

Attachment E
Dairy General Waste Discharge Requirements
Order R1-2019-0001

Tribal Cultural Resources Mitigation Program

This attachment for the General Waste Discharge Requirements for Dairies in the North Coast Region (GWDR) describes procedures dairy operators must follow under specific situations to protect tribal cultural resources (TCRs) (reference: GWDR Attachment E – CEQA Initial Study/Mitigated Negative Declaration (IS/MND) for this dairy permit project). Dairies are required to comply with this attachment as part of the GWDR. As discussed below, a new dairy operation may be subject to a project level CEQA analysis. The mitigation measures outlined in the GWDR are not intended to replace those that may be developed and implemented by the appropriate local land use authorities and other public agencies with permitting authority over a specific project.

TCRs are defined in California Public Resources Code (PRC) section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is:

- *Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in PRC section 5020.1(k), or*
- *A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of PRC Section 5024.1.*

To identify and protect TCRs at all dairies, including existing, new, expanding, and reopening of inactive dairies, the dairy owners and operators (Permittee) must comply with the appropriate mitigation measures described below. Any information regarding TCRs obtained during tribal consultation must comply with all applicable laws related to confidentiality and public disclosure of the information.

1. Procedures for TCR Evaluation at New, Expanding, or Reopening Dairies¹:

Prior to GWDR enrollment of any new, expanding, or inactive dairies to be reopened, the dairy project must demonstrate compliance with the IS/MND (GWDR Attachment

¹Certain types of activities associated with dairy expansion, creation, and reopening will likely require a separate permit and CEQA analysis by the State, local county, or city permitting department.

E). The Permittee's designated Professional Archaeologist² or the Regional Water Board shall perform a records search of Native American archaeological resources at the appropriate regional information center of the California Historical Resources Information System (CHRIS). The results must be documented as discussed in the IS/MND and in the GWDR. The requirement to perform a CHRIS records search may be satisfied by using the results of a previous CHRIS records search completed for the specific parcel or parcels where the new, expanding, or inactive dairy activities are proposed to occur.

The Permittee shall promptly retain a Professional Archaeologist to evaluate the CHRIS positive result if the site has not previously been evaluated and specific mitigation measures developed, to recommend appropriate measures to avoid damaging effects to a TCR. If Native American archaeological sites or artifacts are identified in a CHRIS positive result, then the Permittee or their designated Professional Archaeologist shall contact the culturally affiliated California Native American tribes of the CHRIS positive result. In the case of a new, expanded, or reopened inactive dairy where the Regional Water Board must conduct additional CEQA analysis, the Regional Water Board may consult with the local California Native American tribe prior to circulation of CEQA documents in accordance with AB 52 requirements.³

If the property has **not** been subject to a prior **physical** cultural resources survey, then one must be done. The Professional Archaeologist shall

- A. Request a Sacred Lands Inventory for the project area from the Native American Heritage Commission;
- B. Contact the local tribes about the project to inquire about TCRs in the project area;
- C. Conduct a **pedestrian** survey of the property;
- D. Record potential historical and archaeological resources on DPR forms; and
- E. Write a report of their findings which shall be submitted to the appropriate regional Information Center of the CHRIS and the Regional Water Board.

If the property **has** been the subject of a previous survey, then the permittee can use the report from the previous survey or the records search results of the dairy parcel to demonstrate compliance with CEQA for that portion of the property surveyed so long as the area previously surveyed did not identify any TCRs. If the report or prior report finds no TCRs, then no further action is required for that portion of the property.

If the archaeologist's pedestrian survey and research reveals a TCR or a Sacred Lands inventory positive result, then the Professional Archaeologist, and/or the Regional Water Board shall develop appropriate mitigation and conservation measures in consultation with the affected California Native American tribe. If the affected tribe has no comments within **14 days** of a request for comments on proposed mitigation and conservation measures, then the Permittee shall add the final conservation measures

² A Professional Archaeologist is one that is qualified by the Secretary of the Interior, Register of Professional Archaeologists, or Society for California Archaeology.

³ See generally PRC §§ 21080.3.1, 21080.3.2, 21082.3, 21084.2.

recommended by their archaeologist to the applicable CEQA document for the new, expanding, or reopening of the inactive dairy project. If the affected tribe submits comments within **14 days** of a request for comments, then the Permittee shall carefully consider any comments or mitigation measure recommendations submitted by the culturally affiliated California Native American tribes with the goal of conserving TCRs with appropriate dignity. Mitigation and conservation measures to consider include: avoidance of the area, fencing with flash grazing, soil capping, onsite burial, or other equally protective measures (see Mitigation Measures to Protect TCR Sites on Dairies in Section 4 below). The Permittee shall provide a copy of the final mitigation and conservation measures to any culturally affiliated California Native American tribes identified by the Native American Heritage Commission and to the Regional Water Board Executive Officer. Final mitigation measures are subject to approval by the Regional Water Board Executive Officer.

New dairies will likely be subject to a project-specific CEQA analysis by a county, city, or state agency for evaluation and approval of grading, building construction, and other environmental impacts. Expanding or reopening inactive dairies may include activities that require project-specific CEQA analysis, depending upon the need for grading, construction, or any other environmental impacts that may be caused by operation of the expanded or reopening of the inactive dairy. As such, the conclusions and development of mitigation measures by local land use authorities and other public agencies as they relate to potential environmental impacts for new, expanding or reopening dairies may be different than those determined in this GWDR and its analysis of potential environmental impacts. Therefore, future lead agencies should base their findings on the site-specific information developed for the project.

The Permittee shall notify the Regional Water Board Executive Officer prior to applicable CEQA document circulation if they receive a CHRIS positive result or Sacred Lands Inventory positive result.

Prior to enrollment in the GWDR, new, expanding or inactive dairies to be reopened must demonstrate compliance with CEQA and, if necessary, submit any project level CEQA analysis and associated mitigation measures to the Regional Water Board. In some instances, the Permittee may be required to apply for an individual permit.

2. Procedures for Discovery During Significant Ground Disturbing Activities on All Dairies:

If any suspected archaeological materials or indicators⁴ are uncovered or discovered during significant ground disturbing dairy activities that are regulated under this

⁴ Archaeological materials or indicators may include, but are not limited to: arrowheads and chipped stone tools; bedrock outcrops and boulders with mortar cups; ground stone implements (grinding slabs, mortars, and pestles) and locally darkened midden soils containing some of the previously listed items plus fragments of bone, fire affected stones, shellfish, or other dietary refuse.

GWDR, then those significant ground disturbing dairy activities shall immediately cease within 50 feet of the find (100-foot diameter circle). Examples of significant ground disturbing dairy activities may include: new deep ripping, trenching, excavation, road construction, road reconstruction, or pond construction.⁵ As soon as practicable following discovery, the Permittee shall consult a Professional Archaeologist to document and assess if the find is a historical resource pursuant to PRC section 5024.1(c) or a unique archaeological resource pursuant to PRC section 21083.2(g).

If the Professional Archaeologist determines that the find **is not** a Native American archaeological site, then the dairy operator may continue dairy operations at that site in compliance with all applicable laws and regulations related to archaeological discoveries as advised in writing by the Professional Archaeologist and approved by the Regional Water Board.

If the Professional Archaeologist determines that the find **is** a Native American archaeological site, then the Permittee or their designated Professional Archaeologist shall notify the Native American Heritage Commission within seven days of the discovery and request a list of any California Native American tribes that are potentially culturally affiliated with the discovery. The Permittee or their designated Professional Archaeologist shall notify any potentially culturally affiliated California Native American tribes of the discovery within 48 hours of receiving the list from the Native American Heritage Commission. The Professional Archaeologist shall develop proposed mitigation measures, which may include those listed in Mitigation Measures to protect TCR Sites on Dairies (Section 4 below) as necessary. The proposed mitigation measures shall be submitted to the culturally affiliated California Native American tribes. If the affiliated tribe has no comments on proposed mitigation measures within **14 days** of a request for comments, the Permittee shall implement the final mitigation measures recommended by their archaeologist. A copy of the proposed mitigation measures shall be submitted to the Regional Water Board and the affiliated tribe prior to implementation.

If the affiliated tribe submits comments within **14 days** of a request for comments, then the Permittee will carefully consider any comments and mitigation measure recommendations submitted by the tribe with the goal of conserving TCRs with appropriate dignity. The Permittee shall provide a copy of the final proposed mitigation measures to the culturally affiliated California Native American tribes identified by the Native American Heritage Commission and to the Regional Water Board Executive Officer. In the event that the tribe and the landowner cannot reach an agreement, the Regional Water Board Executive Officer shall require mitigation measures such as from the list in Section 4 below. Upon tribe/landowner agreement or Executive Officer approval, dairy activities can resume within the affected zone.

⁵ Ongoing dairy activities that are not significant ground disturbing activities will generally include grazing, fertilizing, irrigation, and other similar activities.

Previously documented areas with archaeological material or indicators that have an archaeologist report with mitigation measures that continue to prevent significant impacts, are exempt from this section provided the Permittee avoids any significant adverse impacts to TCRs. If mitigation measures to protect the archaeological site are unclear or undocumented, then the Permittee must consult a Professional Archaeologist as described above. The Permittee must send a copy of the archaeology reports to the Regional Water Board and the affected tribe with a statement of protection measures for review of CEQA compliance.

Nothing in the Order should be construed as the Regional Water Board granting the authority to any third-party access to private land.

3. Mitigation Measures for Treatment of Human Remains:

Upon the discovery of any human remains at a permitted property, the Permittee shall immediately comply with Health and Safety Code section 7050.5 and, if applicable, PRC section 5097.98. The following actions shall be taken immediately upon the discovery of human remains:

All activities, including livestock grazing, in the immediate vicinity of the discovery shall stop immediately. The Permittee shall immediately notify the county coroner. Ground disturbing activities shall not resume until the requirements of California Health and Safety Code section 7050.5 and, if applicable, PRC section 5097.98, have been met. The Permittee shall ensure that the human remains are treated with appropriate dignity.

4. Mitigation Measures to Minimize and Avoid Significant Adverse Impacts to TCR Sites on Dairies:

Direct and indirect impacts to TCRs could occur from dairy operations. Direct impacts from cattle to TCR sites may include significant ground disturbance activities especially around wet areas such as troughs, streams, and springs. Impacts can occur in areas where animals congregate and habitually walk through, including stream crossings and steep banks. Cattle wallowing can also cause subsurface impacts. Direct impacts can also occur from dairy operations such as excavation for retention ponds, trenching for irrigation lines or conduit, grading roads that go through TCR sites, and deep tilling of fields. Indirect impacts can occur from overgrazing and the loss of vegetation that holds the soil intact. Areas of high traffic and corrals where vegetation is denuded may also experience erosion.

The following are examples of mitigation measures that, if feasible for a given site, may be used to minimize and avoid significant adverse impacts to TCRs sites:

- A. Avoidance of the site;
- B. Confidentiality of the location of the site;

- C. Fence off or cap-in-place areas of very high sensitivity such as burial and cemetery sites;
- D. Identify equipment travel routes around sensitive TCR sites;
- E. Heavily used wet areas, such as troughs, can be paved or moved from sensitive areas to areas that are not sensitive or are less sensitive;
- F. Conduct frequent walk-throughs of the sensitive TCR sites to assess pasture conditions;
- G. Restrict grazing in TCR sites to seasonally dry times of the year;
- H. Implement more frequent pasture rotation in the sensitive areas to lessen impacts from grazing;
- I. Use aboveground irrigation lines or route irrigation lines around TCR sites;
- J. Restrict new impacts at highly disturbed areas;
- K. Provide workers training (develop brochures) about potential TCR resources in the area;
- L. Protect the cultural character and integrity of the resource; and
- M. Other effective mitigation measures that reduce impacts to TCR sites to a less than significant level.

Note that not all mitigation measures will apply to individual dairies. Appropriate selection of the mitigation measures above as tailored to a project's individual impacts will reduce impacts to a less than significant level.

Previously documented areas, with archaeological material or indicators that have an archaeologist report and are employing mitigations that continue to prevent significant impacts, are exempt from this section provided the Permittee continues to avoid any significant adverse impacts to TCR sites. If mitigation measures to protect the site are unclear or undocumented, then the dairy Permittee must consult a Professional Archaeologist as described in Section 2 above.