United States Department of the Interior

BUREAU OF LAND MANAGEMENT
California Desert District
22835 Calle San Juan de Los Lagos
Moreno Valley, California 92553
www.ca.blm.gov

JAN 15 2016

In Reply Refer To:
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RECEIVED
JAN 19 2015
BY:_____

Cynthia Gomez
Tribal Advisor
Governor's Office of the Tribal Advisor
1550 Harbor Blvd Ste 100
West Sacramento, CA 95691

Subject: Bureau of Land Management (BLM) Land Use Plan Amendment (LUPA) Programmatic Agreement development as part of Phase 1 of the Desert Renewable Energy Conservation Plan (DRECP)

Dear Ms. Gomez:

The Bureau of Land Management (BLM) is continuing our efforts to inform and consult with you regarding the BLM Land Use Plan Amendment (LUPA) as Phase 1 of the Desert Renewable Energy Conservation Plan (DRECP). The BLM consulted with the DRECP consulting parties to develop a Programmatic Agreement (PA) pursuant to Section 106 of the National Historic Preservation Act. The BLM assembled a working group to develop the first draft of the PA, held five consulting party meetings, and circulated three drafts of the full PA to all consulting parties to solicit feedback. The purpose of this letter is to provide you with the Final PA, and to invite you to sign the PA as a Concurring Party.

Final Programmatic Agreement

The BLM is pleased to transmit the Final PA for the BLM LUPA (Enclosure 1) and to invite you to participate in its implementation by signing the PA as a Concurring Party. The Final PA is also available online at http://drecp.org/section106/. The BLM, as the overall lead federal agency for this project and the lead for Section 106, has coordinated and consulted with more than 350 consulting parties including: the Advisory Council on Historic Preservation; the State Historic Preservation Office; 44 Federally-recognized Indian Tribes and 7 non-federally recognized tribal organizations; other federal, state, and local agencies; museums and historic societies; universities; representatives from the renewable energy industry; other interested parties; and the public on the development of this PA. The PA, as a binding contract between the parties, ensures that historic properties will continue to be taken into account in the manner described in the PA.

Enclosed with this letter you will also find four copies of your signature page (Enclosure 2). If you wish to participate as a Concurring Party to this PA, we ask you to please sign on all four pages and return three of these originals back to the following address:

Attention: Tiffany Arend, Archaeologist
Bureau of Land Management
California Desert District
22835 Calle San Juan de los Lagos
Moreno Valley, CA 92553

Please keep one signed original page with the enclosed copy of the Final PA for your records. Please return the three signed pages by **February 4, 2016**, or inform us if you elect not to concur and participate in the PA. The BLM will present the Final PA, with all Concurring Party signatures, to the Signatories for execution in February 2016. Signed signature pages returned after that date will still be accepted, however, they may not be included in the document that is presented to the Signatories for execution in February.

In the meantime, if you have any other questions or concerns about the DRECP please do not hesitate to contact the BLM. You can contact Tiffany Arend, Archaeologist, by telephone at (951) 697-5365, or by email at DRECP106@blm.gov. We look forward to hearing from you regarding the Final PA for the Land Use Plan Amendment as Phase 1 of the DRECP.

Sincerely,

For Teresa A. Raml
District Manager

Enclosures (2):
Final LUPA Programmatic Agreement
Four (4) signature pages to the PA

Concurring Party

GOVERNOR'S OFFICE OF THE TRIBAL ADVISOR

BY: _____ DATE: _____

TITLE: _____

Concurring Party

GOVERNOR'S OFFICE OF THE TRIBAL ADVISOR

BY: _____ DATE: _____

TITLE: _____

Concurring Party

GOVERNOR'S OFFICE OF THE TRIBAL ADVISOR

BY: _____ DATE: _____

TITLE: _____

Concurring Party

GOVERNOR'S OFFICE OF THE TRIBAL ADVISOR

BY: _____ DATE: _____

TITLE: _____

PROGRAMMATIC AGREEMENT
AMONG
THE BUREAU OF LAND MANAGEMENT – CALIFORNIA, THE CALIFORNIA OFFICE OF HISTORIC PRESERVATION, AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, REGARDING RENEWABLE ENERGY DEVELOPMENT ON A PORTION OF PUBLIC LANDS ADMINISTERED BY THE BUREAU OF LAND MANAGEMENT - CALIFORNIA

WHEREAS, in August 2005, the United States Congress enacted the Energy Policy Act of 2005, Public Law 109-58. In Section 211 of this Act, Congress directed that the Secretary of the Interior (the "Secretary") should, before the end of the 10-year period beginning on the date of enactment of the Act, seek to have approved non-hydropower renewable energy projects located on the public lands with a generation capacity of at least 10,000 megawatts of electricity; and

WHEREAS, by Secretarial Order No. 3285 issued March 11, 2009, amended February 22, 2010, the Secretary stated as policy that encouraging the production, development, and delivery of renewable energy is one of Department of the Interior's (DOI) highest priorities and that agencies and bureaus within the DOI will work collaboratively with each other, and with other Federal agencies, departments, states, local communities, and private landowners to encourage the timely and responsible development of renewable energy and associated transmission while protecting and enhancing the Nation's water, wildlife, and other natural resources; and

WHEREAS, by Secretarial Order No. 3330 issued October 31, 2013 the Secretary established a department-wide mitigation strategy to ensure consistency and efficiency in the review and permitting of infrastructure development projects and in conserving our Nation's valuable natural and cultural resources by (1) using a landscape-scale approach to identify and facilitate investment in key conservation priorities in a region, (2) early integration of mitigation considerations in project planning and design, (3) ensuring the durability of mitigation measures over time, (4) ensuring transparency and consistency in mitigation decisions, and (5) a focus on mitigation efforts that improve the resilience of our Nation's resources in the face of climate change; and

WHEREAS, to achieve the goals established by Congress in Section 211 of Public Law 109-58, to support the Secretary's declaration of policy in Secretarial Orders No. 3285 and 3330, and to support the goals of the Bureau of Land Management to encourage appropriate development of renewable energy on public lands, the Bureau of Land Management and the Department of Energy utilized the analysis in the six state Solar Programmatic Environmental Impact Statement (Solar PEIS) to inform withdrawal and land use planning decisions, including whether to identify design features to reduce the environmental impacts of solar development on public lands; and

WHEREAS, the Solar PEIS analysis was used to support the development of a technology-specific Section 106 Programmatic Agreement (Solar PA) for right-of-way (ROW) applications for projects on public lands managed by the Bureau of Land Management in six states where the

Bureau of Land Management is the lead federal agency (available online at: http://solareis.anl.gov/documents/docs/Solar_PA.pdf); and

WHEREAS, the Bureau of Land Management – California (BLM) intends to further refine the approach of the Solar PEIS and Solar PA on lands administered by the BLM within the boundaries of the Desert Renewable Energy Conservation Plan (DRECP) by amending the Solar PEIS through its land use planning process and replacing the Solar PA with a Programmatic Agreement (Agreement) that accommodates all renewable energy projects, which for the purposes of this Agreement includes any renewable energy project or transmission line ROW application and any connected actions, for solar, wind, geothermal production, and transmission lines that also includes appurtenant facilities (renewable energy projects), and provides additional, locally developed management considerations in California; and

WHEREAS, to achieve the goals established by Congress in Section 211 of Public Law 109-58, to support the Secretary's declaration of policy in Secretarial Orders No. 3285 and 3330, and to support the goals of the BLM to encourage appropriate development of renewable energy on public lands, the BLM is proposing to amend the California Desert Conservation Area (CDCA) Plan, and portions of the Bakersfield Resource Management Plan (RMP), and the Bishop RMP that are within the boundaries of the DRECP via a BLM Land Use Plan Amendment (LUPA); and

WHEREAS, the BLM has prepared an environmental impact statement (EIS) under the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*) for the LUPA to identify alternatives for the purposes of NEPA and comparatively examined the relative effects of the alternatives to inform the agency's consideration of future specific renewable energy projects, including the possible identification of Development Focus Areas (DFAs) and lands where renewable energy project development may occur; and,

WHEREAS, the BLM has provided the public opportunities to comment on the LUPA through NEPA process consistent with 36 C.F.R. § 800.2(d)(3), including public scoping meetings and public meetings held in November and December 2011, April and May 2013, and October, November, and December 2014; release of a Description and Comparative Evaluation of Draft DRECP Alternatives in December 2012; and a public website with additional information. All public materials included information about the National Historic Preservation Act (NHPA) and the Section 106 process, and the BLM considered comments received through the NEPA and NHPA processes concerning cultural resources in the development of this Agreement.; and

WHEREAS, through the Record of Decision (ROD), the BLM will determine whether to amend BLM land use plans to include:

- Areas suitable for renewable energy project development (DFAs);
- Areas potentially available for renewable energy project development (Variance Process Lands or VPLs);

- Areas to be managed for biological, cultural, and scientific conservation (National Conservation Lands or NCLs, Areas of Critical Environmental Concern or ACECs, and Wildlife Allocation areas);
- Areas to be managed for recreational use (Special Recreation Management Areas or SRMAs);
- Areas that will continue to be managed for multiple use without a specified allocation (unallocated land);
- Establish basic avoidance, minimization, compensation, conservation, and mitigation requirements (Conservation Management Actions or CMAs) for renewable energy development within the LUPA to ensure the most environmentally responsible development and delivery of renewable energy; and

WHEREAS, any terms and conditions established by the ROD will apply to new applications for renewable energy project development as defined in the ROD. The stipulations of this Agreement will also apply to those same applications; and

WHEREAS, the BLM has determined that its LUPA is an undertaking subject to Section 106 of the NHPA at 54 U.S.C. § 306108, and its implementing regulations at 36 C.F.R. § 800 (2004); and

WHEREAS, the BLM has determined that its LUPA decisions consistent with the DRECP constitutes a controversial and non-routine undertaking where the effects may be regional in scope and cannot be fully determined prior to approval of the Undertaking, and the BLM proposes the development and approval of a Programmatic Agreement under 36 C.F.R. § 800.14(b)(3), which meets the threshold of review by the Advisory Council on Historic Preservation (ACHP) under Component 5(b) and (c) of the *National Programmatic Agreement among the BLM, ACHP, and National Conference of State Historic Preservation Officers* (hereinafter referred to as the *National Programmatic Agreement*); and

WHEREAS, pursuant to the *National Programmatic Agreement* and 36 C.F.R. § 800.6(a)(1)(c), the BLM has notified the ACHP that some implementation activities allowed by the LUPA have the potential for adverse effects and of the BLM's intent to develop this Agreement, and the ACHP has elected to participate by formal notification received October 22, 2013 and is a Signatory to this Agreement; and

WHEREAS, the BLM has consulted with the California State Historic Preservation Office (SHPO) regarding the LUPA pursuant to 36 C.F.R. § 800. Because the effects of the LUPA's implementation on historic properties cannot be fully determined prior to the Undertaking's approval, the BLM has chosen to assess potential adverse effects from the Undertaking and provide for the resolution of any such effect through the implementation of this Agreement consistent with 36 C.F.R. § 800.14(b)(3); and

WHEREAS, the BLM has consulted with the SHPO and the ACHP pursuant to 36 C.F.R. § 800.14(b)(3), and following the procedures outlined at 36 C.F.R. § 800.6, has developed the process outlined in this Agreement to govern the BLM's compliance with Section 106 of the NHPA during implementation of the LUPA; and

WHEREAS, pursuant to the special relationship between the Federal Government and federally recognized Indian tribes (codified in Section 101(d)(6)(B) of the NHPA, 36 C.F.R. § 800.2(c)(2)(ii), the American Indian Religious Freedom Act (AIRFA), Executive Orders 13007 and 13175, and Section 3(c) and Section 12 of the Native American Graves Protection and Repatriation Act (NAGPRA)) the BLM is responsible for government-to-government consultation with federally recognized Indian tribes; and

WHEREAS, the BLM has formally notified and invited federally recognized Indian tribes (Tribes) (see Appendix A) with interests in the lands managed by the BLM to consult on the LUPA, the development of this Agreement, and to participate in this Agreement as Concurring Parties; and

WHEREAS, the BLM has formally notified and invited non-federally recognized tribes and tribal organizations (Tribal Organizations) (see Appendix A) with interests in the lands managed by the BLM to consult on the LUPA, the development of this Agreement, and to participate in this Agreement as Concurring Parties; and

WHEREAS, the BLM has invited the Tribes to participate in Tribal Federal Leadership Conferences between September 2011 and September 2015 to identify issues, concerns, and interests and to share information regarding any and all resources within the DRECP plan area pertinent to renewable energy project development, natural and cultural resource conservation, and to solicit information pertinent to renewable energy project development and land use planning, and the BLM considered this information in the preparation of the LUPA EIS; and

WHEREAS, the BLM has consulted and will continue to consult with the Tribes and Tribal Organizations on the LUPA and the development of this Agreement, and will continue to consult with the Tribes and Tribal Organizations throughout the implementation of this Agreement, regarding historic properties to which they attach religious and cultural significance. The BLM will carry out its responsibilities to consult with Tribes and Tribal Organizations that request such consultation with the further understanding that, notwithstanding any decision by these Tribes and Tribal Organizations to decline concurrence, the BLM shall continue to consult with these Tribes and Tribal Organizations throughout the implementation of this Agreement, pursuant to Stipulation II; and

WHEREAS, the BLM has invited federal and state government agencies (see Appendix A) with interests in the lands managed by the BLM to consult on the LUPA and to participate in this Agreement as Concurring Parties; and

WHEREAS, the BLM has invited local governments (see Appendix A) with interests in the lands managed by the BLM to consult on the LUPA and to participate in this Agreement as Concurring Parties; and

WHEREAS, the BLM has invited organizations and individuals (see Appendix A) with interests in the lands managed by the BLM to consult on the LUPA and to participate in this Agreement as Concurring Parties; and

WHEREAS, signing of this Agreement by a Concurring Party indicates participation in the Section 106 consultations and acknowledgment that their party's views were taken into consideration, but does not indicate approval of the outcome of NEPA analysis for the LUPA nor does it indicate a preference for or endorsement of a specific alternative; and

WHEREAS, for the purposes of this Agreement, "Consulting Parties" collectively refers to the Signatories, Concurring Parties, and all Tribes or Tribal Organizations regardless of their decision to sign this Agreement as a Concurring Party; and

WHEREAS, This Agreement does not negate or supersede any other Memorandum of Agreement (MOA) or Programmatic Agreement (PA) governing the LUPA Area, pursuant to 36 C.F.R. Part 800, with the exception of the Solar PA. If any MOA or PA in effect at the time this Agreement is executed is found to be in conflict with this Agreement, the respective Signatories will confer to resolve the conflict per Stipulation X of this Agreement. If the resolution results in a proposed amendment to this Agreement, the provisions under Stipulation IX will be followed; and

WHEREAS, the provisions of this Agreement apply to future, site-specific renewable energy project applications when the BLM is the lead federal agency and the application is for renewable energy projects on BLM administered public lands within the LUPA Area, and connected actions; and

NOW, THEREFORE, the BLM, SHPO, and ACHP mutually agree that the BLM will carry out its Section 106 responsibilities with respect to any future renewable energy project development within the LUPA Area in accordance with the following stipulations.

DEFINITIONS

Terms used in this Agreement are defined in Appendix B. All other terms not defined have the same meaning as set forth in the regulations at 36 C.F.R. § 800.16.

STIPULATIONS

The BLM shall ensure that the following measures are carried out:

I. APPLICABILITY

A. General Purpose

1. The LUPA establishes a framework for permitting for all renewable energy project and transmission line ROW applications and portions of any connected actions, for solar, wind, geothermal production, and transmission lines that also includes appurtenant facilities (renewable energy projects), on lands administered by the BLM. It also includes those connected actions that may extend onto other jurisdictions. This Agreement and the LUPA will inform the agency's consideration of future, site-specific, renewable energy project applications including the identification of DFAs and other lands administered by the BLM where renewable energy project development may occur, areas where renewable energy project development will not be permitted, and development of CMAs to establish basic avoidance, minimization, and mitigation requirements for renewable energy project development within the DRECP LUPA Area, to ensure the most responsible development of renewable energy on BLM-administered public lands. A more detailed description of the BLM Undertaking and corresponding maps are included in Appendix C.

2. This Agreement establishes the process the BLM will follow to fulfill its responsibilities under Section 106 of the NHPA for site-specific, renewable energy project application decisions that are implemented in accordance with the decisions supported by the LUPA and BLM policy. This Agreement does not provide streamlining or fast-tracking of renewable energy project applications. Instead, provisions of this Agreement will be incorporated in the LUPA to ensure a consistent, predictable, and timely approach to take into account the effects of renewable energy project application decisions upon historic properties across the LUPA Area.

B. Tiered Agreements

1. The BLM will execute MOAs pursuant to 36 C.F.R. § 800.6 (c), as opposed to PAs, to fulfill the intent of this Agreement for site-specific, renewable energy projects that result in adverse effects whenever possible. MOAs are usually based upon knowledge of specific resources; therefore, resolutions of adverse effects are more accurate. Where there is adequate information regarding the nature of historic properties within areas of potential effect (APEs), MOAs can specify avoidance, minimization, and/or mitigation measures more precisely.

2. Creation of new, project-specific PAs tiered from this Agreement is not anticipated, but may be necessary where any of the conditions pursuant to 36 C.F.R. § 800.14 (b)(1) for using a PA are met. New PAs, however, are generally

discouraged and are not considered appropriate for most specific undertakings, where determinations of eligibility and findings of effect can be completed before the BLM makes a decision on the undertaking.

II. GOVERNING CONSULTATION PRINCIPLES

A. Advisory Council on Historic Preservation Consultation

The BLM shall invite the ACHP to participate in consultation when the following thresholds for ACHP review are met: (1) non-routine interstate and/or interagency projects or programs; (2) undertakings that adversely affect National Historic Landmarks (NHLs); (3) undertakings that the BLM determines to be highly controversial; (4) undertakings that will have an adverse effect and with respect to which disputes cannot be resolved through formal agreement between BLM-SHPO, such as a MOA; and (5) development and approval of program alternatives, including project-specific PAs. The ACHP shall determine whether it will participate in the consultation within 15 days of receipt of notice, according to the criteria set forth in Appendix A to 36 C.F.R. § 800. A decision by the ACHP not to participate in Section 106 consultation does not preclude ACHP entry into the process at a later time if the ACHP determines that its involvement is necessary to ensure that the purposes of Section 106 are met. If the ACHP determines that its involvement is necessary, the ACHP will notify the BLM and Consulting Parties per 36 C.F.R. § 800.2(b)(1).

B. State Historic Preservation Office Consultation

The BLM shall enter into formal consultation with SHPO on all renewable energy project applications within the LUPA Area pursuant to 36 C.F.R. § 800.2(c)(1). Formal consultation shall be initiated during the pre-application phase of all renewable energy project applications in order to facilitate early and robust coordination and consultation. Consultation with SHPO shall follow the procedures outlined in this Agreement.

C. Coordination with other Federal Agencies

Any other Federal agencies that may have Section 106 responsibilities on a renewable energy project application within the LUPA Area will be invited to coordinate their review with the BLM pursuant to 36 C.F.R. § 800.2(a)(2). The Federal agencies will consult to determine whether the BLM can act on their behalf as the lead Federal agency and fulfill their collective responsibilities under Section 106. Those Federal agencies that do not designate a lead Federal agency remain individually responsible for their compliance under Section 106.

D. Secretary of the Department of the Interior

In accordance with 36 C.F.R. § 800.10(c), the BLM shall notify the Secretary of the Department of Interior of any consultation involving an NHL and invite the Secretary to participate in the consultation continuing under this Agreement.

E. Tribal Consultation

1. The BLM acknowledges its government-to-government responsibilities to Tribes for Section 106 review and implementation of this Agreement and commits to accord tribal officials the appropriate respect and dignity of their position as leaders of sovereign nations. The BLM shall continue to facilitate meaningful consultation with Tribes and Tribal Organizations during the development of the DRECP LUPA, as well as the planning and implementation of any activities or decisions that tier from the LUPA.

2. The BLM will engage the Tribes and Tribal Organizations in early and meaningful consultation on all renewable energy project applications. The BLM will consult with Tribes and Tribal Organizations at the earliest stages of the proposed undertaking to gather ethnographic information, property information, and other resource information to help identify areas which may be of religious and cultural significance to them and which may be eligible for the National Register of Historic Places (NRHP). Engaging in consultation at the earliest stages of project planning will assist the BLM in identifying significant issues and resources that may not be identified through the course of conventional cultural resources survey and identification efforts. As part of the consultation process the BLM shall endeavor to provide information and maps that are easily understood by tribal representatives.

3. The BLM will continue to discuss and seek agreement with Tribes and Tribal Organizations regarding processes of consultation that are clear, open, and transparent and that can be used to discuss multiple projects in the most efficient manner possible. If a Tribe would like government-to-government consultation with the BLM on an individual basis, this request will be honored at the earliest possible time. If a Tribe or Tribal Organization would like to establish regular meetings with a BLM Field Office, the Tribe or Tribal Organization and the BLM Field Manager should consult to develop specific procedures for consultation.

4. The BLM will encourage renewable energy project Applicants (Applicant) to provide the Tribes and Tribal Organizations with opportunities to participate in the archaeological surveys and construction monitoring for individual projects. Participation during archaeological surveys should be coordinated by the Applicant's cultural resources consultant. Procedures for participation during

project construction should be coordinated with all Tribes and Tribal Organizations the BLM consulted with on the individual project and through the development of a project-specific Tribal Participation Plan.

F. Coordination with state and local process

The BLM will endeavor to coordinate its responsibilities under NHPA and the Section 106 process with the state and local agency responsibilities under the California Environmental Quality Act (CEQA) and other applicable authorities for all renewable energy project applications. The BLM will also endeavor to collaborate with state and local agencies on NRHP and California Register of Historical Resources (CRHR) eligibility determinations. To facilitate this coordination the BLM has consulted with the Consulting Parties, which includes state and local agencies with CEQA responsibilities, to develop this Agreement. Participation by state and local agencies in the consultation for specific renewable energy project applications, and their desired level of participation, will be identified by the responsible agency on a project-by-project basis after receiving BLM's invitation to consult per Stipulation III (B).

G. Applicant Role

The BLM shall invite any Applicant that submits an application for a ROW grant on public lands within the LUPA Area to construct, operate, and maintain a renewable energy project, to participate in the Section 106 process pursuant to 36 C.F.R. § 800.2(c)(4). The Applicant will be the entity to whom the BLM may issue a ROW grant related to any renewable energy project activities, and will have the responsibility for carrying out the terms of any project-specific MOA or PA, with BLM oversight. The BLM will therefore invite the Applicant to sign any project-specific MOA or PA as an Invited Signatory pursuant to36 C.F.R. § 800.6(c)(2)(iii) and 36 C.F.R. § 800.14(b)(3).

H. Additional Consulting Parties

The BLM shall involve individuals and organizations with a demonstrated interest in the undertaking as provided at 36 C.F.R. § 800.2(c)(5). These parties maybe include historical societies, archaeological societies, and other groups or individuals with a legal or economic relation to the undertaking or affected properties, or due to a concern with the undertaking's effects on historic properties.

I. Public Involvement

The BLM shall involve the public in the Section 106 process as provided at 36 C.F.R. § 800.2(d) and 36 C.F.R. § 800.3(e). The BLM shall ensure that the public is informed through press releases, posting of documents on the internet, or other mechanisms; about the manner in which the BLM is meeting its Section 106 responsibilities, and how the

BLM is coordinating Section 106 with other public involvement processes including NEPA as described in Stipulation II (I).

J. Section 106/NEPA Coordination

The BLM will endeavor to coordinate the Section 106 process with NEPA process such that the agency meets its requirements under both authorities in an efficient manner. The BLM will complete the Section 106 process within the timeframe of NEPA process prior to the approval of all future renewable energy project ROW grants authorized pursuant to this program. To facilitate this coordination the BLM will utilize the public review process described in NEPA to partially meet its public involvement responsibilities under NHPA.

III. CONSULTATION PROCEDURES AND TIMELINES

A. The BLM has considered the views and recommendations of the Consulting Parties regarding the identification, protection, treatment, and/or management of historic properties possibly affected by renewable energy projects proposed under the LUPA and this Agreement and has taken this information into account in the following decision-making processes:

1. Through the LUPA the BLM is determining which areas may be appropriate for renewable energy project development based on information generated through the LUPA and other existing information on historic properties, reconnaissance or sample inventories, existing ethnographic information, the results of public scoping, the tribal federal leadership conferences, and feedback from tribal consultation. The areas potentially available for renewable energy project development are identified as DFAs, VPLs, utility corridors, or unallocated public lands within the LUPA Area.

2. Through the LUPA the BLM is determining which areas are not available for renewable energy project development based on information generated through the same process as in Stipulation III (A)(1).

3. Areas excluded from renewable energy project development may include, but are not limited to, areas where renewable energy project development could fundamentally alter or harm the value, integrity, or experience at historic properties such as a National Historic Trail (NHT) or NHL; areas containing Traditional Cultural Properties (TCP) or sites with cultural or religious significance to a Tribe; or areas where the density or complexity of historic properties would require extremely costly programs of mitigation.

4. In accordance with the DRECP Draft EIS/Environmental Impact Report (EIR), the DRECP Phase 1 Final LUPA EIS, the Phase 1 LUPA ROD and Stipulation III (C)(4), the BLM will encourage renewable energy project development on lands administered by the BLM and designated as DFAs or utility corridors. The BLM will also consider renewable energy project development on lands designated as VPLs or unallocated. The consultation processes and mitigation defined in the DRECP Phase 1 Final LUPA EIS and ROD and specified in this Agreement will govern the consideration and authorization of these proposed undertakings on lands administered by the BLM.

B. The BLM will conduct a pre-application review of, and invite potential consulting parties to consult on, all proposed renewable energy project ROW applications within the LUPA Area. Pre-application procedures include:

1. The BLM will hold a pre-application meeting with the Applicant and invite the SHPO, Tribes and Tribal Organizations, and any other potential consulting parties to a specific renewable energy project, as identified in 36 C.F.R. § 800.2, to the meeting in order to discuss inventory or research needs to identify historic properties. The pre-application meeting must be completed prior to formal acceptance of any ROW application, and prior to initiating NEPA review process for all renewable energy projects.

2. While the BLM may meet with Tribes and Tribal Organizations independently, the agency will invite Tribes and Tribal Organizations to participate in pre-application meetings with the Applicant to discuss and consult regarding project design, cultural resource inventory strategies, TCPs and resources with cultural or religious significance to Tribes, review of available ethnographic information, the need for project-specific ethnographic assessments, or other issues of concern.

3. Through the ROW application review process specified in Stipulation III (C), the BLM will prioritize the processing of applications within DFAs and further prioritize applications within DFAs that are also in areas with lower potential for cultural resource concerns, as defined by the cultural resources sensitivity analysis and the results of pre-application models described in Stipulation VI (A).

4. The BLM Section 106 review process detailed in Stipulations IV and V below will be appropriately tailored to the proposed project and in accordance with this Agreement. The process described below is intended to provide flexibility while also enhancing the BLM's ability to meet its Section 106 responsibilities efficiently, without compromising the consideration of effects to historic properties.

5. The objective of consultation is to identify as early as possible any potentially eligible properties, properties with cultural or religious significance to Indian tribes, or other issues that may pose difficulties for the proposed undertaking and future management concerns including landscape-level resources.

C. The following consultation timelines and parameters will apply to any future renewable energy project applications within the LUPA Area:

1. The Section 106 review process for all proposed renewable energy project applications within DFAs, as defined in Stipulation IV to this Agreement, will be subject to the following timelines (see also Appendix D):

a) The BLM shall define the APE and proposed identification efforts in accordance with Stipulation IV (A) and (B) and provide them concurrently to the SHPO and project-specific consulting parties for a single 30 calendar day review and comment period.

b) The BLM shall propose determinations of eligibility and findings of effect in accordance with Stipulation IV (C) and (D) and provide them concurrently to the SHPO and project-specific consulting parties for review and comment. The BLM shall, to the extent possible, make and submit its determinations of eligibility and findings of effect in a single consolidated decision for a 30 calendar day review and comment period.

c) The BLM will forward to the SHPO all comments received during the 30 day review and comment periods identified in (a) and (b) above. Alternatively, a project-specific consulting party may provide their comments directly to the SHPO with a copy to the BLM within the 30 day comment period. The BLM will respond to any request from a project-specific consulting party for consultation within the 30 day comment period.

d) After the 30 day comment period the SHPO will have 10 calendar days to provide any comments on the APE and proposed identification efforts, or to comment or concur on the BLM's determinations of eligibility and findings of effect. Should SHPO not comment, the BLM shall document that SHPO has elected not to comment, provide notification to all project-specific consulting parties, and may proceed in accordance with its proposed designations. If the BLM and SHPO disagree on a proposed determination of eligibility, the BLM shall seek a determination from the Keeper of the National Register. If the BLM and SHPO disagree on the proposed APE, identification efforts, or findings of effect the BLM and

SHPO shall consult to resolve the disagreement in accordance with Stipulation X.

e) Where a project-specific consulting party objects to the BLM's proposals within the 30 day comment period, the BLM shall consult with the objecting party and the SHPO regarding the nature of the objection and reconsider. If the objection is not resolved, the BLM shall further consult with the SHPO and follow the process provided at 36 C.F.R. § 800.4 (c)(2) and 36 C.F.R. § 800.5 (c)(2). While the consultation on the objection continues, the BLM may proceed with other portions that are not subject to objection.

2. Should the APE require modification as a result of a refinement in the Plan of Development (POD), the BLM will consult with SHPO for no more than 15 calendar days to reach agreement on the new APE. The BLM will then prepare a description and map(s) of the modified APE and any additional identification efforts and provide them to the project-specific consulting parties within 30 calendar days of the day upon which agreement was reached.

3. The BLM will review its findings of effect when the sixty-percent design is provided by the Applicant, and provide the results of this review to the project-specific consulting parties. The sixty-percent project design is a conventional engineering milestone and is developed by the Applicant in response to public comment received through the ongoing NEPA process. If significant changes to the project are proposed in the sixty-percent design, a supplemental NEPA or additional Section 106 review may be required. Significant changes can include, but are not limited to: new information, new alternatives, or changes in the proposed project.

4. Renewable energy project applications proposed outside of DFAs are not given a priority status for processing. For these projects, the Section 106 review timelines will include the 30 day review timelines outlined in Stipulation III (C)(1) above as a minimum, but consultation on the APE and identification efforts, and the determinations and findings for a proposed renewable energy project may take longer than 30 days each.

5. The BLM shall make reasonable attempts to contact the project-specific consulting parties as defined in Stipulation II to confirm that the party has elected not to comment or agrees with the course of action proposed by the BLM. "Reasonable attempts" include two forms of written communication, including a formal letter and/or email to the Tribal Chairperson and designated representative for the Tribe; and two follow-up phone calls. Unless otherwise agreed to, the BLM shall respond to any request by a project-specific consulting party for

information and clarification about any proposed language or element under this Agreement, within 30 calendar days of receipt of the request. Where the time period for review or comment has passed after such reasonable attempts, the BLM may assume that the project-specific consulting parties have elected not to comment and may proceed with the course of action proposed.

IV. IDENTIFICATION, EVALUATION AND ASSESSMENT OF EFFECTS

The BLM will conduct Section 106 review of all proposed renewable energy project applications within the portions of the LUPA Area that are available for renewable energy project development in accordance with the timelines established in Stipulation III (C) and with the following processes:

A. Area of Potential Effects

1. The BLM will determine the APE for all individual renewable energy projects proposed within the LUPA Area. The APE will be defined based on the accepted POD for the proposed project. The APE for proposed projects will consider the following factors:

    a) Typically, the BLM may consider the ROW application area, plus any buffers when defining the direct effects APE. Factors considered will include all proposed temporary and permanent, surface and subsurface project components. The components may include, but are not restricted to: all areas where renewable energy generation components are proposed to be constructed; all laydown and construction yards; all linear components including access roads, gas pipelines, water pipelines, transmission line corridors, etc.; all pull-areas associated with transmission line corridors; any helicopter or other alternative equipment use areas; and any other areas associated with project construction where historic properties could sustain direct effects as a result of the project.

    b) For projects with large ROW application areas, where only a small portion of the ROW would be directly affected by any proposed temporary and permanent, surface and subsurface project components, and where historic properties could sustain direct effects as a result of the project, the BLM shall consider the entire ROW application area as part of the APE but may further distinguish between the potential for direct and indirect effects.

    c) When defining the APE for indirect effects, the BLM shall consider the area within which historic properties could sustain visual, auditory, and atmospheric effects as a result of the project, and may extend well beyond the ROW application area.

d) The cumulative effects APE will entirely encompass the direct and indirect APEs and can include reasonably foreseeable effects caused by the undertaking that may occur later in time or be farther removed in distance.

e) When defining the APE, the BLM may also consider lands outside of BLM administered public lands where the BLM is required to analyze project impacts under NEPA and effects to historic properties under NHPA as a connected action to the portion of the project proposed on BLM administered public lands within the LUPA Area.

2. The BLM will prepare a description and map(s) of the APE and provide them to the project-specific consulting parties for review and comment and will concurrently request SHPO review pursuant to Stipulation III (C).

B. Identification Efforts

The BLM may require the development of the following types of cultural resources studies to identify and assess adverse effects to historic properties from the construction, operation, maintenance, and decommissioning of individual renewable energy projects. This is not an exhaustive list and additional studies may be required, as necessary. All studies listed here are described in more detail in Appendix E. Non-confidential versions of final reports will be made available to the project-specific consulting parties.

1. The BLM will require the development of a BLM Class I records search and literature review of existing cultural resources information. This information will be used to develop a research design and work plan for all cultural resources studies for the proposed project. The BLM will also develop an ethnographic literature review based on the review of existing information.

   a) The BLM will send the research design and work plan to the project-specific consulting parties for review and comment and will concurrently request SHPO review and concurrence on the proposed identification efforts, pursuant to Stipulation III (C).

   b) The BLM will submit the ethnographic literature review to the SHPO, Tribes and Tribal Organizations for review and comment, and to seek any additional information regarding resources in the APE with cultural or religious significance to the Tribes.

2. The BLM will require the development of a new Class III inventory for the entire direct effects APE, except where the following conditions apply: (1) where reliable Class III inventory data already exist; (2) where Class III inventories

greater than 15 years in age may be reliable, with additional review; or (3) where geomorphological or human-caused land disturbances would preclude the existence of historic properties.

3. The BLM will require the development of a geo-archaeological study of the entire direct effects APE. The study will consider natural and archaeological site formation processes to determine the likelihood of subsurface archaeological remains within the APE. The study will utilize information obtained during any geotechnical testing conducted as part of the overall project design process to inform this analysis.

4. The BLM may require the development of a separate indirect effects study for the entire indirect effects APE. The study will consider indirect effects to all known historic properties and other properties identified in consultation with project-specific consulting parties within the indirect effects APE, whose NRHP significance may be adversely affected by visual, auditory, or atmospheric intrusions from the proposed project.

5. The BLM may require the development of a separate historic built-environment study for the entire APE, if there are built-environment resources within the APE that have the potential to be historic properties.

6. The BLM will require a peer review of the studies described in (1) through (5) above, and a final report of the peer review produced, in accordance with Stipulation VI (B)(3) of this Agreement.

7. The BLM will consult with the Tribes and Tribal Organizations to identify any resources that have cultural or religious significance to the Tribes or Tribal Organizations. The BLM may require the development of an ethnographic assessment for the project, if the Tribes or Tribal Organizations indicate that they have additional information that should be considered in the Section 106 review and analysis.

C. Determinations of Eligibility

1. Based on the results of the identification efforts described in (B) above, and the results of the peer review report identified in (B)(6), the BLM will determine if any of the cultural resources identified within the APE, including resources with cultural or religious significance to a Tribe, meets one or more of the NRHP eligibility criteria specified in 36 C.F.R. § 60.4. Resources that meet one or more criteria shall be considered historic properties.

2. Where resources are identified that are evaluated as not eligible under Criteria A-C, and where their Criterion D values are unknown but will be avoided by project design or by implementing protection measures, the BLM will treat such resources as eligible for the NRHP under Criterion D without formal evaluation, for that project only, and their significant values will be avoided. The Applicant must submit a formal letter committing to avoidance of any resources that are unevaluated under Criterion D and avoided.

3. The BLM will submit the agency proposed determinations of eligibility to the project-specific consulting parties for review and comment, and will concurrently request SHPO review and concurrence on the agency proposed determinations of eligibility and findings of effect pursuant to Stipulation III (C).

D. Findings of Effect

1. The BLM shall make findings of effect consistent with 36 C.F.R. § 800.4(d) and identify the type of adverse effect for each effected property in accordance with the criteria established in 36 C.F.R. § 800.5(a)(1) and (2)(i)-(vii).

2. The BLM will submit the agency proposed findings of effect to the project-specific consulting parties for review and comment, and will concurrently request SHPO review and concurrence on the agency proposed determinations of eligibility and findings of effect pursuant to Stipulation III (C).

V. HISTORIC PROPERTIES TREATMENT AND MANAGEMENT

A. Avoidance of historic properties is the preferred method to address adverse effects and the BLM will require avoidance to the maximum extent practicable. Where adverse effects to historic properties from any proposed renewable energy project application within the LUPA Area are identified, the BLM will execute a project-specific MOA pursuant to 36 C.F.R. § 800.6 to fulfill the intent of this Agreement. Historic properties will be treated and managed in accordance with the following processes:

1. Resolution of Adverse Effects

a) The BLM will invite the ACHP to participate in the resolution of adverse effects to historic properties should any of the thresholds for ACHP participation identified in Stipulation II (A) be met.

b) The BLM will notify and consult with the SHPO, the ACHP (if participating), and project-specific consulting parties regarding the resolution of adverse effects from individual projects.

c) The BLM will seek agreement to avoid, minimize, or mitigate adverse effects to historic properties. The BLM will execute an MOA with the SHPO and the ACHP (if participating) to conclude the Section 106 process and will file a copy with the ACHP.

d) The BLM will identify all mitigation measures for historic properties that will be adversely affected by a specific project in an Historic Properties Treatment Plan (HPTP) that will be included as an appendix to the MOA. The Applicant is responsible for implementing all of the terms of the MOA, with BLM oversight. Potential appendices are described in more detail in Appendix D.

e) Where the BLM, SHPO, and ACHP (if participating) are unable to execute an MOA, the BLM will follow the process at 36 C.F.R. § 800.7.

2. Post-Review Discoveries and Unanticipated Effects

a) The BLM, in consultation with the SHPO, the ACHP (if participating), and project-specific consulting parties, will develop a comprehensive plan to manage post-review discoveries and unanticipated effects during project construction. The plan will be attached to any project-specific MOA or PA as an appendix, and implemented by the Applicant, with BLM oversight.

b) Should any post-review discoveries or unanticipated effects occur prior to the development of a monitoring plan, or where an MOA or PA for a specific project has not been executed, the BLM shall follow the process at 36 C.F.R. § 800.13(b).

3. Treatment of Human Remains of Native American Origin

a) The BLM shall ensure that any Native American human remains, funerary objects, sacred objects, or objects of cultural matrimony discovered on federal lands shall be treated in accordance with the provisions of NAGPRA and its implementing regulations at 43 CFR Part 10.

b) In consultation with the Tribes and Tribal Organizations for the specific undertaking, the BLM shall seek to develop a written plan of action pursuant to 43 C.F.R. 10.5(e) to manage the inadvertent discovery or intentional excavation of human remains, funerary objects, sacred objects, or objects of cultural patrimony.

c) The BLM shall ensure that the Native American Heritage Commission is notified so that Native American human remains and/or funerary objects discovered on non-federal lands are treated in accordance with the applicable requirements of the California Public Resources Code at Sections 5097.98 and 5097.991, and of the California Health and Human Safety Code at Section 7050.5(c).

d) Once the BLM has verified that the requirements of the NAGPRA or California state laws have been met, the BLM may authorize the Applicant to resume operations in the vicinity of the discovery.

4. Historic Properties Management

The BLM shall ensure that an Historic Properties Management Plan (HPMP) will be developed for all projects where historic properties require long term management. The HPMP will be developed in consultation with the SHPO, the ACHP (if participating), and project-specific consulting parties. The HPMP will identify how historic properties will be managed through project Operations and Maintenance, and Decommissioning. The Applicant is responsible for implementing the terms of the HPMP, with BLM oversight.

B. Creation of new PAs tiered from this Agreement are generally discouraged and are not anticipated, but may be appropriate where any of the conditions pursuant to 36 C.F.R. § 800.14(b)(1) for using a PA are met. Where the BLM determines that a project-specific PA is necessary, the BLM may develop a project-specific PA that tiers from this Agreement, executed pursuant to 36 C.F.R. § 800.14(b) and consistent with Stipulation I (B)(2) herein, instead of following the process outlined in Subpart A above.

1. The BLM will notify the ACHP, SHPO, Tribes and Tribal Organizations, and other potential consulting parties of its intent to develop a project-specific PA and invite the parties to participate in its development as appropriate pursuant to 36 C.F.R. § 800.2(c) to consult and participate in the development of the PA.

2. The PA shall be consistent with requirements of 36 C.F.R. § 800.14 (b). It shall address, but is not limited to, a process for: determination of the APE, identification and evaluation of historic properties, consideration of provisions requiring ethnographic data collection, determination of adverse effects to historic properties, incorporating design changes to avoid or minimize adverse effects to historic properties, development of an HPMP for those projects with historic properties that require management or monitoring for avoidance and protection within or near a project's boundaries, development and implementation of an HPTP for incorporating methods for avoiding, minimizing, or mitigating adverse effects, and amending the PA, resolving disagreements, and terminating the PA.

The Applicant is responsible for implementing all of the terms of the PA, with BLM oversight.

VI. CONSERVATION MANAGEMENT ACTIONS

The CMAs in this section are consistent with the general purpose of this Agreement detailed in Stipulation I. These CMAs do not replace the adverse effect resolution measures that will be developed in consultation on individual renewable energy projects. Instead, these CMAs provide a programmatic framework for specific regional scale commitments that the BLM is making to avoid, minimize, and mitigate cumulative effects to historic properties associated with renewable energy project development in the LUPA Area.

A. Cultural Resources Sensitivity Analysis

1. Renewable energy project Applicants will consider the results of a cultural resources sensitivity analysis using the BLM geodatabase of recorded archaeological sites and other known resources as part of the initial planning pre-application process described in Stipulation III (B). The cultural resources sensitivity analysis is to be used to select specific footprints for further consideration that will minimize impacts to recorded cultural resources including places with cultural and religious significance to Tribes. If the proposed project footprint lies within an area identified or forecast as sensitive for cultural resources the Applicant must provide justification in the application for why the project merits further consideration. The justification from the Applicant to proceed with an application will be project and resource specific, and is intended to inform the Consulting Parties. Sensitivity analysis will not replace required project-specific identification efforts but rather is intended to identify resource patterns. Details revealing specific cultural resources or other information will remain confidential and this process will remain consistent with Stipulation VIII (C).

2. A committee comprised of a subset of the Consulting Parties will be established to work with the BLM to define how the data from recorded archaeological sites and other known resources in the geodatabase will be used and depicted as more sensitive or less sensitive for cultural resources so that the general information can be used by Applicants during the initial planning pre-application process. At a minimum, the committee will include at least one representative from each of the following interest groups: SHPO, Tribes and Tribal Organizations, other agencies, archaeological and historic preservation groups, and Applicants.

3. The committee will develop this process within one year, or other period as determined by the Signatories, of execution of this Agreement. A summary of how the cultural resources sensitivity analysis was developed for use in the pre-

application process will be provided to all Consulting Parties for a 30 day review and comment period. After the 30 day review and comment period, the BLM will consider all comments received, revise the process as appropriate, and provide the final summary to all Consulting Parties. Details regarding the development and implementation of the sensitivity analysis will be included as Appendix F to this Agreement. Renewable energy project applications processed after the execution of this Agreement but prior to the development of the sensitivity analysis will not benefit from the analysis, but will use information obtained from the project-specific identification efforts as described in Stipulation IV (B).

4. In accordance with the reporting intervals described in Stipulation VII, the BLM will provide a report of the status of the geodatabase and its use for informing the pre-application to the Consulting Parties.

B. Peer Review Process

1. When the BLM accepts a renewable energy project application, the Applicant will hire a third-party cultural resources consultant to provide cultural resources technical support to the BLM. This support will include, but not be limited to, assisting the BLM as needed throughout the processes identified in Stipulations IV and V. The BLM must review and approve the scope of work for the third-party cultural resources consultant's services. Third-party cultural resources consultants must meet the same permitting requirements as the cultural resources consultant, consistent with Stipulation VIII (A), and report directly to the BLM lead archaeologist for the project. The purpose of the third-party peer review is to ensure information accuracy and consistency with all BLM requirements and to assist the BLM in meeting its Section 106 compliance requirements.

2. Third-party peer reviews may include, but are not limited to the following activities:

   a) Review of all documents developed for a project.

   b) Review of all fieldwork conducted by the cultural resources consultants, including on-site check-ins during fieldwork and post-fieldwork field verification assessments.

   c) Third party consultant may also complete other tasks to assist the BLM with meeting its Section 106 compliance requirements including, but not limited to: drafting letters, meeting coordination, and consulting party coordination.

3. The results of the field verification and review of the information presented in the technical report will be documented in a summary report to be submitted to the BLM within 60 days of completion of the peer review of those components. The BLM will review and approve the final third-party peer review report.

4. The BLM will consider the information presented in the third-party peer review when making determinations and findings for the project consistent with Stipulation IV (C) and (D).

C. Compensatory Mitigation Fee for Cumulative Effects

1. The BLM will impose a compensatory mitigation fee for all approved renewable energy projects within the LUPA Area to address cumulative and some indirect adverse effects to historic properties. The mitigation fee will be calculated in a manner that is commensurate to the size and regional impacts of the project, the details of which will be established in Appendix G.

2. The same committee identified in Stipulation VI (A)(2) for the development of the Cultural Resources Sensitivity Analysis in Appendix F will establish how compensatory mitigation fees will be used. Individual mitigation efforts will be organized along one of four broad themes within the LUPA Area:

   a) Regional research to address gaps in knowledge or to address synthesis of regional data

   b) Education, training, interpretation, and outreach regarding cultural resources

   c) Maintenance/retention of social and cultural heritage values of people affiliated with LUPA Area

   d) Acquisitions of additional land to be brought into Federal conservation within the LUPA Area due to important cultural values

3. The committee will develop a process for the management and use of the compensatory mitigation fees within six months, or other period as determined by the Signatories, of execution of this Agreement and provide to all Consulting Parties for a 30 day review and comment period. After the 30 day review and comment period, the BLM will consider all comments received, revise the document as appropriate, and provide the final version to all Consulting Parties. The final document will be included as Appendix G to this Agreement.

4. In accordance with the reporting intervals described in Stipulation VII the BLM will provide a report on the status of all activities funded with compensatory mitigation fees, a review of the effectiveness of ongoing activities, and discuss future activities with the Consulting Parties.

D. Cultural Resources Training

1. The BLM will facilitate training in Section 106 of the NHPA and construction compliance for all Consulting Parties, and all future project-specific consulting parties, to enhance the consultation process for all renewable energy projects by encouraging better information sharing and communication. This training will be in addition to the Worker Environmental Awareness Training required by the BLM for all project construction personnel.

   a) Section 106 of the NHPA training will be funded by the regional mitigation fee and will be open to all Consulting Parties, and all future project-specific consulting parties, . The need for additional Section 106 of the NHPA training will be assessed in the annual report identified in Stipulation VII.

   b) All approved renewable energy projects will hold a single, in-person construction compliance training for all cultural resources compliance personnel, including contractors, the Applicant, and the BLM prior to the start of construction. Training will include an introduction to all applicable cultural compliance documents and requirements for construction, sensitivity training by a designated Tribal representative, and a visit to the project site. This project-specific training will be funded by the Applicant, approved by the BLM, and conducted by the cultural resources contractor.

VII. REPORTING REQUIREMENTS

A. The BLM acknowledges the complexity and scale of the Undertaking and will continue to facilitate meaningful consultation throughout the life of this Agreement. The implementation and operation of this Agreement shall be evaluated on an annual basis by the Consulting Parties for the first five (5) years after the signing of the Agreement and the implementation of the Undertaking. The BLM shall prepare an annual letter report summarizing the fulfillment of the stipulations contained within this Agreement. The report will be submitted to all Consulting Parties by January 31, 2017, for the initial reporting period, and by January 31 for all subsequent reporting years.

1. The annual letter report shall include a general summary of actions processed under this Agreement, a report of the implementation of the CMAs; an accounting of the projects where regional mitigation fees have been collected; a description

of the mitigation projects that have been, or are being funded with the fee money, and a discussion of additional mitigation projects that should be considered.

2. If the BLM reports activity under this Agreement, the BLM may hold a Consulting Parties meeting, either in-person or via a conference call, to evaluate the activities conducted under this Agreement during the reporting year, discuss overall trends in project implementation under this Agreement, and address program-level concerns with implementation of this Agreement. The Consulting Parties may provide suggestions for modifications to this Agreement based on information shared at reporting meetings.

B. At the fifth year, the BLM shall prepare a letter report and meet with the Consulting Parties to evaluate the implementation and operation of this Agreement and consult regarding the reporting intervals.

VIII. STANDARDS AND QUALIFICATIONS

A. PROFESSIONAL QUALIFICATIONS. All actions prescribed by this Agreement shall be carried out by or under the direct supervision of a person or persons meeting, at a minimum, the applicable professional qualification standards set forth in the Office of Personnel Management professional qualifications for archaeology and historic preservation, or the Secretary of the Interior's Professional Qualifications Standards (PQS), as appropriate (48 Fed. Reg. 44739 dated September 29, 1983, and C.F.R. § 61. The PQS are also available online at: http://www.nps.gov/history/local-law/arch_stnds_9.htm). Individuals must also meet the regional experience or other requirements of a BLM-issued Cultural Resources Use Permit issued under the authority of Archaeological Resources Protection Act of 1979 (ARPA) (16 U.S.C. 470aa-mm) and its regulations (43 CFR 7), the Antiquities Act of 1906 (P.L. 59-209; 34 Stat. 225, 16 U.S.C. 431-433) and its regulations (43 CFR 3), and/or the Federal Land Policy and Management Act of 1976 (FLPMA)(Public Law 94-570). However, nothing in this Stipulation may be interpreted to preclude any party qualified under the terms of this paragraph from using the services of persons who do not meet the PQS, so long as the work of such persons is directly supervised in the field and laboratory by someone who meets the PQS.

B. DOCUMENTATION STANDARDS. Reporting on and documenting the actions cited in this Agreement shall conform to every reasonable extent with the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 Fed. Reg. 44716-40 dated September 29, 1983), as well as, the BLM 8100 Manual, the Archaeological Resource Management Reports (ARMR): Recommended Contents and Format (ARMR Guidelines) for the Preparation and Review of Archaeological Reports, and any specific and applicable county or local requirements or report formats. This list represents the guidelines available during development of this Agreement. Should the

guidelines be updated after the execution of this Agreement, the latest versions will take precedent. In the event that any guidelines are modified in the future to conflict with this Agreement, the BLM shall notify all Consulting Parties and will consult to determine how this Agreement should be revised, if necessary, pursuant to Stipulation IX.

C. CONFIDENTIALITY. Information concerning the nature and location of any historic property, archaeological resource (historic or prehistoric), or other confidential cultural resource will be considered sensitive and protected from release under the provisions of the Freedom of Information Act (FOIA)(5 U.S.C. 552, as Amended by Public Law No. 104-231, 110 Stat. 3048), Section 9 of ARPA(16 U.S.C. 470hh), Section 304 of the NHPA (54 USC § 307103), and Executive Order 13007. For the purposes of consultation under this Agreement, the Agency official may release certain information for the benefit of the resource. Consideration may result in the sharing of summary reports that do not contain sensitive location information. The BLM will only consider the release of complete reports or other information concerning the nature and location of any historic property, archaeological resource, or other confidential cultural resource to a project-specific consulting party with a demonstrated interest in the information requested and a signed data sharing agreement. All Consulting Parties to this Agreement will ensure that all sensitive information is protected from release.

D. CURATION STANDARDS. On BLM-administered land, all records and materials resulting from the actions cited in Stipulation IV and V of this Agreement shall be curated in accordance with 36 C.F.R. § 79, and the provisions of the NAGPRA, 43 C.F.R. § 10, as applicable. To the extent permitted under Sections 5097.98 and 5097.991 of the California Public Resources Code, the materials and records resulting from the actions cited in Stipulations IV and V of this Agreement for private lands shall be curated in accordance with 36 C.F.R. § 79, with the consent of the private property owner.

IX. AMENDMENTS TO THE AGREEMENT

A. Consulting Parties may request amendments to this Agreement. Upon receipt of a request to amend this Agreement, the BLM will immediately notify the other Consulting Parties and initiate a 30 day period in which all Parties shall consult to consider such amendments.

B. This Agreement may be amended when such an amendment is agreed to in writing by all Signatories. Amendments to this Agreement shall take effect on the dates that they are fully executed by the Signatories.

C. Modifications, additions, or deletions to the appendices made as a result of continuing consultation among the Consulting Parties do not require this Agreement to be amended.

X. DISPUTE RESOLUTION

A. Should the Signatories object at any time to the manner in which the terms of this Agreement are implemented the BLM will immediately notify all Consulting Parties and consult with the other Signatories to resolve the objection. The other Consulting Parties may comment on the objection to the BLM.

1. If the objection can be resolved within a 30 day consultation period (or other period as determined by the Signatories), the BLM may authorize the disputed action to proceed in accordance with the terms of such resolution.

2. If the objection cannot be resolved through such consultation, the BLM will forward all documentation relevant to the objection to the ACHP. Any comments provided by the ACHP within 30 days after its receipt of all relevant documentation will be taken into account by the BLM in reaching a final decision regarding the objection. The BLM will notify all Consulting Parties in writing of its final decision within 14 days after it is rendered and will move forward based on its final decision.

B. The BLM's responsibility to carry out all other actions under this Agreement that are not the subject of the objection will remain unchanged.

C. At any time during implementation of the terms of this Agreement, should an objection pertaining to this Agreement be raised by a Concurring Party, the BLM shall immediately notify all Consulting Parties, in writing, consult with the SHPO about the objection, and take the objection into account. The other Consulting Parties may comment on the objection to the BLM. The BLM shall consult with the objecting party for no more than 30 days. Within 14 days following closure of consultation, the BLM will render a final decision regarding the objection, taking into account all comments from the parties regarding the objection, and proceed accordingly after notifying all parties of its decision, in writing.

XI. TERMINATION

A. If any Signatory to this Agreement determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation IX above.

B. If within sixty (60) days an amendment cannot be developed, a Signatory to this Agreement may initiate termination by providing written notice to the other parties of their intent.

C. Should this Agreement be terminated the BLM may execute a new Memorandum of Agreement pursuant to 36 CFR 800.6 or Programmatic Agreement pursuant to 36 CFR 800.14(b); or request, take into account, and respond to the comments of the ACHP pursuant to 36 CFR 800.7. The BLM shall notify the Consulting Parties to this Agreement as to the course of action it will pursue.

XII. DURATION OF THE AGREEMENT

A. Unless this Agreement is terminated pursuant to Stipulation XI, this Agreement will remain in full force and effect for twenty (20) years from the date of its execution.

B. This Agreement will expire if the LUPA or the stipulations of this Agreement have not been initiated within five (5) years from the date of its execution. Prior to such time, the BLM will consult with the Consulting Parties on whether to extend this Agreement or reconsider the terms of this Agreement and amend it in accordance with Stipulation IX. The BLM shall notify the Consulting Parties as to the course of action it will pursue 90 days before the 5-year anniversary of the execution of this Agreement.

XIII. EFFECTIVE DATE

This Agreement will take effect on the date that it has been executed by the Signatories. This Agreement and any amendments thereto shall be executed in the following order: (1) BLM, (2) SHPO, and (3) ACHP.

Execution of this Agreement by the BLM, the SHPO, and the ACHP, and subsequent implementation of its terms, shall evidence that the BLM has taken into account the effects of the Undertaking on historic properties and that BLM has afforded the ACHP an opportunity to comment on the Undertaking and its effects on historic properties.

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SIGNATORY PARTIES

U.S. BUREAU OF LAND MANAGEMENT

_____

Jerome E. Perez Date
State Director

CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

_____

Julianne Polanco Date
State Historic Preservation Officer

ADVISORY COUNCIL ON HISTORIC PRESERVATION

_____

Milford Wayne Donaldson, FAIA Date
Chairman
Advisory Council on Historic Preservation

APPENDIX A:
INVITED CONSULTING PARTIES

APPENDIX A
List of parties notified and invited to consult on the development of this Agreement

Federally Recognized Indian Tribes
Agua Caliente Band of Cahuilla Indians
Augustine Band of Cahuilla Indians
Barona Band of Mission Indians
Big Pine Tribe of the Owens Valley
Bishop Paiute Tribe
Cabazon Band of Mission Indians
Cahuilla Band of Mission Indians
Campo Band of Mission Indians
Chemehuevi Indian Tribe
Cocopah Indian Tribe
Colorado River Indian Tribes
Ewiiaapaayp Band of Kumeyaay Indians
Fort Independence Band of Paiute Indians
Fort Mojave Indian Tribe
Fort Yuma Quechan Tribe
Inaja-Cosmit Band of Mission Indians
Jamul Indian Village
La Jolla Band of Luiseno Indians
La Posta Band of Kumeyaay Indians
Las Vegas Tribe of Paiute Indians
Lone Pine Paiute-Shoshone Tribe
Los Coyotes Band of Cahuilla and Cupeno Indians
Manzanita Band of Kumeyaay Indians
Mesa Grande Band of Mission Indians
Moapa Band of Paiute Indians
Morongo Band of Mission Indians
Pala Band of Mission Indians
Pauma/Yuima Band of Mission Indians
Pechanga Band of Mission Indians
Ramona Band of Mission Indians
Rincon Luiseno Band of Indians
San Manuel Band of Mission Indians
San Pasqual Band of Diegueno Indians
Santa Rosa Band of Mission Indians
Santa Ynez Band of Mission Indians
Santa Ysabel Band of Diegueno Indians
Soboba Band of Luiseno Indians
Sycuan Band of Kumeyaay Nation
Tejon Indian Tribe

Timbisha Shoshone Tribe
Torres-Martinez Desert Cahuilla Indians
Tule River Reservation
Twenty-Nine Palms Band of Mission Indians
Utu Utu Gwaitu Paiute Tribe
Viejas Band of Kumeyaay Indians

Non-Federally Recognized Indian Tribes and Tribal Organizations
Kawaiisu Tribe
Kern Valley Indian Council
Kern Valley Paiute Council
Kwaaymii Laguna Band of Indians
Monache Intertribal Association
Pahrump Paiute Tribe
Tubatulabals of Kern Valley

Federal Agencies
Bureau of Indian Affairs
National Park Service - Pacific West Region
- Death Valley National Park
- Joshua Tree National Park
- Juan Bautista De Anza National Historic Trail
- Manzanar National Historic Site
- Mojave National Preserve
- Old Spanish National HistoricTrail

U.S. Environmental Protection Agency
U.S. Fish and Wildlife Service - National Wildlife Refuge System
- Ash Meadows National Wildlife Refuge
- Coachella National Wildlife Refuge
- Salton Sea National Wildlife Refuge

U.S. Forest Service – Region 5
- Angeles National Forest
- Cleveland National Forest
- Inyo National Forest
- San Bernardino National Forest
- Sequoia National Forest

Department of Defense:
U.S. Air Force
- Edwards Air Force Base
- Chocolate Mountain Aerial Gunnery Range

U.S. Army - Office of the Deputy Assistant Secretary
U.S. Marine Corps - Installations West
- Air Ground Combat Center, Twentynine Palms

Marine Corps Air Station, Yuma, Arizona
Marine Corps Logistics Base Barstow
U.S. Navy Region - Southwest
Naval Air Weapons Station China Lake
Naval Air Facility El Centro
U.S. Army Corps of Engineers

State Agencies
California Department of Fish and Wildlife
California Department of Transportation
District 6
District 7
District 8
District 9
District 11
California Energy Commission
California Historic Resources Information Centers
Eastern Information Center
South Coastal Information Center
Southern San Joaquin Valley Info Center
California Independent System Operator
California Public Utilities Commission
California State Lands Commission
California State Parks
Governor's Office of the Tribal Advisor
Native American Heritage Commission
State Historic Resources Commission

Local Agencies
Counties:
Imperial County
Inyo County
Kern County
San Bernardino County
San Diego County
Cities:
City of California City
City of Hesperia
City of Lancaster
City of Victorville
Water/Irrigation Districts:
Antelope Valley-East Kern Water Agency
Apple Valley Ranchos Water Company

California Water Service Company
Hi-Desert Water District
Indian Wells Valley Water District
Inyo County Water Department
Imperial Irrigation District
Joshua Basin Water District
Lake Elizabeth Mutual Water Company
Littlerock Creek Irrigation District
Los Angeles County Waterworks Districts
Mammoth Community Water District
Metropolitan Water District Headquarters
Mojave Water Agency
Palm Ranch Irrigation District
Palo Verde Irrigation District
Quartz Hill Water District
Tehachapi-Cummings County Water District
Twentynine Palms Water District
Victorville Water District

Others:

City of Tehachapi Public Works
Death Valley Chamber of Commerce
Golden Hills Community Services District
Heber Public Utility District
Lone Pine Chamber of Commerce
Los Angeles County Planning Division
Riverside Co Regional Parks & Open Space District
Riverside County Planning Deparment
Rosamond Community Services District
Salton Community Services District
San Bernardino County Deparment of Public Works
San Bernardino County Special Districts Department

Organizations

Alliance for Historic Landscape Preservation
Amargosa Conservancy
Amargosa Opera House and Hotel
American Motorcyclist Association
American Rock Art Research Association
American Society of Landscape Architects
Anza Trail Foundation
Basin and Range Watch
California Archaeological Site Stewardship Program
California Archaeology Journal

California Association of Off-Road Vehicles
California Historic Route 66 Association
California Missions Foundation
California Native Plant Society
California Off-Road Vehicle Association
California Preservation Foundation
California Unions for Reliable Energy (Adams Broadwell Joseph & Cardozo)
California Wind Energy Association
Center for Biological Diversity
Center for Energy Efficiency & Renewable Technologies
Conference of California Historical Societies
Death Valley Conservancy
Death Valley Natural History Association
Defenders of Wildlife
Desert Renewable Energy Tribal Coalition
Environmental Consulting
Friends of El Mirage
Friends of Jawbone
Friends of Manzanar
Friends of Public Lands Cabins
Friends of the Desert Mountains
Friends of the Eastern California Museum
Friends of the Inyo
Historic American Landscape Survey
Historic Roads Marriott & Associates
Independent Civic Club
Joshua Tree National Park Association
Journal of California and Great Basin Anthropology
La Cuna de Atzlan Sacred Sites Protection Circle
Los Angeles Conservancy
Mojave Desert Land Trust
Mojave National Preserve Conservancy
Morongo Basin Conservation Association
National Historic Route 66 Federation
National Public Lands News
National Scenic Byway Foundation
National Trust for Historic Preservation
Natural Resources Defense Council
Off-Road Business Administration
Old Spanish Trail Association
Research Issues in San Diego Prehistory
Resources Law Group LLP
Roadside Heritage

Route 66 Preservation Foundation
Save our Desert
Scenic America
Sierra Club
Society for American Archaeology
Society for California Archaeology
Society for Historical Archaeology
Society for the Conservation of Bighorn Sheep
Society of Architectural Historians
Southern California Railway Plaza Association
The Archaeological Conservancy
The California Wilderness Coalition
The Cultural Landscape Foundation
The Nature Conservancy
The Wilderness Society
The Wildlands Conservancy
Union of Concerned Scientists
United Four Wheel Drive Association
USDA Natural Resources Conservation Service

Academic Institutions
East Carolina University
California State Polytechnic University Pomona
California State University:
- Dominguez Hills Department of Anthropology
- Fullerton Department of Anthropology
- Northridge Department of Anthropology
- Sacramento Department of Anthropology
- San Marcos Department of Anthropology
- San Bernardino Department of Anthropology
- San Diego Department of Anthropology

University of California:
- Davis Department of Anthropology
- Irvine History Department
- Los Angeles Cotsen Institute of Archaeology
- Los Angeles Department of Anthropology
- Riverside Department of Anthropology

Museums & Historical Societies
Associated Historical Societies of LA County
Autry National Center of the American West
Bishop Museum & Historical Society
California Garden & Landscape History Society

Coachella Valley Archaeological Society
Conference of California Historical Societies
Eastern California Museum
General Patton Museum
Historical Society of the Upper Mojave Desert
Imperial Valley Desert Museum
Imperial County Historical Society Pioneers Park Museum
Laws Museum
Malki Museum
Maturango Museum
Mojave Desert Heritage & Cultural Association
Mojave River Valley Museum
National Railway Historical Society
Pacific Coast Archaeological Society
Palo Verde Historical Museum & Society
Railway & Locomotive Historical Society
Riverside Historical Society
San Bernardino County Museum
San Diego Archaeological Center
San Diego Archaeological Society
San Diego History Center
Searles Valley Historical Society
Shoshone Village Museum and Inn
San Bernardino Historical Society

Industry Representatives
Abengoa Solar
AGG Associates
Applied Earthworks
ASM Affiliates
Bechtel Energy
Brightsource
Celtic Energy
EDF Renewables
EnXco
Far Western Archaeological Research Group
First Solar
Geothermal Energy Association
Iberdrola Renewables
Jill K. Gardner & Associates, Inc.
K Road Power
Large Scale Solar Association
LightSource Renewables

NextEra Energy Resources
Pacific Gas & Electric Company
Recurrent Energy
Renewable Resources Group
Resource Sciences and Planning
Solar Reserve
Sempra Energy Utilities
Southern California Edison
SoCal Gas
Statistical Research, Inc.
Tenaska
TerraGen

Individuals
Claude Warren
Jim Mattern
Mark Algazy
Matt Bischoff
Sophia Ann Merk

APPENDIX B:
DEFINITIONS AND ACRONYMS

APPENDIX B
Definition of Terms

Adverse Effects: An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the NRHP in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Consideration shall be given to all qualifying characteristics of a historic property, including those that may have been identified subsequent to the original evaluation of the property's eligibility for the NRHP. Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.

Agreement: Agreement refers to this Programmatic Agreement which has been developed to consider adverse effects to historic properties from the BLM Land Use Plan Amendment (LUPA) associated with the Desert Renewable Energy Conservation Plan (DRECP).

Area of Potential Effects: The Area of Potential Effects (APE) is defined as the total geographic area or areas within which a project may directly or indirectly cause alterations in the character or use of historic properties per 36 C.F.R. § 800.16(d). The APE is influenced by the scale and nature of an undertaking and includes those areas which could be affected by a project prior to, during and after construction.

Class I – Existing Information Inventory and Overview: A professionally prepared study that includes a compilation and analysis of all reasonably available cultural resource data and literature, and a management-focused, interpretive, narrative overview, and synthesis of the data. Full definition for all three survey classes is available in the BLM 8110 Manual.

Class II – Probabilistic Field Survey: A statistically based sample survey, designed to aid in characterizing the probable density, diversity, and distribution of cultural properties in an area, to develop and test predictive models, and to answer certain kinds of research questions. Within individual sample units, survey aims, methods, and intensity are the same as those applied in Class III survey.

Class III – Intensive Field Survey: A professionally conducted, systematic pedestrian survey of an entire target area, intended to locate and record all historic properties.

Concurring Parties: Collectively refers to consulting parties with a demonstrated interest in the DRECP LUPA, who agree, through their signature, with the terms of this Agreement. Signing of this Agreement by a Concurring Party indicates participation in the Section 106 consultations and acknowledgment that their party's views were taken into consideration, but does not indicate approval of the outcome of the NEPA analysis for the LUPA nor does it indicate a preference for

or endorsement of a specific alternative. Concurring Parties may propose amendments to this Agreement.

Connected Action: Refers to any proposed project or portions of a proposed project that is located on non-federal lands, but which would require a ROW grant from the BLM to proceed, and is therefore subject to Section 106 of the NHPA review and compliance by the BLM.

Conservation Management Actions (CMAs): As part of the proposed LUPA, CMAs would include proposed changes to the existing management plans concerning cultural resources and tribal interests, as defined in this Agreement.

Consulting Parties: Collectively refers to the Signatories and Concurring Parties, and shall include Tribes or Tribal Organizations regardless of their decision to sign this Agreement.

Cultural Resource: A cultural resource is an object or definite location of human activity, occupation, use, or significance identifiable through field inventory, historical documentation, or oral evidence. Cultural resources are prehistoric, historic, archaeological, or architectural sites, structures, buildings, places, or objects and locations of traditional cultural or religious importance to specified social and/or culture groups. Cultural resources include the entire spectrum of objects and places, from artifacts to cultural landscapes, without regard to eligibility for inclusion on the National Register of Historic Places (NRHP).

Cultural Resources Sensitivity Analysis: GIS modelling of known archaeological resources to consider the archaeological sensitivity of a given area. The goal of the cultural resources sensitivity analysis is to select specific renewable energy project footprints for further consideration that will minimize impacts to cultural resources.

Desert Renewable Energy Conservation Plan (DRECP): The DRECP is an interagency strategy to provide for renewable energy projects and for the conservation of sensitive species, ecosystems, and cultural resources in California's Mojave and Colorado/Sonoran deserts.

Development Focus Areas (DFAs): Areas available for solar, wind and geothermal development and transmission. An application within a DFA would still go through the BLM right-of-way process including environmental and Section 106 review, but would benefit from the DRECP environmental document and this Agreement. See Appendix C for more information.

Evaluation: The application of the National Register eligibility criteria, 36 CFR § 60.4.

Historic Properties: Cultural resources that are included in, or eligible for inclusion in, the NRHP maintained by the Secretary of the Interior and per the NRHP eligibility criteria at 36 C.F.R. § 60.4 and may include any prehistoric or historic district, site, building, structure, traditional cultural property or object. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious

and cultural importance to an Indian tribe or Native Hawaiian organization that meet the NRHP criteria. The term "eligible for inclusion in the NRHP" refers both to properties formally determined as such in accordance with regulations of the Secretary of the Interior and all other properties that meet the NRHP criteria.

Identification: The general term for the component of BLM's cultural resource management program that includes locating, recording, and determining the legal, scientific, public, and conservation values of cultural resources, i.e., giving cultural resources a management identity.

Inventory: a term used to refer to both a record of cultural resources known to occur within a defined geographic area, and the methods used in developing the record. Depending on intended applications for the data, inventories may be based on (a) compilation and synthesis of previously recorded cultural resource data from archival, library, and other indirect sources; (b) systematic examinations of the land surface and natural exposures of the subsurface (survey) for indications of past human activity as represented by artificial modifications of the land and/or the presence of artifacts; and (c) the use of interviews and related means of locating and describing previously unrecorded or incompletely documented cultural resources, including those that may not be identifiable through physical examination.

Lands Administered by the U.S. Department of Interior, Bureau of Land Management (BLM): Any federal lands under the administrative authority of the BLM.

Land Use Plan Amendment (LUPA): BLM land use plan amendment developed pursuant to 43 C.F.R. § 1610.4. See Appendix C for more information.

Literature Review: A literature review is one component of a BLM class I inventory, as defined in BLM Manual Guidance 8110.21(A)(1), and is a professionally prepared study that includes a compilation and analysis of all reasonably available cultural resource data and literature, and a management-focused, interpretive, narrative overview, and synthesis of the data. The overview may also define regional research questions and treatment options.

Memorandum of Agreement (MOA): The document that records the terms and conditions agreed upon to resolve the adverse effects of an undertaking upon historic properties.

National Programmatic Agreement: Agreement among the BLM, ACHP, and National Conference of State Historic Preservation Officers which defines how the BLM plans for and manages cultural resources under its jurisdiction in accordance with the spirit and intent of Section 106 of the NHPA, consistent with 36 C.F.R. § 800, and consistent with its other responsibilities for land-use planning and resource management under FLPMA, NEPA, other statutory authorities, and executive orders and policies.

National Register: The National Register of Historic Places, expanded and maintained by the Secretary of the Interior, as authorized by section 2(b) of the Historic Sites Act and section

101(a)(1)(A) of the National Historic Preservation Act. The National Register lists cultural properties found to qualify for inclusion because of their local, State, or national significance. Eligibility criteria and nomination procedures are found in 36 C.F.R. § 60. The Secretary's administrative responsibility for the National Register is delegated to the National Park Service.

Peer Review: Process by which a third-party cultural resources consultant is hired to assist the BLM's review of all work conducted by the main cultural resources consultant to ensure accuracy and consistency of information provided.

Plan Amendment: The process of considering or making changes in the terms, conditions, and decisions of approved plans. Usually only one or two issues are considered that involve only a portion of the planning areas.

Programmatic Agreement (PA): A document that records the terms and conditions agreed upon to resolve the potential adverse effects of a Federal agency program, complex undertaking or other situations in accordance with 36 C.F.R. § 800.14 (b).

Project-specific consulting parties: Project-specific consulting parties are identified in accordance with 36 C.F.R. § 800.2 (c). This includes all parties with a demonstrated interest in a specific renewable energy project application, or the historic properties located within the APE of a specific renewable energy project application, and are involved in the Section 106 consultation for that project.

Records Search: A records search is one component of a BLM class I inventory and an important element of a literature review. A records search is the process of obtaining existing cultural resource data from published and unpublished documents, BLM cultural resource inventory records, institutional site files, State and national registers, interviews, and other information sources.

Renewable Energy Project: All renewable energy production and transmission right of way authorizations and portions of connected actions, for solar, wind, geothermal production, and transmission lines that also include appurtenant facilities.

Signatories: Parties that have the sole authority to execute, amend, or terminate this Agreement. Signatories to this Agreement are the BLM, SHPO, and ACHP.

Solar PA: A Section 106 Programmatic Agreement for solar energy development right-of-way applications on public lands managed by the BLM in six western states, where the BLM is the lead federal agency. Available online at: http://solareis.anl.gov/documents/docs/Solar_PA.pdf

Tiering: Tiering is a form of incorporation by reference that refers to previous documents and decisions. Tiering allows the scope of analysis for individual projects to be narrowed to focus on

specific issues. All future MOAs and PAs developed for individual renewable energy projects within the LUPA Area will be tiered from this Agreement.

Traditional Cultural Property (TCP): A traditional cultural property is defined generally as a property that is important to a living group or community because of its association with cultural practices or beliefs that (a) are rooted in that community's history, and (b) are important in maintaining the continuing cultural identity of the community. It is a location that may figure in important community traditions. These places may or may not contain features, artifacts, or physical evidence, and are usually identified through consultation with the respective community. A traditional cultural property may be eligible for inclusion in the NRHP and the CRHR.

Tribal Organizations: The non-Federally recognized Indian tribes and Native American organizations that the BLM is consulting with on the BLM LUPA for Phase 1 of the DRECP.

Tribes: The federally recognized Indian tribes that the BLM is consulting with on the BLM LUPA for Phase 1 of the DRECP.

Undertaking: Collectively refers to all projects, activities, or programs funded in whole or in part under the direct or indirect jurisdiction of the BLM, including those carried out by or on behalf of a federal agency; those carried out by federal financial assistance; and those requiring a federal permit, license, or approval.

Variance Process Lands (VPL): These areas would be potentially available for renewable energy project development but would require a more extensive pre-application process to collect additional information before BLM makes a determination on a project application. See Appendix C for more information.

Common Acronyms

ACEC	Area of Critical Environmental Concern
ACHP	Advisory Council on Historic Preservation
AIRFA	American Indian Religious Freedom Act
APE	Area of Potential Effects
ARMR	Archaeological Resource Management Report
ARPA	Archaeological Resources Protection Act
BLM	Bureau of Land Management
BMP	Best Management Practice
CEQA	California Environmental Quality Act
CDCA	California Desert Conservation Area
CFR	Code of Federal Regulations
CMA	Conservation Management Action

CRHR	California Register of Historic Resources
DFA	Development Focus Area
DOI	Department of the Interior
DPR	Department of Parks and Recreation
DRECP	Desert Renewable Energy Conservation Plan
EIR	Environmental Impact Report
EIS	Environmental Impact Statement
FLPMA	Federal Land Policy and Management Act
FOIA	Freedom of Information Act
GIS	Geographic Information System
GPS	Global Positioning System
HPMP	Historic Properties Management Plan
HPTP	Historic Properties Treatment Plan
IM	Instruction Memorandum
LUPA	Land Use Plan Amendment
MOA	Memorandum of Agreement
NAGPRA	Native American Graves Protection and Repatriation Act
NCL	National Conservation Land
NEPA	National Environmental Policy Act
NHL	National Historic Landmark
NHPA	National Historic Preservation Act
NHT	National Historic Trail
NPS	National Park Service
NRHP	National Register of Historic Places
PA	Programmatic Agreement
PEIS	Programmatic Environmental Impact Statement
POD	Plan of Development
PQS	Professional Qualifications Standards
RMP	Resource Management Plan
ROD	Record of Decision
ROW	Right-of-way
SHPO	State Historic Preservation Officer
SRMA	Special Recreation Management Area
TCP	Traditional Cultural Property
VPL	Variance Process Land

APPENDIX C:
BLM LAND USE PLAN AMENDMENT DESCRIPTION

APPENDIX C
BLM Land Use Plan Amendment

The DRECP (BLM, CEC, USFWS, and CDFW) agencies announced in March 2015 that the DRECP will be finalized following a phased approach, starting with the BLM public lands component. The BLM will decide whether to amend the California Desert Conservation Area (CDCA) Plan, as currently amended, as well as the Bakersfield and Bishop Resource Management Plans (RMPs). These Land Use Plan Amendments (LUPA) would identify (1) desired outcomes expressed as specific goals and objectives and (2) allowable uses and management actions designed to achieve those specific goals and objectives. Renewable energy projects are defined for the purposes of this Programmatic Agreement as any renewable energy project or transmission right-of-way (ROW) application and any connected actions, for solar, wind, geothermal production, and transmission lines that also includes appurtenant facilities.

Through the LUPA, renewable energy projects would be allowed in Development Focus Areas (DFA), Variance Process Lands (VPL), and unallocated lands, but would not be allowed in Areas of Critical Environmental Concern (ACEC), National Conservation Lands (NCL), and Wildlife Allocation areas, or Special Recreation Management Areas (SRMA) and Extensive Recreation Management Areas (ERMA). Transmission facilities would be prioritized in existing designated utility corridors, but would also be allowed outside of corridors in DFAs, VPLs, and unallocated lands. Transmission facilities would be allowed in NCLs, ACECs, Wildlife Allocations, SRMAs, and ERMAs but only within the defined corridors, and must be consistent with all conservation and management actions (CMAs) for these units.

Specifically, in furtherance of the purpose of the DRECP to conserve biological, ecological, cultural, social, and scenic resources; respond to federal renewable energy goals and policies and consider state renewable energy targets; and comply with the Federal Land Policy and Management Act (FLPMA) multiple-use management goals, the LUPA would identify:

- Areas of the public lands that are suitable and available for utility-scale solar, wind, and geothermal energy development and transmission facilities (DFAs, VPLs).
- Areas of the public lands that are not suitable and are unavailable for these types of uses (NCLs, ACECs, Wildlife Allocation areas, and SRMAs).
- Areas of the public lands and actions that may be used as mitigation for these types of uses.
- Public lands within the CDCA to be managed under BLM conservation designations pursuant to the Omnibus Public Lands Management Act (NCLs).
- Allowable uses, management actions, stipulations, best management practices and mitigation measures to reduce, minimize, or avoid impacts associated with large-ground disturbing activities, including renewable energy projects on public lands, and allowable uses and management actions designed to enhance resources and visitor experiences on public lands.

The BLM LUPA component of the Preferred Alternative from the DRECP Final Environmental Impact Statement (EIS) covers 9.8 million acres of BLM-managed public lands. Key allocations proposed on BLM lands include:

- **Development Focus Areas (DFA):** Available for solar, wind and geothermal development and transmission facilities. An application on BLM-managed land would still go through the BLM right-of-way process including environmental review, but would benefit from the DRECP environmental document, BLM incentives, and procedures established in the Section 106 Programmatic Agreement for the DRECP. The DRECP Preferred Alternative would designate 388,000 acres of DFAs on BLM lands.
- **Variance Process Lands (VPL):** These areas would be potentially available for renewable energy project development. Project applications within VPLs do not receive the incentives described in the LUPA and this Agreement for projects applications within DFAs, and would require a more extensive pre-application process to collect additional information before BLM makes a determination on a project application. The DRECP Preferred Alternative would designate 40,000 acres of VPLs for potential renewable energy project development on BLM lands.
- **BLM Conservation Areas:** The DRECP proposes to designate NCLs, , ACECs, and wildlife allocation areas to conserve biological, cultural, and other values and uses. Lands within these designations would not be available for renewable energy project development.
    - *National Conservation Lands (NCL)*: The Preferred Alternative proposes about 3.6 million acres of BLM-administered land as NCLs and emphasizes habitat connectivity, cultural-botanical resource values, and National Scenic and Historic Trail Corridors with total ground disturbance limited to 1 percent.
    - *Areas of Critical Environmental Concern (ACEC)*: The Preferred Alternative proposes about 1.3 million acres of BLM-administered land as ACECs only. In these areas, special management is needed to protect certain values. These areas would limit total ground disturbance from 0.1 to 1 percent of the total area. The most conservation protective ground disturbance cap applies, where a 1 percent NCL overlays a more protective ACEC disturbance cap.
    - *Wildlife Allocations:* The Preferred Alternative proposes about 18,000 acres of additional BLM-administered lands that are conserved for wildlife and are not available for renewable energy project development. There is no ground disturbance cap for Wildlife Allocations.

- **Special Recreation Management Areas(SRMA):** SRMAs are public lands managed to be high-priority outdoor recreation areas. The Preferred Alternative would designate 32 SRMAs on BLM-administered land that total 2.8 million acres. The vast majority of lands within SRMAs are not available for renewable energy project development. At Ocotillo Wells SRMA a portion of the SRMA is available for non-surface occupancy geothermal renewable energy development, and three specific parcels are available for limited surface occupancy geothermal development.

- **Un-allocated Land:** BLM-managed lands not covered by any of the above designations, or the Extensive Recreation Management Area designation. Renewable energy project applications would not be allowed unless the project can meet the requirements in the CMAs for these lands. Renewable energy development would also require amending the BLM land use plan.

The LUPA would also make the following management decisions:

Conservation and Management Actions (CMA): As part of the proposed LUPA, CMAs would include proposed changes from the existing management plans for many resources, including biological resources, air resources, comprehensive trails and travel management, cultural resources and tribal interests, lands and realty, livestock grazing, minerals, paleontology, recreation and visitor services, soil, water, and water-dependent resources, visual resources management, wild horses and burros, and wilderness characteristics.

Lands with Wilderness Characteristics: BLM-administered lands within the LUPA Area that could be affected by renewable energy projects or other development authorized under the LUPA were inventoried for wilderness characteristics in 2012 and 2013 under the direction of BLM Manual 6310. Under the Preferred Alternative, 546,000 acres of lands with wilderness characteristics would be managed to protect those characteristics.

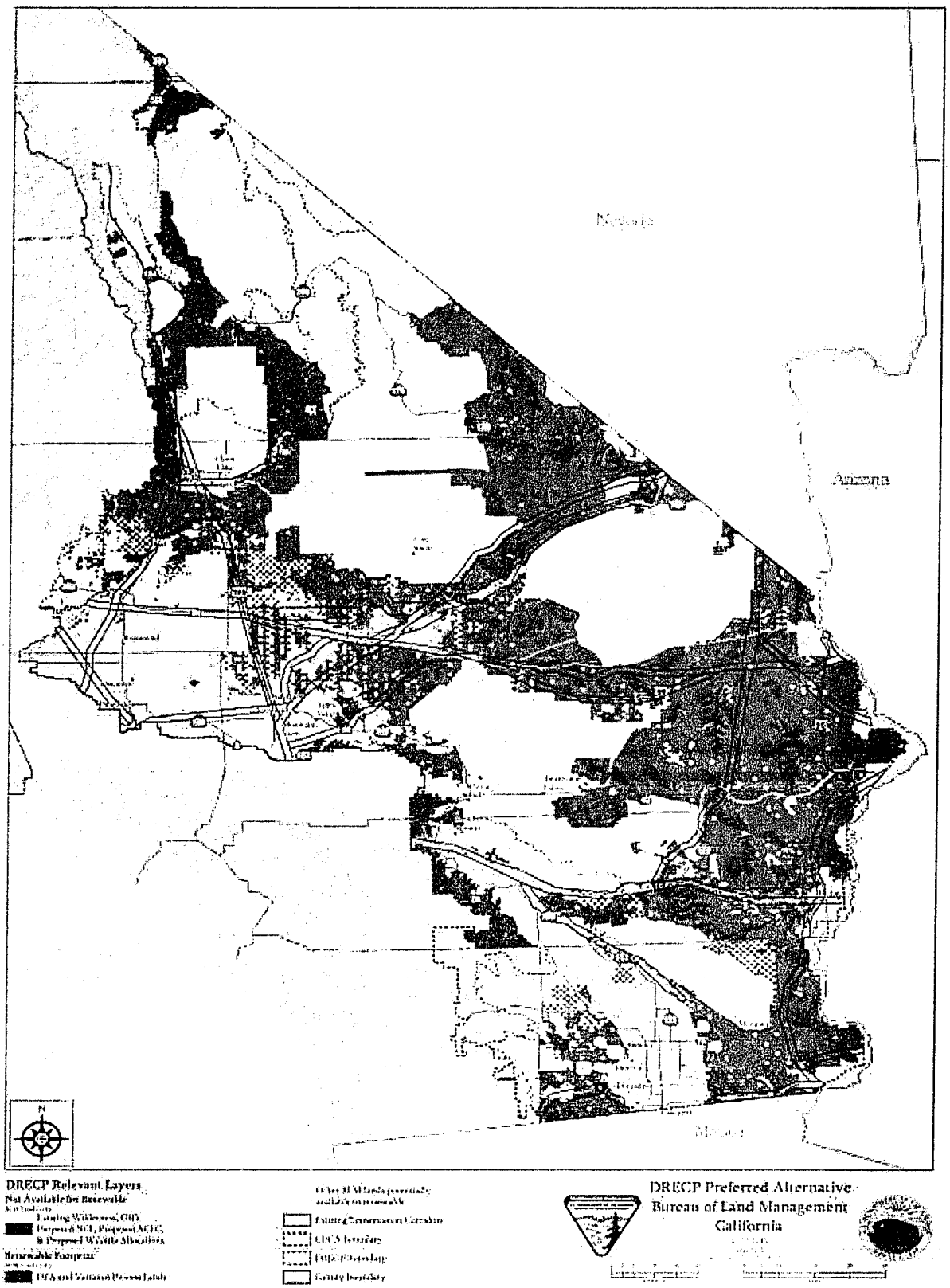
California Desert Conservation Area (CDCA): The LUPA would apply management decisions to the entire CDCA area, but not for all resources and issues. The Multiple Use Classifications used to determine land use and tenure in the CDCA Plan would be replaced by the new land designations and CMAs described above.

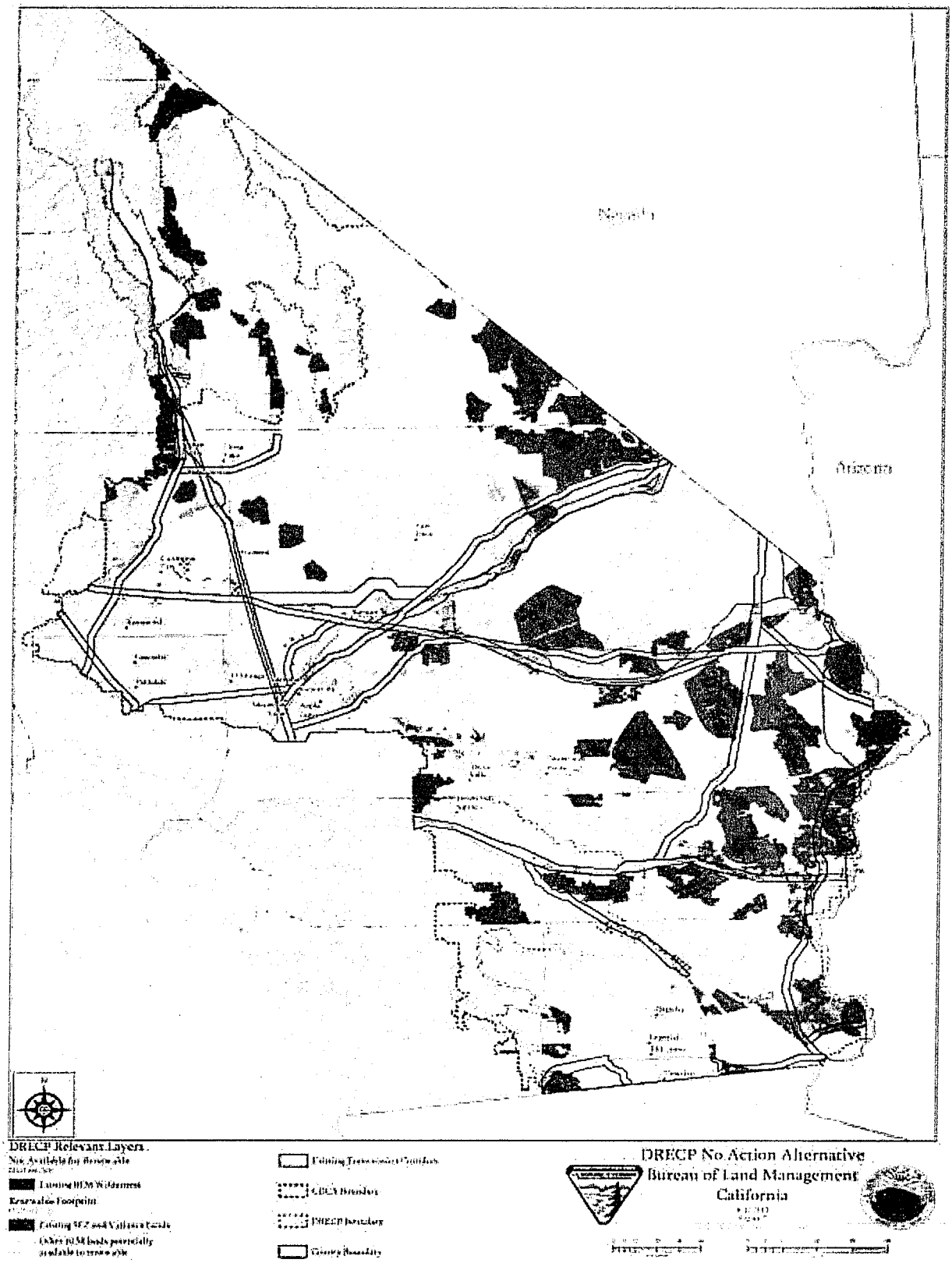
FIGURES

The figures included here show the BLM LUPA Preferred Alternative from the DRECP Proposed LUPA and Final EIS (Figure 1) and the No Action Alternative (Figure 2). On the figures, green represents conserved areas (areas where renewable energy project development would not be allowed). Pink represents DFAs and other areas available for renewable energy project development. Applications for renewable energy projects in the pink areas would be required to go through the BLM right-of-way process for individual project environmental review as specified in this PA and NEPA. Yellow reflects all other BLM lands potentially available for renewable energy project development. Applications in yellow areas would be required to go through the BLM right-of-way process for individual project environmental review as specified in this PA and NEPA, and would also require an additional amendment to the land use plan.

Table 1 represents the acreages for each designation category for both the Preferred Alternative and the No Action Alternative.

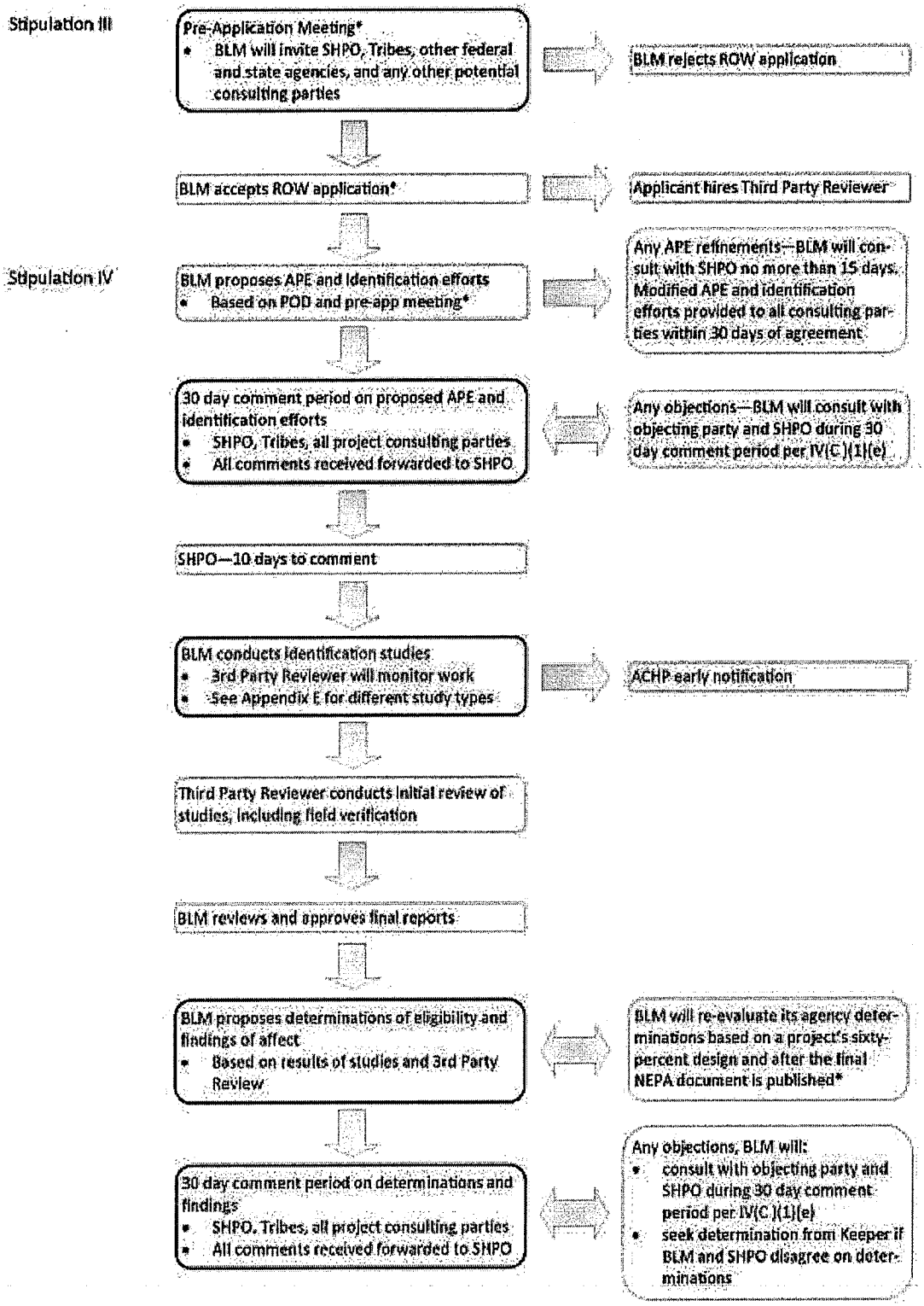
Table 1.			
	Conserved Areas	Development Focus Areas	All other BLM lands potentially available for renewable energy project development
Figure 1. Preferred Alternative Final EIS	8,707,600	388,000	842,000
Figure 2. No Action Alternative	3,452,600	0	7,421,200


Nevada
Arizona
Mexico
N
DRECP Relevant Layers
Not Available for Renewable
Renewable Footprint
DRECP Preferred Alternative
Bureau of Land Management
California

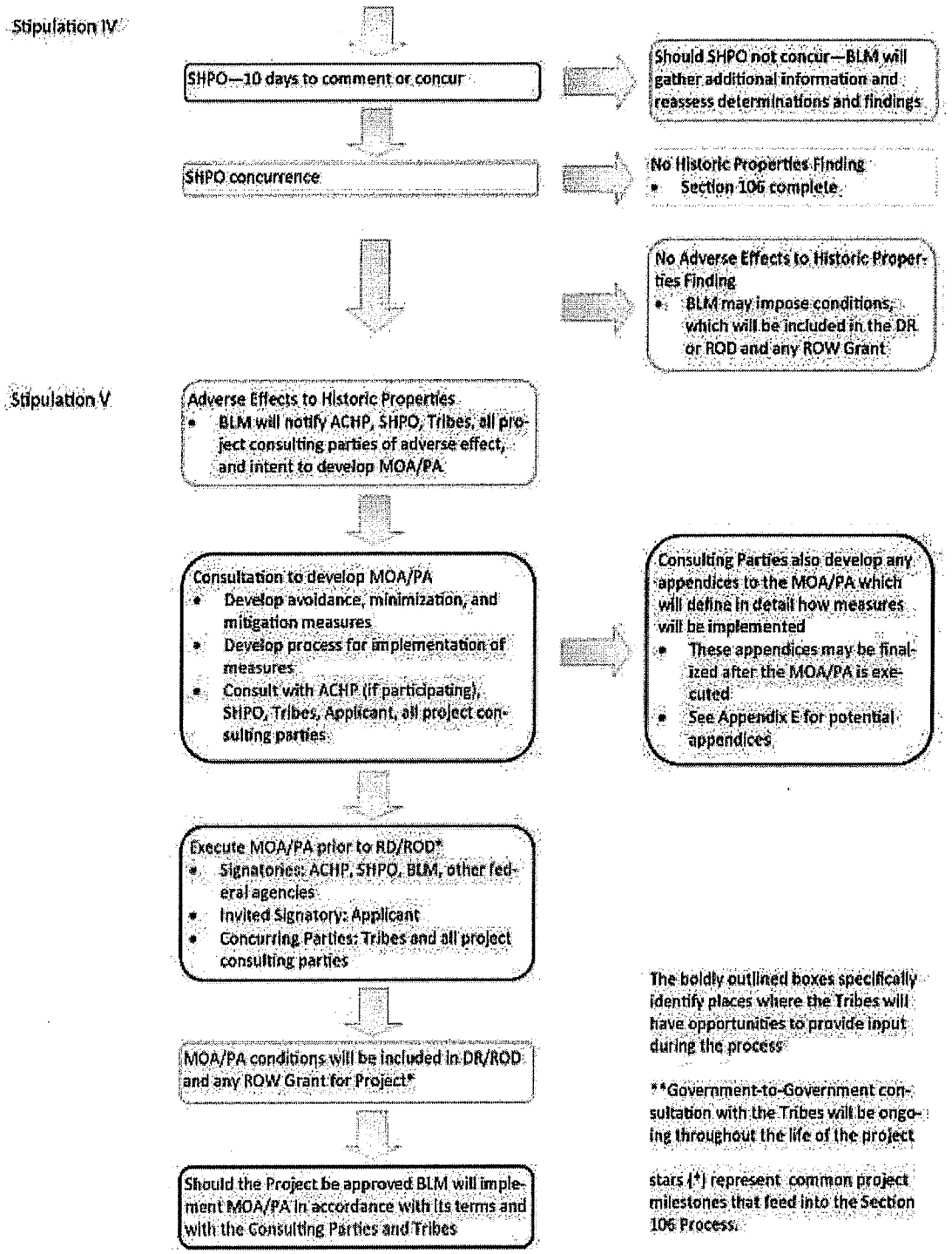

DRECP Relevant Layers
DRECP No Action Alternative
Bureau of Land Management
California

APPENDIX D:
FLOW CHART: SECTION 106 REVIEW PROCESS AND TIMELINES AS DEFINED IN THE AGREEMENT

BLM LUPA PA Section 106 Review Process and Timeline



BLM LUPA PA Section 106 Review Process and Timeline



APPENDIX E:
EXAMPLE DOCUMENT TYPES

This appendix includes a list of example cultural resources studies and a list of example PA/MOA appendices that may be required for individual renewable energy development projects. These are example documents only. This is not an exhaustive list, and not every document type will be required for every renewable energy development project.

Identification Efforts

Class I Literature Review and Records Search
A professionally prepared study that includes a compilation and analysis of all reasonably available cultural resource data and literature, and a management-focused, interpretive, narrative overview, and synthesis of the data. Study will also identify previously documented NRHP listed or eligible historic properties.

Class II Probabilistic Field Survey
A statistically based sample survey, designed to aid in characterizing the probable density, diversity, and distribution of cultural properties in an area, to develop and test predictive models, and to answer certain kinds of research questions. Within individual sample units, survey aims, methods, and intensity are the same as those applied in Class III survey. All recorded cultural resources are evaluated for the NRHP and eligibility recommendations provided.

Class III Intensive Field Survey
A professionally conducted, thorough pedestrian survey of an entire target area, intended to locate and record all cultural resources. All recorded cultural resources are evaluated for the NRHP and eligibility recommendations provided.

Ethnographic Assessment
A professionally conducted study that identifies ethnographic resources that are significant to Indian tribes and that may be affected by a proposed undertaking. Study will be planned and conducted in coordination with participating tribes, and may include additional archival research, field visits, and interviews with tribal informants. Tribal informants will be identified by participating tribes. Tribal informants and participating tribes will be invited to review the draft report. All identified resources will be evaluated for the NRHP and eligibility recommendations provided. Study will analyze the effects to resources identified from a proposed undertaking.

Ethnographic Literature Review
A professionally prepared summary of all publically available ethnographic literature that identifies specific places or resources that have documented significance to Indian tribes and that may be affected by a proposed undertaking.

Geo-archaeological Study
A professionally prepared study that includes a review of geological information on land-formation processes within a target area, prevalence of archaeological sites in the region with subsurface components, and results of any geotechnical testing within the proposed project area.

Study will provide a conclusion regarding the potential for encountering subsurface archaeological resources throughout the target area.

Historic Built Environment Study
A professionally conducted study that identifies all built-environment resources within the indirect effects APE. All recorded historic built environment resources are evaluated for the NRHP and eligibility recommendations provided. Study will analyze the effects to historic properties identified from a proposed undertaking. This study may be incorporated into the indirect effects study.

Indirect Effects Study
A professionally conducted study that identifies all previously documented NRHP listed or eligible historic properties, and documents and evaluates any new resources that may be NRHP eligible under Criteria A-C within the indirect effects APE. Study will analyze the effects to the Criteria A-C values of the historic properties from a proposed undertaking.

Example MOA/PA Appendices

Historic Properties Treatment Plan
A plan that includes detailed measures for resolving adverse effects to historic properties as identified in a project-specific MOA or PA. The HPTP typically describes in detail the requirements that must be met in order to minimize or mitigate adverse effects to specific historic properties. Plan will include what the resolution measures are, how they will be implemented, who will be responsible for implementation, communication protocols, and reporting requirements.

Historic Properties Management Plan/Long Term Management Plan
A plan that identifies specific procedures for the long term management of identified historic properties within a project area, or properties within the project vicinity that have the potential for long-term indirect effects from a project. HPMP/LTMPs will identify any resources within the project area that require long-term management, what the long-term management procedures are, how they will be implemented, who will be responsible for implementation, communication protocols, and reporting requirements.

Post-Review Discovery and Unanticipated Effects Plan
A plan that identifies the procedures for managing any post-review discoveries or unanticipated effects to identified historic properties that may occur during project construction activities. This plan will identify any properties that should be designated as Environmentally Sensitive Areas and avoided by project construction, areas that have the potential for subsurface archaeological materials, and any other areas where archaeological monitoring is required. Plan will also identify archaeological monitoring procedures and provide a process that should be followed in the event that a post-review discovery or unanticipated effect is identified. Plan will identify roles and responsibilities of all parties, notification procedures, communication protocols, and reporting requirements.

NAGPRA Plan of Action
A plan that identifies specific procedures that should be followed in the event of a NAGPRA discovery during project construction activities on federal lands. This Plan will identify management procedures for any NAGPRA materials that may be discovered, procedures for notification and consultation with Indian tribes that may affiliated with the NAGPRA materials, communication protocols, and reporting requirements.

Tribal Participation Plan
A plan that identifies specific procedures for continued tribal participation during the project construction process. The plan is developed in coordination with all participating tribes and the Applicant. The plan should include specific procedures for tribal participation, a participation schedule, roles and responsibilities of all parties, communication protocols, and reporting requirements.

APPENDIX F:
CULTURAL RESOURCES SENSITIVITY ANALYSIS

To be developed as specified in Stipulation VI (A).

APPENDIX G:
COMPENSATORY MITIGATION FEE FOR CUMULATIVE EFFECTS TO CULTURAL RESOURCES

To be developed as specified in Stipulation VI (C).