



# United States Department of the Interior



## BUREAU OF LAND MANAGEMENT

El Centro Field Office

1661 South 4<sup>th</sup> Street

El Centro, CA 92243-4561

<http://www.blm.gov/ca/st/en/fo/elcentro.html>

*In Reply Refer To:*

December 9, 2011

CACA-051552-01(P)  
2800  
CAD07000

Ms. Natalie McCue  
Ocotillo Express, LLC  
1600 Smith Street, Suite 4025  
Houston, TX 77002-7357

Dear Ms. McCue:

On December 7, 2011, your Right-of-Way grants (Grant), serial number CACA-051552-01, was authorized by the BLM for a term that expires one (1) year from the date of authorization. Enclosed please find one of the two original, fully executed Grants authorizing the use of public lands for a geotechnical investigation. The other original will be retained in the Bureau of Land Management (BLM) case file for this right-of-way. There will be no notice to proceed. You may begin construction upon receipt of the signed and executed right-of-way grant.

Please keep a copy of your Grant on-hand and available at all times when performing any activities authorized under your Grant.

The BLM received your prorated rental payment of \$162.96 for the term of the grant and the processing and monitoring fees will be charged against the current reimbursable account set up for CACA-051552.

If you have any questions regarding your right-of-way grant or the fees connected with it, please contact Janet Eubanks, Realty Specialist at 951-697-5376 or via email at [jeubanks@blm.gov](mailto:jeubanks@blm.gov).

  
for Margaret L. Goodro  
Field Manager

Enclosure:

Right-of-Way Grant, CACA-051552-01

cc: Gregory Miller, California Desert District



# United States Department of the Interior



## BUREAU OF LAND MANAGEMENT

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Visit us on the Internet at

[www.blm.gov/ca/st/en/fo/elcentro.html](http://www.blm.gov/ca/st/en/fo/elcentro.html)

December 7, 2011

In Reply Refer To:  
CACA-051552-01(P)  
2800(P)  
CAD07000.12

VIA EMAIL  
RETURN RECEIPT REQUESTED

### DECISION

Ocotillo Express	:	CACA-051552-01
1660 Smith St., Suite 4025	:	Right-of-Way Grant
Houston, TX 77002	:	FLPMA
	:	

### Right-of-Way Grant CACA-051552-01 Amendment Offered/Authorized

Enclosed are two unexecuted originals of your short-term right-of-way (ROW) grants, serial number CACA-051552-01, which allows the use of public land for geotechnical soil testing for your larger project wind energy ROW CACA-051552. Due to time constraints, please print two copies of Form 2800-14, RIGHT-OF-WAY GRANT/TEMPORARY USE PERMIT and sign both, date and return both copies to the El Centro Field Office at the address above. Upon receipt, the BLM will execute both original right-of-way grants and return one original for your records.

### Processing Fee Category Determined

In accordance with Federal regulations contained in 43 CFR § 2804.14, BLM is required to be reimbursed for costs incurred in processing a right-of-way application. We understand the processing fees for this right-of-way will be deducted from the 5101 account set up for the wind energy project serialized as CACA-051552.

### Other Fees

Monitoring fees will be based on the estimated number of hours required to monitor your activities allowed under the right-of-way grant. We estimate approximately 2 visits to the site, approximately 20 hours, for this project and at your request, the BLM will charge to the existing reimbursable account for the larger project.

You will also be charged rent for the use of public land based on 1) the acreage involved, and 2) the zone in which the grant is located. For Imperial County, California, the rental zone is 7. Zone 7 rental for the 2012 calendar year is \$162.96 per acre. The acreage involved with the testing is approximately one (1) acre. Rental will be required prior to the authorization of a ROW Grant.

### Fees Due

At this time your total due is **\$162.96 for rental**. The monitoring and processing fees will be charged against the existing account with BLM for CACA-051552.

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

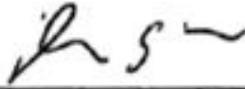
If you wish to file a petition (request) pursuant to regulation 43 CFR 2801.10 or 43 CFR 2881.10 for a stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

### Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success on the merits,
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.

If you have any questions, please contact Janet Eubanks, Realty Specialist at 951-697-5376.



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for **Margaret L. Goodro**  
**Field Manager**

Enclosures:

Right-of-Way Grant CACA-50916  
BLM Form 1842-1

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
RIGHT-OF-WAY GRANT/TEMPORARY USE PERMIT

SERIAL NUMBER CACA-051552-01

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1. A right-of-way is hereby granted pursuant to Title V of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).
2. Nature of Interest:
  - a. By this instrument, the holder:

Ocotillo Express LLC  
1600 Smith St., Suite 4025  
Houston, Texas 77002

receives a right to construct, operate, maintain and terminate a total of 155 MASW survey sites, 16 geotechnical boring sites, 16 electrical resistivity surveys areas and various soil samples in preparation of and in connection with the Ocotillo Express Wind Energy project site located on public lands within Imperial County, California. Maps of the Project Areas and testing areas are shown within the attached POD.
  - b. The right-of-way area granted herein contains approximately 1 acre.
  - c. This instrument shall terminate one (1) year from its effective date unless, prior thereto, it is relinquished, abandoned, terminated or modified pursuant to the terms and conditions of this instrument or of any applicable Federal law or regulation.
  - d. This instrument may not be renewed. If renewed, the right-of-way or permit shall be subject to the regulations existing at the time of renewal and any other terms and conditions that the authorized officer deems necessary to protect the public interest.
  - e. Notwithstanding, the expiration of this instrument or any renewal thereof, early relinquishment, abandonment or termination, the provisions of this instrument to the extent applicable shall continue in effect and shall be binding on the holder, its successors or assigns until they have fully satisfied the obligations and/or

liabilities accruing herein before or on account of the expiration, or prior termination, of the grant.

3. Rental:

For and in consideration of the rights granted, the holder agrees to pay the Bureau of Land Management fair market value rental as determined by the authorized officer unless specifically exempted from such payment by regulation. Provided, however, that the rental may be adjusted by the authorized officer whenever necessary to reflect changes in the fair market rental value as determined by the application of sound business management principles, and so far as practicable and feasible, in accordance with comparable commercial practices.

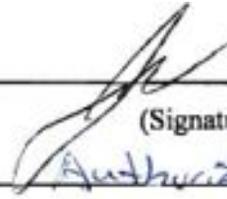
4. Terms and Conditions:

- a. This grant ~~or permit~~ is issued subject to the holder's compliance with all applicable regulations contained in Title 43 Code of Federal Regulations part 2800.
- b. Upon grant termination, by the authorized officer, all improvements shall be removed from the public lands within 120 days or otherwise disposed of as provided in paragraph (4)(d) or as directed by the authorized officer. *If improvements are not removed and the lands rehabilitated within the time set by the Authorized Officer, the Holder shall be liable for the costs incurred by the United States in removal and rehabilitation.*
- c. Each grant issued for a term of 20 years or more, shall at a minimum be reviewed by the authorized officer at the end of the 20th year and at regular intervals thereafter not to exceed 10 years. Provided, however, that a right-of-way or permit granted herein may be reviewed at any time deemed necessary by the authorized officer.
- d. The stipulations, plans, maps, or designs set forth in Appendix A and the Plan of Development, attached hereto, are incorporated into and made a part of this grant instrument as fully and effectively as if they were set forth herein in their entirety.
- e. Failure of the holder to comply with applicable law or any provision of this right-of-way grant ~~or permit~~ shall constitute grounds for suspension or termination thereof.
- f. The holder shall perform all operations in a good and workman like manner so as to ensure protection of the environment and the health and safety of the public.

5. Definitions:

- a. **Holder** means any entity with a BLM right-of-way authorization.
- b. **Public lands** means any land and interest in land owned by the United States within the several states and administered by the Secretary of the Interior through BLM, except lands located on the Outer Continental Shelf, and those held for the benefit of Indians, Aleuts, and Eskimos.
- c. **Right-of-Way** means the public lands authorized to be used or occupied pursuant to a right-of-way grant.
- d. **Right-of-Way Grant** means an instrument issued pursuant to Title V of the Federal Land Policy and Management Act authorizing the use of a right-of-way over, upon, under or through public lands for construction, operation, maintenance and termination of a project.
- e. **Authorized Officer** means any employee of the Department of the Interior to whom has been delegated the authority to perform the duties described in 43 CFR 2880 in respect to this grant.

**IN WITNESS WHEREOF, The undersigned agrees to the terms and conditions of this right-of-way grant or permit.**

  
\_\_\_\_\_  
(Signature of Holder)  
*Authorized Signatory*  
\_\_\_\_\_  
(Title)  
12/7/11  
\_\_\_\_\_  
(Date)

  
\_\_\_\_\_  
acting for Margaret L. Goodro, Field Manager  
\_\_\_\_\_  
(Title)  
12/9/2011  
\_\_\_\_\_  
(Date)

## Categorical Exclusion Documentation

### A. Background

BLM Office: El Centro Field Office  
1661 S. 4<sup>th</sup> Street El Centro, CA 92243

DOI-BLM-CA-D070-2012-0003-CX

#### Project Title:

Ocotillo Express Wind Energy Project Geotechnical Investigation

#### Location:

Various Sections of Township 16S and 16.5S and Range 9E near the community of Ocotillo, California. Please see Ocotillo Express Wind Energy Project Plan of Development for specific section, township, range, and lot.

#### Description and Rationale, including any Stipulations:

Ocotillo Express, LLC proposes to construct, own, and operate a wind energy project near Ocotillo, California in western Imperial County. The proposed project, known as Ocotillo Wind Energy Facility (OWEF), will be constructed on approximately 12,436-acres of BLM administered land. The proposed geotechnical investigation will impact less than 1-acre of BLM administered land.

The purpose of the geotechnical investigation is to provide detailed information that will assist with permitting and detail engineering design for the OWEF project. Specifically, the potential seismic and geologic conditions will be evaluated to assist with the engineering design of roads, structures, foundations, and other design elements of the project. The geotechnical field work as proposed and described in the POD is within the proposed ROW for the proposed OWEF. This field work consists of:

Task 1: 155 Multichannel Analysis of Surface Waves (MASW) surveys

Task 2: 16 Geotechnical borings and soil sample collection

Task 3: 16 Electrical resistivity surveys

The boring samples will be analyzed after the completion of the field work phase of the geotechnical investigations. No geotechnical field work is proposed within any other parts of BLM property. Access to field work site will be from S-2 and SR-98 along existing gravel access roads. These proposed activities and methodologies are generally similar to those used during similar geotechnical investigations for other energy projects on BLM lands.

Pattern Energy is expected to begin the limited geotechnical activities on November 7, 2011. Field work will take place during daylight hours Monday through Friday. The equipment and crews will consist of up to (2) drill/bore rigs with (2) man crews and (2) electrical resistivity (2) man crews. Boring activities are estimated to be completed by November 23, 2011 and MASW will be completed by December 22, 2011.

## B. Land Use Plan Conformance

This action conforms to the *California Desert Conservation Area Plan* (BLM, 1980, as amended) because it is specifically provided for or is clearly consistent with the RMP objectives and decisions as follows:

The Proposed Action is subject to the 1980 California Desert Conservation Area (CDCA) Plan as amended. As part of 1976 Federal Policy Management Act (FLPMA), the CDCA Plan was developed to guide land use management of BLM lands within this portion of California. The Project Site is entirely located on BLM-administered public lands in Imperial County, and is managed under the CDCA Plan, as amended (BLM 1980). Most of the lands administered under the CDCA Plan have been designated as one of four "multiple-use classes": Controlled (C), Limited (L), Moderate (M), or Intensive (I). The class designations govern the type and degree of development or management activities allowed within the boundaries of the classes, and must meet the guidelines given for that class.

The field work site is MUC L. Class L "...protects sensitive, natural, scenic, ecological, and cultural resource values..." and are "...managed to provide for generally lower-intensity, carefully controlled multiple use of resources, while ensuring that sensitive values are not significantly diminished." Solar projects are allowed in MUC L after NEPA requirements for the projects are met.

## C. Compliance with the National Environmental Policy Act

The action is categorically excluded from further documentation under the National Environmental Policy Act (NEPA) in accordance with 516 DM 11.9:

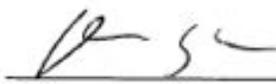
E.12 Grants of right-of-way wholly within the boundaries of other compatibly developed rights-of-way.

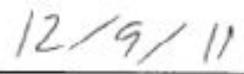
J.3. Conducting preliminary hazardous materials assessment and site investigations, site characterization studies and environmental monitoring. Included are siting, construction, installation and/or operation of small monitoring devices such as wells, particulate dust counters and automatic air or water samples.

J.6. A single trip in a one month period for data collection or observation sites.

This categorical exclusion is appropriate for this action because there are no extraordinary circumstances potentially having effects that may significantly affect the environment. The proposed action has been reviewed, and none of the extraordinary circumstances described in 516 DM 2, Appendix 2 apply (see attached).

## D. Signature

  
for \_\_\_\_\_  
Margaret L. Goodro  
Field Manager

  
\_\_\_\_\_  
Date

## E. Contact

For more information, contact Janet Eubanks (951) 697-5376 or [jeubanks@blm.gov](mailto:jeubanks@blm.gov) at the California Desert District Office.

## Review of Extraordinary Circumstances

The Department of the Interior Manual 516 2.3A (3) requires review of the following “extraordinary circumstances” (516 DM 2 Appendix 2) to determine if an otherwise categorically excluded action would require additional environmental analysis/documentation.

1) *Have significant impacts on public health or safety.*

Yes  No

Comments: The proposed project will not have significant impacts on public health and safety due to the isolated location and temporary nature of the geotechnical boring investigation.

2) *Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (Executive Order 11990); floodplains (Executive Order 11988); national monuments; migratory birds; and other ecologically significant or critical areas.*

Yes  No

Comments: The proposed action would not take place in any designated park, refuge land, wilderness or wilderness study area, proposed prime or unique farmlands, national natural landmarks areas or national monuments. There would not be any runoff to surface or groundwater as a result this project. No historic properties would be affected by this undertaking.

3) *Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA Section 102(2)(E)].*

Yes  No

Comments: The proposed project will not have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources due to the boring being drilled adjacent to an existing access road to minimize environmental impacts.

4) *Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.*

Yes  No

Comments: The proposed project does not have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks due to the boring being drilled adjacent to an existing access road to minimize environmental impacts.

5) *Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.*

Yes  No

Comments: The proposed project will not establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects due to the concentrated and temporary nature of the geotechnical boring investigation.

6) *Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.*

Yes  No

Comments: The proposed project will not have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects due to the concentration and temporary nature of the geotechnical investigation.

7) *Have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places as determined by either the bureau or office.*

Yes  No

Comments: This action would not affect or impact any properties listed or eligible for listing in the National Register of Historic Places as no such properties are located where the action will occur.

8) *Have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species, or have significant impacts on designated Critical Habitat.*

Yes  No

Comments: No proposed or listed species were detected on site.

9) *Violate a Federal law, or a State, local, or tribal law or requirement imposed for the protection of the environment.*

Yes  No

Comments: This action does not violate a Federal law, or a State, local or tribal law or requirement imposed for the protection of the environment.

10) *Have a disproportionately high and adverse effect on low income or minority populations (Executive Order 12898).*

Yes  No

Comments: The proposed project will not have a disproportionately high and adverse effect on low income or minority populations due to the concentration and temporary nature of the geotechnical investigation.

11) *Limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites (Executive Order 13007).*

Yes  No

Comments: This action would not limit access to, or ceremonial use of, any Indian sacred sites, or affect or impact any such sites.

12) *Contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act and Executive Order 13112).*

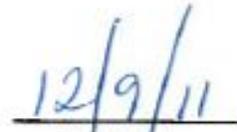
Yes  No

Comments: Design features, washing of all equipment prior to entering and exiting the site, will control any non-native invasive species from being introduced and/or spread. There will be no introduction or spread of noxious weeds or non-invasive species.

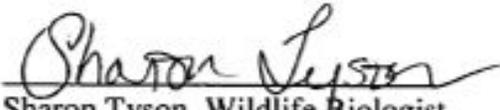
Reviewers:



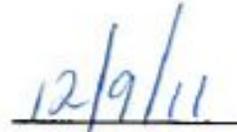
Staff, Archaeologist



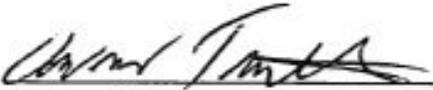
Date



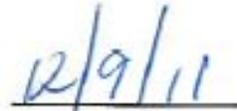
Sharon Tyson, Wildlife Biologist



Date



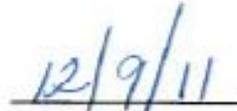
Andrew Trouette, Natural Resource Specialist



Date



Nicollee Gaddis, Planning & Environmental Coordinator



Date



Daniel Steward, Resource Branch Chief



Date

## **Decision Record for a Categorically Excluded Action**

### **Introduction and Background**

Ocotillo Express, LLC proposes to construct, own, and operate a wind energy project near Ocotillo, California in western Imperial County. The proposed project, known as Ocotillo Wind Energy Facility (OWEF), will be constructed on approximately 12,436-acres of BLM administered land. The proposed geotechnical investigation will impact less than 1-acre of BLM administered land.

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Pattern Energy is expected to begin the limited geotechnical activities on November 7, 2011. Field work will take place during daylight hours Monday through Friday. The equipment and crews will consist of up to (2) drill/bore rigs with (2) man crews and (2) electrical resistivity (2) man crews. Boring activities are estimated to be completed by November 23, 2011 and MASW will be completed by December 22, 2011.

### **Decision and Rationale**

I considered the proposed geotechnical investigation and field work; it is my decision to authorize the proposed geotechnical investigations in support of planning and development for Imperial Solar Energy Center South Transmission Line. The information obtained from the geotechnical investigations is necessary for the engineering of structure locations and foundations associated with CSOLAR South.

A qualified multi-disciplinary team participated in the preparation and review of the analysis. The requirements of the California Environmental Quality Act and National Environmental Policy Act have been satisfied and the proposed action is in conformance with the California Desert Conservation Area Plan, 1980, as amended.

## Compliance with Laws, Regulations, Policies and Land Use Plans

The action is categorically excluded from further documentation under the National Environmental Policy Act (NEPA) in accordance with 516 DM 11.9: E.12 Grants of right-of-way wholly within the boundaries of other compatibly developed rights-of-way.

This action conforms to the [*California Desert Conservation Area Plan* (BLM, 1980, as amended)] because it is specifically provided for or is clearly consistent with the RMP objectives and decisions as follows:

The Proposed Action is subject to the 1980 California Desert Conservation Area (CDCA) Plan as amended. As part of 1976 Federal Policy Management Act (FLPMA), the CDCA Plan was developed to guide land use management of BLM lands within this portion of California. The Project Site is entirely located on BLM-administered public lands in Imperial County, and is managed under the CDCA Plan, as amended (BLM 1980). Most of the lands administered under the CDCA Plan have been designated as one of four "multiple-use classes": Controlled (C), Limited (L), Moderate (M), or Intensive (I). The class designations govern the type and degree of development or management activities allowed within the boundaries of the classes, and must meet the guidelines given for that class.

The field work site is MUC L. Class L "...protects sensitive, natural, scenic, ecological, and cultural resource values..." and are "...managed to provide for generally lower-intensity, carefully controlled multiple use of resources, while ensuring that sensitive values are not significantly diminished." Solar projects are allowed in MUC L after NEPA requirements for the projects are met.

## Administrative Remedies

Administrative remedies may be available to those who believe they will be adversely affected by this decision. Appeals may be made to the Office of Hearings and Appeals, Office of the Secretary, U.S. Department of Interior, Board of Land Appeals (Board) in strict compliance with the regulations in 43 CFR Part 4. Notices of appeal must be filed in this office within 30 days after publication of this decision. If a notice of appeal does not include a statement of reasons, such statement must be filed with this office and the Board within 30 days after the notice of appeal is filed. The notice of appeal and any statement of reasons, written arguments, or briefs must also be served upon the Regional Solicitor, Pacific Southwest Region, U.S. Department of Interior, 2800 Cottage Way, E-1712, Sacramento, CA 95825.

*for*   
\_\_\_\_\_  
Margaret L. Goodro  
Field Manager

*12/9/11*  
\_\_\_\_\_  
Date

## Appendix A: Terms and Conditions

### General Terms and Conditions

1. The Holder shall comply with all stipulations contained in this right-of-way grant unless otherwise approved in writing by the Authorized Officer. Non-compliance with the stipulations by the Holder or any of its agents may at the option of the Authorized Officer result in cancellation or suspension of the right-of-way grant or adverse action against the Holder.
2. The Holder shall construct, operate, maintain and decommission the boreholes within this right-of-way in strict conformity with the project description as described in the plan of development (POD) submitted as part of the application (received January 2011).
3. Upon completion of the geotechnical study, boreholes and all construction related materials shall be removed from each bore site. Any components deemed to be unrecoverable shall be disposed of in approved landfills.
4. The Holder shall comply with applicable Federal and State laws and regulations issued there under, existing or hereafter enacted or promulgated, affecting in any manner construction, operation, maintenance or termination of the right-of-way grant.
5. BLM reserves the right to approve of the post geotechnical restoration activities to ensure acceptable restoration as identified in the Environmental Assessment, Section 2.1.2.
6. The Bureau of Land Management retains the right to occupy and use the right-of-way and to issue or grant rights-of-way or other land uses over, upon, under and through the lands, provided that the occupancy and use will not unreasonably interfere with the rights granted herein.
7. The Holder shall confine all activities within the area specifically defined in the right-of-way. All vehicle travel shall be restricted to designated routes of travel or in the authorized location for those areas that leave existing roadways.
8. The Holder or its agents shall follow only the prescribed route to enter and leave the project location. The monitors will lead the other members in to the site for borehole installation.
9. The Holder or its agents shall define and respect work area limits.
10. In the event of the discovery of human remains on BLM lands, the holder or contractors shall notify the Imperial County Coroner at 760-339-6328 and BLM authorities immediately. BLM Law Enforcement may be reached at 909-383-5654, if unable to contact BLM dispatch at the number above call Emergency Services at 911.
11. The Holder shall protect all survey monuments found within the right-of-way. Survey monuments include, but are not limited to, General Land Office and BLM Cadastral Survey Corners, reference corners, witness points, U.S. Coastal and Geodetic benchmarks and

## Appendix A: Terms and Conditions

triangulation stations, military control monuments, and recognizable civil (both public and private) survey monuments. In the event of obliteration or disturbance of any of the above, the Holder shall immediately report the incident, in writing, to the Authorized officer and the respective installing authority if known. Where General Land Office or BLM right-of-way monuments or references are obliterated during operations, the Holder shall secure the services of a registered land surveyor or a BLM cadastral surveyor to restore the disturbed monuments and references using surveying procedures found in the Manual of Surveying Instructions for the Survey of the Public Lands in the United States, latest edition. The Holder shall record such survey in the appropriate county and send a copy to the Authorized Officer. If the BLM cadastral surveyors or other Federal surveyors are used to restore the disturbed survey monument, the holder shall be responsible for the survey cost.

12. In the event that the public land underlying the right-of-way (ROW) encompassed in this grant, or a portion thereof, is conveyed out of Federal ownership and administration of the ROW or the land underlying the ROW is not being reserved to the United States in the patent/deed and/or the ROW is not within a ROW corridor being reserved to the United States in the patent/deed, the United States waives any right it has to administer the right-of-way, or portion thereof, within the conveyed land under Federal laws, statutes, and regulations, including the regulations at 43 CFR Part [2800][2880], including any rights to have the holder apply to BLM for amendments, modifications, or assignments and for BLM to approve or recognize such amendments, modifications, or assignments. At the time of conveyance, the patentee/grantee, and their successors and assigns, shall succeed to the interests of the United States in all matters relating to the right-of-way, or portion thereof, within the conveyed land and shall be subject to applicable State and local government laws, statutes, and ordinances. After conveyance, any disputes concerning compliance with the use and the terms and conditions of the ROW shall be considered a civil matter between the patentee/grantee and the ROW Holder.
13. The permittee/grant Holder, contractor or anyone conducting activities authorized under the grant must have a copy of the grant/terms and conditions on site at the time the activity is being conducted pursuant to the authorization.
14. The permit holder, and its contractors are liable for damages related to its activities and is responsible for incidents on its construction sites, including but not limited to, hazmat, vandalism, and accidents with recreational visitors. Permit holder will take measures to ensure visitor safety such as signing, flagging, lighting, etc.

### Biological Terms and Conditions

#### *General Biological Stipulations*

- 1) In order not to create an illegal trail, no shrub vegetation shall be cleared/bladed using mechanical or manual methods. The Holder or its agents shall preserve existing vegetation. All work performed as the result of project activities shall try to avoid all vegetation within the project area. Precautions shall be taken to avoid damage to vegetation by people or equipment.

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- 2) To prevent the introduction of new invasive weedy plant species into the project area, holder shall require the designated contractor to ensure that vehicles and equipment that have been used on sites outside of the project area have been cleaned prior to starting work on the project.
  - a) Maintain a log of the vehicle cleaning schedule for right-of-way grant monitoring.
- 3) Construction is not to be performed in the spring when the annual vegetation is setting seed.
- 4) A post construction biological report is to be submitted within 30 days of the completion of a borehole site installation.
- 5) The Holder or its agents shall be prohibited from collecting plants and wildlife.
- 6) The area of disturbance shall be confined to the smallest practical area. Area boundaries shall be delimited with flagging or other marking to minimize surface disturbance associated with vehicle straying. Special habitat features, such as burrows, identified by the qualified biologist shall be avoided.
- 7) All potential pitfalls to wildlife will be covered when not attended.
- 8) Existing roads shall be used for travel and equipment storage whenever possible.
- 9) The project proponent shall designate a field contact representative (FCR) who will be responsible for overseeing compliance with protective stipulations for the flat-tailed horned lizard, BLM sensitive species and migratory bird pre-construction surveys and for coordination on compliance with the BLM. The FCR must be on-site during all project activities. The FCR shall have the authority to halt all project activities that are in violation of the stipulations. The FCR shall have a copy of all stipulations when work is being conducted on the site. The FCR may be a crew chief or field supervisor, a project manager, any other employee of the project proponent, or a contracted biologist.
- 10) Only biologists approved by the BLM shall conduct preconstruction surveys. The project proponent shall submit the name(s) and resumes of proposed biologist(s) to the BLM for review and approval at least 15 days prior to the onset of activities. No activities shall begin until a biologist is approved.

### Migratory Birds

1. For the protection of migratory birds during the migratory bird breeding season (January 15 through August 15), prior to construction, the qualified biologist shall conduct a preconstruction migratory bird nesting survey in the project area that takes place; b) If any active nest is located, the nest area shall be flagged for avoidance, and a 200-foot buffer zone shall be delineated, flagged, or otherwise marked; 300-foot buffers shall be established for Federally listed bird nests and 500-foot for nesting raptors; c) No work activity shall occur

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within this avoidance buffer areas until an approved biologist determines that the fledglings are independent of the nest or has verified nest failure.

2. No later than 30 days after completion of the project, the qualified biologist /biological monitor shall prepare a report for the Bureau. Upon locating a dead or injured migratory bird, the project proponent or agent is to notify the BLM Resource Area Office and the appropriate field office (Carlsbad or Ventura) of the USFWS by telephone (960) 337-4452. Written notification must be made within five days of the finding, both to the appropriate USFWS field office and to the USFWS Division of Law Enforcement in Torrance. The information provided must include the date and time of the finding or incident (if known), location of the carcass or injured animal, a photograph, cause of death, if known, and other pertinent information.

### Burrowing Owl

1. During the BUOW nesting season (February 1 to August 31), the qualified biologist shall establish and mark a 250 foot non-disturbance buffer circle around the burrow. The buffer shall be staked and roped-off prior to initiating any activity onsite including geotechnical boring. No activity shall take place within the avoidance buffer area to ensure that disturbance to nesting birds does not occur. Any disturbance to nesting BUOW would require prior consultation, approval and mitigation in accordance with California Fish and Game requirements.
2. No disturbance to nesting BUOW is authorized that may cause changes of behavior, plugging the burrow entrance or causing the burrow to collapse could effectively destroy the nest, and as such, require a State permit.
3. If an active, non-breeding BUOW burrow is detected the geotechnical boring should be located at a 160-foot radius as determined by a qualified biologist, from the occupied burrow to create and mark a non-disturbance buffer around the burrow. The non-disturbance buffer would be established with flagging by the biological monitor prior to any geotechnical activities.

### BLM Sensitive Species

1. All kit fox and badger burrows will be marked, flagged and monitored. All project activity will take place outside breeding season or a 200 foot buffer will be established encircling the burrows.

### Flat-tailed Horned Lizard (FTHL)

- 1) Prior to project initiation, an individual shall be designated as a field contact representative. The field contact representative shall have the authority to ensure compliance with protective measures for the FTHL and will be the primary agency contact dealing with these measures.

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The field contact representative shall have the authority and responsibility to halt activities that are in violation of these terms and conditions.

- 2) All project work areas shall be clearly flagged or similarly marked at the outer boundaries to define the limit of work activities. All construction and restoration workers shall restrict their activities and vehicles to areas that have been flagged to eliminate adverse impacts to the FTHL and its habitat. All workers shall be instructed that their activities are restricted to flagged and cleared areas.
- 3) Within FTHL habitat, the area of disturbance of vegetation and soils shall be the minimum required for the project. Clearing of vegetation and grading shall be minimized. Wherever possible, rather than clearing vegetation and grading the ROW, equipment and vehicles shall use existing surfaces or previously disturbed areas. Where grading is necessary, surface soils shall be stockpiled and replaced following construction to facilitate habitat restoration. To the extent possible, disturbance of shrubs and surface soils due to stockpiling shall be minimized.
- 4) A biological monitor shall be present in each area of active surface disturbance throughout the work day from initial clearing through habitat restoration, except where the project is completely fenced and cleared of FTHLs by a biologist. The monitor(s) shall perform the following functions:
  - a) Develop and implement a worker education program. Wallet-cards summarizing this information shall be provided to all construction and maintenance personnel. The education program shall include the following aspects at a minimum:
    - i) biology and status of the FTHL,
    - ii) protection measures designed to reduce potential impacts to the species,
    - iii) function of flagging designating authorized work areas,
    - iv) reporting procedures to be used if a FTHL is encountered in the field, and
    - v) importance of exercising care when commuting to and from the project area to reduce mortality of FTHL's on roads.
  - b) Ensure that all project-related activities comply with these measures. The biological monitor shall have the authority and responsibility to halt activities that are in violation of these terms and conditions.
  - c) Examine areas of active surface disturbance periodically (at least hourly when surface temperatures exceed 85°F) for the presence of FTHLs. In addition, all hazardous sites (e.g., open pipeline trenches, holes, or other deep excavations) shall be inspected for the presence of FTHLs prior to backfilling.
  - d) Work with the project supervisor to take steps, as necessary, to avoid disturbance to FTHLs and their habitat. If avoiding disturbance to a FTHL is not possible or if a FTHL is found trapped in an excavation, the affected lizard shall be captured by hand and relocated.

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- 5) A designated field contact representative/biological monitor is required for all subsequent borehole site visits. The biological monitor will follow all the aforementioned FTHL avoidance and minimization measures.
- 6) No dogs are allowed on the project site.
- 7) All trash and food items shall be promptly contained within closed, raven-proof containers. These shall be regularly removed from the project site to reduce the attractiveness of the area to ravens and other FTHL predators.

### Cultural Resource Terms and Conditions

- 1) All work associated with the project will be monitored by a qualified archaeologist who has a current BLM El Centro Fieldwork Authorization. This includes any restoration activities;
- 2) Prior to project implementation, all non-archaeological project personnel will be briefed by the archaeologist on the importance of, and the legal basis for, the protection of significant archaeological resources. Personnel will be given a training brochure regarding identification of cultural resources and reporting finds;
- 3) If the construction staff or others observe previously unidentified archaeological resources during construction, they should halt work in the vicinity of the find(s) and immediately notify the project archaeologist and BLM El Centro Field Office (ECFO), including the ECFO Archaeologist, so that the resource value may be documented and assessed as soon as possible. The finds will be formally recorded and evaluated. The proponent should protect the cultural resource discovery from further disturbance pending evaluation;
- 4) If human remains and/or cultural items defined by the Native American Graves Protection and Repatriation Act (NAGPRA) are inadvertently discovered during construction activities, all work in the vicinity of the find will cease and the Imperial County Coroner and the BLM El Centro Field Office, including the ECFO Archaeologist, will be contacted immediately pursuant to Section (3)(d)(1) of the Act. If the remains are found to be Native American as defined by NAGPRA, work may be delayed in the vicinity of the find up to 30 days;
- 5) All contractors will follow only the prescribed route to enter and leave the project location;
- 6) The contractors will define and respect clear work area limits;
- 7) The contractors will not disturb, handle, move, photograph or collect any cultural resources.

**United States Department of the Interior**  
**BUREAU OF LAND MANAGEMENT**  
**El Centro Field Office**  
1661 South 4<sup>th</sup> Street  
El Centro, CA 92243  
[www.blm.gov/ca/elcentro/](http://www.blm.gov/ca/elcentro/)

In Reply Refer To:

CA-670-12-020/ DOI-BLM-CA-D070-2012-0003-CX/ CACA-51552/ 8100 (P)

**Memorandum**

To: Field Manager, El Centro Field Office (CA-670)

From: Archaeologist, El Centro Field Office (CA-670)

Subject: Agency Findings and Determinations under Section 106 of the National Historic Preservation Act

Project: Ocotillo Wind Energy Facility Geotechnical Investigation, Imperial County, California

The Bureau of Land Management (BLM) El Centro Field Office (ECFO) proposes to allow Ocotillo Express, LLC to conduct geotechnical investigations to provide preliminary information that would assist with seismic and geologic conditions that will evaluate the engineering design of roads, structures, foundations, and other design elements of the project. The geotechnical field work as proposed and described in the Plan of Development is within the proposed Right of Way for the proposed Ocotillo Wind Energy Facility. This field work consists of:

- 155 MASW surveys
- 16 geotechnical borings
- 16 electrical resistivity surveys
- Soil sample collection

Pursuant to the *State Protocol Agreement Between The California State Director of The Bureau of Land Management And The California State Historic Preservation Officer* (2007) and in accordance with 36 CFR Part 800, BLM professional cultural resources staff have reviewed this undertaking and have made the following recommendations regarding historic properties that may be affected.

Identification and evaluation efforts for the entire Ocotillo Wind Energy Facility project area are described in a report entitled *Draft Archaeological Survey Report for the Ocotillo Wind Energy Project, Imperial County, California*, prepared by Tierra Environmental, October 2011. Tierra Environmental has reviewed the undertaking and recommended in the letter report, *Ocotillo Express Geotechnical Soil Sampling and Archaeological Resources* dated October 14, 2010 (sic), that archaeological sites would not be affected by the proposed action. Due to the close proximity of several cultural sites to boring locations, the BLM recommends that an archaeological monitor be present during all work. In the event that any cultural resources are

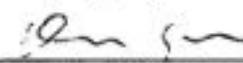
discovered during the geotechnical investigations, all work is to stop and the ECFO Resource Branch Chief and archaeologist is to be notified immediately by phone.

The BLM has determined that the overview and inventory efforts are adequate to identify and avoid historic properties on public lands that might be affected by this undertaking. Therefore, the BLM staff archaeologist has recommended that the proposed undertaking would have no effect on historic properties provided there is an archaeological monitor present.

The BLM makes the following finding for this undertaking.

The BLM finds that there will be *no historic properties affected* by this undertaking.

This memorandum documents the recommendations of the cultural resources staff, the acceptance of these recommendations by the Agency Official (as defined in 36 CFR §800.2(a), Protection of Historic Properties), and constitutes the formal statement of Agency findings and determinations for Section 106 of the National Historic Preservation Act as implemented in the *Protocol*. In accordance with the *Protocol*, BLM has satisfied its responsibilities to take into account the effects of this undertaking on historic properties that may be included or eligible for listing in the NRHP.

Reviewed by:		
Archaeologist, El Centro Field Office	_____	12/6/2011 _____
		Date
Reviewed by:		
Reviewing Archaeologist, El Centro Field Office	_____	12/6/11 _____
		Date
Accepted by Agency Official:		
	_____	12/6/11 _____
Field Manager, El Centro Field Office		Date

Boring_ID	Section	Township	Range	Lot	Tract	Boring Location Coordinates (NAD83, CaSP_VI, US Feet)		Access and Disturbance Area Details			Method of Turn-around	GIS Shape File?
						Easting	Northing	Approx. Road Length, ft	Disturbance Width, ft	Disturbance Area, Acres		
39	31	T16S	9E	5		6607553.09	1848250.10	36	12	0.02	Back In/Out	YES
40	31	T16S	9E	8		6607816.70	1847468.98	95	12	0.03	Stub Path	YES
44	30	T16S	9E	28		6612718.12	1850082.29	NA		0.00	Back In/Out	YES
76	32	T16S	9E	1	62	6621606.58	1847812.51	48	12	0.02	Back In/Out	YES
77	33	T16S	9E	7	63	6622021.81	1847107.72	239	12	0.07	Stub Path	YES
90	28	T16S	9E	22	60	6623338.99	1850110.07	121	12	0.04	Stub Path	YES
101	21	T16S	9E	16	48	6623516.75	1855970.96	188	12	0.06	Back In/Out	YES
104	20	T16S	9E	15	47	6620366.36	1856331.85	108	12	0.04	Back In/Out	YES
117	2	T16.5S	9.5E		SE 1/4, NE 1/4 (within)	6637697.96	1841234.57	199	12	0.06	Stub Path	YES
129	1	T16.5S	9.5E	6		6640728.67	1842023.46	243	12	0.07	Stub Path	YES
148	22	T16S	9E	12	51	6632303.26	1857548.73	111	12	0.04	Back In/Out	YES
169	23	T16S	9E		52 A	6634923.66	1856504.51	331	12	0.09	Stub Path	YES
176	23	T16S	9E		52 A	6635543.08	1855901.85	189	12	0.06	Stub Path	YES
SUB2	28	T16S	9E	24	59	6624839.34	1849927.40	1311	12	0.37	Stub Path	YES
SWY1	28	T16S	9E	25	58	6625231.83	1849839.53	Same route as SUB2			Stub Path	YES
SWY2	28	T16S	9E	25	58	6625494.75	1849708.24	Same route as SUB2			Stub Path	YES