

CHAPTER 5 – CONSULTATION, COORDINATION, AND PUBLIC PARTICIPATION

5.1 SUMMARY OF THE NEPA PROCESS

This section describes the NEPA Process. The BLM relies on the NEPA Handbook H-1790-1 as guidance for complying with NEPA and the Council on Environmental Quality's NEPA regulations (40 CFR Parts 1500-1508) and the Department of the Interior NEPA Manual.

Scoping Process

The BLM authorization of a Right-of-Way (ROW) grant for the proposed project or an action alternative would require a resource management land use plan amendment (PA) to the California Desert Conservation Area (CDCA) Plan (BLM 1980), as amended. The BLM prepared the Draft EIS to inform the public about the DHSP and to meet the needs of federal, state, and local permitting agencies considering the project. Scoping is required by NEPA pursuant to the Council on Environmental Quality (CEQ) (40 CFR 1501.7) regulations. The process ensures that significant issues, alternatives, and impacts are addressed in environmental documents and determines the degree to which these issues and impacts will be analyzed in the EIS.

The scoping process includes the following:

- Publishing the Notice of Intent (NOI) to prepare an EIS.
- Conducting public scoping meetings and agency consultation meetings.
- Documenting all public and agency comments received for the Proposed Action in a Scoping Summary Report (Appendix B).

Notice of Intent

The BLM published a Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) on September 15, 2011 in Federal Register Volume 76, Number 179. Publication of the NOI began a 30-day comment period that ended on October 17, 2011. The BLM provided a website with project information that describes the various methods for providing public comment on the project including an e-mail address where comments could be sent electronically.

Public Scoping Meetings

Notification for public Scoping Meetings held on October 3 and October 6, 2011 was posted on the BLM's website. In addition, notices were sent to Responsible and Trustee Agencies under CEQA, all landowners within 300 feet of the project boundary, and other interested parties.

Public Scoping Meetings were held on October 3, 2011 at the University of Riverside Palm Desert Graduate Center located at 75080 Frank Sinatra Drive in Palm Desert, California and at the Lake Tamarisk Clubhouse located at 6251 Parkview Drive in Desert Center, California. A public Scoping Meeting was held on October 6, 2011 at the Joshua Tree Community Center located at 6171 Sunburst Street in Joshua Tree, California. A presentation describing the project was made by enXco, with presentations describing the environmental review process presented by members of the BLM. Attendees were documented by signing in on a voluntary sign-in sheet, including 6

attendees plus KMIR TV at the University of Riverside Palm Desert Graduate Center, 30 attendees at the Lake Tamarisk Clubhouse, and 7 attendees at the Joshua Tree Community Center.

Fifteen comment letters were received during the scoping comment period that ended on October 17, 2010. Comments were received on the following categories: purpose and need, alternatives development, climate change, cultural resources, fire and fuels management, lands and realty, recreation, social and economic values, environmental justice, water resources, solid and hazardous wastes, visual resources, and cumulative effects. A summary of these comments is provided in the Scoping Summary Report (Appendix B). Comments received during the scoping process were addressed in the EIS as presented in Table 5-1.

Table 5-1. Scoping Comments Addressed in this Draft EIS

Issue Area	Addressed
Purpose and Need	Section 1.2 BLM Purpose and Need
Monitoring	Appendix J (Final EIS Only)
Decommissioning	Section 2.5.7 Decommissioning Activities
Public Participation	Chapter 5 & Appendix B
Air Resources	
Existing conditions	Section 3.2.2
Project emissions	Section 4.2.6, Tables 4.2-3 through 4.2-8
Dust control	Section 4.2.6
Cumulative impacts	Section 4.2.15
Effects to Joshua Tree National Park	Section 4.2.6 and Section 4.17.15
Biological Resources	
Endangered species and habitat	Section 4.4.7
Desert tortoise & habitat	Section 4.4.7: Desert Tortoise
Biological opinion and USFWS	Section 4.4.7: MM WIL-2
Avian species	Section 4.4.7: Native Birds, Burrowing Owl, Golden Eagle, Raptors, Woodpecker, Paserines
Wildlife corridors	Section 4.4.7: Wildlife Movement
Mitigation lands	Section 4.3.7: MM VEG-6, Table 4.3-3
Sensitive Plant Species	Section 4.3.7: Special-Status Plants
Invasive Weeds	Section 4.3.7: Invasive Weeds
Sand Transport Corridor	Section 4.3.15: Alternative E
Climate Change	
Benefits of solar energy	Section 4.5.6 Operations and Maintenance
Address climate change and carbon footprint of the project	Section 4.5.6 Tables 4.5-1 and 4.5-2 and Indirect Effects
Mitigation to reduce greenhouse gas emissions	Section 4.5.6 Mitigation Measures
Amount of SF6 gases that would be released by the project	Section 4.5.6
Cultural Resources	
Native American Consultation	Section 5

Table 5-1. Scoping Comments Addressed in this Draft EIS

Issue Area	Addressed
Native American sacred sites	Section 4.6.5 and Section 5
Avoidance of cultural resources	Section 4.6.5
California Code §27460 should be followed in case of accidental discovery of human remains	Section 3.6.1, State and Section 4.6.16
Fire and Fuels Management	
Wildfire Risk	Section 4.8.6
Fire study on cadmium-telluride containing panel	Section 4.13.6
Lands and Realty	
Solar Programmatic EIS	Section 4.13.6: Direct Effects
Conflicts with federal, state, tribal, or local land policies	Section 4.13.6
Conflicts with the Eagle Mountain Pumped Storage Project	Section 4.13.6: Direct Effects
Conflicts with rural communities	Section 4.13.6
Conflicts with National Parks	Section 4.13.6 and Section 4.17.15
BLM land management policy; role of County/CEQA	Section 1.2, Section 1.8, and Section 4.13.6
Recreation	
Impacts to Joshua Tree National Park	Section 4.14.6 and Section 4.17.15
Impacts to Lake Tamarisk recreational opportunities	Section 4.14.6
Social and Economics Setting	
influx of people to Desert Center	Section 4.15.6 Quality of Life
Housing	Section 4.15.6 Direct Effects
Property Values	Section 4.15.6 Indirect Effects
Effects to utilities	Section 4.15.6 Direct Effects
Environmental Justice	
Address environmental justice	Section 3.16 and 4.16
Water Resources	
Disclose water requirements	Section 2.5.5 Construction Water Requirements, Section 2.5.6 Operational Water
Impacts to groundwater basin	Section 4.20.6 Groundwater Supply and Recharge
Use of non-groundwater sources/water conservation	Section 4.20.6, MM WAT-2
Water quality/SWPPP	Section 4.20.6 Surface Water and Drainage Patterns, Water Quality, MM WAT-1 and MM WAT-4
Minimize impacts to water/washes	Section 4.22.6 Surface Water and Drainage Patterns, Section 4.3.7 Hydrology and Groundwater
Jurisdictional delineation	Section 4.22.6 Jurisdictional Drainages, Section 4.3.2, Table 4.3-1 and MM VEG-1 through VEG-6
Solid and Hazardous Waste	
Hazardous wastes/management	Section 4.21.6, MM PHS-1 through PHS-6

Table 5-1. Scoping Comments Addressed in this Draft EIS

Issue Area	Addressed
Life cycle of panels/recycling	Section 4.13.6, Hazardous Materials, AM-HAZ-10, MM PHS-1, MM PHS-6
Remediation of contaminated sites at solar facility/Phase I or Phase II Environmental Site Assessment	Section 4.13.6 Existing Contamination
Investigation of hazardous materials if buildings are being demolished	No buildings would be demolished
Soil Sampling/investigation	Section 4.13.6 Existing Contamination
Visual Resources	
Impacts to wilderness character/Joshua Tree National Park	Section 4.19.6 Effects Context for Joshua Tree Wilderness and National Park, KOP1 and KOP2,
KOPs should depict all visual impact scenarios	Section 3.19.2 Key Observation Points
Light Pollution	Section 4.19.6 MM VR-6
Cumulative Impacts	
Consider all existing and reasonably foreseeable projects	Section 4.1.4, Cumulative Scenario and Tables 4.1-1 and 4.1-2
Analysis should consider approved Desert Sunlight Solar Farm	Section 4.1.4, Cumulative Scenario and Tables 4.1-1 and 4.1-2
Alternatives	
Types of panels	Section 2.5.4 Photovoltaic Panels
Environmentally sensitive areas	Section 2.7
Siting renewable energy on disturbed/degraded lands	Section 2.17.2
Comparison of alternatives	Section 2.14
Environmentally preferred alternative	Section 2.14 and 2.16
Shared gen-tie line alignment	Section 2.10
Desert wash avoidance	Section 2.7
Mount panels at a height to maintain natural vegetation	Section 2.17.10
Distributed generation/power sited next to consumption	Section 2.17.4
Avoid southwestern portion of project/avoids Desert Dry Wash Woodland/avoids siting within the WHMA	Section 2.6 and Section 2.7
Make the site unavailable for energy development	Section 2.4
Reduce impacts to Joshua Tree National Park	Section 2.7, Section 2.8, and Section 2.17

In addition, an agency recommended that the EIS include an alternative that would mount panels at a height to eliminate the need for vegetation clearing and would maintain natural vegetation. While mitigation to protect, maintain, and restore native vegetation is described in Section 4.3, no alternative PV technology, mounting system, or mounting height was identified by the EIS preparers that could achieve permanence of appreciable amounts of native vegetation on the solar project site. Therefore, this alternative was not considered.

Finally, a commenting agency recommended that the EIS fully consider a desert or ephemeral wash avoidance alternative. Alternatives 6 (Reduced Footprint Solar Project) and Alternative 7

(High-Profile Reduced Footprint Solar Project) would exclude the 155-acre southern parcel of the project and would not require an underground electrical connection across the wash.

Draft EIS

The BLM published a Notice of Availability (NOA) for public and agency review and comment of the Desert Harvest Solar Project Draft EIS and CDCA Plan Amendment on April 13, 2012 in the Federal Register. A 90-day comment period is required for the project and would end July 13, 2012.

During the public review period, the BLM will host public meetings to solicit input from members of the communities and others in the vicinity of the proposed project and alternatives. Information regarding the location and times of the meetings is published on the BLM's website for the project. Comments on the Draft EIS will be considered and addressed in the Final PA/EIS.

Final EIS

Following public review of the Draft EIS, the lead agency prepares a Final EIS. The BLM and EPA's Office of Federal Activities will publish NOAs for the Final EIS in the Federal Register when the document is ready to be released to the public.

Appeal Period and Protest

A protest is an opportunity for a qualified party (any person who participated in the planning process and has an interest which is or may be adversely affected) to seek an administrative review of a proposed decision in accordance with program-specific regulations. The NOA for the Final EIS (to be published by EPA in the Federal Register) will initiate a 30-day protest period on the proposed PA to the Director of the BLM in accordance with 43 CFR 1610.5-2.

Governor's Consistency Review

Pursuant to 43 C.F.R. § 1610.3-2, prior to the approval of a proposed resource management plan, or amendment, the BLM State Director must submit to the State Governor the proposed plan or amendment and identify any known inconsistencies with State or local plans, policies or programs. The Governor has 60 days in which to identify inconsistencies and provide recommendations in writing. If the Governor's written recommendations include changes in the proposed PA that were not raised during the public participation process, then the State Director must provide the public with an opportunity to comment on the recommendations. If the BLM State Office does not accept the Governor's recommendations, then the BLM State Director must notify the Governor in writing and the Governor has 30 days to submit a written appeal.

Record of Decision

After any protests have been resolved, BLM may publish an Approved Plan Amendment and a Record of Decision (ROD) on the Project Application. Publication and release of the ROD would serve as public notice of the BLM's decision on the Project Application which is appealable in accordance with 43 CFR Part 4.

5.2 ORGANIZATIONS AND PERSONS CONSULTED

There are a number of formal and informal agreements in place that provide guidance on the relationship between BLM, as Lead Agency on the EIS, and other agencies. These agreements are summarized here.

BLM–County of Riverside Memorandum of Understanding

The County of Riverside has discretionary authority to issue a Conditional Use Permit (CUP), a Public Use Permit (PUP), a Franchise Route Agreement, and an Encroachment Permit for Project gen-tie, evaluated herein as a portion of the Proposed Action. As allowed by the California Environmental Quality Act (CEQA) Guidelines Section 15221, the County of Riverside intends to use this EIS to provide the environmental review required for its decision regarding the approval of the gen-tie under CEQA. The County of Riverside and the BLM have signed an MOU that defines the relationship of the two agencies, and identifies the County of Riverside as a cooperating agency with the BLM. Following preparation of the EIS by the BLM, the County of Riverside will determine whether the EIS complies with the requirements of CEQA and whether it will be used to support its decision on the gen-tie.

Native American Government to Government Consultation

The United States Bureau of Land Management (BLM) has formally invited 15 Native American Tribes to consult at the government-to-government level throughout the review of the Desert Harvest Solar Project (DHSP), and has had on-going discussions about this project with Tribal cultural staff and other Tribal organizations pursuant to agency responsibilities under 36 CFR § 800.2(c)(B)(ii) and the *Executive Memorandum of April 29 1994* (FR Doc. 94-10877). Documentation regarding that consultation is provided in Appendix I. Consultation with tribes has been initiated and will continue throughout the NEPA and Section 106 compliance processes. Consultation with Indian Tribes, and discussions with Tribal organizations and individuals, has revealed concern about the importance and sensitivity of cultural resources near the DHSP project site, concern about cumulative effects to cultural resources and landscapes.

The Native American Heritage Commission (NAHC) maintains two databases to assist cultural resources specialists in identifying cultural resources of concern to California Native Americans, referred to here as ethnographic resources. The NAHC Sacred Lands database has records for places and objects that Native Americans consider sacred or otherwise important, such as cemeteries and gathering places for traditional foods and materials. The NAHC Contacts database has the names and contact information for individuals, representing a group or themselves, who have expressed an interest in being contacted about development projects in specified areas. The applicant requests information from the NAHC on the presence of sacred lands in the vicinity of a proposed project and also request a list of Native Americans to whom inquiries would be made to identify both additional cultural resources and any concerns the Native Americans may have about a proposed project.

Chambers Group contacted the Native American Heritage Commission (NAHC) in October of 2011 to obtain information on known cultural resources and traditional cultural properties and to learn of any concerns Native Americans may have about the DHSP. The NAHC responded on October 5, 2011 with the information that the Sacred Lands File (SLF) database failed to indicate the presence of Native American cultural resources within the DHSP Area of Potential Effects.

The NAHC also forwarded a list of Native American groups or individuals with traditional ties to the project area. This list can be found in Appendix I.

The BLM initiated formal, government-to-government tribal consultation at the earliest stages of project planning by letter on October 4, 2011 (Kalish 2011). The Palm Springs-South Coast Field Office of the BLM sent letters to 15 Indian tribes, including those identified by the NAHC. The letter requested assistance in identifying any issues or concerns that a tribe might have about the project, including identifying places of religious and cultural significance that might be affected by the proposed project. The letter further requests that each Tribal Government identify those tribal representatives who have been designated to consult with BLM on this project.

Since that time, the BLM has followed up with Tribal governments through additional correspondence, communication, and provision of other project information. Consultation with Indian Tribes on this project is ongoing.

The fifteen tribes currently being consulted with on the DHSP are: Agua Caliente Band of Cahuilla Indians, Augustine Band of Cahuilla Mission Indians, Cabazon Band of Mission Indians, Cahuilla Band of Mission Indians, Chemehuevi Indian Tribe, Cocopah Indian Tribe, Colorado River Indian Tribes, Fort Mojave Indian Tribe, Fort Yuma Quechan Indian Tribe, Morongo Band of Mission Indians, Ramona Band of Mission Indians, San Manuel Band of Mission Indians, Soboba Band of Luiseno Indians, Torres-Martinez Desert Cahuilla Indians, and the Twentynine Palms Band of Mission Indians.

DHSP shares transmission line alternatives and an interconnection with the Red Bluff Substation with the DSSF project. The Memorandum of Agreement for the DSSF project identified indirect adverse effects to the settings of the National Register of Historic Places (NRHP) listed North Chuckwalla Mountain Petroglyph District (NCMPD) and the (Chuckwalla Valley) Prehistoric Trails Network Cultural Landscape (PTNCL). In addition cumulative effects to cultural resources were identified. Similar effects may be identified by the tribes for the DHSP.

As the environmental review and Section 106 consultation processes move forward for the DHSP project, the BLM will continue to consult with Indian tribes regarding issues or concerns with the project, and on properties to which they attach cultural or religious significance.

Section 106 Consultation

The BLM complies with NHPA through a Nationwide Programmatic Agreement (NPA) and, in the state of California, a 2007 State Protocol Agreement. The Protocol Agreement (Protocol) is a modified version of the NPA, adapted to the unique requirements of managing cultural resources on public lands in California, and is used as the primary management guidance for BLM offices in the state. This Protocol allows BLM's cultural resource staff to act on the SHPO's behalf under limited circumstances. BLM may define areas of potential effect (APE) and the required level of inventory efforts, and make determinations of eligibility and the effects of undertakings without consulting with SHPO.

National Park Service Consultation

The National Park Service (NPS), Joshua Tree National Park, is a Cooperating Agency for preparation of this EIS. Although NPS has no discretionary decision to issue on the proposed project, NPS has an interest in land development projects that occur within the airshed and viewshed of

park resources. On April 20, 2011, BLM met with NPS representatives in Palm Springs, CA to discuss the project and the Cooperating Agency relationship. BLM met with NPS again on September 13, 2011 to discuss incorporation of NPS comments on the administrative draft of the EIS. Comments were received from NPS staff and incorporated into the Draft EIS.

Endangered Species Act

The BLM is engaging the U.S. Fish and Wildlife Service (USFWS) in the Endangered Species Act (ESA) Section 7 consultation process concurrently with the NEPA review process and will obtain authorization through an incidental take statement, as necessary. Biological surveys for federally-listed species have been conducted for the proposed project site and the proposed transmission alternatives B, C, and D. Surveys will be conducted for transmission alternative E in the spring 2012.

California Endangered Species Act (CESA) review and approval is required for impacts to State-listed species. Focused biological surveys for sensitive species have been conducted for all potential project areas. The California Department of Fish and Game (CDFG) is expected to complete a Consistency Determination based upon USFWS's Biological Opinion.

Other Agency Coordination

The Applicant is coordinating with the U.S. Army Corps of Engineers, regarding potential project approvals and any associated NEPA regulatory compliance requirements. The Applicant is also coordinating with state and local agencies, including the California Energy Commission, California Department of Transportation, Metropolitan Water District of Southern California, California Regional Water Quality Control Board, and South Coast Air Quality Management District regarding potential project approvals and any associated State and local regulatory compliance requirements.

5.3 SUMMARY OF COMMENTS RECEIVED ON THE DRAFT EIS

The Final PA/EIS will present a summary of comments received on the Draft EIS.

5.4 ADMINISTRATIVE REMEDIES

The BLM and the EPA's Office of Federal Activities will publish separate NOAs for the Final EIS/Proposed PA in the Federal Register when the document is ready to be released to the public. The NOA (that is published by the EPA in the Federal Register) will initiate a 30-day protest period on the Proposed PA. Protests are directed to the Director of the BLM (see "Appeal Period and Protest" in Section 5.1, above) in accordance with 43 CFR 1610.5-2. Additionally, the BLM may accept additional public comment during this period. If this comment period occurs, all substantive comments will be reviewed and responded to with the Record of Decision (ROD).

Following resolution of any protests, the BLM may publish a ROD, which may approve a PA, on the project application. Publication and release of the ROD would serve as public notice of the BLM's decision on the project application which is appealable in accordance with 43 CFR Part 4.