

## DOCKETED

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## Proposed Language CUL-5, CUL-16 and CUL-17

**RED TEXT:** additions agreed to by Staff, CRIT and NEXTERA

**GREEN TEXT:** Proposed Staff language that has counter language from CRIT which is noted in the comment.

NOTE: Text that has been replaced with the red or green text has been deleted and is not shown in strikeout.

### 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 draft and final versions of a 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 provide each draft of the CRMMP to affiliated Native American tribal entities<sup>1</sup> for review and comment. Subsequent iterations of the draft CRMMP and the final CRMMP shall evidence consideration of comments received from said tribal entities, where such comments have been received within 30 days for the initial draft and 7 days for each subsequent draft. 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. 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.

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<sup>1</sup> "affiliated Native American tribal entities" means those tribal entities with which Energy Commission staff initiated consultation under the original siting case and under the consideration of all subsequent amendments to the September 2010 Final Decision for the present project. The list of tribal entities can be found on the project's webpage at [http://docketpublic.energy.ca.gov/PublicDocuments/09-AFC-06C/TN200052\\_20130729T101117\\_Blythe\\_Amendment\\_CEC\\_Tribal\\_Consultation.pdf](http://docketpublic.energy.ca.gov/PublicDocuments/09-AFC-06C/TN200052_20130729T101117_Blythe_Amendment_CEC_Tribal_Consultation.pdf)

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. **Explicitly takes into account the perspective of affiliated Native American tribal entities with respect to in-situ or onsite reburial, (unless otherwise prohibited) for the disposition of archaeological and ethnographic resources encountered as a result of the application review process and as a result of project construction and operation.**
4. 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 taking into account potential data**

**constraints that may occur as the result of in-situ or onsite reburial of resources under subsection 3. above;** 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, 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 Native American observers or monitors will be included, in addition to their roles in the activities required under CUL-1. 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. A section that clearly and concisely sets out the flows of authority and work products for CUL-16, the Construction Monitoring Program, and sets out explicit communication protocols to facilitate the condition's implementation and notification of affiliated tribal entities.**
- 14. A section that clearly and concisely sets out the flows of authority and work products for CUL-17, Authority to Halt Construction; Treatment of Discoveries, and sets out explicit communication protocols to facilitate the condition's implementation and notification of affiliated tribal entities.**
- 153.** The contents, format, and review and approval process of the final Cultural Resource Report (CRR) shall be described.

**Verification:** Preferably at least 90 days, but in any event no less than **60** days **prior to the start of ground disturbance, the project owner shall submit to the CPM for review and approval draft and final versions of a Cultural Resources Monitoring and Mitigation Plan (CRMMP). The CPM shall submit each draft of the CRMMP to affiliated Native American tribal entities for review and comment. Subsequent iterations of the draft CRMMP and the final CRMMP shall evidence consideration of comments received from said tribal entities, where such comments have been received by the CPM within the time frame provided in the condition.**

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-16 CONSTRUCTION MONITORING PROGRAM

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

1. **associated with construction-related grading and other earthwork;**
2. for the trenches for underground communication lines and the natural gas pipeline;
3. for the holes for the transmission line support structures;
4. 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 backdirt 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 **all of the** ground disturbance **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 will either identify potential monitors or will allow ground disturbance to proceed without a Native American monitor.

The research design in the CRMMP shall govern the 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 affiliated**

**Native American tribal entities that 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 **and concurrently notify affiliated Native American tribal entities.**

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 **48** 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 and concurrently notify affiliated Native American tribal entities.

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 e-mail or in some other form of communication acceptable to the CPM and to any affiliated Native American tribal entities that 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-backdirt 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 affiliated Native American tribal entities 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 project owner shall provide written responses to any such comments or information within five business days of their receipt and copy the CPM with such correspondence.

## **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 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 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 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 affiliated Native American tribal entities, the CPM shall ensure the CRS has notified, within 48 hours, all affiliated Native American tribal entities that expressed a desire to be notified in the event of such a discovery. The CRS shall inform the CPM if there are any barriers to performing the notification.
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 have conferred, and the CPM has concurred with the recommended eligibility of the discovery and 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.

**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 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** shall ensure that the CRS notifies all **affiliated Native American tribal entities** 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.