

**DRAFT
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 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; and

47
48 **WHEREAS**, the Bureau of Land Management – California (BLM) intends to further refine the
49 approach of the Solar PEIS and Solar PA on lands administered by the BLM within the
50 boundaries of the Desert Renewable Energy Conservation Plan (DRECP) by amending the Solar
51 PEIS through its land use planning process and replacing the Solar PA with a Programmatic
52 Agreement (Agreement) that accommodates all renewable energy projects, which for the
53 purposes of this Agreement includes any renewable energy project or transmission line ROW
54 application and any connected actions, for solar, wind, geothermal production, and transmission
55 lines that also includes appurtenant facilities (renewable energy projects), and provides
56 additional, locally developed management considerations in California; and

57
58 **WHEREAS**, to achieve the goals established by Congress in Section 211 of Public Law 109-58,
59 to support the Secretary’s declaration of policy in Secretarial Orders No. 3285 and 3330, and to
60 support the goals of the BLM to encourage appropriate development of renewable energy on
61 public lands, the BLM is proposing to amend the California Desert Conservation Area (CDCA)
62 Plan, and portions of the Bakersfield Resource Management Plan (RMP), and the Bishop RMP
63 that are within the boundaries of the DRECP via a BLM Land Use Plan Amendment (LUPA);
64 and

65
66 **WHEREAS**, the BLM has prepared an environmental impact statement (EIS) under the National
67 Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*) for the LUPA to identify
68 alternatives for the purposes of the NEPA and comparatively examined the relative effects of the
69 alternatives to inform the agency’s consideration of future specific renewable energy projects,
70 including the possible identification of Development Focus Areas (DFAs) and lands where
71 renewable energy project development may occur; and,

72
73 **WHEREAS**, the BLM has provided the public opportunities to comment on the LUPA through
74 the NEPA process consistent with 36 C.F.R. § 800.2(d)(3), including public scoping meetings
75 and public meetings held in November and December 2011, April and May 2013, and October,
76 November, and December 2014; release of a Description and Comparative Evaluation of Draft
77 DRECP Alternatives in December 2012; and a public website with additional information. All
78 public materials included information about the National Historic Preservation Act (NHPA) and
79 the Section 106 process, and the BLM considered comments received through the NEPA and the
80 NHPA processes concerning cultural resources in the development of this Agreement.; and

81
82 **WHEREAS**, through the Record of Decision (ROD), the BLM will determine whether to amend
83 BLM land use plans to:

- 84 ▪ Identify lands excluded from renewable energy project development in a 10 million acre
- 85 area of California managed by the BLM;
- 86 ▪ Identify priority areas within the lands open to renewable energy project development
- 87 that are best suited for production of renewable energy (DFAs and other non-conserved
- 88 areas);
- 89 ▪ Identify areas within the lands managed by the BLM that are best suited for conservation,
- 90 and are restricted from future renewable energy project development;
- 91 ▪ Establish basic avoidance, minimization, compensation, conservation, and mitigation
- 92 requirements (Conservation Management Actions or CMAs) for renewable energy

93 development within the LUPA to ensure the most environmentally responsible
94 development and delivery of renewable energy; and

95
96 **WHEREAS**, any terms and conditions established by the ROD will apply to new applications
97 for renewable energy project development as defined in the ROD. The stipulations of this
98 Agreement will also apply to those same applications; and

99
100 **WHEREAS**, the BLM has determined that its LUPA is an undertaking subject to Section 106 of
101 the NHPA at 54 U.S.C. § 306108, and its implementing regulations at 36 C.F.R. § 800 (2004);
102 and

103
104 **WHEREAS**, the BLM has determined that its LUPA decisions consistent with the DRECP
105 constitutes a controversial and non-routine undertaking where the effects may be regional in
106 scope and cannot be fully determined prior to approval of the Undertaking, and the BLM
107 proposes the development and approval of a Programmatic Agreement under 36 C.F.R. §
108 800.14(b)(3), which meets the threshold of review by the Advisory Council on Historic
109 Preservation (ACHP) under Component 5(b) and (c) of the *National Programmatic Agreement*
110 *among the BLM, ACHP, and National Conference of State Historic Preservation Officers*
111 (hereinafter referred to as the *National Programmatic Agreement*); and

112
113 **WHEREAS**, pursuant to the *National Programmatic Agreement* and 36 C.F.R. § 800.6(a)(1)(c),
114 the BLM has notified the ACHP that some implementation activities allowed by the LUPA have
115 the potential for adverse effects and of the BLM's intent to develop this Agreement, and the
116 ACHP has elected to participate by formal notification received October 22, 2013 and is a
117 Signatory to this Agreement; and

118
119 **WHEREAS**, the BLM has consulted with the California State Historic Preservation Office
120 (SHPO) regarding the LUPA pursuant to 36 C.F.R. § 800. Because the effects of the LUPA's
121 implementation on historic properties cannot be fully determined prior to the Undertaking's
122 approval, the BLM has chosen to assess potential adverse effects from the Undertaking and
123 provide for the resolution of any such effect through the implementation of this Agreement
124 consistent with 36 C.F.R. § 800.14(b)(3); and

125
126 **WHEREAS**, the BLM has consulted with the SHPO and the ACHP pursuant to 36 C.F.R. §
127 800.14(b)(3), and following the procedures outlined at 36 C.F.R. § 800.6, has developed the
128 process outlined in this Agreement to govern the BLM's compliance with Section 106 of the
129 NHPA during implementation of the LUPA; and

130
131 **WHEREAS**, pursuant to the special relationship between the Federal Government and federally
132 recognized Indian tribes (codified in Section 101(d)(6)(B) of the NHPA, 36 C.F.R. §
133 800.2(c)(2)(ii), the American Indian Religious Freedom Act (AIRFA), Executive Orders 13007
134 and 13175, and Section 3(c) and Section 12 of the Native American Graves Protection and
135 Repatriation Act (NAGPRA)) the BLM is responsible for government-to-government
136 consultation with federally recognized Indian tribes for all Native American consultation and
137 coordination; and

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

143
144 **WHEREAS**, the BLM has formally notified and invited non-federally recognized tribes and
145 tribal organizations (Tribal Organizations) (see Appendix A) with interests in the lands managed
146 by the BLM to consult on the LUPA, the development of this Agreement, and to participate in
147 this Agreement as Concurring Parties; and

148
149 **WHEREAS**, the BLM has invited the Tribes to participate in Tribal Federal Leadership
150 Conferences between September 2011 and December 2014 to identify issues, concerns, and
151 interests and to share information regarding any and all resources within the DRECP plan area
152 pertinent to renewable energy project development, natural and cultural resource conservation,
153 and to solicit information pertinent to renewable energy project development and land use
154 planning, and the BLM considered this information in the preparation of the LUPA EIS; and

155
156 **WHEREAS**, the BLM has consulted and will continue to consult with the Tribes and Tribal
157 Organizations on the LUPA and the development of this Agreement, and will continue to consult
158 with the Tribes and Tribal Organizations throughout the implementation of this Agreement,
159 regarding historic properties to which they attach religious and cultural significance. The BLM
160 will carry out its responsibilities to consult with Tribes and Tribal Organizations that request
161 such consultation with the further understanding that, notwithstanding any decision by these
162 Tribes and Tribal Organizations to decline concurrence, the BLM shall continue to consult with
163 these Tribes and Tribal Organizations throughout the implementation of this Agreement; and

164
165 **WHEREAS**, the BLM has invited federal and state government agencies (see Appendix A) with
166 interests in the lands managed by the BLM to consult on the LUPA and to participate in this
167 Agreement as Concurring Parties; and

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

172
173 **WHEREAS**, the BLM has invited organizations and individuals (see Appendix A) with interests
174 in the lands managed by the BLM to consult on the LUPA and to participate in this Agreement
175 as Concurring Parties; and

176
177 **WHEREAS**, signing of this Agreement by a Concurring Party indicates participation in the
178 Section 106 consultations and acknowledgment that their party's views were taken into
179 consideration, but does not indicate approval of the outcome of the NEPA analysis for the LUPA
180 nor does it indicate a preference for or endorsement of a specific alternative; and

181 **WHEREAS**, for the purposes of this Agreement, "Consulting Parties" collectively refers to the
182 Signatories and Concurring Parties, and shall include Tribes or Tribal Organizations regardless
183 of their decision to sign this Agreement; and

184

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

192
193 **WHEREAS**, the provisions of this Agreement apply to future, site-specific renewable energy
194 project applications when the BLM is the lead federal agency and the application is for
195 renewable energy projects on BLM administered public lands within the LUPA Area, and
196 connected actions; and

197
198 **NOW, THEREFORE**, the BLM, SHPO, and ACHP mutually agree that the BLM will carry out
199 its Section 106 responsibilities with respect to any future renewable energy project development
200 within the LUPA Area in accordance with the following stipulations.

201 **DEFINITIONS**

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

206 **STIPULATIONS**

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

210 **I. APPLICABILITY**

211 **A. General Purpose.**

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213
214 1. The LUPA establishes a framework for permitting for all renewable energy
215 project and transmission line ROW applications and portions of any connected
216 actions, for solar, wind, geothermal production, and transmission lines that also
217 includes appurtenant facilities (renewable energy projects), on lands administered
218 by the BLM. It also includes those connected actions that may extend onto other
219 jurisdictions. This Agreement and the LUPA will inform the agency's
220 consideration of future, site-specific, renewable energy project applications
221 including the identification of DFAs and other lands administered by the BLM
222 where renewable energy project development may occur, areas where renewable
223 energy project development will not be permitted, and development of CMAs to
224 establish basic avoidance, minimization, and mitigation requirements for
225 renewable energy project development within the DRECP LUPA decision area, to
226 ensure the most responsible development of renewable energy on BLM-
227 administered public lands. A more detailed description of the BLM Undertaking
228 and corresponding maps are included in Appendix C.
229

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

239
240 B. Tiered Agreements

- 241
242 1. The BLM will execute MOAs pursuant to 36 C.F.R. § 800.6 (c), as opposed to
243 PAs, to fulfill the intent of this Agreement for site-specific, renewable energy
244 projects that result in adverse effects whenever possible. MOAs are usually based
245 upon knowledge of specific resources; therefore, resolutions of adverse effects are
246 more accurate. Where there is adequate information regarding the nature of
247 historic properties within areas of potential effect (APEs), MOAs can specify
248 avoidance, minimization, and/or mitigation measures more precisely.
249
250 2. Creation of new, project specific PAs tiered from this Agreement is not
251 anticipated, but may be necessary where any of the conditions pursuant to 800.14
252 (b)(1) for using a PA are met. New PAs, however, are generally discouraged and
253 are not considered appropriate for most specific undertakings, where
254 determinations of eligibility and findings of effect can be completed before the
255 BLM makes a decision on the undertaking.
256

257 **II. GOVERNING CONSULTATION PRINCIPLES**

258
259 A. Advisory Council on Historic Preservation Consultation

260 The BLM shall invite the ACHP to participate in consultation when the following
261 thresholds for ACHP review are met: (1) non-routine interstate and/or interagency
262 projects or programs; (2) undertakings that adversely affect National Historic Landmarks
263 (NHLs); (3) undertakings that the BLM determines to be highly controversial; (4)
264 undertakings that will have an adverse effect; (5) development and approval of program
265 alternatives, including project-specific PAs; and (6) other major infrastructure projects
266 that have the potential to be controversial and complex undertakings. The ACHP shall
267 determine whether it will participate in the consultation within 15 days of receipt of
268 notice, according to the criteria set forth in Appendix A to 36 C.F.R. § 800. A decision by
269 the ACHP not to participate in Section 106 consultation does not preclude ACHP entry
270 into the process at a later time if the ACHP determines that its involvement is necessary
271 to ensure that the purposes of Section 106 are met. If the ACHP determines that its
272 involvement is necessary, the ACHP will notify the BLM and Consulting Parties per 36
273 C.F.R. § 800.2(b)(1).
274

275 B. State Historic Preservation Office Consultation

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

281 C. Coordination with other Federal Agencies

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

289 D. Secretary of the Department of the Interior

290 In accordance with 36 C.F.R. § 800.10(c), if potential adverse effects to an NHL may
291 occur, the BLM shall notify the Secretary of the Department of Interior and invite the
292 Secretary to participate in the consultation continuing under this Agreement.
293

294 E. Tribal Consultation
295

296 1. The BLM acknowledges its government-to-government responsibilities to Tribes
297 for Section 106 review and implementation of this Agreement and commits to
298 accord tribal officials the appropriate respect and dignity of the position of their
299 status as leaders of sovereign nations. The BLM shall continue to facilitate
300 meaningful consultation with Tribes and Tribal Organizations during the
301 development of the DRECP LUPA, as well as the planning and implementation of
302 any activities or decisions that tier from the LUPA.
303

304 2. The BLM will engage the Tribes and Tribal Organizations in early and
305 meaningful consultation on all renewable energy project applications. The BLM
306 will consult with Tribes and Tribal Organizations at the earliest stages of the
307 proposed undertaking to gather ethnographic information, property information,
308 and other resource information to help identify areas which may be of religious
309 and cultural significance to them and which may be eligible for the National
310 Register of Historic Places (NRHP). Engaging in consultation at the earliest
311 stages of project planning will assist the BLM in identifying significant issues and
312 resources that may not be identified through the course of conventional cultural
313 resources survey and identification efforts. As part of the consultation process the
314 BLM shall endeavor to provide information and maps that are easily understood
315 by tribal representatives.
316

317 3. The BLM will continue to discuss and seek agreement with Tribes and Tribal
318 Organizations regarding processes of consultation that are clear, open, and

319 transparent and that can be used to discuss multiple projects in the most efficient
320 manner possible. If a Tribe would like government-to-government consultation
321 with the BLM on an individual basis, this request will be honored at the earliest
322 possible time. If a Tribe or Tribal Organization would like to establish regular
323 meetings with a BLM Field Office, the Tribe or Tribal Organization and the BLM
324 Field Manager should consult to develop Tribe-specific procedures for
325 consultation.

326
327 4. The BLM will encourage renewable energy project applicants to provide the
328 Tribes and Tribal Organizations with opportunities to participate in the
329 archaeological surveys and construction monitoring for individual projects.
330 Participation during archaeological surveys should be coordinated by the
331 applicant's cultural resources consultant. Procedures for participation during
332 project construction should be coordinated with all Tribes and Tribal
333 Organizations the BLM consulted with on the individual project and through the
334 development of a project-specific Tribal Participation Plan.

335
336 F. Coordination with state and local process

337 The BLM will endeavor to coordinate its responsibilities under NHPA and the Section
338 106 process with the state and local agency responsibilities under the California
339 Environmental Quality Act (CEQA) and other applicable authorities for all renewable
340 energy project applications. The BLM will also endeavor to coordinate its NRHP
341 eligibility determinations with the state and local agency responsibility to make
342 determinations to the California Register of Historic Resources (CRHR). To facilitate this
343 coordination the BLM has consulted with the Consulting Parties, which includes state
344 and local agencies with CEQA responsibilities, to develop this Agreement. Participation
345 by state and local agencies in the consultation for specific renewable energy project
346 applications, and their desired level of participation, will be identified by the responsible
347 agency on a project-by-project basis after receiving BLM's invitation to consult per
348 Stipulation III (B).

349
350 G. Applicant Role

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

359
360 H. Public Involvement

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362 The BLM shall involve the public in the Section 106 process as provided at 36 C.F.R. §
363 800.2(d) and 36 C.F.R. § 800.3(e). The BLM shall ensure that the public is informed

364 through press releases, posting of documents on the internet, or other mechanisms, about
365 the manner in which the BLM is meeting its Section 106 responsibilities and how the
366 BLM is ensuring adequate opportunities for public involvement by coordinating Section
367 106 with other public involvement processes including the NEPA as described in
368 Stipulation II (I).

369
370 I. Section 106/NEPA Coordination

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

378 **III. CONSULTATION PROCEDURES AND TIMELINES**

379
380 A. The BLM has considered the views and recommendations of the Consulting Parties
381 regarding the identification, protection, treatment, and/or management of historic
382 properties possibly affected by renewable energy projects proposed under the LUPA and
383 this Agreement and has taken this information into account in the following decision-
384 making processes:

- 385
- 386 1. Through the LUPA the BLM is determining which areas may be appropriate for
387 renewable energy project development based on information generated through
388 the LUPA and other existing information on historic properties, reconnaissance or
389 sample inventories, existing ethnographic information, the results of public
390 scoping, the tribal federal leadership conferences, and feedback from tribal
391 consultation. The areas potentially available for renewable energy project
392 development are identified as DFAs, Study Area Lands, Future Assessment
393 Areas, variance areas, utility corridors, or unallocated public lands within the
394 LUPA Area.
 - 395
 - 396 2. Through the LUPA the BLM is determining which areas are not available for
397 renewable energy project development based on information generated through
398 the same process as in Stipulation III(A)(1).
 - 399
 - 400 3. Areas excluded from renewable energy project development may include, but are
401 not limited to, areas where renewable energy project development could
402 fundamentally alter or harm the value, integrity, or experience at historic
403 properties such as a National Historic Trail (NHT) or NHL; areas containing
404 Traditional Cultural Properties (TCP) or sites with cultural or religious
405 significance to a Tribe; or areas where the density or complexity of historic
406 properties would require extremely costly programs of mitigation.
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4. In accordance with the DRECP Draft EIS/Environmental Impact Report (EIR), the Final LUPA EIS, the LUPA ROD and Stipulations III (C)(4), the BLM will encourage renewable energy project development on lands administered by the BLM and designated as potentially available for renewable energy as either DFAs, Study Area Lands, Future Assessment Areas, variance areas, utility corridors, or unallocated. The consultation processes and mitigation defined in the Final LUPA EIS and ROD and specified in this Agreement will govern the consideration and authorization of these proposed undertakings on public lands.
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- B. The BLM will conduct a preliminary review of, and invite potential consulting parties to consult on, all renewable energy project ROW applications within the LUPA Area. Pre-application procedures include:
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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 the NEPA review process for all renewable energy projects.
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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.
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3. Through the ROW application review process specified in Stipulations III (C)(2) the BLM will prioritize the processing of applications in DFAs and in areas with lower potential for cultural resource concerns as defined by the cultural sensitivity analysis and through the results of pre-application models described in the CMAs defined in Stipulation VI.
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4. The BLM Section 106 review process detailed in Stipulation 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.
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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 decision-making including landscape-level resource concerns.

- 447 C. The following consultation timelines and parameters will apply to any future renewable
448 energy project applications within the LUPA Area:
- 449 1. The Section 106 review process for all proposed renewable energy project
450 applications within DFAs, as defined in Stipulation IV to this Agreement, will be
451 subject to the following timelines (see also Appendix D):
- 452 a) The BLM shall define the APE and proposed identification efforts in
453 accordance with Stipulation IV (A) and (B) and provide them concurrently
454 to the SHPO and project-specific consulting parties for a single 30 day
455 review and comment period.
- 456 b) The BLM shall propose determinations of eligibility and findings of effect
457 in accordance with Stipulation IV (C) and (D) and provide them
458 concurrently to the SHPO and project-specific consulting parties for
459 review and comment. The BLM shall, to the extent possible, make and
460 submit its determinations of eligibility and findings of effect in a single
461 consolidated decision for a 30 day review and comment period.
- 462 c) The BLM will forward to the SHPO all comments received during the 30
463 day review and comment period. Alternatively, a project-specific
464 consulting party may provide their comments directly to the SHPO with a
465 copy to the BLM within the 30 comment period. The BLM will respond to
466 any request from a project-specific consulting party for consultation
467 within the 30 day comment period.
- 468 d) After the 30 day comment period the SHPO will have 10 days to provide
469 any comments on the APE and proposed identification efforts, or to
470 comment or concur on the BLM's determinations and findings. Should
471 SHPO not comment, the BLM shall document that SHPO has elected not
472 to comment, provide notification to all project-specific consulting parties,
473 and may proceed in accordance with its proposed designations. If the
474 BLM and SHPO disagree on a proposed determination, the BLM shall
475 seek a determination from the Keeper of the National Register.
- 476 e) Where a project-specific consulting party objects to the BLM's proposals
477 within the 30 day comment period, the BLM shall consult with the
478 objecting party and the SHPO regarding the nature of the objection and
479 reconsider. If the objection is not resolved, the BLM shall further consult
480 with the SHPO and follow the process provided at 36 C.F.R. § 800.4
481 (c)(2). The BLM may proceed with all portions that are not subject to
482 objection.
- 483 2. Should the APE require modification as a result of a refinement in the POD, the
484 BLM will consult with SHPO for no more than 15 days to reach agreement on the
485 new APE. The BLM will then prepare a description and map(s) of the modified
486 APE and any additional identification efforts and provide them to the project-

487 specific consulting parties within 30 days of the day upon which agreement was
488 reached.

489 3. The BLM will review its findings when the sixty-percent design is provided by
490 the Applicant, and provide the results of this review to the project-specific
491 consulting parties. The sixty-percent project design is a conventional engineering
492 milestone and is developed by the Applicant in response to public comment
493 received through the ongoing NEPA process. If significant changes to the project
494 are proposed in the sixty-percent design, supplemental NEPA or additional
495 Section 106 review may be required. Significant changes can include, but are not
496 limited to: new information, new alternatives, or changes in the proposed project.
497

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

504 5. The BLM shall make reasonable attempts to contact the project-specific
505 consulting parties as defined in Stipulation II to confirm that the party has elected
506 not to comment or agrees with the course of action proposed by the BLM.
507 “Reasonable attempts” include a formal letter and/or email to the Tribal
508 Chairperson and designated representative for the Tribe and a follow-up phone
509 call. Unless otherwise agreed to, the BLM shall respond to any request by a
510 project-specific consulting party for information and clarification about any
511 proposed language or element under this Agreement, within 30 calendar days of
512 receipt of the request. Where the time period for review or comment has passed
513 after such reasonable attempts, the BLM may assume that the project-specific
514 consulting parties have elected not to comment and may proceed with the course
515 of action proposed.

516 **IV. IDENTIFICATION, EVALUATION AND ASSESSMENT OF EFFECTS**

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

521 **A. Area of Potential Effects**

522 1. The BLM will determine the APE for all individual renewable energy projects
523 proposed within the LUPA Area. The APE will be defined based on the accepted
524 Plan of Development (POD) for the proposed project. The APE for proposed
525 projects will consider the following factors:

- 526 a) Typically, the BLM may consider the ROW application area, plus any
527 buffers when defining the direct effects APE. Factors considered will
528 include all proposed temporary and permanent, surface and subsurface
529 project components. The components may include, but are not restricted
530 to: all areas where renewable energy generation components are proposed
531 to be constructed; all laydown and construction yards; all linear
532 components including access roads, gas pipelines, water pipelines,
533 transmission line corridors, etc.; all pull-areas associated with bends in
534 transmission line corridors; any helicopter or other alternative equipment
535 use areas; and any other areas associated with project construction where
536 historic properties could sustain direct effects as a result of the project.
- 537 b) For projects with large ROW application areas, where only a small portion
538 of the ROW would be affected by any proposed temporary and permanent,
539 surface and subsurface project components, and therefore where historic
540 properties could sustain direct effects as a result of the project, the BLM
541 may consider the entire ROW application area as part of the APE.
- 542 c) When defining the APE for indirect effects, the BLM shall consider the
543 area within which historic properties could sustain visual, auditory,
544 atmospheric, and contextual effects as a result of the project, and may
545 extend well beyond the ROW application area. Indirect effects can include
546 reasonably foreseeable effects caused by the undertaking that may occur
547 later in time or be farther removed in distance.
- 548 d) When defining the APE, the BLM may also consider lands outside of the
549 LUPA Area where the BLM is required to analyze project impacts under
550 the NEPA and effects to historic properties under the NHPA as a
551 connected action to the portion of the project proposed on BLM
552 administered public lands within the LUPA Area.

- 553 2. The BLM will prepare a description and map(s) of the APE and provide them to
554 the project-specific consulting parties for review and comment and will
555 concurrently request SHPO review pursuant to Stipulation III (C).
556

557 B. Identification Efforts

558

559 The BLM may require the development of the following types of cultural resources
560 studies to identify and assess adverse effects to historic properties from individual
561 renewable energy projects. This is not an exhaustive list and additional studies may be
562 required, as necessary. All studies listed here are described in more detail in Appendix D.
563

- 564 1. The BLM will require the development of a review of existing cultural resources
565 information and conduct a BLM Class I existing information inventory and
566 overview. This information will be used to develop a research design and work
567 plan for additional cultural resources studies for the proposed project. The BLM
568 will also develop an ethnographic literature review based on the review of
569 existing information. All studies are described in more detail in Appendix D.
570

- 571 a) The BLM will send the research design and work plan to the project-
572 specific consulting parties for review and comment and will concurrently
573 request SHPO review and concurrence on the proposed identification
574 efforts, pursuant to Stipulation III (C).
575
- 576 b) The BLM will submit the ethnographic literature review to the SHPO,
577 Tribes and Tribal Organizations for review and comment, and to seek any
578 additional information regarding resources in the APE with cultural or
579 religious significance to the Tribes.
580
- 581 2. The BLM will require the development of a new Class III inventory for the entire
582 direct effects APE, except where the following conditions apply: (1) where
583 reliable Class III inventory data already exist; (2) where Class III inventories
584 greater than 15 years in age may be reliable, with additional review; or (3) where
585 geomorphological or human-caused land disturbances would preclude the
586 existence of historic properties. If the BLM decides to require less than a Class III
587 inventory for the entire direct effects APE, the BLM will seek the views of the
588 SHPO and project-specific consulting parties, pursuant to Stipulation III(C), and
589 determine the final inventory strategy that best represents a reasonable and good
590 faith effort to carry out appropriate identification efforts.
591
- 592 3. The BLM will require the development of a geoarchaeological study of the entire
593 direct effects APE. The study will consider natural and archaeological site
594 formation processes to determine the likelihood of subsurface archaeological
595 remains within the APE. The study will utilize information obtained during any
596 geotechnical testing conducted as part of the overall project design process to
597 inform this analysis.
598
- 599 4. The BLM may require the development of an indirect effects study for the entire
600 indirect effects APE. The study will consider indirect effects to all known historic
601 properties and other properties identified in consultation with project-specific
602 consulting parties within the indirect effects APE, whose NRHP significance may
603 be adversely affected by visual, auditory, atmospheric, or contextual intrusions
604 from construction of the proposed project.
605
- 606 5. The BLM may require the development of an historic built-environment study for
607 the entire direct effects APE, if there are built-environment resources within the
608 APE.
609
- 610 6. The BLM will require a peer review of the studies described in (1) through (5)
611 above, in accordance with Stipulation VI (B) of this Agreement.
612
- 613 7. The BLM will consult with the Tribes and Tribal Organizations to identify any
614 resources that have cultural or religious significance to the Tribes or Tribal
615 Organizations. The BLM may require the development of an ethnographic
616 assessment for the project, if the Tribes or Tribal Organizations indicate that they

617 have additional information that should be considered in the Section 106 review
618 and analysis.

619 C. Determinations of Eligibility

- 620 1. Based on the results of the identification efforts described in (B) above, and the
621 results of the peer review report described in (B)(6), the BLM will determine if
622 any of the cultural resources identified within the APE, including resources with
623 cultural or religious significance to a Tribe, meets one or more of the NRHP
624 eligibility criteria specified in 36 C.F.R. § 60.4. Resources that meet one or more
625 criteria shall be considered historic properties.
626
- 627 2. Where resources are identified that are evaluated as not eligible under Criteria A-
628 C, but where their Criterion D values are unknown but will be avoided by project
629 design or by implementing protection measures, the BLM may treat such
630 resources as eligible for the NRHP under criterion D without formal evaluation,
631 for that project only, and their significant values will be avoided. The Applicant
632 must submit a formal letter committing to avoidance of any resources that are
633 unevaluated under Criterion D and avoided.
634
- 635 3. The BLM will submit the agency proposed determinations of eligibility to the
636 project-specific consulting parties for review and comment, and will concurrently
637 request SHPO review and concurrence on the agency proposed determinations of
638 eligibility pursuant to Stipulation III (C).

639 D. Findings of Effect

- 640 1. The BLM shall make findings of effect consistent with 36 C.F.R. § 800.4(d) and
641 identify the type of adverse effect for each affected property in accordance with
642 the criteria established in 36 C.F.R. 800.5(a)(1) and (2)(i)-(vii).
643
- 644 2. The BLM will submit the agency proposed findings of effect to the project-
645 specific consulting parties for review and comment, and will concurrently request
646 SHPO review and concurrence on the agency proposed findings of affect pursuant
647 to Stipulation III (C).
648
- 649 3. If the BLM determines that the effect of the undertaking on historic properties
650 may be adverse, the BLM will make a reasonable and good faith effort to avoid or
651 minimize adverse effects to the most reasonable and fitting extent and proceed in
652 accordance with Stipulation V. Avoidance of historic properties is the preferred
653 method to address potential adverse effects and the BLM will require avoidance
654 to the maximum extent practicable.

655 **V. HISTORIC PROPERTIES TREATMENT AND MANAGEMENT**

- 656 A. Where adverse effects to historic properties from any proposed renewable energy project
657 application within the LUPA Area are identified, the BLM will execute a project-specific

658 MOA pursuant to 36 C.F.R. § 800.6 to fulfill the intent of this Agreement. Historic
659 properties will be treated and managed in accordance with the following processes:

660 1. Resolution of Adverse Effects

- 661 a) The BLM will invite the ACHP to participate in the resolution of any
662 adverse effects to historic properties.
- 663 b) The BLM will consult with the SHPO, the ACHP (if participating), and
664 project-specific consulting parties regarding the resolution of adverse
665 effects from individual projects.
- 666 c) The BLM will seek agreement to avoid, minimize, or mitigate adverse
667 effects to historic properties. The BLM will execute an MOA with the
668 SHPO to conclude the Section 106 process and will file a copy with the
669 ACHP.
- 670 d) The BLM will identify all mitigation measures for historic properties that
671 will be adversely affected by a specific project in an Historic Properties
672 Treatment Plan (HPTP) that will be included as an appendix to the MOA.
673 The Applicant is responsible for implementing all of the terms of the
674 MOA. All potential appendices are described in more detail in Appendix
675 D.
- 676 e) Where the BLM and SHPO are unable to execute an MOA, the BLM will
677 follow the process at 36 C.F.R. § 800.7.

678 2. Post-Review Discoveries and Unanticipated Effects

- 679 a) The BLM, in consultation with the SHPO, the ACHP (if participating),
680 and project-specific consulting parties, will develop a comprehensive plan
681 to manage post-review discoveries and unanticipated effects during project
682 construction. The plan will be attached to any project-specific MOA or PA
683 as an appendix, and implemented by the Applicant.
- 684 b) Should any post-review discoveries or unanticipated effects occur prior to
685 the development of a monitoring plan, or where an MOA or PA for a
686 specific project has not been executed, the BLM shall follow the process
687 at 36 C.F.R. § 800.13 (b).

688 3. Treatment of Human Remains of Native American Origin

- 689 a) The BLM shall ensure that any Native American human remains and
690 funerary objects discovered on federal lands shall be treated in accordance
691 with the provisions of NAGPRA and its implementing regulations at 43
692 CFR Part 10.
- 693 b) In consultation with the Tribes and Tribal Organizations for the specific
694 undertaking, the BLM shall seek to develop a written plan of action as
695 needed pursuant to 43 C.F.R. 10.5(e) to manage the inadvertent discovery
696 or intentional excavation of human remains, funerary objects, sacred
697 objects, or objects of cultural patrimony.

- 698 c) The BLM shall ensure that the Native American Heritage Commission is
699 notified so that Native American human remains and/or funerary objects
700 discovered on non-federal lands are treated in accordance with the
701 applicable requirements of the California Public Resources Code at
702 Sections 5097.98 and 5097.991, and of the California Health and Human
703 Safety Code at Section 7050.5(c).
704 d) Once the BLM has verified that the requirements of the NAGPRA or
705 California state laws have been met, the BLM may authorize the project
706 proponent to resume operations in the vicinity of the discovery.

707 4. Historic Properties Management

708 The BLM shall ensure that an Historic Properties Management Plan (HPMP) will
709 be developed for all projects where historic properties require long term
710 management. The HPMP will be developed in consultation with the SHPO, the
711 ACHP (if participating), project-specific consulting parties; will identify how
712 historic properties will be managed through project Operations and Maintenance,
713 and Decommissioning; and will be implemented by the Applicant.

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

- 720 1. The BLM will notify the ACHP, SHPO, Tribes and Tribal Organizations, and
721 other potential consulting parties of its intent to develop a project specific PA and
722 invite the parties to participate in its development as appropriate pursuant to 36
723 C.F.R. § 800.2(c) to consult and participate in the development of the PA.
- 724 2. The PA shall be consistent with requirements of 36 C.F.R. § 800.14 (b). It shall
725 address, but is not limited to, determination of the APE, a process for
726 identification and evaluation of historic properties, consideration of provisions
727 requiring ethnographic data collection, determination of adverse effects to historic
728 properties, a process for incorporating design changes to avoid or minimize
729 adverse effects to historic properties, development of Historic Properties
730 Management Plans (HPMP) for those projects with historic properties that require
731 management or monitoring for avoidance and protection within or near a project's
732 boundaries, a process for incorporating methods for avoiding, minimizing, or
733 mitigating adverse effects, a process for the preparation and implementation of an
734 Historic Properties Treatment Plan (HPTP), and processes for amending the PA,
735 resolving disagreements, and terminating the PA. The Applicant is responsible for
736 implementing all of the terms of the PA.

737 **VI. CONSERVATION MANAGEMENT ACTIONS**

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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 project applicant must provide justification in the application for why the project merits further consideration. 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. The committee will develop this process 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 to all Consulting Parties. Details regarding the development and implementation of the Cultural Resources Sensitivity Analysis will be included as Appendix E to this Agreement.
3. 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. Renewable energy project applicants 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. Third-party cultural resources consultants must meet the same permitting requirements as the cultural resources consultant and consistent with Stipulation VIII (A) and report directly to the BLM lead archaeologist for the individual project. The purpose of the third-party peer review is to ensure information accuracy and consistency with all BLM

784 requirements and to assist the BLM in meeting its Section 106 compliance
785 requirements.

- 786
- 787 2. Third-party peer reviews may include, but are not limited to the following
788 activities:
- 789 a. Review of all fieldwork conducted by the cultural resources consultants,
790 including on-site check-ins during fieldwork and post-fieldwork field
791 verification assessments.
 - 792 b. Review of all reports developed as a result of fieldwork.
 - 793 c. Third party consultant may also complete other tasks to assist the BLM
794 with meeting its Section 106 compliance requirements including, but not
795 limited to: drafting letters, meeting coordination, and consulting party
796 coordination.
- 797
- 798 3. The results of the field verification and review of the information presented in the
799 technical report will be documented in a summary report to be submitted to the
800 BLM within 60 days of completion of the peer review of those components. The
801 BLM will review and approve the final third-party peer review report.
- 802
- 803 4. The BLM will consider the information presented in the third-party peer review
804 when making determinations and findings for the project consistent with
805 Stipulation IV (A)(3) and (4).
- 806

807 C. Compensatory Mitigation Fee for Cumulative Effects

808

- 809 1. The BLM will impose a compensatory mitigation fee for all approved renewable
810 energy projects within the LUPA Area to address cumulative and some indirect
811 adverse effects to historic properties. The mitigation fee will be calculated in a
812 manner that is commensurate to the size and regional impacts of the project, the
813 details of which will be established in Appendix F.
- 814
- 815 2. The same committee identified in Stipulation VI (A)(2)= for the development of
816 Cultural Resources Sensitivity Analysis in Appendix E will establish how
817 compensatory mitigation fees will be used. Individual mitigation efforts will be
818 organized along one of four broad themes within the LUPA area:
- 819 a. Regional research to address gaps in knowledge or to address synthesis of
820 regional data
 - 821 b. Education, training, and outreach regarding cultural resources
 - 822 c. Maintenance/retention of social and cultural heritage values of people
823 affiliated with LUPA area
 - 824 d. Acquisitions of additional land to be brought into Federal conservation
825 within the LUPA area due to important cultural values
- 826 3. The committee will develop a process for the management and use of the
827 compensatory mitigation fees within six-months, or other period as determined by
828 the Signatories, of execution of this Agreement and provide to all Consulting
829 Parties for a 30 day review and comment period. After the 30 day review and

830 comment period, the BLM will consider all comments received, revise the
831 document as appropriate, and provide the final to all Consulting Parties. The final
832 document will be included as Appendix F to this Agreement.
833

- 834 4. In accordance with the reporting intervals described in Stipulation VII the BLM
835 will provide a report of the status of all activities funded with compensatory
836 mitigation fees, a review of the effectiveness of ongoing activities, and discuss
837 future activities with the Consulting Parties.
838

839 D. Cultural Resources Training

840

- 841 1. The BLM will facilitate training in Section 106 of the NHPA and construction
842 compliance for all Consulting Parties to enhance the consultation process for all
843 renewable energy projects by encouraging better information sharing and
844 communication.
845
- 846 a) Section 106 of the NHPA training will be funded by the regional
847 mitigation fee and will be open to all Consulting Parties. The need for
848 Section 106 of the NHPA training will be assessed during the reporting
849 identified in Stipulation VII.
 - 850 b) Proponents of approved renewable energy projects will provide for a
851 single, in-person construction compliance training for all cultural
852 resources compliance personnel on individual renewable energy projects
853 prior to the start of construction. Construction compliance training will be
854 conducted in a single in-person meeting for all cultural compliance
855 personnel, the Applicant, and the BLM and will include an introduction to
856 all applicable cultural compliance documents and requirements for
857 construction, sensitivity training by a designated Tribal representative, and
858 a visit to the project site.

859 VII. REPORTING REQUIREMENTS

- 860 A. The BLM acknowledges the complexity and scale of the Undertaking and will continue
861 to facilitate meaningful consultation throughout the life of this Agreement. The
862 implementation and operation of this Agreement shall be evaluated on an annual basis by
863 the Consulting Parties for the first five (5) years after the signing of the Agreement and
864 the implementation of the Undertaking. The BLM shall prepare an annual letter report
865 summarizing the fulfillment of the stipulations contained within this Agreement. The
866 report will be submitted to all Consulting Parties by December 31, 2016, for the initial
867 reporting period.
868

- 869 1. The annual letter report shall include a general summary of actions processed
870 under this Agreement, a report of the implementation of the CMAs; an accounting
871 of the projects where regional mitigation fees have been collected; a description
872 of the mitigation projects that have been, or are being funded with the fee money,
873 and a discussion of additional mitigation projects that should be considered.
874

875 2. If the BLM reports activity under this Agreement, the Consulting Parties may
876 meet in-person or via a conference call to evaluate the activities conducted under
877 this Agreement during the reporting year, discuss overall trends in project
878 implementation under this Agreement, and address program-level concerns with
879 implementation of this Agreement. The Consulting Parties may provide
880 suggestions for modifications to this Agreement based on information shared at
881 reporting meetings.
882

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

886 **VIII. STANDARDS AND QUALIFICATIONS**

887
888 A. PROFESSIONAL QUALIFICATIONS. All actions prescribed by this Agreement shall
889 be carried out by or under the direct supervision of a person or persons meeting, at a
890 minimum, the applicable professional qualification standards set forth in the Office of
891 Personnel Management professional qualifications for archaeology and historic
892 preservation, or the Secretary of the Interior’s Professional Qualifications Standards
893 (PQS), as appropriate (48 Fed. Reg. 44739 dated September 29, 1983, and C.F.R. § 61.
894 The PQS are also available online at: [http://www.nps.gov/history/local-
895 law/arch_stnds_9.htm](http://www.nps.gov/history/local-law/arch_stnds_9.htm)), and the regional experience or other requirements of a BLM-
896 issued Cultural Resources Use Permit issued under the authority of Archaeological
897 Resources Protection Act of 1979 (16 U.S.C. 470aa-mm) and its regulations (43 CFR 7)
898 and/or Antiquities Act of 1906 (P.L. 59-209; 34 Stat. 225, 16 U.S.C. 431-433) and its
899 regulations (43 CFR 3) and/or Federal Land Policy and Management Act of 1976
900 (FLPMA)(Public Law 94-570). However, nothing in this Stipulation may be interpreted
901 to preclude any party qualified under the terms of this paragraph from using the services
902 of persons who do not meet the PQS, so long as the work of such persons is directly
903 supervised in the field and laboratory by someone who meets the PQS.
904

905 B. DOCUMENTATION STANDARDS. Reporting on and documenting the actions cited in
906 this Agreement shall conform to every reasonable extent with the Secretary of the
907 Interior’s Standards and Guidelines for Archeology and Historic Preservation (48 Fed.
908 Reg. 44716-40 dated September 29, 1983), as well as, the BLM 8100 Manual, the
909 Archaeological Resource Management Reports (ARMR): Recommended Contents and
910 Format (ARMR Guidelines) for the Preparation and Review of Archaeological Reports,
911 and any specific and applicable county or local requirements or report formats. This list
912 represents the guidelines available during development of this Agreement. Should the
913 guidelines be updated after the execution of this Agreement, the latest versions will take
914 precedent. In the event that any guidelines are modified in the future to conflict with this
915 Agreement, the BLM shall notify all Consulting Parties and will consult to determine
916 how this Agreement should be revised, if necessary, pursuant to Stipulation IX.
917

918 C. CONFIDENTIALITY. All Consulting Parties to this Agreement will ensure that all
919 sensitive information, as defined in Section 9 of the Archaeological Resources Protection
920 Act (ARPA) and Section 304 of the NHPA, excluded under the Freedom of Information

921 Act (5 U.S.C. 552, as Amended by Public Law No. 104-231, 110 Stat. 3048) is protected
922 from release. For the purposes of consultation under this Agreement, the Agency official
923 may release certain information for the benefit of the resource. Information concerning
924 the nature and location of any archaeological resource (historic or prehistoric) will be
925 considered for release under the provision of Section 9 of the ARPA of 1979 as amended
926 (16 U.S.C. 470hh). Consideration may result in the sharing of summary reports that do
927 not contain sensitive location information. If complete reports or other information
928 concerning the nature and location of any historic property, archaeological resource, or
929 other confidential cultural resource are submitted to a Consulting Party, a data sharing
930 agreement must be completed and signed by all parties.

931
932 D. CURATION STANDARDS. On BLM-administered land, all records and materials
933 resulting from the actions cited in Stipulation IV and V of this Agreement shall be
934 curated in accordance with 36 C.F.R. § 79, and the provisions of the NAGPRA, 43
935 C.F.R. § 10, as applicable. To the extent permitted under Sections 5097.98 and 5097.991
936 of the California Public Resources Code, the materials and records resulting from the
937 actions cited in Stipulations IV and V of this Agreement for private lands shall be curated
938 in accordance with 36 C.F.R. § 79, with the consent of the private property owner.

939 IX. AMENDMENTS TO THE AGREEMENT

- 940
- 941 A. Signatories may request amendments to this Agreement. Upon receipt of a request to
942 amend this Agreement, the BLM will immediately notify the other Consulting Parties and
943 initiate a 30 day period in which all Parties shall consult to consider such amendments.
944
 - 945 B. This Agreement may be amended when such an amendment is agreed to in writing by all
946 Signatories. Amendments to this Agreement shall take effect on the dates that they are
947 fully executed by the Signatories.
948
 - 949 C. Modifications, additions, or deletions to the appendices made as a result of continuing
950 consultation among the Consulting Parties do not require this Agreement to be amended.

951 X. DISPUTE RESOLUTION

- 952
- 953 A. Should the Signatories object at any time to the manner in which the terms of this
954 Agreement are implemented the BLM will immediately notify all Consulting Parties and
955 consult with the other Signatories to resolve the objection. The other Consulting Parties
956 may comment on the objection to the BLM.
957
 - 958 1. If the objection can be resolved within a 30-day consultation period (or other
959 period as determined by the Signatories), the BLM may authorize the disputed
960 action to proceed in accordance with the terms of such resolution.
961
 - 962 2. If the objection cannot be resolved through such consultation, the BLM will
963 forward all documentation relevant to the objection to the ACHP. Any comments
964 provided by the ACHP within 30 days after its receipt of all relevant
965 documentation will be taken into account by the BLM in reaching a final decision

966 regarding the objection. The BLM will notify all Consulting Parties in writing of
967 its final decision within 14 days after it is rendered.

- 968
- 969 B. The BLM’s responsibility to carry out all other actions under this Agreement that are not
970 the subject of the objection will remain unchanged.
- 971
- 972 C. At any time during implementation of the terms of this Agreement, should an objection
973 pertaining to this Agreement be raised by a Concurring Party, the BLM shall immediately
974 notify all Consulting Parties in writing, consult with the SHPO about the objection, and
975 take the objection into account. The other Consulting Parties may comment on the
976 objection to the BLM. The BLM shall consult with the objecting party/parties for no
977 more than 30 days. Within 14 days following closure of consultation, the BLM will
978 render a final decision regarding the objection and proceed accordingly after notifying all
979 parties of its decision in writing. In reaching its final decision, the BLM will take into
980 account all comments from the parties regarding the objection.

981 **XI. TERMINATION**

- 982
- 983 A. If any Signatory to this Agreement determines that its terms will not or cannot be carried
984 out, that party shall immediately consult with the other parties to attempt to develop an
985 amendment per Stipulation IX above.
- 986
- 987 B. If within sixty (60) days an amendment cannot be reached, a Signatory to this Agreement
988 may initiate termination by providing written notice to the other parties of their intent.
- 989
- 990 C. Should this Agreement be terminated the BLM shall ensure that until and unless a new
991 PA is executed for the activities and undertakings tiered from this Agreement, such
992 undertakings shall be reviewed individually in accordance with 36 C.F.R. § 800.4-800.6.
993 The BLM shall consult with the SHPO to determine the manner in which Section 106
994 review for undertakings tiered from this Agreement shall be concluded.

995 **XII. DURATION OF THE AGREEMENT**

- 996
- 997 A. Unless this Agreement is terminated pursuant to Stipulation XI, another PA is executed
998 for an activity or undertaking tiered from this Agreement that supersedes it, or an
999 undertaking tiered from this Agreement itself has been terminated, this Agreement will
1000 remain in full force and effect for twenty (20) years from the date of its execution.
- 1001
- 1002 B. This Agreement will expire if the LUPA or the stipulations of this Agreement have not
1003 been initiated within five (5) years from the date of its execution. Prior to such time, the
1004 BLM will consult with the Consulting Parties on whether to extend this Agreement or
1005 reconsider the terms of this Agreement and amend it in accordance with Stipulation IX.
1006 The BLM shall notify the Consulting Parties as to the course of action it will pursue 90
1007 days before the 5-year anniversary of the execution of this Agreement.
- 1008

1009 **XIV. EFFECTIVE DATE**

1010

1011 This Agreement will take effect on the date that it has been executed by the Signatories.
1012 This Agreement and any amendments thereto shall be executed in the following order:
1013 (1) BLM, (2) SHPO, and (3) ACHP.

1014
1015 Execution of this Agreement by the BLM, the SHPO, and the ACHP, and subsequent
1016 implementation of its terms, shall evidence that the BLM has taken into account the
1017 effects of the Undertaking on historic properties and that BLM has afforded the ACHP an
1018 opportunity to comment on the Undertaking and its effects on historic properties.

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1021 **SIGNATORY PARTIES**

1022

1023 U.S. BUREAU OF LAND MANAGEMENT

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1025

1026

1027

1028 James G. Kenna

Date

1029 State Director

1030

1031

1032 CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

1033

1034

1035

1036

1037 Julianne Polanco

Date

1038 State Historic Preservation Officer

1039

1040

1041 ADVISORY COUNCIL ON HISTORIC PRESERVATION

1042

1043

1044

1045

1046 John M. Fowler

Date

1047 Executive Director

1048 Advisory Council on Historic Preservation

1049

1050 **Concurring Party**

1051 NAME OF CONCURRING PARTY

BY: _____ DATE: _____

TITLE: _____

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This is an example Concurring Party signature page
Each Consulting Party listed in Appendix A will have a separate signature page in this format

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**APPENDIX A:
INVITED CONSULTING PARTIES**

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APPENDIX A

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

- 1062
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1064
1065 Federally Recognized Indian Tribes
1066 Agua Caliente Band of Cahuilla Indians
1067 Augustine Band of Cahuilla Indians
1068 Barona Band of Mission Indians
1069 Big Pine Tribe of the Owens Valley
1070 Bishop Paiute Tribe
1071 Cabazon Band of Mission Indians
1072 Cahuilla Band of Mission Indians
1073 Campo Band of Mission Indians
1074 Chemehuevi Indian Tribe
1075 Cocopah Indian Tribe
1076 Colorado River Indian Tribes
1077 Ewiiapaayp Band of Kumeyaay Indians
1078 Fort Independence Band of Paiute Indians
1079 Fort Mojave Indian Tribe
1080 Fort Yuma Quechan Tribe
1081 Inaja-Cosmit Band of Mission Indians
1082 Jamul Indian Village
1083 La Jolla Band of Luiseno Indians
1084 La Posta Band of Kumeyaay Indians
1085 Las Vegas Tribe of Paiute Indians
1086 Lone Pine Paiute-Shoshone Tribe
1087 Los Coyotes Band of Cahuilla and Cupeno Indians
1088 Manzanita Band of Kumeyaay Indians
1089 Mesa Grande Band of Mission Indians
1090 Moapa Band of Paiute Indians
1091 Morongo Band of Mission Indians
1092 Pala Band of Mission Indians
1093 Pauma/Yuima Band of Mission Indians
1094 Pechanga Band of Mission Indians
1095 Ramona Band of Mission Indians
1096 Rincon Luiseno Band of Indians
1097 San Manuel Band of Mission Indians
1098 San Pasqual Band of Diegueno Indians
1099 Santa Rosa Band of Mission Indians
1100 Santa Ynez Band of Mission Indians
1101 Santa Ysabel Band of Diegueno Indians
1102 Soboba Band of Luiseno Indians
1103 Sycuan Band of Kumeyaay Nation
1104 Tejon Indian Tribe
1105 Timbisha Shoshone Tribe
1106 Torres-Martinez Desert Cahuilla Indians
1107 Tule River Reservation

- 1108 Twenty-Nine Palms Band of Mission Indians
- 1109 Utu Utu Gwaitu Paiute Tribe
- 1110 Viejas Band of Kumeyaay Indians
- 1111
- 1112 Non-Federally Recognized Indian Tribes and Tribal Organizations
- 1113 Kawaiisu Tribe
- 1114 Kern Valley Indian Council
- 1115 Kern Valley Paiute Council
- 1116 Kwaaymii Laguna Band of Indians
- 1117 Monache Intertribal Association
- 1118 Pahrump Paiute Tribe
- 1119 Tubatulabals of Kern Valley
- 1120
- 1121 Federal Agencies
- 1122 Bureau of Indian Affairs
- 1123 National Park Service - Pacific West Region
 - 1124 Death Valley National Park
 - 1125 Joshua Tree National Park
 - 1126 Juan Bautista De Anza National Historic Trail
 - 1127 Manzanar
 - 1128 Mojave National Preserve
 - 1129 Old Spanish National Historic Trail
- 1130 U.S. Environmental Protection Agency
- 1131 U.S. Fish and Wildlife Service - National Wildlife Refuge System
 - 1132 Ash Meadows National Wildlife Refuge
 - 1133 Coachella National Wildlife Refuge
 - 1134 Salton Sea National Wildlife Refuge
- 1135 U.S. Forest Service – Region 5
 - 1136 Angeles National Forest
 - 1137 Cleveland National Forest
 - 1138 Inyo National Forest
 - 1139 San Bernardino National Forest
 - 1140 Sequoia National Forest
- 1141 Department of Defense:
 - 1142 U.S. Air Force
 - 1143 Edwards Air Force Base
 - 1144 Chocolate Mountain Aerial Gunnery Range
 - 1145 U.S. Army - Office of the Deputy Assistant Secretary
 - 1146 U.S. Marine Corps - Installations West
 - 1147 Air Ground Combat Center, Twentynine Palms
 - 1148 Marine Corps Air Station, Yuma, Arizona
 - 1149 Marine Corps Logistics Base Barstow
 - 1150 U.S. Navy Region - Southwest
 - 1151 Naval Air Weapons Station China Lake
 - 1152 Naval Air Facility El Centro
 - 1153 U.S. Army Corps of Engineers

1154 State Agencies

- 1155 California Department of Fish and Wildlife
- 1156 California Department of Parks and Recreation
- 1157 California Department of Transportation
 - 1158 District 8
 - 1159 District 9
 - 1160 District 11
- 1161 California Energy Commission
- 1162 California Historic Resources Information Centers
 - 1163 Eastern Information Center
 - 1164 South Coastal Information Center
 - 1165 Southern San Joaquin Valley Info Center
- 1166 California Independent System Operator
- 1167 California Public Utilities Commission
- 1168 California State Lands Commission
- 1169 California State Parks
- 1170 Governor's Office of the Tribal Advisor
- 1171 Native American Heritage Commission
- 1172 State Historic Resources Commission

1173

1174 Local Agencies

1175 Counties:

- 1176 Imperial County
- 1177 Inyo County
- 1178 Kern County
- 1179 San Bernardino County
- 1180 San Diego County

1181 Cities:

- 1182 City of California City
- 1183 City of Hesperia
- 1184 City of Lancaster
- 1185 City of Victorville

1186 Water/Irrigation Districts:

- 1187 Antelope Valley-East Kern Water Agency
- 1188 Apple Valley Ranchos Water Company
- 1189 California Water Service Company
- 1190 Hi-Desert Water District
- 1191 Indian Wells Valley Water District
- 1192 Inyo County Water Department
- 1193 Imperial Irrigation District
- 1194 Joshua Basin Water District
- 1195 Lake Elizabeth Mutual Water Company
- 1196 Littlerock Creek Irrigation District
- 1197 Los Angeles County Waterworks Districts
- 1198 Mammoth Community Water District
- 1199 Metropolitan Water District Headquarters

- 1200 Mojave Water Agency
- 1201 Palm Ranch Irrigation District
- 1202 Palo Verde Irrigation District
- 1203 Quartz Hill Water District
- 1204 Tehachapi-Cummings County Water District
- 1205 Twentynine Palms Water District
- 1206 Victorville Water District
- 1207 Others:
- 1208 City of Tehachapi Public Works
- 1209 Death Valley Chamber of Commerce
- 1210 Golden Hills Community Services District
- 1211 Heber Public Utility District
- 1212 Lone Pine Chamber of Commerce
- 1213 Los Angeles County Planning Division
- 1214 Riverside Co Regional Parks & Open Space District
- 1215 Riverside County Planning Department
- 1216 Rosamond Community Services District
- 1217 Salton Community Services District
- 1218 San Bernardino County Department of Public Works
- 1219 San Bernardino County Special Districts Department
- 1220
- 1221 Organizations
- 1222 Alliance for Historic Landscape Preservation
- 1223 Amargosa Conservancy
- 1224 Amargosa Opera House and Hotel
- 1225 American Motorcyclist Association
- 1226 American Rock Art Research Association
- 1227 American Society of Landscape Architects
- 1228 Anza Trail Foundation
- 1229 Basin and Range Watch
- 1230 California Archaeological Site Stewardship Program
- 1231 California Archaeology Journal
- 1232 California Association of Off-Road Vehicles
- 1233 California Historic Route 66 Association
- 1234 California Missions Foundation
- 1235 California Native Plant Society
- 1236 California Off-Road Vehicle Association
- 1237 California Preservation Foundation
- 1238 California Unions for Reliable Energy (Adams Broadwell Joseph & Cardozo)
- 1239 California Wind Energy Association
- 1240 Center for Biological Diversity
- 1241 Center for Energy Efficiency & Renewable Technologies
- 1242 Conference of California Historical Societies
- 1243 Death Valley Conservancy
- 1244 Death Valley Natural History Association
- 1245 Defenders of Wildlife

- 1246 Desert Renewable Energy Tribal Coalition
- 1247 Environmental Consulting
- 1248 Friends of El Mirage
- 1249 Friends of Jawbone
- 1250 Friends of Manzanar
- 1251 Friends of Public Lands Cabins
- 1252 Friends of the Desert Mountains
- 1253 Friends of the Eastern California Museum
- 1254 Friends of the Inyo
- 1255 Historic American Landscape Survey
- 1256 Historic Roads Marriott & Associates
- 1257 Independent Civic Club
- 1258 Joshua Tree National Park Association
- 1259 Journal of California and Great Basin Anthropology
- 1260 La Cuna de Atzlan Sacred Sites Protection Circle
- 1261 Los Angeles Conservancy
- 1262 Mojave Desert Land Trust
- 1263 Mojave National Preserve Conservancy
- 1264 Morongo Basin Conservation Association
- 1265 National Historic Route 66 Federation
- 1266 National Public Lands News
- 1267 National Scenic Byway Foundation
- 1268 National Trust for Historic Preservation
- 1269 Natural Resources Defense Council
- 1270 Off-Road Business Administration
- 1271 Old Spanish Trail Association
- 1272 Research Issues in San Diego Prehistory
- 1273 Resources Law Group LLP
- 1274 Roadside Heritage
- 1275 Route 66 Preservation Foundation
- 1276 Save our Desert
- 1277 Scenic America
- 1278 Sierra Club
- 1279 Society for American Archaeology
- 1280 Society for California Archaeology
- 1281 Society for Historical Archaeology
- 1282 Society of Architectural Historians
- 1283 Southern California Railway Plaza Association
- 1284 The Archaeological Conservancy
- 1285 The California Wilderness Coalition
- 1286 The Cultural Landscape Foundation
- 1287 The Nature Conservancy
- 1288 The Wilderness Society
- 1289 The Wildlands Conservancy
- 1290 Union of Concerned Scientists
- 1291 United Four Wheel Drive Association

- 1292 USDA Natural Resources Conservation Service
1293
1294 Academic Institutions
1295 East Carolina University
1296 California State Polytechnic University Pomona
1297 California State University:
1298 Dominguez Hills
1299 Fullerton Department of Anthropology
1300 Northridge Department of Anthropology
1301 Sacramento San Marcos
1302 San Bernardino Department of Anthropology
1303 San Diego State University
1304 University of California:
1305 Davis Department of Anthropology
1306 Irvine History Department
1307 Los Angeles Cotsen Institute of Archaeology
1308 Los Angeles Department of Anthropology
1309 Riverside Department of Anthropology
1310
1311 Museums & Historical Societies
1312 Associated Historical Societies of LA County
1313 Autry Natl Center of the American West
1314 Bishop Museum & Historical Society
1315 California Garden & Landscape History Society
1316 Coachella Valley Archaeological Society
1317 Conference of California Historical Societies
1318 Eastern California Museum
1319 General Patton Museum
1320 Historical Society of the Upper Mojave Desert
1321 Imperial Valley Desert Museum
1322 Imperial County Historical Society Pioneers Park Museum
1323 Laws Museum
1324 Malki Museum
1325 Maturango Museum
1326 Mojave Desert Heritage & Cultural Association
1327 Mojave River Valley Museum
1328 National Railway Historical Society
1329 Pacific Coast Archaeological Society
1330 Palo Verde Historical Museum & Society
1331 Railway & Locomotive Historical Society
1332 Riverside Historical Society
1333 San Bernardino County Museum
1334 San Diego Archaeological Center
1335 San Diego Archaeological Society
1336 San Diego History Center
1337 Searles Valley Historical Society

- 1338 Shoshone Village Museum and Inn
- 1339 San Bernardino Historical Society
- 1340
- 1341 Industry Representatives
- 1342 Abengoa Solar
- 1343 AGG Associates
- 1344 Applied Earthworks
- 1345 ASM Affiliates
- 1346 Bechtel Energy
- 1347 Brightsource
- 1348 Celtic Energy
- 1349 EDF Renewables
- 1350 EnXco
- 1351 Far Western Archaeological Research Group
- 1352 First Solar
- 1353 Geothermal Energy Association
- 1354 Iberdrola Renewables
- 1355 Jill K. Gardner & Associates, Inc.
- 1356 K Road
- 1357 Large Scale Solar Association
- 1358 LightSource Renewables
- 1359 NextEra Energy Resources
- 1360 Pacific Gas & Electric Company
- 1361 Recurrent Energy
- 1362 Renewable Resources Group
- 1363 Resource Sciences and Planning
- 1364 Solar Reserve
- 1365 Sempra Energy Utilities
- 1366 Southern California Edison
- 1367 SoCal Gas
- 1368 Statistical Research, Inc.
- 1369 Tenaska
- 1370 TerraGen
- 1371
- 1372 Individuals
- 1373 Claude Warren
- 1374 Jim Mattern
- 1375 Mark Algazy
- 1376 Matt Bischoff
- 1377 Sophia Ann Merk
- 1378

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**APPENDIX B:
DEFINITIONS AND ACRONYMS**

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APPENDIX B
Definition of Terms

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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 Effect: The Area of Potential Effect (APE) is defined as the total geographic area or areas within which the 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. 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 from the existing management plans for 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

1428 importance to specified social and/or culture groups. Cultural resources include the entire
1429 spectrum of objects and places, from artifacts to cultural landscapes, without regard to eligibility
1430 for inclusion on the National Register of Historic Places (NRHP).

1431
1432 **Cultural Resources Sensitivity Analysis:** GIS modelling of known archaeological resources to
1433 consider the archaeological sensitivity of a given area. The goal of the cultural resources
1434 sensitivity analysis is to select specific renewable energy project footprints for further
1435 consideration that will minimize impacts to cultural resources.

1436
1437 **Desert Renewable Energy Conservation Plan:** The Desert Renewable Energy Conservation
1438 Plan (DRECP) is an interagency strategy to provide for renewable energy projects and for the
1439 conservation of sensitive species, ecosystems, and cultural resources in California’s Mojave and
1440 Colorado/Sonoran deserts.

1441
1442 **DRECP Variance Lands:** Areas potentially available for renewable energy project development.
1443 Future Assessment Areas require a more extensive pre-application process to collect additional
1444 information before BLM makes a determination on a project application. See Appendix C for
1445 more information.

1446
1447 **Development Focus Areas (DFAs):** Area available for solar, wind and geothermal development
1448 and transmission. An application within a DFA would still go through the BLM right-of-way
1449 process including environmental and Section 106 review, but would benefit from the DRECP
1450 environmental document and this Agreement. See Appendix C for more information.

1451
1452 **Evaluation:** The application of the National Register eligibility criteria, 36 CFR § 60.4.

1453
1454 **Future Assessment Areas:** Areas potentially available for renewable energy project
1455 development. Future Assessment Areas require a more extensive pre-application process to
1456 collect additional information before BLM makes a determination on a project application. See
1457 Appendix C for more information.

1458
1459 **Historic Properties:** Cultural resources that are included in, or eligible for inclusion in, the
1460 NRHP maintained by the Secretary of the Interior and per the NRHP eligibility criteria at 36
1461 C.F.R. § 60.4 and may include any prehistoric or historic district, site, building, structure,
1462 traditional cultural property or object. This term includes artifacts, records, and remains that are
1463 related to and located within such properties. The term includes properties of traditional religious
1464 and cultural importance to an Indian tribe or Native Hawaiian organization that meet the NRHP
1465 criteria. The term “eligible for inclusion in the NRHP” refers both to properties formally
1466 determined as such in accordance with regulations of the Secretary of the Interior and all other
1467 properties that meet the NRHP criteria.

1468
1469 **Identification:** The general term for the component of BLM's cultural resource management
1470 program that includes locating, recording, and determining the legal, scientific, public, and
1471 conservation values of cultural resources, i.e., giving cultural resources a management identity.

1472

1473 **Inventory:** a term used to refer to both a record of cultural resources known to occur within a
1474 defined geographic area, and the methods used in developing the record. Depending on intended
1475 applications for the data, inventories may be based on (a) compilation and synthesis of
1476 previously recorded cultural resource data from archival, library, and other indirect sources; (b)
1477 systematic examinations of the land surface and natural exposures of the subsurface (survey) for
1478 indications of past human activity as represented by artificial modifications of the land and/or the
1479 presence of artifacts; and (c) the use of interviews and related means of locating and describing
1480 previously unrecorded or incompletely documented cultural resources, including those that may
1481 not be identifiable through physical examination.

1482
1483 **Lands Administered by the U.S. Department of Interior, Bureau of Land Management (BLM):**
1484 Any federal lands under the administrative authority of the BLM.

1485
1486 **Land Use Plan Amendment (LUPA):** BLM land use plan amendment developed pursuant to 43
1487 C.F.R. § 1610.4. See Appendix C for more information.

1488
1489 **Literature Review:** A literature review is one component of a BLM class I inventory, as defined
1490 in BLM Manual Guidance 8100.21(A)(1), and is a professionally prepared study that includes a
1491 compilation and analysis of all reasonably available cultural resource data and literature, and a
1492 management-focused, interpretive, narrative overview, and synthesis of the data. The overview
1493 may also define regional research questions and treatment options.

1494
1495 **Memorandum of Agreement (MOA):** The document that records the terms and conditions
1496 agreed upon to resolve the adverse effects of an undertaking upon historic properties.

1497
1498 **National Programmatic Agreement:** Agreement among the BLM, ACHP, and National
1499 Conference of State Historic Preservation Officers which defines how the BLM plans for and
1500 manages cultural resources under its jurisdiction in accordance with the spirit and intent of
1501 Section 106 of the NHPA, consistent with 36 C.F.R. § 800, and consistent with its other
1502 responsibilities for land-use planning and resource management under FLPMA, NEPA, other
1503 statutory authorities, and executive orders and policies.

1504
1505 **National Register:** The National Register of Historic Places, expanded and maintained by the
1506 Secretary of the Interior, as authorized by section 2(b) of the Historic Sites Act and section
1507 101(a)(1)(A) of the National Historic Preservation Act. The National Register lists cultural
1508 properties found to qualify for inclusion because of their local, State, or national significance.
1509 Eligibility criteria and nomination procedures are found in 36 C.F.R. § 60. The Secretary's
1510 administrative responsibility for the National Register is delegated to the National Park Service.

1511
1512 **Peer Review:** Process by which a third-party cultural resources consultant is hired to assist the
1513 BLM's review of all work conducted by the main cultural resources consultant to ensure
1514 accuracy and consistency of information provided.

1515
1516 **Plan Amendment:** The process of considering or making changes in the terms, conditions, and
1517 decisions of approved plans. Usually only one or two issues are considered that involve only a
1518 portion of the planning areas.

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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).

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 includes 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.

Special Analysis Areas: Areas potentially available for renewable energy project development. Future Assessment Areas 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.

Tiering: Tiering is a form of incorporation by reference that refers to previous documents, and allows you to narrow the scope of an analysis to focus on issues that are ripe for decision-making. 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 place, such as a traditional gathering area, prayer site, or sacred/ceremonial 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.

1566 **Undertaking:** Collectively refers to all projects, activities, or programs funded in whole or in
1567 part under the direct or indirect jurisdiction of the BLM, including those carried out by or on
1568 behalf of a federal agency; those carried out by federal financial assistance; and those requiring a
1569 federal permit, license, or approval.

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Common Acronyms

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1575	ACHP	Advisory Council on Historic Preservation
1576	AIRFA	American Indian Religious Freedom Act
1577	APE	Area of Potential Effects
1578	ARMR	Archaeological Resource Management Report
1579	ARPA	Archaeological Resources Protection Act
1580	BLM	Bureau of Land Management
1581	BMP	Best Management Practice
1582	CEQA	California Environmental Quality Act
1583	CDCA	California Desert Conservation Area
1584	CFR	Code of Federal Regulations
1585	CMA	Conservation Management Action
1586	CRHR	California Register of Historic Resources
1587	DFA	Development Focus Area
1588	DOI	Department of the Interior
1589	DPR	Department of Parks and Recreation
1590	DRECP	Desert Renewable Energy Conservation Plan
1591	EIS	Environmental Impact Statement
1592	FLPMA	Federal Land Policy and Management Act
1593	FOIA	Freedom of Information Act
1594	GIS	Geographic Information System
1595	GPS	Global Positioning System
1596	HPMP	Historic Properties Management Plan
1597	HPTP	Historic Properties Treatment Plan
1598	IM	Instruction Memorandum
1599	LUPA	Land Use Plan Amendment
1600	MOA	Memorandum of Agreement
1601	NAGPRA	Native American Graves Protection and Repatriation Act
1602	NEPA	National Environmental Policy Act
1603	NHL	National Historic Landmark
1604	NHPA	National Historic Preservation Act
1605	NHT	National Historic Trail
1606	NPS	National Park Service
1607	NRHP	National Register of Historic Places
1608	PA	Programmatic Agreement
1609	POD	Plan of Development
1610	PQS	Professional Qualifications Standards
1611	RMP	Resource Management Plan

1612	ROD	Record of Decision
1613	ROW	Right-of-way
1614	SHPO	State Historic Preservation Officer
1615	TCP	Traditional Cultural Property
1616		

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**APPENDIX C:
BLM LAND USE PLAN AMENDMENT DESCRIPTION**

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APPENDIX C
BLM Land Use Plan Amendment

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The DRECP 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), Special Analysis Areas, Future Assessment Areas, and unallocated lands, but would not be allowed in Areas of Critical Environmental Concern (ACEC), National Conservation Lands (NCL), or Special Recreation Management Areas (SRMA). Transmission facilities would be prioritized in existing designated utility corridors, but would also be allowed outside of corridors in DFAs, Special Analysis Areas, Future Assessment Areas, and unallocated lands. Transmission facilities would also be allowed in ACECs and SRMAs but must be consistent with management prescriptions for these units. Transmission facilities would also be allowed in wilderness, but only within the legislatively defined corridors that established each wilderness unit. Finally, Transmission facilities would also be allowed in NCLs, but only in previously defined corridors, and must be consistent with all NCL Conservation Management Actions.

Specifically, in furtherance of the purpose of the DRECP to conserve biological, environmental, 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.
- Areas of the public lands that are not suitable and are unavailable for these types of uses.
- 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 as components of the National Landscape Conservation System (NLCS) pursuant to the Omnibus Public Lands Management Act.
- Allowable uses, management actions, stipulations, best management practices and mitigation measures to reduce 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.

1665 The BLM LUPA component of the Preferred Alternative from the DRECP Draft Environmental
1666 Impact Report (EIR)/Environmental Impact Statement (EIS) covers 9.8 million acres of BLM-
1667 managed public lands. Key allocations proposed on BLM lands include:
1668

- 1669 • **Development Focus Areas (DFA):** Available for solar, wind and geothermal
1670 development and transmission facilities. An application on BLM-managed land would
1671 still go through the BLM right-of-way process including environmental review, but
1672 would benefit from the DRECP environmental document, BLM incentives, and
1673 established predictable survey and mitigation requirements. The Draft DRECP Preferred
1674 Alternative would designate 367,000 acres of Development Focus Areas on BLM lands.
- 1675 • **Study Area Lands:** These areas would be potentially available for renewable energy
1676 project development but would require a more extensive pre-application process to
1677 collect additional information before BLM makes a determination on a project
1678 application. Study Area Lands include DRECP Variance Lands, Special Analysis Areas,
1679 and Future Assessment Areas. The Draft DRECP Preferred Alternative would designate
1680 106,000 acres of Study Area Lands for renewable energy project development on BLM
1681 lands.
- 1682 • **Conservation and Recreation Designations:** The DRECP proposes to designate
1683 National Conservation Lands, Areas of Critical Environmental Concern, wildlife
1684 allocations, and Special Recreation Management Areas to conserve biological, cultural,
1685 recreational, and other values and uses. Lands within these designations would not be
1686 available for renewable energy project development.
 - 1687 ○ *National Conservation Lands:* The Preferred Alternative proposes about 3.5
1688 million acres of BLM-administered land as National Conservation Lands and
1689 emphasizes habitat connectivity, cultural-botanical resource values, and National
1690 Scenic and Historic Trail Corridors with total disturbance limited to 1%.
 - 1691 ○ *Areas of Critical Environmental Concern:* The Preferred Alternative proposes
1692 about 1.4 million acres of BLM-administered land as Areas of Critical
1693 Environmental Concern, where special management is needed to protect certain
1694 values. Most of these areas would limit total disturbance to 1% of the total area.
 - 1695 ○ *Wildlife Allocations:* The Preferred Alternative proposes about 20,000 acres of
1696 additional BLM-administered lands that are conserved for wildlife and are not
1697 available for renewable energy project development.
 - 1698 ○ *Special Recreation Management Areas:* Special Recreation Management Areas
1699 are public lands managed to be high-priority outdoor recreation areas. The
1700 Preferred Alternative would designate 32 Special Recreation Management Areas
1701 on BLM-administered land that total 2.7 million acres. The vast majority of lands
1702 within Special Recreation Management Areas are not available for renewable
1703 energy project development.
- 1704 • **Un-allocated Land:** BLM-managed lands not covered by any of the above designations.
1705 These lands would maintain current management methods. Renewable energy project
1706 applications would require amending the BLM land use plan.

1707 The LUPA would also make the following management decisions:

1708 **Conservation and Management Actions:** As part of the proposed LUPA, Conservation and
1709 Management Actions would include proposed changes from the existing management plans for

1710 many resources, including air resources, comprehensive trails and travel management, cultural
 1711 resources and tribal interests, lands and realty, livestock grazing, minerals, paleontology,
 1712 recreation and visitor services, soil, water, and water-dependent resources, visual resources
 1713 management, wild horses and burros, and wilderness characteristics.

1714 **Lands with Wilderness Characteristics:** BLM-administered lands within the LUPA area that
 1715 could be affected by renewable energy projects or other development authorized under the
 1716 LUPA were inventoried for wilderness characteristics in 2012 and 2013 under the direction of
 1717 BLM Manual 6310. Under the Preferred Alternative, nearly 300,000 acres of lands with
 1718 wilderness characteristics would be managed to protect those characteristics.

1719 **California Desert Conservation Area:** The LUPA would apply some management decisions to
 1720 the full California Desert Conservation Area, including those areas outside the DRECP
 1721 boundary. Within the DRECP, the Multiple Use Classifications used to determine land use and
 1722 tenure in the CDCA Plan would be replaced by the new land designations described above.
 1723

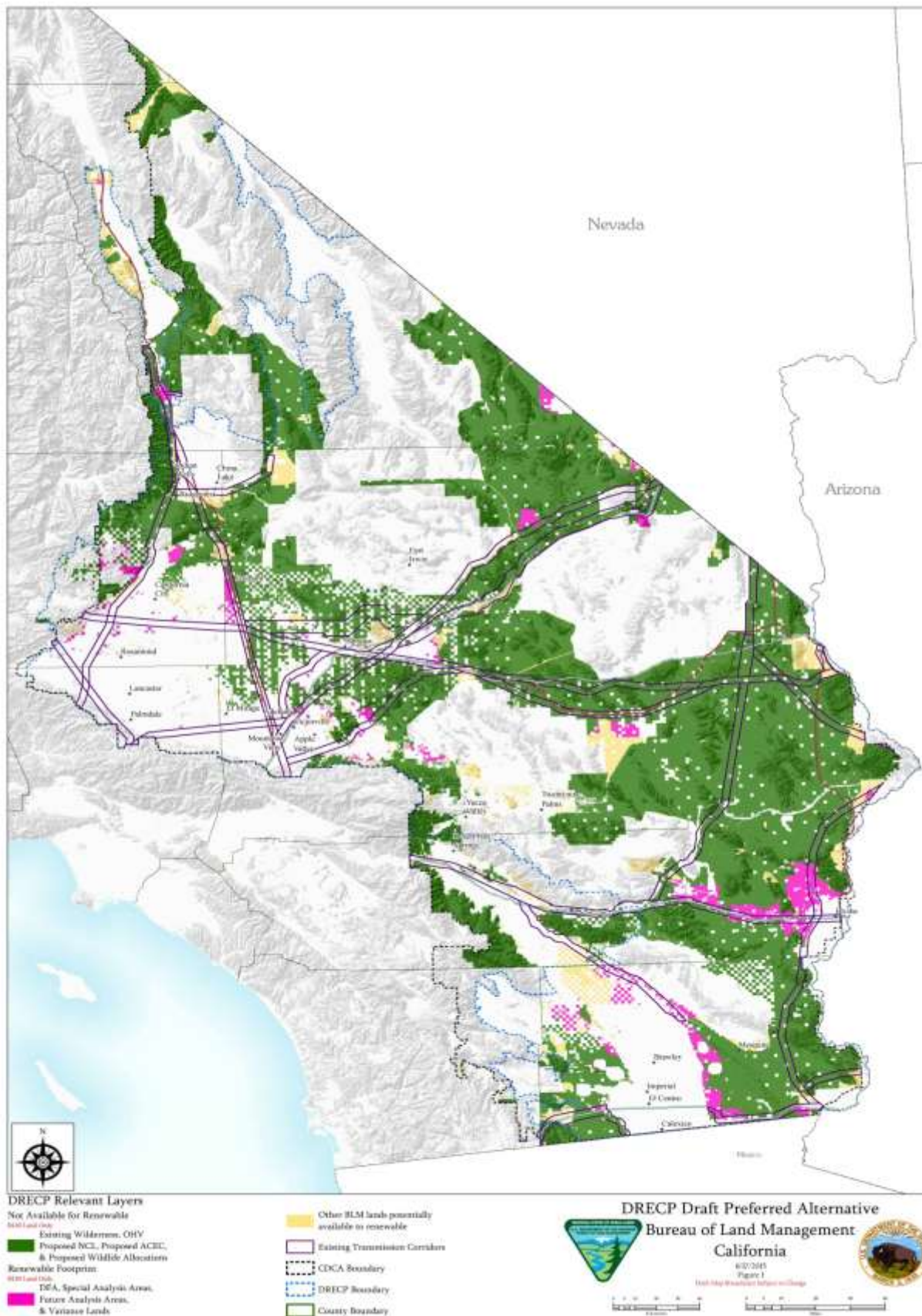
1724
 1725 **FIGURES**
 1726

1727 The figures included here show the BLM LUPA component of the Preferred Alternative from the
 1728 DRECP Draft EIR/ EIS. Figure 1 is the BLM LUPA component of the Preferred Alternative, and
 1729 Figure 2 is the BLM LUPA component of the No Action Alternative. On the figures, green
 1730 represents conserved areas (areas where renewable energy project development would not be
 1731 allowed). Pink represents DFAs and other areas available for renewable energy project
 1732 development. Applications for renewable energy projects in these areas would be required to go
 1733 through the BLM right-of-way process for individual project environmental review as specified
 1734 in this PA and NEPA. Yellow reflects all other BLM lands potentially available for renewable
 1735 energy project development but in addition to the BLM right-of-way process for individual
 1736 project environmental review as specified in this PA and NEPA, these areas would require an
 1737 additional amendment to the land use plan.
 1738

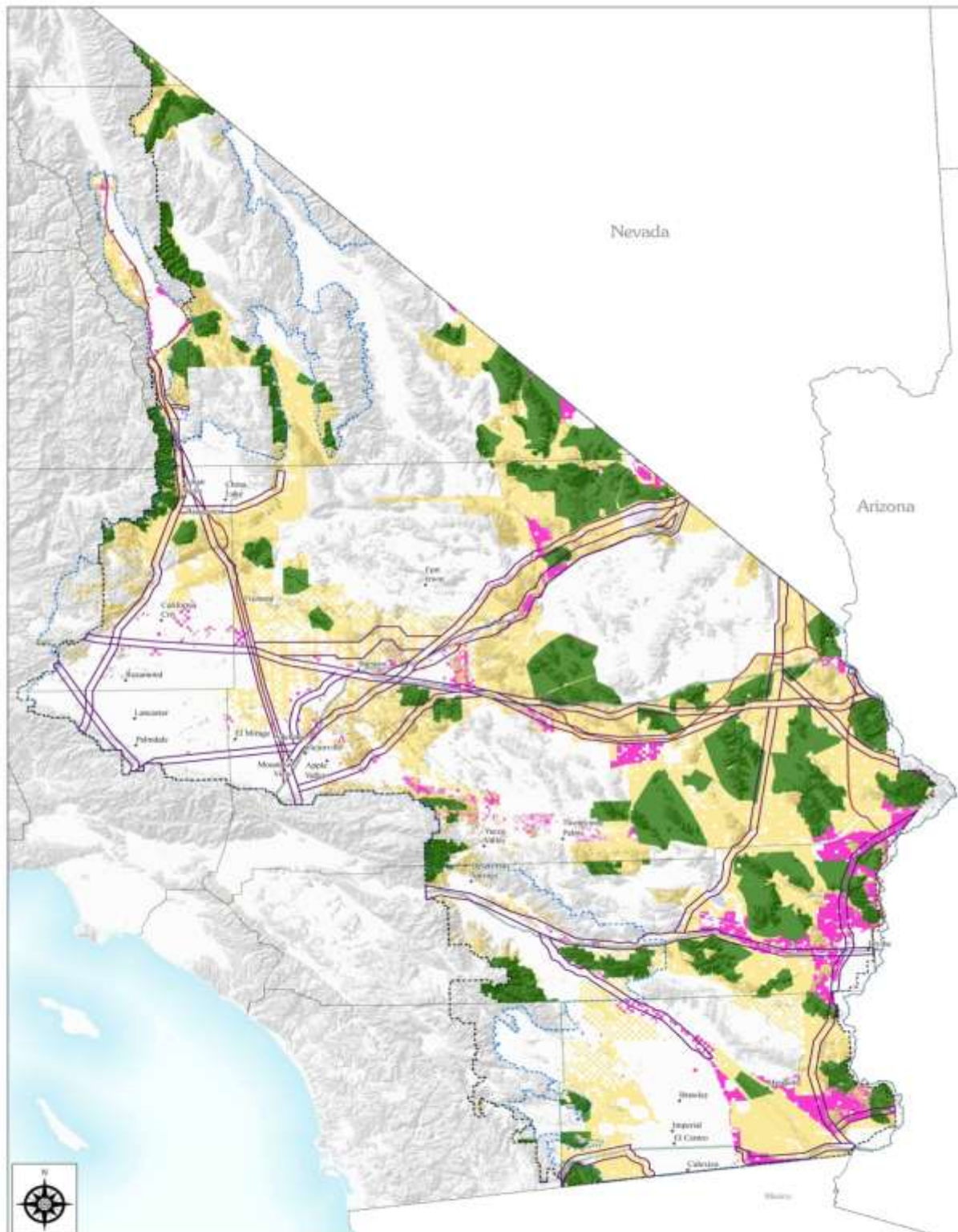
1739 Table 1 represents the acreages for each designation category for both the Preferred Alternative
 1740 and the No Action Alternative.
 1741

	Conserved Areas	Development Focus Areas	All other BLM lands potentially available for renewable energy project development
Figure 1. Preferred Alternative Draft EIR/EIS BLM only	7,011,061	482,235	3,439,576
Figure 2. No Action Alternative BLM only	3,452,593	0	7,421,189

1742



1743



DRECP Relevant Layers

Not Available for Renewable
(BLM Land Only)

- Existing BLM Wilderness
- Renewable Footprint**
(BLM Land Only)
- Existing SEZ and Vistas Lands
- Other BLM lands potentially available to renewable

- Existing Transmission Corridors
- CDCA Boundary
- DRECP Boundary
- County Boundary

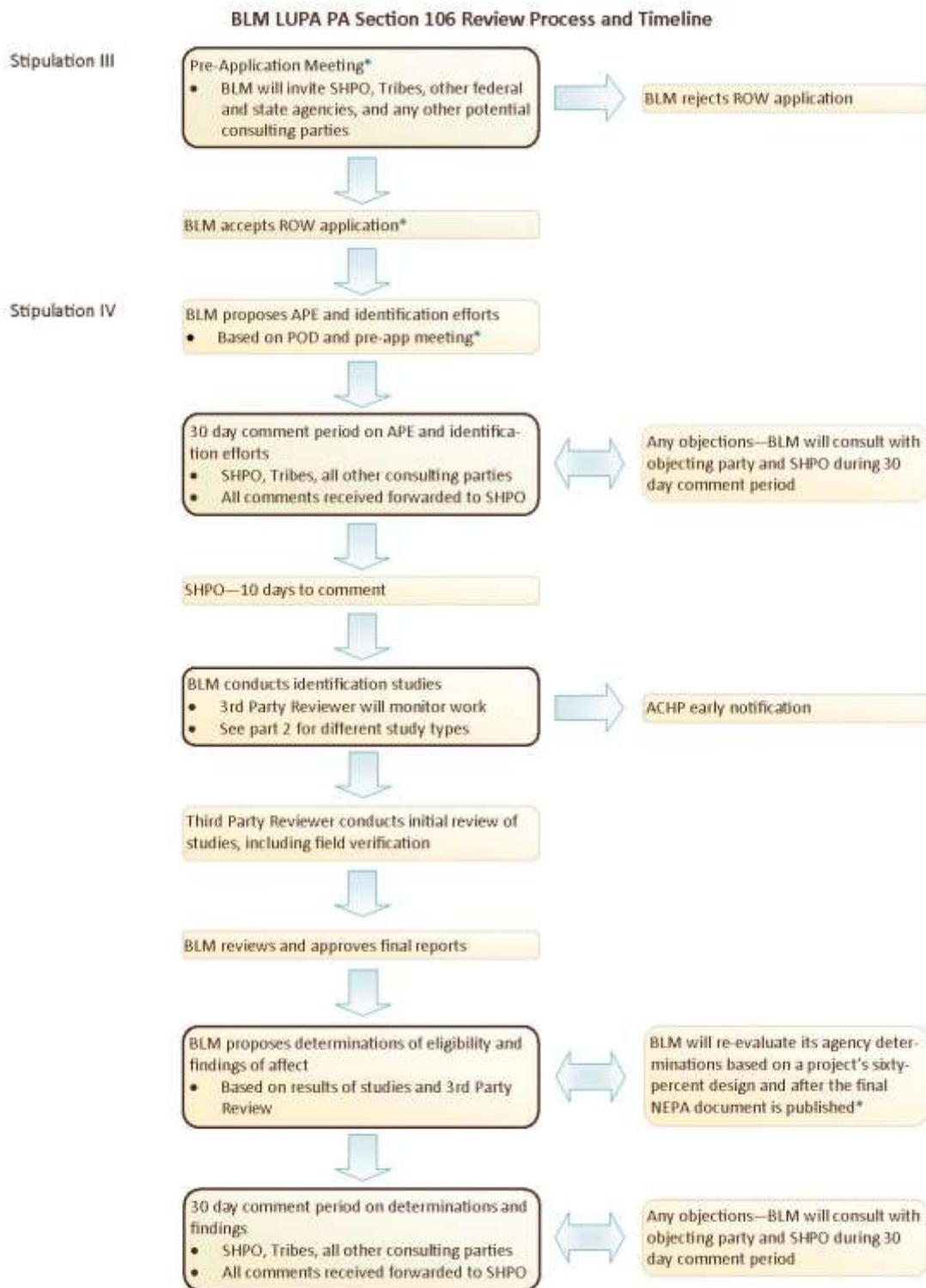
DRECP No Action Alternative
Bureau of Land Management
California
6/17/14
Figure 2
With Map Amendment Changes

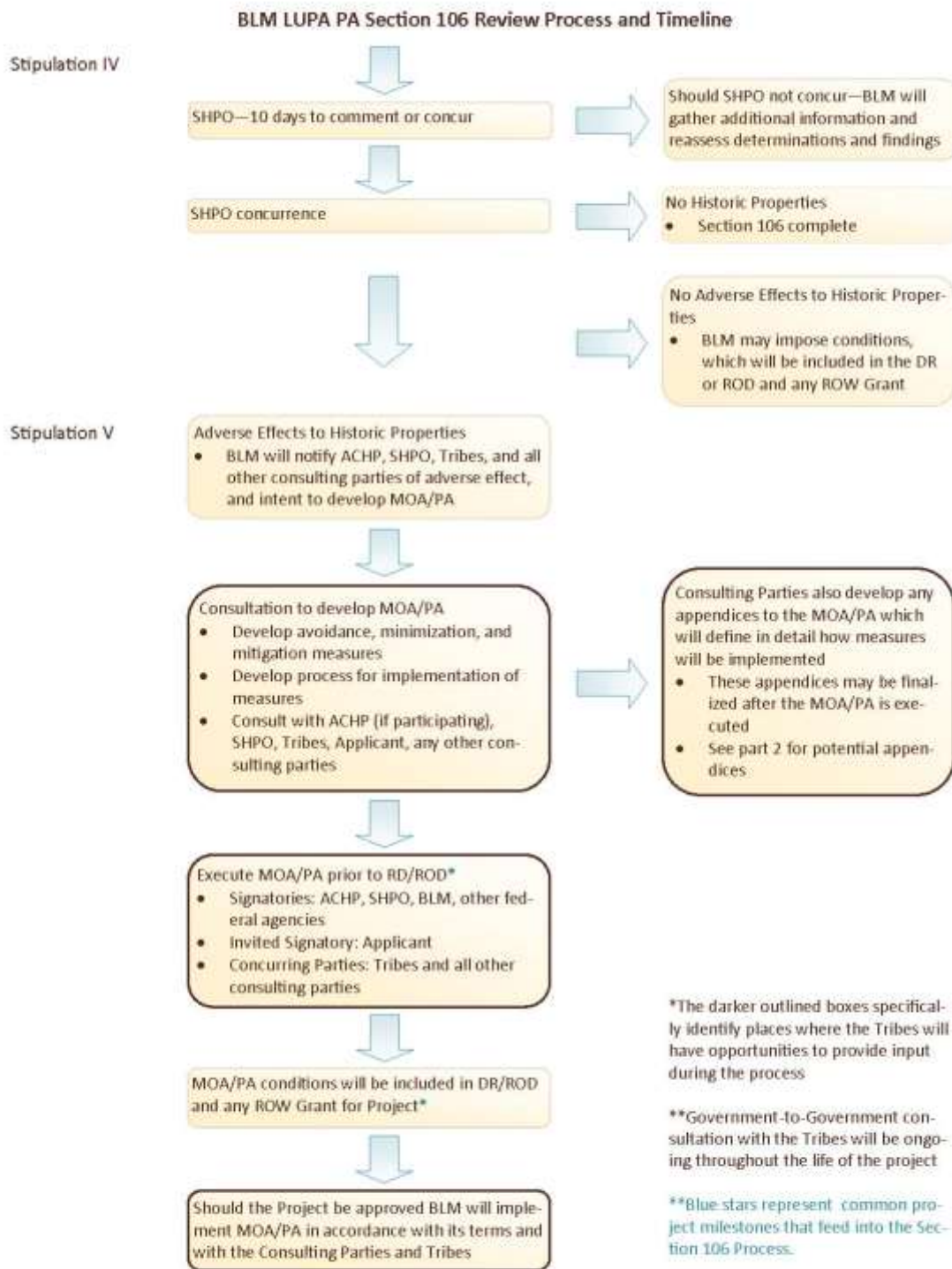
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**APPENDIX D:
FLOW CHART: SECTION 106 REVIEW PROCESS AND TIMELINES AS DEFINED
IN THE AGREEMENT**

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1752

1753 **Identification Efforts**

1754 Potential Studies (not an exhaustive list)

1755

1756 ***Class I Literature Review and Records Search***

1757 A professionally prepared study that includes a compilation and analysis of all reasonably
1758 available cultural resource data and literature, and a management-focused, interpretive, narrative
1759 overview, and synthesis of the data. Study will also identify previously documented NRHP listed
1760 or eligible historic properties.

1761

1762 ***Class II Probabilistic Field Survey***

1763 A statistically based sample survey, designed to aid in characterizing the probable density,
1764 diversity, and distribution of cultural properties in an area, to develop and test predictive models,
1765 and to answer certain kinds of research questions. Within individual sample units, survey aims,
1766 methods, and intensity are the same as those applied in Class III survey. All recorded cultural
1767 resources are evaluated for the NRHP and eligibility recommendations provided.

1768

1769 ***Class III Intensive Field Survey***

1770 A professionally conducted, thorough pedestrian survey of an entire target area, intended to
1771 locate and record all cultural resources. All recorded cultural resources are evaluated for the
1772 NRHP and eligibility recommendations provided.

1773

1774 ***Ethnographic Assessment***

1775 A professionally conducted study that identifies ethnographic resources that are significant to
1776 Indian tribes and that may be affected by a proposed undertaking. Study will be planned and
1777 conducted in coordination with participating tribes, and may include additional archival research,
1778 field visits, and interviews with tribal informants. Tribal informants will be identified by
1779 participating tribes. Tribal informants and participating tribes will be invited to review the draft
1780 report. All identified resources will be evaluated for the NRHP and eligibility recommendations
1781 provided. Study will analyze the effects to resources identified from a proposed undertaking.

1782

1783 ***Ethnographic Literature Review***

1784 A professionally prepared summary of all publically available ethnographic literature that
1785 identifies specific places or resources that have documented significance to Indian tribes and that
1786 may be affected by a proposed undertaking.

1787

1788 ***Geo-archaeological Study***

1789 A professionally prepared study that includes a review of geological information on land-
1790 formation processes within a target area, prevalence of archaeological sites in the region with
1791 subsurface components, and results of any geotechnical testing within the proposed project area.
1792 Study will provide a conclusion regarding the potential for encountering subsurface
1793 archaeological resources throughout the target area.

1794

1795 ***Historic Built Environment Study***

1796 A professionally conducted study that identifies all built-environment resources within the
1797 indirect effects APE. All recorded historic built environment resources are evaluated for the
1798 NRHP and eligibility recommendations provided. Study will analyze the effects to historic

1799 properties identified from a proposed undertaking. This study may be incorporated into the
1800 indirect effects study.

1801

1802 ***Indirect Effects Study***

1803 A professionally conducted study that identifies all previously documented NRHP listed or
1804 eligible historic properties, and documents and evaluates any new resources that may be NRHP
1805 eligible under Criteria A-C within the indirect effects APE. Study will analyze the effects to the
1806 Criteria A-C values of the historic properties from a proposed undertaking.

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1809 **Potential MOA/PA Appendices**

1810 This is not an exhaustive list not every project will require all appendices

1811

1812 ***Historic Properties Treatment Plan***

1813 A plan that includes detailed measures for resolving adverse effects to historic properties as
1814 identified in a project specific MOA or PA. The HPTP typically describes in detail the
1815 requirements that must be met in order to minimize or mitigate adverse effects to specific
1816 historic properties. Plan will include what the resolution measures are, how they will be
1817 implemented, who will be responsible for implementation, communication protocols, and
1818 reporting requirements.

1819

1820 ***Historic Properties Management Plan/Long Term Management Plan***

1821 A plan that identifies specific procedures for the long term management of identified historic
1822 properties within a project area, or properties within the project vicinity that have the potential
1823 for long-term indirect effects from a project. HPMP/LTMPs will identify any resources within
1824 the project area that require long-term management, what the long-term management procedures
1825 are, how they will be implemented, who will be responsible for implementation, communication
1826 protocols, and reporting requirements.

1827

1828 ***Post-Review Discovery and Unanticipated Effects Plan***

1829 A plan that identifies the procedures for managing any post-review discoveries or unanticipated
1830 effects to identified historic properties that may occur during project construction activities. This
1831 plan will identify any properties that should be designated as Environmentally Sensitive Areas
1832 and avoided by project construction, areas that have the potential for subsurface archaeological
1833 materials, and any other areas where archaeological monitoring is required. Plan will also
1834 identify archaeological monitoring procedures and provide a process that should be followed in
1835 the event that a post-review discovery or unanticipated effect is identified. Plan will identify
1836 roles and responsibilities of all parties, notification procedures, communication protocols, and
1837 reporting requirements.

1838

1839 ***NAGPRA Plan of Action***

1840 A plan that identifies specific procedures that should be followed in the event of a NAGPRA
1841 discovery during project construction activities. This Plan will identify management procedures
1842 for any NAGPRA materials that may be discovered, procedures for notification and consultation
1843 with Indian tribes that may affiliated with the NAGPRA materials, communication protocols,
1844 and reporting requirements.

1845

1846 ***Tribal Participation Plan***

1847 A plan that identifies specific procedures for continued tribal participation during the project
1848 construction process. The plan is developed in coordination with all participating tribes and a
1849 project proponent. The plan should include specific procedures for tribal participation, a
1850 participation schedule, roles and responsibilities of all parties, communication protocols, and
1851 reporting requirements.

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1854

**APPENDIX E:
CULTURAL RESOURCES SENSITIVITY ANALYSIS**

1855 To be developed as specified in Stipulation VIA.

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**APPENDIX F:
COMPENSATORY MITIGATION FEE FOR CUMULATIVE EFFECTS TO
CULTURAL RESOURCES**

1859 To be developed as specified in Stipulation VIC.

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