

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF SAN BERNARDINO COUNTY, CALIFORNIA
AND RECORD OF ACTION**

March 18, 2008

FROM: JULIE RYNERSON ROCK, Director
Land Use Services Department - Advance Planning Division

SUBJECT: AGREEMENT WITH THE US DEPARTMENT OF THE INTERIOR,
BUREAU OF LAND MANAGEMENT FOR PROCESSING
ENVIRONMENTAL REVIEWS

RECOMMENDATION: Approve a Memorandum of Understanding (MOU) with the US Department of the Interior, Bureau of Land Management **Agreement No. 08-223** for coordinated environmental review with priority for processing renewable energy projects.

BACKGROUND INFORMATION: The County and the US Department of the Interior, Bureau of Land Management (BLM) have begun working together on energy development projects, most of which are renewable (also referred to as alternative) energy generation facilities, for either wind or solar energy. With the County's vast acreage of undeveloped lands and climatologic conditions, it provides considerable opportunity for renewable energy generation.

In the past few years, several state statutes and federal policies have been promulgated that encourage or require the use of renewable energy sources to supplement the power grid. In response, energy development applications have been submitted for over 290,000 acres of land in San Bernardino County, most of which is managed by the BLM.

These projects require environmental review under both the federal National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA). The BLM will act as the lead agency for NEPA and the County will act as CEQA lead agency. In the case where a project is a thermal energy project that generates 50 megawatts or greater, the California Energy Commission will act as the CEQA lead agency. For such cases, the County will act as a cooperating agency with the BLM in the preparation of environmental documents to ensure the County's concerns are incorporated into the project review.

In order to establish a framework governing the respective responsibilities and roles in processing environmental documents for all projects, and with top priority on alternative energy proposals within the County, this MOU has been prepared for mutual use. The MOU will be utilized to achieve consistency and collaboration on the development and review of joint environmental documents where feasible, and maximize coordination between the two agencies.

Page 1 of 2

cc: LUSD-Rynerson Rock
LUSD-Hyke w/ agree for Sig.
Contractor c/o Dept w/ agree
ACR-Acct Pay Mgr w. agree
Periculum c/o Risk w/ agree
Risk Management
County Counsel-Brizzee
LUSD-Rice
CAO-Simon
File w/ agree
3/28/07

jr

Record of Action of the Board of Supervisors
Agreement No. 08-223

**DEFERRED/APPROVE BOARD OF SUPERVISORS
COUNTY OF SAN BERNARDINO**

MOTION	<u>MOVE</u>	<u>AYE</u>	<u>SECOND</u>	<u>AYE</u>	<u>ABSENT</u>
	1	4	4	5	

DENA M. SMITH CLERK OF THE BOARD

BY 

DATED: March 18, 2008



ITEM 021

**BOARD OF SUPERVISORS
AGREEMENT WITH THE US DEPARTMENT OF THE INTERIOR, BUREAU OF LAND
MANAGEMENT FOR PROCESSING ENVIRONMENTAL REVIEWS
MARCH 18, 2008
PAGE 2 OF 2**

The MOU does not include a funding mechanism. Each party will provide their own funds for implementation of this agreement, either through appropriated funds or other approved mechanisms, such as through supplemental funding provided to each party by the proponent.

The MOU will be effective upon certification by both agencies and remain in effect until terminated by either party.

REVIEW BY OTHERS: This item has been reviewed by County Counsel (Bart Brizzee, Deputy County Counsel, 387-8946) on February 19, 2008; LUSD (Ruth M. Rice, Administrative Manager, 387-4148) on February 21, 2008; and by the County Administrative Office (Adriana Simon, Administrative Analyst, 387-5414) on March 7, 2008.

FINANCIAL IMPACT: There are no financial impacts to the County associated with this item, as any applicable costs will be recovered via separate arrangements with each energy project developer.

SUPERVISORIAL DISTRICTS: First and Third

PRESENTER: Julie Rynerson Rock, Director of Land Use Services, 387-4141



County of San Bernardino

F A S

CONTRACT TRANSMITTAL

FOR COUNTY USE ONLY

<input checked="" type="checkbox"/> New	Vendor Code		SC	Dept.	Contract Number			
<input type="checkbox"/> Change			LUS	A	08 223			
<input type="checkbox"/> Cancel								
County Department			Dept.	Orgn.	Contractor's License No.			
Land Use Services								
County Department Contract Representative			Telephone		Total Contract Amount			
Carrie Hyke			387-4147		n/a			
Contract Type								
<input type="checkbox"/> Revenue <input type="checkbox"/> Encumbered <input type="checkbox"/> Unencumbered <input type="checkbox"/> Other:								
If not encumbered or revenue contract type, provide reason:								
Commodity Code		Contract Start Date	Contract End Date	Original Amount	Amendment Amount			
96132		03/18/08	n/a	n/a				
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.			
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount		
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount		
Project Name			Estimated Payment Total by Fiscal Year					
MOU for Processing Environmental Reviews			FY	Amount	I/D	FY	Amount	I/D

CONTRACTOR U.S. Department of the Interior, Bureau of Land Management (BLM)

Federal ID No. or Social Security No. _____

Contractor's Representative Steven J. Borchard, District Manager, BLM California Desert District

Address 22835 Calle San Juan De Los Lagos, Moreno Valley, CA 92553 Phone (951) 697-5200

Nature of Contract: *(Briefly describe the general terms of the contract)*

This Memorandum of Understanding (MOU) has been prepared in order to expedite the processing of energy development projects and preparation of environmental documents for such projects jointly with the U.S. Department of the Interior, Bureau of Land Management (BLM). Each environmental document prepared under this MOU will be presented for review and approval to the Board of Supervisors or the Planning Commission as appropriate.

There are no financial impacts associated with this MOU, as any costs to the County will be recovered via separate arrangements with each energy project developer.

(Attach this transmittal to all contracts not prepared on the "Standard Contract" form.)

Approved as to Legal Form (sign in blue ink)	Reviewed as to Contract Compliance	Presented to BOS for Signature
County Counsel		Department Head
Date <u>3-25-08</u>	Date _____	Date <u>3/25/08</u>

Auditor/Controller-Recorder Use Only



**MEMORANDUM OF UNDERSTANDING
BETWEEN THE COUNTY OF SAN BERNARDINO
AND THE U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF LAND MANAGEMENT
FOR PROCESSING ENVIRONMENTAL REVIEWS
March 2008**

This MEMORANDUM OF UNDERSTANDING (hereinafter referred to as "MOU") is entered into as of this 6th day of March 2008 between the County of San Bernardino (hereinafter the "County"), with offices located at 385 North Arrowhead Avenue, San Bernardino, California 92415-0182 and the U.S. Department of the Interior, Bureau of Land Management, California Desert District (hereinafter the "BLM"), as represented by the Barstow Field Office located at 2601 Barstow Road, Barstow, California 92311, by the Needles Field Office located at 1303 S. Highway 95, Needles, California 92363, and by the Ridgecrest Field Office located at 300 S. Richmond Road., Ridgecrest, California 93555. Collectively, the County and the BLM shall be referred to as the "Parties". This MOU shall apply to all projects that are located within the County for which the BLM is the lead federal agency.

A. PURPOSE

The purpose of this MOU is to establish an effective, efficient and cooperative process for conducting environmental reviews of proposed projects that are located on public lands managed by the BLM and that may or may not include private land under the jurisdiction of the County. This agreement also sets forth the respective roles and responsibilities of the BLM and the County and establishes that the highest priority be afforded to renewable (also referred to as alternative) energy projects.

This MOU is not intended as the exclusive means of obtaining BLM review of projects within the County's jurisdiction or County review of projects within BLM's jurisdiction. This MOU is a vehicle by which the BLM and the County may achieve consistency by collaborating on the development and review of joint environmental documents where feasible, and maximizing coordination between the two jurisdictions.

B. NEED FOR AGREEMENT

Due to several state and federal policies and regulations that provide incentives for the development of renewable energy sources, together with the vast undeveloped areas and climatic conditions within San Bernardino County, the BLM has received numerous right-of-way applications for solar, wind and geothermal energy development projects within those portions of the County lying within the California Desert District. Private lands are also included within some project boundaries. All projects on public land must be reviewed for compliance with the National Environmental Policy Act ("NEPA"), and where the State or County has certain permitting

authority, must also be reviewed for compliance with the California Environmental Quality Act (“CEQA”).

For projects that are under the jurisdiction of both Parties, and where the County is the CEQA lead agency and an EIR is required for compliance of CEQA, BLM and the County will prepare joint environmental documents to facilitate processing and resolution of issues early in the NEPA and CEQA compliance processes.

The California Energy Commission (“CEC”) acts as the CEQA lead agency for thermal energy projects of 50 megawatts or greater. The County is the CEQA lead agency for virtually all other projects that include private land. In all cases, the County desires to have local interests represented in the environmental review process. In any case where either the CEC is the CEQA lead agency or when CEQA review is not required, the County will be a cooperating agency with the BLM during its NEPA review process if County resources allow.

C. DUTIES OF THE PARTIES

(1) BLM

The BLM agrees to:

- a) Invite the County to participate as a cooperating agency when the BLM is preparing an environmental impact statement (“EIS”) under NEPA.
- b) Take a leadership role in expediting the review of alternative energy proposals, consistent with the Energy Policy Act of 2005 (*PL 109-58*) and subsequent BLM guidance on alternative energy projects, including WOIM 2006-216, Wind Energy Development Policy and WOIM 2007-097, Solar Energy Development Policy, (which are intended to increase renewable energy production on Federal land to assist moving the country towards energy independence), and consistent with NEPA requirements, other applicable environmental laws and regulations, and the California Desert Conservation Area Plan (1980, as amended).
- c) Through the BLM Responsible Official, cooperate with the County to the fullest extent possible to reduce duplication between federal, state, local and tribal requirements. Cooperation may include the following: establishing and maintaining common databases; formulating joint planning processes; participating in joint science investigations; holding joint public meetings and hearings; and undertaking joint environmental assessment level and joint EIS level analyses using joint lead or cooperating agency status.
- d) Provide staffing resources dedicated to coordinating input with the County in processing these applications.
- e) Provide an overall contact for alternative energy projects in the County who will provide regular briefings and updates to the County.

- f) Coordinate with the County regarding public participation activities for joint documents.
- g) Provide opportunity for a County representative to serve on an interdisciplinary team (ID Team) for each EIS and provide key members of its staff to participate, to develop the EIS, analyze impacts and coordinate support activities for each effort.
- h) Make available to the County information to be used in preparation of each EIS covered under this MOU, subject to any non-disclosure provisions as required by statute.
- i) Discuss with the County requirements of federal and state statutes, regulations, policies or applicant's proposals that may result in inconsistencies with the County General Plan, and facilitate resolution of identified conflicts, as requested by either Party.
- j) Consult with the County regarding establishment of relative priorities or other appropriate strategies if the current and/or projected workload of renewable energy projects exceeds the BLM's or the County's ability to provide the services specified in this MOU in a timely manner.
- k) Take the lead role for consultation with the U.S. Fish and Wildlife Service under the federal Endangered Species Act (as amended).
- l) Take the lead role for consultation with the State Historic Preservation Officer under the National Historic Preservation Act.
- m) Take the lead role for consultation with Native American Tribes.

(2) County

The County agrees to:

- a) Expedite the review of alternative energy proposals, consistent with CEQA requirements, other applicable environmental laws and regulations, and the County General Plan and Development Code (as applicable, and consistent with California Senate Bill SB 1078, approved 12 September 2002 (California Public Utilities Code, Sections 387 et. seq.), and the Renewables Portfolio Standards Program authorized under that Act, and subsequent Energy Report updates (which have set the goal of increasing the percentage of renewable energy in the State's electricity mix to 20 percent by 2010, and to 33 percent by 2017).
- b) Participate in the NEPA process as a Cooperating Agency subject to NEPA regulations in 40CFR Parts 1501.6, 1506.2 and 1508.5. On any specific project covered under this MOU that the County chooses not to participate as a formal Cooperating Agency, it will so inform BLM as soon as feasible, but no later than 30 days after release of the Notice of Intent.
- c) Provide resources including staffing for its participation as a Cooperating Agency in the processing of the aforementioned projects as more fully described in this MOU. If the

County is unable to provide staffing resources as identified below, it may notify the BLM in writing of the specific responsibilities it will be unable to fulfill, on a project-specific basis.

- d) Assign a representative to serve as liaison for the County in each EIS/Environmental Impact Report ("EIR") effort in which the County has an interest but is not the CEQA lead agency. This representative will participate in the following activities as County resources allow:
- (1) Participate as a full member of the ID Team, including in public scoping, comment review and response, and document development activities.
 - (2) Attend scheduled ID Team meetings.
 - (3) Submit written assignments as required within specified deadlines and in proper format.
 - (4) Keep the County Supervisors apprised of EIS/EIR efforts and direction as documents are developed.
 - (5) Provide specific expertise and input on planning, access issues, social and economic data, and other areas of special expertise relevant to each EIS/EIR effort.
 - (6) Discuss with the ID Team apparent inconsistencies between the County General Plan and the policies, plans, and programs of the CEC or BLM during the development of EIS/EIR alternatives.
 - (7) Notify the CEC and the BLM in writing of apparent inconsistencies as early as possible in the planning process, but no later than during the Draft EIS/EIR comment period.
- e) Assign a representative to serve as County liaison with the BLM in each EIS/EIR effort on projects where the County is the CEQA lead agency and as identified in Paragraph "d" above. This liaison will also provide timely feedback on key project-specific documents that govern the scope, timeframe and parameters for the EIS/EIR analysis, including but not limited to:
- (1) Additional information needed for County applications to initiate a joint EIS/EIR environmental review process;
 - (2) Participation in the development of the Scope of Work for selection of the Third-Party Contractor for environmental document preparation, consistent with County policies, and in the selection of the contractor including providing any concerns about prospective contractors based on their demonstrated EIR capabilities;
 - (3) Participation in development of plans for preparation, outreach, and overall scheduling for project processing as they relate to EIR requirements;

- (4) Inclusion of strategies for any pertinent anticipated General Plan amendments or exceptions, if applicable;
 - (5) Review of Federal Register Notices required by NEPA for development and availability of EIS documents, for inclusion of pertinent CEQA requirements; and
 - (6) Preparation and coordination of any supplemental notices or news releases required by the CEQA lead agency for EIR documents.
- f) Provide adequate information to the BLM regarding analysis of issues of concern for projects covered under this MOU.
 - g) To the best of its ability, ensure the participation of all essential County personnel and decision makers at appropriate times during the preparation of joint environmental documents and associated permit evaluation processes.
 - h) Work closely with the BLM to adjust priorities and schedules in order to make optimal use of available staff resources.

D. THE BLM AND COUNTY MUTUALLY AGREE THAT:

- (1) On projects within the County's jurisdictional boundaries where BLM is serving as the lead federal agency for processing and compliance with NEPA, the County may, at its election, participate as a Cooperating Agency on those projects.
- (2) On projects within the County's jurisdictional boundaries where CEC is the lead agency on environmental compliance under State law, the County will provide input through the CEC, to the extent feasible.
- (3) For projects where the County is the CEQA lead agency and an EIR is required for compliance of CEQA, BLM and the County will prepare joint environmental documents to facilitate processing and resolution of issues early in the NEPA and CEQA compliance processes.
- (4) Renewable energy projects shall generally be given the highest priority of all jointly prepared environmental documents.
- (5) All environmental documents will be prepared in accordance with applicable federal and state statutes, regulations, policies, and planning instruments.
- (6) In general, the BLM is responsible only for public information regarding BLM regulatory activities, including NEPA and permit processing. The County is responsible for providing adequate public information regarding CEQA activities if it is the lead CEQA agency, and for public information related to other applicable County regulatory activities.

- (7) BLM will retain authority for approval and signature of the Record of Decision after conclusion of the EIS/plan amendment process and all subsequent permit decisions under its jurisdiction. The County will retain authority for approval and signature of the Notice of Determination after conclusion of any EIS/EIR joint process in which the County is the lead agency for compliance with State environmental law, and make associated final permitting decisions for permits under its jurisdiction.
- (8) The BLM shall have the final decision-making authority with respect to EIS decisions as the NEPA lead agency, and federal permit decisions under its jurisdiction. The County or other CEQA lead-agency shall have final decision making authority with respect to EIR decisions, and any permit decisions under its jurisdiction.
- (9) Inasmuch as this MOU does not include a funding mechanism, each party will provide its own funds for implementation of this MOU, either through appropriated funds or other approved mechanisms, including but not limited to supplemental funding provided to each party by the proponent.

E. CONTACTS

To provide for consistent and effective communication between the BLM and the County, each party hereby appoints a Principal Representative to serve as its central point of contact on matters relating to this MOU. Additional representatives from each BLM Field Office may also be appointed to serve as points of contact on specific permit actions, and the County may appoint additional points of contact on specific permit actions. The Principal Representative for each party may be changed upon written notification to the other party.

BLM Principal Representative:

Alan Stein, Deputy District Manager, Resources Division
Bureau of Land Management
California Desert District
22835 Calle San Juan de Los Lagos
Moreno Valley, CA 92553
Tel. 951-697-5382, Facsimile: 951-697-5299

County Principal Representative:

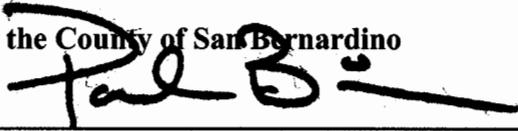
Carrie Hyke, Principal Planner, Advance Planning Division
County of San Bernardino
Land Use Services Department
385 N. Arrowhead Avenue, 1st Floor
San Bernardino, CA 92415-0182
Tel. 909-387-4371, Facsimile: 909-387-3223

F. AMENDMENT, MODIFICATION AND TERMINATION

- (1) This MOU may be modified or amended only in a writing signed by each Party.
- (2) Either party may terminate this MOU by providing written notice to the other party. Such termination shall be effective upon the thirtieth (30th) calendar day following service of such notice, unless a later date is set forth. In the event of termination, the BLM will continue to be responsible for NEPA compliance as the NEPA lead agency and the County will continue to be responsible for CEQA compliance in cases where the County is the CEQA lead agency. All baseline data compiled up to the time of termination shall be made available to both Parties for their continued processing of environmental documents and permits under each party's respective jurisdiction.
- (3) This MOU shall be effective upon the latest date of execution by any Party, and remain in effect until terminated by one or both parties or by the operation of law.

IN WITNESS WHEREOF, the County of San Bernardino, pursuant to Board action authorizing such execution, and the Bureau of Land Management, California Desert District Manager acting by and through its Authorized Officers in Barstow Field Office, Needles Field Office and Ridgecrest Field Office, executes this MOU.

For the County of San Bernardino



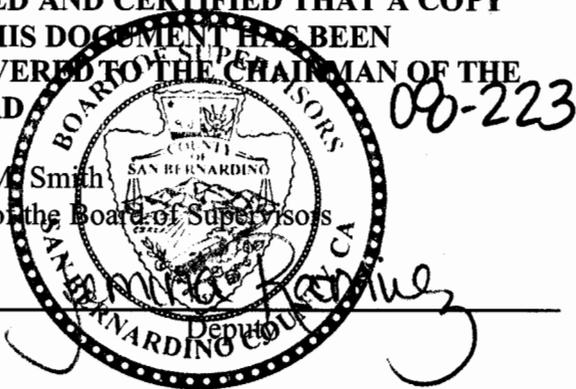
Paul Biane
Chairman, Board of Supervisors

Date: MAR 18 2008

SIGNED AND CERTIFIED THAT A COPY
OF THIS DOCUMENT HAS BEEN
DELIVERED TO THE CHAIRMAN OF THE
BOARD

Dena M. Smith
Clerk of the Board of Supervisors

By:



Date: MAR 18 2008

Approved as to Legal Form

RUTH E. STRINGER
County Counsel

By:



Bart W. Brizzee
Deputy County Counsel

Date: 3-25-08

For the Department of the Interior, Bureau of
Land Management California Desert District



Steven J. Borchard
District Manager

Date: 4/8/2008