

MEMORANDUM OF UNDERSTANDING
BETWEEN THE U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT CALIFORNIA STATE OFFICE
AND THE U.S. DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE PACIFIC WEST REGION
ON COORDINATION AND COLLABORATION
ON RENEWABLE ENERGY PROJECTS IN CALIFORNIA

A. PURPOSE

This Memorandum of Understanding (MOU) documents responsibilities and procedures that will be followed by the Bureau of Land Management (BLM) California State Office, and the National Park Service (NPS) Pacific West Regional Office in coordinating and collaborating on the evaluation of proposals to site renewable energy facilities, including energy transmission, on public lands in the State of California that could potentially impact units of the National Park System and other areas under NPS management. The parties to this MOU, the Department of the Interior (DOI) through the BLM and the NPS, will collectively be referred to herein as "the Parties."

B. STATEMENT OF MUTUAL BENEFIT AND INTERESTS

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) requires that federal agencies consider the environmental impacts associated with agency action and decision-making. Council on Environmental Quality (CEQ) regulations (40 CFR 1501.6) emphasize agency cooperation early in the NEPA process and set out procedures for cooperating agency arrangements to develop Environmental Impact Statements (EISs) in order to reduce delay (40 CFR 1500.5(b)). Agencies may also be cooperating agencies on Environmental Assessments (EAs).

A number of large renewable energy projects (Projects) are proposed to be built on BLM lands in California. The BLM is responsible for managing the use, occupancy, and development of the public lands applying principles of multiple use as defined by statute. These responsibilities are carried out, in part, through the processing of requests for rights-of-way for projects and other appurtenant facilities to be constructed and operated on land it manages. In processing the applications, the BLM must comply with requirements under NEPA reviewing projects under its jurisdiction to consider the environmental impacts associated with project construction and operation. In the case of renewable energy projects being considered by the BLM, this will be accomplished through preparation of Draft and Final EISs and EAs.

A number of the proposed renewable energy projects have the potential to impact resources within and values of the National Park System and other special status areas under the management jurisdiction of the NPS. The NPS is responsible for the protection of units of the National Park System as set forth under the Organic Act of 1916 and other authorities, and has additional responsibilities over special status areas such as National

Trails, Wild and Scenic Rivers, Wilderness, sites on the National Register of Historic Places, National Natural Landmarks, National Historic Landmarks, and lands acquired under the Land and Water Conservation Fund Program and the Federal Lands to Parks Program. The NPS is charged with the duty of conserving the scenery and wildlife of those places it manages, and ensuring they are unimpaired for the enjoyment of future generations.

The environmental analyses carried out pursuant to this MOU will assess the environmental impacts of a proposed project, a “no action” alternative, and other alternatives as appropriate. The analyses will serve to inform the decision-making officials and the public.

C. IT IS MUTUALLY AGREED AND UNDERSTOOD BY ALL PARTIES THAT:

1. Agency Representatives. For the purpose of coordinating the responsibilities of the Parties for the preparation of project environmental analyses, the persons named as Contacts listed below are the designated Agency Representatives of the Parties. Actual delivery of written notice to the following representatives, or such substitute representatives as the respective Parties may hereinafter designate, shall constitute notice to that organization.

2. Project Identification. The BLM agrees to arrange for quarterly meetings with the NPS to identify those projects and related land use planning decisions with potential to impact units of the National Park System and other areas under NPS administration. These meetings will include representatives from the BLM California State Office, the NPS Pacific West Regional Office, and various park units and BLM field offices as appropriate. Primarily, these meetings will facilitate identification of existing right-of-way applications (applications already accepted by the BLM but for which a Notice of Intent has not yet issued) for additional review and screening by the NPS. BLM Instruction Memorandum (IM) No. 2011-061. The BLM agrees to furnish maps and basic project information as available in order for NPS staff to better evaluate whether such projects warrant additional NPS involvement. These meetings may be supplemented by additional project-specific pre-application meetings where the BLM has received but not yet accepted a new application for development and potential impacts to parks are readily identifiable. BLM IM No. 2011-061.

3. Cooperating Agency. Establishing cooperating agency status for specific projects will be made on a case-by-case basis, and will be determined by the NPS based on the level of potential impacts to park resources and values. In general, where a proposed project has the potential to impact park resources and values, the NPS will become a cooperating agency. Each Agency Representative will be responsible for informing the other Party in a timely manner of the Party’s request to establish cooperating agency status for a specific project pursuant to this MOU.

Where the NPS is a cooperating agency on a BLM-managed renewable energy project, the BLM and the NPS agree, pursuant to their respective legal responsibilities, to work together to identify appropriate project siting, design, and mitigation alternatives that will reduce or eliminate impacts to park resources and values. In some instances, the NPS may identify potential project-related impacts to NPS resources and values, but due to the lesser extent of the impacts and prioritization of other projects, the park may choose not to become a cooperating agency under NEPA. In such case, the NPS may provide written comments to the BLM for consideration by the BLM in the NEPA decision-making process. NPS shall provide all such comments in a timely manner.

4. Scheduling. As cooperating agencies, the Parties will agree on schedules for: (1) development of language for EAs, EISs, and decision documents; (2) review of draft documents; and (3) participation in public and interagency meetings. Both Parties will endeavor to develop schedules that are consistent with both Parties' deadlines to the maximum extent possible.

5. Ongoing Communication. The BLM will provide the NPS with information on renewable energy projects in California that are being considered for action, including information on scheduling, milestones, and progress on environmental analyses and other relevant program reviews. This information will be provided as early as possible in the process. Periodic conference calls, or meetings as appropriate, will be held between the Parties to exchange information. The direct line of communication on project-specific information will be between the park staff and the BLM field office staff, and will include notification of the Agency Representative. Each Party agrees to respond to the other's communications and requests for information in a timely manner.

6. Data Sharing and Analysis. Each Party will provide available data to assist in the evaluation of potential impacts to resources and values of National Park System units and other special status areas. Where data gaps exist that may inhibit the evaluation of impacts as required under NEPA, or where further analysis of existing data may be needed, the Parties will work together to develop a joint work plan. Where appropriate, the BLM may require of the right-of-way applicant or its agents to gather data and conduct analyses of potential impacts to park resources and values. The NPS will be provided an opportunity to review data and analyses as they relate to park resources and values. The Parties will exert their best effort to cooperatively resolve disagreements relating to data and analyses of park values and resources. Each party will take all reasonable steps to ensure that data used in environmental analyses meet the Department's scientific integrity policy.

Additionally, the Parties agree to further explore the potential for cost reimbursement of NPS staff time and resources.

7. Land Use Planning Activities. The BLM agrees to inform the NPS early on of public land use planning activities associated with renewable energy development, where such land use plan decisions are expected to impact units of the National Park System. Each

Party will participate in regularly scheduled interagency meetings to address statewide, regional, and/or landscape level approaches to development and conservation.

8. Sharing of Information. It is the intent of each Party, upon request, to provide the other Party the procedures and underlying data used in developing analyses for EAs, Draft EISs and Final EISs, including, but not limited to, final reports, subcontractor reports, and interviews with concerned private and public parties. The Parties may share information that is otherwise protected from disclosure under the attorney-client (but not the attorney work product) privilege, deliberative process privilege, and any other applicable privilege. The Parties agree that privileged information received from the other Party shall be treated and maintained as confidential and that the receiving Party will defend the confidentiality of the information to the same extent and degree as the transferring Party. The receiving Party will timely notify the transferring Party of any third party request to secure the confidential information. Parties agree to label as "Confidential" or use some similar identifier, those documents they believe are privileged and that are not be disclosed to other entities.

9. Release of Information. Except as noted above, information that one Party may receive from the other Party may be released to the public in accordance with federal law.

10. Effective Dates. This MOU is executed as of the date of the last signature and is effective through December 31, 2016, or the date on which all appeals and litigation filed in connection with approval of a Project have been resolved, whichever date is later, at which time the MOU will expire unless extended.

11. Modification. Modifications to this MOU shall be made by mutual consent of the Parties through the issuance of a written instrument signed and dated by both Parties.

12. Termination. Either Party, in writing, may terminate this MOU in whole or in part at any time before the date of expiration upon 30 days' written notice to the other Party. Either Party may terminate application of this MOU to a specific project in whole or in part at any time before the date of expiration upon 30 days' written notice to the other Party. During any such 30-day waiting period, the Parties will actively attempt to resolve any disagreement between them. In the event of termination of this MOU, both Parties shall have access to all non-privileged documentation, reports, analyses, and data developed by any contractor.

13. Conflict Management or Resolution. The Parties agree to early communication and frequent informal consultation to reduce the potential for conflict. The Parties will use their best efforts to resolve issues at the lowest organizational level. Where a disagreement cannot be resolved by the agencies, the disagreement will be elevated within the DOI for resolution. Unresolved issues will be reflected in the EA, Draft EIS, Final EIS and decision document.

D. LEAD AGENCY

1. The lead agency for the NEPA review for a project will be responsible for ensuring compliance with the requirements of NEPA and CEQ regulations, along with all applicable federal laws, executive orders, regulations and direction, and shall be responsible for the scope and content of the NEPA document, for complying with NEPA procedures and implementing regulations including document contents, administrative record, public review of the environmental document, and required decision documentation.
2. The lead agency will review and, if acceptable, approve the draft Notice of Availability of the EIS (as applicable) and EAs, prior to publishing such notices in the Federal Register or other appropriate media, and provide the cooperating agency Party with notice of such pending publication.
3. The lead agency will review and, if acceptable, approve public notices before sending out letters as appropriate to stakeholders on BLM's and NPS's mailing lists, and provide the cooperating agency advance notice of such mailings.
4. The lead agency will reserve the right to prepare, at its option, selected NEPA sections of the Draft and Final EIS, and decision documents and provide the cooperating agency Party with an opportunity to review drafts of these sections, as well as those prepared and provided by the lead agency's contractor(s) and/or the applicant's contractor(s), as soon as they are prepared, with advance notice of review schedules.
5. The lead agency will ensure that NEPA documents present an integrated analysis of whether and how the direct, indirect, and cumulative impacts of a proposed action and alternatives may affect units of the National Park System and other special status areas under NPS administration. BLM IM No. 2011-059. The quality of this analysis will be informed by the data and analysis provided by NPS. Where NPS has advised BLM of data gaps, BLM shall take appropriate actions, consistent with NEPA and Paragraph (C)(6) above, to obtain information to resolve such data gaps and to use such information in its analysis of effects.
6. The lead agency will file Draft and Final EISs with the Environmental Protection Agency (EPA) as required and provide the cooperating agency Party with advance notice of such filings.
7. The lead agency will be responsible for government to government consultation with all affected Tribes, Section 7 Consultation with the United States Fish and Wildlife Service, and Section 106 Consultation with the California State Historic Preservation Officer regarding proposed federal actions, and will provide the cooperating agency Party with notice of any major issues regarding these consultations. If any historic properties under NPS jurisdiction are the subject of Section 106 consultation, the NPS shall have the right to review and approve all communications with the SHPO as to such properties.

8. The lead agency is responsible for all costs associated with the preparation, reproduction and mailing of any published NEPA documents it creates for a Project.

9. The lead agency will be responsible for ensuring all post-approval monitoring, mitigation, and adaptive management actions are carried out as agreed to by the Parties, and will notify and consult with the cooperating agency on any alterations to mutually agreed to post-approval activities. To the extent that any monitoring, mitigation or adaptive management will be carried out on lands managed by the NPS, the Parties will work together to execute appropriate documentation ensuring that the NPS has the ability to enforce such measures directly on the owner and/or operator of the project, if the project is approved by BLM.

E. COOPERATING AGENCY:

1. Pursuant to their respective legal responsibilities, the cooperating agency will assist the lead agency in screening and prioritizing new applications for development and in identifying projects that warrant further NPS involvement, through participation in interagency pre-application meetings and review of application materials.

2. The cooperating agency will provide information, comments, technical expertise, and associated data analysis related to its jurisdiction and expertise that is required for inclusion in an EA, Draft EIS, and Final EIS, as well as the data and analyses supporting them, as available. In particular, the NPS will provide information on the following:

a) The legal authorities governing the management and protection of park units and/or affected special status areas;

b) Identification of the park resources and values that may be affected by project alternatives;

c) Baseline data on park resources, as available, including information on air quality, water resources, wildlife, scenic vistas, soundscapes, night skies, and park wilderness;

d) Visitor use/experience and recreational study data for NPS managed areas;

e) The potential effects to park resources and values, as readily available or readily achievable with existing staff and resources, which information will be used by BLM in drafting relevant sections of the EA, draft EIS or Final EIS;

f) Suggested design features, minimization, mitigation, and monitoring activities that may reduce or eliminate impacts to park resources and values including suggested alternative site locations.

3. The cooperating agency will review administrative drafts of NEPA documents and related documents to be published, and provide the lead agency with comments and/or suggested text, as appropriate, related to the cooperating agency's expertise and jurisdiction.

4. The cooperating agency will participate, as resources permit, in any public meetings, hearings or similar events related to the EA, Draft EIS, or Final EIS.

5. The cooperating agency will participate in conference calls or meetings, as resources permit, related to the EA, EIS, response to comments or issues where the cooperating agency Party has jurisdiction or expertise.

F. CONTACTS

Sandra McGinnis
BLM California Planning and Environmental Coordinator
Bureau of Land Management
California State Office
2800 Cottage Way, Suite W-1623
Sacramento, CA 95825-1886
916-978-4427
Sandra_McGinnis@blm.gov

Raymond Sauvajot, Ph.D.
Chief, Natural Resource Programs
National Park Service
Pacific West Region
1111 Jackson Street, Suite 700
Oakland, CA 94607
510-817-1437
Ray_Sauvajot@nps.gov

This consultation agreement is entered into by:


James Wesley Abbott
Acting State Director
Bureau of Land Management California

6-3-11
Date


Christine S. Lehnertz
Regional Director
National Park Service Pacific West Region

06-01-2011
Date