

PMLevyCOLPEm Resource

From: Snead, Paul [paul.snead@pgnmail.com]
Sent: Tuesday, September 06, 2011 9:52 AM
To: 'Hambrick, Gordon A SAJ'; Bruner, Douglas
Cc: Palmer, John C SAJ; Pugh, David W SAJ; Collazo, Osvaldo SAJ; Kitchen, Robert; Dierolf, Amy C.
Subject: RE: LNP Draft Cultural Resources Special Conditions (UNCLASSIFIED)
Attachments: LNP Draft CR conditions 08-31-2011.PEF Comments.docx

Don:

As requested, attached please find the draft cultural resources special conditions with our comments/suggestions in revisions mode. Please let me know if you have any questions about our comments.

Thanks,

Paul Snead
Supervisor
Environmental Services, Projects & Construction Progress Energy paul.snead@pgnmail.com
(919) 546-2836

-----Original Message-----

From: Hambrick, Gordon A SAJ [<mailto:Gordon.A.Hambrick@usace.army.mil>]
Sent: Wednesday, August 31, 2011 11:32 AM
To: Snead, Paul; Bruner, Douglas
Cc: Palmer, John C SAJ; Pugh, David W SAJ; Collazo, Osvaldo SAJ
Subject: LNP Draft Cultural Resources Special Conditions (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

Good morning Paul:

As we have discussed at our last couple of meetings, please find attached draft cultural resources special conditions, for PEF's review. Please provide to me any comments/suggestions you may have. If possible by COB Tuesday, Sept. 6 would be good. After the Corps reviews your comments and makes changes as appropriate, we will coordinate the draft with the NRC and STOF.

Doug: Provided, FYI.

Oz: FYSA.

Thanks, Don.

Gordon A. (Don) Hambrick, III
Senior Project Manager
Panama City Permits Section
US Army Corps of Engineers
Jacksonville District
1002 West 23rd Street, Suite 350
Panama City, Florida 32401

Office: 850-763-0717, ext. 25
Fax: 850-872-0231

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From: Snead, Paul

Created By: paul.snead@pgnmail.com

Recipients:

"Palmer, John C SAJ" <John.Palmer@usace.army.mil>
Tracking Status: None
"Pugh, David W SAJ" <David.W.Pugh@usace.army.mil>
Tracking Status: None
"Collazo, Osvaldo SAJ" <Osvaldo.Collazo@usace.army.mil>
Tracking Status: None
"Kitchen, Robert" <robert.kitchen@pgnmail.com>
Tracking Status: None
"Dierolf, Amy C." <Amy.Dierolf@pgnmail.com>
Tracking Status: None
"Hambrick, Gordon A SAJ" <Gordon.A.Hambrick@usace.army.mil>
Tracking Status: None
"Bruner, Douglas" <Douglas.Bruner@nrc.gov>
Tracking Status: None

Post Office: WN000075.oak.zone1.progress-energy.com

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Options

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**Progress Energy Florida - Levy Nuclear Plant
(SAJ-2008-00490)**

Special Condition xx: Cultural Resources/Historic Properties:

a. ~~To the extent feasible, no~~ structure or work shall adversely affect or disturb properties listed in the National Register of Historic Places or those eligible for inclusion in the National Register.

b. *Cultural Resources Work Plan for the Proposed Levy Nuclear Plant Project, Levy, Citrus, Marion, Hernando, Sumter, Polk, Hillsborough, and Pinellas Counties, Florida (April 2011)*, Southeastern Archaeological Research, Inc (*Work Plan*) (Attachment #).

1. Prior to the start of any construction work or ground disturbing activities associated with any of the individual project components, as listed and identified in Table 1 of the *Work Plan*, the permittee shall implement the *Work Plan* to conduct a Phase I Cultural Resource Survey to identify any unknown archaeological sites and historical properties within the individual project component. The individual project components, as identified and listed in Table 1, include the transmission lines, the blowdown pipeline, site access/wetland mitigation parcels, and training site parcel.

2. The results of the Phase I Cultural Resource Survey shall be coordinated with the State Historic Preservation Officer (SHPO) and the US Army Corps of Engineers Regulatory Project Manager and Archeologist, for review and analysis. Pursuant to comments returned by the SHPO, measures shall be identified to avoid, minimize, or mitigate adverse impacts to historic properties listed, or eligible for listing in the National Register of Historic Places, or otherwise of archeological or historical value. Coordination will continue until all parties are satisfied that the requirements of Section 106 of the National Historic Preservation Act are fulfilled.

3. The permittee shall provide the results of the Phase I Cultural Resource Survey to the US Army Corps of Engineers Regulatory Project Manager, Native American Coordinator, and Archeologist, who will coordinate with and provide to the Tribal Historic Preservation Office (THPO) of concerned federally recognized Native American Tribes the results of the Phase I Cultural Resource Survey for review and comment. Pursuant to comments returned by the THPO, measures shall be identified to avoid, minimize, or mitigate adverse impacts to historic properties listed, or eligible for listing in the National Register of Historic Places, or otherwise of archeological or historical value. Coordination will continue until all parties are satisfied that the requirements of Section 106 of the National Historic Preservation Act are fulfilled.

Comment [11]: Archaeological excavation to mitigate impact to a site is considered an adverse effect.
The specific issue is with the first sentence, which says that:

"No structure or work shall adversely affect or disturb properties listed in the National Register of Historic Places or those eligible for inclusion in the National Register."

In 1999, the rules that regulate the National Historic Preservation Act were amended to eliminate archaeological excavation as an exception to the criteria of adverse effect, essentially making salvage or data recovery excavation an action that has the potential to "adversely affect or disturb" an archaeological site. The specific section of the rule that was amended is 36CFR Part 800.5(a)(2). It is now necessary for the federal agency to justify conducting data recovery excavation or salvage rather than avoidance or preservation. This amendment was at the request of Native American tribes. Consequently, there are three reasons why the first sentence is problematic:

- 1)By saying that no actions will adversely affect or disturb an NR-eligible site, we have effectively said that we will not conduct archaeological data recovery excavations or salvage excavations.
- 2)The sentence, if interpreted in this fashion, directly contradicts paragraphs 2, 3, and 4e which specify that mitigation (i.e., data recovery) or salvage may be conducted.
- 3)The first sentence could be argued to insist that PEF avoid any and all NR-eligible sites, thereby limiting options if avoidance turns out not to be possible.

Although the "archaeological excavation as adverse effect" issue is typically addressed in an MOA by stating that the site is eligible only for its research potential under NR Criterion D, contains no burials, and is not a TCP, suggest rewording the first sentence to something like:

"To the extent feasible, no structure or work shall adversely affect or disturb properties listed in the National Register of Historic Places or those eligible for inclusion in the National Register."

This provides for consideration of alternatives to avoidance (i.e., mitigation) and does not contradict the mitigation and salvage language in subsequent paragraphs.

4. No construction work or ground disturbing activities associated with any of the individual project components, as listed and identified in Table 1 of the *Work Plan*, may proceed until written verification is issued to the permittee by the Corps that the permittee has complied with the provisions of Special Condition xx.b.1, 2 & 3. The Corps shall provide a written response to the permittee's notice of compliance within 45 days of receipt.

c. If, during the initial ground disturbing activities and construction work, there are archaeological/cultural materials unearthed (which shall include, but not be limited to: pottery, modified shell, flora, fauna, human remains, ceramics, stone tools or metal implements, dugout canoes or any other physical remains that could be associated with Native American cultures or early colonial or American settlement), the permittee shall immediately stop all work in the vicinity and notify SHPO at 850-245-6333 and the Corps Regulatory Project Manager to assess the significance of the discovery and devise appropriate actions, including salvage operations. Based, on the circumstances of the discovery, equity to all parties, and considerations of the public interest, the Corps may modify, suspend or revoke the permit in accordance with 33 CFR Part 325.7.

d. In the unlikely event that human remains are identified, they will be treated in accordance with Section 872.05, Florida Statutes; all work in the vicinity shall immediately cease and the local law authority, the SHPO-State Archaeologist and the Corps Regulatory Project Manager shall immediately be notified. Such activity shall not resume unless specifically authorized by the SHPO-State Archaeologist and the Corps.