

Appendix R

Memorandum of Agreement

1 **DRAFT**
2 **MEMORANDUM OF AGREEMENT**
3 **AMONG THE**
4 **BUREAU OF LAND MANAGEMENT-CALIFORNIA,**
5 **THE UNITED STATES ARMY CORPS OF ENGINEERS,**
6 **OCOTILLO EXPRESS LLC,**
7 **THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,**
8 **AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**
9 **REGARDING**
10 **THE OCOTILLO EXPRESS WIND ENERGY PROJECT**
11 **IMPERIAL COUNTY, CALIFORNIA**
12

13 **WHEREAS**, Ocotillo Express LLC (Applicant), has applied for a right-of-way (ROW)
14 grant on public lands managed by the Bureau of Land Management (BLM) and has submitted a
15 plan of development to construct, operate and maintain a wind turbine electrical energy
16 generation plant on federal and non-federal lands, including construction of access and
17 maintenance roads, meteorological testing towers, a substation and energy collecting system,
18 laydown and staging areas, and support facilities and infrastructure (hereinafter, the “Project”);
19 and
20

21 **WHEREAS**, the BLM has determined that the issuance of a ROW (proposed federal
22 action) to the Applicant in accordance with the Federal Land Policy and Management Act
23 (FLPMA) (Pub. L. 940-579; 43 U.S.C 1701) and authorization of the Project is an undertaking
24 subject to Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. § 470(f),
25 and its implementing regulations under 36 C.F.R. Part 800 (2004); and
26

27 **WHEREAS**, the United States Army Corps of Engineers (COE) may also have Section
28 106 responsibilities since it may issue a Department of the Army (DA) permit pursuant to
29 Section 404 of the Clean Water Act (proposed federal action) for discharges of dredged or fill
30 material into jurisdictional waters of the United States associated with the Project, which is an
31 undertaking subject to Section 106 of the NHPA, and therefore has participated in this
32 consultation and is a Signatory to this Agreement; and
33

34 **WHEREAS**, the BLM is the lead federal agency for the undertaking as provided at 36
35 C.F.R. § 800.2(a)(2) fulfilling the collective responsibilities for complying with Section 106 on
36 behalf of itself and COE, and the BLM shall be responsible for managing historic properties
37 within the area of potential effects (APE); and
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39 **WHEREAS**, the BLM has consulted with the California State Historic Preservation
40 Officer (SHPO) pursuant to 36 CFR Part 800 of the regulations implementing Section 106 of the
41 NHPA; and
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43 **WHEREAS**, in accordance with the regulations at 36 C.F.R. § 800.6(a)(1) BLM has
44 notified the Advisory Council on Historic Preservation (ACHP) regarding the effects of
45 alternatives of the undertaking on historic properties and has invited the ACHP to participate in
46 consultation to resolve the potential effects on historic properties, and as per their letter dated

47 December XX, 2011, the ACHP is participating in this consultation and is a Signatory to this
48 Agreement (see 36 C.F.R. § 800.6(b)(2), “Resolution with Council Participation); and
49

50 **WHEREAS**, the County of Imperial may authorize a portion of the Project facilities on
51 private land and has certain responsibilities under State laws and regulations to take into account
52 and mitigate the impacts on properties eligible for or included on the California Register of
53 Historical Resources and has participated in consultation and is invited to participate in this
54 Agreement as a Concurring Party; and
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56 **WHEREAS**, the BLM and the County of Imperial have prepared the *Draft Plan*
57 *Amendment and Draft Environmental Impact Statement/Environmental Impact Report for the*
58 *Ocotillo Wind Energy Facility (2011)* to identify the Project alternatives for purposes of the
59 National Environmental Policy Act (NEPA) and the California Environmental Quality Act
60 (CEQA), and have comparatively examined the relative effects of the alternatives on known
61 historic properties; and
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63 **WHEREAS**, the Applicant has participated in this consultation per 36 C.F.R. §
64 800.2(c)(4), will be the entity to whom the BLM may grant a ROW, and has the responsibility
65 for carrying out the specific terms of this Agreement under the oversight of the BLM, and is an
66 Invited Signatory to this Agreement; and
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68 **WHEREAS**, the BLM has authorized the Applicant to conduct specific identification
69 efforts for the undertaking including a review of the existing literature and records and cultural
70 resources surveys to identify historic properties that might be located within the APE; and
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72 **WHEREAS**, the reports *Draft Archaeological Survey Report for the Ocotillo Wind*
73 *Energy Project, Imperial County, CA*, prepared by Tierra Environmental Services, October 2011,
74 and the *Draft Historical Resources Evaluation and Impact Analysis for the Ocotillo Express*
75 *Wind Energy Project, Imperial County, CA*, prepared by Scott Moomjian, November 2011
76 present the results of identification and evaluation efforts for archaeological and historical
77 resources; and
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79 **WHEREAS**, the Viejas Band of Kumeyaay Indians have identified a Traditional Cultural
80 Property (TCP) and cultural landscape that has cultural and religious value to their Tribe and
81 other tribes, and has been submitted as a sacred site under Executive Order 13007, and the
82 undertaking falls within the boundaries of the TCP identified by the Tribe; and
83

84 **WHEREAS**, through Section 106 consultation with consulting parties and government-
85 to-government consultation with Indian tribes, the BLM has determined that the historic
86 property, CA-IMP-6988 known as the “Spoke Wheel Geoglyph”, is locally significant and
87 eligible for the National Register of Historic Places (NRHP) under Criterion A for its association
88 with historical patterns or events significant to the cultural traditions of the community. The
89 Spoke Wheel Geoglyph was previously determined eligible and listed on the National Register
90 of Historic Places (NRHP) under Criteria C and D because of its distinctive construction and the
91 likelihood of providing important information. For the purposes of project management the
92 BLM assumes the portion of the TCP (and associated cultural resources) as identified by the

93 tribes within the Project area is eligible for the NRHP. The BLM also recognizes the TCP and its
94 associated cultural resources as identified by the tribes as having cultural and religious value to
95 the tribes; and

96
97 **WHEREAS**, through Section 106 consultation and government-to-government
98 consultation with Indian tribes, the BLM has determined that all build alternatives under
99 consideration for implementation would have an adverse effect on the following historic
100 properties: CA-IMP-6988 known as the “Spoke Wheel Geoglyph”, the portion of the TCP that
101 lies within the APE as identified by tribes, and the cultural resources that the tribes have
102 identified that are related to the TCP to which Indian tribes attach religious and/or cultural
103 significance. The BLM has consulted with the SHPO pursuant to 36 C.F.R. § 800.6 of the
104 regulations implementing Section 106 of the NHPA and has concluded that the undertaking shall
105 have an adverse effect; and

106
107 **WHEREAS**, the BLM intends to manage all known archaeological sites within the APE
108 as eligible for inclusion on the NRHP for project management purposes; and

109
110 **WHEREAS**, pursuant to 36 C.F.R. § 800.2(c)(2)(ii) and Executive Order 13175, the
111 BLM is responsible for government-to-government consultation with federally recognized Indian
112 tribes and is the lead federal agency for all tribal consultation and coordination. The BLM has
113 formally notified and invited federally recognized tribes (Tribes), including the Barona Band of
114 Diegueno Indians, Campo Band of Mission Indians, Cocopah Indian Tribe, Ewiiapaayp Band
115 of Kumeyaay Indians, Fort Yuma Quechan Indian Tribe, Jamul Indian Village, La Posta Band of
116 Kumeyaay Indians, Manzanita Band of Kumeyaay Indians, Mesa Grande Band of Mission
117 Indians, San Pasqual Band of Diegueno Indians, Santa Ysabel Band of Diegueno Indians,
118 Sycuan Band of Kumeyaay Nation, Torres-Martinez Desert Cahuilla Indians, and Viejas Band of
119 Kumeyaay Indians to consult on the undertaking and participate in this Agreement as a
120 Concurring Party; and

121
122 **WHEREAS**, the BLM has invited the non-federally recognized tribe of the Kwaaymii
123 Laguna Band of Indians (Tribal Organization) to consult on the undertaking and participate in
124 this Agreement as a Concurring Party; and

125
126 **WHEREAS**, the Campo Band of Mission Indians, Fort Yuma Quechan Indian Tribe,
127 Manzanita Band of Kumeyaay Indians, San Pasqual Band of Diegueno Indians, Viejas Band of
128 Kumeyaay Indians, Kwaaymii Laguna Band of Indians, and the Southern California Tribal
129 Chairman’s Association, have proposed that the BLM select a no project alternative due to
130 effects identified by the Tribes on the TCP and cultural landscape; and

131
132 **WHEREAS**, the BLM shall continue to consult in a government-to-government manner
133 with the Tribes throughout the implementation of this Agreement regarding effects to historic
134 properties to which they attach religious and cultural significance. BLM will carry out its
135 responsibilities to consult with Tribes that request such consultation with the further
136 understanding that, notwithstanding any decision by these Tribes to decline concurrence, BLM
137 shall continue to consult with these Tribes throughout the implementation of this Agreement; and

138

139 **NOW, THEREFORE**, the BLM, COE, SHPO, and ACHP (Signatories), and the
140 Applicant (Invited Signatories), agree that the undertaking shall be implemented in accordance
141 with the following stipulations in order to take into account the adverse effect of the undertaking
142 on historic properties, resolve such adverse effects through the process set forth in this
143 Agreement, and provide the ACHP with a reasonable opportunity to comment in compliance
144 with Section 106.
145

146 **STIPULATIONS**

147
148 The BLM shall ensure that the following measures are implemented:

149
150 **I. DEFINITIONS**

151
152 The definitions found at 36 C.F.R. § 800.16 and in Appendix A shall apply throughout this
153 Agreement.
154

155 **II. AREA OF POTENTIAL EFFECTS**

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157 The area of potential effects (APE) is described and depicted in Appendix B to this Agreement.
158 Appendix B as set forth hereunder may be modified through consultation among the parties to
159 this Agreement without amending the Agreement. The APE, as currently defined, encompasses
160 an area sufficient to accommodate all of the proposed and alternative project components under
161 consideration as of the date of execution of this Agreement. If it is determined in the future that
162 the undertaking may directly or indirectly affect historic properties located outside the currently
163 defined APE, then the BLM, in consultation with SHPO and pursuant to 36 C.F.R. §
164 800.4(a)(1), shall determine and document modifications to the APE using the following
165 process:

- 166
- 167 a) Consulting parties to this Agreement may propose that the APE established herein be
168 modified. If the Signatories and Invited Signatories decide that such modification
169 requires an amendment of the Agreement, the BLM shall follow the procedures in
170 Stipulation X.
 - 171 b) If the Signatories and Invited Signatories agree to the proposal, then the BLM will
172 prepare a description and a map of the modification to which the Signatories and Invited
173 Signatories agree. The BLM will keep copies of the description and the map on file for its
174 administrative record and distribute copies of each to the other consulting parties within
175 30 days of the day upon which agreement was reached.
 - 176 c) Where modification to the APE adds a new geographic area, the BLM shall take the steps
177 necessary to identify, evaluate and take into account the effects of the undertaking on
178 historic properties in the new geographic area in accordance with this Agreement.

179 **III. AVOIDANCE, PROTECTIVE MEASURES AND TREATMENT PLANS**

180

181 The BLM will continue to monitor mitigation measures and treatments that would avoid and
182 minimize adverse effects to identified historic properties including the TCP identified by several
183 Tribes. Through continuing Section 106 and government-to-government consultation, design
184 for the undertaking has been proposed to reduce the number and/or location of wind turbines
185 from 155 to 112. The reduction and relocation of wind turbines was undertaken, in part, to
186 address impacts to the TCP and cultural landscape as identified by several Tribes. Additional
187 wind turbines were removed or relocated to assure that there would be no effects within the
188 physical boundaries of the archaeological and historical resources identified for the undertaking.
189 Turbines were also removed from the original layout to protect cremation locations.

- 190
- 191 a) Where archaeological resources are avoided, the BLM will implement the management
192 or protective measures identified in Table 1 of Appendix C and the following:
- 193
- 194 i. Archaeological sites that are protected from physical impacts, but are within 150 feet
195 of proposed construction activities, will be identified and labeled by archaeological
196 and Native American monitors as Environmentally Sensitive Areas (ESAs). This
197 includes archaeological sites determined eligible for inclusion in the NRHP and sites
198 that have not been formally evaluated, but are being treated as eligible and avoided
199 for project management purposes.
- 200 ii. The ESAs will be designated by marking the boundaries of sites with appropriate
201 buffer zones using temporary fencing or other easily recognizable boundary defining
202 materials.
- 203 (1) These ESAs will be shown on the engineering plans for the Project as off-limits to
204 construction activities.
- 205 (2) Once established, an ESA will define areas where construction activities cannot
206 occur to prevent damage to historic properties within the designated ESA.
- 207 (3) Construction work areas will also be clearly defined using temporary fencing or
208 other easily recognizable boundary defining materials.
- 209 iii. ESAs will be identified and established prior to initiation of ground disturbing
210 activities and will be maintained and monitored for the duration of the work effort in
211 the ESA vicinity.
- 212
- 213 b) Approval of any alternative other than the No Action/No Project alternative would
214 adversely affect the historic property, CA-IMP-6988, referred to as the Spoke-Wheel
215 Geoglyph and the TCP and its associated cultural resources as identified by the Tribes.
216 The BLM will mitigate the adverse effects and values of cultural and religious
217 importance to the Tribes as follows:
- 218
- 219 i. The BLM shall respect the Tribes' rights to express their traditional cultural values,
220 including those associated with their religions, and their right to access federally
221 managed lands to conduct cultural and religious practices, as variously specified in
222 E.O. 13007, the Religious Freedom Act (RFA), and the American Indian Religious
223 Freedom Act (AIRFA). The BLM shall consult with the Tribes, Applicant and other
224 agencies to develop a plan to assure Tribal access to areas within the APE for
225 traditional religious or cultural purposes. Access shall be consistent with applicable
226 laws, regulations and agreements governing the federal property within the APE and

227 may not impede the undertaking. A Tribal Access Plan shall be completed upon
228 request or within two years after signing of the ROD.
229

230 ii. The BLM shall develop a historic properties treatment plan (HPTP) in consultation
231 with consulting parties to this Agreement. The Applicant will be responsible for
232 implementing all provisions of the HPTP.
233

234 (1) The HPTP shall be finalized by the by the date of the Record of Decision (ROD).
235 The BLM shall submit the HPTP to consulting parties for review. A consulting
236 party may provide any comments directly to SHPO with a copy to the BLM
237 within the 30-day comment period. The BLM will forward to the other
238 Signatories and Invited Signatories all comments regarding the HPTP received
239 during the comment period. The BLM shall submit the revised HPTP to all
240 consulting parties for a final, 15 day review period. BLM will consider any timely
241 comments in finalizing the HPTP. The final HPTP will be made Appendix D to
242 this Agreement.
243 (2) Amendments to the HPTP shall not require an amendment to the Agreement.
244

245 iii. The HPTP will finalize and provide expanded detail on mitigation measures to
246 resolve adverse effects. The Applicant will implement the following mitigation
247 measures in accordance with the stipulations of the final HPTP:
248

249 (1) The HPTP will include mitigation measures that will address the values important
250 to the traditional use of the Spoke-Wheel Geoglyph and its relationship to the
251 larger TCP, other related sites and the cultural landscape as described by the
252 Tribes. The mitigations measures developed shall include, but are not limited-to:
253 a. Visual values associated with the environmental/cultural setting and
254 traditional use of the historic property.
255 b. Audible values important to the traditional use of the property.
256 c. Providing for access to the property.
257 d. Mitigations that might be implemented through coordination or scheduling
258 of traditional use of the property with on-going Project activities.
259 e. Development of treatments/mitigations for the physical protection and
260 stabilization of the Spoke-Wheel Geoglyph.
261 f. Mandatory cultural sensitivity training for all Applicants staff and
262 contractors during construction and long term operation associated with
263 this Project.
264

265 (2) The Applicant will provide funding for the following measures:
266

267 a. An ethnographic study to further document the tribal values of the historic
268 properties within the Project Area that are considered of religious or cultural
269 significance by Indian tribes and tribal organizations. The study will explore
270 how these resources fit into the larger TCP and cultural landscape as
271 identified by Tribes and document and identify the boundaries of the larger
272 TCP and its potential eligibility to the NRHP; and if eligible, a formal

- 273 nomination to the NRHP shall be prepared.
- 274 b. Synthesis study of existing data to explore the potential for one or more
- 275 archaeological districts using a regional approach and the latest GIS
- 276 technology; and if district(s) are identified, or have elements that are
- 277 contributing to existing districts, formal NRHP nomination forms shall be
- 278 prepared.
- 279 c. Prehistoric trails continuation study.
- 280 d. Support and enhance public education and interpretation programs at a
- 281 museum for the interpretation of Native American uses of the area for a
- 282 better understanding by the public.
- 283 e. Professional training of a representative from each Tribe in curation
- 284 management.
- 285 f. Monitoring training for tribal monitors.
- 286 g. Video documentation of the traditional songs associated with the Project
- 287 area.
- 288 h. Support for existing or new language preservation initiatives for the Tribes.
- 289
- 290 (3) The BLM and the Applicant, in consultation with Tribes and the appropriate land
- 291 owner(s) and within the limits of agency authority, will identify and implement
- 292 resource protection measures during the period of construction, such as fencing,
- 293 gating, and law enforcement patrols, to stabilize and/or protect cultural resources
- 294 within the vicinity of the APE during the construction. Where continuing resource
- 295 protection measures are considered appropriate after the period of construction,
- 296 such measures will be developed as provided in Stipulation IV(c).
- 297
- 298 iv. Should the undertaking be approved by the BLM, the HPTP will be implemented
- 299 after the ROW is granted by the BLM and the DA permit is issued by the COE, and
- 300 prior to the issuance of a Notice to Proceed for construction in those portions of the
- 301 undertaking addressed by fieldwork related to the terms of the HPTP.
- 302
- 303 v. Within thirty (30) days after the BLM has determined that all work required by HPTP
- 304 has been completed, the BLM shall notify and submit a summary report to the
- 305 consulting parties. Within twelve (12) months after BLM has determined that all
- 306 work required by HPTP has been completed, or pursuant to an alternative schedule
- 307 required by any HPTP implementing the requirements of this Agreement, the
- 308 Applicant will submit a written draft technical report to the BLM that documents the
- 309 results of implementing the HPTP. The BLM will provide the draft technical report to
- 310 consulting parties for review as provided in Stipulation VII(a).
- 311
- 312 vi. Copies of the final technical report documenting the results of implementing the
- 313 requirements of the HPTP will be distributed by BLM to the consulting parties and to
- 314 the appropriate California Historical Resources Information Survey (CHRIS)
- 315 Regional Information Center.
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317 **IV. MONITORING**

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319 a) Archaeological Monitoring

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- i. The Applicant, in consultation with the other consulting parties to this Agreement, shall develop a comprehensive archaeological monitoring plan. A comprehensive archaeological monitoring plan that has been approved by the Signatories and Invited Signatories shall take precedence over those stipulations provided below. A draft comprehensive archaeological monitoring plan shall be incorporated into the plan for post-review discoveries and unanticipated effects and will be attached as Appendix F to this Agreement. In the absence of a comprehensive archaeological monitoring plan, Paragraphs 1 – 4 of this stipulation shall apply.
 - (1) The Applicant shall ensure that archaeological monitors and, to the extent practicable, tribal monitors, will be on site during construction to observe all construction or other ground disturbing activities for any facilities, roads or other project components related to the undertaking near ESAs and in other areas designated for full-time monitoring, as detailed in Stipulation III, Appendix C and/or Appendix F.
 - (2) The Applicant shall ensure that archaeological monitors will meet the standards specified in Stipulation VIII(a), will be approved and permitted by the BLM, will be 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).
 - (3) The Applicant shall ensure that the PA will submit bi-weekly documentation of archaeological monitoring activities 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 any 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. The BLM will provide copies of biweekly and monthly archaeological monitoring reports to the consulting parties, unless otherwise directed by a consulting party.
 - (4) Upon completion of all archaeological monitoring tasks and requirements implemented pursuant to this Agreement, the Applicant shall ensure that the PA will submit within three months a final monitoring report to the BLM for review and approval. The final monitoring report will describe the monitoring program and its findings and results, and present a detailed professional description, analysis, and evaluation of any cultural resources that were encountered and evaluated during construction. The BLM will provide a copy of the monitoring report to the consulting parties.

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b) Tribal Participation Plan

- i. To facilitate continued tribal consultation for this undertaking, the Applicant in consultation with the BLM, and interested Tribes may develop and implement a tribal participation plan. This plan will afford representatives designated by Tribes (tribal cultural consultants) the opportunity to monitor and be on site during all construction activities to observe grading, trenching or ground disturbing activities for facilities, roads or other activities near ESAs and in other areas designated for monitoring as detailed in Appendix C and/or F.
- ii. The BLM shall continue to consult with Tribes and Tribal Organizations on implementation of the project and all shall be eligible to participate in the development of a tribal participation plan whether they elect to concur in the Agreement or not.
 - (1) In consultation with the BLM, the Applicant will contact and identify Tribes who want to participate in the development and implementation of the plan.
 - (2) The Applicant will develop a draft framework for the tribal participation plan and submit it to the BLM and the participating Tribes for their review and comment.
 - (3) The tribal participation plan will describe the role of all parties in the program, specify the terms, expectations, notifications, reports, training, or deliverables to be provided, including all documentation requirements. The plan will include a specific procedure to be followed in the event that a tribal cultural consultant is not provided or is not available.
 - (4) Tribal cultural consultants will be individuals designated by the Tribes and will report to the PA.
 - (5) The tribal participation plan will be finalized and implemented prior to the start of ground-disturbing activities in areas designated for monitoring and consistent with the provisions of Stipulation IX (Implementation of the Undertaking).

c) Long Term Management Plan

- i. The Applicant, in consultation with the other consulting parties to this Agreement, will establish and fund a Long Term Management Plan (LTMP) for the post-construction archaeological monitoring, and condition assessment of sites in the APE which could be affected by on-going operations and maintenance activities, and law enforcement patrols as provided in Stipulation III(b)(ii)(3). The Applicant shall submit a draft LTMP to the BLM within 9 months from the date of the issuance of the Notice to Proceed for the undertaking. The BLM will submit the LTMP to the consulting parties for review following the provisions of Stipulation VII(a). The LTMP will be made Appendix E to this Agreement.

V. POST-REVIEW DISCOVERIES AND UNANTICIPATED EFFECTS

405 The Applicant, in consultation with the other consulting parties to this Agreement, shall develop
406 a comprehensive plan to manage post-review discoveries and unanticipated effects pursuant to
407 36 C.F.R. § 800.13(a). It shall be attached as Appendix F to this Agreement.
408

- 409 a) If human remains and/or associated funerary objects compose all or part of the discovery,
410 then the BLM shall follow the process described in Stipulation VI.
411
- 412 b) The BLM at its discretion, but in consultation with SHPO, may treat any discovered
413 property as eligible for inclusion in the NRHP for project management purposes pursuant
414 to 36 C.F.R. § 800.13(c).
415

416 **VI. TREATMENT OF HUMAN REMAINS OF NATIVE AMERICAN ORIGIN**

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- 418 a) The BLM shall ensure that any Native American burials and related items discovered on
419 BLM administered lands during implementation of the terms of the Agreement will be
420 treated respectfully and in accordance with the requirements of the Native American
421 Graves Protection and Repatriation Act (NAGPRA) (Pub. L. 101-601) and the Plan of
422 Action (POA) outlined in Appendix G if needed.
423
- 424 b) The BLM shall ensure that Native American burials and related cultural items on non-
425 federal lands are treated in accordance with the applicable requirements of the California
426 Public Resources Code at Sections 5097.98 and 5097.991, and of the California Health
427 and Human Safety Code at Section 7050.5(c) and the POA in Appendix G.
428
- 429 c) The primary goal will be to avoid and protect newly encountered burials and related
430 cultural items and leave them in-place.
431

432 **VII. COMMUNICATION AND REPORTING**

433

- 434 a) BLM shall submit all documents relating to the Agreement to the consulting parties in
435 complete but draft form for review. Consulting parties will be afforded 45 days following
436 receipt of a draft document to submit written comments to BLM unless otherwise
437 mutually agreed to by the consulting parties. The BLM will provide consulting parties
438 with written documentation indicating whether and how the document will be modified in
439 response to comments. Unless consulting parties object to the revisions in writing to the
440 BLM within 30 days following receipt of the revised document, BLM may finalize the
441 document.
442
- 443 i. If a consulting party objects to the revisions during the comment period, the BLM
444 will consult with the objecting party for no more than 30 days to resolve the
445 objection. If the objection is resolved, the BLM will notify consulting parties of the
446 resolution and may revise and finalize the document. If the objection cannot be
447 resolved, the BLM shall follow the procedures in Stipulation XI(c).
448
- 449 ii. The BLM will provide a copy of the final document to the consulting parties.
450

- 451 b) The BLM shall prepare a letter report on a yearly schedule summarizing the fulfillment of
452 the stipulations contained within this Agreement. The report will be submitted to all
453 consulting parties to this Agreement by December 31, 2013, for the initial reporting
454 period and every year thereafter for the duration of this Agreement.
455
- 456 i. The implementation and operation of this Agreement shall be evaluated on an annual
457 basis by the parties. This evaluation, to be conducted after the receipt of the BLM
458 letter report, may include in-person meetings or conference calls among these parties,
459 and may provide suggestions for modifications or amendments.
460
- 461 ii. During the construction phase of the undertaking, the consulting parties will meet
462 annually between January and March to discuss the fulfillment of the stipulations
463 contained within this Agreement.
464
- 465 c) To the extent consistent with the National Historic Preservation Act, Section 304, and the
466 Archaeological Resources Protection Act, Section 9(a), cultural resources data from
467 BLM-managed lands will be treated as confidential by all consulting parties and Tribes
468 and is not to be released to any entity or individual not a party to this agreement.
469 Duplication or distribution of cultural resource data from BLM-managed lands by any
470 consulting party requires written authorization from the BLM El Centro Field Manager.
471 Confidentiality concerns for properties that have traditional religious and cultural
472 importance to the Tribes will be respected and will be protected to the extent allowed by
473 law.
474
475

476 **VIII. ADMINISTRATIVE STANDARDS**

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- 478 a) **PROFESSIONAL QUALIFICATION STANDARDS.** All actions prescribed by this
479 Agreement that involve the identification, evaluation, analysis, recordation, treatment,
480 monitoring, and disposition of historic properties and that involve the reporting and
481 documentation of such actions in the form of reports, forms or other records, shall be
482 carried out by or under the direct supervision of a person or persons meeting, at a
483 minimum, the Secretary of the Interior's Professional Qualifications Standards (PQS), as
484 appropriate (48 Fed. Reg. 44739 dated September 29, 1983). However, nothing in this
485 Stipulation may be interpreted to preclude any party qualified under the terms of this
486 paragraph from using the services of persons who do not meet the PQS, so long as the
487 work of such persons is supervised by someone who meets the PQS. Indian tribes have
488 the sole authority to certify and approve tribal cultural consultants who may participate in
489 activities in support of implementation of this Agreement.
490
- 491 b) **DOCUMENTATION STANDARDS.** Reporting on and documenting the actions cited in
492 this Agreement shall conform to every reasonable extent with the Secretary of the
493 Interior's Standards and Guidelines for Archeology and Historic Preservation (48 Fed
494 Reg. 44716-40 dated September 29, 1983), as well as, the BLM 8100 Manual, the
495 California Office of Historic Preservation's Preservation Planning Bulletin Number 4(a)
496 December 1989, Archaeological Resource Management Reports (ARMR):
497 Recommended Contents and Format (ARMR Guidelines) for the Preparation and Review

498 of Archaeological Reports, and any specific and applicable county or local requirements
499 or report formats.

500
501 c) CURATION STANDARDS. On BLM-administered land, all records and materials
502 resulting from the actions required by this Agreement shall be curated in accordance with
503 36 C.F.R. Part 79, and the provisions of the NAGPRA, 43 C.F.R. Part 10, as applicable.
504 To the extent permitted under Sections 5097.98 and 5097.991 of the California Public
505 Resources Code, the materials and records resulting from the actions required by this
506 Agreement for private lands shall be curated in accordance with 36 C.F.R. Part 79. The
507 BLM will seek to have the materials retrieved from private lands donated through a
508 written donation agreement.

509
510 **IX. IMPLEMENTATION OF THE UNDERTAKING**

511
512 a) The BLM may authorize construction activities, including but not limited to those listed
513 below, to proceed in specific geographic areas where there would be no physical effects
514 to historic properties; where an archaeological monitoring and post-review discovery
515 process or plan is in place per Stipulation IV and V. Such construction activities may
516 include:

- 517
518 i. demarcation, set up, and use of staging areas for construction of the undertaking,
519 ii. conduct of geotechnical boring investigations or other geophysical and engineering
520 activities, and
521 iii. grading, constructing buildings, collection system installation, and installing wind
522 turbines.
523 iv. construction of transmission towers

524
525 b) Initiation of any construction activities on federal lands shall not occur until after the
526 BLM issues the Record of Decision, ROW grant, and Notice(s) to Proceed. Construction
527 shall not occur in waters of the United States on or off federal lands until the COE issues
528 the DA permit.

529
530 **X. AMENDMENTS TO THE AGREEMENT**

531
532 This Agreement may be amended only upon written agreement of the Signatories and Invited
533 Signatories.

534
535 a) Upon receipt of a request to amend this Agreement, the BLM will immediately notify the
536 other consulting parties and initiate a 30 day period to consult on the proposed
537 amendment, whereupon all parties shall consult to consider such amendments.

538
539 b) If agreement to the amendment cannot be reached within the 30 day period, resolution of
540 the issue may proceed by following the dispute resolution process in Stipulation XI.

541
542 c) Amendments to this Agreement shall take effect on the dates that they are fully executed
543 by the Signatories and Invited Signatories.

- 544
545 d) Modifications, additions, or deletions to the appendices made as a result of continuing
546 consultation among the consulting parties do not require the Agreement to be amended.
547
548 e) The terms of this Agreement are a condition of the ROD and the ROW grant that the
549 BLM may issue and are binding on the Applicant. For purposes of this Agreement,
550 changes in the corporate name of the Applicant or reassignment of the ROW to a
551 subsidiary company or other entity may be authorized by the BLM and does not require
552 the Agreement to be amended.
553

554 **XI. DISPUTE RESOLUTION**

555

- 556 a) Should the Signatories or Invited Signatories object at any time to the manner in which
557 the terms of this Agreement are implemented, the BLM will immediately notify the other
558 Signatories and Invited Signatories and consult for no more than 30 days to resolve the
559 objection.
560
561 b) If the objection can be resolved within the consultation period, the BLM may authorize
562 the disputed action to proceed in accordance with the terms of such resolution.
563
564 c) If the objection cannot be resolved through such consultation, the BLM will forward all
565 documentation relevant to the objection to the ACHP with copies to the consulting parties
566 to the Agreement. Any comments provided by the ACHP within 30 days after its receipt
567 of all relevant documentation will be taken into account by the BLM in reaching a final
568 decision regarding the objection. The BLM will notify consulting parties in writing of its
569 final decision within 14 days after it is rendered.
570
571 d) The BLM's responsibility to carry out all other actions under this Agreement that are not
572 the subject of the objection will remain unchanged.
573
574 e) At any time during implementation of the terms of this Agreement, should an objection
575 pertaining to the Agreement be raised by a Concurring Party or a member of the
576 interested public, the BLM shall immediately notify the consulting parties, consult with
577 the SHPO about the objection, and take the objection into account. The other consulting
578 parties may comment on the objection to the BLM. The BLM shall consult with the
579 objecting party for no more than 30 days. Within 14 days following closure of
580 consultation, the BLM will render a final decision regarding the objection and proceed
581 accordingly after notifying all parties of its decision in writing. In reaching its final
582 decision, the BLM will take into account all comments from the parties regarding the
583 objection.
584

585 **XII. TERMINATION**

586

- 587 a) If any Signatory or Invited Signatory to this Agreement determines that its terms will not
588 or cannot be carried out, that party shall immediately consult with the other parties to
589 amend this Agreement in accordance with Stipulation X above. If within sixty (60) days

590 resolution regarding an amendment has not been reached, a Signatory or Invited
591 Signatory may terminate the Agreement upon 10 days' written notification to the other
592 Signatories and Invited Signatories. Following written notification, the terminating
593 Signatory or Invited Signatory will inform the Concurring Parties and Tribes.
594

- 595 b) If the Agreement is terminated, and prior to work continuing on the undertaking, the
596 BLM and COE shall either (a) execute a new Agreement pursuant to 36 C.F.R. § 800.6 or
597 (b) request, take into account, and respond to the comments of the ACHP under 36 C.F.R.
598 800.7. Each party shall notify the other parties to the Agreement as to the course of action
599 that it will pursue.
600

601 **XIII. ADDITION/WITHDRAWAL OF PARTIES TO/FROM THE AGREEMENT**

602

- 603 a) Should conditions of the undertaking change such that other federal agencies, state
604 agencies, Indian tribes, tribal organizations or other organizations or individuals not
605 already party to this Agreement request in writing to participate, the BLM will notify the
606 consulting parties and consider the request to participate in the Agreement. Should the
607 BLM agree to the request to participate, the Agreement shall be amended following the
608 procedures in Stipulation X.
609 b) In the event that the Applicant applies for additional federal funding or other federal
610 approvals, such funding or approving agency may comply with Section 106 by agreeing
611 in writing to the terms of this Agreement and notifying and consulting with SHPO and
612 ACHP. Any necessary modifications will be considered in accordance with Stipulation
613 X.
614 c) Should a Concurring Party determine that its participation in this Agreement is no longer
615 warranted, the party may withdraw from participation by informing the BLM. The BLM
616 shall inform the other parties to this Agreement of the withdrawal. Withdrawal of a
617 Concurring Party to the Agreement does not require an amendment of the Agreement.
618
619

620 **XIV. SOVEREIGN IMMUNITY**

621

- 622 a) The Tribes do not waive their sovereign immunity by entering into this MOA and each
623 fully retains all immunities and defenses provided by law with respect to any action based
624 on or occurring as a result of the MOA.
625

626 **XV. DURATION OF THIS AGREEMENT**

627

- 628 a) This Agreement will expire if construction has not been initiated and the BLM ROW
629 grant expires or is withdrawn, or the stipulations of this Agreement have not been
630 initiated, within thirty (30) years from the date of execution. Prior to such time, the BLM
631 may consult with the other Signatories and Invited Signatories to reconsider the terms of
632 the Agreement and amend it in accordance with Stipulation X above.
633 b) Unless the Agreement is terminated pursuant to Stipulation XII, another agreement
634 executed for the undertaking supersedes it, or the undertaking itself has been terminated,
635

636 this Agreement will remain in full force and effect for the term of the ROW or until
637 BLM, in consultation with the other Signatories and Invited Signatories, determines that
638 implementation of all aspects of the undertaking has been completed and that all terms of
639 this have been fulfilled in a satisfactory manner. The effective period of this Agreement
640 may be extended as provided in Stipulation X. Upon a determination by BLM that
641 implementation of all aspects of the undertaking have been completed and that all terms
642 of this Agreement have been fulfilled in a satisfactory manner, BLM will notify the
643 parties to this Agreement in writing of the agency's determination. This Agreement will
644 terminate and have no further force or effect 30 days after BLM so notifies the consulting
645 parties to this Agreement, unless BLM retracts its determination before the end of that
646 period.

647
648 **XVI. EFFECTIVE DATE**

- 649
- 650 a) This Agreement and any amendments shall take effect on the date that it has been fully
651 executed by the Signatories.
 - 652
 - 653 b) Execution and implementation of this Agreement is evidence that the BLM and the COE
654 have taken into account the effect of the undertaking on historic properties, afforded the
655 ACHP a reasonable opportunity to comment, and that the BLM, and the COE have
656 satisfied their responsibilities under Section 106. The BLM shall be responsible for
657 managing historic properties within the APE for the undertaking pursuant to the NHPA.
658 The Signatories and Invited Signatories to this Agreement represent that they have the
659 authority to sign for and bind the entities on behalf of whom they sign.
- 660

661
662 The remainder of this page is blank.

663
664

SIGNATORY PARTIES

U.S. BUREAU OF LAND MANAGEMENT

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

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

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

CALIFORNIA STATE HISTORIC PRESERVATION OFFICE

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

OCOTILLO EXPRESS LLC

DRAFT

INVITED SIGNATORY PARTY

OCOTILLO EXPRESS LLC

BY: _____ DATE: _____

TITLE: _____

DRAFT

PARTIES INVITED TO CONCUR IN THE AGREEMENT

BARONA BAND OF DIEGUENO INDIANS
CAMPO BAND OF MISSION INDIANS
COCOPAH INDIAN TRIBE
EWIIAAPAYP BAND OF KUMEYAAY INDIANS
FORT YUMA QUECHAN INDIAN TRIBE
JAMUL INDIAN VILLAGE
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
COUNTY OF IMPERIAL

APPENDICES

- A. Definitions
- B. Area of Potential Effect
- C. Table Summary of Eligibility and Management Recommendations for Archaeological Sites
- D. Historic Properties Treatment Plan
- E. Long Term Management Plan
- F. Plan for Archaeological Monitoring, Post-Review Discovery, and Unanticipated Effects
- G. NAGPRA Plan of Action

DRAFT

APPENDIX A - DEFINITIONS

- a) **Applicant.** Refers to Ocotillo Express LLC, and to the same organization in the event of a change of the name of the LLC, provided the Signatories and Invited Signatories are notified in writing of the name change.
- b) **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.
- c) **Concurring Parties.** Collectively refers to parties (not Signatories or Invited Signatories) 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.
- d) **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).
- e) **Consulting Parties.** Collectively refers to the Signatories, Invited Signatories and Concurring Parties who have signed this Agreement.
- f) **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.
- g) **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.
- h) **Invited Signatories.** Invited Signatories are parties that have specific responsibilities as defined in this Agreement. Those Invited Signatories who 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 Signatories to this Agreement are the DOE and the Applicant.

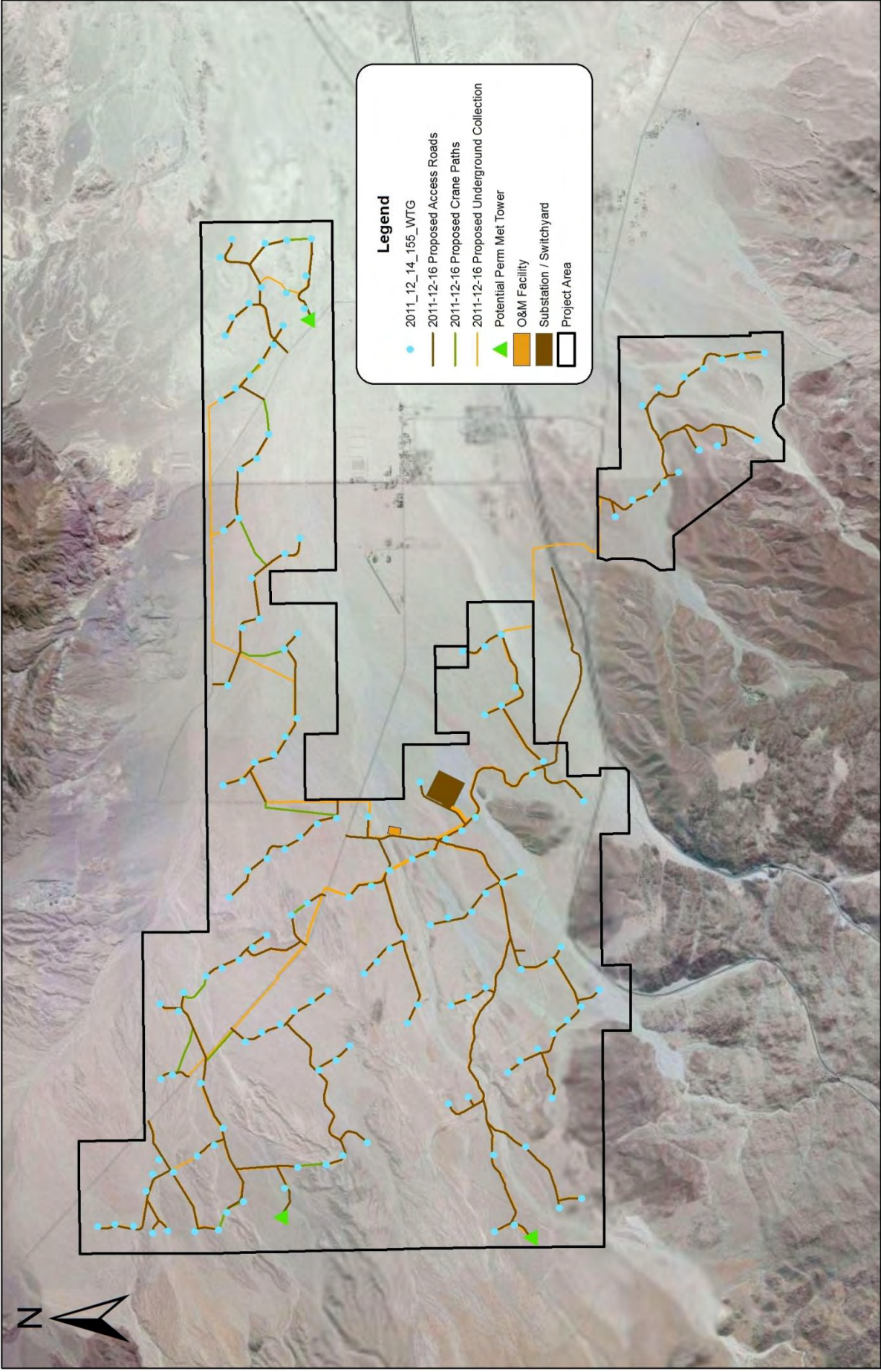
- i) ***Lands Administered by the U.S. Department of Interior, Bureau of Land Management*** (BLM) means any federal lands under the administrative authority of the BLM.
- j) ***Signatories***. Signatories are parties that have the sole authority to execute, amend or terminate this Agreement. Signatories to this Agreement are the BLM, COE, SHPO, and ACHP.
- k) ***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.
- l) ***Tribes***. The federally recognized Indian tribes that the BLM is consulting with on this undertaking.
- m) ***Tribal Organization***. A non-federally recognized Indian tribe or Native American organization that the BLM is consulting with on this undertaking.
- n) ***Undertaking***. Collectively refers to all projects, activities, or programs funded in whole or in part under the direct or indirect jurisdiction of the federal agencies (BLM, COE) that are party to this Agreement, including those carried out by or on behalf of the federal agency; those carried out by federal financial assistance; and those requiring a federal permit, license, or approval.

APPENDIX B-1: AREA OF POTENTIAL EFFECT

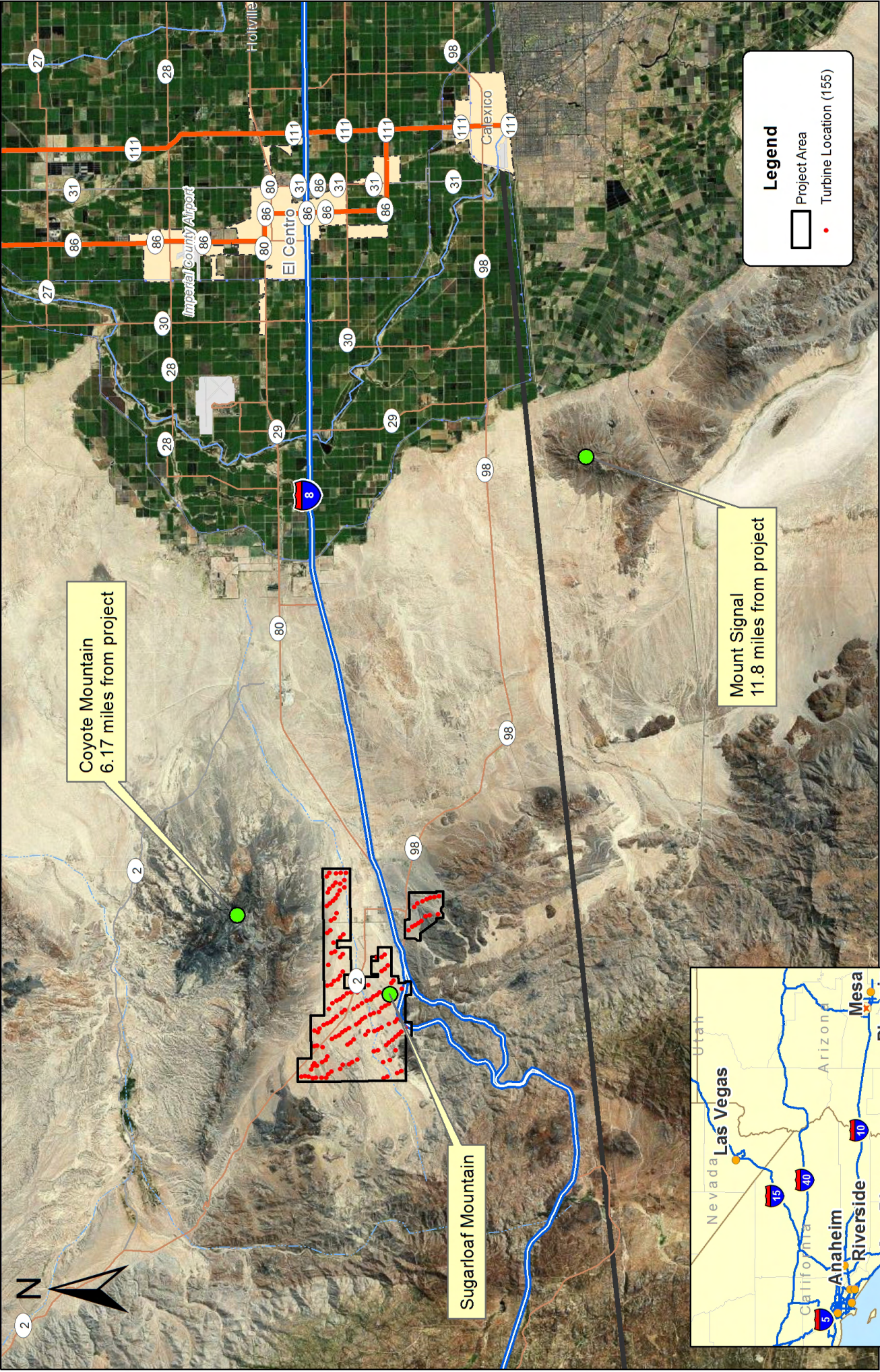
The APE means the geographic area or areas within which an Undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The APE is influenced by the scale and nature of an Undertaking and may be different for different kinds of effects caused by the Undertaking ((36 CFR §800.16 (d)). Adverse effects on historic properties include, but are not limited to: physical destruction or alteration of a property or introduction of visual, atmospheric, or audible elements that diminish the integrity of the property's significant historic features (36 CFR §800.5(a)(2)). There is potential for indirect and cumulative effects on these other sites and properties. Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be further removed in distance, or be cumulative (36 CFR §800.5(a)).

The APE for this Undertaking is comprised of 12,436 acres and is shown on the map attached hereto as Appendix B-2. The APE includes land and property interests owned or managed by the BLM and a private entity. In addition, several entities have easements and/or rights-of-way, including California Department of Transportation (Caltrans), SDG&E, San Diego & Arizona Eastern Railway, AT&T, and Imperial County. The Undertaking will occur in an environmental setting that includes the TCP as identified by the Tribes and its relationship and association to other sites, viewsheds including that towards Coyote, Signal and Sugarloaf Mountains and other properties which are outside the APE but may relate to the historic and cultural significance of the TCP that could be affected by implementation of the Undertaking (see additional map). If additional information reveals indirect and/or cumulative effects on other properties eligible for listing on the NRHP, revision of the APE may be appropriate.

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



**Ocotillo, CA Wind Farm Project
155 Turbine Site Plan**



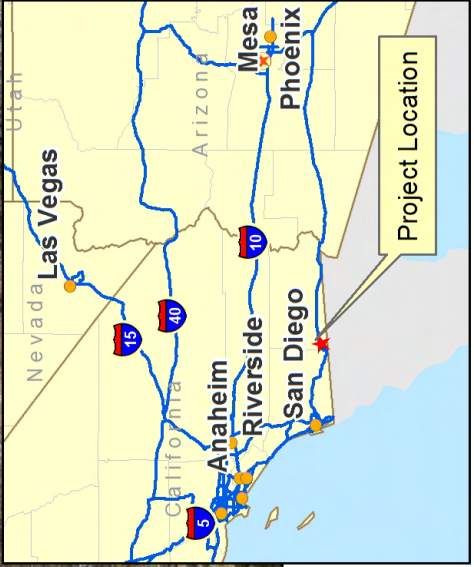
Coyote Mountain
6.17 miles from project

Mount Signal
11.8 miles from project

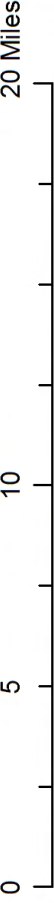
Sugarloaf Mountain

Legend

- Project Area
- Turbine Location (155)



Ocotillo, CA Wind Farm Project



**APPENDIX C: TABLE SUMMARY OF ELIGIBILITY AND MANAGEMENT
RECOMMENDATIONS FOR ARCHAEOLOGICAL SITES**

Appendix C: Table Summary of Eligibility and Management Recommendations for Archaeological Sites

Resource Designation	Site Type	Recommended Eligibility	Nearest Project Component	Project Component within ESA's 150' Buffer	Construction Management Strategy
CA-IMP-008/H	Camp Site, Agave Processing Area, Rock Features & Historic Refuse Scatter	Eligible (Criterion D)	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
CA-IMP-055	Artifact Scatter & Rock Feature	Not Eligible	Road	Yes	Avoid; Temporary Fencing/Monitoring
CA-IMP-103/H	Artifact Scatter, Historic Mining Site & Refuse Scatter	Eligible (Criterion D)	Road	Yes	Avoid; Temporary Fencing/Monitoring
CA-IMP-443	Lithic Scatter & Rock Features	Eligible (Criterion D)	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
CA-IMP-1427	Lithic Scatter & Rock Feature	Eligible (Criterion D)	Road	Yes	Avoid; Temporary Fencing/Monitoring
CA-IMP-1431/H	Artifact Scatter, Rock Features & Historic Mining Site	Eligible (Criterion D)	Road	Yes	Avoid; Temporary Fencing/Monitoring
CA-IMP-2430	Camp Site	Eligible (Criterion D)	Road	No	Avoid
CA-IMP-2471/H	Camp, Cremation, Trail & Historic Refuse Scatter	Eligible (Criterion D); contributor to TCP (Criterion A)	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
CA-IMP-2488	Lithic Scatter & Rock Features	Eligible (Criterion D)	Road	Yes	Avoid; Temporary Fencing/Monitoring
CA-IMP-3705/H	Artifact Scatter & Historic Refuse Scatter	Not Eligible	Assembly Areas	Yes	Avoid; Temporary Fencing/Monitoring
CA-IMP-3712	Lithic Scatter	Eligible (Criterion D)	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
CA-IMP-3720H	Historic Mining Site	Not Eligible	Assembly Areas	No	Avoid
CA-IMP-6508/H	Artifact Scatter, Rock Features & Historic Refuse Scatter	Not Eligible	Assembly Areas	Yes	Avoid; Temporary Fencing/Monitoring
CA-IMP-6915	Camp Site	Eligible (Criterion D)	Road	Yes	Avoid; Temporary Fencing/Monitoring
CA-IMP-6919	Artifact Scatter	Eligible (Criterion D)	Assembly Areas	No	Avoid
CA-IMP-6920	Lithic Scatter & Trail/ Geoglyph	Eligible (Criteria C and D); contributor to TCP (Criterion A)	Collection Line	Yes	Avoid; Temporary Fencing/Monitoring
CA-IMP-6921/H	Lithic Scatter, Rock Features, Historic Foundations & Refuse Scatter	Not Eligible	Assembly Areas	No	Avoid
CA-IMP-6922	Lithic Scatter	Not Eligible	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring

Appendix C: Table Summary of Eligibility and Management Recommendations for Archaeological Sites

Resource Designation	Site Type	Recommended Eligibility	Nearest Project Component	Project Component within ESA's 150' Buffer	Construction Management Strategy
CA-IMP-6923/H	Lithic Scatter, Historic Refuse & Road	Eligible (Criterion D)	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
CA-IMP-6924	Lithic Scatter	Not Eligible	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
CA-IMP-6988	Artifact Scatter, Agave Processing Area & Geoglyph	Listed (Criteria C and D); contributor to TCP (Criterion A)	Electrical Interconnect	Yes	Avoid; Temporary Fencing/Monitoring
CA-IMP-10885/H	Artifact Scatter & Mining Site	Not Eligible	Transmission/Road	No	Avoid
OCO-003	Camp Site, Rock Feature & Modern Geoglyph	Eligible (Criterion D)	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-008	Lithic Scatter & Rock Feature	Eligible (Criterion D)	Assembly Areas	Yes	Avoid; Temporary Fencing/Monitoring
OCO-011	Lithic Scatter & Agave Processing Area	Not Eligible	Road	No	Avoid
OCO-012	Lithic Scatter & Agave Processing Area	Eligible (Criterion D)	Assembly Areas	Yes	Avoid; Temporary Fencing/Monitoring
OCO-014	Lithic Scatter & Agave Processing Area	Eligible (Criterion D)	Road	No	Avoid
OCO-019	Lithic Scatter & Agave Processing Area	Eligible (Criterion D)	Assembly Areas	No	Avoid
OCO-021	Artifact Scatter & Agave Processing Area	Eligible (Criterion D)	Assembly Areas	Yes	Avoid; Temporary Fencing/Monitoring
OCO-023	Artifact Scatter & Agave Processing Area	Eligible (Criterion D)	Assembly Areas	Yes	Avoid; Temporary Fencing/Monitoring
OCO-024	Lithic Scatter	Not Eligible	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-025	Lithic Scatter	Not Eligible	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-026	Agave Processing Area	Eligible (Criterion D)	Transmission/Road	No	Avoid
OCO-AMC-001/H	Lithic Scatter, Rock Feature & Historic Refuse Scatter	Not Eligible	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-AMC-003	Lithic Scatter	Not Eligible	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-AMC-004	Ceramic Scatter	Eligible (Criterion D)	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring

Appendix C: Table Summary of Eligibility and Management Recommendations for Archaeological Sites

Resource Designation	Site Type	Recommended Eligibility	Nearest Project Component	Project Component within ESA's 150' Buffer	Construction Management Strategy
OCO-AMC-005H	Historic Refuse Scatter	Not Eligible	Assembly Areas	Yes	Avoid; Temporary Fencing/Monitoring
OCO-AMC-006	Ceramic Scatter	Not Eligible	Assembly Areas	Yes	Avoid; Temporary Fencing/Monitoring
OCO-AMC-010H	Historic Refuse Scatter	Not Eligible	Assembly Areas	No	Avoid
OCO-AMC-027H	Historic Mining Site	Not Eligible	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-AMC-028	Artifact Scatter & Agave Processing Area	Eligible (Criterion D)	Assembly Areas	Yes	Avoid; Temporary Fencing/Monitoring
OCO-AMC-032	Lithic Scatter	Not Eligible	Assembly Areas	No	Avoid
OCO-AMC-035	Lithic Scatter	Not Eligible	Transmission/Road	No	Avoid
OCO-AMC-042	Lithic Scatter & Rock Features	Eligible (Criterion D)	Assembly Areas	Yes	Avoid; Temporary Fencing/Monitoring
OCO-AMC-044/H	Artifact Scatter, Agave Processing Area & Historic Mining Site	Eligible (Criterion D)	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-AMC-052	Lithic Scatter	Not Eligible	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-AMC-053H	Historic Survey Marker & Rock Feature	Not Eligible	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-AMC-054	Camp Site & Rock Features	Eligible (Criterion D)	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-AMC-064	Lithic Scatter	Eligible (Criterion D)	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-AMC-065	Lithic Scatter	Not Eligible	Transmission/Road	No	Avoid
OCO-AMC-066	Lithic Scatter & Rock Features	Not Eligible	Transmission/Road	No	Avoid
OCO-AMC-067	Lithic Scatter & Rock Features	Not Eligible	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-AMC-068/H	Lithic scatter, Rock Features & Historic Mining Site	Eligible (Criterion D)	Assembly Areas	Yes	Avoid; Temporary Fencing/Monitoring
OCO-AMC-069	Lithic Scatter	Not Eligible	Road	No	Avoid
OCO-AMC-070	Lithic Scatter	Not Eligible	Assembly Areas	Yes	Avoid; Temporary Fencing/Monitoring
OCO-AMC-072	Lithic Scatter & Rock Features	Eligible (Criterion D)	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-AMC-076/H	Lithic Scatter, Historic Mining Site & Road	Not Eligible	Turbine155	Yes	Avoid; Temporary Fencing/Monitoring

Appendix C: Table Summary of Eligibility and Management Recommendations for Archaeological Sites					
Resource Designation	Site Type	Recommended Eligibility	Nearest Project Component	Project Component within ESA's 150' Buffer	Construction Management Strategy
OCO-AMC-078	Lithic Scatter	Not Eligible	Assembly Areas	Yes	Avoid; Temporary Fencing/Monitoring
OCO-AMC-083	Modern Redeposited Artifact Scatter	Not Eligible	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-AMC-086	Lithic Scatter	Eligible (Criterion D)	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-AMC-088	Lithic Scatter & Rock Features	Eligible (Criterion D)	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-AMC-090	Artifact Scatter	Eligible (Criterion D)	Assembly Areas	Yes	Avoid; Temporary Fencing/Monitoring
OCO-AMC-091	Artifact Scatter & Rock Features	Eligible (Criterion D)	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-AMC-094	Agave Processing Area	Eligible (Criterion D)	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-AMC-097	Artifact Scatter & Agave Processing Area	Eligible (Criterion D)	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-AMC-100	Lithic Scatter & Agave Processing Area	Eligible (Criterion D)	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-AMC-102	Agave Processing Area	Eligible (Criterion D)	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-AMC-125	Agave Processing Area	Eligible (Criterion D)	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-AMC-126	Agave Processing Area	Eligible (Criterion D)	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-AMC-129	Lithic Scatter	Not Eligible	Transmission/Road	No	Avoid
OCO-AMC-130	Lithic Scatter	Not Eligible	Transmission/Road	No	Avoid
OCO-AMC-500T	Trail & Rock Features	Eligible (Criterion D); contributor to TCP (Criterion A)	Assembly Areas	No	Avoid
OCO-AMC-501T	Trail	Eligible (Criterion D); contributor to TCP (Criterion A)	Assembly Areas	No	Avoid
OCO-BF-001	Camp Site	Eligible (Criterion D)	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-BF-004H	Historic Mining Site	Not Eligible	Assembly Areas	Yes	Avoid; Temporary Fencing/Monitoring
OCO-BF-005	Lithic Scatter & Rock Features	Eligible (Criterion D)	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-BF-008	Lithic Scatter	Eligible (Criterion D)	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-BF-009H	Historic Mining Site	Not Eligible	Assembly Areas	Yes	Avoid; Temporary Fencing/Monitoring
OCO-BF-012	Lithic Scatter	Eligible (Criterion D)	Road	Yes	Avoid; Temporary Fencing/Monitoring

Appendix C: Table Summary of Eligibility and Management Recommendations for Archaeological Sites

Resource Designation	Site Type	Recommended Eligibility	Nearest Project Component	Project Component within ESA's 150' Buffer	Construction Management Strategy
OCO-BF-013/H	Lithic Scatter, Rock Features & Survey Markers	Eligible (Criterion D)	Assembly Areas	Yes	Avoid; Temporary Fencing/Monitoring
OCO-BF-017	Lithic Scatter & Rock Features	Eligible (Criterion D)	Assembly Areas	Yes	Avoid; Temporary Fencing/Monitoring
OCO-BF-018/H	Lithic Scatter & Historic Mining Site	Eligible (Criterion D)	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-BF-019/H	Lithic Scatter & Historic Mining Site	Eligible (Criterion D)	Assembly Areas	Yes	Avoid; Temporary Fencing/Monitoring
OCO-BF-020	Lithic Scatter	Not Eligible	Assembly Areas	Yes	Avoid; Temporary Fencing/Monitoring
OCO-BF-026/H	Lithic Scatter & Historic Mining Site	Eligible (Criterion D)	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-BF-034	Lithic Scatter	Not Eligible	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-BF-035	Lithic Scatter	Not Eligible	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-BF-040	Artifact Scatter & Rock Features	Eligible (Criterion D)	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-BF-041	Camp Site & Rock Features	Eligible (Criterion D)	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-BF-042T	Trail	Eligible (Criterion D); contributor to TCP (Criterion A)	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-BF-044	Agave Processing Area	Eligible (Criterion D)	Road	No	Avoid
OCO-BF-048	Lithic Scatter & Agave Processing Area	Eligible (Criterion D)	Road	No	Avoid
OCO-BF-049	Agave Processing Area	Eligible (Criterion D)	Assembly Areas	No	Avoid
OCO-BF-050	Agave Processing Area	Eligible (Criterion D)	Assembly Areas	No	Avoid
OCO-BF-054	Agave Processing Area	Eligible (Criterion D)	Assembly Areas	No	Avoid
OCO-BF-055	Agave Processing Area	Eligible (Criterion D)	Assembly Areas	No	Avoid
OCO-BF-056	Agave Processing Area	Eligible (Criterion D)	Assembly Areas	Yes	Avoid; Temporary Fencing/Monitoring
OCO-BF-057	Ceramic Scatter & Agave Processing Area	Eligible (Criterion D)	Assembly Areas	Yes	Avoid; Temporary Fencing/Monitoring
OCO-BF-059	Lithic Scatter & Agave Processing Area	Eligible (Criterion D)	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-BF-060	Artifact Scatter	Not Eligible	Road	No	Avoid

Appendix C: Table Summary of Eligibility and Management Recommendations for Archaeological Sites					
Resource Designation	Site Type	Recommended Eligibility	Nearest Project Component	Project Component within ESA's 150' Buffer	Construction Management Strategy
OCO-BF-061	Agave Processing Area	Eligible (Criterion D)	Road	No	Avoid
OCO-CWB-001T	Trail	Eligible (Criterion D); contributor to TCP (Criterion A)	Road	No	Avoid
OCO-CWB-002T	Trail & Rock Feature	Eligible (Criterion D); contributor to TCP (Criterion A)	Road	No	Avoid
OCO-CWB-003T	Trail	Eligible (Criterion D); contributor to TCP (Criterion A)	Assembly Areas	No	Avoid
OCO-CWB-004T	Trail & Rock Features	Eligible (Criterion D); contributor to TCP (Criterion A)	Road	No	Avoid
OCO-EAM-001	Camp Site	Not Eligible	Transmission/Road	No	Avoid
OCO-EAM-002	Artifact Scatter & Agave Processing Area	Eligible (Criterion D)	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-EAM-005	Lithic Scatter	Eligible (Criterion D)	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-EAM-010	Camp Site & Rock Features	Eligible (Criterion D)	Assembly Areas	Yes	Avoid; Temporary Fencing/Monitoring
OCO-EAM-011	Artifact Scatter	Not Eligible	Assembly Areas	Yes	Avoid; Temporary Fencing/Monitoring
OCO-EAM-012	Camp Site, Trail & Rock Features	Eligible (Criterion D); contributor to TCP (Criterion A)	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-EAM-013	Lithic Scatter & Rock Features	Eligible (Criterion D)	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-EAM-014	Lithic Scatter & Rock Features	Eligible (Criterion D)	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-EAM-015	Lithic Scatter & Rock Features	Eligible (Criterion D)	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-EAM-017	Artifact Scatter	Not Eligible	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-EAM-018H	Historic Mining Site	Not Eligible	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-EAM-019	Camp Site	Not Eligible	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-EAM-020	Artifact Scatter	Not Eligible	Assembly Areas	No	Avoid
OCO-EAM-023	Lithic Scatter & Rock Feature	Not Eligible	Assembly Areas	No	Avoid
OCO-EAM-024	Lithic Scatter & Rock Feature	Not Eligible	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-EAM-025	Lithic Scatter	Not Eligible	Transmission/Road	No	Avoid

Appendix C: Table Summary of Eligibility and Management Recommendations for Archaeological Sites

Resource Designation	Site Type	Recommended Eligibility	Nearest Project Component	Project Component within ESA's 150' Buffer	Construction Management Strategy
OCO-EAM-026	Lithic Scatter & Rock Feature	Not Eligible	Transmission/Road	No	Avoid
OCO-EAM-027	Lithic Scatter	Not Eligible	Assembly Areas	No	Avoid
OCO-EAM-028	Lithic Scatter	Not Eligible	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-EAM-030	Lithic Scatter	Not Eligible	Road	No	Avoid
OCO-EAM-031	Artifact Scatter & Agave Processing Area	Eligible (Criterion D)	Road	No	Avoid
OCO-EAM-032	Lithic Scatter	Not Eligible	Road	No	Avoid
OCO-EAM-033H	Historic Mining Site	Not Eligible	Assembly Areas	No	Avoid
OCO-EAM-034	Agave Processing Area	Eligible (Criterion D)	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-EAM-035	Lithic Scatter	Not Eligible	Assembly Areas	No	Avoid
OCO-EAM-036	Lithic Scatter	Not Eligible	Assembly Areas	No	Avoid
OCO-EAM-037	Lithic Scatter	Not Eligible	Assembly Areas	Yes	Avoid; Temporary Fencing/Monitoring
OCO-EAM-038	Lithic Scatter	Not Eligible	Road	No	Avoid
OCO-EAM-039	Lithic Scatter	Not Eligible	Transmission/Road	No	Avoid
OCO-EAM-040	Lithic Scatter	Not Eligible	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-EAM-042	Camp Site & Agave Processing Area	Eligible (Criterion D)	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-EAM-043	Lithic Scatter	Not Eligible	Assembly Areas	No	Avoid
OCO-EAM-044	Lithic Scatter	Not Eligible	Road	No	Avoid
OCO-EAM-046	Agave Processing Area	Eligible (Criterion D)	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-EAM-047	Lithic Scatter	Not Eligible	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-EAM-048H	Historic Mining Site	Not Eligible	boundaries	Yes	Avoid; Temporary Fencing/Monitoring
OCO-EAM-049	Agave Processing Area	Not Eligible	boundaries	Yes	Avoid; Temporary Fencing/Monitoring
OCO-EAM-050	Lithic Scatter	Not Eligible	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-EAM-052	Lithic Scatter	Not Eligible	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-EAM-053	Lithic Scatter & Rock Feature	Not Eligible	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-EAM-054	Artifact Scatter	Not Eligible	boundaries	Yes	Avoid; Temporary

Appendix C: Table Summary of Eligibility and Management Recommendations for Archaeological Sites					
Resource Designation	Site Type	Recommended Eligibility	Nearest Project Component	Project Component within ESA's 150' Buffer	Construction Management Strategy
					Fencing/Monitoring
OCO-EAM-055	Lithic Scatter	Not Eligible	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-EAM-056T	Trail	Eligible (Criterion D); contributor to TCP (Criterion A)	Assembly Areas	Yes	Avoid; Temporary Fencing/Monitoring
OCO-EAM-057	Lithic Scatter	Not Eligible	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-EAM-058	Camp Site & Agave Processing Area	Eligible (Criterion D)	Assembly Areas	Yes	Avoid; Temporary Fencing/Monitoring
OCO-EAM-061	Artifact Scatter	Not Eligible	Road	No	Avoid
OCO-EAM-062	Lithic Scatter	Eligible (Criterion D)	Assembly Areas	Yes	Avoid; Temporary Fencing/Monitoring
OCO-EAM-064	Rock Feature	Not Eligible	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-EAM-065	Lithic Scatter	Not Eligible	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-EAM-067/H	Lithic Scatter, Rock Features & Historic Mining Site	Not Eligible	Assembly Areas	No	Avoid
OCO-EAM-068	Agave Processing Site	Eligible (Criterion D)	Assembly Areas	Yes	Avoid; Temporary Fencing/Monitoring
OCO-EAM-069	Lithic Scatter	Not Eligible	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-EAM-070	Lithic Scatter	Not Eligible	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-EAM-071	Lithic Scatter & Rock Feature	Not Eligible	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-EAM-072	Lithic Scatter & Rock Features	Eligible (Criterion D)	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-EAM-074	Camp Site & Rock Feature	Eligible (Criterion D)	Assembly Areas	No	Avoid
OCO-EAM-075/H	Artifact Scatter, Rock Features & Historic Refuse Scatter	Eligible (Criterion D)	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-EAM-076	Lithic Scatter & Rock Feature	Not Eligible	Transmission/Road	No	Avoid
OCO-EAM-077	Camp Site & Rock Features	Eligible (Criterion D)	Transmission/Road	No	Avoid
OCO-EAM-078	Lithic Scatter	Not Eligible	Assembly Areas	No	Avoid
OCO-EAM-079	Lithic Scatter	Not Eligible	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-EAM-081	Lithic Scatter & Cremation Site	Eligible (Criterion D); contributor to TCP (Criterion A)	Road	No	Avoid

Appendix C: Table Summary of Eligibility and Management Recommendations for Archaeological Sites					
Resource Designation	Site Type	Recommended Eligibility	Nearest Project Component	Project Component within ESA's 150' Buffer	Construction Management Strategy
OCO-EAM-082	Artifact Scatter	Not Eligible	Transmission/Road	No	Avoid
OCO-EAM-083	Artifact Scatter	Not Eligible	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-EAM-084	Artifact Scatter & Rock Features	Not Eligible	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-EAM-085	Agave Processing Area	Eligible (Criterion D)	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-EAM-087	Lithic Scatter	Not Eligible	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-EAM-088	Artifact Scatter	Not Eligible	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-EAM-089	Agave Processing Area	Not Eligible	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-EAM-100	Lithic Scatter & Agave Processing Area	Eligible (Criterion D)	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-EAM-101	Lithic Scatter & Agave Processing Area	Eligible (Criterion D)	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-EAM-102	Lithic Scatter & Agave Processing Area	Eligible (Criterion D)	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-EAM-103	Lithic Scatter & Agave Processing Area	Eligible (Criterion D)	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-EAM-104	Lithic Scatter	Not Eligible	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-EAM-106	Lithic Scatter & Agave Processing Area	Eligible (Criterion D)	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-EAM-107	Lithic Scatter & Agave Processing Area	Eligible (Criterion D)	Road	No	Avoid
OCO-EAM-108	Lithic Scatter & Agave Processing Area	Eligible (Criterion D)	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-EAM-109	Lithic Scatter & Agave Processing Area	Eligible (Criterion D)	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-EAM-110	Artifact Scatter & Agave Processing Area	Eligible (Criterion D)	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-EAM-111	Artifact Scatter & Agave Processing Area	Eligible (Criterion D)	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-EAM-112	Lithic Scatter & Agave Processing	Not Eligible	Road	Yes	Avoid; Temporary Fencing/Monitoring

Appendix C: Table Summary of Eligibility and Management Recommendations for Archaeological Sites					
Resource Designation	Site Type	Recommended Eligibility	Nearest Project Component	Project Component within ESA's 150' Buffer	Construction Management Strategy
	Area				
OCO-EAM-113	Lithic Scatter & Geoglyph	Eligible (Criteria C and D); contributor to TCP (Criterion A)	Assembly Areas	No	Avoid
OCO-EAM-114	Lithic Scatter	Not Eligible	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-EAM-151	Lithic Scatter	Not Eligible	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-EAM-152	Camp Site & Rock Features	Eligible (Criterion D)	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-EAM-200T	Trail	Eligible (Criterion D); contributor to TCP (Criterion A)	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-EAM-300H	Historic Mining Site & Refuse Scatter	Not Eligible	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-JLU-173/H	Artifact Scatter & Historic Mining Site	Eligible (Criterion D)	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-KAM-001T	Trail	Eligible (Criterion D); contributor to TCP (Criterion A)	Transmission/Road	No	Avoid
OCO-KRM-001	Lithic Scatter & Rock Features	Not Eligible	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-KRM-003	Artifact Scatter	Not Eligible	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-KRM-004	Lithic Scatter	Not Eligible	Assembly Areas	Yes	Avoid; Temporary Fencing/Monitoring
OCO-KRM-005	Lithic Scatter	Not Eligible	Road	No	Avoid
OCO-KRM-006	Artifact Scatter & Rock Features	Not Eligible	Turbine 155	Yes	Avoid; Temporary Fencing/Monitoring
OCO-KRM-007	Lithic Scatter	Not Eligible	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-KRM-008	Lithic Scatter	Not Eligible	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-KRM-009	Lithic Scatter	Not Eligible	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-KRM-020	Ceramic Scatter	Not Eligible	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-KRM-022	Artifact Scatter	Not Eligible	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-KRM-023	Artifact Scatter	Not Eligible	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-KRM-024	Artifact Scatter	Not Eligible	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-KRM-025	Artifact Scatter	Not Eligible	Road	No	Avoid
OCO-KRM-026	Artifact Scatter	Not Eligible	Road	Yes	Avoid; Temporary Fencing/Monitoring

Appendix C: Table Summary of Eligibility and Management Recommendations for Archaeological Sites					
Resource Designation	Site Type	Recommended Eligibility	Nearest Project Component	Project Component within ESA's 150' Buffer	Construction Management Strategy
OCO-KRM-032	Artifact Scatter	Not Eligible	Road	No	Avoid
OCO-KRM-033	Ceramic Scatter	Not Eligible	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-KRM-037	Lithic Scatter	Not Eligible	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-KRM-044	Lithic Scatter	Not Eligible	Transmission/Road	No	Avoid
OCO-KRM-048T	Trail	Eligible (Criterion D); contributor to TCP (Criterion A)	Assembly Areas	Yes	Avoid; Temporary Fencing/Monitoring
OCO-KRM-051	Camp Site & Rock Features	Eligible (Criterion D)	Electrical Inter-connect	Yes	Avoid; Temporary Fencing/Monitoring
OCO-KRM-052/H	Lithic & Historic Refuse Scatter	Not Eligible	Electrical Inter-connect	Yes	Avoid; Temporary Fencing/Monitoring
OCO-KRM-053	Lithic Scatter	Not Eligible	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-KRM-059/H	Artifact Scatter, Rock Features & Survey Markers	Eligible (Criterion D)	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-KRM-065T	Trail	Eligible (Criterion D); contributor to TCP (Criterion A)	Assembly Areas	No	Avoid
OCO-KRM-066T	Trail	Eligible (Criterion D); contributor to TCP (Criterion A)	Assembly Areas	No	Avoid
OCO-KRM-067	Camp Site & Rock Features	Eligible (Criterion D)	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-LPM-001	Artifact Scatter	Not Eligible	Transmission/Road	No	Avoid
OCO-LPM-002	Lithic Scatter	Not Eligible	Transmission/Road	No	Avoid
OCO-LPM-004	Lithic Scatter & Agave Processing Area	Not Eligible	Assembly Areas	No	Avoid
OCO-LPM-006	Artifact Scatter & Agave Processing Area	Not Eligible	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-LPM-007	Lithic Scatter	Not Eligible	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-LPM-008	Lithic Scatter	Not Eligible	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-LPM-009	Camp Site & Agave Processing Area	Eligible (Criterion D)	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-LPM-010	Camp Site & Agave Processing Area	Eligible (Criterion D)	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-LPM-011T	Trail	Eligible (Criterion D); contributor to TCP (Criterion A)	Assembly Areas	Yes	Avoid; Temporary Fencing/Monitoring

Appendix C: Table Summary of Eligibility and Management Recommendations for Archaeological Sites					
Resource Designation	Site Type	Recommended Eligibility	Nearest Project Component	Project Component within ESA's 150' Buffer	Construction Management Strategy
OCO-LPM-012	Agave Processing Area	Eligible (Criterion D)	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-LPM-013	Agave Processing Area	Eligible (Criterion D)	Assembly Areas	Yes	Avoid; Temporary Fencing/Monitoring
OCO-MD-001T	Trail	Eligible (Criterion D); contributor to TCP (Criterion A)	Assembly Areas	No	Avoid
OCO-MD-002T	Trail	Eligible (Criterion D); contributor to TCP (Criterion A)	Assembly Areas	No	Avoid
OCO-MD-003T	Trail	Eligible (Criterion D); contributor to TCP (Criterion A)	Assembly Areas	No	Avoid
OCO-MHN-001T	Trail	Eligible (Criterion D); contributor to TCP (Criterion A)	Assembly Areas	No	Avoid
OCO-MOW-001H	Historic Refuse Scatter	Not Eligible	Assembly Areas	Yes	Avoid; Temporary Fencing/Monitoring
OCO-MOW-002	Artifact Scatter	Not Eligible	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-MOW-004H	Historic Refuse Scatter	Not Eligible	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-MOW-005	Lithic Scatter	Not Eligible	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-MOW-010	Ceramic Scatter	Not Eligible	Assembly Areas	No	Avoid
OCO-MOW-011	Ceramic Scatter	Not Eligible	boundaries	No	Avoid
OCO-MOW-012/H	Artifact Scatter & Historic Mining Site & Refuse Scatter	Not Eligible	Assembly Areas	No	Avoid
OCO-MOW-013/H	Lithic Scatter, Rock Feature, Historic Refuse Scatter & Survey Marker	Not Eligible	Assembly Areas	No	Avoid
OCO-MOW-014	Artifact Scatter	Not Eligible	Assembly Areas	No	Avoid
OCO-MOW-016	Artifact Scatter	Not Eligible	Assembly Areas	Yes	Avoid; Temporary Fencing/Monitoring
OCO-MOW-022/H	Artifact Scatter & Historic Mining Site	Not Eligible	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-MOW-026H	Historic Mining Site	Not Eligible	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-MOW-027H	Historic Mining Site	Not Eligible	Assembly Areas	Yes	Avoid; Temporary Fencing/Monitoring
OCO-MOW-028	Artifact Scatter	Not Eligible	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-MOW-029H	Historic Mining Site	Not Eligible	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring

Appendix C: Table Summary of Eligibility and Management Recommendations for Archaeological Sites					
Resource Designation	Site Type	Recommended Eligibility	Nearest Project Component	Project Component within ESA's 150' Buffer	Construction Management Strategy
OCO-MOW-032	Lithic Scatter	Not Eligible	Electrical Interconnect	Yes	Avoid; Temporary Fencing/Monitoring
OCO-MOW-037H	Historic Mining Site & Survey Marker	Not Eligible	Road	No	Avoid
OCO-MOW-038	Artifact Scatter	Not Eligible	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-MOW-039	Artifact Scatter	Not Eligible	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-MOW-040H	Historic Mining Site	Not Eligible	Assembly Areas	Yes	Avoid; Temporary Fencing/Monitoring
OCO-MOW-042	Artifact Scatter	Not Eligible	Assembly Areas	No	Avoid
OCO-MOW-043/H	Ceramic & Historic Refuse Scatter	Not Eligible	Assembly Areas	No	Avoid
OCO-MOW-045H	Historic Mining Site	Not Eligible	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-MOW-046H	Historic Mining Site	Not Eligible	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-MOW-047H	Historic Mining Site & Survey Marker	Not Eligible	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-MOW-048H	Historic Mining Site & Survey Marker	Not Eligible	Transmission/Road	No	Avoid
OCO-MOW-049H	Historic Refuse Scatter	Not Eligible	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-MOW-050H	Historic Refuse Scatter	Not Eligible	boundaries	Yes	Avoid; Temporary Fencing/Monitoring
OCO-MOW-051	Lithic Scatter	Not Eligible	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-MOW-052/H	Ceramic Scatter & Historic Mining Site	Not Eligible	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-MOW-054	Artifact Scatter	Not Eligible	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-MOW-055	Camp Site & Rock Features	Eligible (Criterion D)	Assembly Areas	Yes	Avoid; Temporary Fencing/Monitoring
OCO-MOW-059H	Historic Refuse Scatter	Not Eligible	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-MOW-064/H	Artifact Scatter & Historic Mining Site & Refuse Scatter	Not Eligible	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-MOW-065H	Historic Mining Site	Not Eligible	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-MOW-066	Artifact Scatter	Not Eligible	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-MOW-067H	Historic Mining Site & Survey Marker	Not Eligible	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-MOW-068	Lithic Scatter & Rock Features	Not Eligible	Transmission/Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-MOW-069	Lithic Scatter	Not Eligible	Assembly	Yes	Avoid; Temporary

Appendix C: Table Summary of Eligibility and Management Recommendations for Archaeological Sites

Resource Designation	Site Type	Recommended Eligibility	Nearest Project Component	Project Component within ESA's 150' Buffer	Construction Management Strategy
			Areas		Fencing/Monitoring
OCO-MOW-070	Lithic Scatter	Not Eligible	Assembly Areas	Yes	Avoid; Temporary Fencing/Monitoring
OCO-MOW-071	Lithic Scatter	Not Eligible	Road	No	Avoid
OCO-MOW-072	Lithic Scatter	Not Eligible	Road	No	Avoid
OCO-MOW-073H	Historic Mining Site	Not Eligible	Road	No	Avoid
OCO-MOW-074	Lithic Scatter	Not Eligible	Road	No	Avoid
OCO-MOW-200T	Trail	Eligible (Criterion D); contributor to TCP (Criterion A)	Assembly Areas	No	Avoid
OCO-MOW-201T	Trail	Eligible (Criterion D); contributor to TCP (Criterion A)	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-MTE-006/H	Camp Site & Historic Mining Site	Eligible (Criterion D)	Road	No	Avoid
OCO-SAC-003	Artifact Scatter & Agave Processing Area	Eligible (Criterion D)	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-SAC-100T	Trail & Rock Features	Eligible (Criterion D); contributor to TCP (Criterion A)	Assembly Areas	No	Avoid
OCO-VAP-023	Artifact Scatter & Cremation Site	Eligible (Criterion D); contributor to TCP (Criterion A)	Road	Yes	Avoid; Temporary Fencing/Monitoring
OCO-VAP-025	Artifact Scatter	Eligible (Criterion D)	Road	Yes	Avoid; Temporary Fencing/Monitoring
P-13-012210	Road (Dos Cabezas)	Not Eligible	Road	Yes	None

APPENDIX D: HISTORIC PROPERTIES TREATMENT PLAN

***DRAFT* HISTORIC PROPERTIES TREATMENT PLAN
FOR THE OCOTILLO WIND ENERGY FACILITY
PROJECT,
IMPERIAL COUNTY, CALIFORNIA.**

Prepared for:

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February 2012
PN 18980.01

1. INTRODUCTION

Through consultation and resulting consensus, the Bureau of Land Management (BLM) has determined that the Ocotillo Wind Energy Facility (OWEF) Project will have an adverse effect on historic properties, including a National Register of Historic Places (NRHP) listed site, and a Traditional Cultural Property. Visual and auditory effects will change the character of historic properties in the project's area of potential effects (APE) and the qualities that make the resources eligible for the National Register of Historic Places (NRHP). As required by the OWEF Memorandum of Agreement (MOA) and the Draft Environmental Impact Statement (DEIS) Mitigation Measure CUL-4, a Historic Properties Treatment Plan (HPTP) has been developed in order to recover, document, and preserve the important archaeological and other significant values of the cultural resources affected by this project, thus resolving the project's adverse effects. As well, this HPTP details measures that have, and will be implemented to avoid adverse effects to other historic properties.

This document constitutes the HPTP for the cultural resources within the APE of the OWEF Project. This project involves the construction of no more than 112 wind turbines dispersed across a right-of-way (ROW) that is approximately 12,436 acres in size. This HPTP is designed to satisfy Stipulation III(b) of the MOA developed for this project, and Mitigation Measures outlined in the Draft Environmental Impact Statement (DEIS).

The next section of this document outlines the regulatory context for the project. Site avoidance procedures are discussed followed by a summary of the significant cultural resources and potential adverse effects that may result from the Project. Off-site/alternative mitigation measures and protection procedures during construction are then presented.

REGULATORY CONTEXT

This HPTP has been developed to assist the BLM in their compliance with Section 106 of the National Historic Preservation Act (NHPA), the California Environmental Quality Act (CEQA; PRC 21000 - 21177), and other applicable federal, state, and/or local laws, ordinances, rules, regulations, and policies.

Pursuant to 36 CFR § 800, the regulations implementing the NHPA, an MOA has been developed for OWEF Project. Stipulation III of the MOA and Mitigation Measure CUL-4 of the DEIS require the development of a Historic Property Treatment Plan (HPTP) for the project. This document is responsive to these stipulations.

NHPA Section 106 is applicable to federal undertakings, including projects financed or permitted by federal agencies, regardless of whether the activities occur on land that is managed by federal agencies, other governmental agencies, or private landowners. 36 CFR Part 800.1(a) states the purpose and goal of the Section 106 process as follows:

The section 106 process seeks to accommodate historic preservation concerns with the needs of Federal undertakings through consultation among the agency official and other

parties with an interest in the effects of the undertaking on historic properties commencing at the early stages of project planning. The goal of consultation is to identify historic properties potentially affected by the undertaking, assess its effects and seek ways to avoid, minimize or mitigate any adverse effects on historic properties.

"Historic properties" are significant cultural resources that are listed in or determined eligible for listing in the NRHP. The criteria for NRHP eligibility are defined at 36 CFR §60.4 and include:

The quality of significance in American history, architecture, archaeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and that:

- (a) are associated with events that have made a significant contribution to the broad patterns of our history; or
- (b) are associated with the lives of persons significant in our past; or
- (c) embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- (d) have yielded or may be likely to yield, information important in prehistory or history.

Significant impacts under CEQA, in slight contrast, occur when "historically significant" or "unique" cultural resources are adversely impacted. Historically significant cultural resources are defined by eligibility for or by listing in the CRHR. In practice, the NRHP criteria for significance applied under Section 106 are generally (although not entirely) consistent with CRHR criteria (see PRC §5024.1, Title 14 CCR, Section 4852 and §15064.5(a)(3)).

Under CEQA, significant impacts to cultural resources are those that alter or destroy prehistoric or historical archaeological sites, features and artifacts, and historical properties (e.g., buildings) that are themselves determined to be significant or unique. Significant archaeological resources and historical properties are defined as those that:

- (A) Are associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage;
- (B) Are associated with the lives of persons important in our past;
- (C) Embody the distinctive characteristics of a type, period, region, or method of construction, or represent the work of an important creative individual, or possess high artistic values; or
- (D) Have yielded, or may be likely to yield, information important in prehistory or history.

Unique resources under CEQA, again in slight contrast, are those that represent:

an archaeological artifact, object, or site about which it can be clearly demonstrated that, without merely adding to the current body of knowledge, there is a high probability that it meets any of the following criteria:

- (1) Contains information needed to answer important scientific research questions and that there is a demonstrable public interest in that information.
- (2) Has a special and particular quality such as being the oldest of its type or the best available example of its type.
- (3) Is directly associated with a scientifically recognized important prehistoric or historic event or person (PRC § 21083.2 (g)).

MITIGATION REQUIREMENTS, DEIS AND MOA

As part of compliance with NEPA, the BLM prepared the DEIS for the OWEF to identify alternative and preferred turbine alignments, examine the relative effects of the alternatives on known historic properties, and identify mitigation measures that would reduce these adverse effects to a less than significant level. The cultural resource mitigation measures are outlined in the DEIS Mitigation Measures for the project. They include implementation of recommended BLM Best Management Practices (BMPs) from the BLM's Programmatic EIS for Wind Energy Development. Subsequently, the BLM executed the MOA as evidence that the Advisory Council for Historic Preservation (ACHP) was afforded the opportunity to comment on the undertaking. The mitigation measures provided in the DEIS shall be coordinated with the requirements of MOA and this document. A concordance is provided for each measure below.

2. AVOIDANCE AND PROTECTION MEASURES

The avoidance and protection of cultural resources within the OWEF APE is a primary goal of this plan, as outlined in Mitigation Measures C-1b and C-1e. Compliance with these measures included changes to the final project design involving re-alignments, adjustments and changes in tower locations.

As part of early project planning, all wind turbines were relocated to assure that there would be no effects within the physical boundaries of the archaeological and historical resources identified for the undertaking. Additionally, approximately 3000 acres were eliminated from the original ROW boundary to protect sensitive cultural and biological resources in the southwest corner of the project area.

Through continuing Section 106 and government-to-government consultation, the number of proposed turbines has been reduced from 155 to 112 to help reduce the visual effects to NRHP-listed site CA-IMP-6988 (Spoked-Wheel Geoglyph) in the direction of important geologic features including Coyote and Signal Mountains and to address impacts to the TCP and cultural

landscape identified by several Tribes. Turbines were also removed from the 155 layout to protect cremation locations.

3. CULTURAL RESOURCES WITHIN THE OWEF ROW

287 archaeological sites have been recorded within the Project APE (Tierra Environmental Services 2011) and the reader is referred to the Class III inventory report for information on these sites. Physical effects to all of these sites have been avoided by changes in turbine locations. CA-IMP-6988, known as the “Spoke Wheel Geoglyph”, is located within the APE and has been determined as 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. The Spoke Wheel Geoglyph was previously determined eligible and listed on the NRHP under Criteria C and D in 2003 because of its distinctive construction and the likelihood of providing important information.

The region containing the Ocotillo Wind Project was and continues to be acknowledged as a ritual landscape by Native American tribes. This Colorado Desert more widely was the setting for mythic events that resulted in the creation of the world, the tribes themselves, and their individual ritual practices (Bourke 1889; Kroeber 1925; von Werlhof 2004; Whitley 2000). Specific locations may be associated with individual mythic spirits and events, including the creator; and known routes follow their mythic movements across the region. In ethnographic and contemporary times, rituals were/are conducted at the locations of these mythic events, and pilgrimages and initiations were/are undertaken to follow the sequence of mythic events, following designated trails. These rituals include spiritual cleansing, honoring the creator and other spirits, healing, acquiring supernatural power or assistance, burial, and puberty initiations, among others. Based on chronometric analyses of specific ritual sites, the time-depth of these practices is believed to be at least 2000 years (Dorn et al. 199X).

Ritual/mythic locations are also important in the transmission of cultural knowledge between generations, and are used for educational purposes. They are further important in fostering indigenous self-identity, and preserving social memory (Whitley and Whitley 2012). The ritual landscape, in this sense, can be understood as having both religious and social importance to the tribes. Because many mythic beliefs and ritual practices are shared among the tribes in the region, despite potentially different languages or dialects, concern with and use and knowledge of this ritual landscape is widespread.

The use of these ritual locations and landscape features varies and, depending upon circumstance, can involve group or alternatively private ceremonies. Some rituals are conducted regularly; others less frequently but still periodically; and still others, only rarely. Some locations are associated with very specific spirits and/or powers, and may only be used by or under the direction of individuals with appropriate knowledge and training; other ritual locations may be employed by any individual, with the appropriate intent and attitude. The nature of the ceremonies conducted also varies, depending upon location, purpose, and numbers of individuals

involved. The rituals range from group events involving singing and dancing, the public recitation of mythic sequences, lengthy group runs across the landscape to foster dreams signaling the acquisition of supernatural power, puberty initiations of various kinds, individual and private prayer, fasting and meditation, censing with white sage, cremation of human remains, deposition of offerings, the construction of earth figures and cairns, to the creation of petroglyphs.

Archaeological manifestations of these rituals include trails, cairns, dance circles and paths, offerings, petroglyphs and, especially earth figures. Otherwise ostensibly natural features, including springs, rockshelters/caves and locally prominent peaks are also common components of the ritual landscape, and potentially may be invested with more religious significance than humanly-constructed ritual places (Whitley 1998). Coyote Mountain, north of the Project, has been identified as one such sacred feature as has Signal and Sugarloaf Mountains. Regardless of specific form, ethnography across far western North America emphasizes the importance of the view-shed of many ritual locales (e.g., Hudson et al. 1979; Keyser and Whitley 2000; Stoffle et al. 2001). View-shed may have been important for celestial observations, and may have involved the positioning of alignments and/or rock art (e.g., with solstitial events). Alternatively, certain rituals may have been primarily conducted facing a specific direction, often towards a mountain that itself has religious significance.

Through consultation with Indian tribes on the OWEF project, a TCP and cultural landscape that has cultural and religious value pursuant to the above discussion has been submitted to the BLM as a sacred site under Executive Order 13007. It encompasses the OWEF APE. For the purposes of project management the BLM assumes the portion of the TCP (and associated cultural resources) as identified by the tribes within the Project area is eligible for the NRHP.

4. ADVERSE EFFECTS

Ethnography throughout far western North America documents the widespread Native American belief that development, including the construction of railroads, transmission lines and dams, within or in the vicinity of sacred sites destroys their spiritual values (see citations in Whitley 2000). The construction of a wind farm within the TCP has the potential to result in adverse effects to the values that make this area important to Native Americans, including their ability to continue traditional uses. While the proposed project has been designed to avoid physical impacts to the archaeological resources, the construction and operation of wind turbines within the TCP will result in visual and auditory effects that have the potential to impact the use of these locations for religious purposes. Inasmuch as the ritual landscape extends beyond the project ROW, and visual and auditory effects cannot be limited to the project boundaries, adverse effects may also occur to additional ritual sites in and traditional uses of the landscape as a whole.

5. OFF-SITE TREATMENT MEASURES

A number of off-site/alternative treatment measures will be completed to resolve adverse effects resulting from the project. Off-site treatment measures were determined through both BLM consultations with the project's consulting parties including Indian tribes. The cost of the treatment measures will be borne by the applicant.

In accordance with CUL-1, -2, -3 and -4, within 60 days of the issuance of the notice to proceed for this Project, Ocotillo Express LLC will identify to the BLM the consultant(s) who, under contract to Ocotillo Express LLC, will be responsible for developing and completing the off-site treatment products described below as appropriate with the exception of the Tribal Access Plan. Prior to carrying out any activities related to any treatment measure, the consultant(s) shall meet with the BLM and Ocotillo Express LLC to discuss the goals of the project and work plan requirements, including lines of communication, deliverables, schedules, and any terms and conditions.

Within 45 days of meeting with the BLM and Ocotillo Express LLC, and prior to initiation of any work related to the specific measure, the consultant(s) will provide the BLM with a draft Work Plan for completing the work required. The work plan shall document lines of communication, key personnel, and provide any appropriate contexts to support the design and methods proposed for completion of the mitigation measure. The work plan shall also include a schedule of milestones and timeline for completion of the work.

The BLM will provide copies of the draft work plan to the consulting parties in accordance with the communication and reporting procedures in Section VII of the MOA upon request. Upon approval of the work plan by the BLM, the BLM will authorize Ocotillo Express LLC and the consultant(s) to initiate work. Any products or studies described in the mitigation measures required by this Agreement will be developed in a manner to allow other proposed undertakings that may occur in the region to augment or expand the scope of the products or studies, provided that such augmentation or expansion proposed by other undertakings are the result of consultation under Section 106 or is an appropriate mitigation measure developed through the NEPA or CEQA process, cost sharing is provided as appropriate and developed in consultation with Ocotillo Express LLC and the BLM, and that no additional burden be placed on Ocotillo Express LLC unless the proposed measures is related to an Ocotillo Express LLC undertaking.

Tribal Access Plan

In accordance with CUL-9 and 11, although it may not be possible to entirely eliminate potential visual and auditory impacts to the ritual landscape, the applicant will develop a Tribal Access Plan to address ritual sites access and management issues with the lead agency and Indian tribes. This Plan will ensure reasonable access to these sites for ceremonial and other traditional uses, through the establishment of a calendar scheduling periodic dates for access, and/or using a specified advance notification system to arrange access. The Plan may include provisions for the reduction of impacts from turbines within a half-mile of the sites, to the degree possible, during tribal visits and protection of privacy. It may include a program of monitoring and, if necessary,

treatment to ensure the physical stability and integrity of the ritual sites within the Project ROW to be coordinated through Appendix E: Long Term Management Plan of the MOA.

Ultimately, the measures included in the Tribal Access Plan must be informed by Native American input on how best to address potential impacts to ceremonial practice and cultural sensitivities associated with traditional uses of the Spoke-Wheel geoglyph and other elements of the TCP. This can be done without disclosure of proprietary information about cultural practice. In general, various strategies can be devised to maintain privacy and confidentiality of ceremonial practice and mitigate project visual and auditory impacts during Native American access. Several general strategies are proposed here for which specific implementation can be developed through NA consultation and project design improvements. They include:

- Construction of post-and-cable barriers along access roads in proximity to the geoglyph to prevent cars stopping during ceremonies and to decrease the potential for direct or indirect impacts.
- Strategically placed natural landscaping such as boulders or berms to increase privacy
- Scheduling of Native American access when construction activities and subsequent maintenance activities are not occurring.
- Maintaining exclusion zones around the geoglyph during scheduled ceremonial uses.

Ethnographic Study

In further accordance with CUL-9, an ethnographic study to further document the tribal values of the historic properties within the project area that are considered of religious or cultural significance by Indian tribes and tribal organizations shall be developed. The study will explore how these resources fit into the larger TCP and cultural landscape as identified by Tribes and document and identify the boundaries of the larger TCP and its potential eligibility to the NRHP. If the recommendation is that the TCP is eligible to the NRHP, a formal nomination to the NRHP shall be prepared.

As part of this ethnographic study, the applicant may include a program designed to train and support interested Native American tribal members in ethnographic data collection and analysis, provide direction and guidance in the collection of their tribal ethnographic data, and assist with the writing of the specific tribal ethnography, by members of those tribes. The focus of this study shall be the ritual landscape within and surrounding the Project ROW, including traditional uses of this landscape and its sites. To the degree possible, data collected in this study will be made available to the BLM for future planning purposes. At the request of individual tribes, however, specific tribal data may be kept confidential and not shared with the public, agencies, archaeologists or anthropologists, or other tribes or groups.

Regional Synthesis and Study

In accordance with CUL-4, the BLM acknowledges that further research may reveal the potential for a district or multiple districts to exist within the project area. Further research may also reveal that some of the archaeological resources within the project area may be part of a larger previously identified district, such as the In-Ko-Pah Gorge Discontiguous District; the Yuha

Basin Discontiguous District, or a larger yet-to-be identified district, whose boundaries may extend outside of the project area. There is also a potential for the additions to the multiple property listing of the Earth Figures of the California-Arizona Colorado River Basin Thematic Group.

A synthesis study will be prepared of existing data to explore the potential for one or more archaeological districts using a regional approach and the latest GIS technology; and if district(s) are identified, or have elements that are contributing to existing districts, formal NRHP nomination forms shall be prepared.

Prehistoric Trails Continuation Study

The project APE is located at the very center of a currently proposed Yuha-Jacumba Prehistoric Corridor Cultural Landscape (Noah 2012). Anchoring this context study is a partially reconstructed network of trails and travel corridors that native peoples used for movements between the desert lowlands and mountainous uplands. These trails served multiple purposes including seasonal transhumance, trade, cultural exchange, ceremonialism, and access to localized resources such as toolstone, soapstone, agave, mesquite, Lake Cahuilla wetland resources, acorns, and pine nuts, to name a few.

The project area is located in a particularly important zone for addressing many of the research questions that are posed in the Yuha-Jacumba context study. This western end of the Palm Canyon Wash Basin is at a virtual gateway between the desert and upland zones that were connected by several intersecting travel corridors. One major route that was used by the Kamia bands of Ipai/Kumeyaay and described by Gifford (1931) ran up In-ko-pah Gorge to Jacumba Valley and points east. Two routes described by Tom Lucas of the Kwaaymai band (Cline 1979) ran up Carrizon Canyon and Carrizo Gorge, respectively, and intersected on the desert floor west of Ocotillo. Other routes, such as one extending south through Davies Valley are also documented. Some segments of these routes are known from ethnographic or historical accounts while others are hypothesized from what appear to be natural landscape corridors (von Werlhof 1979). Archaeological evidence of these specific trails systems provide only an incomplete corroboration because of natural forces and historical roads or developments that have obliterated physical traces. Many additional trail segments remain to be discovered through archaeological survey. Where trails segments no longer exist, the spatial analysis of localized artifact types such as ceramics and geologically specific tool stone are indirect evidence for travel routes. A major research objective of the cultural context and with direct application to research in the project area is the articulation of additional empirical evidence of this trail network both within the APE and as it can be traced beyond its limits.

Educational and Interpretive Program

The applicant shall fund a program to enhance and support public education and interpretation at the Imperial Valley Desert Museum in Ocotillo, California. This program must include provisions for the interpretation of Native American past and present uses of the area to communicate the importance of the values embodied in the archaeological and cultural resources

contained within the project and facilitate a better understanding of these values to the lay public and other stakeholders.

Professional Curation Management Training

A representative from each tribe shall be provided with training in curation and cultural resources artifact preservation. The training opportunity shall utilize existing museum or other facilities that offer on-site training programs or it will provide the training at a locally organized facility through the use of professional contractors.

Monitoring Training for Tribal Monitors

If interest is expressed by tribes involved in the Tribal Participation Plan, as outlined under Stipulation IV(b) of the MOA, a program of training for Native American monitoring will be developed and implemented. This will include instruction in compliance with NHPA Section 106, daily reporting procedures and other practical details, as suggested by the participants.

Video Documentation of Traditional Songs

A broadcast quality video (not to exceed 30 minutes) shall be produced in partnership with tribes and their members to document the traditional songs and dances that may be associated with the Project area. The product may also feature images of the project landscape before construction, interviews with knowledgeable Native Americans about this specific traditional landscape and its importance to tribal values, and a discussion of the different components of a traditional landscape within the project area.

Support for Linguistic Programs

The applicant shall provide financial support to existing or new native language programs or initiatives being conducted by tribes in the region. This will assist in the perpetuation of these languages, as well as associated traditional beliefs and practices.

6. SITE PROTECTION DURING PROJECT CONSTRUCTION

In accordance with CUL-5, -6, 7, 8 and 10, the BLM and the Applicant, in consultation with Tribes and the appropriate land owner(s) and within the limits of agency authority, will identify and implement resource protection measures during the period of construction, such as fencing, gating, and law enforcement patrols, to stabilize and/or protect cultural resources within the vicinity of the APE during the construction. Where continuing resource protection measures are considered appropriate after the period of construction, such measures will be developed as provided in Stipulation IV(c) of the MOA and appropriate Appendix documents.

A series of measures will be completed to ensure that known and previously undiscovered sites are not adversely affected during Project construction.

Subsurface Testing at Turbine Locations

All proposed turbine locations have been positioned to avoid direct disturbance to known archaeological sites. Prior to construction, subsurface archaeological testing may be conducted at certain turbine locations to ensure that subsurface archaeological deposits are not present that would be inadvertently destroyed by the project. This testing will involve the excavation of eight (8) Shovel Test Pits (STPs) at each turbine location, including the screening of the removed spoils in order to identify potential artifacts or archaeological specimens. Should a subsurface archaeological deposit be identified, that resource will be evaluated and the turbine location would be repositioned or eliminated as appropriate (see procedures outlined in Appendix F: Plan for Archaeological Monitoring, Post-Review Discovery, and Unanticipated Effects). A Native American monitor will be present during all archaeological testing procedures.

ESAs

In order to ensure that sites are not impacted during the construction of the Project, all recorded site areas within 150 feet of areas of direct impact, including turbine locations, access roads, operations facilities and staging zones, will be temporarily fenced as Environmentally Sensitive Areas (ESAs). No access of any kind will be permitted into these areas by Project personnel or equipment without prior authorization.

Monitoring During Construction

A team consisting of a Native American and an archaeologist shall be present to monitor all construction activities that will be present during all construction activities with 150 feet of known sites. These monitors will have stop-work authority in the event that cultural resources are threatened.

Law Enforcement Protection

In accordance with CUL-12, the applicant shall fund a program, in consultation with the BLM and tribes that will enhance law enforcement and ranger patrols and protection of the cultural resources within the ROW during the life of the Project, including during construction and operation of the wind farm.

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APPENDIX E: LONG TERM MANAGEMENT PLAN

**APPENDIX F: PLAN FOR ARCHAEOLOGICAL MONITORING, POST-REVIEW
DISCOVERY AND UNANTICIPATED EFFECTS**

DRAFT
MANAGEMENT PLAN FOR ARCHAEOLOGICAL MONITORING,
POST-REVIEW DISCOVERY, AND UNANTICIPATED EFFECTS
For The
OCOTILLO WIND ENERGY PROJECT
IMPERIAL COUNTY, CA

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February 2012

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1. INTRODUCTION

This Management Plan (Plan) was prepared for the Ocotillo Wind Energy Facility Project (Project) in western Imperial County, California. Pattern Energy, Inc., through Ocotillo Express LLC, is proposing to construct, operate and maintain a wind energy generation facility consisting of up to 155 wind turbine generators with a total capacity of 356.5 MW. Tierra Environmental Services, Inc. (Tierra) of San Diego was commissioned to conduct an archaeological survey of the Project area. This Management Plan describes methods to be implemented for the protection and avoidance of effects to all archaeological sites in the APE identified. This Management Plan also describes methods for the treatment of inadvertent or unanticipated discoveries.

1.1 APPLICABILITY

The following Management Plan applies to all properties that are considered in the Project as approved by the BLM and defined below. The BLM has overall jurisdiction for ensuring the actions stipulated in this plan are implemented to comply with Section 106 of the NHPA, unless otherwise stipulated in the *Memorandum of Agreement Among the Bureau of Land Management-California, the United States Army Corps Of Engineers, Ocotillo Express LLC, the California State Historic Preservation Officer, and the Advisory Council On Historic Preservation Regarding the Ocotillo Express Wind Energy Project Imperial County, California* (MOA) or in the following plan. The County of Imperial will be consulted on all matters concerning private lands and the regulations set forth in CEQA. The Management Plan is in accordance with the MOA Stipulations IV through VII that govern Monitoring, Post Review Discoveries and Unanticipated Effects, Treatment of Human Remains of Native American Origin and Communication and Reporting.

2. CONSTRUCTION MONITORING

2.1 ENVIRONMENTALLY SENSITIVE AREAS (ESAs)

Sites that can be protected from direct physical impacts, but are within close proximity (within 150 ft) of proposed construction activities will be identified and labeled as Environmentally Sensitive Areas (ESAs). This includes archaeological sites determined eligible for inclusion in the National Register of Historic Places (NRHP) or California Register of Historic Resources (CRHR) and sites that have not been formally evaluated, but are being treated as eligible and avoided for project management purposes [see Stipulation III(a)(i) of the project MOA].

As noted in Stipulation III(a) of the MOA:

- a) Where archaeological resources are avoided, the BLM will implement the management or protective measures identified in Table 1 of Appendix C of the MOA and the following:
 - i. Archaeological sites that are protected from physical impacts, but are within 150 feet of proposed construction activities, will be identified and labeled by archaeological and Native American monitors 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.
 - ii. The ESAs will be designated by marking the boundaries of sites with appropriate buffer zones using temporary fencing or other easily recognizable boundary defining materials.
 - (1) These ESAs will be shown on the engineering plans for the Project as off-limits to construction activities.
 - (2) Once established, an ESA will define areas where construction activities cannot occur to prevent damage to historic properties within the designated ESA.
 - (3) Construction work areas will also be clearly defined using temporary fencing or other easily recognizable boundary defining materials.

The establishment of ESAs is a non-destructive means to avoid impacts to recorded cultural resources within the project. The ESAs will be designated by marking boundaries of known sites or other identified areas with appropriate buffer zones using temporary fencing, stakes, and /or flagging. ESAs will not be marked or identified as archaeological sites to avoid disclosure of sensitive resources. Once established, ESAs will define areas where construction and restoration can occur while preventing activities and damage to archaeological resources within them.

ESAs will be identified and established by a qualified archaeologist using sub-meter GPS unit(s) prior to initiation of ground disturbing activities and will be maintained and monitored for the duration of the work effort in the ESA vicinity, with archaeological monitoring of construction and restoration activities required within 150 ft of all ESA locations. The archaeological monitors will report on any violations of the protected areas. ESAs will not be identified and labeled when significant cultural resources are located more than 150 ft from proposed construction activities, and such areas of proposed construction activities will not be monitored.

2.2 CONSTRUCTION MONITORING

Archaeological monitors will be present during construction activity at selected locations based on the occurrence of recorded archaeological sites and ESAs.

While the Draft MOA stipulates [Stipulation IV(a)(i)] that a comprehensive monitoring plan may be developed in consultation with the parties to the MOA, in absence of such a comprehensive plan, the following stipulations shall apply:

- (1) The Applicant (Ocotillo Express LLC) shall ensure that archaeological monitors 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 designated for full-time monitoring, as detailed in Stipulation III, Appendix C and/or Appendix F.
- (2) Ocotillo Express LLC shall ensure that archaeological monitors will meet the standards specified in Stipulation VIII(a), will be approved and permitted by the BLM, will be familiar with the types of historic and prehistoric archaeological resources that may occur in the APE, and will be directly supervised by a principal investigator (PI).
- (3) Ocotillo Express LLC shall ensure that the PI will submit bi-weekly documentation of archaeological monitoring activities 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 any actions taken. The PI will prepare a monthly field monitoring verification report with the compiled monitoring observations, results, and actions taken for submission and approval to the BLM. The BLM will provide copies of biweekly and monthly archaeological monitoring reports to the consulting parties, unless otherwise directed by a consulting party.
- (4) Upon completion of all archaeological monitoring tasks and requirements implemented pursuant to this Agreement, Ocotillo Express LLC shall ensure that the PI will submit within three months a final monitoring report to the BLM for review and approval. The final monitoring report will describe the monitoring program and its findings and results, and present a detailed professional description, analysis, and evaluation of any cultural resources that were encountered and evaluated during construction. The BLM will provide a copy of the monitoring report to the consulting parties.

Schedule and Notification

A tentative schedule for construction activities will be provided by the construction company in consensus with Ocotillo Express LLC. Ocotillo Express, by way of the PI will disperse this construction schedule as and when it becomes available to all cultural monitors. It is the objective of Ocotillo Express and Tierra to supply the all cultural monitors with adequate advance notice of one week prior to the commencement of initial construction. The construction site manager will notify the PI at least five days prior to mobilization of work in all areas identified as requiring cultural resource monitoring. Updates to the construction schedule will be distributed as appropriate and as available.

Training

Training of all project construction personnel will be conducted prior to the commencement of construction activities. The training program will be designed by Tierra and Ocotillo Express LLC in consultation with the BLM, and must be completed by all project personnel prior to entry into the project area.

All project personnel will attend a safety and Worker Environmental Awareness Program (WEAP) prior to the start of the construction activities. All cultural monitors will be required to complete safety and WEAP training prior to commencing work on the project. The WEAP training program must be completed by all personnel prior to entry into the project area. Additionally, all cultural monitors will be trained on or prior to their first day in the field by the PI on jobsite protocol, their duties and expectations regarding field activities, lines of authority, reporting, and documentation.

2.2.1 MONITORING BY ARCHAEOLOGISTS

The archaeological monitors will be qualified archaeologists who are familiar with the types of historical and prehistoric resources that could be present in the Project and will be directly supervised by a Principal Investigator (PI). The PI will be approved by the BLM prior to construction. A monitor can prevent damage to a site by being able to communicate well with others involved in the project. The PI is responsible for taking action/reporting on all unanticipated effects to cultural resources as well as for making final determinations of archaeological origin. It is the responsibility of the PI to take action and make final determinations for the unanticipated effect of the cultural resources.

Full time monitoring by a professional archaeologist and will occur during all construction activities near ESAs and in other areas determined appropriate for full time monitoring. Should an inadvertent discovery during the monitoring effort be identified, the archaeologist on site will immediately notify the PI of the discovery. Due to the Project's large scale and compacted schedule, it is probable that multiple construction crews will be working near ESAs simultaneously. In this event, should the PI not be immediately available to respond to a concern expressed, the archaeologist on site will have the authority of the PI to halt work for allowance of the inadvertent discovery to be properly assessed and appropriately treated. At a minimum, the duties performed by the archaeological monitors include:

- (1) Requesting excavation work to be re-directed so that new discoveries can be evaluated;
- (2) Sharing information so that others will understand the cultural importance of the features involved;
- (3) Ensuring excavation that is disturbing a site is halted and the appropriate laws are followed when human remains are discovered;
- (4) Helping to insure that Native American human remains and any associated grave items are treated with culturally appropriate dignity, consistent with the Native American Graves Protection and Repatriation Act (NAGPRA) or applicable state law;
- (5) Coordination with tribal consultants consistent with the Tribal Participation Plan (TPP) [see Section 2.2.2 below].

Archaeological monitors will be required to submit daily logs denoting activities, resources, and any actions observed. As noted in the MOA monitoring stipulations noted in Section 2.3 Construction Monitoring, the PI will be responsible for the submission of biweekly, monthly, and final monitoring reports to the BLM for the duration of project construction. Copies of these reports will be provided to the consulting parties of the MOA by the BLM. In the event that ESAs require modification, all project work in the immediate vicinity will be diverted to a buffer distance determined by the archaeological monitor until authorization to resume work has been granted by the BLM or CEQA lead agency (see Chapter 3). Ocotillo Express LLC will notify the BLM or CEQA lead agency [County of Imperial] of any unanticipated effects to cultural resources or ESAs immediately. If such affects occur, Ocotillo Express LLC will consult with the BLM or the CEQA lead agency to mitigate damages and to increase effectiveness of ESAs. Such mitigation may include, but not be limited to modification of protective measures, refinement of monitoring protocols, data-recovery investigations, or payment of compensatory damages in the form of non-destructive cultural resource studies or protection within or outside the license area, at the discretion of the BLM, following consultation with interested parties, or the CEQA lead agency.

In addition to standard surveying equipment (GPS units, cameras, measuring tape, etc.) all archaeological monitors are required to have the basic equipment needed to complete minimal documentation, preliminary evaluation, and recovery of unanticipated discoveries, including a screen, shovel, and a bucket. If the evaluation or data recovery work prescribed is more extensive than the archaeological monitor alone can complete in an expeditions manner, the archaeological consultant will supply additional crew and equipment for the work. All recovered archaeological materials will be taken back to the consultant's laboratory for processing, analysis, reporting, and preparation for curation.

Monitoring Reporting for ESAs

Daily Logs

Daily logs depicting observances and activities will be completed by all cultural monitors, archaeologists and cultural consultants alike. The logs will be submitted at the end of each day to the PI.

Summary Reports

Preliminary archaeological monitoring summaries will be submitted biweekly by the archaeological monitoring consultant to the BLM for review with the intended goal of distribution to all consulting parties by email along with monthly verification report described below. Preliminary results will include the location and activities conducted during the archaeological monitoring activities for the reporting time period, as well as a description of any cultural resources identified and appropriate action taken. The archaeological consultant will prepare a monthly field monitoring verification report with the compiled archaeological monitor observations, results, and actions taken for submission to the BLM. The report will be submitted to Ocotillo Express LLC, the agencies and other stakeholders after review by the BLM. Copies will also be provided to the consulting parties of the MOA.

Monitoring Report

Upon completion of all monitoring tasks and requirements the archaeological consultant will prepare a monitoring report for the BLM or CEQA lead agency and other stakeholders describing the monitoring program, the findings and results of the monitoring effort, and presenting a detailed professional description, analysis, and evaluation of any cultural resources that were encountered

and evaluated during construction. The monitoring program consists of the methods utilized to determine designated monitoring locations, the observations noted during the monitoring effort (ie: construction machinery and activities, cultural resources observed, biological and/or geographical observations as they pertain to cultural resources, etc), as well as protocols for cultural resources encountered during the effort. A draft version of this report shall be submitted to the BLM for initial review within three months of completion of all archaeological monitoring tasks and requirements. Once it has been reviewed by the BLM, the draft report shall be provided to all consulting parties for a 30 day review period. The final report will be provided to all consulting parties along with a written documentation of any changes. Non confidential data will also be disseminated to the public and other interested parties, as appropriate.

2.2.2 Tribal Participation Plan (TPP)

As stipulated in the MOA [Stipulation IV(b)], a Tribal Participation Plan (TPP) will be developed to facilitate continued tribal consultation for this undertaking by Ocotillo Express LLC and interested Tribes, in consultation with the BLM. This plan will provide representatives designated by Tribes (tribal cultural consultants) the opportunity to monitor and be on site during construction to observe grading, trenching or ground disturbing activities for facilities, roads or other activities near ESAs and in other areas designated for monitoring as detailed in Appendix C and/or F of the MOA.

The TPP will describe the role of all parties in the program, specify the terms, expectations, notifications, reports, training and/or deliverables to be provided, and include a specific procedure to be followed in the event that a tribal cultural consultant is not provided or is not available. The tribal consultants will be designated by the Tribes and contracted by the PI. The TPP will be finalized and implemented prior to the start of ground-disturbing activities in areas designated for monitoring (see Stipulation IV(b) of the MOA).

3. TREATMENT FOR UNANTICIPATED DISCOVERIES

3.1 DISCOVERY AND EVALUATION

In the event of an unanticipated discovery of archaeological materials within a work area during construction monitoring, all ground disturbing work at that area will be suspended or redirected. The archaeological monitor will carefully inspect the ground surface around the discovery and the displaced dirt in order to determine whether the discovery is an isolated find (fewer than three items) or a site (three or more items, or a feature). If the find is determined to be an isolated find (with the exception of human remains or items of cultural patrimony), the discovery will be documented on the appropriate Department of Parks and Recreation 523a form, reported and described in the monitoring report; all consulting parties will be apprised of such discoveries in the biweekly monitoring summaries. Isolated finds will only be collected if they are diagnostic artifacts. Please see Action Plan Chart 1 in the Appendix for further information.

If the discovery is determined to be a site, after securing the work area from additional disturbance, in concert with the construction site manager, the PI will notify the BLM or CEQA lead agency archaeologist immediately by telephone of the nature and extent of the discovery. In consultation with the PI, the BLM or CEQA lead agency [County of Imperial] will determine what additional fieldwork is necessary, such as limited test excavation, to determine the site's potential eligibility for the NRHP or CRHR. It may be determined that a site visit by the BLM or CEQA lead agency is necessary to make that determination. Avoidance and protection of the site will be the first strategy investigated. In the event that avoidance is not possible, evaluation will be necessary and the newly discovered site will be designated as an Unavoidable New Discovery (UND).

If test excavation is required to evaluate an UND, the PI in coordination with the BLM (or County if on private land) will formulate a testing program at that time, taking into account the site type, research issues, methods, and interpretive criteria against which the site will be evaluated, and it will be implemented. In general any evaluation effort will be focused on the area of discovery within the area of impact including a reasonable buffer (not more than 10 m from the maximum extent of the find). The focus will be to determine the nature of the archaeological resource and to assess the quantity, quality, and variety of archaeological items that are or may be present. Evaluation will include Controlled Surface Collections (CSC), Shovel Test Pits (STPs) of a sufficient number to characterize the extent of subsurface archaeological deposits and a minimum of one Control Unit (CU) to evaluate the condition of the discovery and acquire a controlled sample of the preserved cultural materials. For additional information, please see Section 3.2.

After site evaluation the PI will have five business days in which to prepare a summary letter report assessing the site's eligibility and recommending appropriate treatment measures, such as the need for archaeological data recovery, if the site is recommended eligible. The letter report will be submitted to the BLM or CEQA lead agency, and the consulting parties as appropriate, who will have 10 business days to review the report and evaluate the proposed treatment measure. Determinations concerning NRHP or CRHR eligibility and the implementation of proposed treatment measures will be made by the BLM or the CEQA lead agency. If any portions of the site within the Area of Direct Impact (ADI) on private property and BLM administered lands meet the following conditions, they may be determined not contributory to the NRHP/CRHR eligibility of the entire site, in addition to the ADI, as a whole, by the BLM in consultation with the CEQA lead agency, where necessary, if:

1. the ADI lacks intact subsurface archaeological deposits;
2. the ADI lacks chronological data;
3. no human remains are present within the ADI or known on the site as a whole;
4. no intact features are present within the ADI other than bedrock milling stations, lithic chipping stations or historical refuse scatters determined to be single incident refuse dumps;
5. in addition, prehistoric/Native American surface artifact densities within the ADI shall not exceed 0.5 archaeological specimens per meter square or contain more than three types indicating a diverse assemblage.

No further SHPO consultation will be required for eligibility determinations for site areas that meet the above conditions. Findings that exceed these criteria will be submitted to the SHPO for concurrence for a 10-day review period. If the determination is that the discovered resource is not eligible for listing in the NRHP or CRHR, the BLM or CEQA lead agency will issue written notice to proceed for all BLM-administered lands, or in consultation with the CEQA lead agency for state or private lands.

If a discovered site is determined to be eligible for the NRHP or CRHR, further treatment measures will be required. In consultation with the BLM, CEQA lead agency, and other consulting parties, the PI will prepare a data recovery plan for BLM review and approval for all BLM land, and for review and consultation with the CEQA lead agency for state or private lands. After review and concurrence, the BLM or CEQA lead agency archaeologist will notify the PI that the proposed data recovery plan can proceed. Data recovery efforts will be focused only on that portion of the site within the area of impact with a reasonable buffer. To the degree possible the construction and engineering teams will be included in discussions to avoid or minimize potential damage to the discovered resource. Any portion of a site undergoing data recovery will be fenced until implementation of the data recovery plan is completed.

The level of effort will be dictated by the nature and extent of the discovery and on the results of the initial evaluation effort. The focus will be on recovering a sufficiently large sample to characterize the discovery and to address regional research questions, as appropriate. Upon completion of any required fieldwork the PI will prepare a brief interim letter report summarizing the results. The BLM or CEQA lead agency archeologist will have five business days to review the report and determine whether or not construction work at the discovery site can resume or if additional sampling is required. The BLM or CEQA lead agency archaeologist in consultation with the other stakeholders will notify Ocotillo Express LLC when work can resume. A final data recovery report will be prepared after laboratory studies and analyses.

A second type of discovery, an Avoidable New Discovery (AND), will also be described for the Project. The category of AND applies to sites that are identified by the cultural resources monitors during monitoring, but are not in areas of potential direct impact. These ANDs may be an expansion of a previously recorded site or may be an entirely new resource. Please refer to Action Plan Chart 2 in the Appendix for further information.

If the AND is part of a previously recorded site, it will be mapped and described and the boundary of the site will be modified using a DPR Site Record Update. If the increased site size results in the new site boundary encroaching into a project work area or into a portion of the project with the

potential for direct impacts, the first alternative will be to explore establishing or modifying the existing ESA to protect the enlarged area from damage. If impacts to the newly described resource can't be avoided, it will be treated as a UND (Unavoidable New Discovery) and the process described above will be implemented, as appropriate.

Alternatively, if the AND is not within the project work area that is vulnerable to direct ground or project impacts, the data pertaining to the AND will be acquired by the cultural resource monitor and a DPR Site Record or Site Record Update, as appropriate, will be prepared for submission to the South Coastal Information Center. It will also be described and presented in the final monitoring report. If the AND is within 150 ft of the project, an ESA will be established to ensure protection during construction. Avoidable New Discoveries would not require immediate reporting or consultation with the SHPO or other agencies or consulting parties, but will be included as part of the project data record.

3.2 FIELD METHODS

This section describes in more detail the methods used to evaluate unanticipated discoveries identified during construction monitoring that require subsurface excavations. These methods are essentially the same as those used for site-specific evaluations.

Evaluation methods are essentially sampling methods focused on recovering a large enough sample to estimate the density and diversity of the cultural deposit and to expose enough of the site stratigraphy to assess site integrity. A general approach is described below, from surface inspection and collection to various kinds of subsurface investigation.

The first step is to mark all exposed artifacts, artifact concentrations and features with color-coded pin flags to provide an overall view of the site's potential contents. If the unanticipated discovery is a buried site, the area involved will tend to be limited. If the unanticipated discovery's surface material is part of a site that was missed during the original survey, these finds will be sampled with CSCs ranging from 5 x 5 m units to 15 x 15 m units according to surface artifact density. Enough grids will be used to collect from ca. 30 to 50% of all surface artifacts. The CSCs will be supplemented by the collection of all formal tools inside and outside of the CSCs. If practical, all artifacts will be collected on sites with a sparse surface scatter.

Four types of subsurface excavation units will be used.

- (1) 30 x 30 or 50 x 50 cm Shovel Test Pits (STPs), excavated in 20-cm levels to depths of no more than 80 cm, usually space at 10-m intervals and/or subjectively placed. These would be used to help define site boundaries, focusing on the edges of the site.
- (2) 1.0 x 0.5 m Shovel Test Units (STUs), excavated in 10 or 20-cm levels, to depths between 40 and 100 cm, helping to provide a stratigraphic profile of the deposit. Excavation will cease when two levels of completely sterile soil or subsoil are encountered. The location and number of STUs will vary depending upon the size and artifact density of the deposit, with STUs placed within each discrete site locus, with additional STUs in artifact concentrations.
- (3) If an STU yields substantial artifact densities, a 1 x 1 m standard test unit (TU) will be excavated in 10-cm levels adjacent to the STU until sterile soil or bedrock is

reached. Additional TUs may be used if it is judged necessary to properly evaluate the site in terms of its contents and depositional integrity.

- (4) Shovel Scrape Units (SSUs), which are rectangular in shape but variable in size depending upon the deposit. Typically SSUs are only 5-10 cm in depth and are placed in areas where the terrain and other data suggest the site deposit is very shallow. These may be used to obtain a representative sample of the shallow areas of the deposit, thereby complementing the results of the STPs, STUs, and TUs.

All excavated material will be screened through 1/8-in (3 mm) wire mesh. Typically most sites range between 0 and 20 cm in depth, below which either decayed bedrock, bedrock or a calcareous B-horizon is typically encountered. When artifacts drop to trace quantities or are absent, either a 50-cm square STP or an auger with a 4-in diameter blade will be used to check for deeper deposits. Sidewall profiles will be drawn and photographed where appropriate, with small soil samples taken for Munsell color and/or constituent classification. All features, except for those containing human remains or burials, will be photographed and drawn carefully in plan view and then bisected to obtain a feature profile which will also be photographed and drawn.

As appropriate, the site will be mapped using either with Trimble sub-meter GPS data receivers with real-time correction capabilities and down to 10 cm accuracy to plot all formed artifacts, surface collection grids (CSCs), excavations units (STPs, STUs, TUs, SSUs), and the boundaries of any defined loci and features. The GPS will also be used to record site boundaries, landform edges, drainages, roads, and other relevant surface features. A series of site overview photographs will be taken to illustrate the site's landscape context and important artifact concentrations, features and artifacts will be photographed as appropriate.

3.3 LABORATORY METHODS

Laboratory work will include standard processing and cataloguing of the materials recovered in the field, and special studies to address the program's research issues.

3.3.1 Standard Processing, Cataloging, and Analysis

Initial lab procedures include cleaning (as appropriate), sorting, and cataloguing of all items. Each item will be individually examined and catalogued according to class, subclass, and material, counted (except for bulk invertebrate and vertebrate remains), and weighed on a digital scale. Very large items, such as oversized ground stone, will be weighed on a dial scale. All coded data will be entered into a MS Excel database.

Cultural material will be sorted during cataloguing into the following categories: 11 classes of prehistoric artifacts, two classes of ecofacts, ethnohistoric items, historic, and modern items, and organic samples. The prehistoric artifact classes included debitage, cores, utilized flakes, retouched flakes, bifaces, percussion tools, ground stone, ceramics, bone artifacts, shell artifacts, and miscellaneous items.

When possible, cores will be separated by platform variability into subclasses such as multidirectional, unidirectional and bifacial types. Debitage, including both flakes and debris, will be sorted by material type and cortical variation (primary, secondary, and interior) during cataloguing. The classification of flaked stone tools will be determined by typology and production

technology. Simple flake tools, i.e., unmodified utilized flakes, will be identified based on the presence of macroscopic use-wear traces. Retouched tools include scrapers, graters, notched pieces, and other edge modified flakes. Bifaces include projectile points, drills, and standard non-patterned bifaces. Length, width, and thickness measurements will be taken for all tools and cores using a sliding caliper.

Percussion tools, including hammers and abraders, will be defined based on their morphology and the type of macroscopic use-wear they exhibit. Ground stone artifacts will be classified by type, including millstones and hand stones. Length, width, and thickness measurements will be taken on complete ground stone items.

Organic artifact classes (ecofacts) consisted of vertebrate and bulk shell specimens. After bulk shell is catalogued, it will be sorted to taxon and coded into an Excel sub-catalog. Modified bone and shell artifacts will be separated from the unmodified bone and shell assemblages. Historic resources, as well as modern items, will be catalogued and identified as specifically as is appropriate. Finally, other organic samples will be catalogued by type.

After preliminary cataloguing of the material is completed, more detailed attribute analysis of lithics and groundstone will be performed. Stone artifacts (both flaked and ground) will be individually analyzed for selected morphological and technological attributes, as well as material and condition, in an attempt to gain insight into the period of occupation and range of activities undertaken. Specific analytical methods will be described in the analytical results section. All artifacts, ecofacts, and samples will be subject to appropriate conservation in the field and laboratory including proper packaging and handling.

3.3.2 Special Studies

Special studies to assess a site's research potential and/or to address the research objectives of data recovery programs (as deemed necessary), may include radiocarbon dating, obsidian sourcing, obsidian hydration dating, protein residue analysis, and/or ceramic petrographic analyses.

Radiocarbon Dating

If organic samples are recovered that are appropriate for dating either human activity at the site or natural Holocene depositional events associated with Lake Cahuilla or other landforms, they will be submitted to an appropriate laboratory for radiocarbon measurement. A maximum of four samples may be submitted for evaluation studies.

Obsidian Sourcing and Hydration Analysis

If suitable obsidian artifacts are recovered, samples will be submitted to appropriate laboratories for sourcing and hydration measurement. A maximum of four samples may be submitted for evaluation studies.

Protein Residue Studies

If flaked or ground stone tools that are suitable for protein residue analysis are recovered, samples will be submitted to an appropriate laboratory. A maximum of four samples will be submitted.

Ceramic Petrographic X-Ray Fluorescence (XRF) Studies

A sample of Brownware sherds will be subjected to petrographic analysis or XRF to distinguish sherds produced in the Colorado Desert from sherds produced in the Peninsular Range. A maximum of four samples may be submitted.

3.4 REPORTS

Documentation of sites will comply with the reporting specifications in the BLM 8100 Manual guidance as stipulated in the BLM Cultural Resources Use Permit and Field Authorizations for this Undertaking, and to every reasonable extent with the *Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation* (48 FR 44716-44740), as well as the *California Office of Historic Resource Management Reports (ARMR): Recommended Contents and Format (ARMR Guidelines) for the Preparation and Review of Archaeological Reports*.

All excavation unit and artifact locational information shall be placed in a separate, confidential appendix (or appendices) to the report. Reports shall first be submitted in draft form, in a format as close to the final report as possible, including copies of photographs (as JPEGs), maps, figures, and tables. The BLM and other authorized interested parties will be afforded the opportunity to review the draft report and to access the evaluation data, as needed and when requested. This will be coordinated through the BLM. Based on review comments, the draft report shall be revised and a final report shall be submitted.

3.5 MANAGEMENT AND TREATMENT OF HUMAN REMAINS

Pursuant to the MOA and Native American Graves Protection and Repatriation Act (NAGPRA) Plan of Action, treatment of any bone identified will be reported and a tentative, unofficial assessment of the likelihood of its being human will be established. If the bone is determined to be human by the Principal Investigator, the PI will notify the appropriate BLM staff and will also be responsible for notifying the County of Imperial Office of the Coroner. The Coroner will in turn notify the Native American Heritage Commission. All remains will be left in place and protected until they can be examined by the Medical Examiner and jurisdiction is determined.

As stipulated in the MOA in Stipulation VI(a&b), the BLM will ensure that any Native American human remains, sacred objects, or items of Native American cultural patrimony are encountered on BLM administered lands during the implementations of this Management Plan will be treated in accordance with the requirements of the NAGPRA (Pub. L. 101-601). The BLM will also 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 in Sections 5097.98 and 5097.991, and of the California Health and Human Safety Code in Section 7050.5(c). All NAGPRA consultation will be carried out by the BLM. Immediate telephone notification will be made to the appropriate agency officials, followed by written confirmation.

3.6 CURATION

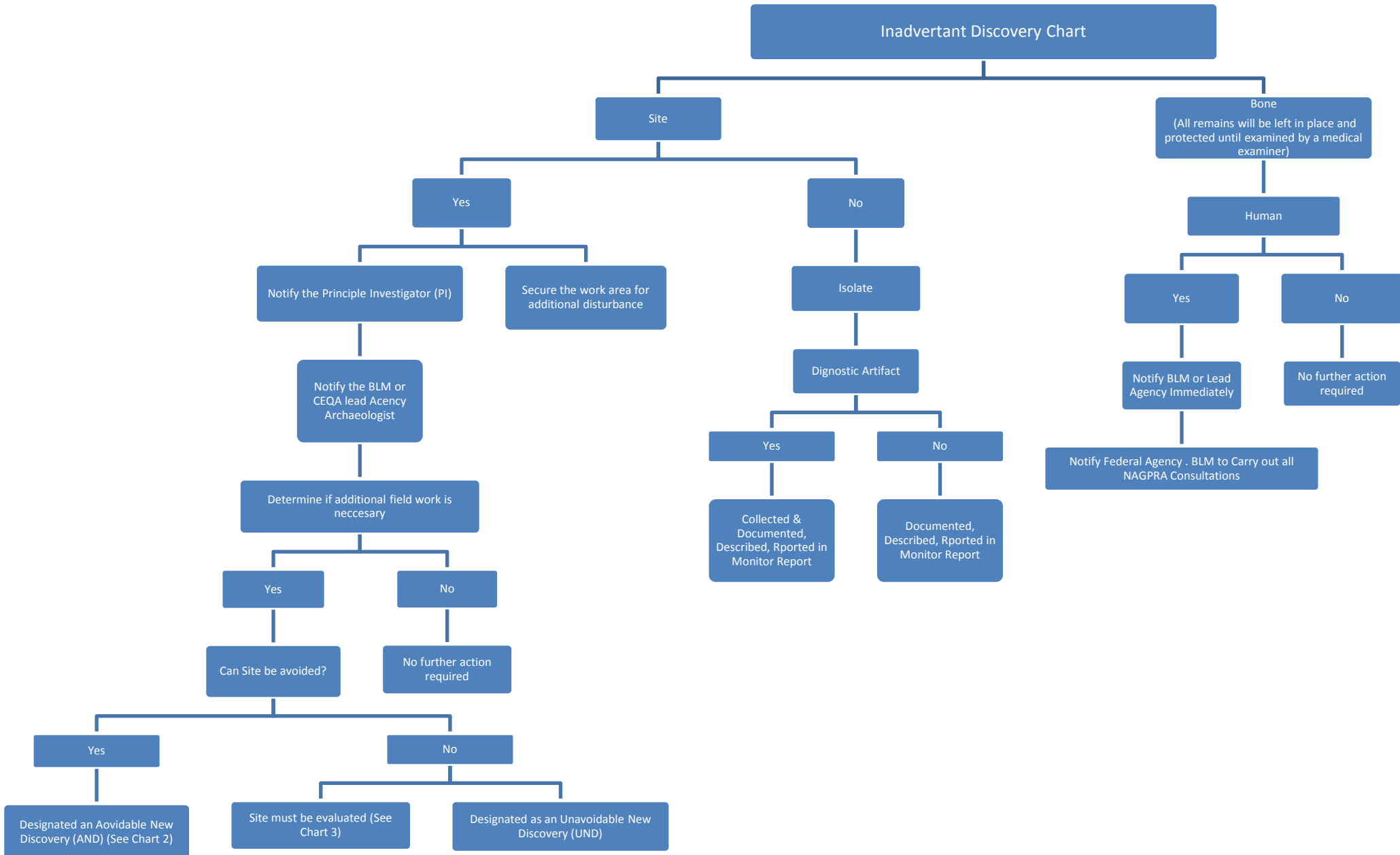
Prior to commencement of construction, Ocotillo Express LLC will establish a curation agreement for the permanent curation of all cultural resources collected during archaeological work associated with the Ocotillo Wind Energy Project, preferably with the Imperial Valley Desert Museum or a recognized curation facility.

4. SUMMARY

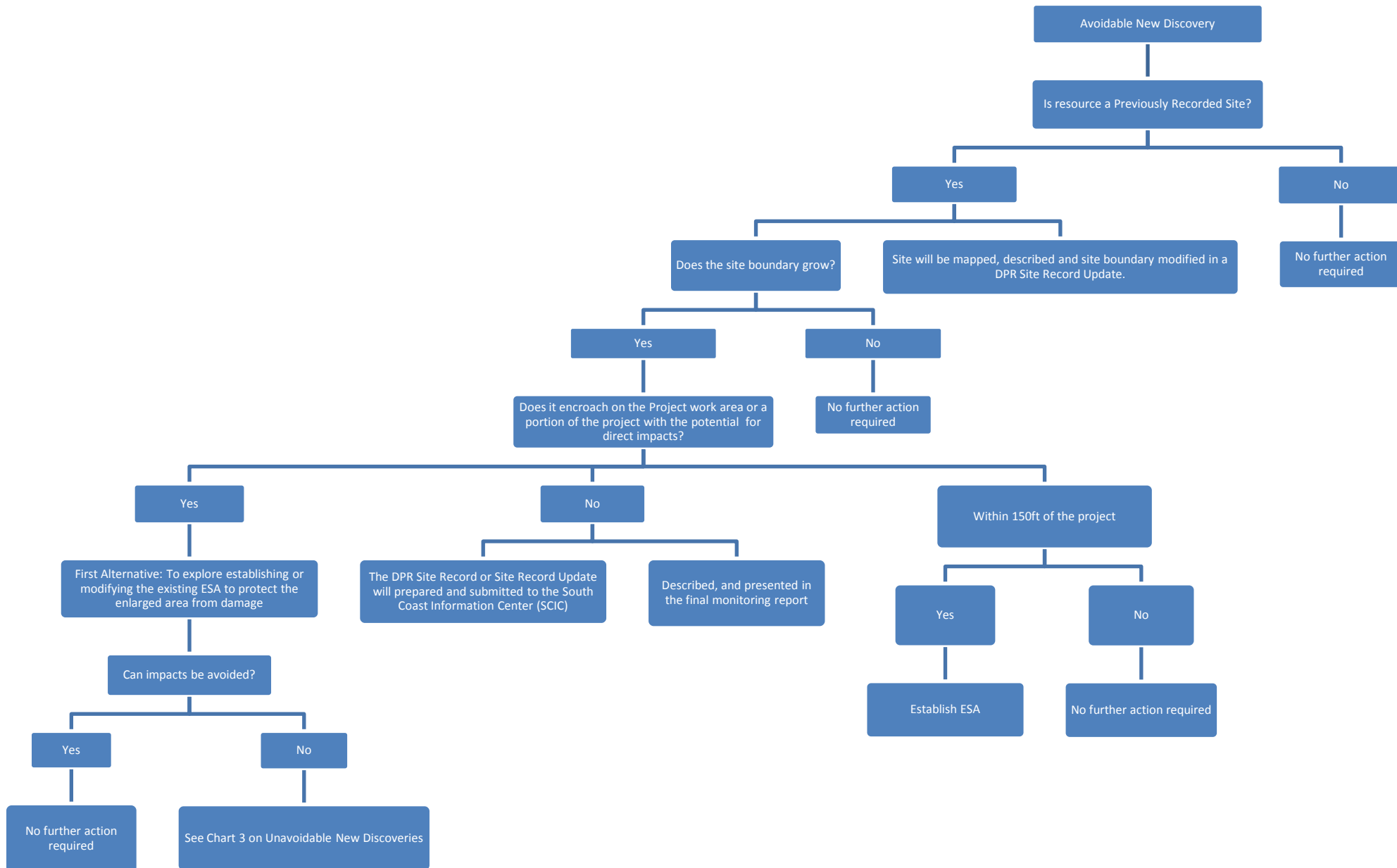
This management plan describes the protocol for construction monitoring of cultural resources and the treatment of unanticipated archaeological discoveries. Qualified archaeological monitors will be present to observe all ground breaking activity near archaeological sites to ensure adherence to Environmentally Sensitive Areas (ESAs). Exclusionary fencing will be used to protect sites that have construction activity within or near ESA's. All construction personnel will receive cultural resources training to ensure awareness of the archeological sensitivity of the Project area, and especially for ESAs. Unanticipated discoveries will undergo formal archaeological evaluation to determine the extent and character of newly identified cultural deposits for the purposes of supporting recommendations of NRHP or CRHR eligibility. The same evaluation methods can be used for the data recovery of the discovery, if it cannot be avoided.

Action Plan Charts

Action Plan Chart 1 – Inadvertent Discovery Chart



Action Plan Chart 2 – Avoidable New Discovery (AND)



APPENDIX G: NAGPRA PLAN OF ACTION

NAGPRA PLAN OF ACTION

1 INTRODUCTION

Stipulation VI of the Memorandum of Agreement (MOA) stipulates that a Plan of Action (POA) is to be implemented if human remains are discovered within the APE, and that the POA will address the roles of the MOA Signatories, Tribes, and Invited Signatories.

While the steps to be taken in the event of any discovery within the APE are described in Appendix F (Discovery Plan), the procedures specifically related to the discovery of human remains, funerary objects, sacred objects, and objects of cultural patrimony are detailed in the present appendix.

2 APPLICABLE LAWS

Depending on land ownership and other factors, either Federal law or State law, or both, will apply to any human remains, funerary objects, sacred objects, or objects of cultural patrimony that may be discovered within the APE. Federal statutes, most notably ARPA and NAGPRA govern discoveries on Federal or Tribal land. State laws, prominently H&SC 7050.5(b) and PRC 5097.98(a-b) in California govern discoveries on non-Federal/non-Tribal land.

This POA complies with the NAGPRA regulations, which state that the Federal Agency official “must complete a written Plan of Action (described in [43 CFR] § 10.5(e)) and execute the actions called for in it” (43 CFR 10.3(c)(2)). The regulations also specify that a copy of the POA must be provided to the involved lineal descendants and Indian tribes, and that such descendants and tribes may sign the POA (43 CFR 10.5(e)). Moreover, the regulations require the POA to comply with 43 CFR 10.3(b)(1), which speaks to responsibilities under ARPA, and to address and document nine topics (see 43 CFR 10.5(e)(1-9)) related to the discovery and treatment of human remains and cultural items as defined at 43 CFR 10(2)(d). These nine topics are taken up in Subsections 3- 9, below.

3 PLAN OF ACTION

3.1 Cultural Items

The Ocotillo Express Wind Energy Project is a Federal undertaking that encompasses both public and private land. The POA provides specific direction for how the El Centro Field Office of the Bureau of Land Management (BLM), Tribes, and Invited Signatories will comply with legal requirements governing treatment and custody of human remains for the Undertaking. This POA is meant to address the requirements of the Native American Graves Protection and Repatriation Act (NAGPRA) as well as state-specific statutes concerning human remains. As lead Federal Agency for cultural resources compliance for this Undertaking, the BLM is the primary contact and executor for the POA.

According to NAGPRA and implementing regulations, a POA must identify “the kinds of objects to be considered ‘cultural items’ as defined in [43 CFR] § 10.2(d)” (43 CFR 10.5(e)(1)).

In this POA, human remains and three types of Native American cultural items are recognized: (1) “funerary objects,” including both “associated funerary objects” and “unassociated funerary objects”; (2) “sacred objects”; and (3) “objects of cultural patrimony.” The full definitions of these terms, as set forth in the NAGPRA regulations (43 CFR 10.2(d)(1-4)), are incorporated herein by reference and adopted for use throughout this POA. Also for the purposes of this POA, the term “grave goods,” as used in California law (e.g., in PRC 5097.98), is deemed to be subsumed by the Federal term “funerary objects.” More generally, the term “cultural items,” as used in this POA, includes funerary objects, sacred objects, and objects of cultural patrimony.

3.2 Custody

The POA is to present “the specific information used to determine custody pursuant to [43 CFR] § 10.6” (43 CFR 10.5(e)(2)).

3.2.1 Federal Land

In the event of any discovery of human remains and/or funerary objects on Federal land within the APE, custody (i.e., ownership or control per 43 CFR 10.6(a)) shall vest in the lineal descendant of the deceased individual (per 43 CFR 10.6(a)(1)), or, “in cases where a lineal descendant cannot be ascertained and no claim is made, and with respect to unassociated funerary objects, sacred objects, and objects of cultural patrimony,” in the Indian tribe identified in accordance with the priority and criteria set forth at 43 CFR 10.6(a)(2). BLM is responsible for ensuring that the custody of any human remains and/or funerary objects discovered within the APE of the Project is established in accordance with these regulations. Additionally, prior to the transfer of custody of the remains and/or objects to the lineal descendant or Indian tribe, BLM must publish general notices of the proposed disposition in accordance 43 CFR 10.6(c) (see also Subsection 3.9.1, below).

3.2.2 Non-Federal/Non-Tribal Land

The custody of human remains discovered on non-Federal/non-Tribal lands is a complex matter and ultimately, after prescribed consultation with the Native American individual or group identified by the NAHC as the Most Likely Descendant (MLD), lies with the land owner. Relevant procedures and responsibilities are set forth at PRC 5097.98(a-b, e-f) and summarized in Subsection 3.3 of this POA.

G.3.3 Treatment, Care, and Handling

The NAGPRA regulations require the POA to address “the planned treatment, care, and handling of human remains, funerary objects, sacred objects, or objects of cultural patrimony recovered” (43 CFR 10.5(e)(3)).

In the event that human remains are discovered within the APE, either inadvertently or in the course of archaeological investigations, and without respect to land ownership, the Ocotillo Express LLC Project Manager will:

- (1) Immediately cease or cause to be ceased any earth-disturbing activity within an area extending not less than 5 and not more than 50 meters (to be determined in the field

- on a case-by-case basis by the lead archaeological monitor) from the discovered remains;
- (2) Take whatever feasible steps may be needed to ensure that the subject remains are not disturbed further and are secure pending implementation of the treatment measures prescribed in this POA;
 - (3) Ensure that the remains are treated with appropriate respect and cultural sensitivity at all times;
 - (4) Within 24 hours, contact both the El Centro BLM Project Manager and the El Centro BLM Archaeologist to report the discovery; and
 - (5) Cooperate fully with the parties responsible for carrying out the treatment measures described in Subsections 3.3.1- 3.3.3, below.

3.3.1 Discoveries on Federal Land

If human remains or funerary objects are discovered on Federal lands, all activity in the area of the discovery will cease immediately. The Ocotillo Express LLC Project Manager will notify both the El Centro BLM Project Manager and the El Centro BLM Archaeologist by telephone within 24 hours of the discovery, followed within three days by written confirmation. The BLM will then be responsible for notifying the appropriate Tribe(s), and for initiating Tribal consultation as prescribed by 43 CFR 10.5. The Ocotillo Express LLC Project Manager will also notify the appropriate county coroner who, pursuant to H&SC 7050.5 et seq. and PRC 5097.98, will determine whether the remains are those of a Native American; if so, the coroner will contact the NAHC, and the procedures set forth at PRC 5098.98 will be implemented together with the Federal procedures required by 43 CFR 10.3-10.6.

BLM will ensure that the stipulations of this POA are fully implemented before authorizing Ocotillo Express LLC to continue any ground-disturbing activity. Such activity will be suspended in the discovery area (i.e., within not less than 5 nor more than 50 meters in all directions from the discovered remains and/or objects) until authorized by BLM to resume such activities. Such activity will be suspended in the discovery area until the Tribes, Ocotillo Express LLC, and BLM can resolve treatment in this manner, then BLM shall consult with the CA SHPO to develop a treatment plan within 15 days of notification of discovery. Preservation and protection in place shall be the preferred treatment measure. Absent objection by the SHPO, BLM will then implement the treatment plan, or, if the SHPO objects, BLM will utilize the dispute resolution process set forth in Stipulation XI of the MOA to resolve any objection. Human remains and any funerary objects will not be excavated or otherwise removed unless approved by BLM and after consultation with the Tribes as appropriate. Disposition of any such remains discovered on or removed from Federal or Tribal lands will follow the protocols discussed in Subsection 3.9, below.

3.3.2 Discoveries on Non-Federal/Non-Tribal Land

When human remains and/or “grave goods” (i.e., funerary objects) are discovered on non-Federal/non-Tribal land other than a dedicated cemetery in California, the party responsible for

the discovery must notify the county coroner. If such remains and/or grave goods are found within the APE of the Project, Ocotillo Express LLC will notify the BLM and the Imperial County coroner. After notification, BLM will be responsible for notifying appropriate Signatories, Invited Signatories, and Tribes.

The coroner will determine whether or not the circumstances, manner, and cause of death require further investigation. If the coroner determines that the remains are Native American, the coroner will contact the Native American Heritage Commission (CH&SC 7050.5(b)). The NAHC will then immediately identify those persons it believes to be to be most likely descended from the deceased Native American. With the permission of the landowner, the MLD may inspect the site of the discovery and recommend means for treating or disposing, with appropriate dignity, the human remains and any associated grave goods. The MLD will complete the inspection and make a recommendation within 48 hours of being granted access to the site. If the NAHC is unable to identify a MLD, or if the MLD fails to make a recommendation, or if the landowner rejects the MLD's recommendation and mediation by the NAHC fails to provide measures acceptable to the landowner, the landowner will reinter the human remains and associated items with appropriate dignity on the property in a location not subject to further subsurface disturbance (PRC 5097.98).

3.4 Archaeological Recording

Also to be discussed in the POA is “the planned archaeological recording of the human remains, funerary objects, sacred objects, or objects of cultural patrimony recovered” (43 CFR 10.5(e)(4)).

Following the initial discovery and identification of any human remains, funerary objects, sacred objects, or objects of cultural patrimony within the APE, no further archaeological excavation or recording of such remains and/or objects will occur until after either (1) the lineal descendant or Tribe entitled to custody pursuant to 43 CFR 10.6(a), if the discovery is on Federal or Tribal land, or (2) the MLD identified pursuant to PRC 5097.98, if the discovery is on non-Federal or non-Tribal land in California, or (3) “the group with cultural affinity” has made a recommendation to BLM and the landowner with respect to the disposition of the remains and/or objects.

Thereafter, BLM will take into account the recommendation(s) of the appropriate Native American lineal descendant or Tribe, or MLD, or group with cultural affinity and will decide on the nature of any archaeological excavation or recording to be done of the discovered remains and/or funerary objects.

3.5 Analysis

The regulations also call for the POA to identify “the kinds of analysis planned for each kind of object” (43 CFR 10.5(e)(5)).

No scientific analysis of human remains and/or funerary objects will occur until after either (1) the lineal descendant or Tribe entitled to custody pursuant to 43 CFR 10.6(a), if the discovery is on Federal or Tribal land, or (2) the MLD identified pursuant to PRC 5097.98, if the discovery is on non-Federal or non-Tribal land in California, or (3) “the group with cultural affinity” has made a recommendation to BLM and the landowner with respect to the disposition of the

remains and/or objects, including whether or not destructive and/or nondestructive analysis should be permitted.

Thereafter, BLM will take into account the recommendation(s) of the appropriate Native American lineal descendant or Tribe, or MLD, or group with cultural affinity and will decide on the nature of any scientific analysis is to be done of the discovered remains and/or funerary objects.

3.6 Tribal Contacts

Another important feature of the POA is that it must state “any steps to be followed to contact Indian tribe officials at the time of intentional excavation or inadvertent discovery of specific human remains, funerary objects, sacred objects, or objects of cultural patrimony” (43 CFR 10.5(e)(6)). As discussed in the MOA, BLM has invited fourteen Indian tribes (the Tribes) and one non-federally recognized tribe to participate in the Section 106 consultation process and to be Concurring Parties to the MOA. The Tribes, non-federally recognized tribe and one Tribal Organization are listed below together with specifications as to how each wishes to be contacted and involved if human remains are discovered within the APE.

In the event that human remains and/or funerary objects, or sacred objects, or objects of cultural patrimony are discovered within the APE, either inadvertently or in the course of intentional archaeological excavations, Ocotillo Express LLC will immediately (1) cease or cause to be ceased any earth-disturbing activity within an area extending not less than 5 meters and not more than 50 meters (to be determined in the field on a case-by-case basis) from the discovered remains; (2) ensure that the remains and/or cultural objects are protected from further disturbance; and (3) inform BLM by telephone within 24 hours following the discovery. BLM will then contact the appropriate Tribes, Tribal Organizations, Signatories, and Invited Signatories. The Tribes will be contacted and consulted in accordance with the information provided below, including the designated Point of Contact (POC) for each Tribe or Tribal Organization, and in other sections of this POA.

BARONA BAND OF DIEGUENO INDIANS

POC Contact Information
How the Tribe Wishes to Be Involved

CAMPO BAND OF MISSION INDIANS

POC Contact Information
How the Tribe Wishes to Be Involved

COCOPAH INDIAN TRIBE

POC Contact Information
How the Tribe Wishes to Be Involved

EWIIAAPAAYP BAND OF KUMEYAAY INDIANS

POC Contact Information
How the Tribe Wishes to Be Involved

FORT YUMA QUECHAN INDIAN TRIBE

POC Contact Information
How the Tribe Wishes to Be Involved

JAMAL INDIAN VILLAGE

POC Contact Information
How the Tribe Wishes to Be Involved

KWAAYMII LAGUNA BAND OF INDIANS

POC Contact Information
How the Tribe Wishes to Be Involved

KUMEYAAY CULTURAL REPATRIATION COMMITTEE

POC Contact Information
How the Organization Wishes to Be Involved

LA PSOTA BAND OF KUMEYAAY INDIANS

POC Contact Information
How the Tribe Wishes to Be Involved

MANZANITA BAND OF KUMEYAAY INDIANS

POC Contact Information
How the Tribe Wishes to Be Involved

MESA GRANDE BAND OF MISSION INDIANS

POC Contact Information
How the Tribe Wishes to Be Involved

SAN PASQUAL BAND OF DIEGUENO INDIANS

POC Contact Information
How the Tribe Wishes to Be Involved

SANTA YSABEL BAND OF DIEGUENO INDIANS

POC Contact Information
How the Tribe Wishes to Be Involved

SYCUAN BAND OF KUMEYAAY NATION

POC Contact Information
How the Tribe Wishes to Be Involved

TORRES-MARTINEZ DESERT CAHUILLA INDIANS

POC Contact Information
How the Tribe Wishes to Be Involved

VIEJAS BAND OF KUMEYAAY INDIANS

POC Contact Information
How the Tribe Wishes to Be Involved

3.7 Traditional Treatment Measures

As stipulated in the NAGPRA regulations (43 CFR 10.5(e)(7)), the POA must describe “the kind of traditional treatment, if any, to be afforded the human remains, funerary objects, sacred objects, or objects of cultural patrimony by members of the Indian tribe....”

Following any discovery of Native American human remains and/or funerary objects, and prior to the disposition of such remains and/or objects, BLM will consult with the appropriate Native American lineal descendant or Tribe, or MLD, or group with cultural affinity, and will ascertain the wishes of such lineal descendant or Tribe, or MLD, or group with cultural affinity with respect to the kind of traditional treatment, if any, to be afforded the human remains or objects. BLM will then take the necessary steps to ensure that the lineal descendant or Tribe, or MLD, or group with cultural affinity is granted the opportunity, access, and privacy required for the traditional treatment of the remains and/or objects in compliance with NAGPRA, AIRFA, and all other applicable statutes and regulations.

3.8 Reporting

The POA also must address “the nature of reports to be prepared” (43 CFR 10.5(e)(8)). Although it is difficult to suggest the nature of reports to be prepared without knowing the kinds of remains and/or objects that would be discovered, or whether the discovery would be made inadvertently or in the course of planned and permitted archaeological excavations, one can define the procedures to be followed with respect to deciding on the scope, content, distribution, and confidentiality of any reports that may be produced.

Decisions about report preparation and content will be based on a consultative process very similar to what is described for scientific analysis (see Subsection 3.5, above). No reports of human remains and/or funerary objects will be released until after either (1) the lineal descendant or Tribe entitled to custody pursuant to 43 CFR 10.6(a), if the discovery is on Federal land, or (2) the MLD identified pursuant to PRC 5097.98, if the discovery is on non-Federal or non-Tribal land in California, or (3) “the group with cultural affinity” has made a recommendation to BLM and the landowner with respect to the disposition of the remains and/or objects, including whether or not archaeological reporting should take place.

Thereafter, BLM will take into account the recommendation(s) of the appropriate Native American lineal descendant or Tribe, or MLD, or group with cultural affinity and will decide on the nature of any archaeological report to be prepared on the discovered remains and/or funerary objects. BLM also will ascertain whether or not photographs of the subject remains and/or objects are culturally permissible, who (i.e., which agencies, Tribes, institutions, etc.) should receive copies of any report that is produced, and how best to maintain the confidentiality of such report and the information therein to comply with ARPA, NAGPRA, and other laws.

3.9 Disposition of Remains and Objects

Finally, the NAGPRA regulations require the POA to set forth a plan for “the disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony following [43 CFR] § 10.6” (43 CFR 10.5(e)(9)). The procedures to be followed in arriving at decisions regarding disposition depend upon land ownership in which the remains and/or objects are found. In addition, the final disposition or custody of human remains, funerary objects, sacred objects, or objects of cultural patrimony is also subject to consultation with the parties having claim(s) to the remains and materials in question. During consultation the remains and/or objects shall be treated respectfully and stored in a secure location.

3.9.1 Discoveries on Federal Land

In the event that human remains and/or cultural items are found within the APE of the Project on Federal lands, preservation and protection in place shall be the primary treatment strategy. Should preservation and protection in place not be possible, following consultation as required by 43 CFR 10.6, the BLM will ascertain custody in accordance with 43 CFR 10.6(a–c) (see Subsection C.3.2 of this POA). Once BLM has made a determination of the party entitled to custody, BLM will publish at least two notices of the proposed disposition of the remains and/or objects, as required by 43 CFR 10.6(c). These notices must be published at least one week apart. If no additional claimants come forward within 30 days following the second publication of the notice, then BLM will transfer custody of the remains and/or cultural items to the party named in the notices pursuant to 43 CFR 10.6(c). The party having custody will then decide on the ultimate disposition of the remains and/or cultural items. If the party given custody should decide that any of the remains and/or items are to be curated, then they will select for that purpose and deliver such remains and/or items to a repository that meets the standards and criteria set forth at 36 CFR 79.

3.9.2 Discoveries on Non-Federal/Non-Tribal Land

If Native American human remains and/or grave goods are found within that portion of the APE—and after Ocotillo Express LLC has notified the BLM and the Imperial County coroner, and the coroner has contacted the NAHC, and the NAHC has designated a MLD, and the MLD has visited the discovery site, pursuant to CH&SC 7050.5 *et seq.* and PRC 5097.98(a-b)—the landowner will discuss and confer with the MLD “all reasonable options” regarding the MLD’s preferences for treatment of the human remains and/or grave goods. These options may include:

- A. Preservation of Native American human remains and associated items in place.

- B. The nondestructive removal and analysis of human remains and items associated with Native American human remains. Relinquishment of Native American human remains and associated items to the descendants for treatment.
- C. Other culturally appropriate treatment [PRC 5097.98(b)(1)(A-D)].

The landowner may accept the MLD's recommendation, or agree to extend discussions taking into account the possibility that additional or multiple Native American human remains may be present, or reject the MLD's recommendation. If the NAHC is unable to identify an MLD, or the MLD does not make a recommendation, or if the landowner rejects the MLD's recommendation, and if mediation (as provided for by PRC 5097.98(k)), if invoked, fails to provide measures acceptable to the landowner,

the landowner or his or her authorized representative shall inter the human remains and items associated with Native American remains with appropriate dignity on the property in a location not subject to further and future subsurface disturbance. To protect these sites, that landowner shall do one or more of the following:

1. Record the site with the commission [i.e., the NAHC] or the appropriate Information Center [of the California Historical Resources Information System (CHRIS)].
2. Utilize an open-space or conservation zoning designation or easement.
3. Record a document with the county in which the property is located [PRC 5097.98(e)(1-3)].

In these circumstances, it is the landowner who, after the prescribed consultation, makes the final decision regarding the disposition of Native American human remains and/or grave goods governed by PRC 5097.98. The Undertaking, however, remains under Federal jurisdiction, so these restrictions of California law may only take effect after pertinent Federal requirements are complied with.

4 SUMMARY OF THE POA

In summary, in the event that human remains and/or funerary objects are found within the APE of the Undertaking, the Plan of Action (POA) to be implemented includes;

- (1) BLM will be the lead Federal Agency responsible for seeing that the terms of the POA are executed and that the Undertaking is in compliance with NAGPRA, and other applicable Federal statutes and regulations.
- (2) BLM will maintain ongoing consultation, as necessary and appropriate, with the PA Signatories, Invited Signatories, and Tribes, and specifically will involve the Tribes in decision making with respect to any human remains and/or cultural items that may be discovered within the APE, in accordance with 43 CFR 10.
- (3) Ocotillo Express LLC will summarize in construction and maintenance contracts all relevant legal requirements regarding the discovery and

treatment of human remains and/or funerary objects, and will take appropriate steps to ensure that its contractors and employees are familiar with the required procedures.

- (4) In the event that human remains and/or funerary objects are found within the APE of the Project, Ocotillo Express LLC will immediately cease or cause to be ceased any activity within an area extending not less than 5 meters and not more than 50 meters (to be determined in the field on a case-by-case basis) from the discovered remains;
- (5) If human remains or funerary objects are discovered on Federal land, Ocotillo Express LLC will notify BLM by telephone as soon as possible, but no later than 24 hours after the discovery, followed within three business days by written confirmation. BLM will then be responsible for notifying the appropriate Tribe(s), and for initiating Tribal consultation as prescribed by 43 CFR 10.5. The Ocotillo Express Project Manager will also ensure that the Imperial County coroner is notified, pursuant to H&SC 7050.5 *et seq.* The telephone number of the coroner's main office in Imperial County is 760-339-6301. BLM's El Centro Field Office main number is 760-337-4400. Ocotillo Express LLC can be reached at XXX-XXX-XXXX.
- (6) The BLM in coordination with the Imperial County coroner will make a determination as to whether the remains are human, or non-human. This determination will be made by qualified personnel, such as a physical or forensic anthropologist (in conjunction with a cultural resources contractor, if one is involved with the discovery). If the remains are identified as non-human, no further notification or action is required, although further archaeological assessment may be needed. If the remains are human, additional measures and procedures, as described below, apply.
- (7) Ocotillo Express LLC, under the direction of BLM will take whatever steps may be needed to ensure that the subject remains and or/funerary objects are not disturbed further and are secure pending further implementation of the treatment measures as prescribed in the POA. BLM, in coordination with Ocotillo Express LLC, will ensure that the remains and/or objects are treated with appropriate respect and cultural sensitivity at all times.
- (8) In the event of an inadvertent discovery of human remains on Federal lands, any potentially disturbing activity will be suspended in the discovery area (i.e., within not less than 5 nor more than 50 meters in all directions from the discovered remains and/or objects) until authorized by BLM to resume such activities. BLM will ensure that the stipulations of this POA are fully implemented. Such activity will be suspended in the discovery area until the Tribes, Ocotillo Express LLC, and BLM can

determine if preservation and protection in place or other treatment is necessary. If preservation in place is not possible, the BLM shall consult with the SHPO to develop a treatment plan within 15 days of notification of discovery. Absent objection by the SHPO, BLM will then implement the treatment plan, or, if the SHPO objects, BLM will utilize the dispute resolution process set forth in Stipulation XI of the MOA to resolve any objection.

- (9) Human remains and/or funerary objects discovered on Federal land will not be excavated or otherwise removed unless approved by BLM and after consultation with the Tribe(s) and BLM, as appropriate. Disposition of any such remains and/or objects discovered on or removed from Federal lands will follow the protocols discussed in POA Subsection 3.9.

- (10) The Imperial County coroner will determine whether or not the circumstances, manner, and cause of death require further investigation as a crime scene. If not, the coroner will endeavor to determine if the remains are those of a Native American. This will be accomplished in consultation with a physical anthropologist, human osteologist, or other qualified specialist to verify that the remains are human and, if so, whether or not they appear to be those of a Native American. This aspect of the work will be coordinated very closely with the coroner, as required by law, to ensure that any potential evidence of a crime is not disturbed.

- (11) If the coroner determines that the remains are Native American and not related to a crime, the coroner will contact the Native American Heritage Commission [per CH&SC 7050.5(b)]. The NAHC will then immediately identify those persons it believes to be most likely descended from the deceased Native American. With the permission of the landowner, the MLD may inspect the site of the discovery and recommend means for treating or disposing, with appropriate dignity, the human remains and any associated grave goods. The MLD will complete the inspection and make a recommendation within 48 hours following notification by the NAHC. If the NAHC is unable to identify an MLD, or if the MLD fails to make a recommendation, or if the landowner rejects the MLD's recommendation and mediation by the NAHC fails to provide measures acceptable to the landowner, the landowner will reinter the human remains and any associated items with appropriate dignity on the property in a location not subject to further subsurface disturbance, given the restrictions addressed in Item 16 (below), and subject to any additional compliance measures that address human remains within the APE of the Undertaking [PRC 5097.98].

- (12) Regardless of the discovery site's ownership status (Federal or private), if the human remains are not those of a Native American, then BLM and the

landowner, if the discovery site is not on Federal land, will consult with the coroner, a biological anthropologist or human osteologist, and a qualified historical archaeologist to develop an appropriate plan for treatment. BLM will consult with the SHPO and other concerned parties to determine if historical research, further archaeological excavations, and/or other studies may be necessary before a treatment plan can be finalized. Also, if the remains are those of an identifiable individual and not part of a crime scene, BLM will notify the next of kin. Such kin may wish to influence or control the subsequent disposition of the remains.

- (13) If the next of kin (for non-Indian remains), MLD, or other appropriate Native American entity (e.g., culturally affiliated tribe, indigenous tribe, other tribe likely to have a cultural relationship, or lineal descendants) so requests, BLM will coordinate discussion between concerned parties to determine if reburial at or near the original site in a location not subject to further disturbance is feasible. If a proximate reburial location is not feasible, then BLM may continue to coordinate discussions until a final disposition of the remains is decided upon
- (14) Following the initial discovery and identification of any human remains, funerary objects, sacred objects, or objects of cultural patrimony within the APE, no further archaeological excavation, recording, or analysis, of such remains and/or objects will occur until after (1) the lineal descendant or Tribe entitled to custody pursuant to 43 CFR 10.6(a), if the discovery is on Federal or Tribal land, or (2) the MLD identified pursuant to PRC 5097.98, if the discovery is on non-Federal land in California, or (3) “the group with cultural affinity has made a recommendation to BLM and the landowner with respect to the disposition of the remains and/or objects. Thereafter, BLM will take into account the recommendation of the appropriate Native American lineal descendant or Tribe, or MLD, or group with cultural affinity and will decide on the nature of any archaeological excavation, recording, or analysis, to be done of the discovered remains and/or funerary objects.

Following any discovery of Native American human remains and/or funerary objects, and prior to the disposition of such remains and/or objects, BLM will consult with the appropriate Native American lineal descendant or Tribe, or MLD, or group with cultural affinity, and will ascertain the wishes of such lineal descendant or Tribe, or MLD, or group with cultural affinity with respect to the kind of traditional treatment, if any, to be afforded the human remains or objects. BLM, will then take the necessary steps to ensure that the lineal descendant or Tribe, or MLD, or group with cultural affinity is granted the opportunity, access, and privacy required for the traditional treatment of the remains and/or objects in compliance with NAGPRA, AIRFA, and all other applicable statutes and regulations.