

## **4.11 TRIBAL CULTURAL RESOURCES**

This section evaluates the Proposed Project’s potential impacts on tribal cultural resources (TCRs). TCRs 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. A cultural landscape that meets these criteria is a tribal cultural resource to the extent that the landscape is geographically defined in terms of the size and scope of the landscape. Historical resources, unique archaeological resources, or non-unique archaeological resources may also be tribal cultural resources if they meet these criteria.

Applicable State and local policies related to TCRs are discussed and potential impacts to TCRs are based on coordination and consultation with California Native American tribes that are traditionally and culturally affiliated with the Project site. The consultation process was conducted pursuant to PRC Section 21080.3. Additionally, information used in preparing this section was derived from the *Archaeological and Paleontological Assessment Report for the Energy Source Mineral, LLC Project* (Cultural Resources Assessment) prepared by Chambers Group in January 2021. This document is contained in Appendix D of this EIR.

### **4.11.1 Existing Environmental Setting**

In accordance with Section 15063(a) of the CEQA Guidelines, the County prepared a Notice of Preparation (dated December 11, 2020) that identified the topics to be analyzed in the EIR. In compliance with Assembly Bill (AB) 52 (2014), the County provided formal notification of the Proposed Project on November 6, 2020, via United States Postal Service (USPS) certified mail to each representative of two Native American groups and individuals who may have knowledge of cultural resources in the Project area. The letters can be seen in Appendix L: AB 52 Tribal Consultation. Letters were sent to the Fort Yuma – Quechan Indian Tribe and the Torres-Martinez Indian Tribe. Both Tribes had until December 9, 2020, to respond. As of February 2021, neither Tribe has responded to the AB 52 consultation letters.

### **4.11.2 Regulatory Setting**

#### **State**

##### Assembly Bill 52

AB 52, in effect as of July 1, 2015, introduces tribal cultural resources as a class of cultural resources and additional considerations relating to Native American consultation into CEQA. As a general concept, a tribal cultural resource is similar to the federally defined Traditional Cultural Properties; however, it incorporates consideration of local and state significance and required mitigation under CEQA. A tribal cultural resource may be considered significant if included in a local or State register of historical resources; determined by the lead agency to be significant pursuant to criteria set forth in PRC Section 5024.1; is a geographically defined cultural landscape that meets one or more of these criteria; or is a historical resource described in PRC Section 21084.1, a unique archaeological resource described in PRC Section 21083.2, or is a nonunique archaeological resource if it conforms with the above criteria.

### Native American Historic Resource Protection Act

State law addresses the disposition of Native American burials in archaeological sites and protects such remains from disturbance, vandalism, or inadvertent destruction; establishes procedures to be implemented if Native American skeletal remains are discovered during construction of a project; and establishes the NAHC to resolve disputes regarding the disposition of such remains. In addition, the Native American Historic Resource Protection Act (PRC Section 5097 et seq.) makes it a misdemeanor punishable by up to one year in jail to deface or destroy a Native American historic or cultural site that is listed or may be eligible for listing in the CRHR.

### Native American Graves Protection and Repatriation Act

The Native American Graves Protection and Repatriation Act (NAGPRA; 25 U.S.C., Chapter 32), enacted in 2001, requires all State agencies and museums that receive State funding and that have possession or control over collections of human remains or cultural items, as defined, to complete an inventory and summary of these remains and items on or before January 1, 2003, with certain exceptions. The NAGPRA also provides a process for the identification and repatriation of these items to the appropriate tribes.

### California Health and Safety Code Section 7050.5

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. California Health and Safety Code Section 7050.5 requires that if human remains are discovered in any place other than a dedicated cemetery, no further disturbance or excavation of the site or nearby area reasonably suspected to contain human remains can occur until the County Coroner has examined the remains (Section 7050.5b). If the coroner determines or has reason to believe that the remains are those of a Native American, the coroner must contact the NAHC within 24 hours (Section 7050.5c). The NAHC will notify the most likely descendant; and, with the permission of the landowner, the most likely descendant may inspect the site of discovery. The inspection must be completed within 24 hours of notification of the most likely descendant by the NAHC. The most likely descendant may recommend means of treating or disposing of, with appropriate dignity, the human remains and items associated with Native Americans.

## **Local**

### Imperial County General Plan

The Conservation and Open Space Element of the General Plan includes goals, objectives, and policies for the protection of tribal cultural resources and scientific sites that emphasize identification, documentation, and protection of tribal cultural resources. Table 4.11-1 provides a consistency analysis of the applicable Imperial County General Plan policies relevant to cultural resources as they relate to the Project. While this EIR analyzes the Project's consistency with the General Plan pursuant to State CEQA Guidelines Section 15125(d), the Imperial County Board of Supervisors ultimately determines consistency with the General Plan.

**Table 4.11-1: General Plan Consistency**

General Plan Policies	Consistency with General Plan	Analysis
<b>Conservation and Open Space Element</b>		
<i>Preservation of Cultural Resources</i>		
Objective 3.3 – Engage all local Native American Tribes in the protection of tribal cultural resources, including prehistoric trails and burial sites.	Consistent	AB 52 letters were sent to the Fort Yuma – Quechan Indian Tribe and the Torres-Martinez Indian Tribe. Both Tribes had until December 9, 2020, to respond. As of February 2021, neither Tribe has responded to the AB 52 consultation letters. The Project is consistent with this objective.

**4.11.3 Thresholds of Significance**

In order to assist in determining whether a project would have a significant effect on the environment, the County utilizes the State CEQA Guidelines Appendix G Guidelines. Appendix G states that a project may be deemed to have an impact on tribal cultural resources if it would:

- Threshold a)**            **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:**
- (i)        **Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as define in Public Resources Code Section 5020.1(k), or**
  - (ii)      **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 is 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?**

**4.11.4 Methodology**

PRC Sections 21080.3.1 and 21080.3.2 require public agencies to consult with California Native American tribes identified by the NAHC to identify potential significant impacts to TCRs, as further defined in PRC Section 21074 as part of CEQA. In accordance with PRC Section 21080.3.1(d), the County formally notified the California Native American tribes associated with the Project area to address potential impacts associated with California Native American resources.

As previously mentioned in Section 4.3: Cultural Resources, the SCIC record search performed for the Project indicated that no cultural resources have been previously identified within the Project site, and six resources have been identified within a 1-mile radius of the Project site. During completion of the

pedestrian survey on the Project site, two newly discovered historic-period sites were identified. These two historic-period sites will be assigned primary numbers by the SCIC (pending) but are temporarily named 21268-001 and 21268-002. Based on the background research and results of the survey, Chambers Group archaeologists determined that 21268-001 and 21268-002 would be unlikely to provide cultural value to any California Native American Tribes and do not require further archaeological testing or evaluation.

#### **4.11.5 Project Impact Analysis**

**Threshold a) 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:**

- (i) Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as define in Public Resources Code Section 5020.1(k), or**
- (ii) 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 is 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?**

As previously mentioned, based on the background research and results of the survey, Chambers Group archaeologists determined that the two newly discovered sites, 21268-001 and 21268-002, are unlikely to provide cultural value to any California Native American Tribes; and, since neither Tribe responded to the AB 52 consultation letters, do not require further archaeological testing or evaluation. No other sites listed or eligible for listing in a historical register were identified within or adjacent to the Project site.

Additionally, AB 52 letters were sent to the Fort Yuma – Quechan Indian Tribe and the Torres-Martinez Indian Tribe. Both Tribes had until December 9, 2020, to respond. As of February 2021, neither Tribe has responded to the AB 52 letters that were sent in the consultation process.

Based on the Cultural Resources Assessment and the lack of response from the tribes, the County has determined there are no known tribal cultural resources within the Project Site and impacts would be considered less than significant.

#### **4.11.6 Cumulative Impacts**

Cumulative impacts are defined in CEQA as “two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts” (CEQA Guidelines Section 15355). Stated in another way, “a cumulative impact consists of an impact which is created as a result of the combination of the project evaluated in the EIR together with other projects causing relating impacts” (CEQA Guidelines Section 15130 [a][1]).

According to CEQA, the importance of TCRs is the value of the resource to California Native American tribes culturally affiliated with the Project area. Therefore, the issue that must be explored in a cumulative analysis is the cumulative loss of TCRs. For TCRs that are avoided or preserved through dedication within open space, no impacts would occur. However, if avoidance or dedication of open space to preserve TCRs is infeasible, those impacts must be considered in combination with TCRs that would be impacted for other projects included in the cumulative project list.

The Project site does not contain any TCRs listed in the CRHR or known to a California Native American tribe; and, therefore, the Project's cumulative impacts to TCRs would be less than significant. Additionally, individual projects would be evaluated on a project-by-project basis to determine the extent of potential impacts to TCRs and historical/archeological resources. Further, each project would be required to comply with AB 52 for the purposes of identifying potential TCRs. With adherence to State laws, as well as implementation of Project-specific mitigation as needed, cumulative impacts to TCRs would be less than significant.

**4.11.7 Mitigation Measures**

No mitigation measures were required, as all Project impacts regarding TCRs are less than significant.

**4.11.8 Level of Significance After Mitigation**

No mitigation measures are required; impacts related to TCRs would remain less than significant.