

Annex 2D

Equivalence Matrix: Physical Cultural Resources

Objectives and Operational Principles per OP 4.00 Table A1	Government of India (GoI) Legal Framework	POWERGRID Environmental and Social Policy and Procedures (ESPP)	Gap Analysis POWERGRID ESPP	Recommended Gap Filling Measures for POWERGRID ESPP
<p>Objectives To assist in preserving physical cultural resources and avoiding their destruction or damage. PCR includes resources of archaeological, paleontological, historical, architectural, religious (including graveyards and burial sites), aesthetic, or other cultural significance.</p>	<p>According to the 1950 Constitution of India, it shall be the duty of every citizen to value and preserve the rich heritage of the composite culture (Article 51A (f)).</p> <p>PCRs are primarily regulated in:</p> <ul style="list-style-type: none"> • The Antiquities and National Treasures Law of 1972 (ANTL) as well as the Rules 1973 is designed to regulate trade in antiquities and art treasures, and provides the Government with the authority to acquire 	<p>The ESPP aims to “[a]void areas of...cultural significance.” (Preface)</p> <p>“For selection of optimum route, the following criteria are taken into account:(ii) the monument of cultural or historical importance is not affected by the route of the transmission line;...”</p>	<p>Partial Equivalence There is partial equivalence with this objective. The ESPP does not define what is included within the definition of “areas of cultural significance,” or “monuments of cultural or historical importance.” Nor does the ESPP cite any of the applicable</p>	<p>The ESPP should be revised to include all resources of archaeological, paleontological, historical, architectural, religious (including graveyards and burial sites), aesthetic, or other cultural significance within the purview of the its policies and procedures..</p>

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	<p>specified treasures for preservation in public places. The ANTL defines antiquities to include “any article, object or thing of historical interest,” beyond those specified in the Act, “[w]hich has been in existence for not less than one hundred years” or “any manuscript record or other document...of scientific, historical, literary or aesthetic value, which has been in existence for not less than seventy-five years.” (2 (1))</p> <p>It is also necessary to conform to the various notifications under the various provisions of the Antiquities and Art Treasures Act, 1972 and Rules, 1973</p>		<p>legislation pertaining to PCR.</p>	

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	<ul style="list-style-type: none"> • The Ancient Monuments and Archaeological Sites and Remains Act of 1958 (AMASRA) and the accompanying Ancient Monuments and Archaeological Sites and Remains Rules of 1959 (AMASRR) provide the Central Government with the authority to declare ancient monuments, etc. as “Protected Monuments” of national importance and, for this purpose to contractually define “owners”, (i.e. guardians or “Director Generals” (DGs) of the monuments). For purposes of the Act, “Ancient Monuments” are defined to include “any structure, monument, tumulus or place of internment, or any cave, rock-sculpture, 			

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	<p>inscription or monolith which is of historical, archeological interest and which has been in existence for not less than 100 years (Section 2) The Act also gives the Central Government the authority to declare designated areas surrounding such monuments and sites as “protected areas” and prohibits the construction of any building...or utilis[ation] of [protected areas] without the permission of the Central Government.” (Sections 2(i) and 19)</p> <p>District Collectors (DGs) are authorized to enter into agreements with DGs to restrict the owners’ right to use the monument for any purpose , destroy, remove, alter or deface</p>			

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	<p>the monument or build on or near the site of the monument.” Such agreements may also include clauses regarding terms and conditions of public access to such monuments. (Section 6). The Act also provides that “No person, including the owner or occupier shall construct any building within the protected area ...or utilize such area...without the permission of the Central Government.” (Section 19)</p> <p>AMASRR places restrictions on access to (including archeological excavation of) protected monuments and sites. It provides that “[n]o person shall under take any construction...within a protected area except</p>			

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	<p>[with] permission granted ...by the Central Government....Application for permission [for any construction activity] within a protected area shall be made...at least three months before the commencement of construction.” (Section 10) The Act contains annexed lists of protected monuments and sites and model applications for licenses.</p> <p>The Ancient Monuments Preservation Act, 1904 which was repealed, to the extent it is not inconsistent with the AMASRA, is still applicable with the regard to the monuments that have been protected under it.</p> <p>The Indian Treasure</p>			

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	<p>Trove Act, 1878 is applicable</p> <ul style="list-style-type: none"> • Under the Scheduled Tribes and Other Traditional Dwellers (Recognition of Forest Rights) Act of 2006 (FRA), forest rights holders are “empowered to ensure that “the habitat of forest dwelling Scheduled Tribes and other traditional forest dwellers is preserved from any form of destructive practices affecting their cultural and natural heritage.” <p>Under PESA the Gram Sabha is competent to safeguard and preserve its customs, cultural identity and customs and community resources. (See Section 4(d)) These rights need to be</p>			

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	<p>respected.</p> <p>Provisions of the EIA Notification also apply to PCR. (see below)</p>			
<p>Principles 1. Use an environmental assessment (EA) or equivalent process to identify PCR and prevent or minimize or compensate for adverse impacts and enhance positive impacts on PCR through site selection and design.</p>	<p>Under the EIA Notification an Application for Prior Environmental Clearance (EC) requires the use of prescribed Form 1 and, in specified cases, Supplementary Form 1A. Form 1 of the EIA Notification requires the applicant for Environmental Clearance to “identify any...areas protected under international conventions, national or local legislation for their ...cultural, landscape...or other related value.” (EIA, Notification, Section 6,Form 1) Form 1A of the EIA</p>	<p>As part of the Scoping process for transmission lines, POWERGRID examines “various route alternatives through Survey of India toposheets and census records and...identify[ies] social sensitive areas such as ...cultural and historical areas.”(5.1.2.i)</p> <p>“Due to the inherent flexibility in routing transmission lines, importance is accorded to significant cultural properties to avoid them totally. The Archeological Survey of India... is consulted while finalizing route alignment. Similarly substations are located in</p>	<p>Partial Equivalence</p> <p>There is partial equivalence to this Operational Principle. Mitigation requirements do not provide for the enhancement of positive impacts on PCR</p>	<p>The ESPP could be revised to provide for include mitigation requirements that provide for the enhancement of positive impacts on PCR</p>

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	<p>Notification applies to construction projects and requires project proponents to provide “full information...and Whenever necessary...explanatory notes.” Among other issues the proponent is required to identify is the proximity of “any anthropological or archeological sites or artefacts” or “obstruction of any view, scenic amenity or landscapes.” (EIA Notification, Section 6, Form 1A]</p>	<p>such as way that the cultural property sites and structures are best avoided.” (2,2)</p> <p>Alternatives assessments undertaken as part of EA include “historical/cultural monument” among the criteria for transmission line route and substation site selection. (Appendix XXV).</p>		
<p>2. As part of the EA, as appropriate, conduct field based surveys, using qualified specialists.</p>	<p>The AMASR prescribes an application format for requesting permission for construction within a protected area. It requires site plan showing the location of the proposed construction in relation to</p>	<p>“The site/field staff will conduct spot verifications to explore available options in order to avoid socially sensitive areas [such as ...cultural and historical areas].” (5.1.2.ii)</p>	<p>Partial Equivalence</p> <p>There is partial equivalence with this Operational Principle. There</p>	<p>The ESPP should be revised to provide for the use of qualified specialists in conducting field based surveys</p>

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	<p>the protected area and an undertaking to observe the provisions of the AMASRA. (Third Schedule, Form 1)</p> <p>The EA Notification requires that “a public hearing” be held “at the site or in its close proximity, for ascertaining concerns with local affected persons.” (7.III.(ii)(a)</p> <p>The EIA Authorities at the National and State Levels comprise of qualified professionals. The State Environmental Approval Committees also consist of qualified professionals.</p> <p>The FRA requires consultations with tribes, which have the duty to preserve their cultural and</p>		<p>is no procedure to use qualified specialists in conducting field based surveys.</p>	

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	natural heritage (2006 Recognition of Forest Rights Act Section 5).			
3. Consult concerned government authorities, relevant non-governmental organizations, relevant experts and local people in documenting the presence and significance of PCR, assessing the nature and extent of potential impacts on these resources, and designing and implementing mitigation plans.	<p>The AMASRA provides that an “archeological officer¹ or an officer authorized by him...may enter upon and make excavations in any protected area.” (Section 21)</p> <p>FRA provides for consultations with the Central government, state governments and tribal communities for the documentation of PCR (Section 5).</p> <p>As part of the Forest Clearance process, the Deputy Conservator of Forests is required to</p>	<p>Under the ESPP, “[P]ublic consultation [is] an integral part of the process throughout the planning and execution of a project. (ESPP 2.6)</p> <p>“The Archeological Survey of India... is consulted while finalizing route alignment.” (2.2)</p>	<p>Partial Equivalence</p> <p>There is partial equivalence to this Operational Principle. There is no provision to consult non-governmental organizations, relevant experts in assessing the nature and extent of potential impacts and designing and implementing implementation measures.</p>	<p>The ESPP should be revised to provide for consultation with non-governmental organizations, relevant experts in assessing the nature and extent of potential impacts and designing and implementing implementation measures.</p>

¹ The AMASRA defines an “archeological officer” as “an officer of the Department of Archeology of the Government of India not lower than the rank of Assistant Superintendent of Archeology.” (Section2 (c).

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	submit a form stating whether “any protected archeological/heritage site...or any other important monument is located in the area. If so, details need to be provided to the “competent authority” and a “NOC [No Objection Certificate] must be obtained “if required.”			
4. For materials that may be discovered during project implementation, provide for the use of “chance find” procedures in the context of the PCR management plan or PCR component of the environmental management plan.	The AMASRR provides that for any proposed archeological excavation “or other like operation” in any area” that is not protected” must request three-month prior authorization from the Central Government” providing (Sections 24-26): (i) name, location and other details of the site; (ii) nature of antiquities previously found;	None.	No Equivalence. There is no equivalent procedure for “chance finds” during project implementation.	The ESPP should be revised to develop a procedure for “chance finds” during project implementation.

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	<p>(iii) details of previous explorations, if any; (iv) purpose of the excavation or operation; (v) proposed extent of the excavation or operation (a plan of the site in triplicate showing in red outline the extent of the proposed excavation or operation should be attached); (vi) proposed duration of the excavation or operation; (vii) amount of the proposed expenditure on the excavation or operation; and (viii) name and status of the director of the excavation or operation.</p> <p>The Indian Treasure Trove Act, 1878 is also applicable and needs to be considered. Under this Act, there is a procedure</p>			

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	prescribed on finding treasure including notice by finder of “treasure” (Section 4), which defines the role of Collector, penalties etc.			
5. Disclose draft mitigation plans as part of the EA or equivalent process, in a timely manner, before appraisal formally begins, in an accessible place and in a form and language that are understandable to key stakeholders.	<p>Under the Environmental Notification (EIA Notification) the EIA document is required to contain a “[d]escription] of mitigation measures incorporated into the project.” (EIA Notification, Section 7, Appendix III)</p> <p>Under the Environmental Notification, the regulatory authority is required to make the Draft EIA report available for inspection</p>	<p>All relevant information about the project and details of socio-economic survey, Rehabilitation Action Plan (RAP), IEAR etc. shall be available at the designated place (Public information Centre/library) of each substations and will be shared with the public or any interested persons whenever asked/required. (ESPP, Appendix XVIII³)</p> <p>The IEAR includes “measures...to either... avoid or</p>	<p>Partial Equivalence</p> <p>POWERGRID’s ESPP requirements on public disclosure of the IEAR is partially equivalent to the requirements of this Operational Principle to the extent that . the IEAR contains the</p>	<p>The ESPP should be revised especially for making it available in a language that is easily understandable to the PAPs.</p>

³ This statement can be found in the electronic version of the ESPP posted on POWERGRID’s website at 4-ESPPVol-II_120405[1][.pdf However, it is not replicated in the hard copy of the ESPP.

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	and a notified place during normal business hours prior to and up to the date of the public hearing and prior to Appraisal. ² (EIA Notification 7(i) III (vi.)	mitigate...impact[s] and describes “the monitoring plan and...proposed organization support structure...” (Appendix XXXI)	elements of a draft mitigation plan and requires its disclosure in an accessible location (substation). However it does not require that the IEAR be made available “in a form and language available to key stakeholders.”	

² Under the EIA Notification, Appraisal is defined as “the detailed scrutiny by the EAC/SEAC of the application and other documents, including the Final EIA report, outcome of public consultations, including public hearing proceedings submitted by the applicant to the regulatory authority concerned for grant of environmental clearance.”