

3.0 COMMENTS AND RESPONSE TO COMMENTS

LETTER 1

STATE OF CALIFORNIA

Edmund G. Brown, Jr., Governor

NATIVE AMERICAN HERITAGE COMMISSION

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April 23, 2014

IMPERIAL COUNTY

RVICES

Mr. David Black, Planner IV

Imperial County Planning and Development Services Department

801 Main Street
El Centro, CA 92243

Sent by U.S. Mail

No. of Pages:

4

RE: SCH#2013091039; CEQA Notice of Completion; draft Environmental Impact Report (DEIR) for the **"Regenerate LLC, Sevelle Solar Farm Complex Project (Construct, Operate, Reclamation of up to Five Solar Facilities; new Access; IID Switch Substation, Internal Transmission Lines;"** located near Berrege Springs, northwest Imperial County, California

Dear Mr. Black

The Native American Heritage Commission (NAHC) has reviewed the above-referenced environmental document.

The California Environmental Quality Act (CEQA) states that any project which includes archeological resources, is a significant effect requiring the preparation of an EIR (CEQA guidelines 15064.5(b)). To adequately comply with this provision and mitigate project-related impacts on archaeological resources, the Commission recommends the following actions be required:

Lead agencies should include in their mitigation plan provisions for the identification and evaluation of accidentally discovered archeological resources, pursuant to California Environmental Quality Act (CEQA) §15064.5(f). In areas of identified archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American, with knowledge in cultural resources, should monitor all ground-disturbing activities. Also, California Public Resources Code Section 21083.2 require documentation and analysis of archaeological items that meet the standard in Section 15064.5 (a)(b)(f).

If there is federal jurisdiction of this project due to funding or regulatory provisions; then the following may apply: the National Environmental Policy Act (NEPA 42 U.S.C 4321-43351) and Section 106 of the National Historic Preservation Act (16 U.S.C 470 *et seq.*) and 36 CFR Part 800.14(b) require consultation with culturally

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affiliated Native American tribes to determine if the proposed project may have an adverse impact on cultural resources

We suggest that this (additional archaeological activity) be coordinated with the NAHC, if possible. The final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department. Any information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum, and not be made available for public disclosure pursuant to California Government Code Section 6254.10.

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Continued

A list of appropriate Native American Contacts for consultation concerning the project site has been provided and is attached to this letter to determine if the proposed activity might impinge on any cultural resources.

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California Government Code Section 65040.12(e) defines "environmental justice" to provide "fair treatment of People...with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations and policies." (The California Code is consistent with the Federal Executive Order 12898 regarding 'environmental justice.' Also, applicable to state agencies is Executive Order B-10-11 requires consultation with Native American tribes their elected officials and other representatives of tribal governments to provide meaningful input into the development of legislation, regulations, rules, and policies on matters that may affect tribal communities.

1-4

Lead agencies should consider first, avoidance for sacred and/or historical sites, pursuant to CEQA Guidelines 15370(a). Then if the project goes ahead then, lead agencies include in their mitigation and monitoring plan provisions for the analysis and disposition of recovered artifacts, pursuant to California Public Resources Code Section 21083.2 in consultation with culturally affiliated Native Americans.

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Lead agencies should include provisions for discovery of Native American human remains in their mitigation plan. Health and Safety Code §7050.5, CEQA §15064.5(e), and Public Resources Code §5097.98 mandates the process to be followed in the event of an accidental discovery of any human remains in a location other than a dedicated cemetery.

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Sincerely,

Dave Singleton
Program Analyst

CC: State Clearinghouse

Attachment: Native American Contacts list

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Native American Contacts Imperial County California April 23, 2014

La Posta Band of Mission Indians
Gwendolyn Parada, Chairperson
8 Crestwood Road Diegueno/Kumeyaay
Boulevard , CA 91905
gparada@lapostacasino.
(619) 478-2113
619-478-2125

Fort Yuma Quechan Indian Nation
Keeny Escalanti, Sr., President
PO Box 1899 Quechan
Yuma , AZ 85366
qitpres@quechantribe.com
(760) 572-0213
(760) 572-2102 FAX

Manzanita Band of Kumeyaay Nation
Leroy J. Elliott, Chairperson
PO Box 1302 Diegueno/Kumeyaay
Boulevard , CA 91905
ljbirdsinger@aol.com
(619) 766-4930
(619) 766-4957 Fax

Augustine Band of Cahuilla Mission Indians
Mary Ann Green, Chairperson
P.O. Box 846 Cahuilla
Coachella , CA 92236
(760) 398-4722
760-369-7161 - FAX

Campo Band of Mission Indians
Ralph Goff, Chairperson
36190 Church Road, Suite 1 Diegueno/Kumeyaay
Campo , CA 91906
chairgoff@aol.com
(619) 478-9046
(619) 478-5818 Fax

Torres-Martinez Desert Cahuilla Indians
Matthew Krystal, Cultural Resources Manager
P.O. Box 1160 Cahuilla
Thermal , CA 92274
mkrystall@tmdci-nsn.gov
760) 397-0300,
(760) 409-2987- cell
(760) 397-8146 Fax

Kwaaymii Laguna Band of Mission Indians
Carmen Lucas
P.O. Box 775 Diegueno -
Pine Valley , CA 91962
(619) 709-4207

Ewilaapaay Tribal Office
Will Micklin, Executive Director
4054 Willows Road Diegueno/Kumeyaay
Alpine , CA 91901
wmicklin@leaningrock.net
(619) 445-6315 - voice
(619) 445-9126 - fax

This list is current only as of the date of this document.

Distribution of this list does not relieve any person of the statutory responsibility as defined in Section 7050.5 of the Health and Safety Code, Section 5097.94 of the Public Resources Code and Section 5097.98 of the Public Resources Code.

This list is only applicable for contacting locative Americans with regard to cultural resources for the proposed SCH2013091039; CEQA Notice of Completion; draft Environmental Impact Report (DEIR) for Regenerate LLC, Seville Solar Farm Complex; located in northwest Imperial County, California.

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**Native American Contacts
Imperial County California
April 23, 2014**

Quechan Indian Nation
Arlene Kingery, THPO
P.O. Box 1899 Quechan
Yuma , AZ 85366
(760) 572-2423
historicpreservation@quechantribe.com
(760) 572-0515 - FAX

Ah-Mut-Pipa Foundation
Preston J. Arrow-weed
P.O. Box 160 Quechan
Bard , CA 92222 Kumeyaay
ahmut@earthlink.net
(928) 388-9456

Inter-Tribal Cultural Resource Protection Council
Frank Brown, Coordinator
240 Brown Road Diegueno/Kumeyaay
Alpine , CA 91901
frbrown@viejassn.gov
(619) 884-6437

Kumeyaay Cultural Repatriation Committee
Bernice Paipa, Vice Spokesperson
P.O. 937 Diegueno/Kumeyaay
Boulevard , CA 91905
bernicepaipa@gmail.com
(KCRC is a Coalition of 12
Kumeyaay Governments)

Cocopah Indian Reservation
Attn: H. Jill McCormick, Tribal Archaeologist
County 15th & Avenue G Cocopah
Sommerton , AZ 85350
culturalres@cocopah.com
(928) 530-2291

This list is current only as of the date of this document.

Distribution of this list does not relieve any person of the statutory responsibility as defined in Section 7050.5 of the Health and Safety Code, Section 5097.94 of the Public Resources Code and Section 5097.98 of the Public Resources Code.

This list is only applicable for contacting local Native Americans with regard to cultural resources for the proposed SCH2013091039; CEQA Notice of Completion; draft Environmental Impact Report (DEIR) for Regenerate LLC, Seville Solar Farm Complex; located in northwest Imperial County, California.

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RESPONSE TO COMMENT LETTER 1

Commenter: Dave Singleton, Program Analyst, Native American Heritage Commission

Date of Letter: April 23, 2014

Response to Comment 1-1: Introductory comment explaining that the Native American Heritage Commission (NAHC) has reviewed the EIR. Comment recommends that a certified archaeologist and a culturally affiliated Native American should monitor all ground-disturbing activities. The comment also notes that California Public Resources Code Section 21083.2 requires documentation and analysis of archaeological items that meet the standard in Section 15064.5 (a)(b)(f). Mitigation measure MM 4.7.2 on pages 4.7-20 and 4.7-21 of the Draft EIR includes provision for a qualified and experienced archaeological monitor during the construction process, including overseeing installation, effectiveness and removal of temporary orange construction fencing.

Response to Comment 1-2: The comment states that if federal jurisdiction is present due to funding or regulatory provisions, the National Environmental Policy Act (NEPA) may apply. No aspect of the Project will receive federal funding. While a portion of the new IID 92 kV transmission line from the new IID switch station is an overbuild located on public land managed by the Bureau of Land Management (BLM), the Project would not be subject to NEPA because the existing transmission line was already analyzed. On November 15, 2002, BLM granted the IID right-of-way CACA 044554 to construct the overbuilt 92 kV transmission line above the existing IID distribution line as part of a larger IID Project. BLM has confirmed that the granted ROW remains valid (see Draft EIR page 2.0-3). Thus, no further NEPA review is required.

Response to Comment 1-3: The comment states that a list of Native American Contacts is provided for consultation. The County contacted the NAHC regarding the Project during preparation of the Draft EIR. The NAHC provided a list of Native American Tribal Governments (dated September 20, 2013). As noted on page 1.0-16 of the Draft EIR "In addition, the County sent consultation letters to the Native American Tribes in October 2013." The list attached to the NAHC comment letter (dated April 23, 2014) includes two additional tribes (Augustine Band of Cahuilla Mission Indians and Torres-Martinez Desert Cahuilla Indians) that were not included as part of the September 20, 2013 list. However, the Torrez Martinez Tribe was consulted during preparation of the EIR. Only the Augustine Band of Cahuilla Mission Indians was not previously consulted. All future correspondence/consultation will include the Augustine Band of Cahuilla Mission Indians.

Response to Comment 1-4: The comment defines "environmental justice" noting that Native American tribes must be consulted to provide meaningful input on regulations, rules and policies on matters that may affect tribal communities. This comment does not address the adequacy of the analysis of the EIR but is noted for the decision-makers' consideration. No response is required.

Response to Comment 1-5: The comment states that avoidance of sacred and/or historical sites should be considered as the first option by lead agencies. The comment goes on to state that If avoidance is not possible, lead agencies should include provision of analysis and disposition of recovered artifacts as part of mitigation and monitoring plans. Mitigation measure MM 4.7.2 includes provision of evaluation if avoidance of SDI 12151 is not possible. This comment does not address the adequacy of the analysis of the EIR. No further response is required.

Response to Comment 1-6: The comment states that lead agencies should include provisions for discovery of Native American Human remains. Mitigation measure MM 4.7.4 addresses discovery of human remains and cites Public Resources Code 5097.8 (refer to Draft EIR page 4.7-23).

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