PROGRAMMATIC AGREEMENT
AMONG
THE UNITED STATES DEPARTMENT OF INTERIOR, BUREAU OF LAND MANAGEMENT,

THE ARIZONA STATE HISTORIC PRESERVATION OFFICER,
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,
THE COLORADO STATE HISTORIC PRESERVATION OFFICER,
THE NEW MEXICO STATE HISTORIC PRESERVATION OFFICER,
THE NEVADA STATE HISTORIC PRESERVATION OFFICER,
THE UTAH STATE HISTORIC PRESERVATION OFFICER,
AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING SOLAR ENERGY DEVELOPMENT ON LANDS ADMINISTERED BY THE BUREAU OF LAND MANAGEMENT

WHEREAS, in August 2005, the United States Congress enacted the Energy Policy Act of 2005, Public Law 109-58. In Section 211 of this Act, Congress directed that the Secretary of the Interior (the "Secretary") should, before the end of the 10-year period beginning on the date of enactment of the Act, seek to have approved non-hydropower renewable energy projects located on the public lands with a generation capacity of at least 10,000 megawatts of electricity; and

WHEREAS, by Secretarial Order No. 3285 issued March 11, 2009, amended February 22, 2010, the Secretary stated as policy that encouraging the production, development, and delivery of renewable energy is one of Department of the 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, to achieve the goals established by Congress in Section 211 of Public Law 109-58 and to support the Secretary's declaration of policy, the DOI, through the Bureau of Land Management (BLM), and the Department of Energy (DOE) have decided to prepare a programmatic environmental impact statement (PEIS) under the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*) to inform the agencies' consideration of specific agency-wide solar energy programs and additional related policy, including the possible identification of Solar Energy Zones and lands where solar development may occur only if authorized by the BLM through a variance process. The DOE and the BLM are joint lead Federal agencies for preparation of the Solar PEIS, which will analyze the potential impacts of utility-scale solar development on lands in the states of Arizona, California, Colorado, New Mexico, Nevada, and Utah, and for which the BLM is preparing an independent Record of Decision (ROD); and

WHEREAS, the DOE is a lead agency in the development of the PEIS but is not a Signatory Party to this PA because it will prepare its own ROD and will have no responsibility for complying with the terms of this Programmatic Agreement (PA). The DOE will utilize the analysis in the Solar PEIS to create programmatic guidance in a more informed and environmentally sound basis. The BLM will use the analysis in the Solar PEIS to inform withdrawal and land use planning decisions, including whether to identify design features to reduce the environmental impacts of solar development on public lands; and

WHEREAS, through the ROD, the BLM will determine whether to amend BLM land use plans to:

- Identify lands excluded from utility-scale solar energy development in a six-state study area consisting of California, Arizona, Nevada, Utah, New Mexico, and Colorado;
- Identify priority areas within the lands open to solar energy development that are best suited for utility-scale production of solar energy (Solar Energy Zones);
- Identify utility-scale solar energy right-of-way avoidance areas where applications will be considered only through a variance process;
- In the six-state study area adopt those elements of the new Solar Energy Development Program that pertain to planning; and
- Establish basic mitigation requirements for solar energy development on public lands to ensure the most environmentally responsible development and delivery of solar energy; and

WHEREAS, the BLM has determined that its decisions regarding implementation of a solar energy program constitute a non-routine interstate program that meets the threshold of review by the Advisory Council on Historic Preservation (ACHP) under Component 5(b) of the "Programmatic Agreement Among the Bureau of Land Management, the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers Regarding the Manner in which BLM Will Meet Its Responsibilities Under the National Historic Preservation Act (NHPA);" (hereinafter referred to as the "National Programmatic Agreement"); and

WHEREAS, in accordance with regulations at 36 CFR §800.14(b)(3) the BLM has notified and invited the ACHP pursuant to 36 CFR §800.6(a)(1)(C) to participate in consultation to resolve the potential effects of the proposed BLM national solar energy program on historic properties, and as documented in its letter dated October 2, 2008, the ACHP has elected to participate in consultation; and

WHEREAS, the National Programmatic Agreement is implemented through individual Protocol agreements (Protocols) between BLM State Directors and the State Historic Preservation Officers (SHPO) of the States of Arizona, California, Colorado, Nevada, New Mexico, and Utah, which are incorporated herein by reference; and

WHEREAS, the BLM has determined that any decisions in its ROD to amend BLM land use plans are intended to encourage appropriate development of solar energy on the public lands, and that solar development has the potential to affect historic properties on lands managed by the BLM in the states of Arizona, California, Colorado, Nevada, New Mexico, and Utah; and

WHEREAS, any terms and conditions established by the ROD will apply to new applications for solar energy development as defined in the ROD. The stipulations of this PA will also apply to those same applications; and

WHEREAS, the BLM has detailed guidance in Manual Section 8130.12, Information Needed for Decision Making in Land Use Plans; and

WHEREAS, the BLM has consulted with the Arizona SHPO, California SHPO, Colorado SHPO, Nevada SHPO, New Mexico SHPO, and Utah SHPO pursuant to the National Programmatic Agreement and individual state Protocols about the solar energy program. Because the effects of this program's implementation on historic properties cannot be fully determined prior to the program's approval, the BLM has chosen to conclude its assessment of the program's potential adverse effects and provide for the resolution of any such effect through the implementation of this PA consistent with 36 CFR §800.14(b)(3); and

WHEREAS, the BLM has consulted with the Consulting Parties, including Indian tribes, to this PA and has incorporated their suggestions for improvement of the document; and

WHEREAS, the BLM consults with Indian tribes under multiple authorities, including the American Indian Religious Freedom Act (AIRFA), Executive Order 13175, and Section 3(c) of the Native American Graves Protection and Repatriation Act (NAGPRA), and pursuant to NHPA [Section 101(d)(6)(B) and 36 CFR §800.2(c)(2)(ii)], BLM has notified and invited Indian tribes (see Appendix B) with interests in the lands managed by the BLM to consult on the Solar PEIS, implementation of any future BLM solar energy program, and this PA, and the tribes have been invited to concur in this PA; and

WHEREAS, execution of this PA by a Concurring Party indicates participation in the Section 106 consultations and acknowledgment that their party's views were taken into consideration, but does not indicate approval of the outcome of the NEPA analysis for the solar energy program nor does it indicate a preference for or endorsement of a specific alternative; and

WHEREAS, the provisions of this PA apply to future, site-specific solar energy program applications when the BLM is the lead federal agency and the application is for projects on public lands managed by the BLM. This PA shall not apply to tribal land. If future solar applications include projects that extend onto state or private lands, the BLM will consult with the SHPO and other state agencies, as appropriate, to determine the applicability of this PA's provisions to the non-federal lands involved; and

NOW, THEREFORE, the BLM, ACHP, Arizona SHPO, California SHPO, Colorado SHPO, Nevada SHPO, New Mexico SHPO, and Utah SHPO agree that any future solar energy program shall be administered in accordance with the following provisions to satisfy the BLM's

responsibilities under Section 106 of the NHPA for development and implementation of the solar energy program.

STIPULATIONS

The BLM will ensure that the following stipulations are carried out.

1) INTENT

A) General Purpose. This PA establishes the process the BLM will follow to fulfill its responsibilities under Section 106 of the NHPA for site-specific, solar application decisions that are implemented in accordance with the decisions supported by the Solar PEIS and BLM policy. By preparing and executing this PA in consultation with the Signatory and Concurring Parties, the BLM will have taken into account the potential effects of the Solar PEIS decisions on historic properties. Provisions of this PA will be incorporated in the Solar PEIS to ensure a consistent and predictable approach to take into account the effects of solar development upon historic properties across the six state area covered by the Solar PEIS.

B) Tiered Agreements

1) The BLM will execute Memoranda of Agreement (MOA) to fulfill the intent of this PA for site-specific projects whenever possible. MOAs are preferred over creation of new tiered PAs. MOAs are usually based upon knowledge of specific resources; therefore, resolutions of adverse effects are more accurate. Where there is adequate information regarding the nature of historic properties within areas of potential effect (APE), MOAs can specify avoidance, minimization, and/or mitigation measures more precisely. To facilitate creation of MOAs, the BLM will seek non-project related funding through its appropriations process to support cultural resource inventories of lands with limited survey data within Solar Energy Zones (SEZ) and variance areas as defined by the Final Solar PEIS.

2) Creation of new PAs tiered to this PA is not anticipated, but may be appropriate where little is known about historic properties located within the potential area of effect. New PAs may be created if necessary where the nature of specific projects has not yet been determined. New PAs, however, will generally be discouraged and are not considered appropriate for most specific undertakings, where determinations of eligibility and effect can be completed before the BLM considers approving the undertaking.

3) State-Specific Procedures or Memoranda of Understanding (MOU) can be beneficial in circumstances where the BLM, SHPOs, and/or Indian tribes already follow or wish to create new, more specific, efficient consultative procedures than those enumerated in this PA. State-Specific Procedures are not a substitute for the fundamental consultative process enumerated in this PA. However, they can customize the Section 106 process to meet the needs of local tribes and SHPOs in a manner best adapted to local organizational structures, tribal capabilities and preferences, or current, local knowledge of historic properties.

2) GOVERNING PRINCIPLES

The BLM shall adhere to the following principles in complying with Section 106 of the NHPA in implementing the solar energy program.

A) The BLM will endeavor to coordinate the Section 106 process with the NEPA process such that the agency meets its requirements under both authorities in an efficient manner. The BLM will complete the Section 106 process within the timeframe of the NEPA process prior to the approval of all future solar energy rights-of-way authorized pursuant to this program.

B) The BLM, in consultation with the Consulting Parties, will continue to seek opportunities and avenues to improve the efficiency and effectiveness of Section 106 review of solar energy program activities and solar energy projects and the processes whereby the BLM meets its responsibility to take into account effects and seek ways to avoid, minimize, or mitigate adverse effects on historic properties.

C) The Signatory and Concurring Parties shall seek opportunities to utilize the transfer or submission of electronic copies of letters or other documents in portable document format (PDF) to streamline and expedite consultation. In consultation with other parties, the BLM will select the format for data transferal that is most expeditious and compatible with existing databases.

D) The BLM and SHPOs shall seek opportunities to ensure that inventory data, including surveyed areas, is provided to the BLM and the appropriate SHPO in digital and/or non-digital format consistent with state guidelines and BLM standards. The format for documentation will be agreed to by the BLM and the SHPO.

3) CONSULTATION PRINCIPLES

A) Throughout the review of activities tiered to this PA, the BLM will seek, discuss, and consider the views of the Consulting Parties, and will seek agreement with them (36 CFR §800.16(f)) when making decisions under the stipulations of this PA. Consulting Party as used herein includes Signatories and Concurring Parties.

1) Consultation Parameters and Timing

a) Unless otherwise agreed to by the Consulting Parties or stated in this PA, Consulting Parties shall have 30 calendar days to respond to a request to review activities tiered to this PA, from receipt of a formal request for review. The BLM shall make reasonable attempts to contact the Consulting Parties to confirm that the party has elected not to comment or agrees with the course of action proposed by the BLM. "Reasonable attempts" include contacting the Tribal Chairperson and the appropriate staff by email with a follow-up phone call. Where the time period for review or comment has passed after such reasonable attempts, the BLM may assume that the Consulting Party has elected not to comment and may proceed with the course of action proposed.

b) Unless otherwise agreed to by the Consulting Party, the BLM shall respond to any request by a Consulting Party for information and clarification about any proposed language or element under this PA, within 30 calendar days of receipt of the request.

2) The objective of consultation is to identify as early as possible any potentially eligible properties or issues that may pose difficulties for the proposed undertaking and future management decision-making. Early consultation should be especially sensitive to landscape-level resources/properties that go beyond individual archaeological sites and historic buildings and structures. Such landscape-level historic properties may include, but are not limited to, Traditional Cultural Properties, historic trails, farmsteads, ranches, or mining sites.

B) Tribal Consultation

1) The BLM, acknowledging its government-to-government responsibilities for Section 106 review and implementation of this PA, shall continue to facilitate meaningful consultation with Indian tribes during the development of the Solar PEIS, as well as the planning and implementation of any activities or decisions that tier to the Solar PEIS. The BLM will utilize ethnographic studies carried out to inform the PEIS for ongoing tribal consultation regarding the types of sacred sites, Traditional Cultural Properties, and plants and animals of significance and use to tribes.

2) Given the nature and scale of solar energy projects, the BLM will engage Indian tribes in early and meaningful consultation. The BLM will work with tribes at the earliest stages of the proposed undertaking to gather ethnographic information, property information, and other resource information to help identify areas which may be of religious and cultural significance to them and which may be eligible for the National Register of Historic Places. Engaging in consultation at the earliest stages of project planning will assist the BLM in identifying significant issues and resources that may not be identified through the course of conventional cultural resources survey and identification efforts. The BLM shall endeavor to provide information and maps that are easily understood by tribal representatives in the consultation process.

3) Because of the potential number, size, and scale of proposed energy projects in any given area, the BLM will also endeavor to combine consultations on multiple projects or invite tribes to meetings where multiple projects may be discussed and coordinated in order to facilitate coordination and information exchange, minimize confusion about the number of projects, and provide for a more effective and productive process of tribal consultation. The BLM will discuss and seek agreement with Indian tribes regarding processes of consultation that can be used to discuss multiple projects in the most efficient manner possible. If a tribe would like government-to-government consultation with the BLM on an individual basis, this will be honored at the earliest possible time.

C) Public Involvement

1) The BLM shall involve the public in the Section 106 process as provided at 36 CFR §800.2(d) and 36 CFR §800.3(e). The BLM shall ensure that the public is informed through press releases, posting of documents on the internet, or other mechanisms, about the manner in which the BLM is meeting its Section 106 responsibilities and how the BLM is ensuring adequate opportunities for public involvement by coordinating Section 106 with other public involvement processes.

2) In the preparation of the PEIS, the BLM has requested public comment through written correspondence, field hearings, Federal Register notices, and the posting of documentation on the internet. When considering future site-specific applications for

solar development, the BLM will utilize established public notification procedures for Environmental Assessments or Environmental Impact Statements. These procedures include but are not limited to posting of notices and documents on the internet, announcements in newspapers, mailing documentation to mail lists, and public presentations that advise the public on how they can provide comment on or participate in the Section 106 process.

4) SECTION 106 CONSULTATION PROCEDURES

A) PEIS Decisions: Section 106 Review of Alternatives in the Solar PEIS

The BLM shall seek, discuss, and consider the views and recommendations of the Consulting Parties regarding the creation and development of measures considered in the Solar PEIS and adopted in any ROD that relate to the identification, protection, treatment, or management of historic properties, including but not limited to:

1) Creation of a Solar Energy Program and Guidelines

a) The following procedures will apply to the BLM's consideration of potential effects on historic properties when the BLM proposes program policies or design features:

i) The BLM will decide which areas are inappropriate for utility-scale solar energy development based on information generated through the land use planning process and other existing information on historic properties, reconnaissance or sample inventories, the results of public scoping, and feedback from tribal consultation. Areas excluded from utility-scale solar development may include, but are not limited to, areas where the density or complexity of historic properties would require extremely costly programs of mitigation; areas containing Traditional Cultural Properties or sacred sites of cultural or religious significance to an Indian tribe; or areas where solar development could fundamentally alter or harm the value, integrity, or experience at historic properties such as a National Historic Trail (NHT) or National Historic Landmark (NHL).

ii) Information from the sources listed above may also be utilized to develop standardized design features intended as guidance to reduce or eliminate potential adverse effects to historic properties. Guidelines will be implemented for proposed solar energy projects subject to the terms of the ROD for the Solar PEIS and referenced or incorporated into decisions authorizing those projects.

b) The BLM will carry out any government-to-government consultation in accordance with the current Secretary of the Interior's Policy on Consultation with Indian tribes as well as with consultation protocols which a tribe may have with local BLM field offices. Such consultation will ensure full BLM consideration of Indian tribal issues and concerns, including, but not limited to, the effects of solar development on historic properties. Consultation parameters for program level decisions shall follow the principles described in Stipulation 3(A)(1) of this PA.

c) In accordance with the Supplement to the PEIS and the Final PEIS, the BLM will encourage solar development within designated SEZs. The level of consultation and mitigation cited in the Supplement will govern the consideration and authorization of proposed undertakings on public lands governed by the variance process.

2) Future Land Use Plan Amendments

a) Additional land use plan amendments, beyond those tied directly to completion of the PEIS, will be needed to authorize future supportive infrastructure required for utility-scale solar energy generation facilities and to identify new or expanded SEZs beyond those designated in the PEIS.

b) The BLM will take the effects on historic properties into account when deciding whether to amend land use plans, including whether to identify SEZs in those land use plans. The BLM will:

i) Identify lands that are unsuitable for utility-scale solar energy projects in accordance with the process described above in Stipulation 4(A)(1)(a)(i).

ii) Identify the nature, density, and distribution of prehistoric and historic sites in areas of potential effect.

iii) Develop and incorporate stipulations in land use plans and RODs that specify identification, evaluation, treatment, avoidance, protection, and management measures tailored to the lands, resources, and sites of religious and cultural significance to Indian tribes.

iv) The BLM will use information generated through the land use planning process, existing information supplemented by reconnaissance-level survey, as needed, and the results of public scoping, together with the results of government-to-government consultation with Indian tribes in carrying out steps i to iii) above.

c) The BLM will consult with the Consulting Parties on all land use plan amendments analyzed in the Solar PEIS as early as possible to ensure full consideration of their views and comments in the planning process.

B) Solar Energy Applications. After completion of the Solar PEIS and any applicable land use plan amendment decision, the BLM expects to process solar energy project applications that will cover a range of scale and complexity that present unique cultural resource management challenges, considerations, and opportunities for the Section 106 process. The BLM will hold pre-application meetings with the applicant, SHPO, and Indian tribes to discuss inventory or research needs to identify historic properties. The BLM will use screening procedures that prioritize the processing of applications in areas with the lowest potential for conflicts, including cultural resource concerns. For these projects, the BLM Section 106 review process detailed below will be appropriately tailored to the proposed project, taking into account this PA and the thresholds for ACHP involvement as expressed in the National Programmatic Agreement. The process described below is intended to provide flexibility while also enhancing the BLM's ability to meet its Section 106 responsibilities efficiently without compromising the consideration of effects to historic properties. The BLM will structure Section 106 compliance for proposed applications in accordance with this PA or state-specific procedures that reflect the guidelines in Subpart 4 below.

1) The BLM shall invite the ACHP to participate in consultation when the thresholds for ACHP reviews are met as expressed in the National Programmatic Agreement.

2) When the thresholds for ACHP participation are met:

a) The BLM shall invite ACHP participation by providing the ACHP with appropriate information pursuant to 36 CFR § 800.11.

b) The ACHP shall determine whether it will participate in the consultation within 15 days of receipt of notice, according to the criteria set forth in Appendix A to 36 CFR

Part 800. If the ACHP decides to participate, the BLM will follow procedures contained within 36 CFR Part 800 in order to meet its obligations under Section 106.

c) If the ACHP does not join in consultation, the BLM shall proceed with consultation with other Consulting Parties and shall follow the procedures described in Stipulation 4.B.4 below.

d) A decision by the ACHP not to participate in Section 106 consultation does not preclude ACHP entry into the process at a later time if the ACHP determines that its involvement is necessary to ensure that the purposes of Section 106 are met. If the ACHP determines that its involvement is necessary, the ACHP will notify the BLM and Consulting Parties per 36 CFR §800.2(b)(1).

3) If potential adverse effects to an NHL may occur, the BLM shall notify the Secretary of the Department of Interior and invite the Secretary to participate in the consultation in accordance with 36 CFR §800.10(c).

4) When the thresholds for seeking ACHP review are not met or if thresholds for ACHP review are met but the ACHP declines to participate, the BLM will conduct Section 106 review in accordance with the following processes:

a) Inventory.

i) The BLM will determine the Area of Potential Effect (APE), will review existing information, and will seek information from and views of the SHPO, tribes and other parties likely to have knowledge of or concerns with historic properties in the APE.

ii) While the BLM may meet with Indian tribes independently, the agency will invite Indian tribes to participate in pre-application meetings with the solar project applicant to discuss and consult regarding project design, Traditional Cultural Properties, sacred sites, proposed cultural resource inventory strategies, the need for regional ethnographic studies, or other issues of tribal concern.

iii) New Class III inventories will normally be required for the entire APE, except where in the judgment of the BLM reliable Class III inventory data already exist or where geomorphological or human-caused land disturbances would preclude the existence of historic properties. If the BLM decides to require Class III inventory for the entire APE, it may authorize such actions without further consultation.

iv) If the BLM decides to require less than a Class III inventory for the entire APE, the BLM will seek the views of the SHPO, Indian tribes, and any Consulting Parties and determine the final inventory strategy that best represents a reasonable and good faith effort to carry out appropriate identification efforts.

b) Eligibility

i) The BLM will determine if any of the properties within the APE, including properties of traditional religious and cultural importance to an Indian tribe, meets one or more eligibility criteria specified in 36 CFR §60.4. Properties that meet one or more criteria shall be considered historic properties for Section 106 purposes under this PA.

ii) The BLM shall determine the National Register eligibility of all properties consistent with BLM-SHPO Protocols or 36 CFR §800.4.

iii) At pre-application meetings or through other broader, ongoing consultation efforts, the BLM will ask Indian tribes if they wish to be consulted on the

National Register eligibility of specific property types within the APE when the BLM proposes to make an initial determination that the property is not eligible. When tribes have identified specific property types they wish to be consulted about when the BLM would otherwise conclude the property was not eligible, the BLM will consult with tribes about those site types prior to making a final determination of eligibility for the properties in question. Tribes will have additional opportunities for consultation regarding effect and treatment for properties determined eligible as outlined below.

c) Effect

i) The BLM will determine whether National Register-listed or eligible properties may be affected by the undertaking, considering the views of the SHPO, Indian tribes, the public, and Consulting Parties.

ii) If the BLM determines that no historic properties are affected, the BLM will document this finding, proceed with the undertaking, and provide documentation to the SHPO according to the State's BLM-SHPO Protocol or 36 CFR §800.4.

iii) If the BLM determines that historic properties may be affected, the BLM will apply the Criteria of Adverse Effect. If the BLM makes a finding of no adverse effect pursuant to 36 CFR §800.5(b) and the undertaking does not meet the threshold for case-by-case review in the State's BLM-SHPO Protocol, the BLM will document this finding, proceed with the undertaking and report it to the SHPO according to the BLM-SHPO Protocol or 36 CFR §800.5.

iv) If a SHPO, Indian tribe, or other Consulting Party objects to the BLM finding of no historic properties affected, or no adverse effect, the BLM will follow the procedures within Stipulation 5.D to resolve the dispute.

v) If the BLM determines that the effect may be adverse, the BLM will make a reasonable and good faith effort to avoid or minimize adverse effects to the most reasonable and fitting extent and proceed in accordance with subsection (d) immediately below. Avoidance of historic properties is the preferred method to address potential adverse effects and the BLM will require avoidance to the maximum extent practicable.

d) Treatment/Mitigation

i) The BLM will consult regarding the treatment of adverse effects with the SHPO, Consulting Parties, and Indian tribes, when they have indicated at pre-application or other meetings that they wish to provide input for the specific property types affected.

ii) The BLM will seek agreement to avoid, minimize, or mitigate adverse effects to historic properties. If tribes, or any other Consulting Party, object to the terms of the MOA, they will follow the Dispute Resolution process as discussed in Section 5.D of this PA. Unless an objection has been raised by tribes or other Consulting Parties, the BLM will execute an MOA with the SHPO to conclude the Section 106 process and will file a copy with the ACHP.

iii) Where the BLM and SHPO are unable to execute an MOA, the BLM will invite the ACHP to participate in an undertaking-specific MOA. The ACHP will help the BLM and the SHPO develop and execute the MOA or the BLM will follow the Dispute Resolution process.

e) Post-Review Discoveries

i) The BLM will instruct solar companies to halt all surface-disturbing activities within 100 feet of the discovery, protect any exposed cultural resources, and notify the BLM within 24 hours if any unrecorded cultural resources are discovered during siting, construction, reclamation, or decommissioning activities.
ii) The BLM shall notify the appropriate SHPO and any other agency having jurisdiction over the land involved.
iii) The BLM will inspect the discovery within 72 hours and will apply the National Register criteria to determine if the discovery is eligible for listing in the National Register in accordance with subsection (b) above.
iv) If the discovered cultural resource is subsequently identified by an Indian tribe as a property of traditional cultural or religious importance, the solar company shall assist the BLM in consulting with the appropriate Indian tribe regarding eligibility and treatment.
v) Any historic property discovered or exposed by solar operations that is being adversely affected will be subject to a program of treatment/mitigation.
vi) Discoveries which are not being adversely affected by solar operations and which can be avoided by subsequent development will be protected, monitored, and avoided by future operations.
vii) Treatment measures will be determined in accordance with subsection (d) above.
viii) Native American human remains and funerary objects discovered on federal or tribal lands shall be treated in accordance with the provisions of NAGPRA and its implementing regulations at 43 CFR Part 10. Treatment of human remains and associated funerary objects discovered on state or private lands are governed by state laws.
ix) Once the BLM has verified that the requirements of NAGPRA or state laws have been met, the BLM may authorize the solar company to resume operations in the vicinity of the discovery.

5) Programmatic Agreements. Where the BLM determines that a specific proposed solar energy project has the potential to adversely affect historic properties but those effects cannot be determined prior to the project's approval, the BLM may develop an undertaking-specific PA executed pursuant to 36 CFR §800.14(b), instead of following the process outlined in Subpart 4 above. a) The BLM shall identify and invite tribes, organizations, and individuals or other parties as appropriate (pursuant to 36 CFR §800.2(c)) to consult and participate in the development of the PA.
b) The PA shall be consistent with requirements of 36 CFR Part 800. It shall address, but is not limited to, determination of the APE, a process for identification and evaluation of historic properties, consideration of provisions requiring ethnographic data collection, a process for incorporating design changes to avoid or minimize adverse effects to historic properties, development of Historic Properties Management Plans (HPMP) for those projects with historic properties that require management or monitoring for avoidance and protection within or near a project's boundaries, a process for incorporating methods for avoiding, minimizing, or mitigating adverse effects, a process for the preparation and implementation of an Historic Properties

Treatment Plan, and processes for amending the PA, resolving disagreements, and terminating the PA.

6) State-Specific Procedures

a) Individual BLM States, their respective SHPOs, and Indian tribes may have already executed procedures or appendices to existing Protocols, MOUs, or other BLM state-specific procedures for a wide spectrum of undertakings. Such existing procedures may establish local professional standards for reporting; site recording; tribal consultation; evaluation of cultural resources for National Register eligibility; or no historic properties affected, no adverse effect, or adverse effect when consulting parties reach agreement on resolving the adverse effect(s). These procedures will be retained if they help implement the processes laid out in this PA.

b) In the development of new state-specific procedures, the BLM and SHPO will provide opportunities for review and comment to the ACHP, Indian tribes, and the public in the same manner provided for in the National Programmatic Agreement for development of Protocols. Any new state-specific procedures may alter or streamline the consultation process of those parties who execute them but they cannot affect the consultation rights of those parties who choose not to execute them.

5) DISPUTE RESOLUTION

A) If there is an objection by any Signatory to this PA regarding the manner in which the terms of the PA are being implemented, the objecting Signatory will notify the BLM in writing of the objection. The BLM will notify all other Signatory and Concurring Parties and request their comments on the objection within 30 calendar days of such notification. All Signatory and Concurring Parties will be offered the opportunity to consult to resolve the objection.

B) If the objection is resolved by the end of the 30-calendar-day consultation period, the BLM will provide written documentation of that resolution to all Signatories and Concurring Parties.

C) If at the end of the 30-calendar-day-consultation period, the objection cannot be resolved through such consultation, the BLM will forward all documentation relevant to the objection to the ACHP pursuant to 36 CFR §800.2(b)(2). Any comments provided by the ACHP within 30 calendar days after its receipt of all relevant documentation will be taken into account by the BLM in reaching a final decision regarding the objection. The BLM will notify the Signatory and Concurring Parties in writing of its final decision within 14 calendar days after it is rendered.

D) At any time during implementation of the terms of this PA, should an objection pertaining to the PA be raised by an Indian tribe or a member of the public, the BLM shall immediately notify the Signatory and Concurring Parties about the objection, and take the objection into account. The Signatory or Concurring Parties may comment on the objection to the BLM. The BLM shall consult with the objecting party (ies) for no more than 14 calendar days. Within 7 calendar days following closure of consultation, the BLM will render a decision regarding the objection and notify all parties of its decision in writing. In

reaching its final decision, the BLM will take into account all comments from the parties regarding the objection.

E) Nothing in this Section shall be construed or interpreted as a waiver of any judicial remedy that would be available to any party to this PA.

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

6) AMENDMENTS

A) Any Signatory to this PA may request that the other parties consider amending it if there are changes to circumstances that warrant revision of the stipulations. If any Signatory proposes an amendment to this PA, the Signatory will notify the BLM in writing of the proposal to amend. The BLM will notify all Consulting Parties of the proposal to amend and consult on the proposed amendment.

B) Amendments shall be executed in writing and shall go into effect upon signature by all Signatories in the same manner as the original.

C) The BLM will ensure that the PA will be reevaluated by the Consulting Parties every five (5) years or at the request of a Signatory or Concurring Party and, if necessary, amended. The BLM will contact the Consulting Parties no later than six (6) months prior to the 5-year anniversary to set up a meeting as needed to accomplish this review.

7) REPORTING

A) As part of annual reporting requirements for BLM-SHPO Protocols and annual Washington Office reporting requirements, each BLM State will prepare a section within these documents that describes Section 106 actions carried out for each solar project authorized. Both projects that met the threshold for ACHP review mentioned at Stipulation 4(B)(1) as well as those that did not will be briefly summarized. The description will include an assessment of how the PA is working and whether the PA needs to be amended to address specific issues. Any training which occurred during the year, including staff names, offices, and dates of training, shall be included within each states' annual report. The content and format of this section of annual reports will be developed in consultation with the Signatories to this PA.

B) The BLM Washington Office Minerals and Realty Management Directorate and Cultural, Paleontological Resources and Tribal Consultation Division will coordinate to ensure that the information described above from the six BLM States operating under this PA is efficiently collated and transmitted to the Signatory and Concurring Parties in a timely manner.

C) BLM States will include such reporting within the first Washington Office annual report data call following the signing of the ROD by at least two (2) months.

8) TRAINING

A) The BLM will develop flexible, computer-accessible training (such as on-line courses or "webinars") on the provisions contained within the Solar PEIS affecting cultural resources and obligations of this PA within six (6) months of its execution.

B) The BLM will develop this training in consultation with the Signatory Parties who will be invited to participate in the preparation and review of proposed course content.

C) The BLM will direct appropriate staff, including managers, cultural and mineral program specialists, and tribal liaisons, to complete the training as part of Individual Development Plans within one (1) year of the training becoming available. New BLM staff involved with the solar energy or cultural programs will be required to complete the training within one year of beginning work at a BLM Field Office involved with the solar energy program.

D) Course material will be updated every three (3) years or sooner if the Signatory Parties agree that such updated content is needed more quickly.

E) Training on the provisions of this PA will be offered as long as the PA remains in effect.

9) TERMINATION

A) Only the BLM and the ACHP may terminate this entire PA. Individual SHPOs may terminate participation by their state in this PA. In the event that an individual SHPO terminates its participation in this PA, the provisions contained herein will remain in effect for the remaining states.

B) Signatories to this PA may initiate termination by providing written notice to the other parties of their intent. After notification by the initiating Signatory, the remaining Signatories shall have 60 calendar days to consult to seek agreement on amendments or any other actions that would address the issues and avoid termination.

C) Should such consultation result in an agreement on an alternative to termination, the Signatories shall proceed in accordance with that agreement.

D) Should such consultation fail, after the 60-day period, the Signatory proposing termination may terminate its participation (if initiated by an individual SHPO) or this entire PA (if initiated by the BLM or the ACHP) by promptly notifying the other Signatories in writing.

E) Should this PA be terminated by the BLM or the ACHP, then the BLM shall either consult in accordance with 36 CFR §800.14(b) to develop a new agreement or request, consider, and respond to the comments of the ACHP pursuant to 36 CFR §800.7. Should an individual SHPO terminate its participation in this PA, then the affected BLM State shall meet its Section 106 obligations regarding solar developments on public lands within that state by following the procedures within 36 CFR 800.3 through 800.7 or an already applicable program alternative under 36 CFR 800.14.

F) Beginning with the date of termination of this entire agreement, the BLM shall ensure that until and unless a new PA is executed for the activities and undertakings tiered from this PA, such undertakings shall be reviewed individually in accordance with 36 CFR §800.4-800.6. In the event of termination, the BLM shall refer to the 36 CFR Part 800 regulations to address any remaining Section 106 activities or undertakings treated under this PA. The BLM shall consult with appropriate state's SHPO to determine the manner in which Section 106 review for activities or undertakings tiered from this PA shall be concluded.

10) DURATION OF THIS PA

A) Unless the PA is terminated pursuant to Stipulation 9 of this PA, another agreement is executed for an activity or undertaking tiered to this PA that supersedes it, or an undertaking tiered to this PA itself has been terminated, this PA will remain in full force and effect for 20 years from the date of its execution. It may be terminated prior to 20 years if the BLM, in consultation with the other Signatories, determines that all aspects of the Solar Energy Program have been completed and that all terms of this PA and any subsequent tiered agreements have been fulfilled in a satisfactory manner. Upon a determination by the BLM that all aspects of the Solar Energy Program have been completed and that all terms of this PA and any subsequent tiered agreements have been fulfilled in a satisfactory manner, the BLM will notify the other Signatories and Concurring Parties of this PA in writing of the agency's determination. This PA will terminate and have no further force or effect on the day that the BLM so notifies the Signatory and Concurring Parties to the PA.

B) If the BLM or any of the other Signatory Parties determine that there is a need to extend this PA beyond 20 years, they shall consult with all Consulting Parties to agree upon provisions of a new PA. The new Solar PA will incorporate those provisions of this PA which have worked well and will modify other provisions to reflect the experiences learned from administering the stipulations contained herein.

C) This PA will expire if the Solar Energy Program or the stipulations of this PA have not been implemented within five (5) years from the date of its execution. Prior to such time, the BLM will consult with the Signatories and Concurring Parties on whether to extend the PA or reconsider the terms of the PA and amend it in accordance with Stipulation 6. The BLM shall notify the Signatories and Concurring Parties as to the course of action it will pursue 30 days before the 5-year anniversary of the execution of this PA

11) EXECUTION OF TERMS

A) Entirety of Agreement. This PA, consisting of 35 complete pages, represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations and agreements, whether written or oral.

B) Prior Approval. This PA shall not be binding upon any party unless this PA has been reduced to writing, and signed by all Signatories, before performance begins as described under the terms of this PA.

C) Severability. Should any portion of this PA be judicially determined to be illegal or unenforceable, the remainder of the PA shall continue in full force and effect, and the Signatories may renegotiate the terms affected by the severance.

Execution of the PA and implementation of its terms is evidence that the BLM has taken into account the effects of the solar energy development program on historic properties and has afforded the ACHP an opportunity to comment on the undertaking, its effects, and resolution of adverse effects.

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Signatures. In witness whereof, the parties to this PA through their duly authorized representatives have executed this PA on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this PA as set forth herein.

The effective date of this PA is the date of the last Signatory signature affixed to these pages. Any amendments or attachments to this PA shall take effect on the dates they are fully executed by the Signatories, or such other self-executing dates as may be described in those documents.

The remainder of this page intentionally left blank.

Signatory Party:

Bureau of Land Management

By: _____ Date: 9/7/2012

Mike Pool, Acting Director, BLM

Signatory Party:

Advisory Council on Historic Preservation

By: John M. Fowler Date: 9/20/12
John M. Fowler, Executive Director

Signatory Party:

Arizona State Historic Preservation Officer

By: James Garrison Date: 9/13/12
James Garrison, SHPO

Signatory Party:

California State Historic Preservation Officer

By: Susan K Stratton for Date: 11 Sept 2012
Milford Wayne Donaldson, FAIA, SHPO

Signatory Party:

Colorado State Historic Preservation Officer

By: Richard H Wilson (Deputy SHPO) Date: 9-12-2012
Edward Nichols, SHPO

Signatory Party:

Nevada State Historic Preservation Officer

By: Rebecca Palmer Date: 9/11/12

for Ronald James, SHPO

Signatory Party:

New Mexico State Historic Preservation Officer

By: Jeff Pappas Date: 9/11/12
Jeff Pappas, SHPO

Signatory Party:

Utah State Historic Preservation Officer

By: _____ Date: 9/11/2012
Wilson Martin, SHPO

Concurring Party:

National Trust for Historic Preservation

By: Barbara Pahl Date: 9-19-12
Barbara Pahl, Vice President of Western Field Offices, NTHP

Concurring Party:

Duckwater Shoshone Tribe

By: _____ Date: 9-13-12
Virginia Sanchez, Chairman

APPENDIX A: Definition of Terms

a) Parties to this PA are defined herein according to the role they played in formulating the PA and will play in its execution. Use of either Signatory Party or Concurring Party means only the specific parties covered by that term. However, wherever the term Consulting Party appears, it is understood to also include Signatory and Concurring Parties.

   i) **"Signatory Party"**. Signatory Parties represent those agencies with the sole authority to execute, amend, or terminate the PA. These parties wrote, reviewed, and revised the PA and agreed upon its final provisions.

   ii) **"Concurring Party"**. A Concurring Party actively participated in the review of the draft versions of the PA and chose to sign it, acknowledging familiarity with the terms of the PA. The decision of a Concurring Party to sign the PA does not mean the party endorses or agrees with all provisions

   iii) **"Consulting Party"**. Consulting Parties are the Signatory and Concurring Parties. Consulting Parties also include Indian tribes that attach religious and cultural significance to historic properties that may be affected by the BLM's national solar program, interested organizations, and members of the public. Consulting Parties were invited to consider and provide input into drafts of the PA.

b) Unless otherwise defined herein, the definitions provided at 36 CFR §800.16 and in these stipulations are applicable throughout this PA.

c) **"Class III Inventory"** is a professionally conducted, thorough pedestrian survey of an entire area, intended to locate and record all historic properties.

d) **"Solar Energy Zone"** is defined as an area within which the BLM will prioritize and facilitate utility-scale production of solar energy and associated transmission infrastructure development.

e) **"Variance Process"** is the case-by-case decision-making process the BLM will engage in to consider solar applications outside of solar energy zones as described in the Supplement to the Draft PEIS. The BLM may approve solar developments through the variance process based on environmental considerations; consultations with appropriate federal, state, and local agencies, and Tribes; and public outreach.

APPENDIX B: Tribal Governments Invited to Consult on the PEIS and PA

ARIZONA
Ak Chin Indian Community Council
Cocopah Tribal Council
Colorado River Tribal Council
Fort McDowell Yavapai Nation
Fort Yuma Quechan Tribe
Gila River Indian Community
Havasupai Tribal Council
Hopi Tribal Council
Hualapai Tribal Council
Navajo Nation
Pascua Yaqui Tribal Council
Salt River Pima-Maricopa Indian Community
San Carlos Apache Tribe
San Juan Southern Paiute Council
Tohono O'odham Nation
Tonto Apache Tribal Council
White Mountain Apache Tribe
Yavapai-Apache Nation Tribal Council
Yavapai-Prescott Indian Tribe

CALIFORNIA
Agua Caliente Band of Cahuilla Indians
Augustine Band of Mission Indians
Barona Group of the Capitan Grande
Bear River Band of Rohnerville Rancheria
Benton Paiute Reservation
Berry Creek Rancheria
Big Lagoon Rancheria
Big Pine Paiute Tribe of the Owens Valley
Big Sandy Rancheria of Mono Indians
Big Valley Rancheria of Pomo Indians
Bishop Paiute Tribe
Blue Lake Rancheria
Bridgeport Indian Colony
Buena Vista Rancheria
Cabazon Band of Cahuilla Mission Indians
Cahto Tribal Executive Committee
Cahuilla Band of Mission Indians
California Valley Miwok Tribe
Campo Band of Mission Indians
Cedarville Rancheria
Chemehuevi Tribal Council
Chicken Ranch Rancheria

Cloverdale Rancheria
Cold Springs Rancheria
Colusa Rancheria
Cortina Rancheria
Coyote Valley Reservation
Dry Creek Rancheria
Elem Indian Colony
Elk Valley Rancheria
Enterprise Rancheria
Ewiiaapaayp Band of Kumeyaay Indians
Federated Indians of Graton Rancheria
Fort Bidwell Reservation
Fort Independence Indian Reservation
Fort Mojave Tribal Council
Greenville Rancheria
Grindstone Rancheria
Guidiville Rancheria
Habematolel Pomo of Upper Lake
Hoopa Valley Tribal Council
Hopland Reservation
Inaja-Cosmit Reservation
Ione Band of Miwok Indians
Jackson Rancheria
Jamul Indian Village
Karuk Tribe of California
La Jolla Band of Luiseño Indians
La Posta Band of Mission Indians
Lone Pine Paiute Shoshone Reservation
Los Coyotes Band of Cahuilla & Cupeno Indians
Lower Lake Rancheria
Lytton Rancheria
Manchester - Point Arena Band of Pomo Indians
Manzanita Band of Mission Indians
Mechoopda Indian Tribe of the Chico Rancheria
Mesa Grande Band of Mission Indians
Middletown Rancheria
Mooretown Rancheria
Morongo Band of Mission Indians
North Fork Rancheria
Pala Band of Mission Indians
Paskenta Band of Nomlaki Indians
Pauma/Yuima Band of Mission Indians
Pechanga Band of Mission Indians
Picayune Rancheria of Chukchansi Indians
Pinoleville Reservation

Pit River Tribal Council
Potter Valley Tribe
Quartz Valley Reservation
Ramona Band of Mission Indians
Redding Rancheria
Redwood Valley Reservation
Resighini Rancheria
Rincon Band of Mission Indians
Robinson Rancheria
Round Valley Reservation
Rumsey Rancheria
San Manuel Band of Mission Indians
San Pasqual Band of Mission Indians
Santa Rosa Band of Mission Indians
Santa Rosa Rancheria
Santa Ynez Band of Mission Indians
Santa Ysabel Band of Diegueño Indians
Scotts Valley Rancheria
Sherwood Valley Rancheria
Shingle Springs Rancheria
Smith River Rancheria
Soboba Band of Luiseño Indians
Stewarts Point Rancheria
Susanville Indian Rancheria
Sycuan Band of the Kumeyaay Nation
Table Mountain Rancheria
Timbisha Shoshone Tribe
Torres-Martinez Desert Cahuilla Indians
Trinidad Rancheria
Tule River Reservation
Tuolumne Rancheria
Twenty-Nine Palms Band of Mission Indians
United Auburn Indian Community
Viejas Band of Mission Indians
Wiyot Tribe
Woodfords Community Council
Yurok Tribe

COLORADO
Southern Ute Tribe
Ute Mountain Ute Tribe

IDAHO
Shoshone-Bannock Tribes

MONTANA
Blackfeet Tribal Business Council
Chippewa Cree Business Committee
Confederated Salish & Kootenai Tribes, Tribal Council
Crow Tribal Council
Fort Belknap Community Council
Fort Peck Tribal Executive Board
Northern Cheyenne Tribe

NORTH DAKOTA
Standing Rock Sioux Tribe

NEVADA
Battle Mountain Band Council
Carson Community Council
Dresslerville Community Council
Duckwater Tribal Council
Elko Band Council
Ely Shoshone Tribe
Fallon Paiute Shoshone Tribal Business Council
Fort McDermitt Tribal Council
Las Vegas Tribal Council
Lovelock Tribal Council
Moapa Business Council
Pahrump Paiute Tribe
Pyramid Lake Paiute Tribal Council
Reno-Sparks Tribal Council
Shoshone-Paiute Business Council (Duck Valley)
South Fork Band Council
Stewart Community Council
Summit Lake Paiute Tribal Council
Te-Moak Tribe of Western Shoshone Tribal Council
Walker River Paiute Tribal Council
Washoe Tribal Council
Wells Band Council
Winnemucca Tribal Council
Yerington Paiute Tribes
Yomba Tribal Council

NEW MEXICO
Jicarilla Apache Nation
Mescalero Apache Tribe
Ohkay Owingeh
Pueblo of Acoma
Pueblo of Cochiti

Pueblo of Isleta
Pueblo of Jemez
Pueblo of Laguna
Pueblo of Nambe
Pueblo of Picuris
Pueblo of Pojoaque
Pueblo of San Felipe
Pueblo of San Ildefonso
Pueblo of Sandia
Pueblo of Santa Ana
Pueblo of Santa Clara
Pueblo of Santo Domingo
Pueblo of Taos
Pueblo of Tesuque
Pueblo of Zia
Pueblo of Zuni

OKLAHOMA
Apache Tribe of Oklahoma
Cheyenne-Arapaho Tribes of Oklahoma
Comanche Nation
Fort Sill Apache Tribe of Oklahoma
Kiowa Tribe of Oklahoma
Pawnee Nation of Oklahoma

SOUTH DAKOTA
Cheyenne River Lakota Sioux Tribe
Crow Creek Sioux Tribe
Lower Brule Sioux Tribal Council
Oglala Sioux Tribe
Rosebud Sioux Tribe
Sisseton-Wahpeton Sioux Tribe
Yankton Sioux Tribe

TEXAS
Ysleta del Sur Pueblo

UTAH
Goshute Business Council
Northwestern Band of Shoshone Nation
Paiute Indian Tribe of Utah Tribal Council
Paiute Indian Tribe of Utah, Cedar Band
Paiute Indian Tribe of Utah, Indian Peak Band
Paiute Indian Tribe of Utah, Kanosh Band
Paiute Indian Tribe of Utah, Koosharem Band

Paiute Indian Tribe of Utah, Shivwits Band
Skull Valley Band of Goshute Indians General Council
Ute Indian Tribe
White Mesa Ute Tribe

WYOMING
Eastern Shoshone Tribe
Northern Arapaho Business Council

APPENDIX C: SUPPLEMENT 1. DESIGN ELEMENT FROM SOLAR PEIS

Performance Bonding. The BLM will require a Performance and Reclamation bond for all solar energy projects. This will ensure compliance with the terms and conditions of the right-of-way (ROW) authorization. When establishing bond amounts and conditions, the BLM authorized officer will require coverage of all expenses tied to cultural resources identification, protection, and mitigation. These may include but are not limited to costs for: ethnographic studies, inventory, testing, geomorphological studies, data recovery, compensatory mitigation programs, curation, monitoring, treatment of damaged sites, and generation and submission of reports. BLM officers will review the adequacy of all bonds on an annual basis. The bond will also be reviewed at the time of any ROW assignment, amendment, or renewal. The BLM authorized officer may increase or decrease the bond amount pertaining to cultural resources at any time during the term of the ROW authorization, consistent with the regulations at 43 CFR §2805.12(g).