

**MEMORANDUM OF AGREEMENT BETWEEN THE
DEPARTMENT OF INTERIOR, BUREAU OF LAND MANAGEMENT (BLM)
SOUTHERN NEVADA DISTRICT OFFICE
and
NEVADA STATE HISTORIC PRESERVATION OFFICER (SHPO)
REGARDING THE
DRY LAKE SOLAR ENERGY ZONE (SEZ)
CLARK COUNTY, NEVADA**

WHEREAS, BLM will consider issuing rights-of-way (ROW) grants under the Federal Land Policy and Management Act of 1976 (FLPMA) for the following three photovoltaic solar energy project applicants within the Dry Lake SEZ (See Attachment #1) on BLM administered lands, 22 miles northeast of Las Vegas: First Solar (1544 acres), INVEnergy (712 acres), and NVEnergy (815 acres). The Dry Lake SEZ is an area of BLM-administered lands in southern Nevada that the BLM designated in the *Solar Development in Six Western States Resource Management Plan Amendment/Record of Decision* (2012) (“Western Solar Plan”) as suitable for utility-scale solar energy development because of its high solar energy potential and few resource conflicts, including to historic properties; and

WHEREAS, the three projects are separate undertakings subject to compliance with the review process under the National Historic Preservation Act (NHPA), 53 U.S.C. § 306108 (“Section 106” or “Section 106 of the NHPA”) they are collectively referred to as the Undertaking in this Memorandum of Agreement (“MOA” or “Agreement”). Compliance with the requirements of Section 106 is covered by the 2012 Solar Energy Development Programmatic Agreement (Solar PA), which sets forth the Section 106 process for site-specific solar projects located within SEZs designated as part of the Western Solar Plan. The Solar PA specifically calls for site specific Memoranda of Agreement to be developed based on the knowledge of specific resources. Additionally, BLM is relying on the Nevada State Protocol Agreement (2014), established pursuant to the National Programmatic Agreement (2012) to inform the process of consultation between BLM and the SHPO, and the potential involvement of the Advisory Council on Historic Preservation (ACHP). Development of this MOA is in accordance with the Solar PA; and

WHEREAS, in accordance with the Solar PA, BLM has defined the Undertaking's area of potential effect (APE) as the footprint of each proposed project in the Dry Lake SEZ (for any direct effects) and a five (5) mile radius extending outward from the Dry Lake SEZ or to the visible horizon (for any indirect effects) (See Attachment #2); and

WHEREAS, BLM has, pursuant to the Solar PA and the Nevada State Protocol Agreement, engaged in consultation with the SHPO, interested Native American tribes, and the Old Spanish Trail Association (OSTA) on the Dry Lake SEZ, and sought information regarding the identification and evaluation of historic properties within the direct and indirect APEs for the Undertaking; and

WHEREAS, BLM completed a Class III inventory for 3,471.43 acres covering the direct APE for the three projects. This inventory identified only three ineligible sites – two small lithic scatters and a historic road that is not eligible for the National Register of Historic Places (National Register). Based on the Class III Inventory Report, BLM determined that the undertakings would have no direct effect on historic properties listed in or eligible for the National Register. The SHPO concurred with this

determination on October 23, 2014; and

WHEREAS, BLM, in consultation with the SHPO, also prepared a view shed analysis for the Undertaking and determined that four (4) historic properties were within the indirect APE. The BLM determined that as one of these properties – Flaherty Rockshelter (26CK415) –is eligible only under the Secretary of Interior’s Criterion D, this property would not be adversely affected by the Undertaking. The BLM, in consultation with the SHPO, determined that the Undertaking would have visual adverse effects to three (3) historic properties – the Old Spanish Trail/Mormon Wagon Road (26CK3848); the SP, LA, and SL Railroad now known as the UP Railroad (26CK5685); and the Arrowhead Highway (26CK7793); and

WHEREAS, BLM initiated consultation with the Moapa Band of Paiutes, Paiute Indian Tribe of Utah, the Timbisha Shoshone Tribe, the Chemehuevi Indian Tribe, the Fort Mojave Indian Tribe, the Pahrump Paiute Tribe, the Colorado River Indian Tribe, the Las Vegas Paiute Tribe, the Hopi Tribe, the San Juan Southern Paiute Tribe, and the Kaibab Band of Paiutes. BLM did not receive responses of concern, identification of historic properties, or interest in the projects from these Indian tribes. BLM will continue to consult with the Indian tribes pursuant to this Agreement; and

WHEREAS, the OSTA is a partner with BLM and National Park Service that is regularly consulted during the development of management decisions regarding the Old Spanish Trail. BLM has consulted with OSTA regarding the Undertaking, the adverse effects to the three historic properties, and the development of this Agreement. BLM will continue to consult with OSTA and other interested parties pursuant to this Agreement; and

NOW, THEREFORE, BLM and the SHPO agree that the Undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the Undertaking on historic properties.

STIPULATIONS

BLM shall ensure that the following measures are carried out:

I. PREPARATION OF A HISTORIC PROPERTIES TREATMENT PLAN

Upon execution of the MOA, and prior to initiating surface disturbing activities associated with the Undertaking, BLM, in consultation with the SHPO, OSTA, and Native American tribes as appropriate, shall develop a Historic Properties Treatment Plan (HPTP) for all adversely affected historic properties in the direct and indirect APEs. The HPTP shall be consistent with the Secretary of the Interior’s Standards and Guidelines for Archaeology and Historic Preservation (48 CFR 44716-37) and the *Mitigation Standards for Historical Resources of Local and State Significance* (BLM, 2014).

II. REVIEW AND EXECUTION OF THE HPTP

- A. BLM shall submit the draft HPTP to SHPO for a thirty (30) day review and comment period. If SHPO fails to respond to the BLM within the thirty (30) calendar days of receipt of the

draft HPTP, the BLM shall assume concurrence with the planned mitigation and proceed accordingly.

- B. BLM shall concurrently provide OSTA, Native American tribes, and other consulting parties, as appropriate, with a copy of the HPTP with the same thirty (30) day review opportunity as afforded SHPO.
- C. BLM shall provide SHPO with copies of any comments received during consultation with Native American tribes and other consulting parties with the exception of sensitive or confidential information obtained from Native American tribes. The SHPO shall have ten (10) calendar days from receipt to review these comments.
- D. BLM shall address all comments on the draft HPTP provided by SHPO, OSTA, Native American tribes, and other consulting parties in the final HPTP. BLM shall provide the final HPTP to SHPO, OSTA, Native American tribes, and other consulting parties as appropriate.
- E. Within thirty (30) calendar days of completion of fieldwork as defined in the HPTP, BLM will provide SHPO, OSTA, Native American tribes, and other consulting parties as appropriate, with a preliminary fieldwork summary report outlining fieldwork activities.
- F. BLM shall provide the SHPO, OSTA, Native American Tribes, and other consulting parties as appropriate, with a draft mitigation report and any draft documents for all historic properties within thirty (30) days after the completion of the fieldwork associated with the activity, unless otherwise negotiated.
- G. BLM shall ensure that all draft final mitigation documents or other products resulting from actions pursuant to this MOA will be provided to the SHPO, Native American tribes, and other consulting parties as appropriate. All such reports shall be consistent with contemporary professional standards. Final mitigation documents or other products will be due sixty (60) days after receiving SHPO, OSTA, Native American tribes, and other consulting party comments.

III. NOTICES TO PROCEED

BLM may issue a Notice to Proceed (NTP) for individual construction segments of the Undertaking under any of the following conditions:

- A. A Contractor hired by BLM shall provide BLM with a summary of fieldwork completed for all historic properties according to the HPTP; and
- B. BLM shall review the summary; and
- C. BLM shall provide a copy of the summary to SHPO; and

D. SHPO shall review the summary. If SHPO concurs or does not respond within two working days of receipt, BLM shall assume concurrence and issue the NTP.

E. No ground disturbing activities will begin until BLM issues a NTP for the Undertaking.

H. A NTP may be issued for portions of the APE (shown on the map in Attachment #1).

IV. DURATION

This MOA will expire if its stipulations are not carried out within five (5) years from the date of its execution. At such time, and prior to work continuing on any covered undertaking, BLM shall either (a) execute a MOA pursuant to 36 C.F.R. § 800.6, or (b) request, take into account, and respond to the comments of the under 36 C.F.R. § 800.7. Prior to such time, BLM may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation VIII below. BLM shall notify the signatories as to the course of action it will pursue.

V. POST-REVIEW DISCOVERIES

If potential historic properties are discovered or unanticipated effects on historic properties found, BLM shall implement the discovery plan included as Attachment #3 of this MOA.

VI. MONITORING AND REPORTING

Each year following the execution of this MOA until it expires or is terminated, BLM shall provide all parties to this MOA a summary report detailing work carried out pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in BLM's efforts to carry out the terms of this MOA.

VII. DISPUTE RESOLUTION

Should any consulting party object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, BLM shall consult with SHPO to resolve the objection. If BLM determines that such objection cannot be resolved, BLM will:

- A. Forward all documentation relevant to the dispute, including the BLM's proposed resolution, to the ACHP. The ACHP shall provide BLM with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, BLM shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories, and concurring parties, and provide them with a copy of this written response. BLM will then proceed according to its final decision.
- B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, BLM may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, BLM shall prepare a written response that takes into account

any timely comments regarding the dispute from the signatories and concurring parties to the MOA, and provide them and the ACHP with a copy of such written response.

- C. BLM's responsibilities to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

VIII. AMENDMENTS

This MOA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy is signed by all of the signatories.

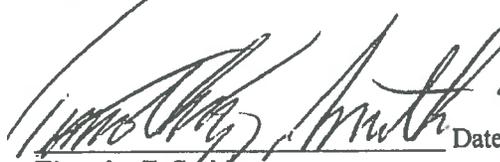
IX. TERMINATION

If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation VIII, above. If within thirty (30) days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories.

Once the MOA is terminated, and prior to work continuing on any covered undertaking, BLM must (a) execute a new MOA pursuant to 36 CFR § 800.6, or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. BLM shall notify the signatories as to the course of action it will pursue.

EXECUTION of this MOA by the BLM and SHPO and implementation of its terms evidence that BLM has taken into account the effects of this Undertaking on historic properties and afforded the ACHP an opportunity to comment.

SIGNATORIES:

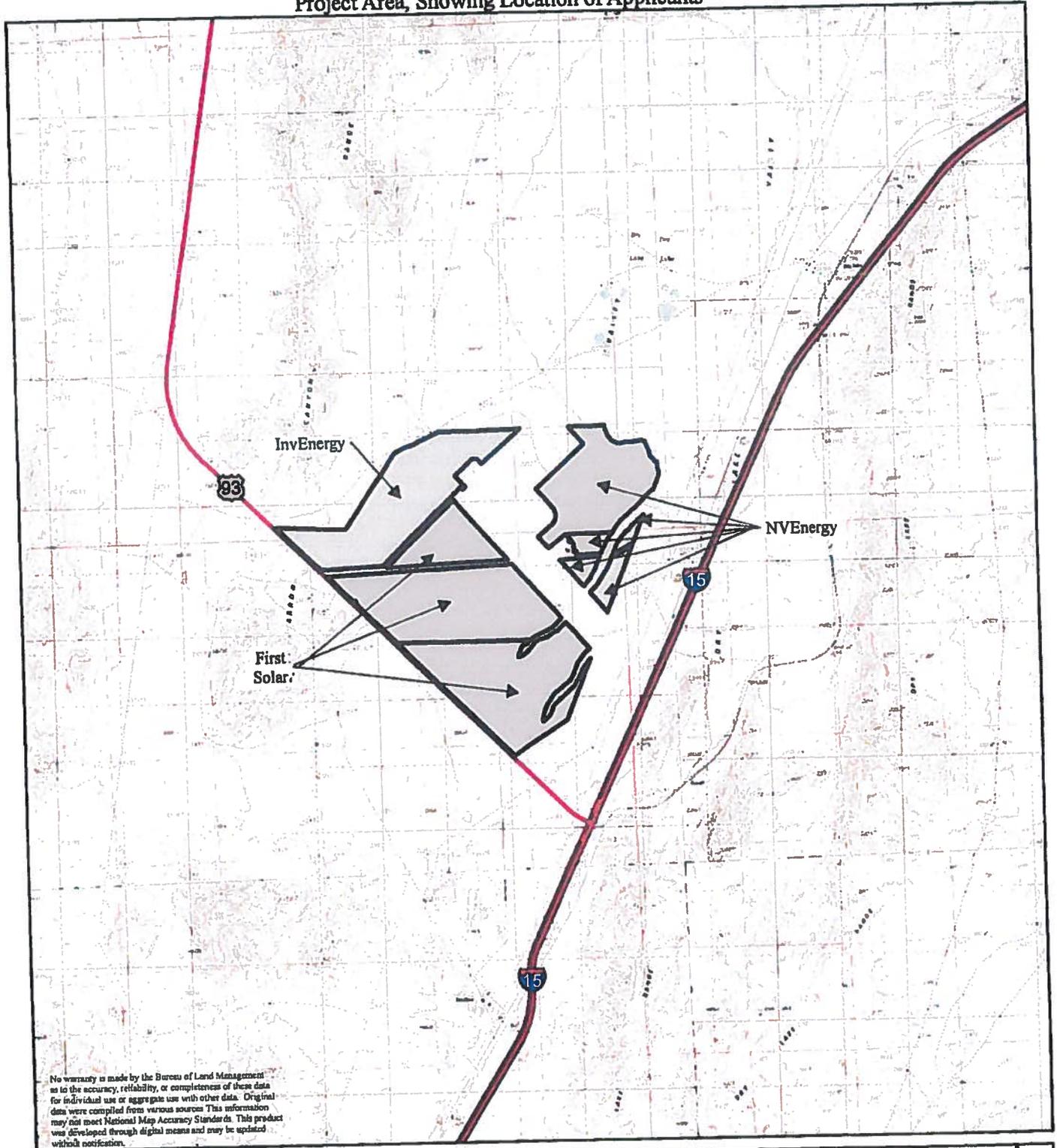
 Date 4/30/15

Timothy Z. Smith
Southern Nevada District Manager
Bureau of Land Management

 Date 4/30/15

Rebecca Palmer
Nevada State Historic Preservation Officer
Nevada State Historic Preservation Office

**Attachment #1.
Dry Lake Solar Energy Zone
Project Area, Showing Location of Applicants**



No warranty is made by the Bureau of Land Management as to the accuracy, reliability, or completeness of these data for individual use or aggregate use with other data. Original data were compiled from various sources. This information may not meet National Map Accuracy Standards. This product was developed through digital means and may be updated without notification.

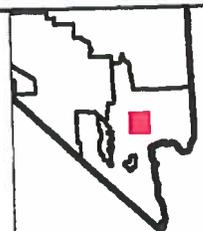


**Southern Nevada District
Bureau of Land Management
4701 Torrey Pines Dr
Las Vegas, NV.**

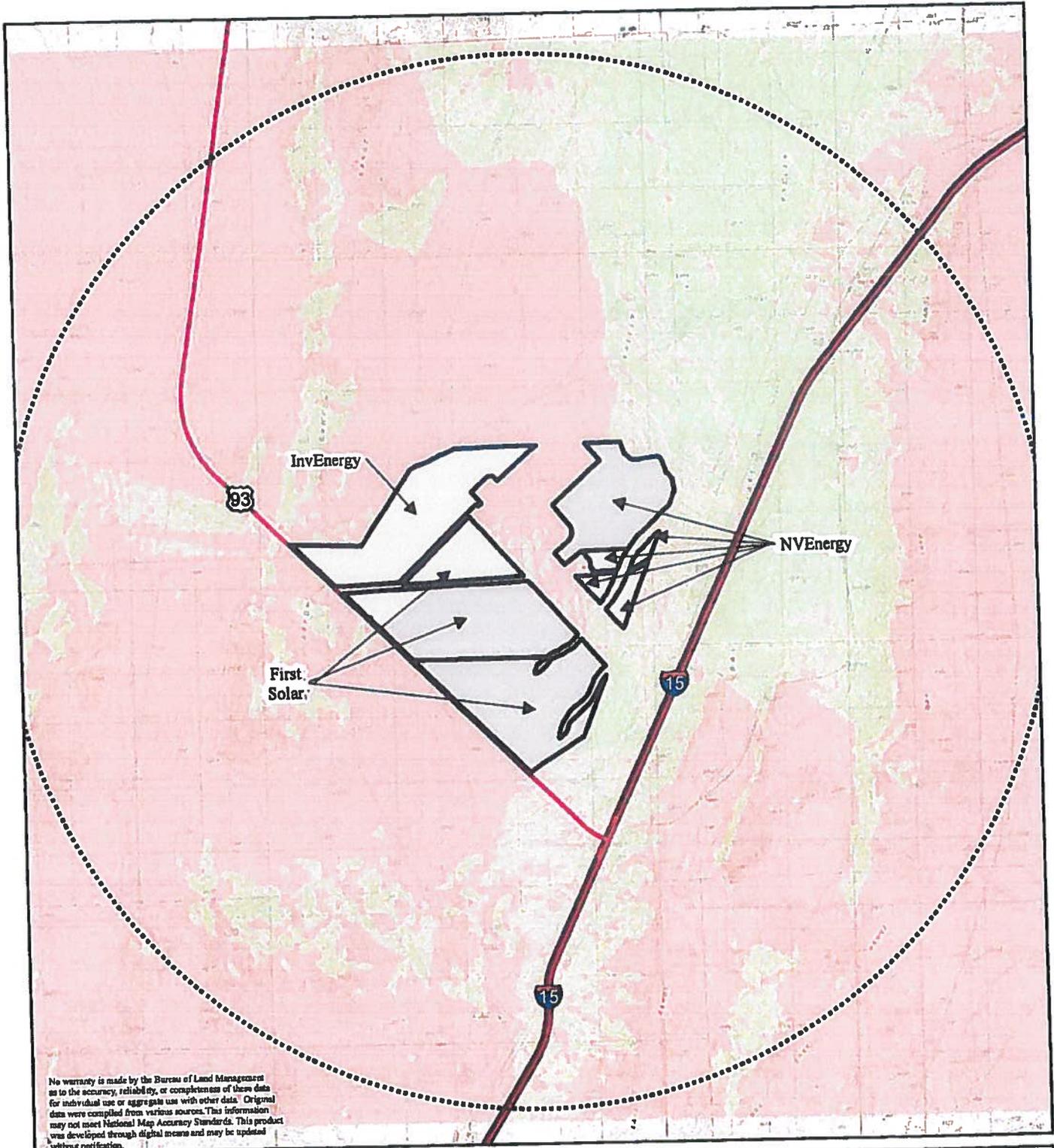
 **Project Area**



**1:80,000
Date: 4/30/2015**



Attachment #2.
Area of Potential Effect



No warranty is made by the Bureau of Land Management as to the accuracy, reliability, or completeness of these data for individual use or aggregate use with other data. Original data were compiled from various sources. This information may not meet National Map Accuracy Standards. This product was developed through digital means and may be updated without notification.



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Direct APE



Indirect APE

Viewshed



Not Visible



Visible



1:80,000
Date: 4/30/2015



Attachment #3

Plan and Procedures for Unanticipated Discoveries of Cultural Resources and NAGPRA Items in Areas Administered by the Bureau of Land Management, Nevada

The purpose of this Unanticipated Discoveries Plan is to demonstrate compliance with applicable federal and state laws and regulations regarding cultural resource and human remains and associated materials, describe to regulatory and review agencies the procedures that will be followed in the event of unanticipated discoveries, and to provide guidance to Project personnel. The federal laws that govern cultural resources and human remains include, but are not limited to, the National Historic Preservation Act of 1966, as amended (NHPA); the regulations at 36 CFR Part 800 that implement Section 106 of the NHPA; the Native American Graves Protection and Repatriation Act (NAGPRA, 25 U.S.C. §§ 3001-3013); the regulations for NAGPRA at 43 CFR 10; and the Archaeological Resource Protection Act (ARPA, Public Law 96-95, 16 U.S.C. 470aa-mm); and the ARPA regulations at 43 CFR 7. Discovery of human remains found on non-Federal lands in Nevada is governed by Nevada Revised Statutes, Chapter 383.150 to 383.190, Protection of Indian Burial Sites.

If the BLM determines that an undertaking may affect or has affected a previously unidentified property that may be eligible for the National Register, the BLM will:

1. Ensure that activities associated with the undertaking within 100 meters of the discovery are halted and the discovery is appropriately protected, until the BLM Authorized Officer issues a Notice to Proceed (NTP).
 - a. The BLM will determine if an adverse effect exists. If an adverse effect is found, BLM will identify the applicable criteria of significance and will propose actions to resolve the adverse effects.
2. The BLM shall notify the signatories to the Memorandum of Agreement (MOA) for the Dry Lake SEZ Projects in Nevada and request their comments on the discovery. The BLM shall also notify consulting tribes with ties to the area of discovery as defined through the tribes' aboriginal territories. The BLM shall consider comments from the MOA signatories and consulting tribes on the discovery.
 - a. Within two working days of notification to the MOA signatory parties, the BLM shall notify the proponent, tribes, and other interested persons as appropriate, of the BLM's decision on eligibility and proposed treatment, if any, and solicit comments on the BLM's proposed course of action;
 - b. The MOA signatories, consulting tribes, and other interested persons as appropriate, will be asked to provide BLM with comments within two working days of BLM's notification. Any timely comments offered by the MOA signatories, Tribes, and other interested persons will be documented, considered in dealing with the discovery, and, subject to confidentiality requirements allowable under law, be made available for public inspection;

c. The BLM shall notify the MOA signatories, tribes, and other interested persons of its decision regarding evaluation and treatment and shall ensure that treatment actions, if any, are implemented; and

d. The BLM shall ensure that reports of treatment efforts for discovery situations are completed in a timely manner and conform to the stipulations of this agreement. Final reports on the treatment effort shall be sent to the MOA signatories, consulting tribes, and other interested persons as appropriate, for informational purposes, within 90 days after BLM has accepted the report, subject to confidentiality requirements allowable under law.

e. Potential treatment options include archaeological excavation and removal under terms of an approved data recovery plan reflecting the Advisory Council's Guidance on the Recovery of Significant Information from Archaeological Sites (May 18, 1999).

f. Upon BLM approval of a Plan of Action (POA) for steps to be taken regarding human remains, funerary objects, sacred objects, and objects of cultural patrimony from lands administered by BLM Nevada and developed in accordance with the NAGPRA, the POA shall replace provisions in this Unanticipated Discovery Plan for handling those remains and objects subject to NAGPRA.

3. Notices to Proceed

a. Notices to Proceed (NTP) may be issued by the BLM under any of the following conditions:

(1) evaluation of potentially eligible resource(s) results in a determination that the resource(s) are not eligible; or

(2) the fieldwork phase of the treatment option has been completed; and

(3) the BLM has accepted a summary description of the fieldwork performed and a reporting schedule for that work;

CONSTRUCTION MONITORING

The proponents will retain qualified archaeologists to monitor all phases of initial ground disturbance including, but not necessarily limited to, grading, plowing, excavating, and trenching. For project areas administered by BLM Nevada, a qualified monitor is a person who has been previously qualified by the Nevada State Office in the capacity of Crew Chief for prehistoric archaeological resources, at minimum, based on standards in the BLM Nevada cultural resources inventory guidelines (Attachment A).

The following process will be followed regardless of land jurisdiction. The archaeologists and all Project construction staff will follow this protocol:

In the event that human remains or cultural resources are identified during the Project, all work

will be stopped and the procedures for unanticipated remains will be implemented. The remains left in place and not disturbed, and the proponent's Environmental Inspector (EI) will be notified. The project archaeologist will be contacted and requested to investigate the discovery site. The appropriate agency archaeologists will be contacted; for federally-administered public lands, the appropriate agency archaeologist will be notified. For non-Federal lands in Nevada, the State Historic Preservation Office will be notified in the event of the unanticipated discovery of human remains.

The discovery area will be protected through security measures to ensure the integrity of the remains. At a minimum a physical barrier, such as hazard fencing, will be placed around the discovery to guard against unauthorized personnel and equipment entering the area.

The proponent's EI will notify the sheriff's office of the discovery in order to determine whether it should be treated as a crime scene or as a human burial.

For non-burial related unanticipated discoveries, the plan for unanticipated discoveries shall be implemented. The artifacts/features left in place and not disturbed while the EI and the archaeologist and tribal monitor, as appropriate, are notified. The archaeologist will be called upon to investigate the situation.

ATTACHMENT A

Crew Chief : Any individuals(s) proposed as responsible for carrying out field projects. Crew Chiefs are responsible for the technical quality of field operations, for direct on-site supervision of all aspects of field work and data gathering, for proposing resource evaluations and recommendations for further treatment, and for preparing field records and descriptive reports. For each Crew Chief, information must be included with the application to demonstrate that the individual has achieved the following: (1) adequate professional instruction, obtained through: (a) formal education resulting in a baccalaureate degree in an appropriate discipline (anthropology, archaeology, history, architecture); and (b) at least 12 months of pertinent, professionally supervised experience, with increasing responsibility leading to duties similar to those proposed in the application; (2) competent in recording, collecting, handling, analyzing, evaluating, and reporting cultural property data, relative to the type and scope of work proposed; (3) the ability to supervise activity of the type and scope proposed; (4) completion of at least 4 months of professional experience or specialized training in field methods, pertaining to the geographic or culture area involved.