

2.11 Tribal Cultural Resources

This section discusses potential impacts to tribal cultural resources (TCRs) resulting from implementation of the proposed JVR Energy Park Project (Proposed Project). This assessment is based on Native American consultation and the Cultural Resources Report prepared by Dudek (Appendix E). The results of the analysis are presented below and included as Appendix E to this Environmental Impact Report (EIR), with confidential records and maps on file at the County of San Diego (County) Planning & Development Services and deposited with the South Coastal Information Center (SCIC).

Comments received in response to the Notice of Preparation (NOP) included concerns regarding proper Native American consultation and proper monitoring for tribal cultural resources, tribal artifacts, cremation sites and human remains. These concerns are addressed herein. A copy of the NOP and comment letters received in response to the NOP is included in Appendix A of this EIR.

The analysis is based on a review of existing cultural resources; technical data; applicable laws, regulations, and guidelines; and the technical report prepared for the Proposed Project attached as Appendix E, in conformance with the California Environmental Quality Act (CEQA) Guidelines Appendix G Checklist Question XVII(a) and (b), as well as with the County of San Diego's Guidelines for Determining Significance for Cultural Resources (County of San Diego 2007) and other applicable standards. In addition, this assessment is also based on Native American consultation conducted by the County pursuant to Assembly Bill (AB) 52.

For the purposes of this section, TCRs include those resources identified by tribal individuals that are either eligible for listing in the California Register of Historical Resources (CRHR) or determined by the CEQA Lead Agency, within its discretion and as supported by substantial evidence, to be a TCR. In many cases, TCRs are CRHR-eligible archaeological sites that convey tribal values.

The Proposed Project's area of disturbance was reduced from 643 acres to 626 acres as a result of minor changes to the Project area, as described in Chapter 1 (Section 1.2 Project Description) of the Final EIR. The area of disturbance includes approximately 623 acres within the Major Use Permit (MUP) boundary. The Proposed Project also includes approximately three acres of temporary disturbance outside of the revised MUP boundary as a result of the realigned water main. One acre of the three acres of disturbance for the water line is outside of the original MUP boundary. As described in the Proposed Project Revisions Technical Memorandum (Appendix R), these changes will slightly reduce tribal cultural resources impacts within the MUP boundary and will not result in new significant impacts outside of the MUP boundary. Therefore, these Proposed Project revisions will not change any significance determinations in this Section 2.11 Tribal Cultural Resources. This Section has been revised to account for the Proposed Project revisions.

2.11.1 Existing Conditions

Natural Setting

The Project site is located within Jacumba Valley in unincorporated southeastern San Diego County. The Proposed Project's area of direct impact (ADI) is largely confined to the valley floor, a portion of which has been altered by agricultural activity. The valley floor on which most of the solar facility would be constructed is located at an elevation of approximately 2,800 feet above mean sea level.

The Project site is located in the eastern portion of the Peninsular Range Geomorphic Province of Southern California. The Peninsular Range Geomorphic Province is typified by northwest to southeast trending mountain ranges that parallel the trace of the San Andreas and related regional fault system. The Peninsular Ranges generally comprise the granitic of the Peninsular Ranges batholith and associated metamorphic rocks. West of the batholith, in the San Diego embayment, the Peninsular Range Geomorphic Province comprises sedimentary rocks ranging from Late Cretaceous to Pleistocene in age (Appendix E).

The climate is classified as Mediterranean Hot Summer. Rainfall is about 24 centimeters (9.5 inches) per year, based on rain gauge averages between 1963 and 2011, falling primarily between December and March. The average January daily minimum temperature is 4°C (39°F), and the average July daily maximum is 32°C (90°F). The climate would have imposed few constraints on prehistoric hunter-gatherers in the region.

Mammals, birds, and reptiles within these communities provided potential food resources to prehistoric inhabitants. Common animals within this area may include coyote (*Canis latrans*), California ground squirrel (*Spermophilus beecheyi*), cottontail (*Sylvilagus audubonit*), black-tailed jackrabbit (*Lepus californicus bennettii*), deer mouse (*Peromyscus maniculatus*), and song sparrow (*Melospiza melodia*), as well as a number of other species of birds, mammals, reptiles, and amphibians.

Cultural Setting

Evidence for continuous human occupation in southern California spans the last 10,000 years. Various attempts to parse out variability in archaeological assemblages over this broad time frame have led to the development of several cultural chronologies; some of these are based on geologic time, most are based on temporal trends in archaeological assemblages, and others are interpretive reconstructions. Each of these reconstructions describes essentially similar trends in assemblage composition in more or less detail. The prehistoric sequence within the general Jacumba region is particularly complicated by potential overlap with aboriginal groups traveling west from the Colorado Desert and Imperial Valley. To overcome potential issues in the application of disparate cultural sequences, this research employs a common set of generalized terms used to describe

chronological trends in assemblage composition: Paleoindian (pre-5500 BC), Archaic (8000 BC–AD 500), Late Prehistoric (AD 500–1769), and Ethnohistoric (post-AD 1769). Descriptions of these chronological trends are outlined in detail within Section 1.2.1 of the Cultural Technical Report prepared for the Proposed Project (Appendix E).

Area of Direct Impact

The Project site includes 24 parcels of private land that encompass an area of 1,356 acres immediately east of the community of Jacumba Hot Springs. Located within the Project site is the ~~643~~ 626-acre ADI (Figure 2.11-1, Area of Direct Impact). The ADI includes all Proposed Project solar facilities, access driveways, fencing, ~~and~~ landscaping, and the water main realignment. The vertical ADI for the Proposed Project is considered to be the sediments disturbed during Proposed Project construction. The amount of disturbed sediments varies according to topography and construction needs. The foundations for photovoltaic cells, which cover the extreme bulk of the ADI, consists of metal pipe or I-beams driven 10 to 15 feet into the ground. Installation of the collection system would include trenches 3 to 4 feet in depth. The realignment of the water main would include trenching up to 3.8 feet.

Tribal Cultural Resources in the Area of Potential Effects

Under California's AB 52, TCRs are defined as archaeological resources that are eligible for or listed in the CRHR, or determined by the CEQA Lead Agency, within its discretion and as supported by substantial evidence, to be a TCR. Notwithstanding the lack of information on TCRs received by the County to date, no significant archaeological sites eligible for or listed in the CRHR would be impacted by the Proposed Project. However, County consultation on AB 52 is ongoing and will continue throughout the processing of the Proposed Project.

2.11.2 Regulatory Setting

Federal Regulations

National Historic Preservation Act

The National Historic Preservation Act of 1966, as amended (16 USC Section 470) sets forth national policy and procedures regarding historic properties, defined as districts, sites, buildings, structures, and objects included in or eligible for the National Register of Historic Places (NRHP). Section 106 of the National Historic Preservation Act requires federal agencies to take into account the effects of their undertakings on such properties, and to allow the Advisory Council on Historic Preservation the opportunity to comment on those undertakings, following regulations issued in the Code of Federal Regulations (CFR) by the Advisory Council on Historic Preservation (36 CFR 800).

Section 106 of the National Historic Preservation Act requires federal agencies to consider the effects of their actions on historic properties and to seek comments from the Advisory Council on Historic Preservation. The purpose of Section 106 is to avoid unnecessary harm to historic properties from federal actions.

Archeological Resources Protection Act

The Archeological Resources Protection Act (ARPA) makes acts of destruction or alteration of archaeological resources punishable with civil and criminal penalties. The U.S. Department of the Interior has issued regulations under the ARPA, establishing definitions, standards, and procedures to be followed by all federal land managers in providing protection for archaeological resources located on public lands and Native American lands. Permitting authority of the Bureau of Indian Affairs under the ARPA is detailed in 25 CFR Part 262. An application for an ARPA permit must include authorization and a written agreement between the federal agency and an appropriate repository that will house and curate the collection recovered from a project site. This permit process applies to all excavations on federal, public, and tribal lands.

Native American Graves Protection and Repatriation Act

If Native American human remains, associated or unassociated funerary objects, sacred objects, and objects of cultural patrimony are found, then the Native American Graves Protection and Repatriation Act (NAGPRA) (25 USC Sections 3001–3013) would apply. Under the NAGPRA, federal agencies are required to consult with Native American tribes, in addition to carrying out the inventory, summary, and repatriation provisions of the NAGPRA. Federal agencies also have special NAGPRA responsibilities when Native American human remains and objects are discovered on federal or tribal lands. On tribal trust lands, the tribe, rather than the federal agency, retains responsibilities under the NAGPRA.

Traditional Cultural Properties

Native American Heritage Values

Federal and state laws mandate that consideration be given to the concerns of contemporary Native Americans with regard to potentially ancestral human remains, associated funerary objects, and items of cultural patrimony. Also relevant to prehistoric archaeological sites is the category termed “traditional cultural property” (TCP) in discussions of cultural resource management performed under federal auspices. According to Guidelines for Evaluating and Documenting Traditional Cultural Properties, “traditional” in this context refers to those beliefs, customs, and practices of a living community of people that have been passed down through the generations, usually orally or through practice (NPS 1992). The traditional cultural significance of a historic property, then, is

significance derived from the role the property plays in a community's historically rooted beliefs, customs, and practices. Examples of properties possessing such significance include the following:

- A location associated with the traditional beliefs of a Native American group about its origins, its cultural history, or the nature of the world;
- A rural community whose organization, buildings and structures, or patterns of land use reflect the cultural traditions valued by its long-term residents;
- An urban neighborhood that is the traditional home of a particular cultural group, and that reflects its beliefs and practices;
- A location where Native American religious practitioners have historically gone, and are known or thought to go today, to perform ceremonial activities in accordance with traditional cultural rules of practice; and
- A location where a community has traditionally carried out economic, artistic, or other cultural practices important in maintaining its historic identity.

A TCP can be defined, generally, as one that is eligible for inclusion in the NRHP because of its association with cultural practices or beliefs of a living community that (a) are rooted in that community's history, and (b) are important in maintaining the continuing cultural identity of the community. Under County guidelines, TCPs may also be protected under the County's Resource Protection Ordinance (RPO) (County of San Diego 2012).

State Regulations

California Environmental Quality Act

CEQA requires lead agencies to carefully consider the potential effects of a project on TCRs. CEQA requires an assessment of impacts associated with the direct or indirect destruction of TCRs or sites with cultural value to a California Native American tribe.

AB 52 amended California Public Resources Code (PRC) Section 5097.94, and added PRC Sections 21073, 21074, 21080.3.1, 21080.3.2, 21082.3, 21083.09, 21084.2, and 21084.3. The primary intent of AB 52 was to include California Native American tribes early in the environmental review process and to establish a new category of resources related to Native Americans that require consideration under CEQA, known as tribal cultural resources. PRC Section 21074(a)(1) and (2) defines tribal cultural resources 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 or included in a local register of historical resources, or a resource that is determined to be a tribal cultural resource by a lead agency in its discretion and as supported by substantial evidence.

PRC Section 21080.3.1 requires that, within 14 days of a lead agency determining that an application for a project is complete, or a decision by a public agency to undertake a project, the lead agency provide formal notification to the designated contact or tribal representatives of California Native American tribes that are traditionally and culturally affiliated with the geographic area of a project site (as defined in PRC Section 21073) and who have requested in writing to be informed by the lead agency (PRC Section 21080.3.1[b]). Tribes interested in consultation must respond in writing within 30 days from receipt of the lead agency's formal notification, and the lead agency must begin consultation within 30 days of receiving the tribe's request for consultation (PRC Sections 21080.3.1[d] and 21080.3.1[e]).

PRC Section 21080.3.2(a) identifies the following as potential consultation discussion topics: the type of environmental review necessary, the significance of tribal cultural resources, the significance of a project's impacts on tribal cultural resources, project alternatives or appropriate measures for preservation, and mitigation measures. Consultation is considered concluded when either (1) the parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource, or (2) a party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached (PRC Section 21080.3.2[b]).

If a California Native American tribe has requested consultation pursuant to PRC Section 21080.3.1 and has failed to provide comments to the lead agency, or otherwise failed to engage in the consultation process, or if the lead agency has complied with PRC Section 21080.3.1(d) and the California Native American tribe has failed to request consultation within 30 days, the lead agency may certify an Environmental Impact Report or adopt a Mitigated Negative Declaration (PRC Section 21082.3[d][2] and [3]).

PRC Section 21082.3(c)(1) states that any information, including the location, description, and use of the tribal cultural resources, that is submitted by a California Native American tribe during the environmental review process must not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public without the prior consent of the tribe that provided the information. If the lead agency publishes any information submitted by a California Native American tribe during the consultation or environmental review process, that information must be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public.

Local Regulations

County of San Diego Guidelines for Determining Significance, Cultural Resources

According to the County's Guidelines (County of San Diego 2007), any of the following will be considered a potentially significant impact to cultural resources:

1. The project causes a substantial adverse change in the significance of a historic resource as defined in Section 15064.5 of the State CEQA Guidelines. This shall include the destruction, disturbance or any alteration of characteristics or elements of a resource that cause it to be significant, in a manner not consistent with the Secretary of Interior Standards.
2. The project causes a substantial adverse change in the significance of an archaeological resource pursuant to Section 15064.5 of the State CEQA Guidelines. This shall include the destruction or disturbance of an important archaeological site or any portion of an important archaeological site that contains or has the potential to contain information important to history or prehistory.
3. The project disturbs any human remains, including those interred outside of formal cemeteries.
4. The project proposes activities or uses damaging to significant cultural resources as defined by the Resource Protection Ordinance and fails to preserve those resources.
5. The project proposes activities or uses damaging to significant causes a substantial adverse change in the significance of a tribal cultural resources as defined under CEQA Section 21074.

Guidelines 1 and 2 are derived directly from CEQA. Sections 21083.2 of CEQA and 15064.5 of the state CEQA Guidelines recommend evaluating historical and archaeological resources to determine whether or not a proposed action would have a significant effect on unique historical or archaeological resources. Guideline 3 is included because human remains must be treated with dignity and respect and CEQA requires consultation with the "Most Likely Descendant" as identified by the Native American Heritage Commission (NAHC) for any project in which human remains have been identified. Guideline 4 was selected because the RPO requires that cultural resources be considered when assessing environmental impacts.

Since the adoption of the County CEQA Guidelines, a new subject area has been added to CEQA – Tribal Cultural Resources. Guideline 5 is included because TCRs are important to local Native American communities and may include sacred sites and traditional use areas that have been used over multiple generations. All discretionary projects are required to conform to applicable County standards related to cultural resources. These include the Zoning Ordinance, General Plan, and the Grading, Clearing and Watercourses Ordinance (Section 87.429). Non-compliance would result in a project that is inconsistent with County standards, which is itself a significant impact under CEQA.

County of San Diego Grading Ordinance

The Grading Ordinance requires that projects involving grading, clearing, and/or removal of natural vegetation obtain a grading permit, unless the project meets one or more of the exemptions listed in Section 87.202 of the Grading Ordinance. The grading permit is discretionary and requires compliance with CEQA. In the event that human remains or Native American artifacts are encountered, Section 87.429 requires that grading operations be suspended in the affected area, and the operator is required to inform the County official. The County's Grading Ordinance requires projects to comply with the requirements of Health and Safety Code Section 7050.5 and Public Resources Section 5097.99.

County of San Diego General Plan Conservation and Open Space Element

The Conservation and Open Space Element of the County General Plan provides policies for the protection of natural resources. The following policies are related to tribal cultural resources (County of San Diego 2011):

- **Policy COS-7.1:** Archaeological Protection. Preserve important archaeological resources from loss or destruction and require development to include appropriate mitigation to protect the quality and integrity of these resources.
- **Policy COS-7.2:** Open Space Easements. Require development to avoid archaeological resources whenever possible. If complete avoidance is not possible, require development to fully mitigate impacts to archaeological resources.
- **Policy COS-7.3:** Archaeological Collections. Require the appropriate treatment and preservation of archaeological collections in a culturally appropriate manner.
- **Policy COS-7.4:** Consultation with Affected Communities. Require consultation with affected communities, including local tribes to determine the appropriate treatment of cultural resources.
- **Policy COS-7.5:** Treatment of Human Remains. Require human remains be treated with the utmost dignity and respect and that the disposition and handling of human remains will be done in consultation with the most likely descendant (MLD) and under the requirements of federal, state, and County Regulations.
- **Policy COS-7.6:** Cultural Resource Data Management. Coordinate with public agencies, tribes, and institutions in order to build and maintain a central database that includes a notation whether collections from each site are being curated, and if so, where, along with the nature and location of cultural resources throughout the County of San Diego.

County of San Diego Resource Protection Ordinance

The RPO requires that cultural resources be evaluated as part of the County's discretionary environmental review process for certain permit types. If cultural resources are found to be significant pursuant to the RPO, they must be preserved. The RPO prohibits development, trenching, grading, clearing and grubbing, or any other activity or use that damages significant prehistoric or historic site lands, except for scientific investigations with an approved research design prepared by an archaeologist certified by the Register of Professional Archaeologists (County of San Diego 2012).

Pursuant to the RPO, significant prehistoric or historic sites are sites that provide information regarding important scientific research questions about prehistoric or historic activities that have scientific, religious, or other ethnic value of local, regional, state, or federal importance. Such locations include the following (County of San Diego 2012):

- Any prehistoric or historic district, site, interrelated collection of features or artifacts, building, structure, or object either:
 - a. Formally determined eligible or listed in the NRHP by the Keeper of the National Register; or
 - b. To which the Historic Resource (H designator) Special Area Regulations have been applied; or
- One-of-a-kind, locally unique, or regionally unique cultural resources which contain a significant volume and range of data and materials; and
- Any location of past or current sacred religious or ceremonial observances which is either:
 - a. Protected under Public Law 95-341, the American Indian Religious Freedom Act or PRC 5097.9, such as burial(s), pictographs, petroglyphs, solstice observatory sites, sacred shrines, religious ground figures, or
 - b. Other formally designated and recognized sites which are of ritual, ceremonial, or sacred value to any prehistoric or historic ethnic group.

2.11.3 Analysis of Project Effects and Determination of Significance

Methodology

The presence and significance of existing tribal cultural resources associated with the Proposed Project was determined using methodologies that include archaeological site record and archival research, a Sacred Lands File search, intensive pedestrian field survey and evaluation (see Appendix E), and Native American consultation pursuant to AB 52 was conducted.

Records Search

As described in the Cultural Resources Report (Appendix E), and Section 2.4, Cultural Resources, of this EIR, Dudek conducted a records search of files obtained from the SCIC for the Project site and a 0.5-mile buffer surrounding the Project site. SCIC records indicate that 35 previous cultural resources studies have been performed within a 0.5-mile radius of the Project site; of these, 19 cover at least a portion of the Project site. The SCIC records search also identified 143 cultural resources previously recorded within a 0.5-mile radius of the Project site. Of the 143 resources, 51 are located within the Project site, 24 of which are within the Proposed Project ADI. Prehistoric resources previously located within the Project site include 34 artifact scatters, six temporary campsites, a village site, a bedrock milling station, and an isolated flake. There are also eight multicomponent artifact scatters, and one historic railroad track.

Pedestrian Survey and Evaluation

An intensive pedestrian survey was completed in July and August 2018 and February and December 2019 for the Proposed Project and this was followed by significance evaluation testing in February, March, and June 2019 and January 2020. The pedestrian survey was conducted in less than 15 m intervals; however, actual survey transect spacing depended on ground visibility. Areas with dense vegetation required shorter, 10-meter transect spacing and areas with excellent ground visibility at times allowed for a maximum transect width of 15 meters. All survey transects were oriented according to cardinal directions or to major topographic features. Transect spacing was kept using a compass but field tablets with a mobile ESRI GIS application with real-time locations plotted on aerials were used to help navigate the survey and ensure the entire Proposed Project ADI was covered. The crew moved together as a team to ensure accurate transect spacing and to facilitate resource identification. Upon discovery of an artifact or feature, the entire crew stopped while the crew chief confirmed the identified resource. At the same time, all other crew members more closely inspected the area around their individual transects. All artifact concentrations and features were recorded during transect sweeps. Section 4.1 of the Cultural Resources Technical Report (Appendix E) describes in detail the methodology for the intensive pedestrian survey.

The pedestrian survey identified nine newly identified archaeological resources and 25 new isolates. The survey also revisited 28 previously recorded archaeological sites and one isolate. Following the initial intensive pedestrian survey in July and August 2018, the Proposed Project design was adjusted to avoid impacts to significant archaeological sites. After design modifications, the ADI contains 28 archaeological sites and 20 isolated finds. Red Tail Monitoring and Research provided Kumeyaay Native American monitors during all field studies, from survey to evaluation.

Sites CA-SDI-7056, CA-SDI-8072, CA-SDI-11689, CA-SDI-19070, CA-SDI-19904, CA-SDI-19905, CA-SDI-19910, CA-SDI-21758, CA-SDI-22725, CA-SDI-22726, CA-SDI-22727, CA-SDI-22729, and CA-SDI-22733 were identified within the ADI and were previously unevaluated. These archaeological sites consisted of highly dispersed artifact scatters or a single milling feature resource with little to no subsurface deposits. After field evaluation and laboratory analysis, due to their lack of data potential, Dudek recommends these sites, in their entirety, as not significant, and not eligible for listing in the CRHR, or local register based on CEQA Criterion 4, and based on County Significance Guidelines (Appendix E). Four additional sites located within the ADI were only partially evaluated by Dudek: CA-SDI-4457/H, CA-SDI-6741, CA-SDI-8430, CA-SDI-11676. The portions of the archaeological sites within the current ADI were evaluated during the current study and are recommended not eligible for listing in the CRHR, or local register based on CEQA Criterion 4, and based on County Significance Guidelines. These portions of the sites are therefore recommended as non-contributing elements to the overall eligibility of the resource. Sites CA-SDI-7054, CA-SDI-11675, CA-SDI-11682, CA-SDI-11684, CA-SDI-11685, CA-SDI-11686, CA-SDI-11688, CA-SDI-19906, CA-SDI-19907, CA-SDI-19908, and CA-SDI-19909 are located within the ADI but have been previously evaluated as not significant or are no longer extent. There are 31 archaeological sites that are located within the Project site but are outside of the Proposed Project ADI. These archaeological sites would not be impacted by Proposed Project implementation.

Tribal Consultation and Outreach

Dudek contacted the NAHC on July 27, 2018, to request a search of their Sacred Lands Files (Appendix B of Appendix E). The NAHC responded indicating the presence of Native American cultural sites in the Jacumba Quad that may be impacted. The NAHC response letter advised Dudek to contact Native American representatives who may have information about cultural resources within the Project area. Dudek sent outreach letters to all Native American contacts supplied by the NAHC requesting any information these representatives have concerning TCRs within the Project area. When mailing addresses were not available, Dudek attempted to contact Native American representatives by telephone. Dudek received four responses to these Native American outreach efforts. The response letters did not indicate knowledge of any specific TCRs that may be impacted by the Proposed Project but did comment on the sensitivity of the area and requested Native American monitoring.

Lacy Padilla of Agua Caliente Band of Cahuilla Indians and Chris Devers of Pauma Band of Luiseno Indians both responded via email and advised Dudek that the Proposed Project is outside of their tribes' traditional area. Both deferred to tribal entities more closely associated with the Project area.

Gwendolyn Parada, Chairwoman of La Posta Band of Mission Indians, responded via a letter dated August 21, 2018, stating that the Project site is located within the Diegueno traditional territory and that they would like to consult on the Proposed Project. Chairwoman Parada requested to be

added to the distribution list for public notices and environmental review documents for the Proposed Project. La Posta tribe does not have knowledge of any specific TCRs that may be impacted by the Proposed Project but requested that a Native American monitor be present during survey and archaeological testing. The La Posta tribe further requested to meet with Dudek to “consult” on the Proposed Project and to discuss their concerns and proposed mitigation. Dudek sent a response letter via email on October 2, 2018, letting Ms. Parada know that the County of San Diego was the lead agency overseeing the Proposed Project and that they would be leading Native American consultation. La Posta did not send any further communications to Dudek.

Carmen Lucas of the Kwaavmii Laguna Band of Mission Indians called Dudek archaeologist Matthew DeCarlo on September 10, 2018, in response to Dudek’s outreach letter. Ms. Lucas did not have knowledge of any specific TCRs that may be impacted by the Proposed Project but she stated that Jacumba is a sacred area and that “not one inch” of the area does not have cultural significance. Ms. Lucas recommended that a qualified Native American monitor be present during survey of the Proposed Project. She also recommended that forensic dogs be used to identify human remains, and that the dog analysis should dictate the design of the solar arrays. Mr. DeCarlo notified Ms. Lucas that the County of San Diego was the lead agency overseeing the Proposed Project, and that the County would be leading Native American consultation.

Red Tail Monitoring and Research provided Kumeyaay Native American monitors during all field studies, from survey to evaluation. Justin Linton, Tushon Phoenix, and Daniel “Bobo” Linton represented Red Tail during various sessions of fieldwork and were included in determining the archaeological findings.

As the lead agency responsible for environmental compliance for the Proposed Project, San Diego County staff initiated formal Native American consultation as required by AB 52 on January 31, 2019. Eight tribes (Barona, Campo, Jamul, Kwaaymii, Manzanita, Santa Ysabel, Sycuan, Viejas) who have requested to consult under AB 52 were notified of the Proposed Project. Five tribes (Campo, Jamul, Manzanita, Santa Ysabel, Viejas) responded. Santa Ysabel deferred to the Campo tribe. The County has been consulting with Campo, Jamul, Manzanita and Viejas. To date, no TCRs have been identified during consultation. Consultation is ongoing and will continue throughout the processing of the Proposed Project.

Guidelines for the Determination of Significance

The Proposed Project is a solar energy facility, which includes ~~the a-switchyard~~ Switchyard Facilities that would be transferred to San Diego Gas & Electric (SDG&E) after construction. For the purposes of this analysis, the ~~switchyard~~ Switchyard Facilities (as described in Chapter 1, Project Description, of this EIR) ~~is are~~ are a component of the Proposed Project and ~~has~~ have been analyzed as a part of the whole of the action. However, this EIR highlights the specific analysis of

the ~~switchyard~~ Switchyard Facilities operation under each threshold of significance in the event responsible agencies have CEQA obligations related to the ~~switchyard~~ Switchyard Facilities.

The County's Guidelines for Determining Significance do not include guidance on tribal cultural resources. However, as mentioned above, the County's RPO includes protections for TCRs (County of San Diego 2012). Therefore, for the purpose of this EIR, Appendix G of the CEQA Guidelines (14 CCR 15000 et seq.) and the County's RPO applies to the direct and indirect impact analysis, as well as the cumulative impact analysis. A significant impact would result if:

1. The project, as designed, causes a substantial adverse change in the significance of a tribal cultural resource as defined in PRC, Section 21074, as either a site, feature, place, or cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is:
 - a. listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code 5020.1(k); or
 - b. a resource determined by the Lead Agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code 5024.1. In applying the criteria set forth in subdivision (c) of Public Resources Code 5024.1, the Lead Agency shall consider the significance of the resource to a California Native American Tribe.
2. The project proposes activities or uses damaging to tribal cultural resources as defined by the County RPO and fails to preserve those resources.

The first guideline is included in CEQA Guidelines, Appendix G and was selected because CEQA requires that TCRs be evaluated to determine whether or not a proposed action would have a significant effect on such resources. Any project that would have an adverse impact (direct, indirect, and/or cumulative) on a significant TCR as defined by these guidelines would be considered to have a significant impact on the environment. The second guideline was selected because TCRs are protected under the RPO. Any project that would have an adverse impact (direct, indirect, and/or cumulative) on a significant TCR as defined by these guidelines would be considered to have a significant impact on the environment.

Analysis

TCR impacts occur through the destruction or alteration of a TCR through grading, excavating, trenching, boring, tunneling, or other activity that disturbs or displaces the TCRs. Excavation operations are the most common ways for TCRs to be adversely impacted and can result in the permanent loss of resources. The most extensive excavation impacts are usually associated with

grading, where earthmovers are used in combination with bulldozers to rip and transport soil and bedrock. Front-end loaders, track hoes, and trucks can also be used in excavation operations. Construction of the Proposed Project would involve clearing and grubbing of the existing vegetation within the ~~643~~ 626-acre development footprint, which includes the 623-acre MUP area and 3 acres of temporary disturbance outside of the MUP boundary for the water main realignment. Grading would be required throughout the 623-acre MUP boundary. Trenching would occur along the water main realignment. Grading is expected to be balanced on site, with approximately ~~264,000~~ 280,000 cubic yards of cut redistributed across the site. For the Proposed Project, no mass grading is proposed. Smaller amounts of earth are moved during, boring, trenching, and tunneling, and typically the impacts are less extensive. Indirect impacts to TCRs can also occur, including increased access to resources, and altering, obscuring, or reducing the visual setting of a resource.

The analysis of potential impacts to TCRs resulting from implementation of the Proposed Project is based on a review of archival records, Native American outreach, recent survey and archaeological evaluation accompanied by Native American monitoring, and laboratory analysis as described in the Cultural Resources Report (Appendix E) and through AB 52 consultation conducted by the County.

The Proposed Project's ADI comprises approximately ~~643~~ 626 acres within the 1,356-acre Project site. In addition to grading, construction activities that would disturb the subsurface within the ADI include the water main realignment, construction of trenching for the underground collection system, installation of approximately 300,000 photovoltaic modules, 25 inverter/transformer platforms, 75 battery storage containers, an on-site collector substation, ~~and switchyard~~ Switchyard Facilities, and access improvements. A half-mile buffer around the maximum extents of the Project site was considered for indirect impacts to cultural resources. Indirect impacts could occur through increased access to the area.

Implementation of the Proposed Project would impact 20 archaeological isolates and would result in direct impacts to 28 archaeological sites, as identified in Section 2.4, Cultural Resources, of this EIR. The 20 isolates identified within the ADI required no evaluation or avoidance measures as isolates are, by definition, not significant. None of the evaluated archaeological sites contained substantial or diverse archaeological deposits that could be used to develop or refine local or regional culture histories. Instead, evaluated prehistoric sites produced low quantities of limited diversity chipped stone assemblages, primarily consisting of cortical and interior flakes, and rock shatter representing incipient tool production. Minor amounts of brownware aboriginal ceramic sherds indicate some transient occupation possibly taking advantage of seasonally available resources, but no evidence of longer-term or more residentially stable occupation was identified in the ADI (Appendix E). All sites or portions of sites located within the Proposed Project ADI would be subject to grading and leveling and the surface of the sites would be completely destroyed. Due to their lack of data potential, these resources or portions of resources within the Proposed Project ADI are recommended as not

significant, and not eligible for listing in the CRHR, or local register based on CEQA Criterion 4, or County Significance Guidelines. As such, impacts to each of these evaluated sites as a result of Proposed Project implementation would not be significant.

Some of the archaeological sites intersecting the Project site were previously included in the Jacumba Valley Archaeological District (JVAD). Individual archaeological sites or portions of larger sites included in the JVAD that overlap the current Proposed Project ADI were subject to archaeological test excavations. No significant archaeological deposits were identified. Specifically, only small quantities of debitage and aboriginal ceramics were recovered with no midden soils or other evidence of habitation, or any organic datable materials. As a result, these evaluated sites or portions thereof are recommended as not significant under CEQA and not eligible for listing in the CRHR or Local Register. Though no federal nexus has been identified for the Proposed Project as of the date of the Cultural Resources Report (Appendix E), significance recommendations under Section 106 of the National Historic Preservation Act are the same; none of the evaluated archaeological sites are recommended as significant and none are eligible for listing in the NRHP under any criteria. As a result, it is determined that implementation of the Proposed Project would have No Adverse Effect to the JVAD because it would not impact archaeological deposits that convey the significance of the JVAD (Appendix E).

Under AB 52, TCRs are defined as resources that are eligible for or listed in the CRHR, or resources that the lead agency determines to be a TCR with a substantial burden of evidence. Notwithstanding the lack of information on TCRs received by the County to date, no significant archaeological sites eligible for or listed in the CRHR will be impacted by the Proposed Project. Therefore, no TCRs have been identified that would be impacted by the Proposed Project. However, there is the potential for inadvertent discovery of TCRs, including human remains, previously unknown as a result of the historic and ongoing Tribal use of the Project site, as well as indirect impacts through increased access to the area. Additionally, although identified archaeological sites located in the Proposed Project ADI are not considered eligible for listing on the CRHR or the NRHP, all cultural resources are considered important under County of San Diego Guidelines for Determining Significance (County of San Diego 2007). As such, impacts would be **potentially significant (Impact TCR-1)** during construction. Once in operation, the Proposed Project would not involve additional ground-disturbing activities that could impact potential TCRs within the Proposed Project ADI. Therefore, impacts during operation would be **less than significant**.

Decommissioning activities would be performed within the Project ADI. No ground-disturbing activities would occur outside the Proposed Project ADI and the activities associated with decommissioning would not include grading. All Proposed Project components would be decommissioned except the ~~switchyard~~ Switchyard Facilities and connection to the SDG&E transmission line which would be owned and operated by SDG&E. Implementation of a final decommissioning plan(s) would be required, and would be provided within one year of issuance

of the building permits for the Proposed Project to ensure compliance with Section 6954.b.3(d) of the County of San Diego Zoning Ordinance for removal surety as described in Chapter 1, Project Description, of this EIR. Although no TCRs have been identified that would be impacted by the Proposed Project, there is the potential for the inadvertent discovery of TCRs, including human remains, previously unknown as a result of the historic and ongoing Tribal use of the Project site, as well as indirect impacts through increased access to the area. Additionally, although identified archaeological sites located in the Proposed Project ADI are not considered eligible for listing on the CRHR or the NRHP, all cultural resources are considered important under County of San Diego Guidelines for Determining Significance (County of San Diego 2007). As such, impacts would be **potentially significant (Impact TCR-1)**. Therefore, impacts to TCRs as a result of Proposed Project decommissioning would be **potentially significant**.

Switchyard Facilities

The Proposed Project would include ~~a 138-kilovolt~~ the Switchyard Facilities located adjacent to the proposed collector substation (see ~~Figure 1-2 Project Components 4-5, Substation and Switchyard~~, in Chapter 1 of this EIR). The size of the switchyard pad would be approximately 140,000 square feet. Within this area would be an 8- foot-high security fence (445 feet by 300 feet) surrounded by a 5-foot shoulder for grounding protection inside the fence. As discussed above, no significant archaeological sites eligible for or listed in the CRHR would be impacted by the Proposed Project. Therefore, no TCRs have been identified that would be impacted by the Proposed Project. However, there is the potential for inadvertent discovery of TCRs, including human remains, previously unknown as a result of the historic and ongoing Tribal use of the Switchyard Facilities site, as well as indirect impacts through increased access to the area. Additionally, although identified archaeological sites located in the Proposed Project ADI are not considered eligible for listing on the CRHR or the NRHP, all cultural resources are considered important under County of San Diego Guidelines for Determining Significance (County of San Diego 2007). As such, impacts would be **potentially significant (Impact TCR-1)** during construction.

After completion of construction of the ~~switchyard~~ Switchyard Facilities, operation of the ~~switchyard~~ Switchyard Facilities would be transferred to SDG&E as described in Chapter 1, Project Description, of this EIR. The ~~switchyard~~ Switchyard Facilities would be un-staffed during operation. Monitoring and control functions would be performed remotely from SDG&E's central operations facilities. Accordingly, no new personnel would be required for operation and maintenance. Routine operations would require a single pickup truck visiting the ~~switchyard~~ Switchyard Facilities several times a week for switching, as well as several larger substation construction and maintenance trucks visiting the ~~switchyard~~ Switchyard Facilities several times a year for equipment maintenance. Maintenance activities would include equipment testing, equipment monitoring and repair, and emergency and routine procedures for service continuity and preventive maintenance. Operational activities are unlikely to disturb tribal cultural resources

because they would affect surface soil horizons only, which do not contain significant tribal cultural resources as previously analyzed and as described in Appendix E. Therefore, it is determined that ~~switchyard~~ Switchyard Facilities operation and maintenance impacts related to tribal cultural resources would be **less than significant**. The ~~switchyard~~ Switchyard Facilities and connection to the SDG&E transmission line which would be owned and operated by SDG&E would not be decommissioned at the life span of the solar facility.

2.11.4 Cumulative Impact Analysis

Cumulative projects located within the cumulative project area (identified in Table 1-4 of Chapter 1, Project Description, of this EIR) would have the potential to result in a cumulative impact associated with tribal cultural resources from extensive grading, excavation, or other ground-disturbing activities that are located in an area of high or moderate sensitivity. Cumulative projects would be regulated by applicable state and local regulations, including CEQA and the County Grading Ordinance.

According to CEQA, the importance of cultural resources comes from the research value and the information they contain. Therefore, the issue that must be explored in a cumulative analysis is the cumulative loss of that information. For sites that are less than significant, the information is preserved through recordation and test excavations. Significant sites that are placed in open space easements avoid impacts to cultural resources and preserve the data. Significant sites that are not placed within open space easements preserve the information through recordation, test excavations, and data recovery programs that would be presented in reports and filed with the County and SCIC. The artifact collections from any potentially significant site would also be curated at a facility within ~~the~~ San Diego County, Imperial County, or with an affiliated tribal curation facility. Alternatively, the collections may be repatriated to a tribe of appropriate affiliation.

The cumulative study area includes southeastern San Diego County and southwestern Imperial County and was selected because these areas include the relatively undeveloped portions of the ancestral Kumeyaay territory, and those rural areas outside of the historically developed urban population centers in San Diego and southwestern Imperial County. These cumulative projects are summarized in Chapter 1, Project Description (Table 1-4). Related projects within this geographic extent are capable of collectively contributing, along with the Proposed Project's ADI, to impacts on tribal cultural resources associated with ancestral Kumeyaay lifestyles.

Those projects identified within the cumulative impact study area would be required to implement mitigation should they result in potentially significant impacts to tribal cultural resources. This reduces the potential for cumulative impacts. As described above, no significant archaeological sites eligible for or listed in the CRHR would be impacted by the Proposed Project. In addition, no TCRs have been identified during AB 52 consultation. Therefore, no TCRs would be impacted by

the Proposed Project. As such, it is determined that the Proposed Project **would not contribute to a significant cumulative impact to cultural resources.**

2.11.5 Significance of Impacts Prior to Mitigation

The Proposed Project's development activities could affect TCRs within 50 feet of the Project ADI or within resource-specific, predetermined buffers, and has the potential to affect undiscovered TCRs, including human remains and archaeological resources that may qualify as TCRs. Therefore, impacts to TCRs would be **potentially significant (Impact TCR-1)**. Cumulative impacts would **not be cumulatively considerable**.

Once in operation, the Proposed Project would not involve additional ground-disturbing activities that could impact potential tribal cultural resources within the Proposed Project ADI. Therefore, impacts during operation would remain **less than significant**.

2.11.6 Mitigation Measures

M-TCR-1 Temporary Fencing. To prevent inadvertent disturbance of tribal cultural resources (TCRs) within the avoidance areas (land outside of the Project ADI), temporary fencing shall be installed where resources are located within 50 feet of the Project ADI. The temporary fencing shall include the following requirements:

- Prior to the commencement of any grading and/or clearing in association with the grading and/or improvement plan, temporary construction fencing shall be placed to protect archaeological sites or portions of sites adjacent to the Project ADI during earth-disturbing activities. Temporary fencing shall be installed prior to the pre-construction meeting and any clearing, grubbing, trenching, grading, or land disturbances; remain for the duration of earth-disturbing activities; and include the following:
 - Temporary fencing is required in all locations of the Project where proposed grading or clearing is within 50 feet of any archaeological site outside of the Project ADI.
 - The placement of such fencing shall be approved by the County. Upon approval, the fencing shall remain in place until the conclusion of grading activities, after which the fencing shall be removed.
 - Installation of temporary fencing shall require the presence of monitor(s) (Archaeological & Native American) pursuant to **M-CR-2**.

M-TCR-2 Archaeological and Tribal Monitoring. To mitigate for potential impacts to undiscovered, buried tribal cultural resources (TCRs) within the Project ADI, an archaeological and tribal monitoring program and potential data recovery program shall be implemented pursuant to the County of San Diego's (County's) Guidelines for Determining Significance and Report Format and Requirements for Cultural Resources and the California Environmental Quality Act (CEQA) and shall include the following requirements:

a. Pre-Construction

- The project developer shall contract with a County-approved archaeologist to perform archaeological monitoring. The Project archaeologist shall contract with a Kumeyaay Native American monitor(s) to conduct Native American monitoring for the Project.
- The pre-construction meeting shall be attended by the Project archaeologist and the Kumeyaay Native American monitor(s) to explain the monitoring requirements.

b. Construction

- Monitoring
 - Both the Project archaeologist and Kumeyaay Native American monitor(s) are to be on site during all earth-disturbing activities. The frequency and location of monitoring of native soils shall be determined by the Project archaeologist and the Kumeyaay Native American monitor. Both the Project Archaeologist and Kumeyaay Native American monitor(s) will evaluate fill soils to ensure that they are negative for cultural resources
- Inadvertent Discoveries
 - Both the Project archaeologist and the Kumeyaay Native American monitor have the authority to divert or temporarily halt ground disturbance operations in the area of the discovery.
 - The Project archaeologist shall contact the County archaeologist.
 - The Project archaeologist, in consultation with the County archaeologist and the Kumeyaay Native American monitor, shall determine the significance of discovered resources and whether they constitute a TCR.

- The Project Archaeologist shall notify the Campo Band of Mission Indians, Manzanita Band of the Kumeyaay Nation, and the Viejas Band of Kumeyaay Indians of the unanticipated discovery.
- Should a potential TCR be identified, the Project archaeologist shall consult with consulting tribes for a final determination.
- Construction activities shall be allowed to resume after the County archaeologist has agreed with the significance evaluation.
- Isolates and non-significant deposits shall be minimally documented in the field. If the isolates and non-significant deposits are not collected by the Project archaeologist, the Kumeyaay Native American monitor may collect the cultural material for transfer to a tribal curation facility or repatriation program.
- If cultural resources are determined to be significant, a research design and data recovery program shall be prepared by the Project archaeologist in consultation with the Kumeyaay Native American monitor and approved by the County archaeologist. The program shall include reasonable efforts to preserve (avoid) unique cultural resources or sacred sites, to cap identified sacred sites or unique cultural resources and to place development over the cap if avoidance is infeasible; and to perform data recovery for non-unique cultural resources. The preferred option is preservation (avoidance).

c. Human Remains

- The property owner or their representative shall contact the County coroner and the County Planning & Development Services staff archaeologist.
- Upon identification of human remains, no further disturbance shall occur in the area of the find until the County coroner has made the necessary findings as to origin. Should the human remains need to be taken off site for evaluation, they shall be accompanied by a Kumeyaay Native American monitor.
- If the remains are determined to be of Native American origin, the most likely descendant (MLD), as identified by the Native American Heritage Commission (NAHC), shall be contacted by the property owner or their representative to determine proper treatment and disposition of the remains.
- The Project Archaeologist shall notify the Campo Band of Mission Indians, Manzanita Band of the Kumeyaay Nation, and Viejas Band of Kumeyaay Indians of the identification of human remains.

- The immediate vicinity where the Native American human remains are located is not to be damaged or disturbed by further development activity until consultation with the MLD regarding their recommendations as required by California Public Resources Code, Section 5097.98, has been conducted.
 - California Public Resources Code, Section 5097.98; CEQA Guidelines, Section 15064.5; and California Health and Safety Code, Section 7050.5, shall be followed in the event that human remains are discovered.
- d. Rough Grading
- Upon completion of rough grading, a monitoring report identifying whether resources were encountered shall be prepared. A copy of the monitoring report shall be provided to any culturally affiliated tribe that requests a copy.
- e. Final Grading
- A final report substantiating that native soil-disturbing activities are completed and whether cultural resources were encountered shall be prepared. A copy of the final report shall be submitted to the South Coastal Information Center (SCIC) and any culturally affiliated tribe that requests a copy.
- f. Cultural Material Conveyance

The final report shall include the following:

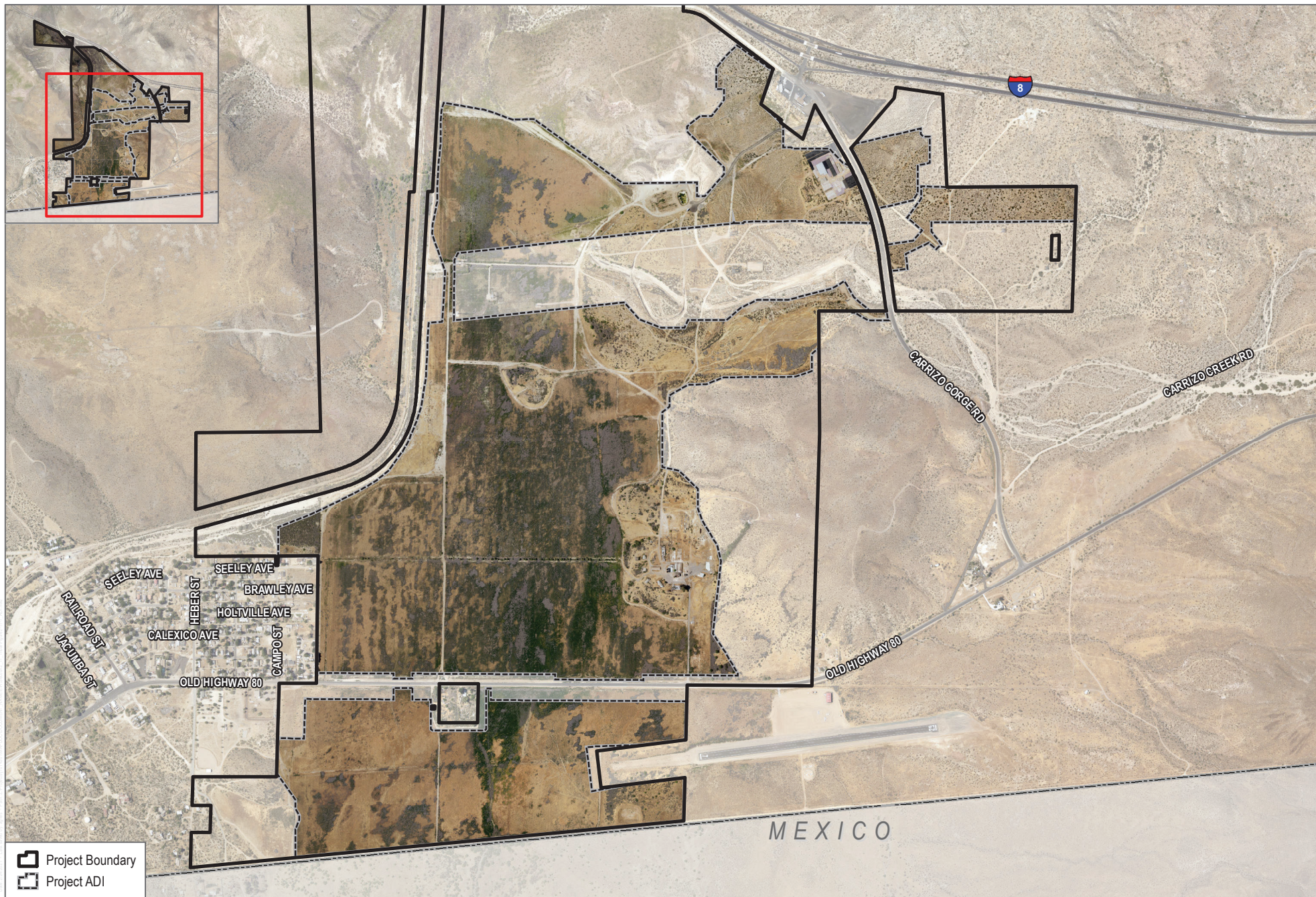
- Evidence that all prehistoric materials have been curated at a San Diego County, Imperial County, or culturally affiliated Tribal curation facility that meets federal standards according to Title 36, Part 79, of the Code of Federal Regulations or alternatively have been repatriated to a culturally affiliated tribe.
- Evidence that historic materials have been curated at a San Diego curation facility that meets federal standards according to Title 36, Part 79, of the Code of Federal Regulations.

M-TCR-3 Long-Term Preservation of Resources. All O&M and decommissioning activities will be performed within the Project ADI – no ground-disturbing activities shall occur outside the Project ADI. Employees and contractors performing O&M and decommissioning activities will receive training or instructions regarding the archaeological and cultural sensitivity of the Project Area to ensure no inadvertent impacts occur to the 11 potentially significant sites (or portions thereof) that are located within 50 feet of the Project ADI, including the eight sites that were fully or partially tested and the three that were not evaluated). Temporary fencing will be installed during decommissioning activities to delineate the ADI.

2.11.7 Conclusion

The potential for discovery of tribal cultural resources, including human remains, during construction and decommissioning of the Proposed Project (**Impact TCR-1**) would be mitigated to **less than significant** with incorporation of mitigation measures **M-TCR-1**, **M-TCR-2**, and **M-TCR-3**. Cumulative impacts would **not be cumulatively considerable**.

Once in operation, the Proposed Project would not involve additional ground-disturbing activities that could impact potential tribal cultural resources within the Proposed Project ADI. Therefore, impacts during operation would remain **less than significant**.



SOURCE: SANGIS 2017, 2021; Kimley-Horn 2021

FIGURE 2.11-1

ADI Map

JVR Energy Park Project

INTENTIONALLY LEFT BLANK