

## DOCKETED

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## CRIT Proposed Modifications to Conditions of Certification

### CUL-1 PREHISTORIC TRAILS NETWORK CULTURAL LANDSCAPE (PTNCL) DOCUMENTATION AND POSSIBLE NRHP NOMINATION

*As explained in CRIT's Comment Letter on the Staff Assessment, CUL-1 currently proposes a per-acre mitigation fee to document a landscape that the Commission Staff has largely abandoned in the Palen Solar Electric Generating System proceeding. To the extent the Commission still intends to document the PTNCL, the per-acre fee must be revised to ensure adequate funding now that underlying assumptions have changed. CRIT also objects to the Staff Assessment assertion that CEC staff is unable to determine mitigation supported by affected Tribes and to its conclusion that CUL-1 reduces impacts to the greatest extent possible. CRIT nevertheless maintains that compensatory mitigation cannot reduce a project's significant cultural impacts to a level of insignificance.*

### CUL-5 CULTURAL RESOURCES MONITORING AND MITIGATION PLAN

Prior to the start of ground disturbance, the project owner shall submit to the CPM for review and approval the Cultural Resources Monitoring and Mitigation Plan (CRMMP), as prepared by or under the direction of the CRS, with the contributions of the PPA, and the PHA. The CPM shall facilitate review and comment by affected Indian tribes prior to approval. The authors' name(s) shall appear on the title page of the CRMMP. The CRMMP shall specify the impact mitigation protocols for all known cultural resources and identify general and specific measures to minimize potential impacts to all other cultural resources, including those discovered during construction. Implementation of the CRMMP shall be the responsibility of the CRS and the project owner, but the CPM retains ultimate authority to interpret and enforce the CRMMP.

Copies of the CRMMP shall reside with the CRS, alternate CRS, the PPA, and the PHA, each CRM, and the project owner's on-site construction manager. No ground disturbance shall occur prior to CPM approval of the CRMMP, unless such activities are specifically approved by the CPM. Prior to certification, the project owner may have the CRS, alternate CRS, the PPA, and the PHA complete and submit to CEC for review the CRMMP, except for the portions to be contributed by the PTNCL and the DTCCCL programs.

The CRMMP shall include, but not be limited to, the elements and measures listed below.

1. The following statement shall be included in the Introduction: "Any discussion, summary, or paraphrasing of the Conditions of Certification in this CRMMP is intended as general guidance and as an aid to the user in understanding the Conditions and their implementation. The Conditions, as written in the Commission Decision, shall supersede any summarization, description, or interpretation of the conditions in the CRMMP. The Cultural Resources Conditions of Certification from the Commission Decision are contained in Appendix A."
2. The duties of the CRS shall be fully discussed, including coordination duties with respect to the completion of the Prehistoric Trails Network Cultural Landscape (PTNCL) documentation and possible NRHP nomination program and the Desert Training Center California-Arizona Maneuver Area Cultural

Landscape (DTCCL) documentation and possible NRHP nomination program, and oversight/management duties with respect to site evaluation, data collection, monitoring, and reporting at both known prehistoric and historic-period archaeological sites and any CRHR-eligible (as determined by the CPM) prehistoric and historic period archaeological sites discovered during construction.

3. A general research design shall be developed that:

- a. Charts a timeline of all research activities, including those coordinated under the PTNCL and DTCCL documentation and possible NRHP nomination programs;
- b. Recapitulates the existing paleoenvironmental, prehistoric, ethnohistoric, ethnographic, and historic contexts developed in the PTNCL and DTCCL historic context and adds to these the additional context of the non-military, historic-period occupation and use of the Palo Verde Mesa, to create a comprehensive historic context for the BSPP vicinity;
- c. Poses archaeological research questions and testable hypotheses specifically applicable to the archaeological resource types known for the Palo Verde Mesa, based on the research questions developed under the PTNCL and DTCCL research and on the archaeological and historical literature pertinent to the Palo Verde Mesa; and
- d. Clearly articulates why it is in the public interest to address the research questions that it poses.

4. Protocols, reflecting the guidance provided in CUL-6 through CUL-11 shall be specified for the data recovery from known prehistoric and historic-period archaeological resource types.

5. Artifact collection, retention/disposal, in-situ reburial, and curation policies shall be discussed, as related to the research questions formulated in the research design. These policies shall apply to cultural resources materials and documentation resulting from evaluation and data recovery at both known prehistoric and historic-period archaeological sites and any CRHR-eligible (as determined by the CPM) prehistoric and historic-period archaeological sites discovered during construction. A prescriptive treatment plan may be included in the CRMMP for limited data types.

6. The implementation sequence and the estimated time frames needed to accomplish all project-related tasks during the ground-disturbance and post-ground-disturbance analysis phases of the project shall be specified.

7. Person(s) expected to perform each of the tasks, their responsibilities, and the reporting relationships between project construction management and the mitigation and monitoring team shall be identified.

8. The manner in which roles and responsibilities of Native American observers ~~, or monitors will be included, in addition to their roles in the activities required under CUL-1, and~~ the procedures to be used to select them, ~~and their roles and responsibilities shall be described.~~

9. All impact-avoidance measures (such as flagging or fencing) to prohibit or otherwise restrict access to sensitive resource areas that are to be avoided during ground disturbance, construction, and/or operation shall be described. Any areas where these measures are to be implemented shall be identified. The description shall address how these measures would be implemented prior to the start of ground disturbance and how long they would be needed to protect the resources from project-related impacts.

10. The commitment to record on Department of Parks and Recreation (DPR) 523 forms, to map, and to photograph all encountered cultural resources over 50 years of age shall be stated. In addition, the commitment to curate all archaeological materials retained as a result of the archaeological investigations (survey, testing, data recovery), in accordance with the California State Historical Resources Commission's Guidelines for the Curation of Archaeological Collections, into a retrievable storage collection in a public repository or museum shall be stated.

11. The commitment of the project owner to pay all curation fees for artifacts recovered and for related documentation produced during cultural resources investigations conducted for the project shall be stated. The project owner shall identify a curation facility that could accept cultural resources materials resulting from BSPP cultural resources investigations.

12. The CRS shall attest to having access to equipment and supplies necessary for site mapping, photography, and recovery of all cultural resource materials (that cannot be treated prescriptively) from known CRHR-eligible archaeological sites and from CRHR-eligible sites that are encountered during ground disturbance.

13. The contents, format, and review and approval process of the final Cultural Resource Report (CRR) shall be described.

14. A provision requiring that all eligible or presumed eligible prehistoric-period archaeological sites, traditional cultural properties, or ethnographic resources discovered during construction shall be avoided if feasible. Any determination that avoidance is infeasible shall be made in writing based on substantial evidence. This provision shall further provide that, if avoidance is determined to be infeasible pursuant to this provision, the CPM must next consider whether it is feasible to rebury or otherwise allow to remain in situ any such resources discovered during construction. Again, any determination of infeasibility shall be made in writing based on substantial evidence. Only if the CPM determines that both avoidance and in-situ reburial are infeasible may the CPM consider other measures, such as data recovery.

**Verification:** Preferably, a ~~At least 90 days, but in any event no less than 30 days~~ prior to the start of ground disturbance, the project owner shall submit the CRMMP to the CPM for review and approval. The CPM shall be responsible for contacting all affected Indian tribes to request review and comment within 30 days of receiving the CRMMP. The CPM shall provide written responses to all comments received from an Indian tribe.

At least 20 days prior to the start of ground disturbance, in a letter to the CPM, the project owner shall agree to pay curation fees for any materials generated or collected as a result of the archaeological investigations (survey, testing, data recovery). At least 30 days prior to the initiation of ground disturbance, the project owner shall provide to the CPM a copy of a letter from a curation facility that meets the standards stated in the California State Historical Resources Commission's Guidelines for the Curation of Archaeological Collections, stating the facility's willingness and ability to receive the materials generated by BSPP cultural resources activities and requiring curation. Any agreements concerning curation will be retained and available for audit for the life of the project.

#### **CUL-6 Prehistoric Quarries Archaeological District (PQAD) Data Recovery and District Nomination**

*As explained in CRIT's Comment Letter on the Staff Assessment, CRIT objects to the use of data collection at pre-historic archaeological sites and requests that the Commission evaluate the feasibility of avoiding these sites. In the event that the Commission denies this request or determines that avoidance is infeasible, CRIT requests that the Conditions be modified to (a) require the use of Native American Monitors during all ground-disturbing activity and (b) eliminate the use of a compressed Phase II-Phase III approach, such that affected Tribes have the opportunity to consult regarding proposed site eligibility.*

#### **CUL-7 DATA RECOVERY FOR SMALL PREHISTORIC SITES (LITHIC SCATTERS, CAIRNS, AND POT DROPS)**

*As explained in CRIT's Comment Letter on the Staff Assessment, CRIT objects to the use of data collection at pre-historic archaeological sites and requests that the Commission evaluate the feasibility of avoiding these sites. In the event that the Commission denies this request or determines that avoidance is infeasible, CRIT requests that the Conditions be modified to (a) require the use of Native American Monitors during all ground-disturbing activity and (b) eliminate the use of a compressed Phase II-Phase III approach, such that affected Tribes have the opportunity to consult regarding proposed site eligibility.*

#### **CUL-16 CONSTRUCTION MONITORING PROGRAM**

The CPM, working with the project owner, shall ensure that the CRS, alternate CRS, or CRMs, to prevent construction impacts to undiscovered resources and to ensure that known resources are not impacted in an unanticipated manner, monitor full time all ground disturbances:

- 1. in the areas recommended by the geoarchaeological study to the depth recommended all project grading;*
2. for the trenches for underground communication lines and the natural gas pipeline;
3. for the holes for the transmission line support structures
- 4. in the parts of sites CA-RIV-2846 and CA-RIV-3419 that the project will grade away, in the area inside project boundaries within 1,000 feet of the margins of archaeological sites CA-RIV-2846 and CA-RIV-3419 and within 300 feet of all known and discovered examples of thermal cobble features;*

45. And for the jack-and-bore tunneling for underground conductor or cable lines or pipelines, that they monitor the excavation of the jack-and-bore entry and exit pits and examine, log, and screen auger back dirt samples, as detailed in the CRMMP.

Full-time archaeological monitoring for this project shall be the archaeological monitoring of the earth-removing activities in the areas specified in the previous paragraph, for as long as the activities are ongoing. Where excavation equipment is actively removing dirt and hauling the excavated material farther than fifty feet from the location of active excavation, full-time archaeological monitoring shall require at least two monitors per excavation area. In this circumstance, one monitor shall observe the location of active excavation and a second monitor shall inspect the dumped material. For excavation areas where the excavated material is dumped no farther than fifty feet from the location of active excavation, one monitor shall both observe the location of active excavation and inspect the dumped material.

A Native American monitor shall be obtained to monitor ground disturbance in all areas where Native American artifacts may be discovered described above. Contact lists of interested Native Americans and guidelines for monitoring shall be obtained from the Native American Heritage Commission. Preference in selecting a monitor shall be given to Native Americans with traditional ties to the area that shall be monitored. If efforts to obtain the services of a qualified Native American monitor are unsuccessful, the project owner shall immediately inform the CPM. The CPM either will identify potential monitors or will allow ground disturbance to proceed without a Native American monitor.

The research design in the CRMMP shall govern the avoidance, collection, treatment, retention/disposal, and curation of any archaeological materials encountered. On forms provided by the CPM, CRMs shall keep a daily log of any monitoring and other cultural resources activities and any instances of noncompliance with the Conditions and/or applicable LORS. Copies of the daily monitoring logs shall be provided by the CRS to the CPM, if requested by the CPM and to any affected Indian tribes to request such logs. From these logs, the CRS shall compile a monthly monitoring summary report to be included in the MCR. If there are no monitoring activities, the summary report shall specify why monitoring has been suspended.

The CRS or alternate CRS shall report daily to the CPM on the status of the project's cultural resources-related activities, unless reducing or ending daily reporting is requested by the CRS and approved by the CPM.

In the event that the CRS believes that the current level of monitoring is not appropriate in certain locations, a letter or e-mail detailing the justification for changing the level of monitoring shall be provided to the CPM for review and approval prior to any change in the level of monitoring. If the request involves a proposed change in monitoring levels for NAMs, the CPM must contact affected Indian tribes for review of the proposed change.

The CRS, at his or her discretion, or at the request of the CPM, may informally discuss cultural resources monitoring and mitigation activities with Energy Commission technical staff.

Cultural resources monitoring activities are the responsibility of the CRS. Any interference with monitoring activities, removal of a monitor from duties assigned by the CRS, or direction to a monitor to relocate monitoring activities by anyone other than the CRS shall be considered non-compliance with these Conditions.

Upon becoming aware of any incidents of non-compliance with the Conditions and/or applicable LORS, the CRS and/or the project owner shall notify the CPM by telephone or e-mail within 24 hours. The CRS shall also recommend corrective action to resolve the problem or achieve compliance with the Conditions. When the issue is resolved, the CRS shall write a report describing the issue, the resolution of the issue, and the effectiveness of the resolution measures. This report shall be provided in the next MCR for the review of the CPM.

**Verification:** At least 30 days prior to the start of ground disturbance, the CPM will provide to the CRS an electronic copy of a form to be used as a daily monitoring log.

Monthly, while monitoring is on going, the project owner shall include in each MCR a copy of the monthly summary report of cultural resources-related monitoring prepared by the CRS and shall attach any new DPR 523A forms completed for finds treated prescriptively, as specified in the CRMMP.

At least 2448 hours prior to implementing a proposed change in monitoring level, the project owner shall submit to the CPM, for review and approval, a letter or e-mail (or some other form of communication acceptable to the CPM) detailing the CRS's justification for changing the monitoring level.

Daily, as long as no cultural resources are found, the CRS shall provide a statement that "no cultural resources over 50 years of age were discovered" to the CPM as an email, or in some other form of communication acceptable to the CPM, and any Indian tribe to request such statements.

Weekly, during jack-and-bore tunneling for the underground transmission line, the project owner shall provide the CPM with copies of the soil and sediment descriptions and auger-back dirt screening logs kept by the CRS, alternate CRS, or CRMs, as detailed in the CRMMP.

At least 24 hours prior to reducing or ending daily reporting, the project owner shall submit to the CPM, for review and approval, a letter or e-mail (or some other form of communication acceptable to the CPM) detailing the CRS's justification for reducing or ending daily reporting.

No later than 30 days following the discovery of any Native American cultural materials, the project owner shall submit to the CPM copies of the information transmittal letters sent to the Chairpersons of the Native American tribes or groups who requested the information. Additionally, the project owner shall submit to the CPM copies of letters of transmittal for all subsequent responses to Native American requests for notification, consultation, and reports and records.

Within 15 days of receiving them, the project owner shall submit to the CPM copies of any comments or information provided by Native Americans in response to the project owner's transmittals of

information. The CPM shall provide a written response, or shall ensure the project owner provides a written response, to such comments within 5 business days.

#### **CUL-17 AUTHORITY TO HALT CONSTRUCTION; TREATMENT OF DISCOVERIES**

The project owner shall grant authority to halt ground disturbance to the CRS, alternate CRS, PPA, PHA, ~~and~~ the CRMs, and NAMs in the event of a discovery.

Redirection of ground disturbance shall be accomplished under the direction of the construction supervisor in consultation with the CRS. In the event that a cultural resource over 50 years of age is found (or if younger, determined exceptionally significant by the CPM), or impacts to such a resource can be anticipated, ground disturbance shall be halted or redirected in the immediate vicinity of the discovery sufficient to ensure that the resource is protected from further impacts. Monitoring and daily reporting, as provided in other Conditions, shall continue during the project's ground-disturbing activities elsewhere. The halting or redirection of ground disturbance shall remain in effect until the CRS has visited the discovery, and all of the following have occurred:

1. The CRS has notified the project owner, and the CRS or project owner has notified the CPM. ~~has been notified~~ within 24 hours of the discovery, or by Monday morning if the cultural resources discovery occurs between 8:00 AM on Friday and 8:00 AM on Sunday morning, including a description of the discovery (or changes in character or attributes), the action taken (i.e., work stoppage or redirection), a recommendation of CRHR eligibility, and recommendations for avoidance of the discovery if feasible, or if avoidance is infeasible, data recovery from any cultural resources discoveries, and whether or not a determination of CRHR eligibility has been made.

2. If the discovery would be of interest to Native Americans, the CRS has notified all Native American groups that expressed a desire to be notified in the event of such a discovery within 24 hours of the CPM notification. In the event the CRS fails to timely provide such notification, the CPM shall fine the project owner \$5,000 per day of delay.

3. The CRS has completed field notes, measurements, and photography for a DPR 523 Primary form. Unless the find can be treated prescriptively, as specified in the CRMMP, the Description entry of the DPR 523 Primary form shall include a recommendation on the CRHR eligibility of the discovery. The project owner shall submit completed forms to the CPM.

4. The CRS, the project owner, ~~and~~ the CPM and any interested Indian tribes have conferred, and the CPM has concurred with the recommended eligibility of the discovery.

5. If the discovery is an eligible or potentially eligible prehistoric site, traditional cultural property, or ethnographic site, the CRS, the project owner, the CPM, and any interested Indian tribes have discussed the possibility of avoiding the discovery or, if avoidance is infeasible, reburial in-situ. If avoidance of the discovery is determined to be infeasible, the CPM has provided a written determination of infeasibility supported by substantial evidence. If reburial in-situ is infeasible, the CPM has provided a written determination of infeasibility supported by substantial evidence. If avoidance and re-burial are



both infeasible, the CPM has approved the CRS's proposed data recovery, if any, including the curation of the artifacts, or other appropriate mitigation; and any necessary data recovery and mitigation have been completed.

6. If the discovery is any other site, the CPM has approved the CRS's proposed data recovery plan, if any, including the curation of the artifacts, or other appropriate mitigation, and any necessary data recovery and mitigation have been completed.

**Verification:** At least 30 days prior to the start of ground disturbance, the project owner shall provide the CPM and CRS with a letter confirming that the CRS, alternate CRS, PPA, PHA, ~~and~~ CRMs and NAMs have the authority to halt ground disturbance in the vicinity of a cultural resources discovery, and that the project owner shall ensure that the CRS notifies the CPM within 24 hours of a discovery, or by Monday morning if the cultural resources discovery occurs between 8:00 AM on Friday and 8:00 AM on Sunday morning.

Within 48 hours of the discovery of a resource of interest to Native Americans, the CPM~~project owner~~ shall ensure that the CRS notifies all Native American groups that expressed a desire to be notified in the event of such a discovery.

Unless the discovery can be treated prescriptively, as specified in the CRMMP, completed DPR 523 forms for resources newly discovered during ground disturbance shall be submitted to the CPM for review and approval no later than 24 hours following the notification of the CPM, or 48 hours following the completion of data recordation/recovery, whichever the CRS decides is more appropriate for the subject cultural resource.