

## **2.6 Tribal Cultural Resources**

This section of the Environmental Impact Report (EIR) discusses potential impacts to tribal cultural resources (TCRs) resulting from the implementation of the project. The analysis is based on the review of existing resources, technical data, and applicable laws, regulations, and guidelines, as well as the following technical study prepared for the proposed project, which was prepared in accordance with the *County of San Diego Guidelines for Determining Significance, Cultural Resources: Archaeological and Historic Resources* (County of San Diego 2007a) and the *County of San Diego Format and Content Requirements, Cultural Resources: Archaeological and Historic Resources* (County of San Diego 2007b):

- *Cultural Resources Survey and Inventory for the Starlight Solar Project, San Diego County, California* (SWCA Environmental Consultants [SWCA] 2024) (Appendix E.1 of this EIR)

The analysis is also based on Native American consultation conducted by the County of San Diego (County) pursuant to provisions in the California Environmental Quality Act (CEQA) pertaining to Assembly Bill (AB) 52. Comments received in response to the Notice of Preparation (NOP) include concerns regarding proper Native American consultation and proper monitoring for TCRs, tribal artifacts, cremation sites and human remains, and the potential disturbance of these resources. These concerns are addressed in this section of the EIR where applicable and within the cultural resources survey and inventory report (see Appendix E.1). Copies of the NOP and comment letters received in response to the NOP are included in Appendix A, NOP, Initial Study, and Public Comments, of this EIR.

### **2.6.1 Existing Conditions**

Information in this section is taken from the cultural resources survey and inventory report (SWCA 2024; see Appendix E.1), unless otherwise noted.

#### **2.6.1.1 Natural Setting**

The project area is in the Peninsular Ranges geomorphic province, which extends approximately 900 miles from the Transverse Ranges and the Los Angeles Basin south to the southern tip of Baja California. Northwest-trending mountain ranges and valleys distinguish the Peninsular Ranges by following faults branching from the San Andreas Fault. The Peninsular Ranges are the remnants of large igneous bodies emplaced approximately 180 million years ago. Rugged mountainous terrain on the east of the province is composed mostly of Mesozoic igneous and metamorphic rocks. The subject site is located within the topographically dynamic eastern portion of the Peninsular Ranges geomorphic province. Specifically, the site is in an area underlain by early and late Cretaceous tonalite of the La Posta Formation.

The terrain in the area is characterized by chaparral-covered hills, with large granitic boulder and bedrock outcroppings, interrupted by small valleys, dry washes, or arroyos. The elevation of the area ranges between approximately 3,300 to 3,600 feet above mean sea level, with the highest elevation located toward the northwest, and the lowest to the southeast. Several small peaks are present in the area, which include Rattlesnake Mountain and Boundary Peak to the south and Old George, Goat, and Music Mountains to the east. Boundary Peak, located south near the international border, adjacent to the Jewel Valley, rises a little over 3,900 feet.

Nearby water sources include Boundary Creek and Walker Creek, as well as several small springs. Climatically, the area is characterized as arid, with a mean annual rainfall averaging about 15 inches. Due to the scarcity of water in the region, most streams are ephemeral and permanent surface water flow is rare. Winter temperatures are as low as 32 degrees Fahrenheit (°F), with summer temperatures exceeding 100°F.

The project site is located near the Tecate Divide in a transitional ecoregion between the peninsular mountains and the Colorado Desert to the east. Vegetation consists of mountain chaparral, characterized by the dominant chaparral vegetation of the lowlands and deserts but lacking the hardwood and conifer woodland of some of the mountain regions around it. Common local fauna includes coyotes, cottontail and black-tailed jackrabbits, deer mouse, and song sparrow, as well as a number of other species of bird, mammals, and reptiles.

### **2.6.1.2 Cultural Setting**

Archaeologists have defined five broad cultural traditions for the upland areas of San Diego County. The earliest is the Paleoindian; these groups had small populations and likely were highly mobile. Scant evidence of occupation of San Diego County by Paleoindian people has been found. The San Dieguito complex is likely the first substantial population of Southern California. While a degree of mobility continued, San Dieguito subsistence strategies focused primarily on coastal shellfish, mountain, and inland game, and plant foods. Artifact assemblages include manos and metates, and the evidence of plant processing differentiates this period from the earlier Paleoindian period. Stemmed (e.g., Lake Mojave or Silver Lake) projectile points, crescents, an abundance of scrapers, a small number of milling tools, and the general use of volcanic lithic materials for the manufacture of flaked stone tools mark the San Dieguito complex.

The San Dieguito complex gave way to the Millingstone Horizon (MSH) as formation of larger settlements increased, long-distance trade networks intensified, and art and personal aesthetics such shell and stone pendants became more elaborate, along with an increasing variety of shell bead types. MSH is thought to represent an ecological adaptation to collecting a wider variety of resources. Ground stone implements for the processing of small seeds, namely metates and slabs paired with manos and mullers, dominated MSH collections. Mortar and pestle, associated with processing acorns, are present, but not common. Hammer stones, chopper tools, various scrapers including scraper planes, and expedient flake cutting tools are abundant.

The Intermediate and Late Prehistoric traditions mark a proliferation of cultures in Southern California. Overall, the Late Holocene regional record is characterized by larger populations with high densities which inhabited larger and more permanent settlements than earlier periods. Artifacts and cultural markers by the Late Prehistoric include pottery, a proliferation of acorn-processing sites in the uplands, the presence of obsidian from Obsidian Butte, the Imperial Valley source, and interment by cremation. The bow and arrow rather than the spear thrower and dart for hunting is inferred from the high densities of small, finely crafted projectile points. Mortar and pestle use expanded and was critical to exploitation of the acorn as a food resource. Since large quantities of acorns were available, which could be stored for long periods of time, the impact on local populations was significant.

### **2.6.1.3 Ethnographic Setting**

The Native American people in the project area at the time of European contact were the Kumeyaay, specifically the Tipai, who spoke a language broadly designated Kumeyaay, which belongs to the Yuman language family. Traditional Kumeyaay territory stretched from the San Diego coast to just beyond the eastern edge of the Salton Basin. The Kumeyaay were divided into exogamous (i.e., marrying outside of) patrilineal clans. The Tipai were 13 clans which had names based on plant, animal, or natural. Each band or clan was autonomous and had a clan chief who oversaw intra- and inter-clan affairs. However, clan membership was fluid, with individuals having affiliation with multiple communities and multiple clans sometimes sharing the same territory. The Tipai managed the landscape, cultivating native grains, burning stubbles, and casting seeds well into the 1880s in inland mountain locations far removed from the mission

establishments near the coast. The indigenous coastal groups were heavily impacted by the Spanish conquest and were subject to control under the Spanish mission system.

The eastern Kumeyaay were not recognized by the federal government and were left on their own to deal with Euro-American encroachment of their homeland. Eventually, the Bureau of Indian Affairs created reservations for the eastern Kumeyaay during the early part of the twentieth century. Today 13 federally recognized bands form the Kumeyaay Nation consisting of Barona, Campo, Capitan Grande (an unoccupied reservation that is part of the Barona Band), Ewiiapaayp, Inaja Cosmit, Jamul, La Posta, Manzanita, Mesa Grande, San Pasqual, Santa Ysabel, Sycuan, and Viejas. There are also numerous Kumeyaay tribal organizations that are not federally recognized but are recognized by the State of California.

### **2.6.1.4 Tribal Cultural Resources in the Project Site**

Under California's AB 52, TCRs are defined as resources that are eligible for or listed 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.

As discussed in greater detail in Section 2.3, Cultural Resources and in Appendix E.1, the Native American Heritage Commission (NAHC) was contacted to request a search of their Sacred Lands File on February 4, 2022. The NAHC responded on March 30, 2022, indicating a positive result of the Sacred Lands File. While a positive result does not necessarily indicate the presence of a sacred land within the project site, the NAHC recommended contacting the Ewiiapaayp Band of Kumeyaay Indians and the Manzanita Band of Kumeyaay Nation for more information.

On January 17, 2024, SWCA sent information-gathering letters via certified mail and email to the 23 individuals from 14 tribes identified by the NAHC, including the two tribes noted above. Follow-up phone calls to the 23 individuals were placed on February 5, 2024, and voicemails were left with contact information if the tribes wanted to reach out. Responses were received from seven of the 23 Tribal contacts. In summary, six of the seven responding tribes, including the Ewiiapaayp Band of Kumeyaay Indians, Jamul Indian Village (Jamul), Quechan Tribe of the Fort Yuma Reservation, San Pasqual Band of Diegueño Mission Indians (San Pasqual), Sycuan Band of the Kumeyaay Nation, and Viejas Band of Kumeyaay Indians (Viejas) stated they wished to defer consultation to tribes nearer to the project site. The Sycuan Band of the Kumeyaay Nation also requested a copy of the cultural and TCR technical study. The Campo Band of Diegueño Mission Indians (Campo) requested consultation with the County. SWCA also conducted information gathering through subconsultant Loveless and Linton, who provided Kumeyaay Cultural Committee feedback on the initial intensive survey. Finally, Campo provided tribal monitoring during pedestrian survey from September 11 through 29, 2023.

The cultural resources inventory of the project site identified 32 archaeological sites and 41 isolated finds. All 41 of the isolated finds and seven of the archaeological sites have been determined ineligible for listing in the CRHR. An additional four archaeological resources were found to be outside the project site and therefore will not be impacted and were not evaluated for significance. The remaining 21 archaeological resources are assumed eligible for the CRHR. Through project design the resources will be located within dedicated open space easements and impacts will be avoided. None of the archaeological sites has been identified as a TCR.

Pursuant to AB 52, the County initiated tribal outreach and government-to-government consultation with interested California Native American tribes. Nine tribes (Barona Group of Capitan Grande Band of Mission Indians, Campo, Iipay Nation of Santa Ysabel, Jamul, Kwaaymii Laguna Band of Mission Indians, Manzanita Band of the Kumeyaay Nation, San Pasqual, Sycuan Band of the Kumeyaay Nation, and Viejas) were sent notices of the project. Four tribes (Campo, Jamul, San Pasqual, and Viejas) requested formal

government-to-government consultation. The County has met with Campo, Jamul, San Pasqual and Viejas. On February 5, 2024, Jamul concluded its consultation with the County and deferred to Campo. San Pasqual was provided an earlier draft copy of this report on May 30, 2024. To date, no response has been received from San Pasqual. The County and Viejas concluded consultation on March 18, 2025. During consultation with Campo, the Tribe requested a larger, unspecified distance between cultural resource boundaries and construction areas. The County and Campo concluded consultation on December 3, 2024. However, as a result of consultation to date, no TCRs have been identified within the project site.

## 2.6.2 Regulatory Setting

### 2.6.2.1 State Regulations

#### California State Assembly Bill 52

California State AB 52 requires public agencies to consult with tribes during the CEQA process. As of 2015, CEQA established that “[a] project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment” (Public Resources Code [PRC] Section 21084.2). To be considered a TCR, a resource must be either listed, or determined to be eligible for listing, in the national, state, or local register of historic resources; or a resource that the lead agency chooses, in its discretion, to treat as a TCR.

To help determine whether a project may have such an effect, the lead agency must consult with any California Native American tribe that requests consultation and is traditionally and culturally affiliated with the geographic area of a proposed project. If a lead agency determines that a project may cause a substantial adverse change to TCRs, the lead agency must consider measures to mitigate that impact. PRC Section 20184.3 (b)(2) provides examples of mitigation measures that lead agencies may consider to avoid or minimize impacts to TCRs.

PRC Section 21074(a) defines TCRs as follows:

- 1) Sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe that are either of the following:
  - a. Included or determined to be eligible for inclusion in the California Register of Historical Resources.
  - b. Included in a local register of historical resources as defined in subdivision (k) of Section 5020.1.
- 2) 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 Section 5024.1. In applying the criteria set forth in subdivision (c) of Section 5024.1 for the purposes of this paragraph, the lead agency shall consider the significance of the resource to a California Native American tribe.
  - a. A cultural landscape that meets the criteria of subdivision (a) is a tribal cultural resource to the extent that the landscape is geographically defined in terms of the size and scope of the landscape.
  - b. A historical resource described in Section 21084.1, a unique archaeological resource as defined in subdivision (g) of Section 21083.2, or a “nonunique archaeological resource” as defined in subdivision (h) of Section 21083.2 may also be a tribal cultural resource if it conforms with the criteria of subdivision (a).

The Governor’s Office of Land Use and Climate Innovation, formerly known as the Governor’s Office of Planning and Research, defines what constitutes *substantial evidence* as follows:

Evidence that may support such a finding could include elder testimony, oral history, tribal government archival information, testimony of a qualified archaeologist certified by the relevant tribe, testimony of an expert certified by the tribal government, official tribal government declarations or resolutions, formal statements from a certified Tribal Historic Preservation Officer, or historical/anthropological records. (Governor’s Office of Planning and Research 2017:5)

PRC Section 5097.5 states that no person shall “knowingly and willfully excavate upon, or remove, destroy, injure, or deface, any historic or prehistoric ruins, burial grounds, archaeological or vertebrate paleontological site, including fossilized footprints, inscriptions made by human agency, rock art, or any other archaeological, paleontological or historical feature, situated on public lands, except with the express permission of the public agency having jurisdiction over such lands.” Violation of this section is a misdemeanor. As defined in this section, “public lands” means “lands owned by, or under the jurisdiction of, the state, or any city, county, district, authority, or public corporation, or any agency thereof.”

### Native American Human Remains

Sites that may contain human remains important to Native Americans must be identified and treated in a sensitive manner, consistent with state law (i.e., Health and Safety Code Section 7050.5 and PRC Section 5097.98), as outlined below:

If potential human bone or human remains are encountered during project development, and in accordance with Health and Safety Code Section 7050.5, the county coroner must be notified. The coroner will then determine within 2 working days of being notified whether the remains are subject to his or her authority. If the coroner recognizes the remains to be Native American, he or she shall contact the NAHC by phone within 24 hours, in accordance with PRC Section 5097.98. The NAHC will then designate a Most Likely Descendent (MLD) with respect to the human remains. The MLD then has the opportunity to recommend to the property owner or the person responsible for the excavation work the means for treating or disposing, with appropriate dignity, the human remains and associated grave goods.

### **2.6.2.2 Local Regulations**

#### Conservation and Open Space Element of the County’s General Plan

The *San Diego County General Plan: A Plan for Growth, Conservation, and Sustainability* (General Plan) (County of San Diego 2011a), presents the County’s goals and policies for cultural resources in Chapter 5, Conservation and Open Space Element (County of San Diego 2011b). Archaeological and historic resources, known collectively as cultural resources, are the tangible or intangible remains left by ancestral people who made and used them. Cultural resources, found throughout San Diego County, are irreplaceable reminders of the county’s prehistoric and historic past that continue to have value for communities today. These resources can provide clues to prehistoric and historic human behaviors and provide scientific, religious, and other valuable educational information about the cultural past. In addition, these resources such as sacred places and traditional cultural properties continue to influence and have value for San Diego County’s living tribal people. The cultural environment encompasses both the built (post-1769) and the archaeological environments, which include both prehistoric and historic archaeological sites. Cultural resources are found throughout San Diego County and include not only physical evidence of the past such as Native American rock shelters and pictographs but the intangible evidence such as traditional cultural lands and sacred sites. Examples of historic cultural resources (the built environment) include homes, barns, bridges, fountains, and silos. In 2008, more than 23,000 recorded cultural resource sites had been recorded within San Diego County, and this number continues to grow.

County goals and policies for cultural resources are as follows (County of San Diego 2011b):

- **GOAL COS-7- Protection and Preservation of Archaeological Resources.** Protection and Preservation of the County’s important archaeological resources for their cultural importance to local communities, as well as their research and educational potential.
  - **COS-7.1 Archaeological Protection.** Preserve important archaeological resources from loss or destruction and require development to include appropriate mitigation to protect the equality and integrity of these resources.
  - **COS-7.2 Open Space Easements.** Require development to avoid archeological resources whenever possible. If complete avoidance is not possible, require development to fully mitigate impacts to archaeological resources.
  - **COS-7.3 Archaeological Collections.** Require the appropriate treatment and preservation of archaeological collections in a culturally appropriate manner.
  - **COS-7.4 Consultation with Affected Communities.** Require consultation with affected communities, including local tribes to determine the appropriate treatment of cultural resources.
  - **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.
  - **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 County Code of Regulatory Ordinances Sections 86.601 through 86.608 (Resource Protection Ordinance [RPO]) protects significant cultural resources. The RPO defines “Significant Prehistoric or Historic Sites” in Section 86.602(o) as follows:

- Any prehistoric or historic district, site, interrelated collection of features or artifacts, buildings, structure, or object either:
  - a) Formally determined eligible or listed in the National Register of Historic Places by the Keeper of the National Register; or
  - b) To which the Historic Register (“H” Designator) Special Area Regulations have been applied; or
- One-of-a-kind, locally unique, or regionally unique cultural resources which contained 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 Public Resources Code Section 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.

The RPO does not allow nonexempt activities or uses damaging to significant prehistoric or historic lands on properties under County jurisdiction. The only exempt activity is scientific investigation. All discretionary projects are required to be in conformance with applicable County standards related to cultural resources, including the noted RPO criteria on prehistoric and historic sites. Noncompliance would result in a project that does not meet the County standards.

## **2.6.3 Analysis of Project Effects and Determination as to Significance**

### **2.6.3.1 Methodology**

#### Guidelines for the Determination of Significance

The County's guidelines for determining significance (County of San Diego 2007a) do not include guidance on TCRs. However, as mentioned above, both AB 52 and the County's RPO include protections for certain types of significant cultural resources as well as locations of sacred or ceremonial observances. Therefore, for the purpose of this EIR, Appendix G of the State CEQA Guidelines (14 California Code of Regulations 15000 et seq.) and the County's RPO apply to the direct and indirect impact analysis, as well as the cumulative impact analysis. A significant impact would result if:

- 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:
  - listed or eligible for listing in the CRHR, or in a local register of historical resources as defined in PRC 5020.1(k); or
  - a resource determined by the Lead Agency, in its discretion and supported by substantial evidence, to be significant pursuant to the criteria in PRC 5024.1(c). In applying these criteria, the Lead Agency shall consider the significance of the resource to a California Native American tribe.
- The project proposes activities or uses damaging to cultural resources of tribal significance as defined by the County RPO and fails to preserve those resources.

#### Analysis

Project-related impacts to TCRs could occur through the destruction or alteration of a TCR such that it no longer qualifies for inclusion on the CRHR or no longer qualifies as a resource that falls under the County RPO. This likely would occur through ground-disturbing activities such as grading, grubbing, excavating, trenching, boring, other activities that disturb or displace TCRs. Construction of the proposed project would involve clearing, grubbing, and grading for installation of project components, and trenching for installation of the gen-tie line and other subsurface utilities. Indirect impacts to TCRs can also occur, including vandalism or inadvertent disturbance due to increased access and visitation to the project site, and adversely affecting the visual setting of a resource, if the setting contributes to the resource's eligibility.

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, pedestrian field survey accompanied by a tribal observer, and AB 52 consultation conducted by the County. As a result of these efforts, no known TCRs as defined in CEQA have been identified within the project site. Additionally, all archaeological resources within the project site that remain unevaluated and are assumed eligible for the CRHR will be placed in open space easements and impacts will be avoided (see Section 2.3, Cultural Resources).

While no TCRs have been identified, TCRs could be encountered during project construction. If such resources are encountered, they could be impacted both directly through destruction or physical alteration, or indirectly through visual alteration to the surrounding setting. Such impacts would be **potentially significant (Impact TCR-1)**.

## 2.6.4 Cumulative Impact Analysis

The cumulative projects listed in Table 1-4 in Chapter 1.0, Project Description, Location, and Environmental Setting, and within this geographic area of consideration include other solar projects, a wind project, and a water project. Some of these projects involve related improvements such as electrical substations and subsurface or overhead generation-tie lines. Several of those that have been analyzed under CEQA have the potential to impact both cultural resources and TCRs. Therefore, the proposed project, along with these projects in the cumulative area of analysis, are capable of collectively contributing to impacts to TCRs. Cumulative projects on state or public lands would be required to comply with PRC Sections 5097–5097.6 pertaining to impacts to TCRs. Other cumulative projects would be regulated by federal, state, and local regulations, including CEQA and the San Diego County Code of Regulatory Ordinances Title 8, Division 7, Grading, Clearing, and Watercourses.

No TCRs have been identified within the project site. However, TCRs could be encountered during construction. As a result, in the absence of mitigation, the project could contribute to a **cumulatively considerable impact** to TCRs (Impact TR-CU-1).

~~The preparation and implementation of a Treatment Agreement and Preservation Plan (M-CR-2), as well as archaeological and Native American monitoring (M-CR-3) during project construction would ensure proper identification, documentation, evaluation, treatment, and reporting of inadvertent discoveries, including TCRs. As a result, the project would not contribute to a cumulatively considerable impact to TCRs.~~

## 2.6.5 Significance of Impacts Prior to Mitigation

Construction of the project could encounter and impact previously undocumented TCRs within the project site, including human remains and archaeological resources that may qualify as TCRs. The project would have a **potentially significant impact** prior to mitigation.

## 2.6.6 Mitigation Measures

Mitigation measures M-CR-2 and M-CR-3, presented in Chapter 2.3, Cultural Resources, would also mitigate potential impacts under **Impact TCR-1**, as follows:

**M-CR-2 Cultural Resources Treatment Agreement and Preservation Plan.** In order to mitigate for impacts to cultural resources and tribal cultural resources (TCRs), the Applicant shall develop and enter into a Cultural Resources Treatment Agreement and Preservation Plan with the consulting Native American tribes.

A Cultural Resources Treatment Agreement and Preservation Plan shall be developed between the Applicant or their representative and the consulting Native American tribes. The Cultural Resources Treatment Agreement and Preservation Plan shall be reviewed and agreed to by the County prior to final signature and authorization. The Cultural Resources Treatment Agreement and Preservation Plan shall include but is not limited to the following:

1. Parties entering into the agreement and contact information.
2. Responsibilities of the Property Owner or their representative, Principal Investigator (PI), archaeological monitors, Kumeyaay Native American monitors, and consulting tribes.
3. Requirements of the Archaeological Monitoring Program including unanticipated discoveries. The requirements shall address grading and grubbing requirements including controlled grading and controlled vegetation removal in areas of cultural sensitivity, analysis of identified cultural materials, and on-site storage of cultural materials.
4. Treatment of identified Native American cultural materials and TCRs.
5. Treatment of Native American human remains and associated grave goods.
6. Incorporation of P-37-027350, P-37-033497/P-37-033502/P-37-033503, P-37-040847, P-37-040848, P-37-040850, P-37-040851, P-37-040861, P-37-040866, and P-37-040865 into dedicated open space in Phase I. Incorporation of P-37-010476/P-37-034159, P-37-033310, P-37-040857, P-37-040858, P-37-040859, P-37-040862, P-37-040863, P-37-040864, P-37-040867, P-37-040869, P-37-040870, and P-37-040872 into dedicated open space in Phase II.
7. Interim treatment and final internment of Native American cultural soils and materials.
8. Confidentiality of cultural information including location and data.
9. Regulations that apply to cultural resources and TCRs that have been identified or may be identified during project construction.

A copy of the implemented agreement shall be submitted to the County for approval, prior to the approval of any plan and issuance of any permit. The County shall review the implemented agreement for compliance this condition.

**M-CR-3**

**Archaeological and Native American Monitoring.** In order to mitigate for potential impacts to undiscovered buried archaeological resources and human remains, an Archaeological Monitoring Program and potential Data Recovery Program shall be implemented pursuant to the *County of San Diego Guidelines for Determining Significance, Cultural Resources: Archaeological and Historic Resources* and the California Environmental Quality Act (CEQA). This shall be implemented prior to approval of any grading and or improvement plans and issuance of any Grading or Construction Permits, for both Phases for the period of time that ground-disturbing activities have the potential to uncover or disturb cultural resources, as determined by the Principal Investigator.

A County-approved Principal Investigator known as the “Project Archaeologist” shall be contracted to perform monitoring and a potential data recovery program during all grading, clearing, grubbing, trenching, and earth-disturbing activities for both Phases I and II. The Project Archaeologist shall contract with a Kumeyaay Native American monitor(s) to conduct Native American monitoring for the project.

The monitoring program for both Phases I and II shall include the following:

1. Preconstruction
  - a. Contract with a County-approved archaeologist to perform archaeological monitoring and a potential data recovery program during all earth-disturbing activities. The Project Archaeologist shall perform the monitoring duties before, during and after construction.
  - b. Hold a preconstruction meeting to be attended by the Project Archaeologist and Kumeyaay Native American monitor(s) to explain the monitoring requirements.
2. Construction Monitoring
  - a. Both the Project Archaeologist and Kumeyaay Native American monitor(s) are to be on-site during earth-disturbing activities. The frequency and location of monitoring of native soils shall be determined by the Project Archaeologist in consultation with the Kumeyaay Native American monitor. Both the Project Archaeologist and Kumeyaay Native American monitor shall evaluate fill soils to ensure that they are negative for cultural resources, including those that could be identified as TCRs.
  - b. If cultural resources or TCRs are identified:
    - i. Both the Project Archaeologist and Kumeyaay Native American monitor(s) have the authority to divert or temporarily halt ground disturbance operations in the area of the discovery.
    - ii. The Project Archaeologist shall contact the County Archaeologist at the time of discovery.
    - iii. The Project Archaeologist in consultation with the County Archaeologist and Kumeyaay Native American monitor(s) shall determine the significance of discovered resources.
    - iv. Construction activities shall be allowed to resume after the County Archaeologist has concurred with the significance evaluation.
    - v. Isolates and non-significant deposits shall be minimally documented in the field. Should the isolates and non-significant deposits not be 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.
  - c. 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(s) and approved by the County Archaeologist. The program shall include reasonable efforts to preserve (avoid) unique cultural resources or Sacred Sites, including TCRs; the capping of identified Sacred Sites or unique cultural resources and placement of development over the cap if avoidance is infeasible; and data recovery for nonunique cultural resources. The preferred option is preservation (avoidance).
3. Human Remains
  - a. The Property Owner or their representative shall contact the County Coroner and the Planning and Development Services Staff Archaeologist.

- b. 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. If the human remains are to be taken off-site for evaluation, they may be accompanied by the Kumeyaay Native American monitor.
  - c. 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 in order to determine proper treatment and disposition of the remains.
  - d. 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 Public Resources Code Section 5097.98 has been conducted.
  - e. Public Resources Code Section 5097.98, CEQA 15064.5, and Health and Safety Code 7050.5 shall be followed in the event that human remains are discovered.
4. Rough Grading
    - a. Monitoring Report. Upon completion of rough grading, a monitoring report shall be prepared identifying whether resources were encountered. A copy of the monitoring report shall be provided to the South Coastal Information Center and any culturally affiliated tribe who requests a copy.
  5. Final Grading
    - a. Final Report. A final report shall be prepared substantiating that earth-disturbing activities are completed and whether cultural resources were encountered. A copy of the final report shall be submitted to the South Coastal Information Center and any culturally affiliated tribe who requests a copy.
    - b. The final report shall include evidence that all prehistoric materials have been curated at a San Diego curation facility or tribal curation facility that meets federal standards per 36 Code of Federal Regulations (CFR) 79, or alternatively have been repatriated to a culturally affiliated tribe.
    - c. The final report shall include evidence that all historic materials have been curated at a San Diego curation facility that meets federal standards per 36 CFR 79.

The Applicant shall provide a copy of the Archaeological Monitoring Contract or letter of acceptance, cost estimate, and memorandum of understanding (MOU) to the County. Additionally, the cost amount of the monitoring work shall be added to the grading bond cost estimate for both Phases I and II.

Planning and Development Services shall review the contract or letter of acceptance, MOU, and cost estimate or separate bonds for compliance with this condition. The cost estimate should be forwarded to the County for inclusion in the grading bond cost estimate, and grading bonds and the grading monitoring requirement shall be made a condition of the issuance of the grading or construction permit.

## 2.6.7 Conclusion

No TCRs have been identified within the project site. However, previously undocumented TCRs could be identified and impacted during project implementation (**Impact TCR-1**). Impacts to TCRs would be mitigated to **less than significant** through implementation of **M-CR-2** (Treatment Agreement and Preservation Plan) and **M-CR-3** (Archaeological and Native American Monitoring). In the absence of mitigation, the project could contribute to a cumulatively considerable impact to TCRs (**Impact TR-CU-1**). However, the preparation and implementation of a Treatment Agreement and Preservation Plan (**M-CR-2**), as well as archaeological and Native American monitoring (**M-CR-3**) during project construction, would ensure proper identification, documentation, evaluation, treatment, and reporting of inadvertent discoveries, including TCRs. Impacts to TCRs **would not be cumulatively considerable**.