

**Rio Mesa Solar Electric Generating Facility (RMSEGF)
(11-AFC-4)**

**Applicant's General Comments and Comments to Conditions of Certification
on the Preliminary Staff Assessment**

CULTURAL RESOURCES

This section provides first the general comments applicable to each resource type, followed by specific comments by page. The Applicant also submits under confidentiality updated tables of prehistoric archeological sites (with threshold discussion per General Comment 1, below), historic archeological sites, multi-component archeological sites, isolates, and undetermined sites with locational information to help work with staff to determine the final number and location of sites in the PAA under each category. The updated tables contain confidential cultural resources location information and has been supplied to the CEC under separate and confidential cover as Confidential Attachment A.

GENERAL COMMENTS

Prehistoric Archeological Sites

1. The threshold set forth by the PSA for potentially ineligible prehistoric archeological sites on page 4.3-87 is not justified. For example, the threshold of five reduction features or fewer is not supported and should be removed from the threshold. Because the definition of a site boundary is based on an arbitrary 30 meter criteria, the number of loci are similarly arbitrary and do not reflect meaningful patterns of pasts prehistoric use. Also, there is no definition of "sparse lithic scatters" and there is no justification for using 40 surface artifacts as a measure for "small reduction features". Note that the California Archeological Resource Identification and Data Acquisition Program (1988) defines sparse lithic scatters (i.e., surface densities less than 3 flake stone items per square meter), and Mark Giambastiani's research results and evaluation from his work related to the Quackenbush Training Area, Marine Corps Air Ground Combat Center (MCAGCC), Twenty-nine Palms, California (2006) indicates that small reduction features include those features with less than 50 surface artifacts. Additionally, the PSA applies the thresholds subjectively and fails to explain how they were applied. For example, it is unclear how the PSA determined which features constituted "dispersed artifact scatters." The majority of the prehistoric archeological sites in the PAA are related to commonly occurring prehistoric lithic reduction scatters, which the PSA refers to as quarries. As correctly noted by the PSA, "many quarries produce redundant information" (p. 4.3-87). Yet, the PSA only recommended that 42 sites were not eligible using this threshold. The Applicant believes this understates the number of ineligible sites. Even using the CEC's threshold, it appears that more sites should be considered ineligible. Refer to Tables A and B in the attached CD located under separate and confidential cover as Confidential Attachment A.
2. The prehistoric archeological site eligibility findings are not explained or supported. Table 12 states that there are 16 prehistoric archeological features that the PSA has determined to be eligible for the CRHR; however, there is no analysis or support for why these sites have been determined eligible. *The applicant disagrees that those sites are eligible, as set forth in the Cultural Resources Assessment Report for the Rio Mesa Electric Generating Facility, Riverside County, California. Confidential submission to Energy Commission Docket Unit on October 14, 2011 (Nixon et al. 2011).* The PSA should incorporate Staff's review of the most recent version

CULTURAL RESOURCES

of the Technical Report. Refer to Table B in the attached CD located under separate and confidential cover as Confidential Attachment A for an analysis for the sites not eligible.

3. The PSA groups the prehistoric archeological sites into subtype categories without rationale to justify these conclusions. The PSA indicates throughout that the “rationale will be provided in the FSA”. The deferred analysis does not enable meaningful comment and responses, and is therefore contrary to CEC guidance (20 CCR 1742.5(c)). The PSA fails to provide a well-articulated theoretical perspective and sound rationale as to how particular sites were grouped into sub-categories/types in their analysis since these definitions are being used as the basis for sites that staff feel require additional testing to make eligibility determinations. In particular, the grouping of various trails and sites into a religious/ceremonial location category is not supported by any specific evidence in the record. The Applicant will undertake further analysis per the workplan for these sites, but it is premature to reach any such categorization conclusions.
4. The Applicant has agreed to conduct geoarchaeological testing, and the CEC has concurred with the Applicant’s Geoarchaeological Research Design. Applicant began this work in November. The document should be corrected throughout to reflect Staff’s approval of the Applicant’s Geoarchaeological Research Design.
5. The PSA fails to adequately justify why additional extensive subsurface testing is required at 107 sites, especially where relevant guidance recognizes that extensive site-wide sampling may be infeasible, may damage resources, and may not be necessary (Nat'l Park Serv., National Register Bulletin No. 36, "Guidelines for Evaluating and Registering Archaeological Properties" (2000)). Indeed, under CEQA and CEC regulations, Staff must limit its requests for information and further analysis to those data sets reasonably necessary to complete the analysis (Pub. Res. Code § 21160, 20 C.C.R. § 1716(b)). The scope of that information should be limited to what is necessary to the analysis and not extend beyond. *Sierra Club v. State Bd. of Forestry* (1994) 7 Cal. 4th 1215, 1231, *see also* 58 Ops.Cal.Atty.Gen. 614 (1975). There is already substantial information on the record upon which to further narrow the list of potential eligible prehistoric archeological sites (Nixon et al. 2011; URS 2012j, 2012k, 2012b, 2012l). The Applicant has been working with CEC staff on an archeological research design and testing plan, but disagrees that 107 sites merit further testing. Note also that the correct total is 107 sites, not 108.
6. Many of the 107 sites represent the same site type, with the same constituents made of the same materials, representing ubiquitous data. Therefore, after applying the revised thresholds recommended in General Comment 1, above, it is possible to group the types and conduct sampling on a subset of the 107 sites. If in the subset analysis a type is found to be eligible, then others of the same type would be assumed eligible as well, without further impacting the eligible resources. The Applicant will continue working with Staff to identify the appropriate subset of site types for further evaluation testing, keeping in mind the objective is to create limited disturbance prior to making an evaluation determination. To that end, please refer to Tables A and B in the attached CD located under separate and confidential cover as Confidential Attachment A that further classifies the sites for testing eligibility and makes recommendation regarding the type of testing at each site.
7. With respect to mitigation for archeological sites, CEQA requires that agencies should, where feasible, avoid archeological sites by preserving in place and that the CEQA document should discuss the options for preservation, and where data recovery is the only option, why it is adequate and beneficial (14 CCR 15126.4(b)(3)). Therefore, the PSA should note that within

CULTURAL RESOURCES

the project site and project linears, contributing components of sites determined eligible will be avoided to the extent feasible and consistent with good engineering practice and project generation objectives. Avoidance of sacred sites, if any, will be determined in coordination with California Native American tribes (CEC Rules, Ch. 6, Article 2, Section 2324(c) and 2325). Other methods of preservation - incorporation of sites within open space, granting of a conservation easement or covering with a layer of chemically stable soil - are infeasible. This is due to the nature of the development, which requires construction on the full site to meet power generation needs - 500 MW - as required by the power purchase agreements for the project. For those locations for which preservation in place is not feasible, the Applicant proposes preparation of a site testing plan and data recovery. Generally, data recovery will be adequate and most beneficial because it will make the data available to the public and further the understanding and research regarding past uses of the site.

Landscapes/Districts Generally

8. It should be clarified that all the landscapes/districts discussed in the PSA are proposed only, as none have been formally nominated to the CRHR. Therefore, the Applicant recommends a global change to include the word "proposed" in conjunction with references to landscapes/districts. In addition, change all mention of staff assuming or concluding such a resource to be eligible to CEC staff recommending a resource to be eligible for later review and determination of eligibility.
9. Additionally, the PSA bases its analysis of the landscapes/districts on previous Commission decisions where the staff "assumed" various landscapes/districts to be eligible for the CRHR. However, an agency is not permitted under CEQA to assume that a resource is a significant historical resource without substantial evidence (CEQA explicitly provides that determinations must be supported by substantial evidence per 14 CCR 15064.5). The PSA does not provide such substantial evidence as discussed in the Specific Comment with respect to each of the proposed landscapes/districts below.
10. The PSA applies CEQA and looks to determine whether any resources are eligible for listing in the CRHR. Only California Resources are eligible for the CRHR. For example, only California properties listed in, or formerly determined eligible for listing in, the NRHP are automatically listed on the CRHR (Pub. Res. Code 5024.1(a); 14 CCR 4851). However, the geographic scope of the proposed landscapes considered in the PSA are massive, most of which cover at least portions of two states, and one that covers four western states. Thus, while the PSA may discuss multi-state resources, it has no jurisdiction by which to impose CRHR eligibility or impose mitigation for out of state resources. Regardless, those resources are more properly analyzed through the NEPA process through BLM, and they will be subject to the Section 106 National Historic Preservation Act ("NHPA") process.
11. In analyzing the different kinds of landscapes (archeological, historic, ethnographic), the PSA does not reference or follow appropriate state and federal guidance. Ethnographic landscapes and resources are not defined in state law or regulations and, as discussed in the General Comment 10 above, the PSA does not point to the state guidance that allows such vast, multi-state resources to be found eligible for the CRHR. Specifically, although the state regulations acknowledge cultural landscapes as a construct, there are no provisions by which to find such vast areas eligible. Rather, such areas or places are like districts, which do have specific criteria. Specifically, such districts must 1) "contain a concentration of historic buildings, structures, objects, or sites united historically, culturally, or architecturally," 2) be "defined by precise geographic boundaries" and 3) designate "all individual resources located within the

CULTURAL RESOURCES

boundaries of an historic district ... as either contributing or as noncontributing to the significance of the historic district” (14 CCR 4852(a)(5); 14 CCR 15064.5). There are also specific federal guidelines that apply for resources that may be considered for listing under the NRHP. For example, ethnographic landscapes may be considered as Traditional Cultural Properties, in accordance with federal guidance. Alternatively, landscapes may be considered as archeological districts in accordance with federal guidance. However, the PSA fails to appropriately apply the most relevant guidelines. For example, the PSA refers to the National Park Services (NPS) Bulletin 38 *Guidelines for Evaluating and Documenting Traditional Cultural Properties* for its analysis of the proposed archaeological districts/landscapes. Archaeological properties also must be evaluated for NRHP eligibility under NPS Bulletin 36 *Guidelines for Evaluating and Registering Archaeological Properties*, which is not cited in the PSA. Regardless, neither guidance document is applied correctly, since both these federal guidelines require boundaries. NPS Bulletin #36 requires justified, defensible boundaries for archeological districts and NPS Bulletin #38 requires that boundaries for traditional cultural properties be defined narrowly. Bulletin #38 specifically notes that boundaries should not encompass all of the "extensive views of the natural landscape" even though those views may be important to the traditional cultural user and may be considered cumulatively. Throughout the PSA, the analysis does not consider state regulations for districts and selectively, inconsistently, and inaccurately applies Federal guidelines, with the result that the conclusions are not supported by regulatory guidance, adequate justification, or substantial evidence.

Prehistoric Archeological Landscapes/Districts

12. The eligibility analysis of the proposed Prehistoric Trails Network Cultural Landscape (PTNCL) is flawed, as it fails to consistently apply the state regulations and federal guidance, all of which require a justified, defensible boundary. The PSA describes the proposed landscape as following along the length of the historically known route of the Halchidhoma Trail, from where it begins near Blythe at the Colorado River, continuing to the west through the Chuckwalla Valley toward modern San Bernardino, with a width of 10 m. This is an arbitrary boundary delineation. This trail network supposedly went all the way to the Pacific Ocean and its full extent has not been mapped. Without a defined boundary, it is not possible to evaluate integrity of a district or landscape. Further, it does not appear that the project site is within the boundary of the proposed landscape as described in the PSA.
13. If the proposed PTNCL boundary were to be accepted, the extent of this proposed landscape is enormous and the landscape overall is subject to severe disturbance with cities, highways and other infrastructure and development along the route, and therefore, the finding of integrity is not supported by the facts. In addition, the PSA fails to set forth all of the contributing and noncontributing elements as required by state regulations (14 CCR 4852(a)). Finally, the period of significance for the proposed PTNCL is broad and not substantiated.
14. The PSA does not offer substantial evidence to support the statements that the proposed PTNCL is eligible under Criteria 1 or 4, or that the Halchidhoma trail extends on the project site. With respect to Criteria 1, the PSA does not identify any specific events associated with the use of this trade, transportation and/or ceremonial route that have made a significant contribution to the broad patterns of California's history and cultural heritage, a key requirement for eligibility under Criteria 1. Rather, the PSA broadly states that because the trail is referred to in oral histories or creation stories, the landscape is eligible under Criteria 1 (see p. 4.3-90). There is in fact no substantial evidence that the Halchidhoma trail, even if mentioned in oral histories or creation stories, crosses the project site and there is nothing to

CULTURAL RESOURCES

tie the trails on the project site to oral histories or creation stories. With respect to Criteria 4, the PSA indicates that the archaeological sites within the proposed PTNCL may be likely to yield information important in prehistory (Laylander and Schaefer 2011a); however, no important scientific research questions are presented in the PSA related to the PTNCL. Furthermore, no evidence is presented in the PSA that the resources on the project site are related to the Halchidhoma trail or would contribute to the PTNCL by presenting any related unique archaeological resource. "Unique archeological resources" are defined in CEQA at Section 21083.2 (g) of the Public Resources Code as an archaeological artifact, object, or site about which it can be clearly demonstrated that, without merely adding to the current body of knowledge, there is a high probability that it meets any of the following criteria: (1) Contains information needed to answer important scientific research questions and there is a demonstrable public interest in that information; (2) Has a special and particular quality such as being the oldest of its type or the best available example of its type; or (3) Is directly associated with a scientifically recognized important prehistoric or historic event or person. Conversely, a "nonunique archaeological resource" means an archaeological artifact, object, or site which does not meet the above criteria. A nonunique archaeological resource need be given no further consideration, other than simple recording of its existence by the lead agency if it so elects.

15. With respect to the proposed Prehistoric Quarries Archeological District (PQAD), the PSA identifies this as a contributor to the proposed PTNCL. While a boundary is more defined, the boundary is not justified as it encompasses many "discontiguous" areas that are not all identified. This makes it impossible to judge whether the chosen boundary or constituent contributing resources complies with state guidelines requiring a precise boundary, or Federal guidelines that direct that the boundaries should "encompass, but not exceed, the full extent of the significant resources and land area making up the property." National Register Bulletin #36. In addition, the PSA fails to set forth all of the contributing and noncontributing elements as required by state regulations (14 CCR 4852(a)).
16. The PQAD integrity analysis is unsubstantiated, as the landforms within the project site have been eroded due to natural processes over time and destroyed due to numerous transmission and gas lines, agricultural development, DTC activities, rock hounding, and other recreational activities. The PSA states that the period of significance is the "entire prehistoric and early prehistoric periods" and concludes that the district maintains integrity such that it conveys the significance of that period. In fact, however, the geoarchaeological assessment identified considerable erosional processes at play and that much of the landform that was once at higher elevations has eroded and become displaced across the alluvial fan/flat. There are approximately 2-3 areas of the relict Colorado River Terrace where the landform and lithic scatters are intact as it pertains to location. However, the entire region is and has been a popular location for rock collectors (rock hounds), who come to the area recreationally in search of certain rocks and minerals. The Palo Verde Mesa within the Project area is found in published rock collector's books. In addition, as noted above, transmission and gas lines have been developed in the area and DTC and recreational OHV activities have impacted the site and the vicinity. All of these actions have greatly impacted the integrity of location, and association has been compromised in the majority of these proposed PQAD contributing sites within the PAA.
17. The PSA does not offer substantial evidence to support the statements that the proposed PQAD is eligible under Criteria 4, as suggested in the PSA. With respect to Criteria 4, the PSA indicates that the archaeological sites within the proposed PTNCL may be likely to yield

CULTURAL RESOURCES

information important in prehistory (Laylander and Schaefer 2011a); however, no important scientific research questions are presented in the PSA related to the PQAD. Furthermore, no evidence is presented in the PSA that the resources on the project site would contribute to the PQAD by presenting any related unique archaeological resource for the same reasons discussed in General Comment 15 above.

18. The conclusion regarding how many and which prehistoric archeological sites in the PAA may be contributors to the proposed PTCNL and/or the proposed PQAD is inconsistent and confusing (e.g., page 4.3-86 says 41 may contribute to the proposed PTCNL, 104 may contribute to the proposed PQAD and 14, may contribute to both - a total of 155 sites; then page 4.3-87, says all 166 sites are potential contributors; lastly Table A-4 lists 266 sites, not 166). Further, the conclusions regarding why these sites may be considered contributors are not based on substantial evidence and/or the rationale is being withheld until the FSA is published. In particular, it is not explained how the archeological sites on the Project site could be contributing when the Project site is not even within the boundary. Federal guidance clearly states that districts may not be defined by projects, so any effort to expand the PTNCL based on a project-by-project approach is not appropriate (United States Department of the Interior, 1983; United States Department of the Interior, 1991).
19. The PSA concludes that 25 prehistoric archeological resources require additional subsurface testing to determine whether they contribute to the proposed PTNCL, 103 sites require additional subsurface testing to determine whether they contribute to the proposed PQAD and 14 multi-component sites require further testing to determine if they contribute to both, but does not provide its rationale for why these sites require additional testing, deferring its explanation to the FSA. The Applicant disagrees that any are contributing to the proposed districts and objects to this requirement for the reasons discussed above. Further, if there is no rationale, then the analysis is fundamentally flawed and fails to allow for meaningful comment as required by CEC regulation (20 CCR 1742.5(c)).
20. In addition to failing to articulate a rationale with substantial evidence as to why the various sites in the PAA are actually, or could be, contributing elements to the proposed prehistoric archeological landscapes, the PSA fundamentally misapplies the impact analysis for impacts to landscapes/districts by assuming that impact to every contributing element is a significant impact to a landscape/district. Under the CEQA Guidelines, a significant impact is one that *physically* destroys or alters the resource or its immediate surroundings such that the significance of an historical resource would be materially impaired. The significance of the resource is materially impaired when a project "[d]emolishes or materially alters in an adverse manner those physical characteristics of an historical resource that convey its historical significance and that justify [the lead agency's determination of significance]." CEQA Guidelines § 15064.5(b). Loss of a contributing element that is not itself individually eligible in and of itself is not a significant impact.

Historic Archeological Landscapes/Districts

21. With respect to the proposed Desert Training Center Cultural Landscape (DTCCCL)/District, it is not clear if the PSA considers that there is a separate landscape from the BLM proposed district– the Desert Training Center/California-Arizona Maneuver (DTC/C-AMA) District. Regardless, the PSA does not provide substantial evidence to support the argument that the DTC Maneuver Sites warrant further subsurface testing as an element of the proposed mitigation. The PSA text divides the 32 sites into three categories - (a) berms/foxholes, (b)

CULTURAL RESOURCES

tank/tire tracks, and (3) UXO sites, then states that UXO sites have the greatest potential for buried deposit, but it does not limit the subsurface screening/testing to that category. Further, like the DTC Food Related Sites, the DTC Maneuver sites have been documented sufficiently to capture their contribution to the proposed landscape and its historical significance without further subsurface investigation. The rationale that additional testing is necessary to determine CRHR significance is unfounded. It is known that soldiers trained in this area of the desert in 1942-1944, and it is also well documented that they practiced various maneuvers to prepare for WWII deployment. There is the General Patton's Museum in Desert Center, CA dedicated to this activity, countless documents available to the public, and the world-wide-web offers prolific historic information available to researchers, students, and the public to learn about this period of US history and the artifacts and sites associated. Therefore these resources are not individually eligible under any criterion and there is not linkage or additional data potential as a group. The information provided in the PSA indicates that the type of materials that may be below ground would not provide additional information. Regardless, **CUL-5** requires a CRMMP, which will document any unexpected discovery.

22. The PSA concludes without evidence that direct and cumulative impacts to the proposed DTCC and the 32 Maneuver sites are significant (see p. 4.3-109). However, this is a flawed analysis. As noted above, impacting contributing elements in and of itself is not a significant impact to the district. Because berms/foxholes, tank tracks and UXO locations are ubiquitous throughout formerly used DTC locations, documentation of the sites is sufficient; there is no unmitigated project-level or cumulative impact.

Ethnographic Landscapes

23. Ethnographic Research Design (p. 4.3-49-4.3-51) presented in the PSA is inadequate and has not been made available to the Applicant or otherwise peer reviewed. At minimum, the research design should include a summary of data gaps, research questions and testable hypotheses, with methods of collecting and analyzing the data, none of which is found within the Ethnographic Research Design presented in the PSA. Regardless, the PSA finds the presence of three proposed ethnographic landscapes (two near the PAA and one within the PAA). The conclusions provided in the PSA are unsupported and do not appear to be based on objective research, since the PSA says staff will provide the justification later. This is not a valid approach.
24. Even if the design were adequate, the proposed Salt Song Trail Landscape and the proposed Keruk Trail Landscapes are unbounded (for both, the PSA states "A precise delineation and boundary justification... is not necessary..." p. 4.3-121) and therefore, are not eligible for the CRHR based on application of the state regulations and Federal guidance, as discussed above. The PSA fails to provide a substantiated accounting of the individual contributing resources. The analysis provides a table of the contributing elements to the landscape (see pp. 4.3-119-4.3-120), but these elements are vague and all encompassing - water, plants, etc. These "elements" are actually generic environmental resources, and such generic classes do not satisfy the state regulations requiring identification of all *individual* contributing resources (14 CCR 1452(a)(5)). The PSA also fails to identify if the project site contains any such specific contributing elements, and once again, the PSA defers its analysis to a future report to be provided. This prevents the Applicant from responding and fails to allow for meaningful comment.

CULTURAL RESOURCES

25. Additionally, the analysis of the integrity of the proposed Salt Song Trail Landscape and the proposed Keruk Trail Landscapes is not substantiated. The PSA arbitrarily looks only at the segment of the trail in the project vicinity and concludes that impacts to the viewshed in this area would be significant. However, notwithstanding the fact that the PSA arbitrarily segments the trail, the viewshed in this segment also incorporates the view of major towns like Blythe, highways and transmission lines, which undermines the findings of integrity. Thus, the PSA fails to truly and adequately consider the integrity of the landscape as a whole.
26. There is no background or rationale to explain the eligibility recommendations for either the Salt Song Trail Landscape or the Keruk Trail Landscape. For both, the PSA states that the landscapes are eligible for the same general reasons. For the Salt Song Trail Landscape, the PSA proposed that it be eligible under Criteria 1 at the regional level for "its broad contributions to the unique historic events that shaped the Southern Paiute understanding of the landscape....." and the for the Keruk Trail Landscape for "its broad contribution to the unique historic events that shaped the Yuman understanding of the landscape....". However, the PSA does not explain what these "unique historic events" are, where they occurred and why they are significant.

Further, the PSA does not adequately justify its rationale for eligibility of either landscape under Criteria 3. A resource may be eligible under Criteria 3 if it embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic value. Although the song or a dreaming activity may have high artistic value, the landscape itself is not the art, the songs are the art. Additionally, the landscape integrity has been changed over time drastically; for example, the Colorado River has dams that prevent its shifting course and effect on other tributaries, which would likely have been an important component to songs. Many of trails in the songs now have highways (I-10, Runnalls Road) or railroads in their place, which has changed the landscape associated directly with the course in which these songs derived. The growth and development of the region over time with agriculture, canals, damming the river, highways, airports, railroads, transmission and other utilities, residential development, also have dramatically altered the landscape. Therefore the landscape itself cannot be considered eligible as conveying integral artistic value because this landscape has changed radically over time and lacks any integrity of its original form in which these songs are derived. These songs/dreamscapes are an important oral account of the landscape, but the songs and dreamscapes admittedly change over time; the landscape is not the art work, it is the songs/practices themselves that are the art, therefore these proposed landscapes are not eligible under Criteria 3.

27. As for impacts, metaphysical impacts to songs that do "not follow linear trails, but fill/make space" are not secondary impacts addressed under CEQA, which is exclusively focused on impacts to the physical environment (Pub. Res. Code 21002.1; 21060.5). The PSA argues that significant environmental justice impacts stem from the impacts to deceased souls and traditional practitioners and relatives of the deceased who fear the deceased souls may not find their way on the spiritual trail is unavailing. However, CEQA does not protect against generalized fear or religious beliefs. Further, the PSA's efforts to tie the Salt Song to the project site specifically are unconvincing, as the PSA concedes that the RMS site, including the Palo Verde Mesa is not mentioned in the song. Further, although there are statements that the Salt Song trail also has a physical trail element that continues to be used today, there is no evidence of any such trail on the project site, which is privately owned.

CULTURAL RESOURCES

28. If the vast Salt Song Trail and Keruk Trail Landscapes are in fact eligible under the NRHP (which will be determined by BLM in consultation with SHPO), the project's effects would be indirect and visual, as neither of these trails is on the project site and the PSA does not present substantial evidence to support the conclusion that the effects of the project would be significant and unavoidable. To the contrary, traditional practitioners have stated that no amount of landscape alteration can prevent them from continuing the tradition (p. 4.3-123). The PSA fails to show how the physical characteristics of the trails (Salt Song and Keruk trails) will be materially altered by additional viewshed interruptions when there are significant viewshed interruptions all along the trails, including major cities, industrial uses, roads and infrastructure.
29. With respect to the Palo Verde Mesa Landscape, based on the definition staff provided, an ethnographic landscape "is defined generally as a landscape containing a variety of natural and cultural resources that associated people define as heritage resources." Staff's evidence and rationale for the Palo Verde Mesa Ethnographic Landscape does not meet the very basic definition and provides only firsthand rationale based on the authors subjective opinion regarding this landscapes significance. Further, the PSA points to nothing on site that relates to tribal New World Agriculture or occupation from 1829 to 1905, which is the defined period of significance. For this reason all references to the Palo Verde Mesa Ethnographic Landscape should be stricken.
30. Further, the conclusions of the integrity analysis do not match the descriptions of the revisions to the landscape and are not supported by substantial evidence. Based on the actual facts on the ground, none of the four constituent zones - the river, floodplain, mesa and mountains - have integrity. Specifically, based on the PSA's own description, the river was revised significantly in the twentieth century with dams and levees, the floodplain has been put into modern agricultural use in over 90 percent of the lands, erasing prior New World agricultural patterns, the mesa was scarred with World War II training exercises that were ubiquitous throughout, as well as mining and recreational vehicle use, together serving to erase and blur evidence of the past. The mountains have been cut through with roads and flanked by mining activities, similarly obscuring the past.
31. Additionally, the PSA describes the project site as potentially providing contributing elements to the proposed Palo Verde Mesa Landscape in terms of providing information regarding winter occupation of the mesa and camp relationships to lithic tool reduction. However, the project site provides ubiquitous examples of lithic tool reduction, which is all prehistoric (none dates from the period between 1829-1905), and there is no substantial evidence presented that the project site provides examples of winter mesa occupation between 1829-1905. Further, the contributing elements to this proposed landscape provided in Table 18 on page 4.3-120 do not list lithic tool reduction sites as relevant or winter camps. Even if the landscape were found to have justified boundaries, the project site does not provide contributing elements of a significant nature that can be documented as occurring during the period of significance. Additionally, the identity of any contributing resource is only vaguely and generically identified, and no substantial evidence that specific contributing resources would be altered. As a result, no additional mitigation should be required for this proposed landscape.
32. The PSA analysis of the RMS project's contribution to cumulative impacts to the proposed ethnographic trail landscapes indicates that the Staff will "segment" the landscapes to

CULTURAL RESOURCES

conduct a cumulative analysis in the future, but there is no legal basis cited upon which such segmentation would be permitted, and any such exercise would be arbitrary.

Historic Resources

33. The PSA is not clear on which historic period resources Staff has determined to be ineligible/eligible. The Applicant concurs that the two 161kv lines are eligible, but disagrees that the Bradshaw Trail in the project vicinity, the Bradshaw Trail Borrow Pit, or Palo Verde Irrigation District (PVID) are eligible.
34. With respect to the Bradshaw Trail, the PSA relies on a prior finding that the Bradshaw Trail is NRHP-eligible to determine that the segment in the PAA is also eligible. However, that prior finding was based on an analysis of a different project and was not specific to the portion of the Bradshaw Trail located on site. The segment of the road/trail in the project area is approximately five and one-half miles. The original Bradshaw Trail extended a length of approximately 101 miles from La Paz, Arizona to San Bernardino County, California. Substantial evidence supports a finding that the portion of the Bradshaw Trail that crosses the project is not eligible because it has lost its integrity due to (a) evidence that the trail in this location is not the original alignment, (b) there are no cultural materials presently associated with the trail in this section, instead non historic features line the road/trail – canals and transmission lines, and (c) no evidence of the original trail remains - rather the “trail” is now a two-way improved, regularly graded dirt road since 1948 (Adam Rush, Principal Planner, Riverside County, 11/14/2012), and in this vicinity has already been paved. Therefore, the portion of the Bradshaw Trail on the Project site no longer reflects an integrity of setting, feeling, association, or design.
35. The PSA states that it is unable to evaluate the significance of any impact to the Bradshaw Trail because the project description is not settled. BLM has final decision making authority as to the improvements to Bradshaw Trail. Regardless, as noted above in General Comment 34, there is no impact, as the trail is not an eligible resource.
36. With respect to the Bradshaw Trail Burrow Pit, the PSA presents no substantial evidence that the pit is CRHR-eligible (all the evidence cited points to the Bradshaw Trail Burrow Pit being a modern resource and ineligible), but yet the PSA defers the determination to the FSA. Again, this deferral of analysis is not justified.
37. With respect to the Palo Verde Irrigation District (PVID), the PSA identifies it as a potential eligible CRHR district under Criteria 1, but defers actual analysis to the FSA. This deferral is not justified. The evidence presented by the Applicant, which found that the district elements have been heavily modified over time such that it no longer retains integrity is not contradicted by the fact that other irrigation districts have been determined eligible in the past where modern materials were used. Specifically, the PSA points to the Reclamation District 10000 (RD 10000) (NRHP eligible) and Turlock Irrigation District (TID) (CRHR eligible) as evidence for why the PVID may be eligible. However, these examples are not directly analogous. RD 10000 represents the first, and one of the largest, reclamation districts in California and TID represents the oldest irrigation district in California. The proposed PVID district is a common example of many such districts that enabled agriculture in otherwise arid areas along the Colorado River. Additionally, RD 10000 and TID were both found significant based on their original period of significance (early 1900s for RD 10000 and late 1800s for TID) and retained their integrity from that period. Here, unlike those districts, as noted in the PSA, a devastating flood in 1905 destroyed much of the original PVID system, and another flood in

CULTURAL RESOURCES

1922 again devastated the new system. There is no justification for integrity based on the potential original period of significance from 1877. Further since the time the district was incorporated many changes have occurred including construction of a dam and over 30 miles of levees. In addition, PVID has aggressively modernized its facilities such that the proposed district does not retain integrity of workmanship, design, materials, and feeling.

The PSA finds the period of significance for the PVID potential district extends to the present, but as noted in the PSA (p. 4.3-1), resources less than 50 years old must be exceptional and the PSA offers no support for why the PVID is an exceptional resource. To the contrary, there are multiple irrigation districts (California Development Company, Imperial Irrigation District, and Metropolitan Water District) with historical water grants from the early 1900s on the Colorado River and according to guidance, properties generally must be viewed comparatively. *National Register Bulletin How to Apply the National Register of Criteria for Evaluation*, which is the professional standard for methods used for evaluating properties, states that the property must be subjected to a comparative evaluation (National Park Service 1998). The only time it is not necessary to evaluate the property in question against other properties is when:

- It is the sole example of a property type that is important in illustrating the historic context or
- It clearly possesses the defined characteristics required to be strongly representative of the context.

These conditions are not met here. Therefore, PVID must be examined in relation to other facilities. Whereas RD 10000 represents one of the first, and one of the largest, reclamation districts in California, and TID is the first irrigation district in the state, the PVID does not share these characteristics. The proposed PVID district is a common example of many such districts, such as the Imperial Irrigation District and TID, which enabled agriculture in otherwise arid areas. Nor is the PVID dam unique. The Bureau of Indian Affairs has the Headgate Rock Dam for the Colorado Indian Tribes, and Imperial Irrigation District operates the Senator Walsh Dam, the Imperial Diversion Dam, and the Laguna Dam. PVID should not be determined eligible and no mitigation should be required.

38. With respect to impacts, note that for the portion of the Bradshaw Trail road that crosses PVID drains (Palo Verde Drain, Estes Drain, and Private Drain No. 1), the project will simply pave the existing road crossings by using a Bailey's Bridge type structure to avoid impacts to the drain. Therefore, there will be no impact to the drains themselves. With respect to the 34th Avenue crossings (Hodges Drain, and C-03 Canal), the project will construct new 24 foot wide crossings adjacent to the existing county crossings and spanning the features without touching them. However, this construction would not impact the integrity of the drains, as they are not contributing and are already significantly altered. The Hodges Drain was not part of the original construction and was a late and modest addition to the irrigation district. The drain lacks any distinguishing features, materials, and arrangements and has likely been altered to accommodate the ongoing maintenance and grading of Bradshaw Trail Road and 34th Avenue through time. The C-03 Canal has been significantly altered with non-historic period additions (bulkhead gates and drain, non-historic period metal panels, pressure treated timber, and poured concrete reinforcement). At the intersection of the C-03 Canal and Bradshaw Trail Road (on the west side of SR-78), the canal is a partially concrete-lined basin

CULTURAL RESOURCES

approximately 20 feet wide with vegetation and rocks situated along both banks. At the intersection of the C-03 canal and 34th Avenue, the canal is a concrete-lined basin approximately 10 feet wide with two dirt access roads situated along both banks. Since its construction, the canal has been heavily altered, including accommodating the ongoing maintenance and grading of Bradshaw Trail Road and 34th Avenue through time. One additional crossing to each of these facilities would not impact the integrity of either the individual drains or the proposed potential district as a whole.

FINDINGS OF FACT

There are no Findings of Fact in this section of the PSA

CONDITIONS OF CERTIFICATION

1. **CUL-1 Proposed Prehistoric Trails Network Cultural Landscape (PTNCL) Documentation and Possible NRHP Nomination Program**

Page 4.3-178: The Prehistoric Trails Network Cultural Landscape is a “proposed” landscape and, as recommended in the General Comments above, the word “proposed” should be inserted in all references to this landscape. The PSA does not contain substantial evidence to support an eligibility finding using state or federal guidance. Therefore, there is no legal nexus for requiring mitigation. However, the Applicant is willing to pay the fee.

2. **CUL-2 Proposed Desert Training Center Cultural Landscape (DTCCL) Documentation and Possible NRHP Nomination Program**

Page 4.3-179: The Desert Training Center Cultural Landscape is a “proposed” landscape and, as recommended in the General Comments above, the word “proposed” should be inserted in all references to this landscape. The PSA does not contain substantial evidence to support an eligibility finding using state or federal guidance. Therefore, there is no legal nexus for requiring mitigation. However, the Applicant is willing to pay the fee.

3. **CUL-3 Cultural Resources Personnel**

Page 4.3-182, 1st and 2nd paragraph under Required Cultural Resources Technical Specialists: The CRS may qualify as the PPA and/or PHA. A clarification to the condition has been added in two places below to reflect this.

CUL-3 Cultural Resources Personnel

Prior to the start of construction-related ground disturbance or grading, boring, and trenching, as defined in the General Conditions for this project; surface grading or subsurface soil work during pre-construction activities or site mobilization; or mowing activities and heavy equipment use in loose or sandy soils, at the site and for access roads and linear facilities, the project owner shall obtain the services of a Cultural Resources Specialist (CRS) and one or more Alternate CRS(s). The project owner shall submit the

CULTURAL RESOURCES

resumes and qualifications for the CRS, CRS alternates, and all technical specialists to the CPM for review and approval.

The project owner shall ensure that the CRS manages all cultural resources monitoring, mitigation, curation, and reporting activities, and any pre-construction cultural resources activities (e.g., geoarchaeology or data recovery), unless management of these is otherwise provided for in accordance with the cultural resources conditions of certification (Conditions). The CRS may elect to obtain the services of Cultural Resources Monitors (CRMs) and other technical specialists, if needed, to assist in monitoring, mitigation, and curation activities. The project owner shall obtain the services of a Native American Monitors (NAMs), as required by **CUL-12**. The project owner shall ensure that the CRS makes recommendations regarding the eligibility for listing in the California Register of Historical Resources (CRHR) of any cultural resources that are newly discovered or that may be affected in an unanticipated manner.

No construction-related ground disturbance or grading, boring, and trenching, as defined in the General Conditions for this project; surface grading or subsurface soil work during pre-construction activities or site mobilization; or mowing activities and heavy equipment use in loose or sandy soils, at the site, access roads, and linear facilities, shall occur prior to CPM approval of the CRS and alternates, unless such activities are specifically approved by the CPM.

Approval of a CRS may be denied or revoked for reasons including but not limited to non-compliance on this or other Energy Commission projects and for concurrent service as CRS on an unmanageable number of Energy Commission projects, as determined by the CPM. After all ground disturbance is completed and the CRS has fulfilled all responsibilities specified in these cultural resources conditions, the project owner may discharge the CRS, if the CPM approves.

If, during operation of the proposed power plant, circumstances develop that would require ground disturbance in soils or sediments previously undisturbed during project construction, no surface grading or subsurface soil work shall occur prior to submission of a Petition to Modify and CPM review and approval of a project-specific protocol for addressing unanticipated discoveries, consistent with the approved Cultural Resources Mitigation and Monitoring Plan (CRMMP).

CULTURAL RESOURCES SPECIALIST

The resumes for the CRS and alternate(s) shall include information demonstrating to the satisfaction of the CPM that their training and backgrounds conform to the U.S. Secretary of the Interior's Professional Qualifications Standards, as published in Title 36, Code of Federal Regulations, part 61 (36 C.F.R., part 61). In addition, the CRS and alternate(s) shall have the following qualifications:

- Listing in the Register of Professional Archaeologists;
- Qualifications appropriate to the needs of the project, including a background in anthropology, archaeology, history, architectural history, or a related field;

CULTURAL RESOURCES

- At least three years of archaeological or historical, as appropriate (per nature of predominant cultural resources on the project site), resources mitigation and field experience in California; and
- At least one year of experience in a decision-making capacity on cultural resources projects in California and the appropriate training and experience to knowledgeably make recommendations regarding the significance of cultural resources.

The resumes of the CRS and alternate CRS shall include the names and telephone numbers of contacts familiar with the work of the CRS/alternate CRS on referenced projects and demonstrate to the satisfaction of the CPM that the CRS/alternate CRS has the appropriate training and experience to implement effectively the Conditions.

CULTURAL RESOURCES MONITORS

CRMs shall have the following qualifications:

- B.S. or B.A. degree in anthropology, archaeology, historical archaeology, or a related field, and one year experience monitoring in California; or
- A.S. or A.A. degree in anthropology, archaeology, historical archaeology, or a related field, and four years experience monitoring in California; or
- Enrollment in upper division classes pursuing a degree in the fields of anthropology, archaeology, historical archaeology, or a related field, and two years of monitoring experience in California.

REQUIRED CULTURAL RESOURCES TECHNICAL SPECIALISTS

The project owner shall ensure that the CRS is qualified or obtains the services of a qualified prehistoric archaeologist to conduct the research specified in CUL-6. The Project Prehistoric Archaeologist's (PPA) training and background must meet the U.S. Secretary of the Interior's Professional Qualifications Standards for prehistoric archaeology, as published in Title 36, Code of Federal Regulations, part 61, and the resume of the PPA must demonstrate familiarity with the similar artifacts and environmental modifications (deliberate and incidental) to those associated with the prehistoric and protohistoric use of the Palo Verde Mesa. The PPA must meet OSHA standards as a "Competent Person" in trench safety.

The project owner shall ensure that the CRS is qualified or obtains the services of a qualified historical archaeologist to conduct the research specified in CUL-8. The Project Historical Archaeologist's (PHA) training and background must meet the U.S. Secretary of Interior's Professional Qualifications Standards for historical archaeology, as published in Title 36, Code of Federal Regulations, part 61. The resume of the PHA must demonstrate familiarity with the artifacts, environmental modifications (deliberate and incidental, including tank tracks), and trash disposal patterns associated with World War II land-based army activities, and knowledge of the full range of late nineteenth and early-to-mid-twentieth-century domestic can, bottle, and ceramic diagnostic traits.

The resumes of the CRS, alternate CRS, the PPA, and the PHA, and any other proposed technical specialists, shall be submitted to the CPM for approval and shall include the names and telephone numbers of contacts familiar with the work of these persons on projects

CULTURAL RESOURCES

referenced in the resumes and demonstrate to the satisfaction of the CPM that these persons have the appropriate training and experience to undertake the required research.

Verification:

1. At least 45 days prior to the start of ground disturbance, the project owner shall submit the resumes for the CRS and alternate(s) to the CPM for review and approval.
 2. At least 10 days prior to a termination or release of the CRS, or within 10 days after the resignation of a CRS, the project owner shall submit the resume of the proposed new CRS, if different from the alternate CRS, to the CPM for review and approval. At the same time, the project owner shall also provide to the proposed new CRS the AFC and all cultural resources documents, field notes, photographs, and other cultural resources materials generated by the project. If no alternate CRS is available to assume the duties of the CRS, the project owner shall designate a CRM to serve in place of a CRS for a maximum of 3 days. If cultural resources are discovered, ground disturbance shall remain halted until there is a CRS or alternate CRS to make a recommendation regarding significance.
 3. At least 20 days prior to ground disturbance, the CRS shall provide a letter naming CRMs and attesting that the identified CRMs meet the minimum qualifications for cultural resources monitoring required by this condition.
 4. At least 5 days prior to additional CRMs beginning on-site duties during the project, the CRS shall provide letters to the CPM identifying the new CRMs and attesting to their qualifications.
 5. At least 10 days prior to any technical specialists, other than CRMs, beginning tasks, the resume(s) of the specialists shall be provided to the CPM for review and approval. At least 10 days prior to the start of ground disturbance, the project owner shall confirm in writing to the CPM that the approved CRS will be available for onsite work and is prepared to implement the cultural resources conditions.
4. **Page 4.3-183, Condition of Certification CUL-4, 1st Paragraph, 1st sentence:** Please update the condition as indicated below to allow electronic copies to be submitted to minimize production and to make deliverables more efficient.

Page 4.3-183, Condition of Certification CUL-4, verification: Please update the verification as indicated below. This requirement is unnecessary as the public (including Native American tribes) will have access to all Monthly Compliance Reports.

CUL-4 Project Documents for Cultural Resources Personnel

Prior to the start of construction-related ground disturbance or grading, boring, and trenching, as defined in the General Conditions for this project; surface grading or subsurface soil work during pre-construction activities or site mobilization; or mowing activities and heavy equipment use in loose or sandy soils, at the project site, access roads, and linear facilities, if the CRS has not previously worked on the project, the project owner shall provide the CRS with electronic copies of the AFC, data responses, confidential cultural resources reports, all supplements, the Energy Commission cultural resources Final Staff Assessment, and the cultural resources conditions of certification from the Final Decision, for the project. The project owner shall also provide the CRS and the CPM with maps and drawings showing the footprints of the power plant, all linear facility routes, all access roads, and all laydown areas. Maps shall include the appropriate USGS quadrangles and a map at an appropriate scale (e.g., 1:24,000 or 1" = 200') for plotting cultural features or

CULTURAL RESOURCES

materials. If the CRS requests enlargements or strip maps for linear facility routes, the project owner shall provide copies to the CRS and CPM. The CPM shall review map submittals and, in consultation with the CRS, approve those that are appropriate for use in cultural resources planning activities. No ground disturbance shall occur prior to CPM approval of maps and drawings, unless such activities are specifically approved by the CPM.

If construction of the project would proceed in phases, maps and drawings not previously provided shall be provided to the CRS and CPM prior to the start of each phase. Written notice identifying the proposed schedule of each project phase shall be provided to the CRS and CPM.

Weekly, until ground disturbance is completed, the project construction manager shall provide to the CRS and CPM a schedule of project activities for the following week, including the identification of area(s) where ground disturbance will occur during that week.

The project owner shall notify the CRS and CPM of any changes to the scheduling of the construction phases.

Verification:

1. At least 40 days prior to the start of ground disturbance, the project owner shall provide the AFC, data responses, confidential cultural resources documents, all supplements, cultural resources conditions of certification, and the FSA to the CRS, if needed, and the subject maps and drawings to the CRS and CPM. The CPM will review submittals in consultation with the CRS and approve maps and drawings suitable for cultural resources planning activities.
2. At least 15 days prior to the start of ground disturbance, if there are changes to any project-related footprint, the project owner shall provide revised maps and drawings for the changes to the CRS and CPM.
3. At least 15 days prior to the start of each phase of a phased project, the project owner shall submit the appropriate maps and drawings, if not previously provided, to the CRS and CPM.
4. Monthly, during ground disturbance, the project owner shall ~~email~~ provide a progress report to the CPM as part of the project's Monthly Compliance Report. ~~interested Native Americans and other interested parties.~~
5. Within 5 days of changing the scheduling of phases of a phased project, the project owner shall provide written notice of the changes to the CRS and CPM.

5. **Page 4.3-184:**

CUL-5 Cultural Resources Monitoring and Mitigation Plan (CRMMP)

Prior to the start of ground disturbance, the project owner shall submit the Cultural Resources Monitoring and Mitigation Plan (CRMMP), as prepared by, or under the direction of, the CRS, to the CPM for review and approval. The CRMMP shall follow the content and organization of the draft model CRMMP, provided by the CPM, and the authors' name(s) shall appear on the title page of the CRMMP. The CRMMP shall identify measures to minimize potential impacts to sensitive cultural resources. 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, each CRM, and the project owner's on-site construction

CULTURAL RESOURCES

manager. No ground disturbance shall occur prior to CPM approval of the CRMMP, unless such activities are specifically approved by the CPM.

The CRMMP shall include, but not be limited to, the following elements and measures:

1. The following statement 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. A proposed general research design that includes a discussion of archaeological research questions and testable hypotheses specifically applicable to the project vicinity, and a discussion of artifact collection, retention/disposal, and curation policies as related to the research questions formulated in the research design. The research design will specify that the preferred treatment strategy for any buried archaeological deposits is avoidance. A specific mitigation plan shall be prepared for any unavoidable impacts to any CRHR-eligible (as determined by the CPM) resources. A prescriptive treatment plan may be included in the CRMMP for limited data types.
3. Specification of 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.
4. Identification of the 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.
5. A description of the manner in which Native American observers or monitors, as required by Condition of Certification **CUL-12**, will be included, the procedures to be used to select them, and their role and responsibilities.
6. A description of 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, and identification of areas where these measures are to be implemented. 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 effects.
7. A statement that all encountered cultural resources 50 years old or older shall be recorded on the appropriate Department of Parks and Recreation (DPR) 523 form(s) and mapped and photographed. In addition, all archaeological materials retained as a result of the archaeological investigations (e.g., survey, testing, data recovery) shall be curated 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.

CULTURAL RESOURCES

8. A statement that the project owner will pay all curation fees for artifacts recovered and for related documentation produced during cultural resources investigations conducted for the project. The project owner shall identify three possible curation facilities that could accept cultural resources materials resulting from project activities.
9. A statement demonstrating when and how the project owner will comply with Health and Human Safety Code 7050.5(b) and Public Resources Code 5097.98(b) and (e), including the statement that the project owner will notify the CPM and the Native American Heritage Commission (NAHC) of the discovery of human remains.
10. A statement that the CRS has access to equipment and supplies necessary for site mapping, photography, and recovery of any cultural resource materials that are encountered during ground disturbance and cannot be treated prescriptively.
11. A description of the contents, format, and review and approval process of the final Cultural Resource Report (CRR), which shall be prepared according to ARMR guidelines.

Verification:

1. After approval of the CRS proposed by the project owner, the CPM will provide to the project owner an electronic copy of the draft model CRMMP for the CRS.
2. At least 30 days prior to the start of data recovery required in **CUL-6** and **CUL-8**, the project owner shall submit the CRMMP to the CPM for review and approval.
3. At least 30 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).
4. Within 90 days after completion of ground disturbance (including landscaping), if cultural materials requiring curation were generated or collected, the project owner shall provide to the CPM a copy of an agreement with, or other written commitment from, a curation facility that meets the standards stated in the California State Historical Resources Commission's Guidelines for the Curation of Archaeological Collections, to accept the cultural materials from this project. Any agreements concerning curation will be retained and available for audit for the life of the project.

6. CUL-6 Data Recovery for Prehistoric Sites and Features:

Page 4.3-187: PLEASE NOTE: No condition was listed under **CUL-6**. In the PSA, the proposed PQAD was noted as a potential contributor to the proposed PTNCL. The PSA does not contain substantial evidence to support an eligibility finding using state or federal guidance for either the proposed PQAD or the proposed PTNCL. Therefore, there is no legal nexus for requiring mitigation. However, as noted in the comments to **CUL-1** above, the Applicant is willing to pay the fee which would necessarily cover the contributing elements including the proposed PQAD.

The Applicant reserves the right to provide comments to this condition once it is written.

7. CUL-7 Mitigation for Impacts to Ethnographic Resources:

Page 4.3-187 PLEASE NOTE: No condition was listed under **CUL-7**. The PSA does not contain substantial evidence to support an eligibility finding for the three proposed ethnographic landscapes using state or federal guidance and, therefore, the required legal nexus for

CULTURAL RESOURCES

mitigation has not been established. In addition, as a matter of law, requiring open-ended payment to out-of-state facilities cannot satisfy minimum constitutional nexus standards.

The Applicant reserves the right to provide comments to this condition once it is written.

8. **CUL-8 Data Recovery for DTC Maneuver Sites**

CUL-8 should be deleted. The PSA fails to provide substantial evidence that these thirty-two sites contribute to the proposed DTCCCL. Even if the Commission determines that these sites are contributing elements, they have been documented sufficiently such that no further mitigation is required. These types of features are already well documented in both the archaeological and historic record and are unlikely to provide subsurface data that would render it eligible. Furthermore, the CRMMP provides the necessary measures in which to assess any previously undiscovered buried artifacts found during construction monitoring. It should be noted that the Applicant, as part of unexploded ordnance (UXO) clearance, will conduct geophysical investigations of the site which will result in a subsurface mapping of anomalies. Subsurface metal anomalies detected will be excavated in accordance with **CUL-5**. Any additional data provided through the CRMMP process relating to DTC will be provided to the CPM. This construction element far exceeds the minimum requirements of **CUL-8**. Also, as noted in **CUL-2**, the Applicant has already agreed to pay the fee associated with further research associated with the proposed DTCCCL. Therefore, **CUL-8** is unnecessary.

~~**CUL-8 Data Recovery for DTC Maneuver Sites**~~

~~Prior to the start of ground disturbance or grading, boring, and trenching, as defined in the General Conditions for this project; surface grading or subsurface soil work during pre-construction activities or site mobilization; or mowing activities and heavy equipment use in loose or sandy soils, at the project site, access roads, and linear facilities, the project owner shall hire a PHA with the qualifications described in **CUL-2** to supervise the data recovery at those DTC Maneuver Sites that the project will impact. The project owner shall ensure that the CRS and the PHA submit for CPM review and approval a data recovery plan for the impacted DTC Maneuver Sites. The plan must include, but is not limited to, the following:~~

- ~~1. Prior to beginning data recovery, the PHA and all field crew members shall be trained by the DTCCCL Historical Archaeologist, or equivalent qualified person approved by the CPM and hired by the project owner should the DTCCCL Historical Archaeologist not be available, in the identification, analysis and interpretation of the artifacts, environmental modifications, and trash disposal patterns associated with the early phases of WWII land based U.S. army activities, as researched and detailed by the DTCCCL PI Historian and the DTCCCL Historical Archaeologist.~~
- ~~2. Prior to beginning the data recovery, the field crew members shall also be trained in the consistent and accurate identification of the full range of late nineteenth and early to mid-twentieth-century can, bottle, and ceramic diagnostic traits.~~
- ~~3. Prior to the start of ground disturbance or grading, boring, and trenching, as defined in the General Conditions for this project; surface grading or subsurface soil work during pre-construction activities or site mobilization; or mowing activities and heavy~~

CULTURAL RESOURCES

equipment use in loose or sandy soils, at the project site, access roads, and linear facilities, a geophysical survey is completed that meets these requirements:

- a. Use hand held magnetometer equipment (e.g., the Schonstedt GA 52C magnetic locator) that will detect buried metallic items or a dipole soil conductivity meter (e.g., the Geonics EM 031) that will detect changes in the soil that may indicate the presence of buried cultural materials and features.
- b. Identify significant buried deposits. Small or isolated finds (such as isolated nails or small and amorphous metal pieces) will not be recorded; only buried deposits representing multiple artifacts will be tested and possibly excavated.
- c. Analysis of the results of the geophysical survey and determination of which subsurface deposits are new features that will be tested, possibly excavated, and recorded as follows:
 - i. Four or more shovel test probes (STPs) will be used to ground truth each geophysical anomaly;
 - ii. Possible expansion to larger unit exposure will be done if buried deposits are present and a feature's vertical extent needs to be determined;
 - iii. Complete feature excavation by the PHA will be done of all buried deposits found by the geophysical survey, with attention to possible stratigraphy;
 - iv. Detailed in-field analysis of all artifacts found in buried deposits identified by the geophysical survey will be done, documenting the measurements and the types of seams and closures for each bottle, and the measurements, seams, closure, and opening method for all cans. Photographs will be taken of maker's marks on bottles, any text or designs on bottles and cans, and of decorative patterns and maker's marks on ceramics. Artifacts, unless unique, will not be collected.
 - v. All buried deposits will be mapped, measured, photographed, and fully described in writing. All contents of buried deposits will be mapped, measured, photographed, and fully described in writing.
 - vi. DPR site forms will be updated with information from the new features
4. The project owner shall ensure that the original site map shall be updated to include at minimum: landform features such as small drainages, any man-made features, the limits of any artifact concentrations and features (previously known and newly found in the geophysical survey), using location recordation equipment that has the latest technology with sub-meter accuracy (and to the standard of UTM 11 North or California Teale Albers, or equivalent).
5. The project owner shall ensure that the details of what is found at each site is presented in a letter report from the CRS or PHA, to which are attached the DPR form for the site updated with new features, which shall serve as a preliminary report for each site, as follows:
 - a. Letter reports shall address just one site;

CULTURAL RESOURCES

- b. ~~The letter report shall include, but is not limited to, a description of the schedule and methods used in the field effort, a preliminary tally of the numbers and types of features and deposits that were found, and a map showing the location of excavation units, including topographic contours and the site landforms.~~
- c. ~~The letter report shall make a recommendation on whether each site is a contributor to the DTTCL.~~
- 6. ~~The project owner shall ensure that the data collected from the field work shall be provided to the DTCCL PI Historian to assist in the determination of which, if any, of the historic-period sites are contributing elements to the DTCCL.~~
- 7. ~~The project owner shall ensure that the PHA analyzes all recovered data and writes or supervises the writing of a comprehensive final report of the data collection on impacted DTC Maneuver Sites. This report shall be included in the CRR (CUL 15). Relevant portions of the information gathered shall be included in the possible NRHP nomination for the DTCCL.~~

Verification:

- 1. ~~At least 120 days prior to ground disturbance, the project owner shall submit for CPM review and approval a data recovery plan for impacted DTC Maneuver Sites.~~
- 2. ~~At least 105 days prior to ground disturbance, the project owner shall notify the CPM that required crew training (in the identification, analysis and interpretation of the DTC artifacts, environmental modifications, and trash disposal patterns and in the consistent and accurate identification of the full range of late nineteenth and early to mid twentieth-century can, bottle, and ceramic diagnostic traits) has taken place.~~
- 3. ~~At least 90 days prior to ground disturbance, the project owner shall notify the CPM on what date the geophysical survey and data recovery on impacted DTC Maneuver Sites will begin.~~
- 4. ~~Within one week of completing data recovery at a site, the project owner shall submit to the CPM for review and approval a letter report written by the CRS and/or the PHA, evidencing that the data recovery at each impacted DTC Maneuver Sites site has been completed. When the CPM approves the letter report, ground disturbance may begin at the site location(s) that are the subject of the letter report.~~
- 9. **Page 4.3-189:** With regard to the requirement to develop a documentary focused on the infantry in the DTC, Applicant is aware that a film addressing this exact topic has already been prepared for the Rice Solar Energy Project and does not believe a second documentary is warranted; therefore, Applicant requests that CUL-9 be modified as shown below.

~~CUL 9 — Preparation of a Documentary Focused on the Infantry in the DTC~~

~~The project owner shall produce a high-definition, broadcast quality documentary on the training of the infantry and integrated infantry (including motorized infantry), army engineers, and armor in the Desert Training Center. Costs for the documentary (including pre- and post-production costs) shall be required not to exceed the industry average of \$4,500.00 per minute. The final edited documentary shall be at least 26 minutes in length, excluding titles and credits. An approximately 10-minute abbreviated version of the~~

CULTURAL RESOURCES

documentary shall also be produced using primary material from the 26-minute documentary. Copies of the resulting documentary film shall be presented to the Patton Museum, as well as the Infantry School at Fort Benning, Georgia.

Prior to the start of filming, the project owner shall provide the qualifications of the proposed production company to the Executive Director of the General Patton Memorial Museum for review and comment, and to the CPM for review and approval. The production company shall have experience in the creation of historic documentary-style videos, and shall provide evidence of the successful completion of at least three videos of similar quality from project development to release. A copy of any scope of work related to the production of the documentary shall be submitted to the CPM within 10 days of execution.

Prior to the start of filming, the project owner shall also submit the resume of a proposed production advisor to the CPM for review and approval. The production advisor shall be a qualified historian, with training and experience consistent with the requirements of the U.S. Secretary of Interior's Professional Qualifications Standards, as published in Title 36, Code of Federal Regulations, part 61. In addition, the advisor must have experience researching and documenting historic military resources, preferably within the DTCCL. The production advisor shall provide direction during production and post-production to ensure historical accuracy and provide assistance obtaining historic WWII documentation (e.g., military film and training footage, news clips, still photos, audio, and written transcripts of interviews) and the most recent information on Camp Hyder and the 77th Infantry Division in particular, and the DTC/C-AMA in general.

Historic film, still photos, re-creations, interview footage and audio tracks, and compatible, high-quality video footage of the subject areas taken prior to current filming may also be integrated into the final product. The original acquisition format shall be high definition, 16X9, 1080p digital format, using broadcast-level cameras and lenses.

Prior to the start of site mobilization, the production company shall make a filmed interview of Colonel (Ret.) Theodore ("Ted") Bell, a former company commander with the 307th Infantry Regiment of the 77th Infantry Division who was stationed at Camp Hyder in 1943 and participated in the maneuvers in June of that year.

Prior to the start of production editing, the owner shall submit a first draft script, storyboard, and description of other related project elements, including proposed finished length of the documentary (a minimum of 26 minutes of edited footage for the full-length version and 10 minutes for the abbreviated (excerpt) version), to the DTCCL PI Historian, production advisor, and Executive Director of the General Patton Memorial Museum for review and comment, and to the CPM for review and approval.

Prior to the start of Rio Mesa SEGF operations, the project owner shall submit the final cut, with voice-over and background music track, along with packaging proofs, including sample cover, disk label, and packaging materials, to the DTCCL PI Historian, production advisor, and Executive Director of the General Patton Memorial Museum for review and comment, and to the CPM for review and approval.

Concurrent with the start of Rio Mesa SEGF operations, the project owner shall provide the final approved full-length documentary to the General Patton Memorial Museum in a high

CULTURAL RESOURCES

definition format, suitable for mass market duplication, along with 500 DVD copies and 100 BluRay copies of the full length packaged documentary, suitable for resale. Ten DVD copies and five BluRay copies of the packaged documentary shall also be provided to the BLM Palm Springs South Coast Field Office and the CPM. The 10-minute excerpt shall be provided to all parties in a digital format compatible with the display requirements of the Museum and the webcasting requirements of the Energy Commission.

In conjunction with delivery of the final approved documentary in the designated format, the project owner shall provide a letter to the General Patton Memorial Museum confirming that the Museum is assigned and shall exclusively retain all DVD, BluRay, and video reproduction and sales rights, and broadcast television distribution rights of the production, both foreign and domestic, excepting use of excerpts from the documentary [including the 10-minute abbreviated documentary in any Bureau of Land Management or Energy Commission website related to DTC/C-AMA, southern California Desert history, or renewable energy projects within former DTC/C-AMA areas. The letter shall also confirm that the production company may retain copies of the production specifically for promotional and demonstration purposes only. Copies of the letter shall be sent to the CPM and the production company representative.

The project owner shall ensure that all raw footage acquired during the production of the documentary is submitted to the DTCCL PI Historian for use in the DTCCL study. Use of the footage for research purposes shall not be restricted. Ten DVD copies and five BluRay copies of the packaged documentary shall also be provided to the DTCCL PI Historian.

Verification:

1. Within 10 days of execution, the project owner shall submit to the CPM a copy of the scope of work associated with any contract related to the production of the documentary.
2. At least 15 days prior to the start of filming, the project owner shall provide the qualifications of the proposed production company to the Executive Director of the General Patton Memorial Museum for review and comment, and to the CPM for review and approval.
3. At least 15 days prior to the start of filming, the project owner shall submit the resume of a proposed production advisor to the CPM for review and approval.
4. At least 90 days prior to the start of site mobilization, the production company shall shoot the initial footage of the interview with Colonel Bell and obtain footage of films made during army training of infantry and armor forces in the DTC, with particular emphasis on Camp Hyder and other infantry camps within the DTC/C-AMA.
5. At least 30 days prior to the start of production editing, the project owner shall submit a first draft script, storyboard, and description of other related project elements, including proposed finished length of the documentary (a minimum of 26 minutes of edited footage), to the DTCCL PI Historian, production advisor, and Executive Director of the General Patton Memorial Museum for review and comment, and to the CPM for review and approval.
6. At least 90 days prior to the start of Rio Mesa SEGF operations, the project owner shall submit the final cut, with voice over and background music track, along with packaging proofs, including sample cover, disk label, and packaging materials, to the DTCCL PI Historian,

CULTURAL RESOURCES

production advisor, and Executive Director of the General Patton Memorial Museum for review and comment, and to the CPM for review and approval.

7. Concurrent with the start of Rio Mesa SEGf operations, the project owner shall provide the final approved documentary to the General Patton Memorial Museum in a high definition format, suitable for mass market duplication, along with 500 DVD copies and 100 BluRay copies of the full length packaged documentary, suitable for resale. Ten DVD copies and five BluRay copies of the packaged documentary shall also be provided to the BLM Palm Springs South Coast Field Office and the CPM.

8. In conjunction with delivery of the final approved documentary in the designated format, the project owner shall provide a letter to the Executive Director of the General Patton Memorial Museum confirming that the Museum is assigned and shall exclusively retain all DVD, BluRay, and video reproduction and sales rights, and broadcast television distribution rights of the production, both foreign and domestic, excepting use of excerpts from the documentary (including the 10 minute abbreviated documentary on any Bureau of Land Management or Energy Commission website related to DTC/C-AMA, military history, or energy projects in the southern California desert. The letter shall also confirm that the production company may retain copies of the production specifically for promotional and demonstration purposes only. Copies of the letter shall be sent to the CPM and the production company representative.

9. Within 180 days from the start of construction, the project owner shall ensure that all raw footage acquired during the production of the documentary is submitted to the DTCCL PI-Historian for use in the DTCCL study. Use of the footage for research purposes shall not be restricted. Ten DVD copies and five BluRay copies of the packaged documentary shall also be provided to the DTCCL PI-Historian.

10. **Page 4.3-187: PLEASE NOTE:** No condition was listed under **CUL-10**.

The PSA provides no evidence to support a finding of eligibility for the Palo Verde Irrigation District (PVID) as noted in the general and specific comments above. There will be no impacts to the existing drain crossings along the Bradshaw Trail (the existing road will be paved and the drain crossing will be reinforced by use of a Bailey's Bridge type structure, which will avoid impacts to the drain). In addition, the construction activities contemplated for crossing the two existing drains along 34th Avenue would be north of the existing structures and completely separate. The new crossings will span the drains without touching them and will not compromise the integrity of the features in PVID.

The Applicant reserves the right to provide comments to this condition once it is written.

11. **CUL-11 Worker Environmental Awareness Program (WEAP) Training**

Page 4.3-193: Please note one minor clarification to the condition to clarify halting construction only in the immediate area of the discovery not for the whole project as noted below.

Prior to, and for the duration of, ground disturbance, the project owner shall provide Worker Environmental Awareness Program (WEAP) training to all new workers within their first week of employment at the project site, along the linear facilities routes, and at laydown areas, roads, and other ancillary areas. The cultural resources part of this training shall be prepared by the CRS, may be conducted by any member of the archaeological team,

CULTURAL RESOURCES

and may be presented in the form of a video. During the training and during construction, the CRS shall be available (by telephone or in person) to answer questions posed by employees. The training may be discontinued when ground disturbance is completed or suspended, but must be resumed when ground disturbance, as described in detail in **CUL-1**, resumes.

The training shall include:

1. A discussion of applicable laws and penalties under law;
2. Samples or visuals of artifacts that might be found in the project vicinity;
3. A discussion of what such artifacts may look like when partially buried, or wholly buried and then freshly exposed;
4. A discussion of what prehistoric and historical archaeological deposits look like at the surface and when exposed during construction, and the range of variation in the appearance of such deposits;
5. Instruction that the CRS, alternate CRS, and CRMs have the authority to halt ground disturbance in the immediate 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, if the CRS, alternate CRS, or CRMs are not present, 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;
7. An informational brochure that identifies reporting procedures in the event of a discovery;
8. An acknowledgement form signed by each worker indicating that they have received the training; and
9. A sticker that shall be placed on hard hats indicating that environmental training has been completed. No ground disturbance shall occur prior to implementation of the WEAP program, unless such activities are specifically approved by the CPM.

Verification:

1. At least 30 days prior to the beginning of ground disturbance, the CRS shall provide the cultural resources WEAP training program draft text, including Native American participation, graphics, and the informational brochure to the CPM for review and approval.
2. At least 15 days prior to the beginning of ground disturbance, the CPM will provide to the project owner a WEAP Training Acknowledgement form for each WEAP-trained worker to sign.
3. Monthly, until ground disturbance is completed, the project owner shall provide in the Monthly Compliance Report (MCR) the WEAP Training Acknowledgement forms of workers who have completed the training in the prior month and a running total of all persons who have completed training to date.

12. **Page 4.3-194:** Please note minor clarifications to the condition below to add clarify and flexibility to the Applicant.

CULTURAL RESOURCES

CUL-12 Notice of Ground Disturbance, Construction Monitoring Program

Prior to the start of construction-related ground disturbance or grading, boring, and trenching, as defined in the General Conditions for this project; or surface grading or subsurface soil work during pre-construction activities or site mobilization; or mowing activities and heavy equipment use in loose or sandy soils at the project site, access roads, and linear facilities, the project owner shall notify the CPM ~~and all interested Native Americans~~ of the date on which ground disturbance will ensue. The project owner shall ensure that the CRS, alternate CRS, or CRMs monitor, ~~full-time,~~ all the above specified ground disturbance at the project site, along the linear facilities routes in California, and at laydown areas, roads, and other ancillary areas, to ensure there are no impacts to undiscovered resources and to ensure that known resources are not impacted in an unanticipated manner.

~~Full-time~~ a Archaeological monitoring for this project shall be the archaeological monitoring of ground-disturbing 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 areas where Native American artifacts may be discovered. 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 non-compliance 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. 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.

CULTURAL RESOURCES

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.

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 C 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:

1. At least 30 days prior to the start of ground disturbance, the CPM will notify all Native Americans with whom the Energy Commission communicated during the project review of the date on which the project's ground disturbance will begin.
2. 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.
3. 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.
4. 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.
5. 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.
6. 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.
7. 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

CULTURAL RESOURCES

all subsequent responses to Native American requests for notification, consultation, and reports and records.

13. **Page 4.3-196:** Please note minor clarifications to the condition/verification below.

CUL-13 Authority to Halt Ground Disturbance, Treatment of Discoveries

The project owner shall grant authority to halt ground disturbance in the immediate area of the discovery to the CRS, alternate CRS, and the CRMs in the event of a cultural resources 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 ~~CRS 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. If the discovery includes human remains, the project owner shall comply with the requirements of Health and Human Safety Code § 7050.5(b) and shall notify the CPM and the NAHC of the discovery of human remains. No action shall be initiated without direction from the CPM. Monitoring and daily reporting, as provided in other conditions, shall continue during the project's ground-disturbing activities elsewhere. After the discovery of human remains, cultural resources monitoring of ground disturbance shall continue or be initiated, and shall include a Native American monitor pursuant to requirements in these conditions of certification. 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 Native Americans, the CRS has notified all Native American groups that have requested to be notified in the event of such a discovery within 24 hours of the discovery.
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. Ground disturbance may resume only with the approval of the CPM.

CULTURAL RESOURCES

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, and CRMs have the authority to halt ground disturbance in the immediate 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. 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.
 3. Within 48 hours of the discovery of a resource of interest to Native Americans, the 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, and the CRS must inform the CPM when the notifications are complete.
 4. 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.
 5. 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.
14. **Page 4.3-198:** The Applicant will not be utilizing soil borrow and/or disposal sites so requests this condition be removed as non-applicable.

CUL 14 — Use of Soil Borrow and Disposal Sites

~~If fill soils must be acquired from a non-commercial borrow site or disposed of to a non-commercial disposal site, unless less than five-year-old surveys of these sites for archaeological resources are documented and approved by the CPM, the CRS shall survey the borrow and/or disposal site/s for cultural resources and record on DPR 523 forms any that are identified. When the survey is completed, the CRS shall convey the results and recommendations for further action to the project owner and the CPM, who will determine what, if any, further action is required. If the CPM determines that significant archaeological resources that cannot be avoided are present at the borrow site, other conditions shall apply. The CRS shall report on the methods and results of these surveys in the final CRR.~~

Verification:

1. ~~As soon as the project owner knows that a non-commercial borrow site and/or disposal site will be used, he/she shall notify the CRS and CPM and provide documentation of previous archaeological survey, if any, dating within the past five years, for CPM approval.~~
2. ~~In the absence of documentation of recent archaeological survey, at least 30 days prior to any soil borrow or disposal activities on the non-commercial borrow and/or disposal sites, the~~

CULTURAL RESOURCES

CRS shall survey the site/s for archaeological resources. The CRS shall notify the project owner and the CPM of the results of the cultural resources survey, with recommendations, if any, for further action.

15. **Page 4.3-198:** Please add the word monitoring in front of report in all instances in the condition and verification to clarify that this condition refers to the post-construction monitoring report not the Applicant's Draft Cultural Resources Technical Report.

CUL-15 Final Cultural Resources Monitoring Report

The project owner shall submit the final Cultural Resources Monitoring Report (CRMR) to the CPM for approval. The final CRMR shall be written by or under the direction of the CRS and shall be provided in the ARMR format. The final CRMR shall report on all field activities including dates, times and locations, results, samplings, and analyses. All survey reports, DPR 523 forms, data recovery reports, and any additional research reports not previously submitted to the California Historical Resource Information System (CHRIS) and the State Historic Preservation Officer (SHPO) shall be included as appendices to the final CRMR.

If the project owner requests a suspension of ground disturbance and/or construction activities, then a draft CRMR that covers all cultural resources activities associated with the project shall be prepared by the CRS and submitted to the CPM for review and approval. The draft CRMR shall be retained at the project site in a secure facility until ground disturbance and/or construction resumes or the project is withdrawn. If the project is withdrawn, then a final CRMR shall be submitted to the CPM for review and approval at the same time as the withdrawal request.

Verification:

1. Within 30 days after requesting a suspension of construction activities, the project owner shall submit a draft CRMR to the CPM for review and approval.
2. Within 90 days after completion of ground disturbance (including landscaping), the project owner shall submit the final CRMR to the CPM for review and approval. If any reports have previously been sent to the CHRIS, then receipt letters from the CHRIS or other verification of receipt shall be included in an appendix.
3. Within 10 days after CPM approval of the CRMR, the project owner shall provide documentation to the CPM confirming that copies of the final CRMR have been provided to the SHPO, the CHRIS, the curating institution, if archaeological materials were collected, and to the Tribal chairpersons of any Native American groups requesting copies of project-related reports.

Appendix A

1. **Page 4.3-272, Table A-3:** Applicant suggests revising Table A-3 Archaeological Resources Identified in the Rio Mesa SEGF Vicinity but Excluded from the PAA consistent with the information provided under separate and confidential cover in Confidential Attachment A, as applicable.
2. **Page 4.3-288, Table A-4:** Applicant suggests revising Table A-4 Archaeological Resources Identified in the Rio Mesa SEGF Vicinity but Excluded from the PAA and replace with the

CULTURAL RESOURCES

information provided in Attachment A, as applicable under separate and confidential cover in Confidential Attachment A.