation Site	Not Eligible
CA-IMP-06655	Lithic and Ceramic Scatter	Not Eligible
CA-IMP-06656	Lithic Scatter	Not Eligible
CA-IMP-06657	Ceramic Scatter	Unknown
CA-IMP-06658	Temporary Campsite	Not Eligible
CA-IMP-06659	Rock Circle with sherd and lithic, Subsumed under CA-IMP-00068	Unknown
CA-IMP-06889	Isolate: Lithic	Not Eligible
CA-IMP-07866	Lithic Scatter, Subsumed under CA-IMP-00068	Unknown
CA-IMP-08479	Lithic Scatter, Subsumed under CA-IMP-00068	Unknown
CA-IMP-08480	Lithic Scatter, Subsumed under CA-IMP-00068	Unknown
CA-IMP-08481	Lithic Scatter, Subsumed under CA-IMP-00068	Unknown
CA-IMP-08482	Lithic Scatter, Subsumed under CA-IMP-00068	Possibly Eligible

Source: Appendix H of this EIR

### Sacred Lands File Database

A letter was sent to the Native American Heritage Commission (NAHC) to request a search of the sacred lands in regards to the project area on May 11, 2010. On May 24, 2010, the NAHC responded that no previously identified cultural resources were known to be in the vicinity of the project area. The response letter from the NAHC is included in the *Cultural Resources Survey of 640-Acres Proposed for Alternative Energy Exploration* (Appendix H of this EIR).

### Field Survey

A total area of approximately 640 acres was surveyed from April 6-9, 2010 for the project. An intensive survey using parallel transects with 10 to 15 meter intervals was conducted throughout the project

area. Visibility in the project area was excellent with few hindrances. Vegetation in the project area was sparse and the ground surface was open with nearly 100 percent visibility. Much of the project area has been disturbed, particularly in the eastern half, but numerous areas have been previously cut by bulldozers or grubbed and vegetation has only recently begun to re-establish itself. Two Global Positioning System (GPS) units were running during the entire survey and used to maintain transect integrity and record cultural resources locations.

Eighteen cultural resources were identified during the survey. These resources are summarized in Table 3.5-2. These resources include five prehistoric archaeological sites, three historic can dumps, two prehistoric trails, and eight prehistoric isolates. The prehistoric sites are ceramic and lithic scatters or temporary camps. The isolates include cores, flakes, and potsherds. Full descriptions of the resources are provided in the cultural resource survey report (Appendix H of this EIR).

As shown in Table 3.5-2, six cultural resources within the 640-acre survey area are recommended for listing in the California Register of Historical Resources (CRHR). None of these cultural resources recommended for listing in the CRHR are located within the 100-acre solar energy facility, or along proposed access roads, gen-tie, or fiber optic alignment.

**Table 3.5-2. Cultural Resources Located within 640-acre Survey Area**

Site No.	Description	Recommended as California Register Eligible?
CA-IMP-68/118	Large habitation/village site	No
OS27-1	Isolate buff pot sherd	No
OS27-2	Isolate buff pot sherds	No
OS27-3	Obsidian chunk manuport	No
OS27-4	Trail segment, 10 meters long	Possibly
OS27-5	Isolate buff pot sherd	No
OS27-6	Historic can dump	No
OS27-7	Trail segment, 25 meters long	Possibly
OS27-8	Isolate secondary flake	No
OS27-9	Isolate buff pot sherd	No
OS27-10	Historic can dump	No
OS27-11	Isolate jasper core fragment	No
OS27-12	Ceramic scatter	Possibly
OS27-13	Isolate buff pot sherd	No
OS27-14	Large ceramic scatter	Possibly
OS27-15	Ceramic and lithic scatter with cleared circles	Possibly

**Table 3.5-2. Cultural Resources Located within 640-acre Survey Area**

Site No.	Description	Recommended as California Register Eligible?
OS27-16	Ceramic and lithic scatter with a rock circle	Possibly
OS27-17	Ceramic scatter	No
OS27-18	Historic can dump	No

Source: Appendix H of this EIR

### 3.5.2 Regulatory Setting

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

#### Federal

##### *National Historic Preservation Act*

Federal regulations (36 CFR Part 800.2) define historic properties as "any prehistoric or historic district, site, building, structure, or object included, or eligible for inclusion in, in the National Register of Historic Places." Section 106 of the National Historic Preservation Act (NHPA) (Public Law 89-665; 80 Stat 915; USC 470, as amended) requires a federal agency with jurisdiction over a project to take into account the effect of the project on properties included in or eligible for the (NRHP, and to afford the Advisory Council on Historic Preservation a reasonable opportunity to comment. The term "cultural resource" is used to denote a historic or prehistoric district, site, building, structure, or object, regardless of whether it is eligible for the NRHP.

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

##### *California Office of Historic Preservation*

The California Office of Historic Preservation (OHP) administers state and federal historic preservation programs and provides technical assistance to federal, state, and local government agencies, organizations, and the general public with regard to historic preservation programs designed to identify, evaluate, register, and protect California's historic resources.

Section 15064.5 of the CEQA Guidelines also requires that Native American concerns and the concerns of other interested persons and corporate entities, including but not limited to museums, historical commissions, associations, and societies be solicited as part of the process of cultural resources inventory. In addition, California law protects Native American burials, skeletal remains, and



associated grave goods regardless of their antiquity and provides for the sensitive treatment and disposition of those remains (HSC Section 7050.5, PRC Sections 5097.94 et seq.).

#### *CEQA Guidelines: Historical Resources Definition*

CEQA Guidelines Section 15064.5(a) defines a historical resource as:

- (1) A resource listed in, or determined to be eligible by the State Historical Resources Commission, for listing in the CRHR (PRC Section 5024.1; Title 14 CCR, Section 4850 et seq.).
- (2) A resource included in a local register of historical resources, as defined in Section 5020.1(k) of the Public Resources Code or identified as significant in an historical resource survey meeting the requirements Section 5024.1(g) of the Public Resources Code, shall be presumed to be historically or culturally significant. Public agencies must treat any such resource as significant unless the preponderance of evidence demonstrates that it is not historically or culturally significant.
- (3) Any object, building, structure, site, area, place, record, or manuscript which a lead agency determines to be historically significant or significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California may be considered to be an historical resource, provided the lead agency's determination is supported by substantial evidence in light of the whole record. Generally, a resource shall be considered by the lead agency to be "historically significant" if the resource meets the criteria for listing on the CRHR (PRC Section 5024.1; Title 14 CCR, Section 4852) including the following:
  - (A) Is associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage;
  - (B) Is associated with the lives of persons important to our past;
  - (C) 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; or
  - (D) Has yielded, or may be likely to yield, information important in prehistory or history.<sup>1</sup>
- (4) The fact that a resource is not listed in, or determined to be eligible for listing in the CRHR, not included in a local register of historical resources (pursuant to Section 5020.1(k) of the Public Resources Code), or identified in an historical resources survey (meeting the criteria in Section 5024.1(g) of the Public Resources Code) does not preclude a lead agency from determining that the resource may be an historical resource as defined in Public Resources Code Sections 5020.1(j) or 5024.1.

#### *CEQA Guidelines: Archaeological Resources*

Section 15064.5(c) of CEQA Guidelines provides specific guidance on the treatment of archaeological resources as noted below.

- (1) When a project will impact an archaeological site, a lead agency shall first determine whether the site is an historical resource, as defined in subdivision (a).

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<sup>1</sup> Ibid.



- (2) If a lead agency determines that the archaeological site is an historical resource, it shall refer to the provisions of Section 21084.1 of the Public Resources Code, and this section, Section 15126.4 of the Guidelines, and the limits contained in Section 21083.2 of the Public Resources Code do not apply.
- (3) If an archaeological site does not meet the criteria defined in subdivision (a), but does meet the definition of a unique archeological resource in Section 21083.2 of the Public Resources Code, the site shall be treated in accordance with the provisions of Section 21083.2. The time and cost limitations described in Public Resources Code Section 21083.2 (c–f) do not apply to surveys and site evaluation activities intended to determine whether the project location contains unique archaeological resources.
- (4) If an archaeological resource is neither a unique archaeological nor an historical resource, the effects of the project on those resources shall not be considered a significant effect on the environment. It shall be sufficient that both the resource and the effect on it are noted in the Initial Study or EIR, if one is prepared to address impacts on other resources, but they need not be considered further in the CEQA process.

#### *CEQA Guidelines: Human Remains*

Section 15064.5 of CEQA Guidelines provides specific guidance on the treatment of human remains pursuant to PRC § 5097.98, which provides specific guidance on the disposition of Native American burials (human remains), and fall within the jurisdiction of the NAHC:

- (d) When an initial study identifies the existence of, or the probable likelihood, of Native American human remains within the project, a lead agency shall work with the appropriate Native Americans as identified by the NAHC as provided in Public Resources Code Section 5097.98. The applicant may develop an agreement for treating or disposing of, with appropriate dignity, the human remains and any items associated with Native American burials with the appropriate Native Americans as identified by the NAHC. Action implementing such an agreement is exempt from:
  - (1) The general prohibition on disinterring, disturbing, or removing human remains from any location other than a dedicated cemetery (HSC Section 7050.5).
  - (2) The requirements of CEQA and the Coastal Act.
- (e) In the event of the accidental discovery or recognition of any human remains in any location other than a dedicated cemetery, the following steps should be taken:
  - (1) There shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent human remains until:
    - (A) The coroner or the county in which the remains are discovered must be contacted to determine that no investigation of the cause of death is required, and
    - (B) If the coroner determines the remains to be Native American:
      1. The coroner shall contact the NAHC within 24 hours.
      2. The NAHC shall identify the person or persons it believes to be the most likely descended from the deceased Native American.
      3. The mostly descendent may make recommendations to the landowner of the person responsible for the excavation work, for means of treating or disposing of,

with appropriate dignity, the human remains and any associated grave goods as provided in Public Resources Code section 5097.98, or

- (2) Where the following conclusions occur the landowner or his authorized representative shall rebury the Native American human remains and associated grave goods with appropriate dignity on the property in a location not subject to further subsurface disturbance.
  - (A) The NAHC is unable to identify a most likely descendent or the most likely descendent failed to make a recommendation within 24 hours after being notified by the commission.
  - (B) The descendant fails to make a recommendation; or
  - (C) The landowner or his authorized representative rejects the recommendation of the descendant, and the mediation by the NAHC fails to provide measures acceptable to the landowner.
- (f) As part of the objectives, criteria, and procedures required by Section 21082 of the Public Resources Code, a lead agency should make provisions for historical or unique archaeological resources accidentally discovered during construction. These provisions should include an immediate evaluation of the find by a qualified archaeologist. If the find is determined to be an historical or unique archaeological resource, contingency funding and a time allotment sufficient to allow for implementation of avoidance measures or appropriate mitigation should be available. Work could continue on other parts of the building site while historical or unique archaeological resource mitigation takes place.”

#### *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.

#### *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.

#### *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.

### Local

#### *Imperial County General Plan*

The Imperial County General Plan provides goals, objectives, and policies for the identification and protection of significant cultural resources. The Conservation and Open Space Element of the General Plan includes goals, objectives, and policies for the protection of cultural resources and scientific sites that emphasize identification, documentation, and protection of cultural resources. While Section 3.9, Land Use Planning, of this EIR analyzes the project's consistency with the General Plan pursuant to CEQA Guidelines Section 15125(d), the Imperial County Board of Supervisors and Planning Commission ultimately make a determination as to the project's consistency with the General Plan. Goals and Objectives applicable to the proposed project are summarized in Table 3.5-3.

**Table 3.5-3. Project Consistency with Applicable General Plan Goals and Objectives**

General Plan Policies	Consistency with General Plan	Analysis
<p><b>Conservation and Open Space Element - Open Space and Recreation Conservation</b></p> <p><b>Goal 1</b> - Environmental resources shall be conserved for future generations by minimizing environmental impacts in all land use decisions and educating the public on their value.</p> <p><b>Objective 1.4</b> - Ensure the conservation and management of the County's natural and cultural resources.</p>	Consistent	<p>A cultural resources report was prepared for the project site. Known archaeological resources within the project site boundary will be avoided and not impacted. However, as discussed below, the proposed project has the potential to encounter undocumented historical, archaeological resources, and human remains.</p> <p>Implementation of Mitigation Measures CR-1, CR-2, and CR-3 would reduce potentially significant impacts on unknown historic or unique archaeological materials during construction of the project site. Implementation of Mitigation Measure CR-4 would reduce potential impacts on human remains to a level less than significant.</p>
<p><b>Objective 3.1</b> - Protect and preserve sites of archaeological, ecological, historical, and scientific value, and/or cultural significance.</p>	Consistent	

Source: County of Imperial 1993

Notes:

SLF=sacred lands file

### 3.5.3 Impacts and Mitigation Measures

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

#### Thresholds of Significance

##### *Cultural Resources*

Based on CEQA Guidelines Appendix G, project impacts related to cultural resources are considered significant if any of the following occur:

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

### *Tribal Cultural Resources*

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

### *Methodology*

This analysis evaluates the potential for the project, as described in Chapter 2, Project Description, to interact with cultural resources in the project site. Based on the extent of these interactions, this analysis considers whether these conditions would result in an exceedance of one or more of the applied significance criteria as identified above.

As indicated in the environmental setting, a cultural resources report was prepared for the project site. The report provides the results of a records search, a sacred lands file (SLF) search conducted by the NAHC, and field survey, which have been completed for the project site pursuant to CEQA. This report is included in Appendix H of this EIR. The information from the cultural resources report was reviewed and summarized to present the existing conditions and to identify potential environmental impacts, based on the significance criteria presented in this section. Impacts associated with cultural resources and tribal cultural resources that could result from project construction and operational activities were evaluated qualitatively based on site conditions; expected construction practices; materials, locations, and duration of project construction and related activities.

### *Impact Analysis – Solar Energy Facility and Gen-Tie*

#### ***Impact 3.5-1 Would the project cause a substantial adverse change in the significance of a historical resource pursuant to §15064.5?***

To be considered historically significant, a resource must meet one of four criteria for listing outlined in the CRHR (CEQA Guidelines 15064.3 (a)(3)). In addition to meeting one of the criteria outlined the CRHR, a resource must retain enough intact and undisturbed deposits to make a meaningful data contribution to regional research issues (CCR Title 14, Chapter 1.5 Section 4852 [c]). Further, based on CEQA Guidelines Section 15064.5 (b), substantial adverse change would include physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of an historical resource is materially impaired. This can occur when a project:

- Demolishes or materially alters in an adverse manner those physical characteristics of an historical resource that convey its historical significance and that justify its inclusion in, or eligibility for, inclusion in the CRHR, NRHP, a local register, or historic resources.

- Demolishes or materially alters in an adverse manner those physical characteristics that account for its identification in an historical resources survey meeting the requirements of PRC §5024.1(g), unless the public agency establishes by a preponderance of the evidence that the resource is not historically or culturally significant.

As shown in Table 3.5-2, six cultural resources within the 640-acre survey area are recommended for listing in the CRHR. None of these cultural resources recommended for listing in the CRHR are located within the proposed 100-acre solar energy facility site, or along the proposed access roads, gen-tie, or fiber optic alignment. Therefore, the proposed project would not cause a substantial adverse change in the significance of a historical resource pursuant to §15064.5, and no impact would occur.

#### *Mitigation Measure(s)*

No mitigation measures are required.

#### ***Impact 3.5-2 Would the project cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5?***

Pursuant to CEQA Guidelines §15064.5(c)(1) and (2), an archaeological resource includes an archaeological site that qualifies as a significant historical resource as described for Impact 3.5-1. If an archaeological site does not meet any of the criteria outlined in the provisions under Impact 3.5-1, but meets the definition of a “unique archaeological resource” in PRC 21083.2, the site shall be treated in accordance with the provisions of PRC 21083.2, unless the project applicant and public agency elect to comply with all other applicable provisions of CEQA with regards to archaeological resources. “Unique archaeological resource” means an archaeological artifact, object or site about which it can be clearly demonstrated that, without merely adding to the current body of knowledge, there is a high probability that it meets any of the following criteria:

1. Contains information needed to answer important scientific research questions that there is a demonstrable public interest in that information.
2. Has a special and particular quality such as being the oldest of its type or the best available example of its type.
3. Is directly associated with a scientifically recognized important historic event or person.

CEQA Guidelines 15064.5(c)(4) confirms that if an archaeological resource is neither a unique archaeological nor an historic resource, the effects of the project on those resources shall not be considered a significant effect on the environment.

The proposed project includes ground-disturbing activities. As such, the project has the potential to disturb previously undocumented cultural resources that could qualify as unique archaeological resources pursuant to CEQA. This potential impact is considered significant. Implementation of Mitigation Measures CR-1 and CR-2 would reduce the potential impact to a level less than significant.

#### *Mitigation Measure(s)*

**CR-1** Pursuant to CEQA Guidelines §15064.5(f), in the event that previously unidentified unique archaeological resources are encountered during construction or operational repairs, archaeological monitors will be authorized to temporarily divert construction work within 100 feet of the area of discovery until significance and the appropriate

mitigation measures are determined by a qualified archaeologist familiar with the resources of the region.

Applicant shall notify the County within 24 hours. Applicant shall provide contingency funding sufficient to allow for implementation of avoidance measures or appropriate mitigation.

**CR-2**

In the event of the discovery of previously unidentified archaeological materials, the contractor shall immediately cease all work activities within approximately 100 feet of the discovery. After cessation of excavation, the contractor shall immediately contact the Imperial County Department of Planning and Development Services. Except in the case of cultural items that fall within the scope of the Native American Grave Protection and Repatriation Act, the discovery of any cultural resource within the project area shall not be grounds for a “stop work” notice or otherwise interfere with the project’s continuation except as set forth in this paragraph.

In the event of an unanticipated discovery of archaeological materials during construction, the applicant shall retain the services of a qualified professional archaeologist, meeting the Secretary of the Interior’s Standards for a Qualified Archaeologist, to evaluate the significance of the materials prior to resuming any construction-related activities in the vicinity of the find. If the qualified archaeologist determines that the discovery constitutes a significant resource under CEQA and it cannot be avoided, the applicant shall implement an archaeological data recovery program.

*Significance after Mitigation*

With the implementation of Mitigation Measures CR-1 and CR-2, the project would reduce the potential impacts associated with the inadvertent discovery of archaeological resources to a less than significant level.

***Impact 3.5-3 Would the project disturb any human remains, including those interred outside of dedicated cemeteries?***

During the construction and operational phases of the proposed project, grading, excavation and trenching will be required. Although the potential for encountering subsurface human remains within the project site is low, there remains a possibility that human remains are present beneath the ground surface, and that such remains could be exposed during project construction. The potential to encounter human remains is considered a significant impact. Mitigation Measures CR-1 through CR-3 would ensure that the potential impact on previously unknown human remains does not rise to the level of significance pursuant to CEQA.

*Mitigation Measure(s)*

Implement Mitigation Measures CR-1 and CR-2.

**CR-3**

In the event that evidence of human remains is discovered, construction activities within 200 feet of the discovery will be halted or diverted and the Imperial County Coroner will be notified (Section 7050.5 of the HSC). If the Coroner determines that the remains are Native American, the Coroner will notify the NAHC, which will designate a MLD for the project (Section 5097.98 of the PRC). The designated MLD



then has 48 hours from the time access to the property is granted to make recommendations concerning treatment of the remains (AB 2641). If the landowner does not agree with the recommendations of the MLD, the NAHC can mediate (Section 5097.94 of the PRC). If no agreement is reached, the landowner must rebury the remains where they will not be further disturbed (Section 5097.98 of the PRC). This will also include either recording the site with the NAHC or the appropriate Information Center; using an open space or conservation zoning designation or easement; or recording a document with the county in which the property is located (AB 2641).

#### Significance after Mitigation

Implementation of Mitigation Measures CR-1 through CR-3 will reduce the potential impact associated with inadvertent discovery of human remains to a level less than significant.

***Impact 3.5-4 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 letter was sent to the NAHC to request a search of the SLF database in regards to the project area on May 11, 2010. On May 24, 2010, the NAHC responded that no previously identified cultural resources were known to be in the vicinity of the project area.

AB 52 was passed in 2014 and took effect on July 1, 2015. It establishes a new category of environmental resources that must be considered under CEQA called tribal cultural resources (PRC 1074) and establishes a process for consulting with Native American tribes and groups regarding those resources.

AB 52 requires a lead agency to begin consultation with a California Native American Tribe that is traditionally and culturally affiliated with the geographic areas of the proposed project. In accordance with AB 52, the County provided notification of the proposed project to Native American tribes that the County understands to be traditionally and culturally affiliated with the geographic area of the proposed project. This notification was provided in a letter sent via certified mail on October 16, 2019 to the Quechan Indian Tribe, and the Torres-Martinez Desert Cahuilla Indians. Additionally, on October 16, 2019 the County provided notification in a letter sent via certified to the Augustine Band of Cahuilla Mission Indians, Camp Ban of Mission Indians Chemehuevi Reservation, Cocopah Indian Tribe, Colorado River Indian Tribe, EWIIAAPAYP Tribal Office, Fort Yuma-Quechan Indian Tribe, Inter-Tribal Cultural Resource Protection Council, Kumeyaay Cultural Repatriation Committee, Manzanita Band of Kumeyaay Nation, LA Posta Band of Mission Indians, Torres-Martinez Desert

Cahuilla Indians, Torres-Martinez Indian Tribe and NAHC for SB-18 consultation purposes. 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. Impacts on tribal cultural resources would be less than significant.

#### *Mitigation Measure(s)*

No mitigation measures are required.

#### Impact Analysis – Fiberoptic Cable

The proposed project includes the installation of approximately two miles of fiber optic cable to connect the proposed substation to the existing Niland Substation. The installation process involves aerial stringing of the fiber optic cable between existing transmission poles. No new transmission structures would be required to install the fiberoptic cable. No grading or excavation would be required. Therefore, installation of the fiberoptic cable would not involve ground disturbance. Based on these considerations, installation of the fiberoptic cable is not anticipated to impact cultural resources. No impact would occur.

### 3.5.4 Decommissioning/Restoration and Residual Impacts

#### Decommissioning/Restoration

No impact is anticipated from restoration activities as the ground disturbance and associated impacts on cultural resources will have occurred during the construction phase of the project.

#### Residual

Implementation of Mitigation Measures CR-1 and CR-2 would reduce potentially significant impacts on unknown archaeological materials to a less than significant level during construction. Implementation of Mitigation Measure CR-3 would reduce potential impacts on human remains to a level less than significant. No unmitigable impacts on cultural resources would occur with implementation of the project.

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