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CRIT Proposed Modifications to Conditions of Certification

As outlined in CRIT's Opening Testimony, CRIT objects to the treatment of cultural resource analysis and to the use of data recovery as mitigation. CRIT also objects to the formulation of the crucial Cultural Resource Mitigation and Monitoring Plan after Project Approval. In the event the Commission nevertheless approves the Project without requiring sufficient analysis prior to approval, without avoidance of or in-situ reburial of prehistoric archaeological sites and without a final CRMMP, CRIT recommends the following modifications to the Conditions of Certification proposed by CEC Staff. Modifications are shown in redline. Only the portions of the Cultural Resource Conditions of Certification to which CRIT has proposed edits are shown below.

CUL-1 TREATMENT OF THE CHUCKWALLA VALLEY PORTION OF THE PACIFIC TO RIO GRANDE TRAILS LANDSCAPE (PRGTL)

As explained in CRIT's Opening Testimony, CUL-1 currently proposes to require as mitigation analysis that should have occurred in advance of the Commission's consideration of the Project. CRIT objects to this approach. CRIT also maintains that compensatory mitigation cannot reduce a project's significant cultural impacts to a level of insignificance. CRIT reserves the right to make additional comments on the specific mitigation proposed in CUL-1 at the evidentiary hearing.

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 any 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, i.e., archaeological, ethnographic, and historic 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 DTCCL programs.~~

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

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)PRGTL documentation program and the Desert Training Center California-Arizona Maneuver Area Cultural Landscape (DTCCL) documentation 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.

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-period, ethnographic, 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.

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.~~

14. A provision requiring that all eligible or presumed eligible prehistoric-period, 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:

1. ~~A Preferably~~ at least 4560 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.

CUL-7 WORKER ENVIRONMENTAL AWARENESS PROGRAM (WEAP)

The training shall include:

5. Instruction that the CRS, alternate CRS, ~~and~~ CRMs, and NAMs have the authority to halt ground disturbance in the area of a discovery to an extent sufficient to ensure that the resource is protected from further impacts, as determined by the CRS; 6. Instruction that employees are to halt work on their own in the vicinity of a potential cultural resources discovery and shall contact their supervisor and the CRS or CRM, and that redirection of work would be determined by the construction supervisor and the CRS;

CUL-8 CONSTRUCTION MONITORING PROGRAM

The CPM, working with the project owner, shall ensure that the CRS, alternate CRS, or CRMs monitor, full, time all of the above following specified ground disturbance at the project site,: 1) surface grading or subsurface soil work during preconstruction activities, and site mobilization; 2) mowing activities and heavy equipment use in undisturbed loose or sandy soils defined as Zone 2 or Zone 3 of the sand transport corridor; 3) excavation and grading of the power block and common facilities areas; 4) excavation of trenches; and 5) grading of the access, perimeter, and spoke roads along the linear facilities routes, and at laydown areas, roads, and other ancillary areas, to ensure there are no impacts to undiscovered cultural resources and to ensure that known cultural resources are not affected in an unanticipated manner.

The project owner shall obtain the services of one or more Native American Monitors (NAM) to monitor construction-related 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 NAHC. Preference in selecting an NAM 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 NAM are unsuccessful, the project owner shall immediately inform the CPM. The CPM will either identify potential monitors or will allow construction-related ground disturbance to proceed without an NAM.

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 non-compliance with the Conditions and/or applicable LORS. The daily monitoring logs shall at a minimum include the following:

Copies of the daily monitoring logs and cover sheets shall be provided by email from the CRS to the CPM, and any affected Indian tribes to request such logs, as follows:

- Each day's monitoring logs and cover sheet shall be merged into one PDF document
- The PDF title and headings, and emails shall clearly indicate the date of the applicable monitoring logs.
- PDFs for any revised or resubmitted versions shall use the word "revised" in the title.

Verification:

3. While monitoring is on-going, the project owner shall submit each day's monitoring logs and cover sheet merged into one PDF document by email within 24 hours to the CPM and any Indian tribe to request such logs.

9. At least 24 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. 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.

11. 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-9 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 the NAMs in the event of a discovery.

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, 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, 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. If avoidance of the discovery is determined to be infeasible, the CPM has provided a written determination of infeasibility supported by substantial evidence and 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.

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:

1. 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.
2. Within 48 hours of the discovery of a resource of interest to Native Americans, the ~~project owner~~ CPM shall ensure that the CRS notifies all Native American groups that expressed a desire to be notified in the event of such a discovery.

CUL-10 FLAG AND AVOID

In response to CRIT's Opening Testimony, BrightSource suggested the following modifications to CUL-10. CRIT agrees with these modifications (shown in redline), and provides an additional modification for clarity (text highlighted).

If resources within the transmission line corridor can be spanned rather than impacted, or resources within the solar field can be feasibly avoided by adjustment of individual heliostat, or in the event that new resources are discovered during construction where impacts can be reduced or avoided, the project owner shall:

1. Ensure that a CRS, alternate CRS, PPA, or CRM reestablish the boundary of each site, add a 10-meter-wide buffer around the periphery of each site boundary, and flag the resulting space in a conspicuous manner;
2. Ensure that a CRM enforces avoidance of the flagged areas during PSEGS construction; and
3. Ensure, after completion of construction, boundary markings around each site and buffer are removed so as not to attract vandals.

In the event a resource can be avoided, data recovery required by **CUL-11 and CUL-12** shall not be performed.

CUL-11 DATA RECOVERY FOR SIMPLE PREHISTORIC SITES

8. Surface scrape to a depth of 5 centimeters a 5-meter-by-5-meter area centered on the artifact concentration, field-record the lithic artifacts as to location, material type, and the reduction sequence stage each represents, record the location of all other artifacts, and retain the obsidian and ceramic artifacts and botanical and faunal remains for laboratory analysis and curation;

Ensure NAMs are present for this activity;

9. Excavate one 1-meter-by-1-meter unit in 10-centimeter levels until the unit reaches a depth of 20 centimeters below any anthropogenic materials, placing the unit in the part of the site with the highest artifact density and recording its locations on the site map; Ensure NAMs are present for this activity;

13. If subsurface deposits are encountered, test the horizontal limits of the site by excavating additional 1-meter-by-1-meter excavation units in 10- centimeter levels until the unit reaches a depth of 20 centimeters below any anthropogenic materials, using a shovel or hand auger, or other similar technique, at four spots equally spread around the exterior edge of each site, recording the locations of these units on the site map; [Ensure NAMs are present for this activity;](#)

CUL-12 DATA RECOVERY FOR COMPLEX PREHISTORIC SITES

6. Excavate one 1-meter-by-1-meter unit in 10-centimeter levels until three sterile levels are encountered, or until the unit reaches maximum depth of planned impact, placing this unit in the part of the site with the highest artifact density; or, if multiple artifact concentrations were identified, place one 1-meter-by-1-meter excavation unit in the center of each concentration and excavate as just described; retain any artifacts for laboratory analysis; [Ensure NAMs are present for this activity;](#)

7. Determine the vertical and horizontal limits of the each site by placing test units at four locations equally spread around the surface exterior edge and excavating or probing down to the Holocene basement, using a shovel, hand auger, or similar technique; continue exploration in all directions until the horizontal limits of the site are reached; retain any artifacts for laboratory analysis; [Ensure NAMs are present for this activity;](#)

8. Excavate the surface feature or features, using the methods described in the CRMMP; record their locations on the site map, retain samples, such as flotation, pollen, and charcoal, for analysis, and retain all artifacts for professionally appropriate laboratory analyses and curation, until data recovery is complete; [Ensure NAMs are present for this activity;](#)

11. If subsurface deposits were found, develop a sampling design for additional data recovery in consultation with the CRS; plans for this contingency shall be described in detail in the CRMMP [and shall include the use of NAMs;](#)