

Appendix F

Government-to-Government Consultation

This appendix provides the documentation regarding Tribal contacts for the Imperial Valley Solar (IVS) project as follows:

- Table F-1, Documentation of Tribal Contacts in 2008
- Table F-2, Documentation of Tribal Contacts in 2009
- Table F-3, Documentation of Tribal Contacts from January 2010 through April 2010
- Table F-4, Documentation of Tribal Contacts from May 2010 through June 2010

All Tribes and persons who were contacted and participated in this consultation are listed in the first column in all three tables. However, in some cases, contact/consultation occurred only in 1 or 2 years; therefore, there is no contact/consultation noted for the years in which no contact/consultation with that Tribe or person occurred. However, all Tribes and persons listed in the first column in each table participated in the process in at least 1 year between 2008 and 2010.

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Table F-1 Documentation of Tribal Contacts in 2008

Contact & Tribe	BLM Letter 1/8/08	Tribe Letter Response 2/19/08	Face- to-Face Mtg 8/19/08	Tribe Letter Response 8/28/08	Face- to-Face Mtg 10/9/08	BLM Letter 11/11/08	Field Visit 11/12/08	Follow- up Call 11/17/08	Follow- up Call 12/12/08
Campo Band of Kumeyaay Indians									
H. Paul Cuero, Jr., Chairperson	X								
Fidel Hyde, EPA Director	X								
Monique LaChappa, Chairperson				X	X	X		X	X
Lisa Gover, Tribal Administrator/EPA Director					X	X		X	X
Cocopah Indian Tribe									
Sherry Cordova, Chairperson	X					X		X	X
Jill McCormick, Cultural Resources Manager	X					X	X	X	X
Ewiiaapaayp Band of Kumeyaay Indians									
Robert Pinto, Sr., Chairperson	X					X		X	X
Will Micklin, Executive Director	X					X		X	X
Michael Garcia, Vice- Chairman, EPA Director	X					X		X	X
Jim Robertson, Cultural Resources Coordinator									
Fort Yuma Quechan Tribe									
Michael Jackson, Sr., President	X					X		X	X

Contact & Tribe	BLM Letter 1/8/08	Tribe Letter Response 2/19/08	Face-to-Face Mtg 8/19/08	Tribe Letter Response 8/28/08	Face-to-Face Mtg 10/9/08	BLM Letter 11/11/08	Field Visit 11/12/08	Follow-up Call 11/17/08	Follow-up Call 12/12/08
Bridget Nash-Chrabascz, Historic Preservation Officer/Cultural Committee Coordinator	X	X	X			X		X	X
Lorey Cachora									
Fort Yuma Quechan Tribe-Ah-Mut Pipa Foundation									
Preston Arroweed									
Jamul Indian Village									
Kenneth Meza, Sr., Chairperson									
Jesse Pinto									
Kwaaymii Laguna Band of Mission Indians									
Carmen Lucas	X					X	X	X	X
La Posta Band of Kumeyaay Indians									
Gwendolyn Parada, Chairperson	X					X		X	X
James Hill, EPA Director	X								
Bernice Paipa, Environmental Coordinator/Kumeyaay Cultural Repatriation Committee									
Manzanita Band of Kumeyaay Indians									
Leroy Elliott, Chairperson	X					X		X	X
Keith Adkins, Environmental Coordinator	X					X		X	X

Contact & Tribe	BLM Letter 1/8/08	Tribe Letter Response 2/19/08	Face-to-Face Mtg 8/19/08	Tribe Letter Response 8/28/08	Face-to-Face Mtg 10/9/08	BLM Letter 11/11/08	Field Visit 11/12/08	Follow-up Call 11/17/08	Follow-up Call 12/12/08
Nick Elliott, Environmental Coordinator	X					X		X	X
San Pasqual Band of Diegueno Indians									
Allen Lawson, Jr., Chairperson									
Dave Toler, Councilman									
Kristie Orosco, Environmental Coordinator									
Santa Ysabel Band of Diegueno Indians									
Johnny Hernandez, Chairperson									X
Clint Linton, Red Tail Monitoring and Research, Inc.							X		X
Ron Christman									
Rodney Kephart									
Torres-Martinez Desert Cahuilla Indians									
Raymond Torres, Chairperson	X					X			X
Diana Chihuahua, Cultural Resources Coordinator						X		X	X
Alberto Ramirez, Environmental Coordinator						X		X	X

Table General Note: All Tribes and persons who were contacted and participated in the consultation are listed in the first column in Tables F-1 through F-4. However, in some cases, contact/consultation occurred only in 1 or 2 years; therefore, there is no contact/consultation noted for the years in which no contact/consultation with that Tribe or person occurred. However, all Tribes and persons listed in the first column in each table participated in the process in at least 1 year between 2008 and 2010.

Table F-2 Documentation of Tribal Contacts in 2009

Contact & Tribe	Tribe Letter Response 3/23/09	Face-to-Face Mtg 7/10/09	BLM Letter 11/6/09	Follow-up Calls and Emails 11/21/09-12/1/09	Face-to-Face Mtg 12/4/09
Campo Band of Kumeyaay Indians					
H. Paul Cuero, Jr., Chairperson					
Fidel Hyde, EPA Director					
Monique LaChappa, Chairperson			X	X	
Lisa Gover, Tribal Administrator/EPA Director			X	X	
Cocopah Indian Tribe					
Sherry Cordova, Chairperson			X	X	
Jill McCormick, Cultural Resources Manager			X	X	X
Ewiiapaayp Band of Kumeyaay Indians					
Robert Pinto, Sr., Chairperson			X	X	
Will Micklin, Executive Director			X	X	
Michael Garcia, Vice- Chairman, EPA Director			X	X	
Jim Robertson, Cultural Resources Coordinator					X
Fort Yuma Quechan Tribe					
Michael Jackson, Sr., President			X	X	

Contact & Tribe	Tribe Letter Response 3/23/09	Face-to-Face Mtg 7/10/09	BLM Letter 11/6/09	Follow-up Calls and Emails 11/21/09-12/1/09	Face-to-Face Mtg 12/4/09
Bridget Nash-Chrabascz, Historic Preservation Officer/Cultural Committee Coordinator		X	X	X	
Lorey Cachora					
Fort Yuma Quechan Tribe-Ah-Mut Pipa Foundation					
Preston Arrowood				X	X
Jamul Indian Village					
Kenneth Meza, Sr., Chairperson					
Jesse Pinto					X
Kwaaymii Laguna Band of Mission Indians					
Carmen Lucas			X	X	X
La Posta Band of Kumeyaay Indians					
Gwendolyn Parada, Chairperson			X		
James Hill, EPA Director					
Bernice Paipa, Environmental Coordinator/Kumeyaay Cultural Repatriation Committee				X	
Manzanita Band of Kumeyaay Indians					
Leroy Elliott, Chairperson			X	X	
Keith Adkins, Environmental Coordinator			X	X	
Nick Elliott, Environmental Coordinator					X

Contact & Tribe	Tribe Letter Response 3/23/09	Face-to-Face Mtg 7/10/09	BLM Letter 11/6/09	Follow-up Calls and Emails 11/21/09-12/1/09	Face-to-Face Mtg 12/4/09
San Pasqual Band of Diegueno Indians					
Allen Lawson, Jr., Chairperson			X	X	
Dave Toler, Councilman			X	X	
Kristie Orosco, Environmental Coordinator					
Santa Ysabel Band of Diegueno Indians					
Johnny Hernandez, Chairperson			X	X	
Clint Linton, Red Tail Monitoring and Research, Inc.			X	X	
Ron Christman			X		
Rodney Kephart				X	
Torres-Martinez Desert Cahuilla Indians					
Raymond Torres, Chairperson					
Diana Chihuahua, Cultural Resources Coordinator	X				
Alberto Ramirez, Environmental Coordinator					

Table General Note: All Tribes and persons who were contacted and participated in the consultation are listed in the first column in Tables F-1 through F-4. However, in some cases, contact/consultation occurred only in 1 or 2 years; therefore, there is no contact/consultation noted for the years in which no contact/consultation with that Tribe or person occurred. However, all Tribes and persons listed in the first column in each table participated in the process in at least 1 year between 2008 and 2010.

Table F-3 Documentation of Tribal Contacts from January 2010 through April 2010

Contact & Tribe	BLM Letter 1/15/10	Tribe Letter Response 2/4/10	Tribe Letter Response 2/24/10	Follow-up Email 3/1/10	BLM Letter 3/11/10	Follow-up Email 3/12/10	Follow-up Email 3/26/10	BLM Letter 3/29/10	Follow-up Email 4/15/10
Campo Band of Kumeyaay Indians									
H. Paul Cuero, Jr., Chairperson									
Fidel Hyde, EPA Director									
Monique LaChappa, Chairperson	X				X		X	X	X
Lisa Gover, Tribal Administrator/EPA Director	X				X			X	
Cocopah Indian Tribe									
Sherry Cordova, Chairperson	X				X			X	
Jill McCormick, Cultural Resources Manager	X			X	X	X	X	X	X
Ewiiapaayp Band of Kumeyaay Indians									
Robert Pinto, Sr., Chairperson	X				X			X	
Will Micklin, Executive Director	X				X		X	X	X
Michael Garcia, Vice- Chairman, EPA Director	X				X			X	
Jim Robertson, Cultural Resources Coordinator					X				
Fort Yuma Quechan Tribe									
Michael Jackson, Sr., President	X	X			X			X	
Bridget Nash-Chrabascz, Historic Preservation Officer/Cultural Committee Coordinator	X			X	X	X	X	X	X
Lorey Cachora									
Fort Yuma Quechan Tribe-Ah-Mut Pipa Foundation									
Preston Arroweed	X			X	X	X	X	X	X
Jamul Indian Village									
Kenneth Meza, Sr., Chairperson	X				X			X	
Jesse Pinto	X				X			X	
Kwaaymii Laguna Band of Mission Indians									
Carmen Lucas	X				X			X	
La Posta Band of Kumeyaay Indians									
Gwendolyn Parada, Chairperson	X				X		X	X	X
James Hill, EPA Director									

Contact & Tribe	BLM Letter 1/15/10	Tribe Letter Response 2/4/10	Tribe Letter Response 2/24/10	Follow-up Email 3/1/10	BLM Letter 3/11/10	Follow-up Email 3/12/10	Follow-up Email 3/26/10	BLM Letter 3/29/10	Follow-up Email 4/15/10
Bernice Paipa, Environmental Coordinator/Kumeyaay Cultural Repatriation Committee	X				X		X	X	X
Manzanita Band of Kumeyaay Indians									
Leroy Elliott, Chairperson	X				X			X	
Keith Adkins, Environmental Coordinator	X				X		X	X	X
Nick Elliott, Environmental Coordinator	X				X			X	
San Pasqual Band of Diegueno Indians									
Allen Lawson, Jr., Chairperson	X				X			X	
Dave Toler, Councilman	X		X		X		X	X	X
Kristie Orosco, Environmental Coordinator									
Santa Ysabel Band of Diegueno Indians									
Johnny Hernandez, Chairperson	X				X		X	X	X
Clint Linton, Red Tail Monitoring and Research, Inc.	X				X		X	X	X
Ron Christman	X				X			X	
Rodney Kephart									
Torres-Martinez Desert Cahuilla Indians									
Raymond Torres, Chairperson									
Diana Chihuahua, Cultural Resources Coordinator									
Alberto Ramirez, Environmental Coordinator									

Table General Note: All Tribes and persons who were contacted and participated in the consultation are listed in the first column in Tables F-1 through F-4. However, in some cases, contact/consultation occurred only in 1 or 2 years; therefore, there is no contact/consultation noted for the years in which no contact/consultation with that Tribe or person occurred. However, all Tribes and persons listed in the first column in each table participated in the process in at least 1 year between 2008 and 2010.

Table F-4 Documentation of Tribal Contacts from May 2010 through June 2010

Contact & Tribe	Follow-up Email 5/3/10	Face-to-Face Meeting 5/4/10	Tribe Letter Response 5/4/10	Follow-up Emails 5/13/10 & 5/17/10	Tribe Letter Response 5/16/10	Face-to-Face Meeting 5/18/10	Follow-up Email 5/28/10	Tribe Letter Response 5/31/10	BLM Letter 6/2/10	Tribe Letter Response 6/4/10	Tribe Letter Response 6/14/10	Follow-up Email 6/15/10	Face-to-Face Meeting 6/16/10	BLM Letter 6/24/10	Follow-up Email 6/25/10
Campo Band of Kumeyaay Indians															
H. Paul Cuero, Jr., Chairperson															
Fidel Hyde, EPA Director															
Monique LaChappa, Chairperson	X			X			X		X			X		X	X
Lisa Gover, Tribal Administrator/EPA Director									X					X	
Cocopah Indian Tribe															
Sherry Cordova, Chairperson									X					X	
Jill McCormick, Cultural Resources Manager	X	X		X		X	X		X			X	X	X	X
Ewiiaapaayp Band of Kumeyaay Indians															
Robert Pinto, Sr., Chairperson									X					X	
Will Micklin, Executive Director	X			X			X		X			X		X	X
Michael Garcia, Vice-Chairman, EPA Director									X					X	
Jim Robertson, Cultural Resources Coordinator									X					X	
Fort Yuma Quechan Tribe															
Michael Jackson, Sr., President									X					X	
Bridget Nash-Chrabascz, Historic Preservation Officer/Cultural Committee Coordinator	X	X	X	X		X (called in)	X		X	X	X	X	X (called in)	X	X
Lorey Cachora													X	X	
Fort Yuma Quechan Tribe-Ah-Mut Pipa Foundation															
Preston Arrowweed	X	X		X			X		X			X		X	X
Jamul Indian Village															
Kenneth Meza, Sr., Chairperson									X					X	
Jesse Pinto									X					X	
Kwaaymii Laguna Band of Mission Indians															
Carmen Lucas					X			X	X				X	X	
La Posta Band of Kumeyaay Indians															
Gwendolyn Parada, Chairperson	X			X			X		X			X		X	X
James Hill, EPA Director															

Contact & Tribe	Follow-up Email 5/3/10	Face-to-Face Meeting 5/4/10	Tribe Letter Response 5/4/10	Follow-up Emails 5/13/10 & 5/17/10	Tribe Letter Response 5/16/10	Face-to-Face Meeting 5/18/10	Follow-up Email 5/28/10	Tribe Letter Response 5/31/10	BLM Letter 6/2/10	Tribe Letter Response 6/4/10	Tribe Letter Response 6/14/10	Follow-up Email 6/15/10	Face-to-Face Meeting 6/16/10	BLM Letter 6/24/10	Follow-up Email 6/25/10
Bernice Paipa, Environmental Coordinator/Kumeyaay Cultural Repatriation Committee	X			X			X		X			X	X (called in)	X	X
Manzanita Band of Kumeyaay Indians															
Leroy Elliott, Chairperson									X					X	
Keith Adkins, Environmental Coordinator	X			X			X		X			X		X	X
Nick Elliott, Environmental Coordinator									X					X	
San Pasqual Band of Diegueno Indians															
Allen Lawson, Jr., Chairperson									X					X	
Dave Toler, Councilman	X			X			X		X			X		X	X
Kristie Orosco, Environmental Coordinator													X	X	X
Santa Ysabel Band of Diegueno Indians															
Johnny Hernandez, Chairperson	X			X			X		X			X		X	X
Clint Linton, Red Tail Monitoring and Research, Inc.	X			X			X		X			X		X	X
Ron Christman															
Rodney Kephart							X		X			X		X	X
Torres-Martinez Desert Cahuilla Indians															
Raymond Torres, Chairperson															
Diana Chihuahua, Cultural Resources Coordinator															
Alberto Ramirez, Environmental Coordinator															

Table General Note: All Tribes and persons who were contacted and participated in the consultation are listed in the first column in Tables F-1 through F-4. However, in some cases, contact/consultation occurred only in 1 or 2 years; therefore, there is no contact/consultation noted for the years in which no contact/consultation with that Tribe or person occurred. However, all Tribes and persons listed in the first column in each table participated in the process in at least 1 year between 2008 and 2010.

Appendix G

Draft Programmatic Agreement

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DRAFT

**PROGRAMMATIC AGREEMENT
AMONG THE
BUREAU OF LAND MANAGEMENT-CALIFORNIA,
THE UNITED STATES ARMY CORPS OF ENGINEERS,
THE CALIFORNIA ENERGY COMMISSION,
THE TESSERA SOLAR COMPANY,
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING THE TESSERA SOLAR - IMPERIAL VALLEY SOLAR
PROJECT, IMPERIAL COUNTY, CALIFORNIA**

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36 -
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38 **INTRODUCTION**

39

40 The purpose of this Programmatic Agreement (Agreement) is to provide processes whereby the
41 Bureau of Land Management (BLM), U.S. Army Corps of Engineers (COE), and the California
42 Energy Commission (Energy Commission), in consultation with the California State Historic
43 Preservation Officer (SHPO), Advisory Council on Historic Preservation (ACHP), Indian Tribes
44 and other consulting parties, shall determine the steps the agencies shall follow to take into
45 account effects on historic properties as required by Section 106 of the National Historic
46 Preservation Act and satisfy the requirements of the California Environmental Quality Act.

47 The BLM in consultation with the consulting parties to this Agreement, will consider and
48 incorporate within the Section 106 consultation process the performance standards (desired
49 future condition), the range of mitigation measures and commitment to mitigate, and monitoring
50 requirements of the Energy Commission’s Staff Assessment for the Tessera Solar Imperial
51 Valley Solar Project (Application for Certification 08-AFC-5). The BLM and the Energy
52 Commission will endeavor to make the historic properties treatment and management provisions
53 of this Agreement as consistent as possible with the objectives and terms of the Staff Assessment
54 within the context of the consultation process required by Section 106 of the NHPA.

55 Government agencies, consulting parties, and the public identified in the scoping and public
56 notification process for the Staff Assessment and Environmental Impact Statement will be
57 advised in the Supplemental Staff Assessment and Final Environmental Impact Statement (FEIS)
58 that historic properties associated with the undertaking would be treated consistent with the
59 mitigation measures or performance standards identified in the Staff Assessment and adopted by
60 the Energy Commission, and consistent with the stipulations of this Agreement. A proposed final
61 draft of this Agreement will be circulated for public comment as an attachment to the FEIS. The
62 Signatories have consulted with the Invited Signatories, Concurring Parties and Tribes on this
63 Agreement, and have taken into consideration the views and comments received regarding the
64 draft Agreement in preparing this final Agreement.

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**PROGRAMMATIC AGREEMENT
AMONG THE
BUREAU OF LAND MANAGEMENT-CALIFORNIA,
THE UNITED STATES ARMY CORPS OF ENGINEERS,
THE CALIFORNIA ENERGY COMMISSION,
THE TESSERA SOLAR COMPANY,
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING THE TESSERA SOLAR - IMPERIAL VALLEY SOLAR PROJECT,
IMPERIAL COUNTY, CALIFORNIA**

77 **WHEREAS**, the Tessera Solar Company (Applicant) has applied for a right of way (ROW)
78 grant on approximately 6,144 acres of public lands managed by the Bureau of Land Management
79 (BLM) and has submitted a Plan of Development (POD) to construct, operate and maintain a
80 solar energy electrical generating plant (hereinafter referred to as the Imperial Valley Solar
81 Project or Project), including construction of approximately 30,000 solar dish power control
82 units (SunCatchers), a 230 kilovolt (kV) transmission lines, a water pipeline, paved arterial
83 roads, unpaved perimeter access and maintenance roads, laydown and staging areas, and support
84 facilities and infrastructure which are more fully described in Appendix D: Project Description
85 and illustrated in Appendix E: Project Maps and Illustrations attached hereto and incorporated by
86 this reference; and

87
88 **WHEREAS**, the BLM has determined that issuing a right-of-way grant (ROW) to the Tessera
89 Solar Company in accordance with the Federal Land Policy and Management Act (FLPMA)
90 (Public Law 940-579; 43 USC 1701) is an undertaking as defined at 36 CFR
91 800.16(y)(Protection of Historic Properties, August 5, 2004) of the regulations implementing
92 Section 106 of the National Historic Preservation Act (16 USC 470(f))(NHPA); and

93
94 **WHEREAS**, the United States Army Corps of Engineers (COE) may issue a Department of the
95 Army permit pursuant to section 404 of the Clean Water Act for discharges of dredged or fill
96 material into jurisdictional waters of the United States associated with the Imperial Valley Solar
97 Project , which constitutes an undertaking as defined at 36 CFR 800.16(y), and has participated
98 in this consultation and is a Signatory to this Programmatic Agreement (Agreement); and

99
100 **WHEREAS**, the BLM is the lead federal agency for these undertakings for the purpose of
101 complying with Section 106 of the NHPA and its implementing regulations found at 36 CFR
102 Part 800, and the BLM shall be responsible for managing historic properties within the Area of
103 Potential Effects (APE) for the undertaking pursuant to the NHPA; and

104
105 **WHEREAS**, in August 2005, the United States Congress enacted the Energy Policy Act of 2005
106 (Public Law 109-58). In section 211 of this Act, Congress directed that the Secretary of the
107 Interior (the “Secretary”) should, before the end of the 10-year period beginning on the date of

108 enactment of the Act, seek to have approved non-hydropower renewable energy projects located
109 on the public lands with a generation capacity of at least 10,000 megawatts of electricity; and
110

111 **WHEREAS**, by Secretarial Order No. 3285 issued March 11, 2009, the Secretary stated as
112 policy that encouraging the production, development, and delivery of renewable energy is one of
113 the Department of Interior's (DOI) highest priorities and that agencies and bureaus within the
114 DOI will work collaboratively with each other, and with other federal agencies, departments,
115 states, local communities, and private landowners to encourage the timely and responsible
116 development of renewable energy and associated transmission while protecting and enhancing
117 the Nation's water, wildlife, and other natural resources; and
118

119 **WHEREAS**, BLM and the COE have consulted with the California State Historic Preservation
120 Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP), pursuant to 36 CFR
121 800.14(b)(3) and following the procedures outlined at 36 CFR 800.6, and is in the process of
122 considering alternatives for the Project that have the potential to adversely affect historic
123 properties and may reach a decision regarding approval of the undertakings before the effects of
124 the undertaking's implementation on historic properties have been fully determined, the BLM
125 chooses to continue its assessment of the undertaking's potential adverse effect and resolve any
126 such effect through the implementation of this Agreement; and
127

128 **WHEREAS**, the BLM and COE, in consultation with the SHPO and the ACHP and pursuant to
129 36 CFR 800.4(b)(2) where alternatives under consideration consist of large land areas, has
130 determined that a phased (tiered) process for compliance with Section 106 of the NHPA may be
131 appropriate for the undertakings; and
132

133 **WHEREAS**, the Juan Bautista de Anza National Historic Trail corridor is located within the
134 APE for the undertakings and the National Park Service (NPS) has agreed to participate in the
135 Section 106 consultation regarding the undertakings under the terms of this Agreement and is a
136 Concurring Party to this Agreement; and
137

138 **WHEREAS**, the California Energy Commission (Energy Commission) may certify the Imperial
139 Valley Solar Project located on both public and private lands pursuant to Section 25519,
140 subsection (c) of the Warren-Alquist Act of 1974 and for the purposes of consistency proposes to
141 manage all historical resources in accordance with the stipulations of this Agreement, and has
142 participated in this consultation and is an Invited Signatory to this Agreement; and
143

144 **WHEREAS**, the BLM, in coordination with the Energy Commission, has authorized the
145 Applicant to conduct specific identification efforts for this undertaking including a review of the
146 existing literature and records, cultural resources surveys, ethnographic studies, and geo-
147 morphological studies to identify historic properties that might be located within the Area of
148 Potential Effect (APE); and
149

150 **WHEREAS**, the Applicant has retained an archaeological consultant to complete all of the
151 investigations necessary to identify and evaluate cultural resources located within the Area of

152 Potential Effect (APE) for both direct and indirect effects. A review of the existing historic,
153 archaeological and ethnographic literature and records has been completed to ascertain the
154 presence of known and recorded cultural resources in the APE and buffered study area, has
155 conducted an intensive field survey for 7,700 acres of land, including all of the lands identified in
156 APE for direct effects for all project alternatives, and has completed intensive field surveys for
157 alternatives on lands that are no longer part of the project. A cultural resources inventory report
158 (*Draft Final Class III Cultural Resources Technical Report for the Imperial Valley Solar*
159 *Project, Application for Certification (08-AFC-5), Imperial Valley Solar, LLC*, prepared by URS
160 Corporation, June 2010) has been submitted that presents the results of identification efforts to
161 the BLM, the COE, and the Energy Commission. The BLM has provided the report to the
162 consulting parties and Indian Tribes for review and comment; and

163
164 **WHEREAS**, the BLM and the Energy Commission have prepared the *Staff Assessment and*
165 *Draft Environmental Impact Statement and Draft California Desert Conservation Area Plan*
166 *Amendment, SES Solar Two Project, Application for Certification (08-AFC-5) Imperial County*
167 *(2010)* to identify the project alternatives for purposes of the California Environmental Quality
168 Act (CEQA) and the National Environmental Policy Act (NEPA), and have comparatively
169 examined the relative effects of the alternatives on known historic properties; and

170
171 **WHEREAS**, the Applicant has participated in this consultation per 36 CFR 800.2(c)(4), will be
172 the entity to whom the BLM grants a ROW and the COE issues a permit related to Project
173 activities, with the responsibility for carrying out the specific terms of this Agreement under the
174 oversight of the BLM, and therefore is an Invited Signatory to this Agreement; and

175
176 **WHEREAS**, pursuant to section 101(d)(6)(B) of the NHPA, 36 CFR 800.2(c)(2)(ii), the
177 American Indian Religious Freedom Act (AIRFA), Executive Order 13175, and section 3(c) of
178 the Native American Graves Protection and Repatriation Act (NAGPRA), the BLM is
179 responsible for government-to-government consultation with federally recognized Indian Tribes
180 and is the lead federal agency for all Native American consultation and coordination; and

181
182 **WHEREAS**, the BLM has formally notified and invited the Campo Kumeyaay Nation, the
183 Cocopah Indian Tribe, the Quechan Indian Tribe, the Ewiiapaayp Band of Kumeyaay Indians,
184 the Jamul Indian Village, the Kwaaymii Laguna Band of Indians, the La Posta Band of
185 Kumeyaay Indians, the Manzanita Band of Kumeyaay Indians, the San Pasqual Band of
186 Diegueno Indians, and the Santa Ysabel Band of Diegueno Indians (Tribes), and the Ah-Mut
187 Pipa Foundation to consult on this undertaking and participate in this Agreement as a Concurring
188 Party. BLM has documented its efforts to consult with the Tribes and Tribal Organizations and a
189 summary is provided in Appendix I to this Agreement; and

190
191 **WHEREAS**, the BLM shall continue to consult with the Tribes and Tribal Organizations
192 throughout the implementation of this Agreement regarding the adverse effects to historic
193 properties to which they attach religious and cultural significance. BLM will carry out its
194 responsibilities to consult with Tribes that request such consultation with the further

195 understanding that, notwithstanding any decision by these Tribes to decline concurrence, BLM
196 shall continue to consult with these Tribes throughout the implementation of this Agreement; and .
197

198 **WHEREAS**, through consultation, Tribes and Tribal Organizations have expressed their views
199 and concerns about the importance and sensitivity of specific cultural resources that hold
200 religious and cultural significance. Tribes have expressed the connection of these resources to the
201 broader cultural landscape within and near the project area; and
202

203 **WHEREAS**, the National Trust for Historic Preservation, the Anza Society, the California
204 Unions for Reliable Energy, and the Sacred Sites International Foundation, as organizations, and
205 Edie Harmon and Greg P. Smestad, Ph.D., as individuals, have been invited to consult on this
206 undertaking and this Agreement, have been afforded consulting party status pursuant to 36 CFR
207 800.4, and have been invited to be Concurring Parties to this Agreement;
208

209 **NOW, THEREFORE**, the BLM, the COE, the SHPO, and the ACHP (hereinafter “Signatories”) and the Energy Commission and the Applicant (hereinafter “Invited Signatories”), agree that the
210 undertaking shall be implemented in accordance with the following stipulations in order to take
211 into account the effect of the undertaking on historic properties.
212

213
214

215 **STIPULATIONS**

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218

The Signatories and Invited Signatories shall ensure that the following measures are implemented:

219
220

I. DEFINITIONS

221
222
223

The definitions found at 36 CFR 800.16 and in this section apply throughout this Agreement except where another definition is offered in this Agreement.

224

- 225 a) **Concurring Parties**. Collectively refers to consulting parties with a demonstrated interest
226 in the Undertaking, who concur, through their signature, in this Agreement. Concurring
227 Parties may propose amendments to this Agreement. Amendments proposed by
228 Concurring Parties may be considered at the discretion of the Signatories.
- 229 b) **Cultural Resource**. A cultural resource is an object or definite location of human activity,
230 occupation, or use identifiable through field inventory, historical documentation, or oral
231 evidence. Cultural resources are prehistoric, historic, archaeological, or architectural
232 sites, structures, buildings, places, or objects and definite locations of traditional cultural
233 or religious importance to specified social and/or culture groups. Cultural resources
234 include the entire spectrum of resources, from artifacts to cultural landscapes, without
235 regard to eligibility for inclusion on the National Register of Historic Places (NRHP) or
236 California Register of Historical Resources (CRHR).
- 237 c) **Consulting Parties**. Collectively refers to the Signatory, Invited Signatory and
238 Concurring Parties to this Agreement.

- 239 d) **Day.** Singular or plural, refers to a calendar, rather than a business, day.
- 240 e) **Historic Properties.** Historic Properties are included in, or eligible for inclusion in, the
- 241 NRHP maintained by the Secretary of the Interior and per the NRHP eligibility criteria at
- 242 36 CFR § 60.4 and may include any prehistoric or historic district, site, building, structure,
- 243 traditional cultural property or object CFR. This term includes artifacts, records, and
- 244 remains that are related to and located within such properties. The term includes
- 245 properties of traditional religious and cultural importance to an Indian tribe or Native
- 246 Hawaiian organization and that meet the NRHP criteria. The term eligible for inclusion
- 247 in the NRHP includes both properties formally determined as such in accordance with
- 248 regulations of the Secretary of the Interior and all other properties that meet the NRHP
- 249 criteria.
- 250 f) **Historic Resources.** Historic resources meet the criteria for listing on the CRHR as
- 251 provided at California Code of Regulations Title 14, Chapter 11.5, Section 4850 and may
- 252 include, but is not limited to, any object, building, structure, site, area, place, record, or
- 253 manuscript which is historically or archaeologically significant, or is significant in the
- 254 architectural, engineering, scientific, economic, agricultural, educational, social, political,
- 255 military, or cultural annals of California.
- 256 g) **Invited Signatories.** Invited Signatories to this Agreement are the Energy Commission
- 257 and Applicant. Invited Signatories have specific responsibilities as defined in this
- 258 Agreement and have the same rights as the Signatory Parties to propose amendments and
- 259 termination of this Agreement, but their signatures are not required for execution of the
- 260 Agreement.
- 261 h) **Lands Administered by the U.S. Department of Interior, Bureau of Land Management**
- 262 (BLM) means any federal lands under the administrative authority of the BLM.
- 263 i) **Lands Regulated by the U.S. Army Corps of Engineers (COE)** means any lands subject
- 264 to regulation by the COE pursuant to section 404 of the Clean Water Act (33 U.S.C.
- 265 section 1344) or other law, and for which the COE has issued a Department of the Army
- 266 permit.
- 267 j) **Literature Review.** A literature review is one component of a BLM class 1 inventory, as
- 268 defined in BLM Manual Guidance 8100. 21(A)(1), and is a professionally prepared study
- 269 that includes a compilation and analysis of all reasonably available cultural resource data
- 270 and literature, and a management-focused, interpretive, narrative overview, and synthesis
- 271 of the data. The overview may also define regional research questions and treatment
- 272 options.
- 273 k) **Records Search.** A records search is one component of a BLM class I inventory and an
- 274 important element of a literature review. A records search involves obtaining existing
- 275 cultural resource data from published and unpublished documents, BLM cultural
- 276 resource inventory records, institutional site files, State and national registers, interviews,
- 277 and other information sources.
- 278 l) **Signatories.** Signatories to this Agreement are the BLM, COE, SHPO, and ACHP.
- 279 Signatories have the sole authority to execute, amend or terminate this Agreement.
- 280 m) **Traditional Cultural Property.** A traditional cultural property is defined generally as
- 281 property that is important to a living group or community because of its association with
- 282 cultural practices or beliefs that (a) are rooted in that community's history, and (b) are

283 important in maintaining the continuing cultural identity of the community. It is a place
284 that may figure in important community traditions or in culturally important activities,
285 such as traditional gathering areas, prayer sites, or sacred/ceremonial locations. These
286 sites may or may not contain features, artifacts, or physical evidence, and are usually
287 identified through consultation. A traditional cultural property may be eligible for
288 inclusion in the NRHP and the CRHR.

- 289 n) **Tribes.** The federally recognized and non-federally recognized Indian Tribes that BLM is
290 consulting with on this undertaking
- 291 o) **Undertaking.** Issuing any ROW/permit(s) individually or collectively by the BLM or
292 COE allowing or facilitating construction, operation or maintenance activities related to
293 the Project on BLM administered or COE regulated lands constitutes an undertaking as
294 defined at 36 CFR 800.16(y) and are the undertakings addressed by this Agreement.
- 295 p) **Windshield Survey.** A windshield survey is a common method utilized in reconnaissance
296 surveys to identify built-environment cultural resources, such as buildings, objects, and
297 structures. Windshield surveys involve surveyors driving or walking streets and roads of
298 a community and observing and recording the buildings, structures, and landscape
299 characteristics they see.

300
301 **II. AREA OF POTENTIAL EFFECTS**
302

303 a) The APE is defined as the total geographic area or areas within which the undertaking
304 may directly or indirectly cause alterations in the character or use of historic properties
305 per 36 CFR 800.16(d). The APE is influenced by the scale and nature of an undertaking
306 and includes those areas which could be affected by a project prior to, during and after
307 construction. For the Imperial Valley Solar Project the overall APE has been defined to
308 include a 15 mile radius around the project location. Specific APE's for the project are
309 discussed below and include the methodology used to identify historic properties. See
310 Appendix E for APE map and project illustrations.

311
312 i) Where Historic Properties could sustain direct physical effects as a result of the
313 undertaking the APE is defined to include:

314
315 (1) All areas subject to the BLM's ROW decision for the Phase I 300 megawatt
316 (MW) and the Phase II 450 MW portions of the Project area, which includes
317 approximately 6,140 acres of public lands and 360 acres of private lands. The area
318 is generally bounded by Interstate 8 on the south, Dunaway Road to the east, and
319 the Evan Hewes Highway to the north and west. A 200 foot buffer around the
320 APE was included in the survey for cultural resources within the APE per Energy
321 Commission requirements.

322
323 (2) The APE for linear elements of the undertaking includes:

324
325 (a) A ROW for an approximate 10 foot wide and 11.8 mile long water supply
326 pipeline that would extend from the Seeley Waste Water Treatment Plant. The

- 327 pipeline will be buried 30 inches below grade in the shoulder of the existing
328 ROW of the Evan Hewes Highway. A survey corridor for cultural resources
329 for this linear element was established as a 75-foot buffer on either side of the
330 center line (150 foot corridor) to allow for changes in the ROW to avoid
331 cultural resources.
- 332 (b) A ROW for temporary or permanent access roads required outside the plant
333 footprint is approximately 30 feet. A survey corridor for cultural resources for
334 this linear element was established as a 50-foot buffer on either side of the
335 center line (100 foot corridor) to allow for changes in the ROW to avoid
336 cultural resources.
- 337 (c) The ROW for the 230 kV transmission line is defined as an approximately
338 100 foot wide and 10.3 mile long corridor that extends to the San Diego Gas
339 and Electric Company Imperial Valley Substation. A survey corridor for
340 cultural resources for this linear element was established as a 150-foot buffer
341 on either side of the center line (300 foot corridor) to allow for changes in the
342 ROW to avoid cultural resources.
- 343
- 344 ii) Historic properties not located within the areas described in Stipulation II(a)(i) within
345 15 miles of the Project that could sustain direct or indirect effects, including visual,
346 auditory, and atmospheric, as a result of the undertaking and is defined to include:
- 347
- 348 (1) Cultural resources identified through a review of existing literature and records
349 search, information or records on file with the BLM or at the SIC, interviews or
350 discussions with local professional or historical societies and local experts in
351 history or archaeology. Specific areas of concern or cultural resources that were
352 identified include:
- 353
- 354 (a) Cultural resources in the Yuha Area of Critical Environmental Concern
355 (ACEC).
- 356
- 357 (2) Any cultural resource or location which has been included in the Native American
358 Heritage Commission Sacred Lands Files, identified through a literature review or
359 records search, or identified by a Tribe or Tribal organization, through
360 consultation as having religious or cultural significance. Specific areas of concern
361 or cultural resources that have been identified through tribal consultation include:
- 362
- 363 (a) Certain geological features including Signal Mountain and Coyote Mountain.
364 (b) Human remains located within or in proximity to the undertaking including
365 those in any state of decomposition or skeletal completeness.
366 (c) Geoglyphs within the 15 mile radius of the project location such as those in
367 the Yuha ACEC.
- 368
- 369 (3) Any cultural resource or location which has been identified by a consulting party,
370 organization, governmental entity, or individual through consultation or the public

371 commenting processes as having significance or being a resource of concern.
372 Areas identified through consultation to date include:

373

374 (a) Juan Bautista de Anza National Historic Trail (Anza NHT).

375

376 (i) The Anza NHT corridor is designated pursuant to the National Trails Act.
377 The corridor has historic values, as well as recreation and visitor
378 experience values.

379 (ii) No identifiable and recognizable physical evidence or historic properties
380 associated with the historic trail have yet been identified within the APE
381 for direct effects. Specific areas of concern or cultural resources associated
382 with the NHT have been identified both south and north of the Project
383 location and include:

384

- 385 1. Anza Camp 47 (Yuha Well)
- 386 2. Anza Camp 48
- 387 3. Anza Camp 49 (San Sebastian Marsh)

388

389 Sites associated with the 1781 Rivera Expedition which utilized the Anza trail
390 corridor

391 (iii) No identifiable and recognizable physical evidence or historic properties
392 associated with the Rivera y Moncada Expedition of 1781 have yet been
393 identified to occur within the APE for direct effects.

394

395 (4) Built-environment resources

396

397 (a) The APE for the built-environment is defined to include a half-mile buffer
398 from the project site and above-ground linear facilities to encompass historic
399 properties whose historic setting could be adversely affected. Specific areas of
400 concern or cultural resources have been identified both south and north of the
401 Project location and include:

402

- 403 (i) Imperial Irrigation District hydraulic irrigation system components
- 404 (ii) Highway 80 (Evan Hewes Highway) and remnants
- 405 (iii) San Diego and Arizona Railroad
- 406 (iv) U.S. Gypsum Rail-Line
- 407 (v) Plaster City Gypsum Plant

408

409 (5) Cultural resources on private property identified through surveys, where access
410 was granted, and windshield surveys, where access was not allowed, within a half
411 mile of the APE for direct effects.

412

413 (6) Cultural resources identified through a literature review and records search at the
414 BLM El Centro Field Office and at the SIC, for cultural resources that are located

415 within a one mile buffer of the project area and ¼-mile from each linearProject
416 feature.
417
418 (a) Historic Districts and Landscapes
419
420 (i) Yuha Basin Discontiguous Archaeological District
421
422 (7) Cultural resources identified through archaeological or other field investigations
423 for this undertaking that, as a result of project redesign to avoid direct effects to
424 cultural resources, are no longer within the Project area but could still sustain
425 indirect effects.
426
427 (a) Project redesign eliminated approximately 1200 acres of public lands on the
428 eastern perimeter of the proposed project to avoid effects to potentially
429 significant prehistoric archaeological sites and burial sites, reducing the
430 generating capacity of the proposed solar project from 900 MW to 750 MW.
431
432 b) Amending the APE: The APE encompasses an area sufficient to accommodate all of the
433 proposed and alternative project components under consideration as of the date of the
434 execution of this Agreement. If BLM determines in the future that unforeseen changes to
435 the undertaking may cause alterations in the character or use of historic properties, if any
436 such properties exist, in a geographic area or areas beyond the extent of the APE above,
437 then the BLM, in consultation with the Signatories and Invited Signatories shall modify
438 the APE using the following process:

439 i) Any consulting party to this Agreement may propose that the APE established herein
440 be modified. The BLM shall notify the other Signatories and Invited Signatories of
441 the proposal and consult for no more than 15 days to reach agreement on the
442 proposal.

443 ii) If the Signatories agree to the proposal, then the BLM will prepare a description and
444 a map of the modification to which the Signatories agree. The BLM will keep copies
445 of the description and the map on file for its administrative record and distribute
446 copies of each to the other Signatories, Invited Signatories and Concurring Parties
447 within 30 days of the day upon which agreement was reached.

448 iii) Upon agreement to a modification to the APE that adds a new geographic area, the
449 BLM shall follow the processes set forth in Stipulation III to identify and evaluate
450 historic properties in the new APE, assess the effects of the undertaking on any
451 historic properties in the APE, and provide for the resolution of any adverse effects to
452 such properties, known or subsequently discovered.

453 iv) If the Signatories cannot agree to a proposal for the modification of the APE, then
454 they will resolve the dispute in accordance with Stipulation XI.

455 **III. IDENTIFICATION AND EVALUATION**

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- a) The BLM, in coordination with the Energy Commission, has authorized the Applicant to conduct specific identification efforts for this undertaking including, but not limited to, a literature review, records search, cultural resources surveys, ethnographic studies, and geo-morphological studies to identify historic properties that might be located within the APE.
 - i) A cultural resources report (URS June 2010) has been submitted by the Applicant that presents the results of identification efforts to the BLM, the COE, and the Energy Commission and is currently under review. The BLM, the COE, and the Energy Commission will assess whether the report conforms with the field methodology and site description template required under BLM Fieldwork Authorization CA-670-06-07FA09 and Fieldwork Authorization CA-670-06-07FA10 and Energy Commission transaction number Data Requests Set 2, Part 2 #142, Docket number 08-AFC-5.
 - i) The BLM, in consultation with the Energy Commission and COE, may require additional field investigations to be conducted by the Applicant to ensure the accuracy of site recordation and to provide additional information to support site evaluations and the assessment of effects. The BLM, the COE, and the Energy Commission, separately or together, have the right and the discretion, under this Agreement, to request additional field studies.
 - ii) The BLM has consulted and shall respond to any request to consult with Tribes, Tribal organizations or tribal individuals regarding the identification of historic properties within the APE to which they attach religious or cultural significance.
- b) The BLM shall make determinations of eligibility consistent with 800.4(b)(2) and findings of effect consistent with 800.5(a)(1) prior to the Record of Decision to the extent practicable on those cultural resources within the APE, and make the agency's determinations and findings available to the consulting parties, Tribes and the public for a 45 day review and comment period.
 - i) The BLM will respond to any request for consultation on its determinations from a consulting party to this Agreement or a Tribe.
 - ii) A consulting party may provide its comments directly to the SHPO with a copy to the BLM within the 45 day comment period.

- 495 iii) Absent comment within 45 days, the BLM may submit its determinations to SHPO
496 for final review and comment.
497
- 498 iv) Where a consulting party or Tribe objects to the BLM’s determination for a specific
499 cultural resource within the 45 day review period, the BLM shall consult with the
500 objecting party and the SHPO regarding the nature of the objection and reconsider its
501 determinations.
502
- 503 (1) If the objection is not resolved, the BLM shall further consult with the SHPO and
504 follow the processes provided at 36 CFR 800.4(c)(2) for involvement of the
505 ACHP.
506 (2) The BLM may proceed with determinations for all cultural resources not subject
507 to objection.
508
- 509 v) The BLM and the Energy Commission shall coordinate to the extent feasible and
510 practicable on determinations of eligibility for the NRHP and the CRHR.
511
- 512 (1) Historic properties formally determined eligible for inclusion in the NRHP are
513 listed on the CRHR per California Code of Regulations 4851(a)(1).
514 (2) If BLM and the Energy Commission do not agree on the eligibility of historic
515 properties for the NRHP and CRHR respectively, the BLM and the Energy
516 Commission shall consult with the SHPO for 15 days to resolve disagreements
517 with regard to eligibility.
518
- 519 (a) The SHPO shall have the final authority to resolve disagreements regarding
520 eligibility for the CRHR.
521 (i) If the SHPO determines that the cultural resource is eligible for the
522 CRHR, the SHPO shall notify the Energy Commission and BLM and may
523 request that BLM reconsider its determination.
524
- 525 vi) BLM will submit its determinations of eligibility to the SHPO for final review and
526 comment.
527
- 528 (1) SHPO will have 30 days in which to review and comment.
529 (2) Absent comments within this time frame, BLM may assume, and formally
530 document for the record, that the SHPO has elected not to comment and concurs
531 with BLM’s determinations.
532 (3) If the BLM and SHPO disagree on the determination, BLM shall follow the
533 processes provided at 36 CFR 800.4(c)(2) and seek a determination from the
534 Keeper of the National Register.
535
- 536 c) The BLM may defer the formal and final evaluation of cultural resources whose values
537 are limited to the potential to yield information about history or prehistory and where
538 testing or limited excavation is recommended to determine whether the site would be

539 eligible under Criterion D for inclusion on the NRHP . The BLM may also treat cultural
540 resources as historic properties for the purpose of project management if adverse effects
541 to those specific resources can be avoided.
542

- 543 i) If adverse effects to a cultural resource which is being treated as a historic property
544 cannot be avoided, the BLM must either evaluate the resource and make a
545 determination of eligibility or resolve the adverse effect by implementing the
546 prescriptions of the Historic Properties Treatment Plan (HPTP).
547
- 548 ii) The Applicant shall submit to the BLM an analysis of the cultural resources that the
549 Undertaking appears likely to affect. The analysis shall also detail which cultural
550 resources that the undertaking appears to have no potential to affect, which cultural
551 resources the Applicant commits to avoiding through the implementation of formal
552 avoidance measures, and which cultural resources cannot be avoided and will need to
553 be evaluated and/or be treated by implementing the prescriptions of the HPTP
554 required in Section IV of the Agreement. This analysis will be included in table
555 format in Appendix H.
556
- 557 iii) The Applicant, at the direction of the BLM, the COE, and the Energy Commission,
558 may prepare the analysis required above in phases that correspond to the proposed
559 sequence of development for the Phase 1 330 MW and Phase 2 450 MW energy
560 plant, or in phases for each block of 60 SunCatchers, provided that analyses are
561 ultimately prepared for the entirety of the APE.
562
- 563 iv) Where additional evaluation efforts are required to assess the informational values of
564 cultural resources, the BLM and the Energy Commission shall ensure that cultural
565 resources located within the APE are evaluated for the NRHP and the CRHR
566 pursuant to the guidelines provided in Appendix A of this Agreement.
567
- 568 d) Where additional identification and evaluation efforts are required due to changes in the
569 project and the APE, the BLM and the Energy Commission shall ensure that cultural
570 resources located within the APE are identified and evaluated for the NRHP and the
571 CRHR pursuant to Appendix A of this Agreement.
572
- 573 e) Amendment of the identification and evaluation process as set forth herein will not
574 require amendment of this Agreement if all Signatories do so agree.
575

576 **IV. TREATMENT AND MANAGEMENT OF HISTORIC PROPERTIES**

577

- 578 a) The resolution or mitigation of effects to historic properties shall be described in one or
579 more HPTP(s) that shall be an attachment to Appendix B of this Agreement.
580
- 581 i) The BLM and the Applicant, in consultation with the consulting parties and Tribes,
582 shall seek to develop a draft HPTP prior to the ROD if feasible, or to otherwise

- 583 develop a framework and consensus on the general treatment measures for affected
584 historic properties that would be finalized in the HPTP.
585
- 586 (1) Prior to the issuance of any Notice to Proceed by BLM to initiate the undertaking
587 or any component of the undertaking, which may affect historic properties the
588 Applicant shall develop and submit to BLM one or more HPTPs.
589 (2) The HPTP will be initiated after the ROW is granted by the BLM and issuance of
590 any CWA section 404 permit by the COE but prior to the issuance of a Notice to
591 Proceed for construction in those portions of the undertaking addressed by the
592 HPTP.
593 (3) The BLM may authorize the phased implementation of the HPTP (per Stipulation
594 IX), or if appropriate, the development of HPTPs for individual cultural resources,
595 or HPTPs that are issue oriented or geographically.
596
- 597 ii) The BLM and the Energy Commission, to extent possible and consistent with the
598 guidelines provided in Appendix B(2), shall coordinate on the development of the
599 treatment or mitigation measures proposed in the Energy Commission's Conditions of
600 Certifications and the treatment measures developed through the Section 106
601 consultation process.
602
- 603 b) The BLM shall submit the HPTP to the consulting parties and Tribes for a 30 day review
604 period. Absent comments within this time frame, BLM may finalize the HPTP. BLM will
605 provide the parties with written documentation indicating whether and how the draft
606 HPTP will be modified in response to any timely comments received. If the HPTP is
607 revised in response to comments, BLM shall submit the revised HPTP to all parties for a
608 15 day review period. Absent comments within this time frame, BLM will finalize the
609 HPTP. BLM will provide the consulting parties and Tribes with a copy of the final
610 HPTP.
611
- 612 c) Where an HPTP specifically addresses treatment for adverse effects to historic properties
613 to which Tribes attach religious or cultural significance, the BLM shall submit the HPTP
614 to the Tribes and seek their views and comments through consultation, regardless of the
615 status of a Tribe as a consulting party to this Agreement.
616
- 617 i) BLM shall submit an HPTP which addresses treatment for adverse effects to historic
618 properties to which a Tribe(s) attaches religious and cultural significance to the
619 SHPO. BLM shall consult with involved Tribe(s) on distribution of the HPTP to other
620 consulting parties.
621
- 622 d) BLM shall ensure that any HPTP, developed in accordance with Appendix B of this
623 Agreement, is completed and implemented.
624
- 625 e) BLM shall ensure that a Historic Property Management Plan (HPMP), which provides for
626 the protection and management of historic properties during the operational life and

627 decommissioning of the solar energy power plant, is developed and implemented in
628 accordance with Appendix C of this Agreement.

629
630 f) Amendment of an HPTP or HPMP as set forth herein will not require amendment of this
631 Agreement if all Signatories do so agree. If the Signatories do not agree to the
632 amendment of the HPTP or HPMP, the disagreement will be resolved pursuant to the
633 procedures in Section XI of this Agreement.

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635
636

V. DISCOVERIES AND UNANTICIPATED EFFECTS

637 a) If the BLM determines during implementation of the HPTP that either the HPTP or the
638 undertaking will affect a previously unidentified property that may be eligible for the
639 NRHP, or affect a known historic property in an unanticipated manner, the BLM will
640 address the discovery or unanticipated effect in accordance with those provisions of the
641 HPTP that relate to the treatment of discoveries and unanticipated effects. BLM at its
642 discretion may herein assume any discovered property to be eligible for inclusion in the
643 NRHP. BLM compliance with this stipulation shall satisfy the requirements of 36 CFR
644 800.13(a)(1).

645 **VI. TREATMENT OF HUMAN REMAINS OF NATIVE AMERICAN ORIGIN**

646

647 a) The Signatories and Invited Signatories to this Agreement agree that Native American
648 burials and related items discovered on BLM administered lands during implementation
649 of the terms of the Agreement will be treated in accordance with the requirements of the
650 NAGPRA. The BLM will consult with concerned Indian Tribes, Tribal Organizations, or
651 individuals in accordance with the requirements of §§ 3(c) and 3(d) of the NAGPRA and
652 implementing regulations found at 43 CFR Part 10 to address the treatment of Native
653 American burials and related cultural items that may be discovered during
654 implementation of this Agreement.

655 b) In consultation with the Tribes, the BLM shall seek to develop a written plan of action
656 pursuant to 43 CFR 10.5(e) to manage the inadvertent discovery or intentional excavation
657 of human remains, funerary objects, sacred objects, or objects of cultural patrimony. The
658 plan of action shall be included in Appendix L of this Agreement.

659 c) The BLM shall ensure that Native American burials and related cultural items on private
660 lands are treated in accordance with the requirements of §§ 5097.98 and 5097.991 of the
661 California Public Resources Code, and § 7050.5(c) of the California Health and Human
662 Safety Code.

663 **VII. STANDARDS AND QUALIFICATIONS**

664

665 a) **PROFESSIONAL QUALIFICATIONS.** All actions prescribed by this Agreement that
666 involve the identification, evaluation, analysis, recordation, treatment, monitoring, and
667 disposition of historic properties and that involve the reporting and documentation of

668 such actions in the form of reports, forms or other records, shall be carried out by or
669 under the direct supervision of a person or persons meeting, at a minimum, the Secretary
670 of the Interior's Professional Qualifications Standards (PQS), as appropriate (48 FR.
671 44739 dated September 29, 1983). However, nothing in this stipulation may be
672 interpreted to preclude any party qualified under the terms of this paragraph from using
673 the services of properly supervised persons who do not meet the PQS. Qualified Tribal
674 Monitors shall be appointed by the Tribes. Qualified Tribal Monitors shall be an
675 authorized representative of a Tribe with the training the Tribe deems necessary and
676 physically capable of doing the required work.

677
678 b) DOCUMENTATION STANDARDS. Reporting on and documenting the actions cited in
679 this Agreement shall conform to every reasonable extent with the Secretary of the
680 Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR.
681 44716-44740 dated September 29, 1983), as well as, the BLM 8100 Manual, the
682 California Office of Historic Preservation's Preservation Planning Bulletin Number 4(a)
683 December 1989, Archaeological Resource Management Reports (ARMR):
684 Recommended Contents and Format (ARMR Guidelines) for the Preparation and Review
685 of Archaeological Reports, and any specific county or local requirements or report
686 formats as necessary.

687
688 c) CURATION STANDARDS. On BLM-administered land, all records and materials
689 resulting from the actions cited in Stipulation III, IV, V and VI of this Agreement shall be
690 curated in accordance with 36 CFR Part 79, and the provisions of the NAGPRA, 43 CFR
691 Part 10, as applicable. To the extent permitted under §§ 5097.98 and 5097.991 of the
692 California Public Resources Code, the materials and records resulting from the actions
693 cited in Stipulation III and IV of this Agreement for private lands shall be curated in
694 accordance with 36 CFR Part 79. The BLM will seek to have the materials donated
695 through a written donation agreement to be curated with other cultural materials. The
696 BLM will attempt to have all collections curated at one local facility where possible
697 unless otherwise agreed to by the consulting parties.

698 699 **VIII. REPORTING REQUIREMENTS**

700
701 a) Within twelve (12) months after the BLM, in consultation with the Energy Commission,
702 has determined that all fieldwork required by Stipulations III and IV have been
703 completed, the BLM will ensure preparation and concurrent distribution to the
704 consulting parties and Tribes a written draft report that documents the results of
705 implementing the requirements of each Stipulation. The consulting parties and Tribes will
706 be afforded 45 days following receipt of each draft report to submit any written
707 comments to the BLM. Failure of these parties to respond within this time frame shall not
708 preclude the BLM from authorizing revisions to the draft report as the BLM may deem
709 appropriate. The BLM will provide the consulting parties with written documentation
710 indicating whether and how each draft report will be modified in accordance with any
711 reviewing party comments. Unless the reviewing parties object to this documentation in

712 writing to the BLM within 14 days following receipt, the BLM may modify each draft
713 report as the BLM may deem appropriate. All objections shall be resolved pursuant to
714 Stipulation XI. Thereafter, the BLM may issue the reports in final form and distribute
715 these documents in accordance with Stipulation VIII(b).
716

717 b) Unless otherwise requested, one paper copy of final reports documenting the results of
718 implementing the requirements of Stipulation III or IV, will be distributed by the BLM to
719 each consulting party, Tribes and to the California Historical Resources Information
720 Survey (CHRIS) Regional Information Center.
721

722 c) The BLM shall ensure that any draft document that communicates, in lay terms, the
723 results of implementing the requirements of Stipulation III or IV, to members of the
724 interested public, is distributed for review and comment concurrently with and in the
725 same manner as that prescribed for the draft technical report prescribed by Stipulation
726 VIII(a). If the draft document prescribed herein is a publication such as a report or
727 brochure, publication shall upon completion be distributed by the BLM to the consulting
728 parties, and to any other entity that the consulting parties may deem appropriate.
729

730 **IX. IMPLEMENTATION OF THE UNDERTAKING**

731

732 a) The BLM may authorize construction activities and manage the implementation of
733 HPTP(s) in phases corresponding to the construction phases of the undertaking.
734

735 i) Upon approval of the HPTP and implementation of the components of the HPTP
736 subject to determinations of compliance by the BLM for the Phase I 300 MW
737 component, BLM may authorize a Notice to Proceed for construction activities.
738

739 (1) An HPTP(s) for the Phase II 450 MW component may be developed and
740 implemented after approval of the HPTP and issuance of the Notice to Proceed
741 above for the Phase I component.
742

743 b) The BLM may authorize construction activities, including but not limited to those listed
744 below, to proceed in specific geographic areas of the undertaking's APE where there are
745 no historic properties, where there will be no effect to historic properties, where a
746 monitoring and discovery plan has been approved, an HPTP has been approved and
747 initiated, and the activity would not preclude preservation or protection of historic
748 properties in an area for which an HPTP has not been approved. Such construction
749 activities may include:

- 750
- 751 (1) demarcation, set up, and use of staging areas for the project's construction,
 - 752 (2) conduct of geotechnical boring investigations or other geophysical and
753 engineering activities, and
 - 754 (3) construction activities such as grading, constructing buildings, and installing
755 SunCatchers.

756
757 c) Initiation of any construction activities on federal lands shall not occur until after the
758 ROD and Notices to Proceed have been issued by the BLM Construction shall not occur
759 in waters of the US without the issuance of a COE 404 permit..
760

761 **X. AMENDMENTS TO THE AGREEMENT**
762

763 a) This Agreement may be amended only upon written agreement of the Signatories.
764

765 b) Any consulting party to this Agreement may at any time propose amendments.
766

767 i) Upon receipt of a request to amend this Agreement, the BLM will immediately notify
768 the other consulting parties and initiate a 30 day period to consult on the proposed
769 amendment, whereupon all parties shall consult to consider such amendments.
770

771 ii) If agreement to the amendment cannot be reached within the 30 day period, resolution
772 of the issue may proceed by following the dispute resolution process in Stipulation
773 XI.
774

775 iii) This Agreement may be amended when such an amendment is agreed to in writing by
776 all Signatories.
777

778 c) Any consulting party to this Agreement may at any time propose modifications to the
779 Appendices.
780

781 i) Each Appendix to the Agreement may be individually modified without requiring
782 amendment of the Agreement, unless the Signatories through such consultation
783 decide otherwise.
784

785 ii) Upon receipt of a request to modify an Appendix, BLM will immediately notify the
786 Signatories, Invited Signatories and Concurring Parties to consult on the proposed
787 modifications and initiate a 30 day consultation period, whereupon all parties shall
788 consult to consider such modification.
789

790 iii) If agreement on the modification cannot be reached within the 30 day period,
791 resolution of the issue may proceed by following the dispute resolution process in
792 Stipulation XI(c).
793

794 iv) Modifications to an Appendix shall take effect on the date that they are agreed to by
795 the Signatories.
796

797 d) Amendments to this Agreement shall take effect on the dates that they are fully executed
798 by the Signatories.
799

800 e) If the Agreement is not amended through the above process, any consulting party to this
801 Agreement may terminate its participation in the Agreement in accordance with
802 Stipulation XII.

803

804 **XI. DISPUTE RESOLUTION**

805

806 a) Should the Signatories or Invited Signatories object at any time to the manner in which
807 the terms of this Agreement are implemented, the BLM will immediately notify the other
808 Signatories and Invited Signatories and initiate a 30 day period in which to resolve the
809 objection.

810

811 b) If the objection can be resolved within the consultation period, the BLM may authorize
812 the disputed action to proceed in accordance with the terms of such resolution.

813

814 c) If at the end of the 30 day consultation period, the objection cannot be resolved through
815 such consultation, the BLM will forward all documentation relevant to the objection to
816 the ACHP per 36 CFR 800.2(b)(2). Any comments provided by the ACHP within 30
817 days after its receipt of all relevant documentation will be taken into account by the BLM
818 in reaching a final decision regarding the objection. The BLM will notify the other
819 Signatories, Invited Signatories, and Concurring Parties in writing of its final decision
820 within 14 days after it is rendered.

821

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

824

825 e) At any time during implementation of the terms of this Agreement, should an objection
826 pertaining to the Agreement be raised by a Concurring party or a member of the
827 interested public, the BLM shall immediately notify the Signatories, Invited Signatories,
828 and other Concurring Parties, consult with SHPO about the objection, and take the
829 objection into account. The other consulting parties may comment on the objection to the
830 BLM. The BLM shall consult with the objecting party(ies) for no more than 30 days.
831 Within 14 days following closure of consultation, the BLM will render a decision
832 regarding the objection and notify all parties of its decision in writing. In reaching its
833 final decision, the BLM will take into account all comments from the parties regarding
834 the objection. The BLM shall have the authority to make the final decision resolving the
835 objection. Any dispute pertaining to the NRHP eligibility of historic properties or cultural
836 resources covered by this Agreement will be addressed by the BLM per 36 CFR
837 800.4(c)(2).

838

839 **XII. TERMINATION**

840

841 a) The Signatories and Invited Signatory have the authority to terminate this Agreement. If
842 this Agreement is not amended as provided for in Stipulation X, or if a Signatory or
843 Invited Signatory proposes termination of this Agreement for other reasons, the party

844 proposing termination shall notify the other Signatories and Invited Signatories in
845 writing, explain the reasons for proposing termination, and consult for no more than 60
846 days to resolve the objection.

- 847
- 848 b) If a Concurring Party seeks termination of this Agreement, they may terminate their
849 participation and shall notify the Signatories and Invited Signatories in writing, explain
850 the reasons for proposing termination or terminating their participation, and consult for
851 no more than 60 days to resolve the objection.
- 852
- 853 c) Should consultation result in an agreement to resolve the objection, the Signatories shall
854 proceed in accordance with that agreement.
- 855
- 856 d) Should such consultations fail, the Signatory or Invited Signatory proposing termination
857 may terminate this Agreement by notifying the other parties in writing.
- 858
- 859 e) Should the entire Agreement be terminated, then the BLM and the COE, separately if
860 necessary, shall either consult in accordance with 36 CFR 800.14(b) to develop a new
861 agreement or request the comments of the ACHP pursuant to 36 CFR 800.7(a).
- 862

863

864 **XIII. WITHDRAWAL OR ADDITION OF PARTIES FROM/TO THE AGREEMENT**

865

- 866 a) The BLM will respond to any written request for consulting party status pursuant to 36
867 CFR 800.2 and 800.3(f).
- 868
- 869 i) Should a Concurring Party determine that its participation in the undertaking and this
870 Agreement is no longer warranted, the party may withdraw from participation by
871 informing the BLM of its intention to withdraw as soon as is practicable. The BLM
872 shall inform the other consulting parties to this Agreement of the withdrawal.
- 873
- 874 ii) Should conditions of the undertaking change such that other state, federal, or tribal
875 entities not already party to this Agreement request to participate, the BLM will
876 notify the other consulting parties and invite the requesting party to participate in the
877 Agreement. The Agreement shall be amended following the procedures in Stipulation
878 X.
- 879

880 **XIV. DURATION OF THIS AGREEMENT**

881

- 882 a) This Agreement will expire if the undertaking has not been initiated and the BLM right-
883 of-way grant expires or is withdrawn, or the stipulations of this Agreement have not been
884 initiated within five (5) years from the date of its execution. At such time, and prior to
885 work continuing under the auspices of the undertaking, the BLM and the COE shall
886 either (a) execute a memorandum of agreement pursuant to 36 CFR 800.6, or (b) request,
887 take into account, and respond to the comments of the ACHP under 36 C.F.R. 800.7.

888 Prior toAt such time, the BLM and the COE may consult with the other consulting parties
889 to reconsider the terms of the Agreement and amend it in accordance with Stipulation X.
890 The BLM and the COE shall notify the Signatories as to the course of action they will
891 pursue within 30 days.

892
893 b) This Agreement expires 25 years from its effective date unless extended by written
894 agreement of the Signatories. The Signatories and Invited Signatories shall consult at
895 year 10 to review this Agreement. Additionally, the Signatories and Invited Signatories
896 shall consult not less than one year prior to the expiration date to reconsider the terms of
897 this Agreement and, if acceptable, have the Signatories extend the term of this
898 Agreement. Reconsideration may include continuation of the Agreement as originally
899 executed or amended, or termination. Extensions are treated as amendments to the
900 Agreement under Stipulation X.

901
902 c) Unless the Agreement is terminated pursuant to Stipulation XII, another agreement
903 executed for the undertaking supersedes it, or the undertaking itself has been terminated,
904 this Agreement will remain in full force and effect until BLM, in consultation with the
905 other Signatories, determines that implementation of all aspects of the undertaking has
906 been completed and that all terms of this Agreement and any subsequent tiering
907 requirements have been fulfilled in a satisfactory manner. Upon a determination by BLM
908 that implementation of all aspects of the undertaking have been completed and that all
909 terms of this Agreement and any subsequent tiered agreements have been fulfilled in a
910 satisfactory manner, BLM will notify the consulting parties of this PA in writing of the
911 agency's determination. This Agreement will terminate and have no further force or
912 effect on the day that BLM so notifies the Signatories to this Agreement.

913
914 **XV. EFFECTIVE DATE**

915
916 a) This Agreement and any amendments shall take effect on the date that it has been fully
917 executed by the Signatories. The Agreement and any amendments thereto shall be
918 executed in the following order: (1) Applicant, (2) Energy Commission, (3) NPS, (4)
919 COE, (5) BLM, (6) SHPO, and (7) ACHP.

920
921 Execution and implementation of this Agreement is evidence that the BLM and the COE have
922 taken into account the effect of this undertaking on historic properties, afforded the ACHP a
923 reasonable opportunity to comment, and that the BLM and the COE have satisfied their
924 responsibilities under Section 106 of the NHPA. The Signatories and Invited Signatories to this
925 PA represent that they have the authority to sign for and bind the entities on behalf of whom they
926 sign.

927
928
929 The remainder of this page is blank.

930 **SIGNATORY PARTIES**

931

932

U.S. BUREAU OF LAND MANAGEMENT

BY: _____ DATE: _____
James Wesley Abbot
State Director

933

934

U.S. ARMY CORPS OF ENGINEERS, LOS ANGELES DISTRICT

BY: _____ DATE: _____
David J. Castanon
Chief, Regulatory Division

935

936

CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

BY: _____ DATE: _____
Milford Wayne Donaldson, FAIA
State Historic Preservation Officer

937

938

ADVISORY COUNCIL ON HISTORIC PRESERVATION

BY: _____ DATE: _____
John M. Fowler
Executive Director

939

940

941 **INVITED SIGNATORY PARTIES**

942

943

CALIFORNIA ENERGY COMMISSION

BY: _____ DATE: _____

944

945

TESSERA SOLAR L.L.C.

BY: _____ DATE: _____

946 -

947 -

948 -

949 **CONCURRING PARTIES:**
950
951 (This is a potential list only)
952 CAMPO KUMEYAAY NATION
953 COCOPAH INDIAN TRIBE
954 FORT YUMA QUECHAN INDIAN TRIBE
955 EWIIAAPAAYP BAND OF KUMEYAAY INDIANS
956 JAMUL INDIAN VILLAGE
957 KWAAYMII LAGUNA BAND OF INDIANS
958 LA POSTA BAND OF KUMEYAAY INDIANS
959 MANZANITA BAND OF KUMEYAAY INDIANS
960 SAN PASQUAL BAND OF DIEGUENO INDIANS
961 SANTA YSABEL BAND OF DIEGUENO INDIANS
962 AH-MUT PIPA FOUNDATION
963 KUMEYAAY CULTURAL REPATRIATION COMMITTEE
964 CALIFORNIA UNIONS FOR RELIABLE ENERGY
965 NATIONAL TRUST FOR HISTORIC PRESERVATION
966 NATIONAL PARK SERVICE
967 ANZA SOCIETY
968 EDIE HARMON
969 SACRED SITES INTERNATIONAL FOUNDATION
970 GREG P. SMESTAD, PH.D.
971
972
973

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