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4 BLM OCTOBER 2011 DRAFT
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6 **PROGRAMMATIC AGREEMENT**
7 **AMONG**
8 **THE UNITED STATES DEPARTMENT OF INTERIOR, BUREAU OF LAND**
9 **MANAGEMENT,**

10
11 **THE ARIZONA STATE HISTORIC PRESERVATION OFFICER,**
12 **THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,**
13 **THE COLORADO STATE HISTORIC PRESERVATION OFFICER,**
14 **THE NEW MEXICO STATE HISTORIC PRESERVATION OFFICER,**
15 **THE NEVADA STATE HISTORIC PRESERVATION OFFICER,**
16 **THE UTAH STATE HISTORIC PRESERVATION OFFICER,**
17 **AND**
18 **THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**
19 **REGARDING SOLAR ENERGY DEVELOPMENT ON LANDS ADMINISTERED BY**
20 **THE BUREAU OF LAND MANAGEMENT**
21

22 **WHEREAS**, in August 2005, the United States Congress enacted the Energy Policy Act of
23 2005, Public Law 109-58. In Section 211 of this Act, Congress directed that the Secretary of the
24 Interior (the “Secretary”) should, before the end of the 10-year period beginning on the date of
25 enactment of the Act, seek to have approved non-hydropower renewable energy projects located
26 on the public lands with a generation capacity of at least 10,000 megawatts of electricity; and
27

28 **WHEREAS**, by Secretarial Order No. 3285 issued March 11, 2009, amended February 22,
29 2010, the Secretary stated as policy that encouraging the production, development, and delivery
30 of renewable energy is one of Department of the Interior’s (DOI) highest priorities and that
31 agencies and bureaus within the DOI will work collaboratively with each other, and with other
32 Federal agencies, departments, states, local communities, and private landowners to encourage
33 the timely and responsible development of renewable energy and associated transmission while
34 protecting and enhancing the Nation’s water, wildlife, and other natural resources; and
35

36 **WHEREAS**, to achieve the goals established by Congress in Section 211 of Public Law 109-58
37 and to support the Secretary’s declaration of policy, the DOI and the Department of Energy
38 (DOE) have decided to prepare a programmatic environmental impact statement (PEIS) under
39 the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*) to inform the
40 agencies’ consideration of specific agency-wide solar energy programs and additional related
41 policy, including the possible identification of Solar Energy Zones and utility-scale solar energy
42 right-of-way avoidance areas where application will only be considered through a variance
43 process. The DOE and the Bureau of Land Management (BLM), on behalf of the Secretary, are
44 joint lead Federal agencies for preparation of the Solar PEIS, which will analyze the potential
45 impacts of utility-scale solar development on lands in the states of Arizona, California, Colorado,

46 New Mexico, Nevada, and Utah, and for which the BLM is preparing an independent Record of
47 Decision (ROD); and

48
49 **WHEREAS**, the DOE is a lead agency in the development of the PEIS but is not a Signatory
50 Party to this PA because it will prepare its own ROD and will have no responsibility for
51 complying with the terms of this Programmatic Agreement (PA). The DOE will utilize the
52 analysis in the Solar PEIS to create programmatic guidance in a more informed and
53 environmentally sound basis. The BLM will use the analysis in the Solar PEIS to inform
54 withdrawal and land use planning decisions, including whether to identify design features to
55 reduce the environmental impacts of solar development on public lands; and

56
57 **WHEREAS**, through the ROD, the BLM will determine whether to amend BLM land use plans
58 to:

- 59 ▪ Identify lands excluded from solar energy development in a six-state study area
60 consisting of California, Arizona, Nevada, Utah, New Mexico, and Colorado;
- 61 ▪ Identify priority areas within the lands open to solar energy development that are best
62 suited for utility-scale production of solar energy (Solar Energy Zones);
- 63 ▪ Identify utility-scale solar energy right-of-way avoidance areas where applications will
64 only be considered through a variance process;
- 65 ▪ In the six-state study area adopt those elements of the new Solar Energy Development
66 Program that pertain to planning; and
- 67 ▪ Establish basic mitigation requirements for solar energy development on public lands to
68 ensure the most environmentally responsible development and delivery of solar energy;
69 and

70 **WHEREAS**, the BLM has determined that its decisions regarding implementation of a solar
71 energy program constitute a non-routine interstate program that meets the threshold of review by
72 the Advisory Council on Historic Preservation (ACHP) under Section 4(b)(1) of the
73 “Programmatic Agreement Among the Bureau of Land Management, the Advisory Council on
74 Historic Preservation, and the National Conference of State Historic Preservation Officers
75 Regarding the Manner in which BLM Will Meet Its Responsibilities Under the National Historic
76 Preservation Act;” (hereinafter referred to as the “National Programmatic Agreement”); and

77
78 **WHEREAS**, in accordance with regulations at 36 CFR 800.14(b)(3) the BLM has notified and
79 invited the ACHP pursuant to 36 CFR 800.6(a)(1)(C) to participate in consultation to resolve the
80 potential effects of the Undertaking on Historic Properties, and as documented in its letter dated
81 October 2, 2008, the ACHP has elected to participate in consultation; and

82
83 **WHEREAS**, the National Programmatic Agreement is implemented through individual protocol
84 agreements (Protocols) between BLM State Directors and the State Historic Preservation
85 Officers (SHPO) of the States of Arizona, California, Colorado, Nevada, New Mexico, and Utah,
86 which are incorporated herein by reference; and

87
88 **WHEREAS**, the BLM has determined that any decisions in its ROD to amend BLM land use
89 plans are intended to encourage appropriate development of solar energy on the public lands, and

90 that development has the potential to affect historic properties on lands managed by the BLM in
91 the states of Arizona, California, Colorado, Nevada, New Mexico, and Utah; and

92
93 **WHEREAS**, any terms and conditions established by the ROD will apply to new applications
94 for solar energy development as defined in the ROD. The stipulations of this PA will also apply
95 to those same applications; and

96
97 **WHEREAS**, the BLM has detailed guidance in Manual Section 8130.12, Information Needed
98 for Decision Making in Land Use Plans; and

99
100 **WHEREAS**, the BLM has consulted with the Arizona SHPO, California SHPO, Colorado
101 SHPO, Nevada SHPO, New Mexico SHPO, and Utah SHPO pursuant to the National
102 Programmatic Agreement and Protocols and consistent with 36 CFR 800.14(b)(3) about the solar
103 energy program, and because the effects of this program's implementation on historic properties
104 cannot be fully determined prior to the program's approval, the BLM has chosen to conclude its
105 assessment of the program's potential adverse effects and provide for the resolution of any such
106 effect through the implementation of this PA; and

107
108 **WHEREAS**, the BLM has also consulted with the Concurring Parties to this PA, including the
109 National Trust for Historic Preservation, the National Council of State Historic Preservation
110 Officers, and Indian tribes, and has incorporated their suggestions for improvement of the
111 document; and

112
113 **WHEREAS**, the BLM consults with Indian tribes under multiple authorities, including the
114 NHPA, the American Indian Religious Freedom Act (AIRFA), Executive Order 13175, and
115 Section 3(c) of the Native American Graves Protection and Repatriation Act (NAGPRA), and
116 pursuant to Section 101(d)(6)(B) of the NHPA, 36 CFR 800.2(c)(2)(ii), has notified and invited
117 Indian tribes (see Appendix B) with interests in the lands managed by the BLM to consult on the
118 Solar PEIS, implementation of any future BLM solar energy program, and this PA, and the tribes
119 have been invited to concur in this PA; and

120
121 **WHEREAS**, execution of this PA as a Concurring Party indicates participation in the Section
122 106 consultations and acknowledgment that the party's views were taken into consideration, but
123 does not indicate approval of the outcome of the NEPA analysis for the solar energy program nor
124 does it indicate a preference for or endorsement of a specific alternative; and

125
126 **NOW, THEREFORE**, the BLM, ACHP, Arizona SHPO, California SHPO, Colorado SHPO,
127 Nevada SHPO, New Mexico SHPO, and Utah SHPO agree that any future solar energy program
128 shall be administered in accordance with the following provisions to satisfy the BLM's
129 responsibilities under Section 106 of the NHPA for development and implementation of the solar
130 energy program.

131
132 **STIPULATIONS**

133 The BLM will ensure that the following stipulations are carried out.

136 **1) PURPOSE AND NEED**

137 The intent of this PA is to provide a process whereby the BLM, in consultation with the
138 SHPO(s), ACHP, Indian tribes, and other Concurring Parties, shall consider, pursuant to Section
139 106 of the NHPA, the scale and scope of the decisions in the Solar PEIS and provide appropriate
140 steps for the agency to take into account the potential effects of the Solar PEIS decisions on
141 historic properties in a way that can be incorporated in the Solar PEIS, including, e.g.,
142 appropriate management guidance for the Solar Program. This PA also establishes a process for
143 complying with Section 106 of the NHPA for subsequent site-specific decisions that are
144 implemented in accordance with the broad decisions made in the Solar PEIS.
145

146 **2) GOVERNING PRINCIPLES**

147 The BLM shall adhere to the following principles in complying with Section 106 of the NHPA in
148 implementing the solar energy program.
149

150 A) The Section 106 process shall be coordinated with the NEPA process such that the BLM
151 meets its requirements under both authorities in an efficient manner and completes the
152 Section 106 process within the timeframe of the NEPA process and does not delay the
153 approval or ROD of all future solar energy facilities authorized pursuant to this program.
154

155 B) The BLM, in consultation with the Signatory and Concurring Parties, will continue to
156 seek opportunities and avenues to improve the efficiency and effectiveness of Section 106
157 review of solar energy program activities and solar energy projects and the processes
158 whereby the BLM meets its responsibility to take into account effects and seek ways to
159 avoid, minimize, or mitigate adverse effects on historic properties.
160

161 C) The Signatory and Concurring Parties shall seek opportunities to utilize the transfer or
162 submission of electronic copies of letters or other documents in portable document format
163 (PDF) to streamline and expedite consultation. The format for documentation will be agreed
164 to by all parties.
165

166 D) The Signatory Parties shall seek opportunities to ensure that inventory data, including
167 surveyed areas, is provided to the BLM and the appropriate SHPO in digital format
168 consistent with state guidelines and BLM standards. The format for documentation will be
169 agreed to by all parties.
170

171 **3) CONSULTATION PRINCIPLES**

172 A) Throughout the review and analysis of the Solar PEIS, any development and
173 implementation of a solar energy program, and review of activities tiered to this PA, the
174 BLM will seek, discuss, and consider the views of the Consulting Parties, and will seek
175 agreement with them (36 CFR 800.16(f)) when making decisions under the stipulations of
176 this PA.

177 1) Consultation Parameters and Timing

178 a) Unless otherwise agreed to by the Signatory and Concurring Parties or stated in
179 this PA, Signatory and Concurring Parties shall have 30 calendar days to respond to a
180 request to review and comment upon any draft or proposed final Solar PEIS

181 document, implementation of any future solar energy program and PA, or the review
182 of activities tiered to this PA, from receipt of a formal request for review.
183 i) Where the agreed upon time period to respond to a request for review or
184 comment has passed, the BLM may assume that the Signatory or Concurring
185 Party has elected not to comment and may proceed with the course of action
186 proposed.
187 ii) The BLM shall make reasonable attempts to contact the Signatory or
188 Concurring Party and confirm that the party has elected not to comment or
189 agrees or concurs with the course of action proposed by the BLM.
190 b) Unless otherwise agreed to by the Signatory or Concurring Parties, the BLM shall
191 respond to any request by a Signatory or Concurring Party for information and
192 clarification about any proposed language or element in the Solar PEIS or PA, the
193 implementation of any future solar energy program, and the review of activities tiered
194 to this PA, within 30 calendar days of receipt of the request.
195 2) The objective of consultation is to identify as early as possible any potentially
196 significant properties or issues that may pose difficulties for the proposed undertaking
197 and future management decision-making. Early consultation should be especially
198 sensitive to landscape level issues that go beyond archaeology and historic buildings and
199 structures, such as traditional cultural properties, historic trails, encampment sites,
200 farmsteads and ranches, and mining and extraction sites.

201 B) Tribal Consultation

202 1) The BLM, acknowledging its government-to-government responsibilities for
203 Section 106 review and implementation of this PA, shall continue to facilitate meaningful
204 consultation with Indian tribes during the development of the Solar PEIS, as well the
205 planning and implementation of any activities or decisions that tier to the Solar PEIS.
206 2) Given the nature and scale of solar energy projects, the BLM will engage tribes in
207 early and meaningful tribal consultation. The BLM will work with tribes at the earliest
208 stages of the proposed undertaking to gather ethnographic information, property
209 information, and other resource information to help identify significant properties or
210 issues, especially information about properties and landscapes to which Indian tribes
211 attach religious or cultural significance. Engaging in consultation at the earliest stages of
212 project planning will assist the BLM in identifying significant issues and resources that
213 may not be identified through the course of conventional cultural resources survey and
214 identification efforts. The BLM shall endeavor to provide information and maps that are
215 easily understood by tribal representatives in the consultation process.
216 3) Because of the potential number, size, and scale of proposed energy projects in any
217 given area, the BLM will also endeavor to combine consultations on multiple projects or
218 invite tribes to meetings where multiple projects may be discussed and coordinated in
219 order to facilitate coordination and information exchange, minimize confusion about the
220 number of projects, and provide for a more effective and productive process of tribal
221 consultation.

222 C) Public Involvement

223 1) The BLM shall involve the public in the Section 106 process as provided at 36 CFR
224 800.2(d) and 36 CFR 800.3(e). The BLM shall ensure that the public is informed through
225

226 press releases or other mechanisms, about the manner in which the BLM is meeting its
227 Section 106 responsibilities and how the BLM is ensuring adequate opportunities for
228 public involvement by coordinating Section 106 with other public involvement processes.
229 2) In the preparation of the PEIS, the BLM has requested public comment through
230 written correspondence, field hearings, Federal Register notices, and the posting of
231 documentation on the internet. When considering future site-specific applications for
232 solar development, the BLM will utilize established public notification procedures for
233 Environmental Assessments or Environmental Impact Statements. These procedures
234 include but are not limited to posting of notices and documents on the internet,
235 announcements in newspapers, mailing documentation to mail lists, and public
236 presentations.
237

238 4) SECTION 106 CONSULTATION PROCEDURES

239 A) PEIS Decisions: Section 106 Review of Alternatives in the Solar PEIS

240 The BLM shall seek, discuss, and consider the views and recommendations of the
241 Signatory and Concurring Parties on the identification and development of measures
242 considered in the Solar PEIS and adopted in any ROD that relate to the management or
243 treatment of historic properties, including but not limited to:

244 1) Creation of a Solar Energy Program and Guidelines

245 a) The following procedures will apply to the BLM's consideration of potential
246 effects on historic properties when the BLM proposes program policies or design
247 features:

248 i) The BLM will generally use information generated through the land use
249 planning process and other existing information on historic resources
250 supplemented by reconnaissance or sample inventories, as needed, the results of
251 public scoping, and the results of tribal consultation to make a decision regarding
252 which areas, if any, the BLM will exclude from utility-scale solar energy
253 development. Areas excluded from utility-scale solar development may include,
254 but are not limited to, areas where the density or complexity of historic properties
255 would require extremely costly programs of mitigation; areas containing
256 traditional cultural properties, or sacred sites that play a central role in ongoing
257 Indian tribal religious practice or cultural traditions; or areas where solar
258 development could fundamentally alter or harm the value, integrity, or experience
259 at a National Historic Trail (NHT) or National Historic Landmark (NHL).

260 ii) Information from the sources listed above may also be utilized to facilitate
261 appropriate solar development, including possible standardized design features
262 intended to reduce or eliminate potential adverse effects to historic properties.
263 Any program policies and development guidelines developed in consultation with
264 the Signatories to this PA and adopted in the ROD for the Solar PEIS will also be
265 incorporated as a supplement to this PA. Guidelines will be implemented for
266 proposed solar energy projects subject to the terms of the ROD for the Solar PEIS
267 and referenced or incorporated into decisions authorizing those projects.

268 b) The BLM will consult with Signatory and Concurring Parties on all program
269 policies and guidelines that may be proposed in the Solar PEIS as early as possible to
270 ensure full consideration of their views and comments in the Solar PEIS planning

271 process. Consultation parameters for program level decisions shall follow the
272 principles described in Stipulation 3(A)(1) of this PA.
273

274 2) Plan Amendments

275 a) The BLM will do the following to take the effects on historic properties into
276 account when deciding whether to amend land use plans, including whether to identify
277 Solar Energy Zones in those land use plans.

278 i) The BLM will generally use information generated through the land use
279 planning process and other existing information, supplemented by reconnaissance
280 or sample surveys as needed and the results of public scoping, together with the
281 results of government-to-government consultation with Indian tribes, and
282 consultations with Signatory and Consulting Parties to this PA to:

283 aa) Identify lands that are unsuitable for utility-scale solar energy projects in
284 accordance with the process described above in Stipulation 4(A)(1)(a)(i).

285 bb) Identify areas of high or low site density.

286 cc) Develop stipulations for incorporation into land use plans and their RODs
287 applicable to types of historic properties that specify measures of avoidance,
288 monitoring, or data recovery should they be affected by future solar
289 development.

290 ii) The BLM will use information generated through the land use planning
291 process and existing information supplemented by reconnaissance-level survey, as
292 needed, plus the results of public scoping, together with the results of
293 government-to-government consultation with Indian tribes when deciding
294 whether specific plan amendments will include Solar Energy Zones – lands which
295 may be prioritized for solar energy development in the future.

296 b) The BLM will consult with the Signatory and Concurring Parties on all land use
297 plan amendments analyzed in the Solar PEIS as early as possible to ensure full
298 consideration of their views and comments in the planning process.
299

300 B) Solar Energy Project Applications. After completion of the Solar PEIS and any
301 applicable land use plan amendment decision, the BLM expects that it will process solar
302 energy project applications that will cover a range of scale and complexity that present
303 unique cultural resource management challenges, considerations, and opportunities for
304 the NHPA Section 106 process. Pre-application meetings will be held with the applicant
305 and Indian tribes to discuss inventory or research needs to identify historic properties.
306 Screening procedures will give priority to areas with the lowest potential for conflicts,
307 including cultural resource concerns. For these projects, the BLM Section 106 review
308 process will be appropriately tailored to the proposed project, including providing for
309 specific circumstances in which the BLM must invite the ACHP to participate in the
310 review for an individual project. The process described below is intended to provide
311 flexibility while also enhancing the BLM's ability to meet its Section 106 responsibilities
312 efficiently without compromising the consideration of effects to historic properties. The
313 BLM will structure Section 106 compliance for proposed applications in accordance with
314 this PA or state-specific procedures that reflect the guidelines in Subpart 4 below.

- 315 1) The BLM shall invite the ACHP to participate in consultation when the thresholds
316 for ACHP review are met as expressed in the current National Programmatic
317 Agreement.
- 318 2) When the thresholds for ACHP participation are met:
- 319 a) The BLM shall invite ACHP participation by providing the ACHP with appropriate
320 information pursuant to 36 CFR Part 800.11.
- 321 b) The ACHP shall determine whether it will participate in the consultation within
322 15 days of receipt of notice, according to the criteria set forth in Appendix A to
323 36 CFR Part 800.
- 324 c) If the ACHP does not join in consultation, the BLM shall proceed with consultation
325 with other Consulting Parties.
- 326 d) A decision by the ACHP not to participate in the development of an MOA does not
327 preclude ACHP entry into the process at a later time if the ACHP determines that its
328 involvement is necessary to ensure that the purposes of Section 106 of the NHPA are
329 met. If the ACHP determines that its involvement is necessary, the ACHP will notify
330 the BLM, Signatory, and Concurring Parties per 36 CFR 800.2(b)(1).
- 331 3) If potential adverse effects to an NHL may occur, the BLM must also notify the
332 Secretary of the Department of Interior and invite the Secretary to participate in
333 accordance with 36 CFR 800.10(c).
- 334 4) When the thresholds for seeking ACHP review are not present or if thresholds for
335 ACHP review are met but the ACHP declines to participate, the BLM may pursue
336 Section 106 review in accordance with the following processes:
- 337 a) Inventory.
- 338 i) The BLM will determine the APE, will review existing information, and will
339 seek information from tribes and other parties likely to have knowledge of or
340 concerns with historic properties in the APE.
- 341 ii) While the BLM may meet with Indian tribes independently, the agency will
342 invite Indian tribes to participate in pre-application meetings with the solar project
343 applicant in which information about project design, Traditional Cultural
344 Properties, sacred sites, proposed cultural resource inventory strategies, or other
345 issues of tribal concern can be discussed.
- 346 iii) If the BLM decides to require Class III inventory for the entire APE, it may
347 authorize such actions without further consultation.
- 348 iv) If the BLM decides to require less than a Class III inventory for the entire
349 APE, the BLM will seek the views of the SHPO, Indian tribes, and any other
350 Concurring Parties and determine the final inventory strategy that best represents
351 a reasonable and good faith effort to carry out appropriate identification efforts.
- 352 b) Eligibility
- 353 i) The BLM will determine if any of the properties within the APE, including
354 properties of traditional religious and cultural importance to an Indian tribe, meets
355 one or more eligibility criteria specified in 36 CFR 60.4.
- 356 ii) Consistent with BLM-SHPO Protocols, the BLM shall determine that
357 properties are or are not eligible for listing in the National Register for purposes
358 of complying with Section 106 of the NHPA.
- 359 iii) At pre-application or other meetings, the BLM will ask Indian tribes if they
360 wish to be consulted for certain types of properties when the BLM proposes to

361 make an initial determination that the property is not eligible. When tribes have
362 identified specific property types they wish to be consulted about when the BLM
363 would otherwise conclude the property was not eligible, the BLM will consult
364 with tribes about those site types prior to making a final determination of
365 eligibility for the properties in question. Tribes will have additional opportunities
366 for consultation regarding effect and treatment for properties determined eligible
367 as outlined below.

368 c) Effect

369 i) The BLM will determine whether National Register-listed or eligible properties
370 may be affected by the undertaking. The views of the public, consulting parties,
371 and Indian tribes will be taken into account.

372 ii) If no effect is found, the BLM will document this finding, proceed with the
373 undertaking, and provide documentation to the SHPO according to the State's
374 current BLM-SHPO protocol or 36 CFR 800.4 regulations.

375 iii) If an effect is found, the BLM will apply the Criteria of Adverse Effect. If the
376 effect is found not to be adverse or meets the "no adverse conditions" in 36 CFR
377 800.5(b) and does not meet the threshold for case-by-case review in the State's
378 current BLM-SHPO protocol, the BLM will document this finding, proceed with
379 the undertaking and report it to the SHPO according to the current BLM-SHPO
380 protocol or 36 CFR 800.5 regulations.

381 iv) If the BLM determines that the effect may be adverse, the BLM will make a
382 reasonable and good faith effort to avoid or reduce adverse effects to the most
383 reasonable and fitting extent.

384 d) Treatment

385 i) The BLM will consult with the SHPO, with Indian tribes regarding the treatment
386 of adverse effects for those property types on which the tribes indicate at pre-
387 application or other meetings they wish to provide input, and with any consulting
388 parties.

389 ii) In accordance with the provision above and in consultation with the SHPO and
390 other consulting parties, the BLM will attempt to reach a consensus to avoid,
391 minimize, or mitigate adverse effects to historic properties. The BLM will execute
392 an MOA with the SHPO to conclude the Section 106 process and will file a copy
393 with the ACHP.

394 iii) Where the BLM and SHPO are unable to agree to execute an MOA, the BLM
395 will invite the ACHP to participate in an undertaking-specific MOA.

396 5) Programmatic Agreements. Where the BLM determines that a specific proposed solar
397 energy project has the potential to adversely affect historic properties but those effects
398 cannot be determined prior to its approval, the BLM may elect to review a proposed solar
399 energy project using an undertaking-specific PA executed pursuant to 36 CFR 800.6, in
400 place of an MOA:

401 a) Upon the acceptance of a complete application and at the earliest stages of review
402 of a specific undertaking, the BLM may determine that special circumstances require
403 developing, in consultation with the appropriate SHPO(s), ACHP, and other
404 Concurring Parties, a project-specific PA that will govern Section 106 review of the
405 undertaking.

- 406 b) The BLM shall identify and invite tribes, organizations, and individuals or other
407 parties as appropriate (pursuant to 36 CFR 800.2(c)) to consult and participate in the
408 development of the PA.
- 409 c) The PA shall be consistent with requirements of 36 CFR 800. It shall address, but
410 is not limited to, an Area of Potential Effect, a process for identification and evaluation
411 of historic properties, consideration of provisions requiring ethnographic data
412 collection, a process for incorporating design changes to avoid or minimize adverse
413 effects to historic properties, development of Historic Properties Management Plans
414 (HPMP) for those projects with historic properties that require management or
415 monitoring for avoidance and protection within or near a project's boundaries, a
416 process for incorporating methods for avoiding, minimizing, or mitigating adverse
417 effects, a process for the preparation and implementation of an Historic Properties
418 Treatment or Mitigation Plan, a process for amending the PA, and a process for
419 resolving disagreements and terminating the PA.
- 420 6) State-Specific Procedures
- 421 a) Individual BLM State offices, their respective SHPOs, and Indian tribes may devise
422 Memoranda of Understanding (MOU) or other BLM State-specific procedures to
423 implement this PA. Such procedures may establish further streamlining regarding
424 consultation on evaluation of cultural resources for National Register eligibility, no-
425 historic-properties-affected, no-adverse-effect, adverse-effect determinations when
426 consulting parties reach agreement on resolving the adverse effect(s), or tribal
427 consultation.
- 428 b) In the development of these MOUs or state-specific procedures, the BLM State
429 office and SHPO will provide opportunities for review and comment to the ACHP,
430 Indian tribes, and the public in the same manner provided for in the National
431 Programmatic Agreement for development of protocols.
- 432

433 5) DISPUTE RESOLUTION

434 A) If there is an objection by any Signatory to this PA to the manner in which the terms of
435 the PA are implemented, the objecting Signatory will notify the BLM in writing of the
436 objection. The BLM will notify all other Signatories and request their comments on the
437 objection within 30 calendar days of such notification. All Signatories will consult to resolve
438 the objection.

439

440 B) If the objection is resolved by the end of the 30-calendar-day consultation period, the
441 BLM will document the resolution in a written amendment to this PA to be executed by all
442 Signatories or by other means if agreed. If a Signatory fails to respond within 30 calendar
443 days of receipt of the written amendment or other documentation, concurrence with the
444 resolution will be assumed by the other Signatories and the resolution will go into effect.

445

446 C) If at the end of the 30-calendar-day-consultation period, the objection cannot be resolved
447 through such consultation, the BLM will forward all documentation relevant to the objection
448 to the ACHP pursuant to 36 CFR 800.2(b)(2). Any comments provided by the ACHP within
449 30 calendar days after its receipt of all relevant documentation will be taken into account by
450 the BLM in reaching a final decision regarding the objection. The BLM will notify the
451 Signatories in writing of its final decision within 14 calendar days after it is rendered.

452
453 D) The BLM's responsibility to carry out all other actions under this PA that are not the
454 subject of the objection will remain unchanged.

455
456 E) At any time during implementation of the terms of this PA, should an objection
457 pertaining to the PA be raised by a Concurring Party or a member of the interested public, the
458 BLM shall immediately notify the Signatory and other Concurring Parties about the
459 objection, and take the objection into account. The other Signatory or Concurring Parties
460 may comment on the objection to the BLM. The BLM shall consult with the objecting
461 party(ies) for no more than 14 calendar days. Within 7 calendar days following closure of
462 consultation, the BLM will render a decision regarding the objection and notify all parties of
463 its decision in writing. In reaching its final decision, the BLM will take into account all
464 comments from the parties regarding the objection.

465
466 F) Nothing in this Section shall be construed or interpreted as a waiver of any judicial
467 remedy that would be available to any party to this PA.

468
469 During the dispute resolution process all provisions in the PA other than the disputed provision,
470 will remain in effect.

471 472 **6) AMENDMENTS**

473 A) Any party to this PA may request that the other parties consider amending it if there are
474 changes to circumstances that warrant revision of the stipulations. If any Signatory proposes
475 an amendment to this PA, the Signatory will notify the BLM in writing of the proposal to
476 amend. The BLM will notify all other Signatories of the proposal to amend and consult on
477 the proposed amendment. Documents and other agreements called for or tiered from the PA
478 are not considered amendments and will be considered as provided for in the PA. They will
479 be considered supplements to this PA.

480
481 B) Amendments shall be executed in writing and shall go into effect upon signature by all
482 parties in the same manner as the original.

483 484 **7) REPORTING**

485 A) As part of annual reporting requirements for BLM-SHPO protocol agreements and
486 annual Washington Office reporting requirements, each BLM State Office will prepare a
487 section within these documents that describes Section 106 actions carried out for each solar
488 project authorized. Both projects that met the threshold for ACHP review mentioned at
489 Stipulation 4(B)(1) as well as those that did not will be briefly summarized. The description
490 will include an assessment of how the PA is working and whether the PA needs to be
491 amended to address specific issues. The content and format of this section of annual reports
492 will be developed in consultation with the Signatories to this PA.

493
494 B) The BLM Washington Office Minerals and Realty Management Directorate and
495 Cultural, Paleontological Resources and Tribal Consultation Division will coordinate to
496 ensure that the information described above from the six BLM State Offices operating under
497 this PA is efficiently collated and transmitted to the Signatory and Concurring Parties.

498
499 C) BLM State Offices will include such reporting within the first Washington Office annual
500 report data call following the signing of the ROD by at least 2 months.
501

502 **8) TRAINING**

503 A) The BLM will conduct training regarding the provisions and obligations contained
504 within the PEIS and this PA at field offices in Arizona, California, Colorado, New Mexico,
505 Nevada, and Utah.
506

507 B) The training course will begin within 6 months of signing of the ROD and will be
508 updated and offered periodically every 3 years that the PEIS and PA are in effect.
509

510 C) Signatory Parties to the PA will be invited to participate in such training.
511

512 **9) TERMINATION**

513 A) Only the BLM and the ACHP may terminate this entire PA. Individual SHPOs may
514 terminate participation by their state in these alternative procedures. In the event that
515 an individual SHPO terminates its participation in this PA, the provisions contained
516 herein will remain in effect for the remaining states.
517

518 B) Signatories to this PA may initiate termination by providing written notice to the other
519 parties of their intent. After notification by the initiating Signatory, the remaining parties
520 shall have 60 calendar days to consult to seek agreement on amendments or any other actions
521 that would address the issues and avoid termination.
522

523 C) Should such consultation result in an agreement on an alternative to termination, the
524 Signatories shall proceed in accordance with that agreement.
525

526 D) Should such consultation fail, the Signatory proposing termination may terminate its
527 participation (if initiated by an individual SHPO) or this entire PA (if initiated by the BLM or
528 the ACHP) by promptly notifying the other Signatories in writing.
529

530 E) Should this PA be terminated by the BLM or the ACHP, then the BLM shall either
531 consult in accordance with 36 CFR 800.14(b) to develop a new agreement or request,
532 consider, and respond to the comments of the ACHP pursuant to 36 CFR 800.7. Should an
533 individual SHPO terminate its participation in this PA, then the affected BLM State office
534 shall meet its Section 106 obligations regarding solar developments on public lands within
535 that state by following the procedures within 36 CFR 800.
536

537 F) Beginning with the date of termination of this entire agreement, the BLM shall ensure
538 that until and unless a new PA is executed for the activities and undertakings tiered from this
539 PA, such undertakings shall be reviewed individually in accordance with 36 CFR 800.4-
540 800.6. In the event of termination, the BLM shall refer to the 36 CFR 800 regulations to
541 address any remaining Section 106 activities or undertakings treated under this PA. The
542 BLM shall consult with appropriate state's SHPO to determine the manner in which Section
543 106 review for activities or undertakings tiered from this PA shall be concluded.

544 **10) DURATION OF THIS PA**

545 A) Unless the PA is terminated pursuant to Stipulation 9 of this PA, another agreement is
546 executed for an activity or undertaking tiered to this PA that supersedes it, or an undertaking
547 tiered to this PA itself has been terminated, this PA will remain in full force and effect until
548 the BLM, in consultation with the other Signatories, determines that all aspects of the Solar
549 Energy Program have been completed and that all terms of this PA and any subsequent tiered
550 agreements have been fulfilled in a satisfactory manner. Upon a determination by the BLM
551 that all aspects of the Solar Energy Program have been completed and that all terms of this
552 PA and any subsequent tiered agreements have been fulfilled in a satisfactory manner, the
553 BLM will notify the other Signatories and Concurring Parties of this PA in writing of the
554 agency's determination. This PA will terminate and have no further force or effect on the
555 day that the BLM so notifies the other Signatories to the PA.

556 B) This PA will expire if the Solar Energy Program or the stipulations of this PA have not
557 been implemented within 5 years from the date of its execution. Prior to such time, the BLM
558 will consult with the Signatories and Concurring Parties on whether to extend the PA or
559 reconsider the terms of the PA and amend it in accordance with Stipulation 6. The BLM
560 shall notify the Signatories and Concurring Parties as to the course of action it will pursue
561 30 days before the 5-year anniversary of the execution of this PA. The BLM will ensure that
562 the PA will be reevaluated and amended if necessary every 5 years by all parties. The BLM
563 will contact the Concurring Parties no later than 6 months prior to the 5-year anniversary to
564 set up a meeting as needed to accomplish this review.

565 **11) EXECUTION OF TERMS**

566 A) Entirety of Agreement. This PA, consisting of 17 complete pages, represents the entire
567 and integrated agreement between the parties and supersedes all prior negotiations,
568 representations and agreements, whether written or oral.

569 B) Prior Approval. This PA shall not be binding upon any party unless this PA has been
570 reduced to writing, and signed by all Signatories, before performance begins as described
571 under the terms of this PA.

572 C) Severability. Should any portion of this PA be judicially determined to be illegal or
573 unenforceable, the remainder of the PA shall continue in full force and effect, and the
574 Signatories may renegotiate the terms affected by the severance.

575 Execution of the PA and implementation of its terms is evidence that the BLM has taken into
576 account the effects of the solar energy development program on historic properties and has
577 afforded the ACHP an opportunity to comment on the undertaking, its effects, and resolution of
578 adverse effects.

579
580

581 **Signatures.** In witness whereof, the parties to this PA through their duly authorized
582 representatives have executed this PA on the dates set out below, and certify that they have read,
583 understood, and agreed to the terms and conditions of this PA as set forth herein.

584 The effective date of this PA for the Program is the date of the last Signatory signature affixed to
585 these pages. This PA shall take effect on the date that it has been fully executed by the
586 Signatories. Any amendments or attachments to this PA shall take effect on the dates they are
587 fully executed by the Signatories, or such other self-executing dates as may be described in those
588 documents.

589

590 **Signatories:**

591

592 Bureau of Land Management

593 By: _____ Date: _____

594 Robert V. Abbey, Director, BLM

595

596 Advisory Council on Historic Preservation

597 By: _____ Date: _____

598 John M. Fowler, Executive Director

599

600 Arizona State Historic Preservation Officer

601 By: _____ Date: _____

602 James Garrison, SHPO

603

604 California State Historic Preservation Officer

605 By: _____ Date: _____

606 Wayne Donaldson, SHPO

607

608 Colorado State Historic Preservation Officer

609 By: _____ Date: _____

610 Edward Nichols, SHPO

611

612 Nevada State Historic Preservation Officer

613 By: _____ Date: _____

614 Ronald James, SHPO

615

616 New Mexico State Historic Preservation Officer

617 By: _____ Date: _____

618 Jan Biella, Acting SHPO

619

620 Utah State Historic Preservation Officer

621 By: _____ Date: _____

622 Wilson Martin, SHPO

623

624

625 **Concurring Parties**

626

627 National Trust for Historic Preservation

628 By: _____ Date: _____

629 Stephanie Meeks, President, NTHP

630

631 National Conference of State Historic Preservation Officers

632 By: _____ Date: _____

633 Ruth Pierpont, President, NCSHPO

634

635

636 APPENDIX A: Definitions
637

638 a) The definitions provided at 36 CFR 800.16 and in these stipulations are applicable
639 throughout this PA.

640 b) “Tribes” means the Indian tribes (as defined in 36 CFR 800.16(m) that the BLM has
641 invited to consult on this undertaking.

642
643 APPENDIX B: Tribal Governments Invited to Consult on the PEIS and PA (*Note: Appendix B*
644 *will be included with the Final PA*)
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646 APPENDIX C: Supplement 1: Design Element from Solar PEIS
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673 APPENDIX C: SUPPLEMENT 1. DESIGN ELEMENT FROM SOLAR PEIS

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675 Performance Bonding. The BLM will require a Performance and Reclamation bond for all solar
676 energy projects. This will ensure compliance with the terms and conditions of the right-of-way
677 (ROW) authorization. When establishing bond amounts and conditions, the BLM authorized
678 officer will require coverage of all expenses tied to cultural resources identification, protection,
679 and mitigation. These may include but are not limited to costs for: ethnographic studies,
680 inventory, testing, geomorphological studies, data recovery, compensatory mitigation programs,
681 curation, monitoring, treatment of damaged sites, and submission of reports. BLM officers will
682 review the adequacy of all bonds on an annual basis. The bond will also be reviewed at the time
683 of any ROW assignment, amendment, or renewal. The BLM authorized officer may increase or
684 decrease the bond amount pertaining to cultural resources at any time during the term of the
685 ROW authorization, consistent with the regulations at 43 CFR 2805.12(g).

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