

Appendix G: Programmatic Agreement

PROGRAMMATIC AGREEMENT
AMONG
THE BUREAU OF LAND MANAGEMENT, NEVADA,
SEARCHLIGHT WIND ENERGY, LLC,
and
THE NEVADA STATE HISTORIC PRESERVATION OFFICER
REGARDING THE
SEARCHLIGHT WIND ENERGY PROJECT

WHEREAS, Searchlight Wind Energy, LLC, a wholly owned subsidiary of Duke Energy Services (Applicant) has applied for federal right-of-way grants and associated permits for the Searchlight Wind Energy Project (Project); and

WHEREAS, the Project includes an application for a 30-year right-of-way grant to develop a wind farm with a generating capacity up to approximately 220 megawatts (MW) involving 87 wind turbine generators, each up to 427 feet in height, up to 9.2 miles of upgraded existing roads, up to 26 miles of new permanent gravel roads, 8.5 miles of temporary roads, , 16.6 miles of transmission interconnect line, 28.2 miles of buried electrical connection lines, two electrical substations, one switching station, three permanent meteorological (met) towers, laydown areas, and an operations and maintenance building; and

WHEREAS, the Bureau of Land Management's (BLM) issuance of the right-of-way grant for the proposed Project, makes it an undertaking subject to review under Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. §470f, and its implementing regulations, 36 C.F.R. Part 800; and

WHEREAS, the Las Vegas Field Office (LVFO) of the BLM is lead for compliance with Section 106 of the NHPA (36 CFR Part 800.2(a) (2)) and is the primary contact for all consulting parties; and

WHEREAS, the BLM will use a phased process to identify historic properties (36 CFR Part 800.4(b)(2)) and to assess those effects (36 CFR Part 800.5(a)(3)), such that completion of the identification and evaluation of historic properties, determinations of effect on historic properties, and consultation concerning measures to avoid, minimize, or mitigate any adverse effects will be carried out in phases as part of planning for and prior to any Notice to Proceed and Project implementation; and

WHEREAS, the BLM has determined that a Programmatic Agreement (PA) recording the terms and conditions for compliance with Section 106 of NHPA will be utilized for the Project according to 36 CFR Part 800.14(b)(1)(ii); and

WHEREAS, the BLM has determined that the Project may have direct, indirect, and cumulative effects on cultural resources included in, or eligible for inclusion in, the NRHP, hereinafter called historic properties, and has consulted with the Nevada State Historic Preservation Office (SHPO); and

WHEREAS, BLM has consulted with the Advisory Council on Historic Preservation (ACHP) pursuant to 36 CFR 800.14(b) to develop and execute this PA and the ACHP has elected to not formally enter consultation on the development of this PA; and

WHEREAS, since the Western Area Power Administration (Western) has applied for a federal right-of-way grant for a switching station to accommodate a request from the Applicant to interconnect the Project to Western's existing Davis-Mead transmission line, the BLM has invited Western to participate in consultation and to be a concurring party to this PA, and

WHEREAS, the BLM is responsible for government-to-government consultation and coordination with Federally-recognized Indian tribes having aboriginal territorial connections to the area of the Project and who may have concerns or interests in properties of traditional religious or cultural importance and sacred sites in the area for this undertaking; and BLM has consulted on a government-to-government basis with the Chemehuevi Indian Tribe, the Colorado River Indian Tribes (CRIT), the Fort Mojave Indian Tribe, the Hualapai Indian Tribe, the Fort Yuma-Quechan Indian Tribe, the Las Vegas Paiute Tribe, the Moapa Band of Paiutes, the Pahrump Paiute Tribe, and the Timbisha Shoshone Tribe, during which time no properties of traditional religious or cultural importance or sacred sites have been identified by tribes in the APE, nor have any potential adverse effects been made known to BLM through consultation; and BLM will continue to consult regarding the potential effects of the Project on historic properties to which a tribe or tribes may ascribe traditional religious and cultural significance; and

WHEREAS, the BLM consulted with the National Park Service (NPS) National Trails Regional Office in Santa Fe, New Mexico, regarding the Mojave Road of the Old Spanish National Historic Trail (OSNHT) that passes along the east side of Searchlight, Nevada, and the NPS concluded there would be no adverse direct or indirect impacts to the OSNHT from this Project ; and

WHEREAS, BLM has consulted with the Applicant, as a potential grantee of the right-of-way, who has participated in consultation per 36 CFR 800.2(c) (4) and agrees to carry out the stipulations of this PA under the oversight and approval of the BLM. The BLM has an invited the Applicant to be an Invited Signatory to this PA; and

WHEREAS, the BLM will require that the Project is executed in accordance with the conditions of any right-of-way or other authorization that may be granted by the BLM, and in accordance with the stipulations of this PA, which shall be appended to and made a part of any Record of Decision authorizing the grant of the right-of-way; and

WHEREAS, unless defined otherwise in this PA, all terms are used in accordance with 36 CFR Part 800.16, the BLM Nationwide Programmatic Agreement dated February 9, 2012, the State

Protocol Agreement between the BLM, Nevada and the SHPO for Implementing the National Historic Preservation Act, revised February 2012 (Protocol); and

WHEREAS, this PA covers all aspects of the planning, construction, installation, and monitoring of the Project, including other constructed facilities that are not yet designed, or whose location has yet to be determined, and those that may be added in the future; and

WHEREAS, per 36 CFR 800.2(c), the term “consulting party” or “consulting parties” when used in relation to this Project refers to the BLM, the SHPO, affected Indian tribes, Western, the Applicant, and the NPS as a group; and

NOW, THEREFORE, the Signatories and the Invited Signatory to this PA agree that the proposed Project, if authorized by BLM, shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties

STIPULATIONS

The BLM shall ensure that the following measures are carried out:

I. AREA OF POTENTIAL EFFECTS (APE)

A. Defining the APE. The BLM, in consultation with the SHPO, has defined and documented the APE based on direct, indirect, and cumulative effects. The APE will apply to federal, state, and private lands that may be affected by the Project. The BLM may modify the APE in accordance with Stipulation I.B. of this PA. The APE is defined as the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The APE is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking (36 CFR 800.16(d)).

1. Direct Effects. The APE for direct effects is the area within which historic properties may sustain physical alteration or destruction as a result of the Project. The APE for direct effects is limited to the area of potential ground disturbance by activities related to the Project (Attachment 1).
 - a. For wind towers, the APE will be 200 feet around each tower.
 - b. The APE for access roads, except for existing crowned and ditched or paved roads, and for other linear development components will be 200 feet on either side of the centerline for a total width of 400 feet. Existing crowned and ditched or paved roads are not part of the APE unless project-related changes to the current footprints of these roads are planned or if

unanticipated effects occur in adjacent areas, at which time BLM will re-define the APE as appropriate per terms of this PA.

- c. The APE for all other components (i.e. staging areas, lay down areas, etc.) will include the footprint of the facility and a buffer of 200 feet around the footprint of the proposed activity.
2. Indirect Effects. The APE for indirect effects on historic properties considers visual elements that could diminish the integrity of properties for which setting, feeling, and/or association are qualifying characteristics of NRHP eligibility. BLM has determined the indirect effects APE for the undertaking is limited to the visual category.
 - a. The indirect APE for visual effects from the Project extends for eight (8) miles on all sides of the undertaking, or to the visual horizon, whichever is closer. This APE is depicted in Attachment 2.
 - b. An indirect APE for audible effects from the Project has been defined (Attachment 3).
 3. Cumulative Effects. Cumulative effects include reasonably foreseeable effects caused by the Project that may occur later in time, be farther removed in distance or be cumulative [36 CFR 800.5(a)(1)]. For the purposes of this PA, the APE for cumulative effects is the same as that for direct and indirect effects.

B. Modifying the APE

1. BLM, in consultation with SHPO, has currently defined the APE to encompass an area sufficient to accommodate all of the Project effects. The APE may be modified when tribal consultation, additional field research or literature review, unexpected project-related disturbance, consultation with Consulting Parties, or other factors indicate that the qualities and values of historic properties that lie outside the boundaries of the currently defined APE may be affected directly, indirectly, or cumulatively.
 - a. If the BLM determines that the Project or changes to the Project may cause unforeseen direct, indirect, or cumulative effects to historic properties beyond the extent of the established APE, then the BLM may use the process set forth in Stipulation I.B.1.b to determine whether to modify the APE.
 - b. Either the Signatories or the Invited Signatory may propose that the APE be modified. The BLM shall send the SHPO and the Invited Signatory a description and a map of the proposed modification and consult for no more than five working days in an effort to reach consensus on the proposal. If BLM, SHPO and the Invited Signatory cannot agree to a proposal for the modification of the APE, the dispute will follow the procedures in Stipulation VI.

- c. The BLM will continue tribal consultation if there are changes in the APE involving areas beyond those that have already been considered during tribal consultation to date.

2. The Signatories and Invited Signatory's written agreement to modify the APE will not require an amendment to the PA.

II. IDENTIFICATION, EVALUATION, AND DETERMINATION OF EFFECTS

- A. **Standards.** The BLM will ensure that all work undertaken to satisfy the terms of this PA meets the Secretary of the Interior's Standards for Archeology and Historic Preservation (48 FR 44716) (*Federal Register*, September 29, 1983) and is consistent with the ACHP guidance on archaeology found at <http://www.achp.gov/archguide/> and with related guidance from the National Park Service (e.g., National Register bulletins).
- B. **Inventory.** The BLM has standards for inventory that are reasonable and adequate to identify historic properties in the direct effects APE that may be affected by this Project, including guidance and standards found in the Protocol.
 1. Those sections of the Protocol (in Part VIII.B 1-11) may be used in implementing this PA, as appropriate.
 2. Archaeological inventory of the direct effects APE will be accomplished using the BLM Nevada Guidelines and Standards for Archaeological Inventory (January 2012, Fifth Edition). The BLM will ensure that a Class III level archaeological inventory is completed for the direct effects APE. A Class III inventory has been completed and been submitted to the SHPO by BLM.
 - a. The BLM, in consultation with SHPO, has developed a revised isolate definition during the Project. An isolated artifact is defined as up to three (3) artifacts found within 30 meters of each other. An isolated feature is defined as up to four (4) simple features (e.g., rock cairn) associated with each other and with up to two artifacts found within 30 meters of each other.
- C. **Qualified Persons.** The BLM will ensure that all identification and inventory actions for the Project are carried out by or under the direct supervision of a person or persons meeting, at a minimum, the applicable professional qualifications standards set forth in the Secretary's Standards and the permitting requirements of BLM Nevada.
- D. **Indirect APE.** The Applicant will use the following resources to the extent available to identify historic properties that may exist within the indirect APE that may be affected by the Project: historic documents such as GLO maps, other early maps, local histories, aerial

photography, ethnographic information, the records search for the Project, targeted field reconnaissance where physical and legal access is available; and other available means.

- E. **Inventory During Construction.** Inventory during construction will be conducted in accord with Stipulation II.B for any variances to the Project that are outside the currently defined direct APE (including changes in construction right-of-way and ancillary areas) or that extend beyond areas of acceptable prior inventory. Where BLM determines that additional inventory is needed, no ground disturbance will be authorized in the variance area until the inventory, the effects determinations, any required on-site mitigation measures are completed, and the BLM issues a Notice to Proceed in accord with Stipulation V. Consistent with this PA, BLM will determine where construction may continue while the inventory is being completed.
- F. **Determinations of Eligibility.** For each cultural resource that is within the APE, the BLM will determine NRHP eligibility pursuant to 36 CFR 800.4(c)(1), following National Register Bulletin 15, "How to Apply the National Register Criteria for Evaluation" and will consult with SHPO, and any Indian tribe that attaches religious or cultural significance to any identified cultural resource, regarding BLM's determination. To the extent practicable, NRHP eligibility determinations shall be based on documented inventory information and information provided by tribes and other consulting parties. Where there is insufficient information for making eligibility determinations, the BLM and SHPO may determine that archaeological testing or other investigations are necessary to complete NRHP evaluations for cultural resources that may be affected by the Project.
1. If the BLM, in consultation with SHPO and other consulting parties, determines that the cultural resource is not eligible for listing in the NRHP, the resource will not receive any further review or consideration under this PA.
 2. If the BLM and SHPO agree that the cultural resource is eligible, then BLM will determine the Project's effect in accordance with Stipulation II.G.
 3. If any of the Signatory Parties, tribes, or consulting parties disagree regarding the eligibility of a cultural resource, the Signatory Parties shall work together with tribes or consulting parties, when appropriate, to seek a resolution on the determination of eligibility. If the dispute cannot be resolved within 30 days, the BLM will request a formal determination of eligibility from the Keeper of the National Register (Keeper), pursuant to 36 CFR 800.4(c)(2) and 36 CFR Part 63. The Keeper's determination will be final.
 4. The BLM and SHPO agree that isolates are not eligible for the NRHP.

- G. Assessment of Effect. The BLM, in consultation with SHPO, tribes, and other consulting parties as necessary, will assess effects in order to identify all reasonably foreseeable and potentially adverse effects to historic properties that may occur as a result of the Project. These determinations of effect will serve as the basis for the development of a Historic Properties Treatment Plan (HPTP), as needed.

III. RESOLUTION OF ADVERSE EFFECTS

- A. BLM, in consultation with SHPO, will resolve adverse effects to historic properties by following procedures in this PA.

1. To the extent practicable, BLM will ensure that adverse effects to historic properties are avoided through project design or re-design, through relocation of facilities, or by other means.
2. When avoidance is not feasible, or adverse effects cannot be effectively mitigated through avoidance measures, the BLM will consult with SHPO to ensure that the Applicant, through its qualified contractors, develops and implements an approved Historic Properties Treatment Plan (HPTP) designed to lessen or mitigate project-related effects to historic properties. BLM shall use the criteria in V.B of this Agreement as the basis for BLM's decision to issue any Notice to Proceed The HPTP will be used in place of a separate Memorandum of Agreement (MOA) or MOAs.

B. Historic Properties Treatment Plans

1. Any HPTP prepared for the Project will be consistent with the *Secretary of the Interior's Standards for the Treatment of Historic Properties*, the *Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation*, and the *Advisory Council on Historic Preservation's Treatment of Historic Properties: A Handbook* (1980), *Historic American Buildings (HABS)*, *Historic American Engineering Record (HAER)*, and *Historic American Landscapes Surveys (HALS)* guidance (<http://www.nps.gov/hdp/>), and the ACHP's *Recommended Approach for Consultation on the Recovery of Significant Information from Archaeological Sites* dated June 17, 1999, and appropriate state guidelines.
2. The HPTP will provide specific avoidance or mitigation measures, commensurate with the Project, to lessen any potential for cumulative effects.

3. The HPTP will list all identified historic properties within the APE. The HPTP will identify the specific treatment proposed to address the direct, indirect, and cumulative effects of the Project for both individual historic properties and specific groups of historic properties (e.g., archaeological sites, trails, etc.).
 - a. The Applicant, through their qualified contractor, shall complete the required mitigation regardless of land ownership. The Applicant will obtain private landowner consent by written documentation to allow inventory or mitigation beyond the APE if the boundaries of cultural resources extend beyond the APE. If landowner consent cannot be obtained by the Applicant, the BLM will consult with SHPO regarding alternative methods for estimation of the presence of historic properties in the inaccessible areas as well as possible alternative mitigation measures, as appropriate.
4. BLM will submit the draft HPTP to SHPO for 30-day review and concurrence. BLM may concurrently submit this document to other consulting parties, as BLM deems appropriate. These consulting parties shall have fifteen (15) days from their receipt to review the document. BLM will forward all comments received by consulting parties to the SHPO.
5. Upon agreement between BLM and SHPO as to terms of the HPTP, the HPTP shall be final and made part of this PA.
6. For historic properties where avoidance from direct effects is the treatment strategy, the HPTP will include any additional instructions in accord with Stipulation III.C for specific areas of avoidance (e.g., using shape files, UTM boundaries, etc.) as well as methods of avoidance (e.g., use of flagging, monitors, flagging and monitors, etc.).
7. The HPTP will incorporate, as appropriate, research designs needed to guide archaeological data recovery and other treatment efforts. Existing research designs included within historic context documents acceptable to BLM and SHPO will be utilized when BLM and SHPO agree that they are appropriate to the specific property or group of properties.
8. The HPTP shall include, for properties eligible under criteria A through C, mitigation such as:
 - a. Completion of NRHP nomination forms;
 - b. Partnerships and funding for public archaeology projects;
 - c. Print publication (brochure/book);
 - d. Interpretive signage.
9. The HPTP will include procedures to address identification and protection of inadvertent discoveries.

C. Monitoring and Avoidance Measures.

1. An archaeological monitor listed on a cultural resources use permit or Archaeological Resources Protection Act permit issued by the BLM Nevada at the Crew Chief or Principal Investigator level for prehistoric and/or historic period archaeological resources, as appropriate, shall be present during all initial ground disturbing activities including access roads and road widening. A construction-monitoring plan will be prepared and approved by Signatories as part of the HPTP. The plan will include the role of the monitors and construction crews, training and safety requirements, monitoring report guidelines, coordination with tribes, and procedures for post-review discoveries including human remains in accordance with NAGPRA.
2. Historic properties slated for avoidance and/or monitoring within the direct effects APE or within 100 feet of the Project's direct effects APE will have an archaeological monitor present during construction that occurs within 100 feet of the historic property and/or their boundaries identified by means of temporary fencing prior to the commencement of Project construction. These areas will be marked on construction plans as off limits to ground disturbing activities. This fencing will extend a minimum of 50-ft beyond the determined site boundary in order to provide a buffer.

IV. OTHER CONSIDERATIONS

- A. The BLM shall ensure that information regarding the location of identified cultural resources, and all information identified by a tribe or tribes as confidential, is held confidential to the extent provided by Federal and State law.
- B. Identification, evaluation, and treatment efforts may extend beyond the geographic limits of the APE when the resources being considered extend beyond the boundary of the construction activities. No identification, evaluation, or treatment efforts will occur beyond that necessary to complete the Section 106 process as agreed to in this PA.
- C. Inadvertent Discovery of Cultural Resources: Stipulations of this PA and Protocol are intended to identify and mitigate adverse effects to historic properties. Unplanned discoveries of buried cultural resources are not anticipated; however if potential historic properties are discovered or unanticipated effects occur to known historic properties, the BLM , will ensure that provisions in the Protocol (Section VI.B) and the following stipulations are met:
 1. The Applicant shall ensure that activities associated with the undertaking within 100 meters of the discovery are immediately halted. The Applicant, through its

- contractor, shall immediately notify the BLM Authorized Officer of the discovery followed by written confirmation. The Applicant, through its contractor or its authorized representative, shall secure the location to prevent vandalism or other damage.
2. BLM will notify SHPO, the ACHP, affected tribes and any other identified consulting parties, who will have 48 hours from the initial notification to respond to BLM. Within two (2) working days after initial discovery, BLM will notify SHPO, tribes, and other consulting parties as appropriate, of the decision to either allow Project activities to proceed or to require further evaluation and/or mitigation.
 3. If BLM, in consultation with SHPO, tribes, and other consulting parties, determines that mitigation for discoveries or unanticipated impacts is required, BLM shall solicit comments from SHPO, tribes, and other consulting parties, as appropriate, to develop mitigating measures. BLM shall afford SHPO, tribes and other consulting parties, as appropriate, two (2) working days after receipt to provide BLM with comments to be considered when BLM decides on the nature and extent of mitigative efforts. BLM will ensure that such mitigative actions are implemented before allowing Project activities in the 100-meter discovery area to resume. A copy of the resulting report will be provided to consulting parties within 90 days after report completion and acceptance by BLM.
 4. BLM, in consultation with SHPO, may decide to utilize the Inadvertent Discovery Plan developed for and contained in the HPTP in place of the process described in Stipulation IV.C.1-3.
 5. Potential treatment options include, but are not limited to, archaeological excavation and removal under terms of an approved data recovery plan reflecting the Advisory Council's Guidance on the Recovery of Significant Information from Archaeological Sites (May 18, 1999).
 6. Project activities in the area of the discovery or unanticipated impact will remain halted until the BLM Authorized Officer notifies the Applicant in writing that mitigation is complete and/or activities can resume in accord with Stipulation V below.
 7. The BLM and SHPO may agree in writing to reduce the 100-meter discovery area.

D. Inadvertent Discovery of Human Remains

1. For Native American human remains discovered on BLM-administered lands, the BLM will follow the provisions of Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. § 3001).
2. For non-Native American human remains found on BLM-administered lands, and for and Native American remains found on non-federal lands, the BLM will follow applicable state and local laws.

E. Curation

1. The BLM shall ensure that curation of the material remains and all associated records resulting from identification and data recovery efforts on federally-owned lands is completed in accordance with 36 CFR Part 79 in an approved curation facility in Nevada if possible. The Applicant shall provide written documentation to the BLM indicating that the following materials have been accepted for curation (including acceptable payment of any curation fees) in a facility approved by the BLM: all records, database files, photographs, negatives, maps, field notes, artifacts, reports (both hard copy and electronic copy) and other materials collected or developed for identification, evaluation and/or treatment activities. This document is due to BLM within 60 days of acceptance of the final report for the Project. Materials found on federal lands will remain federal property when curated (unless otherwise appropriately repatriated in accordance with NAGPRA).
2. Archaeological materials collected from private lands pursuant to the implementation of this PA shall be maintained in accordance with 36 CFR Part 79 until all analysis is complete. If private landowners wish to donate collections from their lands to a museum, university, historical society, or other repository, the BLM will offer to assist in the transfer by completing the repository's donation forms and other paperwork. Otherwise, collections from private lands will be returned to the landowners within 30 days of acceptance by the SHPO of the final mitigation report. Documentation of the disposition of private collections shall be provided to the BLM and the SHPO.

V. INITIATION OF CONSTRUCTION ACTIVITIES

- A. The BLM will authorize treatment and/or construction only after issuance of a Record of Decision, issuance of a federal right-of-way grant, Special Use Authorization, and specific NTP or any other federal authorization to the Applicant.
- B. The BLM may issue Notices to Proceed (NTP) on any segment of the Project under the following conditions:

1. The BLM has determined there are no cultural resources within the APE for a specified construction area; or
 2. The BLM, in consultation with SHPO, has determined there are no historic properties within the APE for a specified construction area; or
 3. The Applicant has provided BLM with documentation that the archaeological fieldwork phase of mitigation for historic properties within a directly affected portion of the APE is completed, including a summary description of the work undertaken, as well as a reporting schedule; and
 4. BLM has accepted a summary description of the archaeological fieldwork, or other mitigative fieldwork required for indirect effects as outlined in the HPTP, performed and a reporting schedule for that work. BLM shall provide an electronic copy of the summary to SHPO. SHPO will review the summary and if the SHPO concurs or does not respond within two working days of receipt, BLM shall assume concurrence and issue the NTP; and
 5. The Applicant will comply with BLM 3rd party contracting, described in V.C, sufficient to cover:
 - a. Post-fieldwork costs of archaeological data recovery (including but not necessarily limited to artifact cleaning, laboratory analysis, report preparation, report production and distribution, artifact curation); and
 - b. Costs for completion of all other non-archaeological data recovery treatment activities in the HPTP agreed to by BLM and SHPO, including but not limited to those listed in Stipulation III.B.8.
 6. Historic properties within the direct APE that are slated for avoidance, or for subsequent archaeological mitigation, have been adequately and appropriately marked in the field and/or otherwise identified to ensure satisfactory avoidance and protection from construction activities will occur.
 7. Unless provided for otherwise in the HPTP, or unless otherwise agreed upon in writing between BLM and SHPO, resolution of indirect adverse effects must be initiated within six (6) months of completion of the HPTP, and must be completed within twelve (12) months of initiation. The HPTP will clearly define what fieldwork activities, if any, must be completed prior to the issuance of a NTP for a segment and to which segments of the Project this requirement would apply.
- C. Financial Security. The Applicant will write a Statement of Work (SOW) to be approved by the BLM. Upon approval of the SOW, the Applicant will submit to contractors via the Request for Proposal process. The Applicant must submit no less than three (3) proposals

to the BLM for consideration. The BLM will select one of the proposals and inform the applicant of the selection. The Applicant will hire the BLM-preferred contractor and establish an escrow account to perform the work as stated in the SOW. The escrow account would be established to the full bid amount of the contractor. The escrow officer will distribute funds from the escrow account to the contractor based on contract milestones, per BLM guidance.

VI. TIME FRAMES

- A. The BLM will review and comment on reports submitted on behalf of the Applicant within 30 calendar days of receipt.
- B. The BLM shall submit the results of identification, evaluation, effects assessments, treatment efforts, discovery situations, and HPTPs to SHPO. SHPO shall have 30 calendar days from their receipt to review and comment to BLM on any submission.
- C. If the SHPO does not respond to the BLM within 30 days of the receipt of the submission, the BLM shall assume concurrence with the BLM's findings and recommendations in the submission and proceed accordingly.
- D. A draft final report of all identification, evaluation and treatment activities will be due to BLM from the Applicant within nine (9) months after the completion of the fieldwork associated with the activity unless otherwise negotiated. Final reports will be due sixty (60) days after receiving BLM comments.

VI. DISPUTE RESOLUTION

- A. Should any party to this PA object to the manner in which the measures stipulated in this PA are implemented they shall provide written notice to the BLM of the reason for, and a justification of, the objection. The objecting party also shall provide a proposed resolution for consideration. Upon acceptance of such notice, the BLM shall consult for up to 30 days with the parties to this PA to resolve the objection. If the BLM determines that the objection cannot be resolved, the BLM shall forward all documentation relevant to the dispute to the ACHP with a request for advice on resolution. The ACHP may:
 - 1. Provide the BLM with recommendations which the BLM shall take into account in reaching a final decision regarding the dispute; or
 - 2. Notify the BLM that it will comment within an additional 30 days, in accordance with 36 CFR 800.7(c) (4). Any ACHP comment provided in response to such a request will be taken into account by BLM in accordance with 36 CFR 800.7(c)(4) with reference to the subject of the dispute.

- B. All Signatories and Invited Signatory's responsibilities to carry out all other actions subject to the terms of this agreement that are not the subject of the dispute will remain unchanged.

VII. AMENDMENT

Any Signatory or Invited Signatory to this PA who signed the PA may request that it be amended. The BLM shall notify all consulting parties to the PA of the proposed amendment and consult to reach agreement within 30 days unless the Signatories and Invited Signatories agree to a longer period of consultation or the party proposing amendment retracts its proposal. The amendment will be effective on the date a copy signed by all the Signatories and Invited Signatory is filed by the BLM with the ACHP.

VIII. TERMINATION

- A. Any Signatory and Invited Signatory who signed the PA may terminate it.
- B. The termination process starts when a Signatory or Invited Signatory who has signed the PA provides written notice to the other Signatories and Invited Signatory of its intent to terminate. Termination shall take effect no less than 30 days after this notification, during which time the Signatories and the Invited Signatory shall consult to seek agreement on amendments or any other actions that would address the issues and avoid termination. The notice must explain in detail the reasons for the proposed termination. The PA will be terminated at the end of the 30-day period unless the Signatories and Invited Signatory agree to a longer period of consultation or the party proposing termination retracts its proposal.
- C. If the PA is terminated, the BLM will notify all Consulting Parties to the PA of its plan for considering and resolving adverse effects to historic properties for the remainder of the Project and request the ACHP comment within 45 days per 36 CFR 800.7(c).
- D. In accordance with 36 CFR 800.7(c)(4), the BLM will take into account and respond to comments provided by the ACHP within 45 days, prior to making a final decision on how to proceed with regard to historic properties for the remainder of the Project in the absence of a PA.
- E. The SHPO may withdraw from the PA upon written notice to all Signatories and Invited Signatories after having consulted with them for at least 30 days to attempt to find a way to avoid the withdrawal. Upon withdrawal, the BLM and ACHP will comply with Section 106 and resolution of adverse effects in accordance with the terms of this PA, or by following

36 CFR 800.3 through 800.7 or by the execution of an agreement in accordance with 36 CFR 800.14(b).

IX. DURATION OF THIS PA

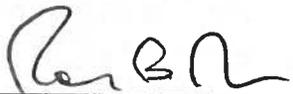
- A. This PA will expire if the Project has not been initiated and the BLM right-of-way grant expires or is withdrawn, or the stipulations of this PA have not been initiated within two (2) years from the date of its execution. At such time, and prior to work continuing on the Project, the BLM must either (a) execute a memorandum of agreement pursuant to 36 CFR 800.6; execute a PA pursuant to 36 CFR 800.14(b); or request, take into account, and respond to the comments of the ACHP under 36 CFR 800.7. Prior to such time, the BLM may consult with the Consulting Parties to reconsider the terms of the PA and amend it in accordance with Stipulation VII. The BLM shall notify the Consulting Parties within 30 days as to the course of action the BLM will pursue.
- B. Unless the PA is terminated pursuant to Stipulation VIII, another agreement executed for the Project supersedes it, or the Project has been cancelled, this PA will remain in full force and effect until BLM, in consultation with the SHPO and Invited Signatory, determines that construction of all aspects of the Project has been completed and that all terms of this PA have been fulfilled in a satisfactory manner, not to exceed ten (10) years, unless each of the Signatories and the Invited Signatory agrees to extend the term hereof through an amendment per Stipulation VII. Upon a determination by BLM that all terms of this PA have been fulfilled in a satisfactory manner, BLM will notify the SHPO in writing of the agency's determination. This PA will terminate on the day that BLM so notifies the SHPO.

X. ROLES AND RESPONSIBILITIES

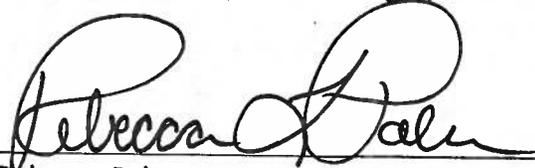
- A. The BLM is the lead agency responsible to ensure that terms of this PA are implemented in accordance with its terms and conditions.
- B. The Applicant agrees to fund directly all required inventory, fieldwork, analysis, reporting, mitigation, curation, and other costs necessary to ensure compliance with this PA and with the NHPA. The Applicant agrees that all resulting work products are or will be the property of the BLM and the U.S. government. The Applicant also agrees to be responsible for any costs of rehabilitation or mitigation should damage occur to cultural resources inside or outside the APE relating to the Applicant's construction, operation or other project-related activities, as well as from negligent actions of the Applicant, its employees, contractors, or any other project personnel.

EXECUTION of this PA by the BLM and the SHPO and implementation of its terms evidence that the BLM has taken into account the effects of this undertaking on historic properties.

SIGNATORIES:



Robert B. Ross, Jr., Field Manager, BLM Las Vegas District Office
Date 2/4/13

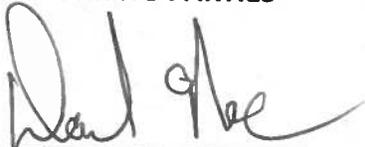


Rebecca Palmer, Acting Nevada State Historic Preservation Officer
Date 2/8/13

INVITED SIGNATORY:

Bob Charlebois, Searchlight Wind Energy LLC
Date

CONCURRING PARTIES



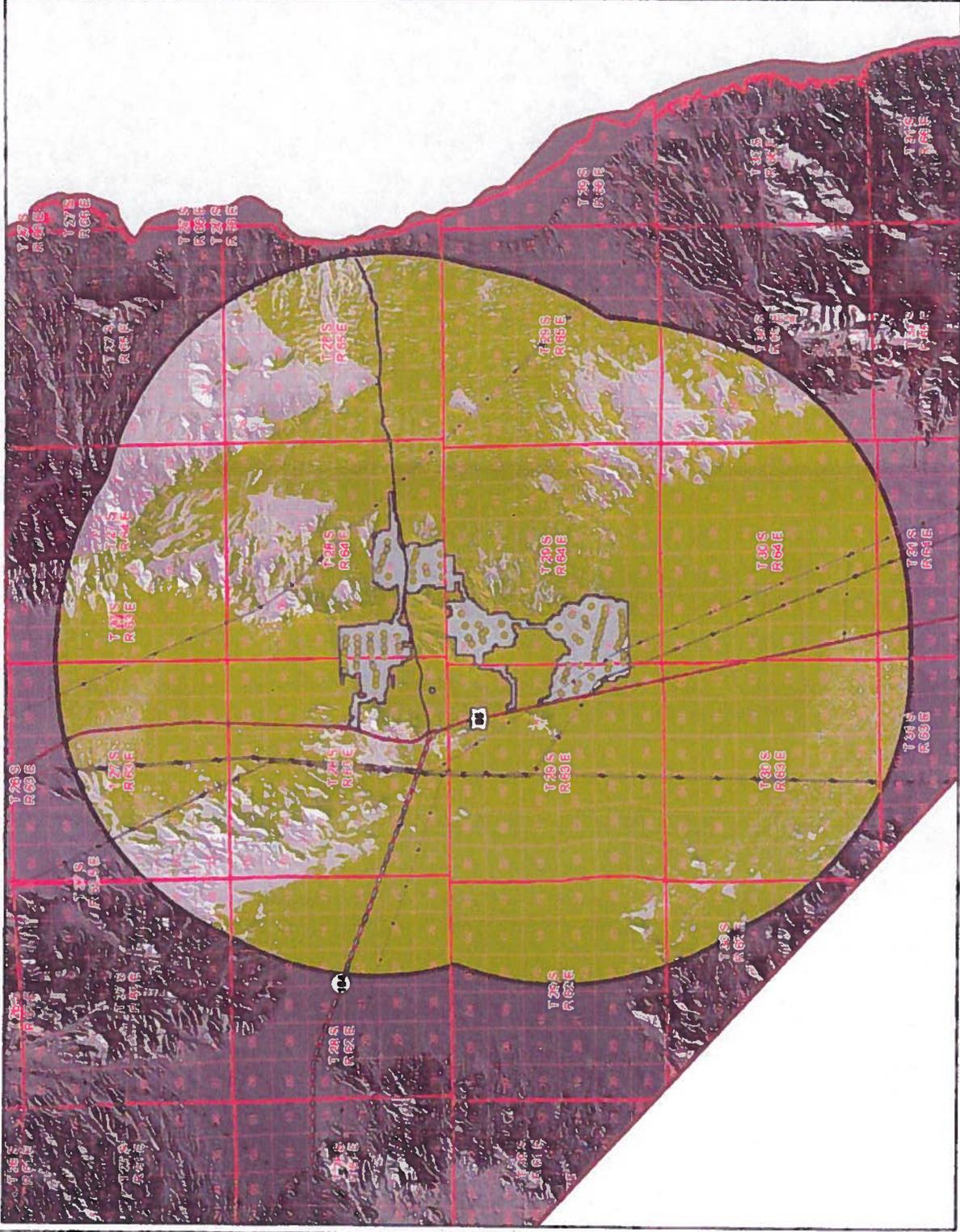
Darrick Moe, Regional Manager
Western, Desert Southwest Customer Service Region
Date 1/31/13

ATTACHMENT 1: Direct Effects APE

ATTACHMENT 2: Visual Effects APE

Searchlight Wind Energy

NVN-084626



Legend

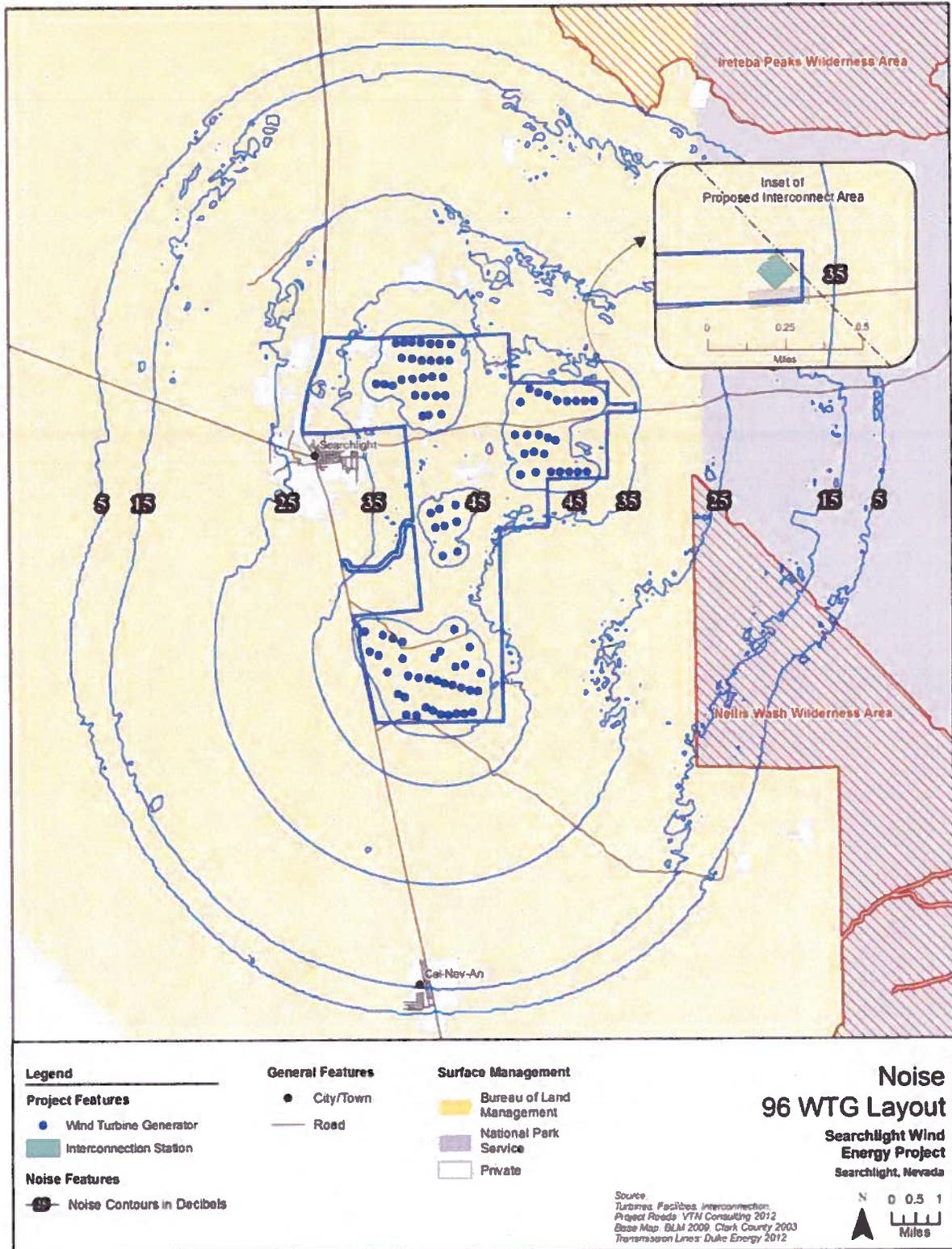
- Southern Nevada District Office
- Searchlight Turbine Location
- Powerline
- SMO RECC Project
- ROW - Wind Development Facility, Pending
- Searchlight Buffer (8 mib)
- Searchlight Viewshed
- Not Visible
- Visible



No warranty is made by the Bureau of Land Management as to the accuracy, reliability, or completeness of these data. The data have been derived from a variety of sources, including aerial photography, ground surveys, and other information. The data are provided for informational purposes only and should not be used for any other purpose without the express written consent of the Bureau of Land Management.



ATTACHMENT 3: Audible Effects APE



1
2 **Figure 4.10-1. Noise Contours for the 96 WTG Layout Alternative**