

APPENDIX 10

Section 106 Draft Memorandums of Agreement for the ECO Substation and Tule Wind Projects

**This appendix is new since publication of the Draft
EIR/EIS.*

APPENDIX 10-1

*Section 106 Draft Memorandum of Agreement for
the ECO Substation Project*

**MEMORANDUM OF AGREEMENT
AMONG THE
BUREAU OF LAND MANAGEMENT-CALIFORNIA,
THE UNITED STATES ARMY CORPS OF ENGINEERS,
SAN DIEGO GAS & ELECTRIC COMPANY,
AND THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,
REGARDING
THE EAST COUNTY SUBSTATION PROJECT
IMPERIAL COUNTY, CALIFORNIA**

WHEREAS, the San Diego Gas & Electric Company (Applicant) has applied for a right-of-way (ROW) grant on public lands managed by the Bureau of Land Management (BLM) and has submitted a Plan of Development (POD) to construct, operate and maintain an electrical energy substation on non-Federal lands and a 138 kilovolt (kV) transmission line across Federal lands, including construction of access and maintenance roads, laydown and staging areas, and support facilities and infrastructure (hereinafter, the “Project”); and

WHEREAS, the BLM has determined that the issuance of a ROW (proposed Federal Action) to the Applicant in accordance with the Federal Land Policy and Management Act (FLPMA) (Public Law 940-579; 43 U.S.C 1701), and authorization of the Project is an undertaking subject to Section 106 of the National Historic Preservation Act (NHPA), 16 USC 470(f), and its implementing regulations under 36 C.F.R. Part 800 (2004) (Section 106); and

WHEREAS, the United States Army Corps of Engineers (COE) may also have Section 106 responsibilities since it may issue a Department of the Army (DA) permit pursuant to Section 404 of the Clean Water Act (proposed Federal action) for discharges of dredged or fill material into jurisdictional waters of the United States associated with the undertaking, and therefore has participated in this consultation and is an Invited Signatory to this Agreement; and

WHEREAS, the BLM is the lead Federal agency for this undertaking for the purpose of complying with Section 106 on behalf of itself and the COE, and the BLM shall be responsible for managing historic properties within the area of potential effects (APE) for the undertaking pursuant to the NHPA; and

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

WHEREAS, the BLM has authorized the Applicant to conduct specific identification efforts for this undertaking including a review of the existing literature and records, cultural resources surveys, ethnographic studies, and geo-morphological studies to identify historic properties that might be located within the APE; and

WHEREAS, the reports (*Prehistoric Artifact Scatters, Bedrock Milling Stations and Tin Can Dumps: Results of a Cultural Resources Study for the SDG&E East County Substation Project, San Diego County, California*, prepared by Insignia Environmental, August 2010, and; *East County Substation Access Road Cultural Resource Survey Results*, Letter report prepared by ASM Affiliates, Carlsbad, CA, ASM Affiliates, Carlsbad, CA, October 8, 2010, and; *Potential Impacts to Cultural Resources Created by the Old Highway 80 – Carrizo Gorge Road Reroute, Jacumba, San Diego County, California*, Letter report prepared by ASM Affiliates, Carlsbad, CA, July 7, 2011, and; *Preliminary Eligibility Recommendations for Cultural Resources in SDG&E's Proposed East County (ECO) Substation Project, San Diego County, California*, Letter report prepared by ASM Affiliates, Carlsbad, CA, July 27, 2011) presents the results of identification and evaluation efforts; and

WHEREAS, the BLM has identified 62 archaeological sites and a segment of old U.S. Highway 80 within the APE which are described in Appendix D to this Agreement, and the archaeological site designated CA-SDI-7074 has been determined eligible for inclusion on the National Register of Historic Places (NRHP) in consultation with California State Historic Preservation Officer (SHPO), archaeological sites CA-SDI-19621 and CA-SDI-19627 and the segment of old U.S. Highway 80 have been determined not eligible for inclusion on the NRHP, and all other archaeological sites will remain unevaluated but will be treated as eligible for inclusion on the NRHP for project management purposes; and

WHEREAS, the BLM has determined that alternatives are under consideration that would have an adverse effect on archaeological site designated CA-SDI-7074 which is eligible for inclusion on the NRHP and has consulted with the SHPO pursuant to 36 C.F.R. Part 800.6 of the regulations implementing Section 106 of the NHPA; and

WHEREAS, in accordance with the regulations at 36 C.F.R. 800.6(a)(1) BLM has notified the Advisory Council on Historic Preservation (ACHP) regarding the effects of alternatives of the undertaking on Historic Properties and has invited them to participate in consultation to resolve the potential effects on Historic Properties, and as per their letter dated August 5, 2011, the ACHP has declined to participate (see 36 C.F.R. 800.6(b)(1), "Resolution without the Council); and

WHEREAS, the Applicant has participated in this consultation per 36 C.F.R. 800.2(c)(4), will be the entity to whom the BLM may grant a ROW, and has the responsibility for carrying out the specific terms of this Agreement under the oversight of the BLM, and is an Invited Signatory to this Agreement; and

WHEREAS, the California Public Utilities Commission (CPUC) is the lead State agency for compliance with the California Environmental Quality Act (CEQA) and has certain responsibilities under State laws and regulations to take into account and mitigate the impacts of

this Project on properties eligible for or included on the California Register of Historic Places and has participated in consultation and is invited to participate in this Agreement as a Concurring Party; and

WHEREAS, pursuant to 36 C.F.R. 800.2(c)(2)(ii) and Executive Order 13175, the BLM is responsible for government-to-government consultation with federally recognized Indian tribes and is the lead federal agency for all tribal consultation and coordination; and

WHEREAS, the BLM has formally notified and invited Federally recognized tribes including the Barona Band of Diegueno Indians, Campo Band of Mission Indians, Ewiiapaayp Band of Kumeyaay Indians, Inaja-Cosmit Band of Mission Indians, Jamul Indian Village, La Posta Band of Kumeyaay Indians, Manzanita Band of Kumeyaay Indians, Mesa Grande Band of Mission Indians, San Pasqual Band of Diegueno Indians, Santa Ysabel Band of Diegueno Indians (Tribes), Sycuan Band of Kumeyaay Nation, and Viejas Band of Kumeyaay Indians, and the non-Federally recognized tribe of the Kwaaymii Laguna Band of Indians (Tribal Organization) to consult on this undertaking and participate in this Agreement as a Concurring Party; and

WHEREAS, the BLM shall continue to consult with the Tribes throughout the implementation of this Agreement regarding effects to historic properties to which they attach religious and cultural significance. BLM will carry out its responsibilities to consult with Tribes that request such consultation with the further understanding that, notwithstanding any decision by these Tribes to decline concurrence, BLM shall continue to consult with these Tribes throughout the implementation of this Agreement; and

NOW, THEREFORE, the BLM and SHPO, (hereinafter “Signatories”), the COE and the Applicant (hereinafter “Invited Signatories”), agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the adverse effect of the undertaking on historic properties, resolve such adverse effects through the process set forth in this Agreement, and provide the ACHP with a reasonable opportunity to comment in compliance with Section 106.

STIPULATIONS

The BLM shall ensure that the following measures are implemented:

I. DEFINITIONS

- a) The definitions found at 36 C.F.R. 800.16 and in Appendix A shall apply throughout this Agreement.

II. AREA OF POTENTIAL EFFECTS

- a) The area of potential effects (APE) for the undertaking is depicted in Appendix B to this Agreement. Appendix B as set forth hereunder may be modified through consultation among the parties to this Agreement without amending the Agreement. The APE, as currently defined, encompasses an area sufficient to accommodate all of the proposed and alternative project components under consideration as of the date of the execution of this Agreement. If it is determined in the future that the undertaking may directly or indirectly affect historic properties located outside the currently defined APE, then the BLM, in consultation with the SHPO and pursuant to 36 C.F.R. 800.4(a)(1), shall determine and document modifications to the APE using the following process:
 - i) Any party to this Agreement may propose that the APE established herein be modified. The BLM shall notify the parties of the proposal and consult for no more than 30 days on the proposal to modify the APE.
 - ii) After considering the views and comments of the consulting parties, and in consultation with SHPO, the BLM will determine and document any modifications to the APE. The BLM will prepare a description and a map of the modification to the APE. The BLM will keep copies of the description and the map on file for its administrative record and distribute copies of each to the other parties to this Agreement within 30 days after modifying the APE.
- b) Where modification to the APE adds a new geographic area, the BLM shall take the steps necessary to identify and evaluate historic properties in the new geographic area, assess the effects of the undertaking on any historic properties in the new geographic area, and provide for the resolution of any adverse effects to such properties in consultation with the parties to this Agreement, Indian tribes, or other parties that request consultation.

III. AVOIDANCE, PROTECTIVE MEASURES AND MITIGATION

- a) The BLM will continue to seek and analyze alternatives that avoid adverse effects to cultural resources.
 - i. For the alternatives under consideration and for the cultural resources described in Table 1 of Appendix D, where cultural resources can be avoided, the BLM will implement the management or protective measures identified in Table 1 of Appendix D and the following:

- (1) Archaeological sites that can be protected from direct impacts, but are within 50 feet , including buffer areas, of proposed construction activities will be identified and labeled as Environmentally Sensitive Areas (ESAs). This includes archaeological sites determined eligible for inclusion in the NRHP and sites that have not been formally evaluated, but are being treated as eligible and avoided for project management purposes.
 - (2) The ESAs will be designated by marking the boundaries of sites with appropriate buffer zones (generally a buffer of 20 feet beyond the outer limits of the site extent, as demonstrated by surface and/or subsurface indications) using temporary fencing or other easily recognizable boundary defining materials.
 - (a) These areas will be shown on the engineering plans for the project as off-limits to construction activities.
 - (b) Once established, an ESA will define areas where construction can occur while preventing construction activities and damage to archaeological resources within the designated ESA.
 - (3) ESAs will be identified and established by a qualified archaeologist prior to initiation of ground disturbing activities and will be maintained and monitored for the duration of the work effort in the ESA vicinity.
- b) Should BLM approve an alternative that adversely affects archaeological site CA-SDI-7074, the BLM shall mitigate the adverse effect as follows:
- i. The BLM shall ensure that the adverse effect of the undertaking on archaeological site CA-SDI-7074 is resolved by implementing and completing the historic properties management plan (HPMP) referred to as *Research Design for Archaeological Data Recovery at Prehistoric Site CA-SDI-7074 for the San Deigo Gas & Electric East County Substation Project, San Diego County, California (Draft)*, prepared by ASM Affiliates, August 2011, which is Appendix C to this Agreement. Due to the property's scientific or information value as defined in Criterion D of 36 C.F.R. 63, the qualifying criteria for inclusion on the NRHP, data recovery, scientific study and observation is the appropriate treatment for the archaeological values at CA-SDI-7074 as outlined in the HPMP. Amendment of the HPMP will not require amendment of this Agreement.
 - ii. The HPMP will include off-site treatment measures to resolve adverse effects (direct, indirect and cumulative) resulting from the project which are being determined through BLM's consultations with consulting parties and Native American Tribes. Off-site treatment measures may include:
 - (1) Provisions to support and enhance public education and interpretation programs at the museum where artifacts collected through data recovery will be curated (e.g., support in the form of funding for one or more interns to inventory and update museum collections and/or develop an interpretive archeological exhibit of traveling display).
 - (2) Completion of ethnographic study related to and archaeological ground-

truthing of the cultural resources that comprise the Jacumba Discontiguous Archeological District.

- (3) Identification and implementation of resource protection measures to stabilize and/or protect cultural resources within the Jacumba Discontiguous Archeological District (e.g., funding for fencing, gates and patrol).
- iii. The HPMP may be augmented or amended to include additional provisions for alternative mitigation or treatment to which the parties to this Agreement may agree are appropriate and reasonable.
- iv. The HPMP may include procedures for managing discoveries and unanticipated effects as provided in Stipulation V.
- v. If the HPMP has not been finalized by the date of execution of this Agreement, the BLM shall continue consultation on the HPMP. If the HPMP has not been finalized by the date of the Decision Record, the BLM may submit the HPMP to the consulting parties for a 30-day review period. A consulting party may provide its comments directly to the SHPO with a copy to the BLM within the 30-day comment period. BLM will consider timely comments when finalizing the HPMP. The BLM will forward to the SHPO all comments regarding the HPMP received during the comment period.
 - (1) The BLM will provide the consulting parties with written documentation indicating whether and how the draft HPMP will be modified in response to any timely comments received. If the HPMP is revised in response to comments received within the 30 day period, BLM shall submit the revised HPMP to all parties for a final, 15 day review period. BLM will consider any timely comments in finalizing the HPMP and provide the consulting parties with a copy.
- vi. Should the undertaking be approved by the BLM, the HPMP will be implemented after the ROW is granted and issuance of any DA permit by the COE, and prior to the issuance of a Notice to Proceed for construction in those portions of the undertaking addressed by the HPMP.

IV. MONITORING

- a) The Applicant, in consultation with the parties to this Agreement, may develop a comprehensive monitoring plan. Where a comprehensive monitoring plan has been approved by the Signatories, the procedures in the plan shall be incorporated into the HPMP and shall take precedent. In the absence of a comprehensive monitoring plan, the following provisions shall apply.
- b) Qualified archaeologist(s) will be on site during construction to observe grading, trenching or other ground disturbing activities for any facilities, roads or other project components related to the undertaking near ESAs and in other areas determined

appropriate for full-time monitoring, as detailed in Stipulation III, an HPMP prepared pursuant to this Agreement, and Appendix D.

- i. Archaeological monitors will be qualified archaeologists who are familiar with the types of historic and prehistoric archaeological resources that may occur in the APE and will be directly supervised by a principal archaeologist (PA). The principal archaeological monitor will be approved by the BLM prior to construction.
- ii. Documentation of archaeological monitoring activities will be submitted biweekly by the PA to the BLM by email. Documentation will include the location of archaeological monitoring activities for the reporting time period, as well as a description of any archaeological resources identified and appropriate actions taken. The PA will prepare a monthly field monitoring verification report with the compiled monitoring observations, results, and actions taken for submission and approval to the BLM.
 - (1) At the request of consulting parties or Indian tribes, the PA will provide copies of biweekly and monthly archaeological monitoring reports.
- c) To facilitate continued tribal consultation for this undertaking, in consultation with Indian tribes and the BLM, the Applicant has agreed to develop and implement a tribal monitoring program to afford representatives designated by Indian tribes (tribal monitoring consultants) the opportunity to monitor and be on site during construction to observe grading, trenching or other ground disturbing activities for facilities, roads or other project components related to the undertaking near ESAs and in other areas determined appropriate for monitoring, as detailed in the HPMP and Appendix D.
 - i. The tribal monitoring program will describe the role of all parties in the program, specify the terms, expectations, notifications, reports, training, or deliverables to be provided, and include a specific procedure to be followed in the event that a tribal monitoring consultant is not provided or is not available.
 - (1) Tribal monitoring consultants will be individuals designated by the Tribal parties to this Agreement and will report to the PA.
 - ii. Documentation of tribal monitoring activities will be submitted to the Tribes and the BLM in accordance with the terms of the tribal monitoring program.
- d) Upon completion of all monitoring tasks and requirements implemented pursuant to this Agreement, the PA will submit within three months a final monitoring report to the BLM for review and approval describing the monitoring program and the findings and results, and presenting a detailed professional description, analysis, and evaluation of any cultural resources that were encountered and evaluated during construction.
 - i. The BLM will provide a copy of the final monitoring report to the parties to this Agreement who so request.

- e) The Applicant, in consultation with the parties to this Agreement, shall establish a Long Term Management Plan (LTMP) for the post-construction monitoring and condition assessment of sites in the APE which could be subject to project operations and maintenance activities.
 - i. The Applicant shall submit a draft LTMP to the BLM within six months from the date of the issuance of the Notice to Proceed for the undertaking.
 - ii. The BLM will submit the LTMP to the consulting parties for review. The parties will be afforded 30 days following receipt of the LTMP to submit any written comments to BLM. BLM will provide the reviewing parties with written documentation indicating whether and how the draft LTMP will be modified in accordance with any reviewing party comments. Unless the reviewing parties object to this documentation in writing to the BLM within 30 days following receipt, BLM may modify the LTMP as BLM may deem appropriate. Thereafter, BLM may issue the LTMP in final form and distribute the LTMP to the consulting parties.

V. POST-REVIEW DISCOVERIES AND UNANTICIPATED EFFECTS

- a) The Applicant, in consultation with the parties to this Agreement, shall develop a comprehensive plan to manage post-review discoveries and unanticipated effects which shall be made Appendix E to this Agreement
 - i. Where an HPMP is prepared pursuant to this Agreement, the plan to manage post-review discoveries and unanticipated effects may be provided in the HPMP.
 - ii. Amendment of the procedures for discoveries and unanticipated effects as provided in the HPMP will not require amendment of this Agreement.
- b) If human remains and/or associated funerary objects compose all or part of the discovery, then the BLM shall follow the process described in Stipulation VI.
- c) The BLM at its discretion may treat any discovered property to be eligible for inclusion in the NRHP for project management purposes. The BLM's compliance with this stipulation shall satisfy the requirements of 36 C.F.R. 800.13(c).

VI. TREATMENT OF HUMAN REMAINS OF NATIVE AMERICAN ORIGIN

- a) The BLM shall ensure that any Native American burials and related items discovered on BLM administered lands during implementation of the terms of the Agreement will be treated in accordance with the requirements of the NAGPRA. The BLM will consult with concerned Tribes, Tribal Organizations, or individuals in accordance with the requirements of Sections 3(c) and 3(d) of the NAGPRA and implementing regulations found at 43 C.F.R. Part 10 to address the treatment of Native American burials and related cultural items that may be discovered during implementation of the undertaking.

- b) The BLM shall ensure that Native American burials and related cultural items on non-Federal lands are treated in accordance with the applicable requirements of the California Public Resources Code at Sections 5097.98 and 5097.991, and of the California Health and Human Safety Code at Section 7050.5(c).

VII. REPORTING

- a) Within twelve (12) months after BLM has determined that all fieldwork required by Stipulation III has been completed, BLM will ensure preparation, and concurrent distribution to the consulting parties, a written draft technical report that documents the results of implementing the treatment requirements of the HPMP. The reviewing parties will be afforded 30 days following receipt of the draft technical report to submit any written comments to BLM. Failure of these parties to respond within this time frame shall not preclude BLM from authorizing revisions to the draft technical report as BLM may deem appropriate. BLM will provide the reviewing parties with written documentation indicating whether and how the draft technical report will be modified in accordance with any reviewing party comments. Unless the reviewing parties object to this documentation in writing to the BLM within 30 days following receipt, BLM may modify the draft technical report as BLM may deem appropriate. Thereafter, BLM may issue the technical report in final form and distribute this document in accordance with Paragraph “b” of this stipulation.
- b) Copies of the final technical report documenting the results of implementing the treatment requirements of the HPMP will be distributed by BLM to the consulting parties and to the appropriate California Historical Resources Information Survey (CHRIS) Regional Information Center.

VIII. ADMINISTRATIVE STANDARDS

- a) **PROFESSIONAL QUALIFICATION STANDARDS.** All actions prescribed by this Agreement that involve the identification, evaluation, analysis, recordation, treatment, monitoring, and disposition of historic properties and that involve the reporting and documentation of such actions in the form of reports, forms or other records, shall be carried out by or under the direct supervision of a person or persons meeting, at a minimum, the Secretary of the Interior’s Professional Qualifications Standards (PQS), as appropriate (48 Fed. Reg. 44739 dated September 29, 1983). However, nothing in this Stipulation may be interpreted to preclude any party qualified under the terms of this paragraph from using the services of persons who do not meet the PQS, so long as the work of such persons is supervised by someone who meets the PQS. Indian tribes have the sole authority to certify and approve tribal consultants who may perform monitoring activities in support of implementation of this Agreement.
- b) **DOCUMENTATION STANDARDS.** Reporting on and documenting the actions cited in this Agreement shall conform to every reasonable extent with the Secretary of the Interior’s Standards and Guidelines for Archeology and Historic Preservation (48 Fed

Reg. 44716-40 dated September 29, 1983), as well as, the BLM 8100 Manual, the California Office of Historic Preservation's Preservation Planning Bulletin Number 4(a) December 1989, Archaeological Resource Management Reports (ARMR): Recommended Contents and Format (ARMR Guidelines) for the Preparation and Review of Archaeological Reports, and any specific and applicable county or local requirements or report formats.

- c) **CURATION STANDARDS.** On BLM-administered land, all records and materials resulting from the actions required by this Agreement shall be curated in accordance with 36 C.F.R. Part 79, and the provisions of the NAGPRA, 43 C.F.R. Part 10, as applicable. To the extent permitted under Sections 5097.98 and 5097.991 of the California Public Resources Code, the materials and records resulting from the actions required by this Agreement for private lands shall be curated in accordance with 36 C.F.R. Part 79. The BLM will seek to have the materials retrieved from private lands donated through a written donation agreement. The BLM will attempt to have all collections curated at one local facility where possible unless otherwise agreed to by the consulting parties.

IX. IMPLEMENTATION OF THE UNDERTAKING

- a) The BLM may authorize construction activities, including but not limited to those listed below, to proceed in specific geographic areas where there are no historic properties; where there will be no adverse effect to historic properties; where a monitoring and discovery process or plan is in place per Stipulation IV and V, or in areas where an HPMP(s) has been approved, initiated and field work completed. Such construction activities may include:
 - i) demarcation, set up, and use of staging areas for construction of the undertaking,
 - ii) conduct of geotechnical boring investigations or other geophysical and engineering activities, and
 - iii) grading, constructing buildings, and installing photovoltaic panels.
 - iv) construction of transmission towers
- b) Initiation of any construction activities on Federal lands shall not occur until after the Signatory parties agree and BLM issues the ROD, ROW grant, and Notice(s) to Proceed. Construction shall not occur in waters of the United States on or off federal lands until the COE issues the DA permit.

X. AMENDMENTS TO THE AGREEMENT

- a) This Agreement may be amended only upon written agreement of the Signatories.
 - i) Upon receipt of a request to amend this Agreement, the BLM will immediately notify the other consulting parties and initiate a 30 day period to consult on the proposed amendment, whereupon all parties shall consult to consider such amendments.
 - ii) If agreement to the amendment cannot be reached within the 30 day period, resolution

of the issue may proceed by following the dispute resolution process in Stipulation XI.

- b) This Agreement may be amended when such an amendment is agreed to in writing by all Signatories.
- c) Amendments to this Agreement shall take effect on the dates that they are fully executed by the Signatories.
- d) Modifications, additions, or deletions to the appendices made as a result of continuing consultation among the consulting parties do not require the Agreement to be amended.

XI. DISPUTE RESOLUTION

- a) Should any party to this Agreement object at any time to any actions proposed or the manner in which the terms of this Agreement are implemented, the BLM shall consult with such party to resolve the objection. If the BLM determines that such objection cannot be resolved, the BLM will:
 - i) Forward all documentation relevant to the dispute, including the BLM's proposed resolution, to the ACHP. The ACHP shall provide the BLM with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the BLM shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. The BLM will then proceed according to its final decision.
 - ii) If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, the BLM may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the BLM shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the MOA, and provide them and the ACHP with a copy of such written response.
 - iii) The BLM's responsibility to implement all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

XII. TERMINATION

- a) If any Signatory or Invited Signatory to this Agreement determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation X above. If within sixty (60) days an amendment cannot be reached;
 - i) a Signatory or Invited Signatory may terminate their participation in the Agreement

upon written notification to the other Signatories and Invited Signatories.

- b) If the Agreement is terminated, and prior to work continuing on the undertaking, the BLM shall continue to follow the process provided at 36 C.F.R. 800.6 until (a) a new Agreement is executed pursuant to 36 C.F.R. 800.6 or (b) the agencies request, take into account, and respond to the comments of the ACHP under 36 C.F.R. 800.7. The BLM shall notify all parties to this Agreement as to the course of action it will pursue.

XIII. PARTIES TO THE AGREEMENT

- a) Should conditions of the undertaking change such that other federal agencies, state agencies, Indian tribes, tribal organizations or other organizations or individuals not already party to this Agreement request in writing to participate, the BLM will notify the other consulting parties and consider the request to participate in the Agreement. If the BLM determines that the party should be invited to participate in this Agreement, the BLM shall notify the requesting party in writing and the Agreement shall be amended following the procedures in Stipulation X.
- b) Should conditions of the undertaking change such that a Signatory or Invited Signatory to this Agreement determine that its participation in the undertaking is no longer required the party may withdraw from participation by informing the BLM. The BLM shall inform the other parties to this Agreement of the withdrawal. Withdrawal of a Signatory or Invited Signatory to the Agreement where its participation is no longer required for purposes of section 106 does not terminate the Agreement as described in Stipulation XII.
- c) Should a Concurring Party determine that its participation in the undertaking and this Agreement is no longer warranted, the party may withdraw from participation by informing the BLM. The BLM shall inform the other parties to this Agreement of the withdrawal. Withdrawal of a Concurring Party to the Agreement does not require an amendment of the Agreement.

XIV. DURATION OF THIS AGREEMENT

- a) This Agreement will expire if the undertaking has not been initiated and the BLM ROW grant expires or is withdrawn, or the stipulations of this Agreement have not been initiated, within five (5) years from the date of its execution. Prior to such time, the BLM may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation X. Prior to work continuing on the undertaking, the BLM shall continue to follow the process provided at 36 C.F.R. 800.6 until either (a) a new memorandum of agreement or programmatic agreement is executed pursuant to 36 C.F.R. 800.6, or (b) the BLM request, take into account, and respond to the comments of the ACHP under 36 C.F.R. 800.7. The BLM shall notify the parties to the Agreement as to the course of action they will pursue.
- b) Unless the Agreement is terminated pursuant to Stipulation XII, another agreement executed for the undertaking supersedes it, or the undertaking itself has been terminated,

this Agreement will remain in full force and effect until BLM, in consultation with the other Signatories, determines that implementation of all aspects of the undertaking has been completed and that all terms of this have been fulfilled in a satisfactory manner. Upon a determination by BLM that implementation of all aspects of the undertaking have been completed and that all terms of this Agreement have been fulfilled in a satisfactory manner, BLM will notify the parties to this Agreement in writing of the agency's determination. This Agreement will terminate and have no further force or effect 30 days after BLM so notifies the Signatories to this Agreement, unless BLM retracts its determination before the end of that period.

XV. EFFECTIVE DATE

- a) This Agreement and any amendments shall take effect on the date that it has been fully executed by the Signatories.
- b) Execution and implementation of this Agreement is evidence that the BLM and the COE have taken into account the effect of this undertaking on historic properties, afforded the ACHP a reasonable opportunity to comment, and that the BLM and COE have satisfied their responsibilities under Section 106. The BLM shall be responsible for managing historic properties within the APE for this undertaking pursuant to the NHPA. The Signatories and Invited Signatories to this Agreement represent that they have the authority to sign for and bind the entities on behalf of whom they sign.

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SIGNATORY PARTIES

U.S. BUREAU OF LAND MANAGEMENT

BY: _____ DATE: _____
Margaret L. Goodro
Manager, El Centro Field Office

CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

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

DRAFT

INVITED SIGNATORY PARTIES

United States Army Corps of Engineers, Los Angeles District
San Diego Gas & Electric Company

DRAFT

Invited Signatory

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

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

DRAFT

Invited Signatory

SAN DIEGO GAS & ELECTRIC COMPANY

BY: _____ DATE: _____

TITLE: _____

DRAFT

CONCURRING PARTIES

BARONA BAND OF DIEGUENO INDIANS
CAMPO BAND OF MISSION INDIANS
EWIAAPAAYP BAND OF KUMEYAAY INDIANS
JAMUL INDIAN VILLAGE
INAJA-COSMIT BAND OF MISSION INDIANS
KWAAYMII LAGUNA BAND OF INDIANS
LA POSTA BAND OF KUMEYAAY INDIANS
MANZANITA BAND OF KUMEYAAY INDIANS
MESA GRANDE BAND OF MISSION INDIANS
SAN PASQUAL BAND OF DIEGUENO INDIANS
SANTA YSABEL BAND OF DIEGUENO INDIANS
SYCUAN BAND OF KUMEYAAY NATION
TORRES-MARTINEZ DESERT CAHUILLA INDIANS
VIEJAS BAND OF KUMEYAAY INDIANS
CALIFORNIA PUBLIC UTILITIES COMMISSION

DRAFT

BARONA BAND OF DIEGUENO INDIANS

BY: _____ DATE: _____

TITLE: _____

DRAFT

Concurring Party

CAMPO BAND OF MISSION INDIANS

BY: _____ DATE: _____

TITLE: _____

DRAFT

Concurring Party

EWIAAPAAYP BAND OF KUMEYAAY INDIANS

BY: _____ DATE: _____

TITLE: _____

DRAFT

Concurring Party

INAJA-COSMIT BAND OF MISSION INDIANS

BY: _____ DATE: _____

TITLE: _____

DRAFT

Concurring Party

JAMUL INDIAN VILLAGE

BY: _____ DATE: _____

TITLE: _____

DRAFT

Concurring Party

KWAAYMII LAGUNA BAND OF INDIANS

BY: _____ DATE: _____

TITLE: _____

DRAFT

Concurring Party

LA POSTA BAND OF KUMEYAAY INDIANS

BY: _____ DATE: _____

TITLE: _____

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Concurring Party

MANZANITA BAND OF KUMEYAAY INDIANS

BY: _____ DATE: _____

TITLE: _____

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MESA GRANDE BAND OF MISSION INDIANS

BY: _____ DATE: _____

TITLE: _____

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Concurring Party

SAN PASQUAL BAND OF DIEGUENO INDIANS

BY: _____ DATE: _____

TITLE: _____

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Concurring Party

SANTA YSABEL BAND OF DIEGUENO INDIANS

BY: _____ DATE: _____

TITLE: _____

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Concurring Party

SYCUAN BAND OF KUMEYAAY NATION

BY: _____ DATE: _____

TITLE: _____

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Concurring Party

TORRES-MARTINEZ DESERT CAHUILLA INDIANS

BY: _____ DATE: _____

TITLE: _____

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Concurring Party

VIEJAS BAND OF KUMEYAA Y INDIANS

BY: _____ DATE: _____

TITLE: _____

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Concurring Party

CALIFORNIA PUBLIC UTILITIES COMMISSION

BY: _____ DATE: _____

TITLE: _____

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APPENDIX A - DEFINITIONS

- a) ***Area of Potential Effect.*** The APE is defined as the total geographic area or areas within which the undertaking may directly or indirectly cause alterations in the character or use of historic properties per 36 C.F.R. 800.16(d). The APE is influenced by the scale and nature of an undertaking and includes those areas which could be affected by an undertaking prior to, during and after construction.
- b) ***Concurring Parties.*** Collectively refers to consulting parties with a demonstrated interest in the undertaking, who agree, through their signature, with the terms of this Agreement. Concurring Parties may propose amendments to this Agreement.
- c) ***Cultural Resource.*** A cultural resource is an object or definite location of human activity, occupation, use, or significance identifiable through field inventory, historical documentation, or oral evidence. Cultural resources are prehistoric, historic, archaeological, or architectural sites, structures, buildings, places, or objects and locations of traditional cultural or religious importance to specified social and/or culture groups. Cultural resources include the entire spectrum of objects and places, from artifacts to cultural landscapes, without regard to eligibility for inclusion on the National Register of Historic Places (NRHP) or California Register of Historical Resources (CRHR).
- d) ***Consulting Parties.*** Collectively refers to the Signatories, Invited Signatories and Concurring Parties who have signed this Agreement.
- e) ***Historic Properties.*** Properties (cultural resources) that are included in, or eligible for inclusion in, the NRHP maintained by the Secretary of the Interior and per the NRHP eligibility criteria at 36 C.F.R.60.4 and may include any prehistoric or historic district, site, building, structure, traditional cultural property or object. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization that meet the NRHP criteria. The term “eligible for inclusion on the NRHP” refers both to properties formally determined as such in accordance with regulations of the Secretary of the Interior and all other properties that meet the NRHP criteria.
- f) ***Historical Resources.*** Historical resources are cultural resources that meet the criteria for listing on the CRHR as provided at California Code of Regulations Title 14, Chapter 11.5, Section 4850 and may include, but are not limited to, any object, building, structure, site, area, place, record, or manuscript which is historically or archaeologically significant, or is significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California.
- g) ***Invited Signatories.*** Invited Signatories are parties that have specific responsibilities as defined in this Agreement. Those Invited Signatories who actually sign this Agreement have the same rights with regard to seeking amendment or termination of this Agreement as the Signatory Parties, but whose signatures are not required for execution of the Agreement. The Invited Signatory to this Agreement is the Applicant.
- h) ***Lands Administered by the U.S. Department of Interior, Bureau of Land Management (BLM)*** means any federal lands under the administrative authority of the BLM.

- i) ***Lands Regulated by the U.S. Army Corps of Engineers*** (COE) means any lands subject to regulation by the COE pursuant to Section 404 of the Clean Water Act (33 USC Part 1344) or other law, and for which the COE has issued a Department of the Army permit.
- j) ***Literature Review***. A literature review is one component of a BLM class I inventory, as defined in BLM Manual Guidance 8100.21(A)(1), and is a professionally prepared study that includes a compilation and analysis of all reasonably available cultural resource data and literature, and a management-focused, interpretive, narrative overview, and synthesis of the data. The overview may also define regional research questions and treatment options.
- k) ***Records Search***. A records search is one component of a BLM class I inventory and an important element of a literature review. A records search is the process of obtaining existing cultural resource data from published and unpublished documents, BLM cultural resource inventory records, institutional site files, State and national registers, interviews, and other information sources.
- l) ***Signatories***. Signatories are parties that have the sole authority to execute, amend or terminate this Agreement. Signatories to this Agreement are the BLM, COE, DOE, and SHPO.
- m) ***Traditional Cultural Property***. A traditional cultural property is defined generally as a property that is important to a living group or community because of its association with cultural practices or beliefs that (a) are rooted in that community's history, and (b) are important in maintaining the continuing cultural identity of the community. It is a place, such as a traditional gathering area, prayer site, or sacred/ceremonial location that may figure in important community traditions. These places may or may not contain features, artifacts, or physical evidence, and are usually identified through consultation. A traditional cultural property may be eligible for inclusion in the NRHP and the CRHR.
- n) ***Tribes***. The federally recognized Indian tribes that the BLM is consulting with on this undertaking.
- o) ***Tribal Organization***. A non-Federally recognized Indian tribe or Native American organization that the BLM is consulting with on this undertaking.
- p) ***Windshield Survey***. A windshield survey is the driving or walking of surveyors along streets and roads of a community in order to observe and record the buildings, structures, and landscape characteristics seen from those vantage points. A windshield survey is a method commonly utilized in reconnaissance surveys to identify built-environment resources, such as buildings, objects, and structures.

APPENDIX B – AREA OF POTENTIAL EFFECT

- a) The BLM has defined the APE for the East County Substation Project based on consideration of both direct and indirect impacts. Below is a discussion about the APE and the methodology used to so define, and the survey methodology utilized within each APE.
 - i) The area within which historic properties could sustain direct effects as a result of the undertaking is defined to include:
 - (1) The block area of installation of the proposed solar energy generating facility, which includes approximately 86 acres of private lands, and generally includes; the Southeast $\frac{1}{4}$ of Southeast $\frac{1}{4}$ of Section 2, Township 17 South and Range 12 East, and; the Southwest $\frac{1}{4}$ of Section 1, Township 17 South, Range 12 East, and; the Southwest $\frac{1}{4}$ and Northwest $\frac{1}{4}$ of Southeast $\frac{1}{4}$ of Section 1, Township 17 South, Range 12 East (all San Bernardino Base Meridian).
 - (2) All linear elements of the undertaking including:
 - (a) A ROW for the generation loop-in interconnection from the Southwest Powerlink transmission line is approximately 100-foot wide and 1500 feet long. The survey corridor for cultural resources for this linear element was established as a 50-foot wide buffer on either side of the center line (100-foot wide corridor).
 - (b) A ROW for construction of the 138 kV transmission line. The ROW is approximately 100-foot wide and 13.3 miles long and extends from the intersection of the East County Substation to the Boulevard Substation. The survey corridor for cultural resources for this linear element was established as a 50-foot wide buffer on either side of the center line (100-foot wide corridor).
 - ii) The area within which historic properties could sustain indirect effects, including visual, auditory, atmospheric, and contextual, as a result of the undertaking includes:
 - (1) Historic properties within a .5-mile buffer around the APE for direct effects that are identified through a review of existing literature and records search, information or records on file with the BLM or at the South Coastal Information Center, interviews or discussions with local professional or historical societies and local experts in history or archaeology.
 - (a) Historic properties identified through archaeological or other field investigations for this undertaking that, as a result of project redesign to avoid direct effects to cultural resources, are no longer within the APE.

- (2) Historic properties included in the Native American Heritage Commission Sacred Lands Files, identified through a literature review or records search, or identified by a Tribe or Tribal Organization, through consultation as having religious or cultural significance that may be affected by the undertaking.
- (3) Historic properties that have been identified by a consulting party, organization, governmental entity, or individual through consultation or the public commenting processes as having significance or being a resource of concern that may be affected by the undertaking.
- (4) Built-environment resources located within one-half mile of the project footprint whose historic settings could be adversely affected.
 - (a) On private property, historic properties within one-half mile of the direct effects APE that are identified through surveys, where access was granted, and windshield surveys, where access was not granted.

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APPENDIX C: Historic Properties Management Plan: Research Design for Archaeological Data Recovery at Prehistoric Site CA-SDI-7074 for the San Diego Gas & Electric East County Substation Project, San Diego County, California (Draft)

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**APPENDIX D: CULTURAL RESOURCES WITHIN THE APE AND PROPOSED
TREATMENT/MANAGEMENT STRATEGY**

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Table 1: Cultural Resources within the APE and Proposed Treatment/Management Strategy

Site Designation	Site Description	Eligibility Recommendation / Criteria or Values	Associated Project Component	Effects / Management
P-37-024023	Old Highway 80	Portions recommended eligible; Criterion A	Old Highway 80 Underground Transmission (UG)	No; Significant values avoided; Underground burial of transmission line
SDI-89	Prehistoric Ceramic Scatter	Not relocated; Not eligible	138kV Pole: SP-43	No
SDI-4477	Prehistoric Habitation	Not Evaluated, Criterion D	Old Highway 80 UG Transmission	No; Avoided; UG in existing disturbed road bed; Monitoring
SDI-6115	Prehistoric Artifact Scatter, Prehistoric Hearths	Not Evaluated, Criterion D	Substation Pad	No; Avoided; Monitoring
SDI-6119	Multi Component: Prehistoric Lithic Scatter, Prehistoric Roasting Pit, Historical Refuse Scatter	Not Evaluated, Criterion D	Access Road Alternative	No; Avoided; Monitoring
SDI-6742	Prehistoric Lithic Scatter	Not relocated; Not eligible	Old Highway 80 UG Transmission	No
SDI-7007	Prehistoric Lithic Scatter	Not Evaluated, Criterion D	138kV Pole: SP-55	No; Avoided; Monitoring
SDI-7009	Prehistoric Artifact Scatter	Not Evaluated, Criterion D	138kV Pole: SP-59	No; Avoided; Monitoring
SDI-7010	Prehistoric Quarry	Not relocated; Not eligible	138kV Pole: SP-61	No
SDI-7012	Rock Circle	Not Evaluated, Criterion D	138kV Pole: SP-51	No; Avoided; Monitoring
SDI-7013	Prehistoric Temporary Camp	Not Evaluated, Criterion D	138kV Pole: SP-50	No; Avoided; Monitoring
SDI-7030	Prehistoric Quarry	Recommended Eligible; Criterion D	138kV Pole: SP-76 and SP-77	No; Avoided; Monitoring
SDI-7043	Multi-component: Prehistoric Artifact Scatter, Prehistoric Bedrock Milling, Historical Refuse Scatter	Recommended Eligible; Criterion D	Old Highway 80 UG Transmission	No; Avoided; Monitoring
SDI-7054	Multi-component: Prehistoric Artifact Scatter; Historical Refuse Scatter	Recommended Not Eligible	Old Highway 80 UG Transmission	No
SDI-7056	Prehistoric Lithic Scatter	Not Evaluated, Criterion D	138kV Pole: SP-86	No; Avoided; Monitoring
SDI-7060	Prehistoric Habitation	Recommended Eligible; Criterion D	Old Highway 80 UG Transmission	No
SDI-7070	Prehistoric Ceramic Scatter	Not relocated; Not eligible	138kV Pole: SP-42	No

Site Designation	Site Description	Eligibility Recommendation / Criteria or Values	Associated Project Component	Effects / Management
SDI-7071	Prehistoric Artifact Scatter, Prehistoric Bedrock Milling	Not Evaluated, Criterion D	138kV Pole: SP-47	No; Avoided; Monitoring
SDI-7074	Multi-component: Prehistoric Artifact Scatter, Prehistoric Bedrock Milling, Hearths, Historical Refuse Scatter	Recommended Eligible; Criterion D	Substation Pad	Yes
SDI-7079	Prehistoric Artifact Scatter	Not Evaluated, Criterion D	Old Highway 80 UG Transmission	No; Avoided; Monitoring
SDI-8312	Prehistoric Lithic Scatter	Not Evaluated, Criterion D	138kV Pole: SP-61	No; Avoided; Monitoring
SDI-8314	Prehistoric Lithic Scatter	Not relocated; Not eligible	138kV Pole: SP-66	No
SDI-8316	Prehistoric Lithic Scatter	Not relocated; Not eligible	138kV Pole: SP-70	No
SDI-8430	Prehistoric Lithic Scatter	Not Evaluated, Criterion D	Old Highway 80 UG Transmission	No; Avoided; Monitoring
SDI-9175	Historical Road Grader	Not relocated; Not eligible	Border to Boulevard UG Transmission	No
SDI-17873	Prehistoric Habitation	Not relocated; Not eligible	Border to Boulevard UG Transmission	No
SDI-19497	Prehistoric Lithic Scatter, Prehistoric Roasting Pit	Not Evaluated, Criterion D	SWPL Loop In	No; Avoided; Monitoring
SDI-19498	Prehistoric Lithic Scatter	Not Evaluated, Criterion D	SWPL Loop In	No; Avoided; Monitoring
SDI-19617	Historical Refuse Scatter	Not Evaluated, Criterion D	Access Road Alternative	No; Avoided; Monitoring
SDI-19619	Historical Refuse Scatter	Not Evaluated, Criterion D	Substation Pad	No; Avoided; Monitoring
SDI-19620	Multi-component: Prehistoric Artifact Scatter, Historical Refuse Scatter	Not Evaluated, Criterion D	Substation Pad	No; Avoided; Monitoring
SDI-19621	Multi-component: Prehistoric Artifact Scatter, Historical Refuse Scatter	Not Relocated: Recommended Not Eligible	Substation Pad	Yes
SDI-19624	Prehistoric Artifact Scatter	Not Evaluated, Criterion D	SWPL Loop In	No; Avoided; Monitoring
SDI-19627	Prehistoric Artifact Scatter	Recommended Not Eligible	Substation Pad	Yes
SDI-20276	Multi-component: Prehistoric Temporary Camp, Historical Refuse	Not Evaluated, Criterion D	Old Highway 80 UG Transmission	No; Avoided; Monitoring

Site Designation	Site Description	Eligibility Recommendation / Criteria or Values	Associated Project Component	Effects / Management
SDI-20277	Multi-component: Prehistoric Lithic Scatter, Historical Refuse	Not Evaluated, Criterion D	Old Highway 80 UG Transmission	No; Avoided; Monitoring
SDI-20278	Historical Refuse Scatter	Not Evaluated, Criterion D	Old Highway 80 UG Transmission	No; Avoided; Monitoring
SDI-20279	Multi-component: Prehistoric Lithic Scatter, Historical Refuse	Not Evaluated, Criterion D	Old Highway 80 UG Transmission	No; Avoided; Monitoring
SDI-20280	Prehistoric Lithic Scatter	Not Evaluated, Criterion D	Old Highway 80 UG Transmission	No; Avoided; Monitoring
SDI-20281	Historical Refuse Scatter	Not Evaluated, Criterion D	Old Highway 80 UG Transmission	No; Avoided; Monitoring
SDI-20282	Prehistoric Lithic Scatter	Not Evaluated, Criterion D	Old Highway 80 UG Transmission	No; Avoided; Monitoring
SDI-20283	Prehistoric Artifact Scatter	Not Evaluated, Criterion D	Old Highway 80 UG Transmission	No; Avoided; Monitoring
SDI-20284	Prehistoric Artifact Scatter	Not Evaluated, Criterion D	Old Highway 80 UG Transmission	No; Avoided; Monitoring
SDI-20285	Prehistoric Artifact Scatter	Not Evaluated, Criterion D	Old Highway 80 UG Transmission	No; Avoided; Monitoring
SDI-20286	Prehistoric Artifact Scatter	Not Evaluated, Criterion D	Old Highway 80 UG Transmission	No; Avoided; Monitoring
SDI-20287	Prehistoric Lithic Scatter	Not Evaluated, Criterion D	Old Highway 80 UG Transmission	No; Avoided; Monitoring
SDI-20288	Prehistoric Artifact Scatter	Not Evaluated, Criterion D	Old Highway 80 UG Transmission	No; Avoided; Monitoring
SDI-20289	Prehistoric Lithic Scatter	Not Evaluated, Criterion D	Old Highway 80 UG Transmission	No; Avoided; Monitoring
SDI-20290	Prehistoric Lithic Scatter	Not Evaluated, Criterion D	Old Highway 80 UG Transmission	No; Avoided; Monitoring
SDI-20291	Prehistoric Lithic Scatter	Not Evaluated, Criterion D	Old Highway 80 UG Transmission	No; Avoided; Monitoring
SDI-20292	Prehistoric Lithic Scatter	Not Evaluated, Criterion D	Border to Boulevard UG Transmission	No; Avoided; Monitoring
SDI-20293	Historical Refuse Scatter	Not Evaluated, Criterion D	Border to Boulevard UG Transmission	No; Avoided; Monitoring
SDI-20294	Historical Refuse Scatter	Not Evaluated, Criterion D	Border to Boulevard UG Transmission	No; Avoided; Monitoring
SDI-20295	Historical Refuse Scatter	Not Evaluated, Criterion D	Border to Boulevard UG Transmission	No; Avoided; Monitoring
SDI-20296	Historical Refuse Scatter	Not Evaluated, Criterion D	Border to Boulevard UG Transmission	No; Avoided; Monitoring
SDI-20297	Multi-component: Prehistoric Lithic Scatter, Historical Refuse	Not Evaluated, Criterion D	Old Highway 80 UG Transmission	No; Avoided; Monitoring

Site Designation	Site Description	Eligibility Recommendation / Criteria or Values	Associated Project Component	Effects / Management
SDI-20298	Multi-component: Prehistoric Lithic Scatter, Historical Refuse	Not Evaluated, Criterion D	Old Highway 80 UG Transmission	No; Avoided; Monitoring
SDI-20299	Prehistoric Lithic Scatter	Not Evaluated, Criterion D	Old Highway 80 UG Transmission	No; Avoided; Monitoring
SDI-20300	Prehistoric Artifact Scatter, Prehistoric Bedrock Milling	Not Evaluated, Criterion D	Old Highway 80 UG Transmission	No; Avoided; Monitoring
ECO-01	Prehistoric Artifact Scatter	Recommended Not Eligible	Substation Pad	Yes
ECO-02	Prehistoric Artifact Scatter	Recommended Not Eligible	Substation Pad	Yes
ECS-1	Historical Refuse Scatter	Not Evaluated, Criterion D	Access Road Alternative	No; Avoided; Monitoring
ECS-2	Historical Refuse Scatter	Not Evaluated, Criterion D	Access Road Alternative	No; Avoided; Monitoring

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APPENDIX E: DRAFT PLAN FOR MONITORING, POST-REVIEW DISCOVERY AND UNANTICIPATED EFFECTS

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APPENDIX 10-2

Section 106 Draft Memorandum of Agreement for the Tule Wind Project

**MEMORANDUM OF AGREEMENT
AMONG THE
BUREAU OF LAND MANAGEMENT-CALIFORNIA,
THE DEPARTMENT OF ENERGY,
THE BUREAU OF INDIAN AFFAIRS,
THE UNITED STATES ARMY CORPS OF ENGINEERS,
TULE WIND, LLC,
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING
THE TULE WIND ENERGY PROJECT
SAN DIEGO COUNTY, CALIFORNIA**

WHEREAS, Tule Wind, LLC (Applicant) has applied for a right-of-way (ROW) grant on public lands managed by the Bureau of Land Management (BLM) and has submitted a Plan of Development (POD) to construct, operate and maintain a wind turbine electrical energy generation plant on Federal and non-Federal lands and a 138 kilovolt (kV) transmission line across Federal lands, including construction of access and maintenance roads, meteorological testing towers, a substation and energy collecting facility, laydown and staging areas, and support facilities and infrastructure (hereinafter, the “Project”); and

WHEREAS, the BLM has determined that the issuance of a ROW (proposed Federal Action) to the Applicant in accordance with the Federal Land Policy and Management Act (FLPMA) (Public Law 940-579; 43 U.S.C 1701), and authorization of the Project is an undertaking subject to Section 106 of the National Historic Preservation Act (NHPA), 16 USC 470(f), and its implementing regulations under 36 C.F.R. Part 800 (2004) (Section 106); and

WHEREAS the U.S. Department of Energy (DOE) may also have Section 106 responsibilities since it may issue a loan guarantee (proposed Federal action) for the undertaking under Title XVII of Energy Policy Act of 2005 as amended by Section 406 of the American Recovery and Reinvestment Act of 2009 and therefore has participated in this consultation and is an Invited Signatory to this Memorandum of Agreement (Agreement); and

WHEREAS, the Bureau of Indian Affairs, Pacific Regional Office (BIA) may also have Section 106 responsibilities since it may approve a Master Lease (proposed Federal action) pursuant to 25 C.F.R. 162 (Leasing and Permitting) for the undertaking on lands owned by the Ewiiapaayp Band of Kumeyaay Indians and therefore has participated in consultation and is an Invited Signatory to this Agreement; and

WHEREAS, the United States Army Corps of Engineers (COE) may also have Section 106 responsibilities since it may issue a Department of the Army (DA) permit pursuant to Section 404 of the Clean Water Act (proposed Federal action) for discharges of dredged or fill material into jurisdictional waters of the United States associated with the undertaking, and therefore has participated in this consultation and is an Invited Signatory to this Agreement; and

WHEREAS, the BLM is the lead Federal agency for this undertaking for the purpose of complying with Section 106 on behalf of itself, the DOE, the BIA, and the COE, and the BLM shall be responsible for managing historic properties within the area of potential effects (APE) for the undertaking pursuant to the NHPA; and

WHEREAS, the Ewiiapaayp Band of Kumeyaay Indians is a cooperating agency and has been invited to consult on this undertaking and this Agreement, has been afforded consulting party status pursuant to 36 C.F.R. 800.3(f)(4), and is invited to participate in this Agreement as a Concurring Party; and

WHEREAS, the California State Lands Commission (SLC) may authorize alternatives of the Project on State land and has certain responsibilities under State laws and regulations to take into account and mitigate the impacts of this Project on properties eligible for or included on the California Register of Historic Places and has participated in consultation and is invited to participate in this Agreement as a Concurring Party; and

WHEREAS, the California Public Utilities Commission (CPUC) is the lead State agency for compliance with the California Environmental Quality Act (CEQA) and has certain responsibilities under State laws and regulations to take into account and mitigate the impacts of this Project on properties eligible for or included on the California Register of Historic Places and has participated in consultation and is invited to participate in this Agreement as a Concurring Party; and

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

WHEREAS, the Applicant has participated in this consultation per 36 C.F.R. 800.2(c)(4), will be the entity to whom the BLM may grant a ROW, and has the responsibility for carrying out the specific terms of this Agreement under the oversight of the BLM, and is an Invited Signatory to this Agreement; and

WHEREAS, the BLM has authorized the Applicant to conduct specific identification efforts for this undertaking including a review of the existing literature and records, cultural resources surveys, ethnographic studies, and geo-morphological studies to identify historic properties that might be located within the area of potential effect (APE); and

WHEREAS, the reports *Class II and Class III Cultural Resources Inventory Report for the Tule Wind Project, McCain Valley, San Diego County, California* (Draft), prepared by ASM Affiliates, June 2010, and; *Addendum Class III Cultural Resources Inventory Report for the Tule Wind Project (Final), McCain Valley, San Diego County, California* (Draft), prepared by ASM

Affiliates, April 2011, and; *Archaeological Testing of Site CA-SDI-4788, Tule Wind Project, McCain Valley, San Diego County, California*, prepared by ASM Affiliates, August 2011, presents the results of identification and evaluation efforts; and

WHEREAS, through consultation with Indian Tribes, the BLM has determined that alternatives are under consideration that would have an adverse effect on the geological landform known as Lost Valley Rock, or “wekatoekush”, to which Indian tribes attach religious or cultural significance, and the BLM has determined that this landform is locally significant and eligible for the National Register of Historic Places (NRHP) under Criterion A for its association with historical patterns or events significant to the cultural traditions of the community, and has consulted with the SHPO pursuant to 36 C.F.R. Part 800.6 of the regulations implementing Section 106 of the NHPA; and

WHEREAS, the BLM will manage all archaeological sites within the APE as eligible for inclusion on the NRHP under Criterion D for project management purposes, and through the imposition of monitoring and avoidance measures, the BLM has found that the significant information values retained by these resources would not be affected by this undertaking; and

WHEREAS, in accordance with the regulations at 36 C.F.R. 800.6(a)(1) BLM has notified the Advisory Council on Historic Preservation (ACHP) regarding the effects of alternatives of the undertaking on Historic Properties and has invited the ACHP to participate in consultation to resolve the potential effects on historic properties, and as per their letter dated March 10, 2010, the ACHP is participating (see 36 C.F.R. 800.6(b)(2), “Resolution with Council Participation); and

WHEREAS, pursuant to 36 C.F.R. 800.2(c)(2)(ii) and Executive Order 13175, the BLM is responsible for government-to-government consultation with federally recognized Indian tribes and is the lead federal agency for all tribal consultation and coordination; and

WHEREAS, the BLM has formally notified and invited Federally recognized tribes including the Barona Band of Diegueno Indians, Campo Band of Mission Indians, Ewiiapaayp Band of Kumeyaay Indians, Inaja-Cosmit Band of Mission Indians, Jamul Indian Village, La Posta Band of Kumeyaay Indians, Manzanita Band of Kumeyaay Indians, Mesa Grande Band of Mission Indians, San Pasqual Band of Diegueno Indians, Santa Ysabel Band of Diegueno Indians Sycuan Band of Kumeyaay Nation, and Viejas Band of Kumeyaay Indians (Tribes),, and the non-Federally recognized tribe of the Kwaaymii Laguna Band of Indians (Tribal Organization) to consult on this undertaking and participate in this Agreement as a Concurring Party; and

WHEREAS, the BLM shall continue to consult with the Tribes throughout the implementation of this Agreement regarding effects to historic properties to which they attach religious and cultural significance. BLM will carry out its responsibilities to consult with Tribes that request such consultation with the further understanding that, notwithstanding any decision by these Tribes to decline concurrence, BLM shall continue to consult with these Tribes throughout the implementation of this Agreement; and

NOW, THEREFORE, the BLM, SHPO and the ACHP (Signatories), the DOE, the BIA, the COE, and the Applicant (Invited Signatories), agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the adverse effect of the undertaking on historic properties, resolve such adverse effects through the process set forth in this Agreement, and provide the ACHP with a reasonable opportunity to comment in compliance with Section 106.

STIPULATIONS

The BLM shall ensure that the following measures are implemented:

I. DEFINITIONS

- a) The definitions found at 36 C.F.R. 800.16 and in Appendix A shall apply throughout this Agreement.

II. AREA OF POTENTIAL EFFECTS

- a) The area of potential effects (APE) for the undertaking is depicted in Appendix B to this Agreement. Appendix B as set forth hereunder may be modified through consultation among the parties to this Agreement without amending the Agreement. The APE, as currently defined, encompasses an area sufficient to accommodate all of the proposed and alternative project components under consideration as of the date of the execution of this Agreement. If it is determined in the future that the undertaking may directly or indirectly affect historic properties located outside the currently defined APE, then the BLM, in consultation with the SHPO and pursuant to 36 C.F.R. 800.4(a)(1), shall determine and document modifications to the APE using the following process:
 - i) Any party to this Agreement may propose that the APE established herein be modified. The BLM shall notify the parties of the proposal and consult for no more than 30 days on the proposal to modify the APE.
 - ii) After considering the views and comments of the consulting parties, and in consultation with SHPO, the BLM will determine and document any modifications to the APE. The BLM will prepare a description and a map of the modification to the APE. The BLM will keep copies of the description and the map on file for its administrative record and distribute copies of each to the other parties to this Agreement within 30 days after modifying the APE.
- b) Where modification to the APE adds a new geographic area, the BLM shall take the steps necessary to identify and evaluate historic properties in the new geographic area, assess the effects of the undertaking on any historic properties in the new geographic area, and provide for the resolution of any adverse effects to such properties in consultation with the parties to this Agreement, Indian tribes, or other parties that request consultation.

III. AVOIDANCE, PROTECTIVE MEASURES AND TREATMENT PLANS

- a) The BLM will continue to seek and analyze alternatives that avoid adverse effects to cultural resources.
 - i. For the alternatives under consideration and for the cultural resources described in Table 1 of Appendix D, where cultural resources can be avoided, the BLM will implement the management or protective measures identified in Table 1 of Appendix D and the following:
 - (1) Archaeological sites that can be protected from direct impacts, but are within 50 feet , including buffer areas, of proposed construction activities will be identified and labled as Environmentally Sensitive Areas (ESAs). This includes archaeological sites determined eligible for inclusion in the NRHP and sites that have not been formally evaluated, but are being treated as eligible and avoided for project management purposes.
 - (2) The ESAs will be designated by marking the boundaries of sites with appropriate buffer zones (generally a buffer of 20 feet beyond the outer limits of the site extent, as demonstrated by surface and/or subsurface indications) using temporary fencing or other easily recognizable boundary defining materials.
 - (a) These areas will be shown on the engineering plans for the project as off-limits to construction activities.
 - (b) Once established, an ESA will define areas where construction can occur while preventing construction activities and damage to archaeological resources within the designated ESA.
 - (3) ESAs will be identified and established by a qualified archaeologist prior to initiation of ground disturbing activities and will be maintained and monitored for the duration of the work effort in the ESA vicinity.
- b) Should BLM approve an alternative that adversely affects the geological landform referred to as the Lost Valley Rock, the BLM shall mitigate the adverse effect as follows:
 - i. The BLM shall ensure that the adverse effect of the undertaking on the geological landform known as Lost Valley Rock is resolved by implementing and completing a historic properties management plan (HPMP) prepared pursuant to this Agreement. Amendment of the HPMP will not require amendment of this Agreement.
 - ii. The HPMP will finalize and provide expanded detail on mitigation measures to resolve adverse effects (direct, indirect and cumulative) resulting from the project which have been determined through BLM's consultations with consulting parties and Tribes and Tribal Organizations. Proposed mitigation measures include, but are not limited to:
 - (1) Conducting an ethnographic study to identify and document historic properties that are of religious or cultural significance, or are considered traditional cultural properties, to Tribes in the McCain Valley.

- (2) Providing funding to support and enhance public education and interpretation programs at a museum (e.g., support in the form of funding for one or more interns to inventory and update museum collections and/or develop an interpretive archeological exhibit of traveling display).
 - (3) Preparation of the supporting documentation and nomination to the National Register of Historic Places for the archaeological resources that that may comprise a proposed McCain Valley Discontiguous Archeological District. Supporting documentation may include both an ethnographic study and archaeological ground-truthing of the resources that may comprise the District.
 - (4) Identification and implementation of resource protection measures, such as funding for fencing, gates, and law enforcement patrols, to stabilize and/or protect cultural resources within the McCain Valley.
- iii. If the HPMP has not been finalized by the date of execution of this Agreement, the BLM shall continue consultation on the HPMP. If the HPMP has not been finalized by the date of the Decision Record, the BLM may submit the HPMP to the consulting parties for a 30-day review period. A consulting party may provide its comments directly to the SHPO with a copy to the BLM within the 30-day comment period. BLM will consider timely comments when finalizing the HPMP. The BLM will forward to the SHPO all comments regarding the HPMP received during the comment period.
- (1) The BLM will provide the consulting parties with written documentation indicating whether and how the draft HPMP will be modified in response to any timely comments received. If the HPMP is revised in response to comments received within the 30 day period, BLM shall submit the revised HPMP to all parties for a final, 15 day review period. BLM will consider any timely comments in finalizing the HPMP and provide the consulting parties with a copy.
- iv. Should the undertaking be approved by the BLM, the HPMP will be implemented after the ROW is granted and prior to the issuance of a Notice to Proceed for construction in those portions of the undertaking addressed by the HPMP.

IV. MONITORING

- a) The Applicant, in consultation with the parties to this Agreement, may develop a comprehensive monitoring plan. Where a comprehensive monitoring plan has been approved by the Signatories, the procedures in the plan shall take precedent. In the absence of a comprehensive monitoring plan, the following provisions shall apply.
- b) Qualified archaeologist(s) will be on site during construction to observe grading, trenching or other ground disturbing activities for any facilities, roads or other project components related to the undertaking near ESAs and in other areas determined appropriate for full-time monitoring, as detailed in Stipulation III, an HPMP prepared pursuant to this Agreement, and Appendix D.

- i. Archaeological monitors will be qualified archaeologists who are familiar with the types of historic and prehistoric archaeological resources that may occur in the APE and will be directly supervised by a principal archaeologist (PA). The archaeological monitors will be approved by the BLM prior to construction.
 - ii. Documentation of archaeological monitoring activities will be submitted biweekly by the PA to the BLM by email. Documentation will include the location of archaeological monitoring activities for the reporting time period, as well as a description of any archaeological resources identified and appropriate actions taken. The PA will prepare a monthly field monitoring verification report with the compiled monitoring observations, results, and actions taken for submission and approval to the BLM.
 - (1) At the request of consulting parties or Indian tribes, the PA will provide copies of biweekly and monthly archaeological monitoring reports.
- c) To facilitate continued tribal consultation for this undertaking, in consultation with Tribes and the BLM, the Applicant has agreed to develop and implement a tribal monitoring program. This program will afford representatives designated by Tribes and Tribal Organizations (tribal monitoring consultants) the opportunity to monitor and be on site during construction to observe grading, trenching or other ground disturbing activities for facilities, roads or other project components related to the undertaking near ESAs and in other areas determined appropriate for monitoring, as detailed in the HPMP and Appendix D.
- i. The tribal monitoring program will describe the role of all parties in the program, specify the terms, expectations, notifications, reports, training, or deliverables to be provided, and include a specific procedure to be followed in the event that a tribal monitoring consultant is not provided or is not available.
 - (1) Tribal monitoring consultants will be individuals designated by the Tribal parties to this Agreement and will report to the PA.
 - ii. Documentation of tribal monitoring activities will be submitted to the Tribes and the BLM in accordance with the terms of the tribal monitoring program.
- d) Upon completion of all monitoring tasks and requirements implemented pursuant to this Agreement, the PA will submit within three months a final monitoring report to the BLM for review and approval. It will describe the monitoring program and the findings and results, and present a detailed professional description, analysis, and evaluation of any cultural resources that were encountered and evaluated during construction.
- i. The BLM will provide a copy of the final monitoring report to the parties to this Agreement who so request.

- e) The Applicant, in consultation with the parties to this Agreement, shall establish a Long Term Management Plan (LTMP) for the post-construction monitoring and condition assessment of sites in the APE which could be subject to project operations and maintenance activities.
 - i. The Applicant shall submit a draft LTMP to the BLM within six months from the date of the issuance of the Notice to Proceed for the undertaking.
 - ii. The BLM will submit the LTMP to the consulting parties for review. The parties will be afforded 30 days following receipt of the LTMP to submit any written comments to BLM. BLM will provide the reviewing parties with written documentation indicating whether and how the draft LTMP will be modified in accordance with any reviewing party comments. Unless the reviewing parties object to this documentation in writing to the BLM within 30 days following receipt, BLM may modify the LTMP as BLM may deem appropriate. Thereafter, BLM may issue the LTMP in final form and distribute the LTMP to the consulting parties.

V. POST-REVIEW DISCOVERIES AND UNANTICIPATED EFFECTS

- a) The Applicant, in consultation with the parties to this Agreement, shall develop a comprehensive plan to manage post-review discoveries and unanticipated effects which shall be made Appendix E to this Agreement
 - i. Where an HPMP is prepared pursuant to this Agreement, the plan to manage post-review discoveries and unanticipated effects may be provided in the HPMP.
 - ii. Amendment of the procedures for discoveries and unanticipated effects as provided in the HPMP will not require amendment of this Agreement.
- b) If human remains and/or associated funerary objects compose all or part of the discovery, then the BLM shall follow the process described in Stipulation VI.
- c) The BLM at its discretion may treat any discovered property to be eligible for inclusion in the NRHP for project management purposes. The BLM's compliance with this stipulation shall satisfy the requirements of 36 C.F.R. 800.13(c).

VI. TREATMENT OF HUMAN REMAINS OF NATIVE AMERICAN ORIGIN

- a) The BLM shall ensure that any Native American burials and related items discovered on BLM administered lands during implementation of the terms of the Agreement will be treated in accordance with the requirements of the NAGPRA. The BLM will consult with concerned Tribes, Tribal Organizations, or individuals in accordance with the requirements of Sections 3(c) and 3(d) of the NAGPRA and implementing regulations found at 43 C.F.R. Part 10 to address the treatment of Native American burials and related cultural items that may be discovered during implementation of the undertaking.

- b) The BLM shall ensure that Native American burials and related cultural items on non-Federal lands are treated in accordance with the applicable requirements of the California Public Resources Code at Sections 5097.98 and 5097.991, and of the California Health and Human Safety Code at Section 7050.5(c).

VII. REPORTING

- a) Within twelve (12) months after BLM has determined that all work required by Stipulation III has been completed, or pursuant to an alternative schedule required by any HPMP implementing the requirements of this Agreement, BLM will ensure preparation, and concurrent distribution to the consulting parties, a written draft technical report that documents the results of implementing the requirements of the HPMP. The reviewing parties will be afforded 30 days following receipt of the draft technical report to submit any written comments to BLM. Failure of these parties to respond within this time frame shall not preclude BLM from authorizing revisions to the draft technical report as BLM may deem appropriate. BLM will provide the reviewing parties with written documentation indicating whether and how the draft technical report will be modified in accordance with any reviewing party comments. Unless the reviewing parties object to this documentation in writing to the BLM within 30 days following receipt, BLM may modify the draft technical report as BLM may deem appropriate. Thereafter, BLM may issue the technical report in final form and distribute this document in accordance with Paragraph “b” of this stipulation.
- b) Copies of the final technical report documenting the results of implementing the requirements of the HPMP will be distributed by BLM to the consulting parties and to the appropriate California Historical Resources Information Survey (CHRIS) Regional Information Center.

VIII. ADMINISTRATIVE STANDARDS

- a) **PROFESSIONAL QUALIFICATION STANDARDS.** All actions prescribed by this Agreement that involve the identification, evaluation, analysis, recordation, treatment, monitoring, and disposition of historic properties and that involve the reporting and documentation of such actions in the form of reports, forms or other records, shall be carried out by or under the direct supervision of a person or persons meeting, at a minimum, the Secretary of the Interior’s Professional Qualifications Standards (PQS), as appropriate (48 Fed. Reg. 44739 dated September 29, 1983). However, nothing in this Stipulation may be interpreted to preclude any party qualified under the terms of this paragraph from using the services of persons who do not meet the PQS, so long as the work of such persons is supervised by someone who meets the PQS. Indian tribes have the sole authority to certify and approve tribal consultants who may perform monitoring activities in support of implementation of this Agreement.
- b) **DOCUMENTATION STANDARDS.** Reporting on and documenting the actions cited in this Agreement shall conform to every reasonable extent with the Secretary of the Interior’s Standards and Guidelines for Archeology and Historic Preservation (48 Fed

Reg. 44716-40 dated September 29, 1983), as well as, the BLM 8100 Manual, the California Office of Historic Preservation's Preservation Planning Bulletin Number 4(a) December 1989, Archaeological Resource Management Reports (ARMR): Recommended Contents and Format (ARMR Guidelines) for the Preparation and Review of Archaeological Reports, and any specific and applicable county or local requirements or report formats.

- c) **CURATION STANDARDS.** On BLM-administered land, all records and materials resulting from the actions required by this Agreement shall be curated in accordance with 36 C.F.R. Part 79, and the provisions of the NAGPRA, 43 C.F.R. Part 10, as applicable. To the extent permitted under Sections 5097.98 and 5097.991 of the California Public Resources Code, the materials and records resulting from the actions required by this Agreement for private lands shall be curated in accordance with 36 C.F.R. Part 79. The BLM will seek to have the materials retrieved from private lands donated through a written donation agreement. The BLM will attempt to have all collections curated at one local facility where possible unless otherwise agreed to by the consulting parties.

IX. IMPLEMENTATION OF THE UNDERTAKING

- a) The BLM may authorize construction activities, including but not limited to those listed below, to proceed in specific geographic areas where there are no historic properties; where there will be no adverse effect to historic properties; where a monitoring and discovery process or plan is in place per Stipulation IV and V, or in areas where an HPMP(s) has been approved, initiated and field work completed. Such construction activities may include:
 - i) demarcation, set up, and use of staging areas for construction of the undertaking,
 - ii) conduct of geotechnical boring investigations or other geophysical and engineering activities, and
 - iii) grading, constructing buildings, and installing wind turbines.
 - iv) construction of transmission towers
- b) Initiation of any construction activities on Federal lands shall not occur until after the Signatory parties agree and BLM issues the ROD, ROW grant, and Notice(s) to Proceed. Construction shall not occur in waters of the United States on or off federal lands until the COE issues the DA permit.

X. AMENDMENTS TO THE AGREEMENT

- a) This Agreement may be amended only upon written agreement of the Signatories.
 - i) Upon receipt of a request to amend this Agreement, the BLM will immediately notify the other consulting parties and initiate a 30 day period to consult on the proposed amendment, whereupon all parties shall consult to consider such amendments.

- ii) If agreement to the amendment cannot be reached within the 30 day period, resolution of the issue may proceed by following the dispute resolution process in Stipulation XI.
- b) This Agreement may be amended when such an amendment is agreed to in writing by all Signatories.
- c) Amendments to this Agreement shall take effect on the dates that they are fully executed by the Signatories.
- d) Modifications, additions, or deletions to the appendices made as a result of continuing consultation among the consulting parties do not require the Agreement to be amended.

XI. DISPUTE RESOLUTION

- a) Should any party to this Agreement object at any time to any actions proposed or the manner in which the terms of this Agreement are implemented, the BLM shall consult with such party to resolve the objection. If the BLM determines that such objection cannot be resolved, the BLM will:
 - i) Forward all documentation relevant to the dispute, including the BLM's proposed resolution, to the ACHP. The ACHP shall provide the BLM with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the BLM shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. The BLM will then proceed according to its final decision.
 - ii) If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, the BLM may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the BLM shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the Agreement, and provide them and the ACHP with a copy of such written response.
- b) The BLM's responsibility to implement all other actions subject to the terms of this Agreement that are not the subject of the dispute remain unchanged.

XII. TERMINATION

- a) If any Signatory or Invited Signatory to this Agreement determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation X above. If within sixty (60) days an amendment cannot be reached;

- i) a Signatory or Invited Signatory may terminate their participation in the Agreement upon written notification to the other Signatories and Invited Signatories.
- b) If the Agreement is terminated, and prior to work continuing on the undertaking, the BLM shall continue to follow the process provided at 36 C.F.R. 800.6 until (a) a new Agreement is executed pursuant to 36 C.F.R. 800.6 or (b) the agencies request, take into account, and respond to the comments of the ACHP under 36 C.F.R. 800.7. The BLM shall notify all parties to this Agreement as to the course of action it will pursue.

XIII. PARTIES TO THE AGREEMENT

- a) Should conditions of the undertaking change such that other federal agencies, state agencies, Indian tribes, tribal organizations or other organizations or individuals not already party to this Agreement request in writing to participate, the BLM will notify the other consulting parties and consider the request to participate in the Agreement. If the BLM determines that the party should be invited to participate in this Agreement, the BLM shall notify the requesting party in writing and the Agreement shall be amended following the procedures in Stipulation X.
- c) Should conditions of the undertaking change such that a Signatory or Invited Signatory to this Agreement determine that its participation in the undertaking is no longer required the party may withdraw from participation by informing the BLM. The BLM shall inform the other parties to this Agreement of the withdrawal. Withdrawal of a Signatory or Invited Signatory to the Agreement where its participation is no longer required for purposes of section 106 does not terminate the Agreement as described in Stipulation XII.
- d) Should a Concurring Party determine that its participation in the undertaking and this Agreement is no longer warranted, the party may withdraw from participation by informing the BLM. The BLM shall inform the other parties to this Agreement of the withdrawal. Withdrawal of a Concurring Party to the Agreement does not require an amendment of the Agreement.

XIV. DURATION OF THIS AGREEMENT

- a) This Agreement will expire if the undertaking has not been initiated and the BLM ROW grant expires or is withdrawn, or the stipulations of this Agreement have not been initiated, within five (5) years from the date of its execution. Prior to such time, the BLM may consult with the other signatories to reconsider the terms of the Agreement and amend it in accordance with Stipulation X below. Prior to work continuing on the undertaking, the BLM shall continue to follow the process provided at 36 C.F.R. 800.6 until either (a) a new memorandum of agreement or programmatic agreement is executed pursuant to 36 C.F.R. 800.6, or (b) the BLM request, take into account, and respond to the comments of the ACHP under 36 C.F.R. 800.7. The BLM shall notify the parties to the Agreement as to the course of action they will pursue.

- b) Unless the Agreement is terminated pursuant to Stipulation XII, another agreement executed for the undertaking supersedes it, or the undertaking itself has been terminated, this Agreement will remain in full force and effect until BLM, in consultation with the other Signatories, determines that implementation of all aspects of the undertaking has been completed and that all terms of this have been fulfilled in a satisfactory manner. Upon a determination by BLM that implementation of all aspects of the undertaking have been completed and that all terms of this Agreement have been fulfilled in a satisfactory manner, BLM will notify the parties to this Agreement in writing of the agency's determination. This Agreement will terminate and have no further force or effect 30 days after BLM so notifies the Signatories to this Agreement, unless BLM retracts its determination before the end of that period.

XV. EFFECTIVE DATE

- a) This Agreement and any amendments shall take effect on the date that it has been fully executed by the Signatories.
- b) Execution and implementation of this Agreement is evidence that the BLM, the BIA, the DOE, and the COE have taken into account the effect of this undertaking on historic properties, afforded the ACHP a reasonable opportunity to comment, and that the BLM, the BIA, the DOE, and the COE have satisfied their responsibilities under Section 106. The BLM shall be responsible for managing historic properties within the APE for this undertaking pursuant to the NHPA. The Signatories and Invited Signatories to this Agreement represent that they have the authority to sign for and bind the entities on behalf of whom they sign.

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SIGNATORY PARTIES

U.S. BUREAU OF LAND MANAGEMENT

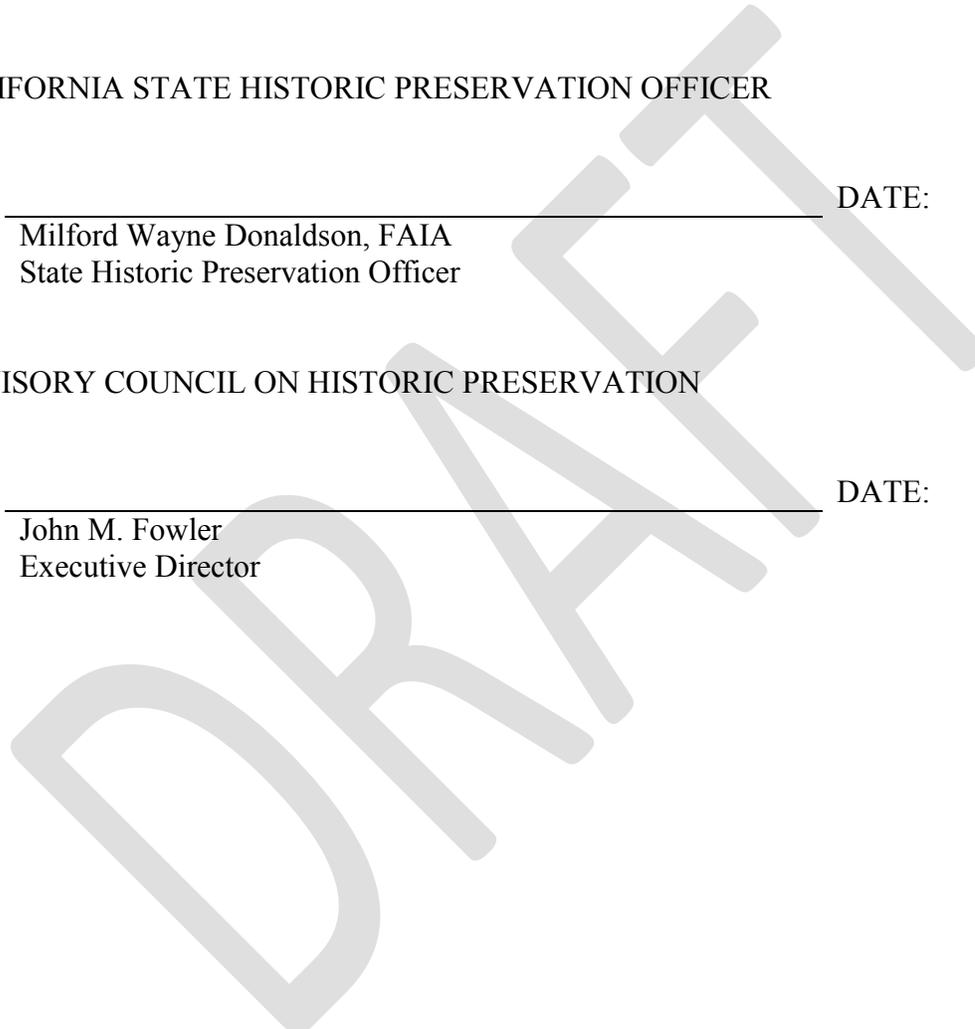
BY: _____ DATE: _____
Margaret L. Goodro
Field Manager, El Centro Field Office

CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

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

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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



INVITED SIGNATORY PARTIES

Department of Energy, Loan Program Office

Bureau of Indian Affairs

United States Army Corps of Engineers, Los Angeles District

Pacific Wind Development, LLC

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CONCURRING PARTIES

BARONA BAND OF DIEGUENO INDIANS
CAMPO BAND OF MISSION INDIANS
EWIAAPAAYP BAND OF KUMEYAAY INDIANS
JAMUL INDIAN VILLAGE
INAJA-COSMIT BAND OF MISSION INDIANS
KWAAYMII LAGUNA BAND OF INDIANS
LA POSTA BAND OF KUMEYAAY INDIANS
MANZANITA BAND OF KUMEYAAY INDIANS
MESA GRANDE BAND OF MISSION INDIANS
SAN PASQUAL BAND OF DIEGUENO INDIANS
SANTA YSABEL BAND OF DIEGUENO INDIANS
SYCUAN BAND OF KUMEYAAY NATION
VIEJAS BAND OF KUMEYAAY INDIANS
CALIFORNIA PUBLIC UTILITIES COMMISSION
CALIFORNIA STATE LANDS COMMISSION

DRAFT

APPENDIX A - DEFINITIONS

- a) **Area of Potential Effect.** The APE is defined as the total geographic area or areas within which the undertaking may directly or indirectly cause alterations in the character or use of historic properties per 36 C.F.R. 800.16(d). The APE is influenced by the scale and nature of an undertaking and includes those areas which could be affected by an undertaking prior to, during and after construction.
- b) **Concurring Parties.** Collectively refers to consulting parties with a demonstrated interest in the undertaking, who agree, through their signature, with the terms of this Agreement. Concurring Parties may propose amendments to this Agreement.
- c) **Cultural Resource.** A cultural resource is an object or definite location of human activity, occupation, use, or significance identifiable through field inventory, historical documentation, or oral evidence. Cultural resources are prehistoric, historic, archaeological, or architectural sites, structures, buildings, places, or objects and locations of traditional cultural or religious importance to specified social and/or culture groups. Cultural resources include the entire spectrum of objects and places, from artifacts to cultural landscapes, without regard to eligibility for inclusion on the National Register of Historic Places (NRHP) or California Register of Historical Resources (CRHR).
- d) **Consulting Parties.** Collectively refers to the Signatories, Invited Signatories and Concurring Parties who have signed this Agreement.
- e) **Historic Properties.** Properties (cultural resources) that are included in, or eligible for inclusion in, the NRHP maintained by the Secretary of the Interior and per the NRHP eligibility criteria at 36 C.F.R.60.4 and may include any prehistoric or historic district, site, building, structure, traditional cultural property or object. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization that meet the NRHP criteria. The term “eligible for inclusion on the NRHP” refers both to properties formally determined as such in accordance with regulations of the Secretary of the Interior and all other properties that meet the NRHP criteria.
- f) **Historical Resources.** Historical resources are cultural resources that meet the criteria for listing on the CRHR as provided at California Code of Regulations Title 14, Chapter 11.5, Section 4850 and may include, but are not limited to, any object, building, structure, site, area, place, record, or manuscript which is historically or archaeologically significant, or is significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California.
- g) **Invited Signatories.** Invited Signatories are parties that have specific responsibilities as defined in this Agreement. Those Invited Signatories who actually sign this Agreement have the same rights with regard to seeking amendment or termination of this Agreement as the Signatory Parties, but whose signatures are not required for execution of the Agreement. The Invited Signatory to this Agreement is the Applicant.
- h) **Lands Administered by the U.S. Department of Interior, Bureau of Land Management (BLM)** means any federal lands under the administrative authority of the BLM.
- i) **Literature Review.** A literature review is one component of a BLM class I inventory, as defined in BLM Manual Guidance 8100.21(A)(1), and is a professionally prepared study

that includes a compilation and analysis of all reasonably available cultural resource data and literature, and a management-focused, interpretive, narrative overview, and synthesis of the data. The overview may also define regional research questions and treatment options.

- j) **Records Search.** A records search is one component of a BLM class I inventory and an important element of a literature review. A records search is the process of obtaining existing cultural resource data from published and unpublished documents, BLM cultural resource inventory records, institutional site files, State and national registers, interviews, and other information sources.
- k) **Signatories.** Signatories are parties that have the sole authority to execute, amend or terminate this Agreement. Signatories to this Agreement are the BLM, COE, DOE, and SHPO.
- l) **Traditional Cultural Property.** A traditional cultural property is defined generally as a property that is important to a living group or community because of its association with cultural practices or beliefs that (a) are rooted in that community's history, and (b) are important in maintaining the continuing cultural identity of the community. It is a place, such as a traditional gathering area, prayer site, or sacred/ceremonial location that may figure in important community traditions. These places may or may not contain features, artifacts, or physical evidence, and are usually identified through consultation. A traditional cultural property may be eligible for inclusion in the NRHP and the CRHR.
- m) **Tribes.** The federally recognized Indian tribes that the BLM is consulting with on this undertaking.
- n) **Tribal Organization.** A non-Federally recognized Indian tribe or Native American organization that the BLM is consulting with on this undertaking.
- o) **Windshield Survey.** A windshield survey is the driving or walking of surveyors along streets and roads of a community in order to observe and record the buildings, structures, and landscape characteristics seen from those vantage points. A windshield survey is a method commonly utilized in reconnaissance surveys to identify built-environment resources, such as buildings, objects, and structures.

APPENDIX B-1: AREA OF POTENTIAL EFFECT.

- a) The BLM has defined the APE for the Tule Wind Energy Project based on consideration of both direct and indirect impacts. Below is a discussion about the APE and the methodology used to so define, and the survey methodology utilized within each APE.
 - i) The area (see Appendix B-2:Reference Maps for the Area of Potential Effect) within which historic properties could sustain direct effects as a result of the undertaking is defined to include:
 - (1) The area of installation of each wind turbine, including the wind turbine base and foundation, pad-mounted transformer, and a gravel driveway from the turbine string access road to the individual turbine, which includes approximately 2.88 acres. The total projected area of disturbance is approximately 386.5 acres.
 - (2) The area of installation of an energy collector substation, which would be located on a 5-acre site on BLM-administered land approximately 7.5 miles northwest of the Boulevard Substation. The collector substation would be located adjacent to the proposed Tule Wind Operation and Maintenance facility site on BLM administered land.
 - (3) The area of installation of the proposed Operation and Maintenance facility which would be located on a 5-acre site adjacent to the collector substation.
 - (4) The area of installation of two permanent and two alternate meteorological towers (MET towers) would be installed within the McCain Valley National Cooperative Land and Wildlife Management Area to monitor wind speed and direction.
 - (5) All linear elements of the undertaking including:
 - (a) The ROW for widening, operation and maintenance of approximately 27.6 miles of existing access road from 20 to 36 feet and a new ROW for approximately 36.4 miles of new access roads which would be 36 feet wide. The ROW for remaining access roads would be 20 feet wide.
 - (b) A ROW for construction, operation and maintenance of the 138 kV transmission line. The ROW is approximately 100-foot wide and 9.7 miles long and extends from the proposed energy collector substation to the existing San Diego Gas & Electric Company's Boulevard Substation.
 - ii) The area within which historic properties could sustain indirect effects, including visual, auditory, atmospheric, and contextual, as a result of the undertaking includes:
 - (1) Historic properties within a .5-mile buffer around the APE for direct effects that are identified through a review of existing literature and records search, information or records on file with the BLM or at the South Coastal Information Center, interviews or discussions with local professional or historical societies and local experts in history or archaeology.

- (a) Historic properties identified through archaeological or other field investigations for this undertaking that, as a result of project redesign to avoid direct effects to cultural resources, are no longer within the APE.
- (2) Historic properties included in the Native American Heritage Commission Sacred Lands Files, identified through a literature review or records search, or identified by a Tribe or Tribal Organization, through consultation as having religious or cultural significance that may be affected by the undertaking.
- (3) Historic properties that have been identified by a consulting party, organization, governmental entity, or individual through consultation or the public commenting processes as having significance or being a resource of concern that may be affected by the undertaking.
- (4) Built-environment resources located within one-half mile of the project footprint whose historic settings could be adversely affected.
- (a) On private property, historic properties within one-half mile of the direct effects APE that are identified through surveys, where access was granted, and windshield surveys, where access was not granted.

APPENDIX B-2: REFERENCE MAPS FOR THE AREA OF POTENTIAL EFFECT.

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**APPENDIX D: SUMMARY OF ELIGIBILITY, EFFECT, AND MANAGEMENT
RECOMMENDATIONS FOR CULTURAL RESOURCES FOR THE TULE WIND
PROJECT**

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**APPENDIX E: MANAGEMENT PLAN FOR ARCHAEOLOGICAL MONITORING,
POST-REVIEW DISCOVERY, AND UNANTICIPATED EFFECTS FOR THE TULE
WIND PROJECT, MCCAIN VALLEY, SAN DIEGO COUNTY, CALIFORNIA**

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