

**Staff's Reply to Applicant's Written Comments of June 25, 2010 (TN 57335)
July 13, 2010**

DATE 07/13/10RECD. 07/13/10**GSEP Cultural Resources Conditions of Certification**

General Comment: It is staff's position, that unless BLM specifically disallows a Condition of Certification or a requirement therein, that the Energy Commission may require qualifications exceeding BLM's requirements and/or stipulate actions in addition to those required by BLM.

The proposed GSEP linear corridor now avoids: CA-Riv-9249, CA-Riv-9248, CA-Riv-9251, CA-Riv-9255, and CA-Riv-0633.

The proposed corridor will now impact sites: CA-Riv-9246, CA-Riv-9262, CA-Riv-9263. All three sites are contributing elements to DTCCL and mitigation is covered under CUL-17.

Timing changes: Staff is willing to accommodate changes to the schedule in order to assist the applicant in their efforts to qualify for ARRA funding. However, some of the conditions must be complete prior to the beginning of any archaeological field work. The specialists described in CUL-1 and CUL-2 must be hired and start work as soon as possible. Their cultural contexts and research questions must be in draft form in order to be incorporated into the GSEP CRMMP and definitely before archaeological field work begins. These specialists must also provide the appropriate training for the field crews before they begin their field work.

Other portions of the field work can be ongoing in some parts of the project area, while construction begins in other parts of the project area. For example, a significant amount of field work might be completed in 45 days, as proposed by the applicant, if two crews worked simultaneously. Staff is open to suggestions from the applicant on this topic, but needs more specific proposals to evaluate.

CUL-1 and CUL-2

The applicant wants to remove the following text in both CUL-1 and CUL-2: "An additional contribution may be required to ensure the completion of the required documentation and possible NRHP nomination."

Applicant's Comment: "The GSEP is willing to participate in funding regional cultural resources research for the project, but the commitment must be for a single specified monetary amount."

Staff Reply: Both the GSEP and the Blythe Solar Power Plant project have expressed a desire for staff to establish a "cap" on the project's contributions to the two regional studies staff has recommended as mitigation for the cumulative impacts of the three I-10 projects. Staff has made the best estimate it can on the costs of the two research programs, but too many uncertainties at this time make an exact estimate of these costs

impossible. Staff is concerned that if one of the three projects for any reason does not proceed to construction, the funding needed to complete the recommended research programs would not be adequate, so staff wants to include the possibility of the projects making additional contributions, if needed.

Staff understands, as well, the applicants' desire to avoid an open-ended monetary obligation, so staff is willing to change the "additional contribution" clauses in CUL-1 and CUL-2 to read as follows:

"An additional contribution may be required to ensure the completion of the required documentation and possible NRHP nomination. This additional contribution shall not exceed 20 percent of the original contribution."

This change covers the possibility that no additional contribution above the original contribution would be required and establishes a ceiling on total contributions.

Applicant Comment: "GSEP takes the position that the regional specialists hired by the CEC and/or BLM with the funds provided in CUL-1 and CUL-2 will work best as synthesizers of the data collected by project mitigation activities. Project cultural resources staff will work with the regional specialists in preparing a CRMMP that will address regional research issues and ensure comparability of data among multiple projects."

Staff Reply: *Staff does not accept this change. Staff's intention with CUL-1 and CUL-2 is to simplify a portion of the required document writing process.*

What would normally happen with all of these projects is that during the planning stage, the project director (or CRS) would read all of the previous research for the region, write a synthesis, and generate some research questions that would guide the work they would do. Since Genesis, Blythe, and Palen are all very close to each other and have similar archaeology, staff is proposing that one person write all three of these sections. Otherwise the applicants for these three projects would pay three different individuals to write essentially the same chapters. Staff contends that it is cheaper for all concerned if the relevant chapters are only written once, and it is more likely to result in a high quality product. This portion of the CRMMP shared by all three projects would then be incorporated into the individual CRMMPs for the Genesis, Blythe and Palen projects by each individual CRS.

In more technical terms, it is standard practice to initiate any archaeological research study with a synthesis of the existing knowledge of the prehistory and history of the area. While the applicants' submitted cultural resources technical reports included summaries, they were not of sufficient resolution and comprehensiveness to serve the purposes staff envisions for the synthetic historic contexts staff has recommended that the regional specialists prepare. Staff thinks that these initial synthetic products from the regional specialists are not just to be expected professionally, but in the I-10 cases, where no field assessment of archaeological sites has been done, they are crucial to the assessment of

eligibility of the archaeological sites the project would significantly impact. Thus the regional studies must be done before the project-specific field work. Additionally, staff's concept of each of the regional studies is as a "living document," as the SHPO representative requested at the Programmatic Agreement kick-off meeting for the three 1-10 projects in April. This means each study starts as a synthesis of present knowledge, which is then used to generate criteria for site evaluation and relevant research questions for data recovery, and the results of the data recovery are then fed back into the nomination or final report. Staff expects that the professionals who direct and participate in the archaeological work at each project site would contribute data to the regional studies and write publications about the results of their own work, but that the regional studies are best done by experienced specialists not associated with any of the projects.

CUL-3

Applicant Addition: "The CRS can also serve in the role of one or more of the technical specialists if that person has the requisite qualifications."

Staff Reply: Staff has no objection to this addition.

Applicant Comment: "These personnel requirements (for the prehistoric archaeologist who directs work for CUL-10 and CUL-11) are unnecessarily restrictive and would rule out the use of personnel qualified to do this work under a BLM Cultural Resource Use Permit."

Staff Reply: Staff does not accept this change. The prehistoric temporary camps around Dry Ford Lake provide professional conditions that are unusual in the state of California. Well-preserved buried Archaic period houses may be found in these locations. Well-preserved ancient houses of any kind are extremely rare in California archaeology, and few professionals have had multiple opportunities to excavate them. Archaic period houses are particularly hard to identify, and their successful identification requires previous experience. Using a backhoe to find and explore deeply buried but intact features is not a common excavation strategy in California. One reason for this circumstance is that few extensive archaeological excavations have taken place in the Colorado and Mojave Deserts (part of the broader Sonoran Desert) of California. Archaeological excavations of ancient houses in similar environmental conditions have been practiced extensively and refined to a fine art in the Phoenix and Tucson (the Sonoran Desert) areas of Arizona.

Staff intends this condition to provide a supervisory archaeologist with the relevant experience in excavating Archaic period structures and working closely with a backhoe. This is not standard backhoe monitoring work. Staff understands that an archaeologist from outside of California may need to be hired specially for this role. If a lack of experience in California results in difficulties for this individual in being qualified for a Field Director under a BLM Cultural Resources Permit, then this individual may serve as Crew Chief, as long as their experience and authority has weight in the day-to-day decisions of the archaeological excavation.

Staff does not consider the requirement for OSHA trench safety training to be excessive. This is a one-day course.

Applicant Comment: “These personnel requirements (regarding the backhoe operator) are unnecessarily restrictive. Mechanical excavations would be under the close supervision of the PPA or PSSA which would be sufficient to adequately control the operator’s activities.”

Staff Reply: Staff does not accept this change. A regular backhoe operator is sufficient for all simple trenching, as in the case of utility installation. However, for any horizontal exposures made by a backhoe within the boundaries of an archaeological site, as required in CUL-10 and CUL-11, the operator must have previous experience working with archaeologists and using the backhoe to scrape thin layers away, rather than to remove deep bucketsful of earth, as does the typical backhoe operator.

Applicant Comment: “The project owner has already committed funds for hiring an ethnographer under CUL -1 and should not have to bear any further commitment for this research.”

Staff Reply: In CUL-3, the description of the qualifications and role of the Project Ethnographer includes this phrase, “if ...[an ethnographer] is not hired by the PTNCL PI for the overall duties as described in the PTNCL documentation and possible NRHP nomination program.” Thus staff thinks the applicant and staff are in agreement, and no change is necessary. If an ethnographer has indeed already been hired under CUL-1, then a second ethnographer would not be required. However, if for whatever reason the CUL-1 ethnographer is not hired, then the project owner shall ensure that the CRS obtains the services of a qualified ethnographer to conduct the research and activities specified in CUL-16.

Applicant Comment: “These personnel requirements (for the historic archaeologist who directs work for CUL-17) are unnecessarily restrictive and would rule out the use of personnel qualified to do this work under a BLM Cultural Resource Use Permit.”

Staff Reply: Staff does not accept this change. These personnel requirements exceed but do not conflict with the requirements of a BLM Cultural Resource Use Permit.

Applicant Comment: “These personnel requirements (for the monitor of the linear corridor) are unnecessarily restrictive and would rule out the use of personnel qualified to do this work under a BLM Cultural Resource Use Permit.”

Staff Reply: Staff does not accept this change. These personnel requirements exceed but do not conflict with the requirements of a BLM Cultural Resource Use Permit. Any crew level person with monitoring experience in Arizona should be qualified for this work.

Applicant Comment:

Verification #1: Applicant proposes changes in timing from 180 days to 120 days.

Verification #4: Change from 20 days to 15 days.
Verification #5: Change from 20 days to 15 days.

Staff Reply: Staff does not object to these changes in timing.

Applicant Comment: Applicant proposes changing the text of Verification #4 to require only a BLM Cultural Resource Use Permit and Field Authorization.

Staff Reply: Staff does not accept this change. As this project takes place on BLM-managed land, a BLM Cultural Resource Use Permit and Field Authorization, is of course, required. However, the Energy Commission has additional requirements which must also be fulfilled.

CUL-4

Applicant Comment: "Per CUL-1 and CUL-2, The PTNCL-PI and DCTCL-PI will be working under the supervision of CEC or BLM staff which has access to all of the documents listed."

Staff Reply: Given recent events between BLM and the Energy Commission regarding sharing cultural resources confidential information, free access to all information between all parties mentioned in the GSEP Conditions of Certification may be difficult to achieve. The intention of this condition is to facilitate information sharing regardless of any difficulties.

Applicant Comment:
Verification #2: Change from 165 days to 120 days.

Staff Reply: Staff has no objection to this change.

CUL-5

Applicant Comment: The applicant would like the CRMMP to include provisions for phased construction.

Staff Question: Is the applicant suggesting multiple CRMMPs with different due dates? Staff needs more information about this proposal in order to form an opinion.

Applicant Comment: The applicant prefers to remove specific language referring to the specialists hired in CUL-1 and CUL-2 from CUL-5.

Staff Reply: Staff does accept this change. In staff's plan, the participation of the specialists specified in CUL-1 and CUL-2 in creating the CRMMP is central to the coordination of cultural resources work among multiple projects. These specialists would generate research questions and define feature types which would be shared by multiple CRSs. The GSEP CRS is welcome to suggest additional research questions, but these would be subject to the approval of the specialists.

Applicant Comment:

Verification #1: At least (120) **65** days prior to the start of ground disturbance **for the construction activities contained in that CRMMP**, the project owner shall submit the CRMMP to the CPM for review and approval.

Staff Question: With this proposed change is the applicant suggesting multiple CRMMPs? Staff needs more information about this proposal in order to form an opinion.

CUL-6

Applicant Comment: The applicant suggests that they should not have to follow the requirements in this condition since: "All fieldwork performed for this project will be under a BLM Cultural Resource Use Permit and Field Authorization. All reporting on the fieldwork will be in accordance with the requirements of the BLM Cultural Resource Use Permit and Field Authorization."

Staff Reply: Staff understands that the applicant would prefer not to have to write two separate reports, one for the BLM and one for the Energy Commission. While the content of the two documents may be very similar, staff nonetheless expects the project owner to submit a document entitled "Cultural Resources Report," which follows all of the standards set in this condition, and which would be submitted to the Energy Commission for review and approval.

CUL-7

No comments.

CUL-8

See comments and replies in CUL-3.

CUL-9

No comments.

CUL-10

Applicant Comment: The applicant suggests that the mitigation described in CUL-10 is not needed because "Sites CA-Riv-9249 and CA-Riv-9255 will both be avoided by GSEP linears and will not be affected by the Project".

Staff Reply: Staff agrees that the new linear alignment will avoid these two sites.

Applicant Comment:

Verification #1: Change 90 days to 45 days.

Staff Reply: Staff suggests we discuss this in more detail during the workshop.

CUL-11

Applicant Comment: The applicant suggests that the mitigation described in CUL-11 is not needed because “Sites CA-Riv-260 and CA-Riv-663 will both be avoided by GSEP linears and will not be affected by the Project”.

Staff Reply: The maps that staff has received from the applicant do suggest that CA-Riv-260 would be avoided by the linear corridor. However, this site is a temporary camp along the edge of Dry Ford Lake, and staff is concerned that it may have a buried component. Further, it was originally recorded when GPS locations were not as accurate as they are today. Staff is concerned that the site boundaries provided by CHRIS maps may be inaccurate. If a buried component is identified during monitoring of the construction of the linear corridor, staff intends for this site to be mitigated as described in CUL-11.

In the case of CA-Riv-663, staff agrees that the new linear corridor will avoid this site.

Applicant Comment: The applicant rejects the idea that CUL-11 research questions will be based on the context written by the PTNCL PI Prehistoric Archaeologist, PTNCL Ethnographer, and PTNCL Ethnohistorian, as described in **CUL-1**.

Staff Reply: Staff does not accept this change. The role of the Cultural Landscape specialists in writing the cultural context for others to apply in their specific project areas, is central to staff’s goal of the regional coordination of cultural resources mitigation.

Applicant Comment: Applicant made some changes in language referring to trenches and OSHA.

Staff Reply: The new text seems to say the same thing as the old text. Changes are unneeded.

Applicant Comment: The applicant is concerned about cleaning trench faces using hand tools.

Staff Reply: In staff’s professional experience, cleaning trench faces with a trowel and examining this surface closely is necessary in order to determine if features are present. This is particularly the case for Archaic structures. Within the boundaries or near the boundaries of a previously identified site, this detailed examination is required. Staff is open to spot-checking at regularly determined intervals in the case of very long trenches, such as those expected for the linear corridor.

Applicant Comment: “Data gathered during the excavations at CA-Riv-9072 will be made available to the regional specialists hired by the CEC with funding obtained under

CUL-1 and CUL-2. These specialists will be best placed to produce the peer-reviewed journal article desired.”

Staff Reply: Staff does not agree. See reply for CUL-1 and CUL-2.

Applicant Comment:

Verification #1: Change 90 days to 45 days.

Staff Reply: See previous comment about timing changes.

Applicant Comment:

Verification #3 and #4: The applicant suggests timing changes for submission of CRR.

Staff Reply: Staff requests more information about the intent of this change.

CUL-12

Applicant Comment: The applicant does not think that this condition is appropriate because sites CA-Riv-260 and CA-Riv-663 will both be avoided by GSEP linears and will not be affected by the Project.

Staff Reply: Staff does not agree. Although the applicant has avoided direct impacts by changing the alignment of the linear corridor these two sites would be subject to indirect impacts such as vandalism. These sites are very close to I-10 and Wiley’s Well Road Rest Area. Despite everyone’s best intentions to protect these sites, they would be eventually destroyed through small scale collection of artifacts during the 30-year life of the GSEP project. This condition is intended to address these indirect impacts.

Applicant Comment:

Verification #1: Change 90 days to 45 days.

Staff Reply: See previous comment about timing changes.

CUL-13

Applicant Comment: The applicant does not think that this condition is appropriate because sites CA-Riv-260 and CA-Riv-663 will both be avoided by GSEP linears and will not be affected by the Project.

Staff Reply: Staff does not accept this change. The linear corridor would pass through or very close to portions of these two important sites. During construction, the site boundaries within 100 feet of the linear corridor need to be flagged so construction crews would not drive on them, or collect artifacts on breaks.

CUL-14

Applicant Comment: Applicant proposes to get rid of this condition entirely, because the construction of a fence on the boundary of the Palen-McCoy Wilderness Area is impractical from a biological standpoint, as it would fragment habitat. They further suggest that facility gates, guard service, and Worker Environmental Awareness Program would be sufficient protection for the resources within the Wilderness.

Staff Reply: Staff has consulted with Susan Sanders, the author of the staff Biological analysis for Genesis. She assured staff that appropriate fencing is available. Staff proposes to change the language of Clause 1 to:

“1. Install permanent fencing, which meets Bureau of Land Management (BLM) standards and avoids biological habitat fragmentation.”

Further, staff does not agree with the applicant that facility gates, guards, and worker training are sufficient to protect the sensitive cultural resources present within the Wilderness. The natural ground surface along the Wilderness boundary consists primarily of “desert pavement” which is just as easy to drive on as man-made pavement. The area lacks signage or other indications of where it is appropriate to drive and where it is not. Multiple old tank tracks and newer four-wheel-drive tracks cross the boundary, which is not clearly marked. Staff intends this condition to prevent the vehicle traffic which would be a logical outcome of changing this area from relatively vacant open space, to industrial in use.

CUL-15

Applicant Comment: The applicant argues that the two geoglyph sites (CA-Riv-661 and CA-Riv-662) are closer to the Blythe Solar Power Project, and would more appropriately be fenced by the applicant for BSPP.

Staff Reply: Staff accepts this change.

CUL-16

Applicant Comment: In a complicated argument, the applicant proposes to get rid of this condition entirely.

Staff Reply: Staff provides a reply to each part of the applicant’s argument, below.

Overall Applicant Comment: The applicant objects to staff’s definition of the ethnographic Project Area of Affect (PAA), the inclusion of the resources in the ethnographic PAA in this analysis, and the Conditions of Certification developed by staff to address the impacts to the resources in the ethnographic PAA.

Staff defined the PAA as follows:

“For ethnographic resources, the PAA is expanded to take into account traditional use areas and traditional cultural places which may be further

afield than the project site footprint or the project vicinity. The areas of analysis for ethnographic resources may include viewsapes that contribute to the historical integrity of a subject resource. Ethnographic resources are often identified in consultation with Native Americans as well as other ethnic or cultural communities, and issues that are raised by these communities may define the APE. For this project the ethnographic PAA is the geographic area around and including the proposed project where the project has the potential to physically or visually degrade ethnographic resources.”

The applicant argues that the California Energy Commission Rules of Practice and Procedure (CEC 2008, pp 86–87) define specific areas of analysis for cultural resources, and that staff’s definition for the GSEP ethnographic PAA exceeds these spatial limits.

Staff Reply: This is incorrect. The section of the Energy Commission Rules and Regulations mentioned by the applicant actually specifies the area for which an applicant must provide to staff copies of previous research conducted in the project vicinity.

*The analysis of ethnographic resources has been a standard aspect of the Energy Commission cultural resources analysis for years. A brief review of the cultural resources sections from recent Staff Assessments would illustrate this point. Further, Energy Commission cultural resources staff may define their areas of analysis as they see fit. In the “ENERGY FACILITY LICENSING PROCESS: Developers Guide of Practices & Procedures” (2000, p.29) it states that: “Staff analyzes three aspects of cultural resources: prehistoric and historic archaeological resources and **ethnographic resources** (emphasis added). The extent of impact analysis varies from project to project, depending upon whether the area is known or likely to have cultural resources and the significance of those resources.”*

In the case of GSEP, staff chose to establish an area of analysis in and around the project area where ethnographic resources could be physically or visually degraded.

The applicant considers this definition to be “impossibly vague definition for uses of impact analysis.”

Staff disagrees. Physical impacts to cultural resources outside of a project area are usually tied to increased visitation and vandalism. Staff identified specific resources that needed to be protected and monitored. Other indirect impacts identified by staff are analogous to visual impacts, hence staff’s use of the term “visual” degradation. In order to determine indirect effects to ethnographic resources, staff used the same area of analysis as Energy Commission Visual Resources staff used for their visual analysis. This area of analysis has concrete, mapable limits.

Applicant Comment: the Native American Heritage Commission (NAHC) and the tribes have not identified any specific Traditional Cultural Properties (TCPs) anywhere in or around the GSEP area.

Staff does not agree. Staff notes that when the NAHC Sacred Land Files fail to indicate the presence of Native American cultural resources, the NAHC cautions that “the absence of specific site information in the Sacred Lands File does not guarantee the absence of cultural resources in any area of potential effect....” Staff considers that the potential presence of important ethnographic resources in this region would have been easy for a cultural resources specialist to predict using standard California Archaeology textbooks and information available at the CHRIS. Springs, trails, and rock art are frequently mentioned in professional documents about the Colorado and Mojave Deserts as being sacred to local Native American groups. The basic records search for GSEP identified McCoy Spring as a National Register District. This district has feature types that are considered sacred. In fact, during the Energy Commission public comment period, Mr. Mike Jackson of the Quechan Indian Tribe specifically expressed concern about potential damage to petroglyphs and trails in the GSEP vicinity. In addition, Mr. Alberto Figueroa (of Yaqui, Pima, and Chemehuevi heritage) specifically expressed concern about potential damage to McCoy Spring.

Applicant Comment: The applicant states that over the last three years, GSEP and BLM have made repeated requests for local Native American groups to identify TCPs, but they have not done so.

Staff Reply: Based on the records provided to the Energy Commission, it appears that the only contacts prior to 2010 made by NextEra or TetraTech to Native American individuals or groups were by letter, email, or telephone.

It is common knowledge among cultural resources professionals that Native American groups rarely provide information about TCPs when requested to do so by letter, email, or telephone. In fact, religious beliefs may prevent individuals from specifically talking about such places. Religious leaders are unlikely to communicate secret or important religious information to someone they have not met in person. Hiring an ethnographer, one already known to local Native American communities, is one way of resolving some of these issues.

A brief internet search regarding cultural resources and Native American consultation along the Colorado River reveals that other companies who have worked in the region over the last 20 years have successfully identified sensitive locations by: 1) meeting with Native American individuals in person, and 2) leading site tours of likely locations after they have been identified during archaeological survey. Rebecca Apple, from AECOM, is particularly well known for her success in this regard.

Staff’s intention with this condition is that already identified archaeological sites be visited by a qualified Native American to determine if they might be subject to additional indirect spiritual or cultural damage in addition to the possibility of vandalism already identified by staff.

CUL-17

Applicant Comment: The applicant proposes that this condition should not apply to P33-13598 or CA-Riv-259. Site P33-13598 was determined not eligible for the NRHP during the Blythe Energy Transmission Line Project. Site CA-Riv-259 was destroyed and no longer exists.

Staff Reply: Although P33-13598 was determined not eligible as an individual site, it nonetheless is potentially a contributing element to the Desert Training Center/California-Arizona Maneuver Area Cultural Landscape. As such it is assumed eligible and impacts to it must be mitigated.

Staff accepts that CUL-17 does not apply to CA-Riv-259.

Staff Comment: The applicant has proposed a change to the linear corridor. With this change, two historic sites are avoided, but three new ones will require mitigation. Sites CA-Riv-9248 and CA-Riv-9251 will be avoided. Newly impacted WWII era sites CA-Riv-246, CA-Riv-9262, and CA-Riv-9263 are all potential contributors to the DTCCL. As such, the mitigation described in CUL-17 applies to these sites as well.

CUL-18

Applicant Comment: The applicant proposes a new condition, requiring compliance with the BLM Genesis Programmatic Agreement.

Staff Reply: Staff does not accept this new condition. Staff will do its best to ensure that the applicant is not presented with conflicting requirements from BLM and the Energy Commission. However, unless specifically rejected by BLM, the Energy Commission has its own requirements which are intended to fulfill its responsibilities under California State law.



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**APPLICATION FOR CERTIFICATION FOR THE
GENESIS SOLAR ENERGY PROJECT**

Docket No. 09-AFC-8

**PROOF OF SERVICE
(Revised 6/7/10)**

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DECLARATION OF SERVICE

I, Maria Santourdjian declare that on July 13, 2010, I served and filed copies of the attached Staff Reply to Applicant's Comments Regarding Cultural COC. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at: [http://www.energy.ca.gov/sitingcases/genesis_solar].

The documents have been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, in the following manner:

(Check all that Apply)

FOR SERVICE TO ALL OTHER PARTIES:

- sent electronically to all email addresses on the Proof of Service list;
- by personal delivery;
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I declare under penalty of perjury that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.

Originally Signed by _____
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