

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

6004B
(2018)



FROM: TLMA – Planning Department

SUBMITTAL DATE:
August 11, 2016

SUBJECT: Memorandum of Understanding between the Bureau of Land Management and County of Riverside regarding coordinated environmental review for the Desert Quartzite Solar Project, 4th District [100% Deposit Based Fee fund]

RECOMMENDED MOTION: Staff Recommends that the Board of Supervisors:

- APPROVE** the Memorandum of Understanding (“MOU”) between the Bureau of Land Management and County of Riverside regarding coordinated environmental review for the Desert Quartzite Solar Project, and
- AUTHORIZE** the Chairman of the Board of Supervisors to sign the attached Memorandum of Understanding.


Steve Weiss, AICP
Planning Director


Juan C. Perez
TLMA Director

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$ N/A	\$ N/A	\$ N/A	\$ N/A	Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/>
NET COUNTY COST	\$ N/A	\$ N/A	\$ N/A	\$ N/A	
SOURCE OF FUNDS: Deposit Based Fee				Budget Adjustment: No	
				For Fiscal Year: 16/17	

C.E.O. RECOMMENDATION:

APPROVE
BY: 
Tina Grande

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

FORM APPROVED COUNTY COUNSEL
BY: 
TIFFANY NORTH
DATE: 9/12/16
Department of Concurrence

- A-30
- Positions Added
- 4/5 Vote
- Change Order

Prev. Agn. Ref.:

District:4

Agenda Number:

3-6

**SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA
FORM 11: MEMORANDUM OF UNDERSTANDING BETWEEN THE BUREAU OF LAND
MANAGEMENT AND COUNTY OF RIVERSIDE REGARDING COORDINATED ENVIRONMENTAL
REVIEW FOR THE DESERT QUARTZITE SOLAR PROJECT**

DATE: August 11, 2016

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BACKGROUND:

First Solar proposes to construct and operate a 300 megawatt (MW) solar photovoltaic (PV) solar power plant known as the Desert Quartzite Project ("Project"). The majority of the 5,275-acre Project, will be located on Federal land managed by BLM. The portion located within the County's jurisdiction includes a 160-acre area that would be developed with photovoltaic panels. The Project includes construction of a 2.8 mile generation transmission intertie line ("Gen-Tie") connecting the electrical output of the solar power plant to Southern California Edison's Colorado River Substation. The Gen-Tie line will run entirely outside of the County's jurisdiction.

First Solar has applied for a Conditional Use Permit (CUP 3721) pursuant to Ordinance No. 348. The Project is also subject to the requirements of Board of Supervisors Policy No. B-29 regarding solar power plants.

The Project requires environmental review under both the federal National Environmental Policy Act ("NEPA") and the California Environmental Quality Act ("CEQA"). The purpose of the MOU is to provide a framework for cooperation between the BLM and the County to work together in preparing and completing a joint environmental analysis and document that complies with NEPA and CEQA and to ensure the County's concerns are incorporated into the Project review.

Impact on Citizens and Businesses

All potential project impacts will be studied under CEQA and noticed to the public pursuant to the requirements of the County. There are no financial impacts to the County associated with this item, as any applicable costs will be fully funded by the Project applicant.

SUPPLEMENTAL:

Additional Fiscal Information

There are no costs associated with the approval of this agenda item. All costs related to the preparation of the environmental analysis, as well as processing the conditional use permit for the solar power plant, will be paid through deposit based fees submitted by the project applicant.

Attachments:

A. MEMORANDUM OF UNDERSTANDING

MEMORANDUM OF UNDERSTANDING
between
THE BUREAU OF LAND MANAGEMENT
and
COUNTY OF RIVERSIDE

This MEMORANDUM OF UNDERSTANDING (MOU) is hereby entered into between the Bureau of Land Management, hereinafter referred to as the BLM, and the County of Riverside, hereinafter referred to as the County. The BLM and County are hereinafter referred together as the Parties.

A. INTRODUCTION and PURPOSE:

First Solar is proposing to build the 300 megawatt (MW) Desert Quartzite Solar Project, a solar photovoltaic energy generating facility and associated infrastructure including a 2.8 mile generation transmission intertie (Gen-Tie) line to the Colorado River Substation (hereinafter referred to as "Project"). The 300 MW solar power plant site is located on a total of approximately 5,000 acres of public and private land. The majority of the Project, including the Gen-Tie, is on approximately 4, 843 acres of federal lands while approximately 160 acres of the Project will be on private within County road rights-of-way and other areas within the County's jurisdiction. The federal lands are subject to BLM jurisdiction, and First Solar has applied for rights-of-way associated with the relevant federal lands pursuant to BLM regulations.

Because the County is required to make discretionary decisions to determine if First Solar can construct the portions of the project on the 160 acres of private land, in accordance with California Environmental Quality Act (CEQA) guidelines, CEQA is triggered. Such discretionary decisions include, but are not limited to a conditional use permit and development agreement. The BLM will begin preparing an Environmental Impact Statement (EIS) in February 2016 in compliance with 1508.11 of the National Environmental Policy Act of 1969 (NEPA), CEQA Statutes Section 21061 and CEQA Guidelines Sections 15120 to 15132, 15220 to 15226, and all other applicable laws, executive orders, regulations, and direction. The BLM personnel will work with County staff to include discussion of the elements of the Project on the 160 acres of private land under the County's jurisdiction, and write a joint Environmental Impact Report/Environmental Impact Statement in a manner that complies with both CEQA and NEPA.

The purpose of this MOU is to provide a framework for cooperation between the BLM and the County to work together as lead agency and cooperating agency, in that order, in preparing and completing a joint environmental analysis and document that is in compliance with NEPA, CEQA, and all applicable laws, executive orders, regulations, direction, and guidelines. Work would include, but is not limited to, environmental and technical information collection, analysis and reporting. This Memorandum of Understanding includes meetings and/or conference calls as necessary for planning, information sharing, gathering and incorporating comments to the draft EIR/EIS to ensure CEQA compliance. Should the decision be made to authorize the Project, this Memorandum of Understanding continues the cooperation during construction of the Project and including the implementation of the mitigation measures and monitoring developed through the NEPA and CEQA process. This cooperation serves the mutual interest of the Parties and the public.

B. STATEMENT OF MUTUAL BENEFIT AND INTERESTS:

The Council on Environmental Quality (CEQ) regulations (40 CFR 1506.2) direct federal agencies to cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and State and local requirements, including joint planning processes, environmental research and studies, public hearings, and environmental impact statements. The CEQ regulations (40 CFR 1501.6) provide for and describe both lead and cooperating agency status, and emphasize agency cooperation early in the NEPA process. For the purposes of this effort, BLM will be the lead agency developing one document in

coordination with the County acting as Cooperating Agency. County will retain its approval authority for all aspects of the project within its jurisdiction. CEQA Statutes Section 21083.7 and CEQA Guidelines Sections 15222 and 15226 encourage similar cooperation by state and local agencies with federal agencies when environmental review is required under both CEQA and NEPA.

This MOU meets the intent of these regulations and provides guidance on the roles each agency will take. In consideration of the above premises, the Parties agree as follows:

C. BLM SHALL:

1. As lead Federal agency, be responsible for ensuring compliance with the requirements of NEPA, and the CEQ, and BLM regulations implementing NEPA, along with all applicable federal laws, executive orders, regulations and direction, and shall be responsible for the EIS and the scope and content of the portion of the joint EIR/EIS that relates to all necessary federal law and regulatory requirements;
2. Provide to the County for review and comment a draft of the Project Description and Alternatives section as soon as they are available to ensure that adequate detail is included to support County's review, analysis, and decisions;
3. Provide the administrative draft of the joint EIR/EIS to the County for its review and comment prior to the release of the public draft;
4. Schedule meetings as necessary with the County to discuss status updates, related findings, schedules and planning associated with the joint EIR/EIS;
5. Ensure that the BLM approved EIS contractor will complete the environmental analysis and prepare the joint EIR/EIS in a form and in substance that is consistent with this MOU and agreeable to the Parties;
6. Act as the intermediary, when necessary, for communications between the County and the EIS contractor related to the joint EIR/EIS;
7. Provide updated mailing lists to the EIS contractor for distributing the public notice of availability of the joint EIR/EIS to the public and to other Federal, State, and local agencies as required by law. The BLM shall provide updated mailing lists of the joint EIR/EIS, and Record of Decision to the public and to other Federal, State, and local agencies as required by law;
8. Publish the Notice of Intent (NOI) in the Federal Register and work with the EIS contractor to develop other public notices including notices that satisfy CEQA, and Notice of Availability of the document and ensure publication in appropriate periodicals;
9. Ensure that the contract with the EIS contractor incorporates the condition that the contractor will provide all graphic handouts and presentations for public meetings/hearings. The EIS contractor shall submit any such graphic presentations and/or handouts to the BLM for approval prior to distributing them at public meetings/hearings;
10. Be responsible for conducting public meetings and provide County with sufficient advanced noticed of these hearings so that the County can attend in a cooperating role;
11. Use its best efforts to ensure that the contract with the EIS contractor incorporates all of the following conditions:
 - (a) The EIS contractor agrees to defend, hold harmless and indemnify the BLM and County with respect to any and all claims, demands, cause(s) of action, and liabilities which may arise from the contractor's performance, purchases, or services utilized in the preparation of the joint EIR/ EIS.
 - (b) The EIS contractor will sign a disclosure statement specifying that they have no financial or other interest in the outcome of the Project.

(c) The EIS contractor shall cooperate in defense of any appeal and/or suit involving the legality or adequacy of the BLM's or County's compliance with NEPA or CEQA with regard to this joint EIR/EIS.

(d) The EIS contractor will be responsible for all stenographic, clerical, graphics, layout, printing, and like work.

(e) The EIS contractor shall produce an internal administrative Draft EIR/EIS for review by the BLM and County prior to publication of the Draft EIR/EIS. The administrative draft shall include all text, maps, appendices, tables, charts, and other materials that will be incorporated in the Draft EIR/EIS for publication. As determined by both the BLM and County, the contractor shall provide a reasonable number of copies to each party to meet internal review needs.

(f) The Draft EIR/EIS will include evaluation of potential Gen-Tie routes, alternative designs, and impacts. The Draft and Final EIR/EIS will apply whichever NEPA and CEQA requirement is more stringent in the analysis. The Draft and Final EIS will describe any inconsistencies between Federal plans or laws as they pertain to the proposed action and describe the extent to which the BLM would reconcile the proposed action with the plan or law.

(g) Subject to Parties' comments during the environmental analysis and responses to the administrative Draft and Final EIR/EIS, the EIS contractor shall have primary responsibility for writing and rewriting all sections, parts, and chapters of the EIR/EIS.

(h) The County is a third-party beneficiary to the contract with the EIS contractor with the right to enforce contract provisions affecting the County's interests.

12. Provide oversight to the EIS contractor in filing the Draft and Final EIR/EIS with the U.S. Environmental Protection Agency (US EPA).

13. Reserve the right to prepare, at its option, selected sections of the Administrative Draft and/or Final EIR/EIS; as appropriate, the BLM will provide such prepared material in a time and manner consistent;

14. Be responsible for consulting with the United States Fish and Wildlife Service for a Section 7 Consultation and the California State Historic Preservation Officer for a Section 106 Consultation regarding proposed federal action; at the discretion of the BLM, the consultant shall furnish such data or information required to accomplish such consultation; the BLM shall include County staff in these meetings and discussions; act as the lead for Native American consultation;

15. As required, the BLM will be responsible for consulting with the California Department of Fish and Game;

16. Should the decision be made to authorize the Project, BLM and the County will jointly define appropriate field inspection responsibilities for ensuring implementation of the mitigation and monitoring activities adopted in the Record of Decision for the project; and,

17. To the extent that CEQA or NEPA guidelines may preclude, or are potentially inconsistent with, construction of the proposed Project that is the subject of this MOU, the BLM will identify such potential inconsistencies at the beginning of the joint EIR/EIS process, and shall collaborate with the County and the contractor to ensure that sufficient information is collected during the course of the environmental assessment process to allow the BLM to begin a joint EIR/EIS for the Project to remove such inconsistencies and allow the Project to be carried forward.

D. COUNTY SHALL:

1. As the cooperating CEQA lead agency, be responsible to ensure that the joint EIR/EIS is in compliance with all requirements of CEQA and shall be responsible for the scope and content of the joint EIR/EIS that relates to all necessary aspects of CEQA.

2. Should the level of detail in the joint EIR/EIS be insufficient in meeting CEQA standards, the BLM will continue the EIS development, and the County will perform a separate Environmental Impact Report or Mitigated Negative Declaration (whichever is required, hiring its own consultants).

E. IT IS MUTUALLY AGREED AND UNDERSTOOD BY ALL PARTIES THAT:

1. Schedule of Deadlines. The BLM intends to make a decision on the Final EIS by July 2017. Both Parties will attempt to meet this timeframe. Attached to this MOU is a draft detailed schedule, which the Parties intend to serve as a template for the actual schedule of deadlines that they intend to adhere to in completing the environmental review that is the subject of this MOU. The parties agree to modify and reach final agreement on the details of this draft schedule, which will include specific dates establishing the deadlines for expected deliverables from the BLM/project proponent's contractor, as well as deadlines for the BLM and the County to respond to all materials provided by the BLM/project proponent's contractor, *within one month*. Once the details of this schedule are agreed to, the Parties shall undertake their best efforts to comply with *all* deadlines set forth in said schedule.

2. Contractor Selection. The project proponent's EIS contractor, AECOM, will be used for the preparation of the joint EIR/EIS. AECOM is on the County's list of qualified Environmental Impact Report consulting firms.

3. Agency Project Representatives. For the purpose of coordinating the responsibilities of the Parties for the preparation of the EIS on the Project, the persons listed below are the designated Agency Project Representatives of the Parties. Actual delivery of written notice to the following representatives, or such substitute representatives as the respective Parties may hereinafter designate, shall constitute notice to that organization. The principal contacts for this instrument are:

BLM	County Representative
Name: Frank McMenimen	Name: Russell Brady, Contract Planner
Title: Project Manager	Agency: Planning Department, County of Riverside
Address: 1201 Bird Center Drive	Address: 4080 Lemon Street, 12 th Flr.
Address: Palm Springs, CA 92261	Address: PO Box 1409, Riverside, CA 92501
Phone: (760)833-7150	Phone: (951)955-3025
FAX: (760)833-7199	FAX: (951)955-1817
E-Mail: fmcmenimen@blm.gov	E-Mail: rbrady@rctlma.org

4. Regular Consultation between Parties. The successful preparation of the EIS requires complete and full communication between all Parties involved. It is the duty of the Agency Project Representatives to ensure close consultation throughout the document preparation and review process. Accordingly:

(a) The Agency Project Representatives shall keep each other advised of the developments affecting the preparation of the Draft EIS. Toward this end, and to ensure close consultation and coordination, the Agency Project Representatives shall conduct conference calls as necessary and shall meet face-to-face at least once every two months or as deemed necessary.

(b) In the event that either Agency Project Representative is unable to participate in any such regularly scheduled conference call or meeting, an alternate shall be delegated to represent that Agency Project Representative's party in said call or meeting.

(c) The BLM recognizes the need for the County to work directly with the EIS contractor with regard to the portions of the Project under the County's jurisdiction and the CEQA requirements. The County will keep the BLM informed of these discussions and will involve the BLM when appropriate.

(d) Consistent with existing laws and regulations, the Parties agree to share all relevant information.

(e) Any and all media releases and/or public mail-outs shall be made with the joint approval and at the direction of the BLM and the County.

5. Scope and Content of the EIS. The BLM and the EIS contractor shall schedule and conduct scoping meetings at the beginning of the process. These meetings will be held to determine the areas of public and agency concerns pertaining to the proposed Project, and guide the Parties in scoping the joint EIR/EIS. The BLM in coordination with the County as a cooperating agency shall determine the final scope of the joint EIR/EIS. The Agency Project Representatives shall determine (with approval, if necessary, from the signatories to this MOU or their delegates):

(a) The scope and content of the joint EIR/ EIS for the Project to ensure that the requirements of the various federal and state statutes (i.e. - NEPA, CEQA, County standards and policies) are met and that the statutory findings required of the BLM and County for their respective decisions on the Project can be made;

(b) Whether the work performed by the EIS contractor is satisfactory, and if not, how best to correct the deficiencies in the work; and

(c) The division of responsibilities among lead agencies and cooperating agencies.

6. County Revisions. County may request revision of the administrative draft with further agency review.

7. Consultation with Other Agencies. The BLM and County reserve the right to consult directly, without notice or report, with other Federal, State, and local officials regarding their areas of specific responsibility outlined in Section C and D above during the preparation of the EIS to ensure objectivity and compliance with NEPA and CEQA. The Parties will immediately notify each other and the contractor if matters discussed at any such consultation will require significant changes in the development of the joint EIR/EIS or require significant costs pursuant to this Memorandum of Understanding.

8. Privileged and Confidential Information. The BLM and the EIS contractor will, upon request, provide County with procedures and underlying data used in developing submitted sections of the Draft and/or Final EIR/EIS including, but not limited to, final reports, subcontractor reports, and interviews with concerned private and public parties, whether or not such information is contained in the working papers or the Draft or Final EIR/EIS. The Parties intend that information that is otherwise protected from disclosure under the attorney-client privilege, work-product privilege, and deliberative process privilege and/or any other applicable privilege may be exchanged without waiving or compromising such privileges or doctrines. The Parties agree that privileged information received from the other party shall be treated and maintained as confidential to the extent allowed by federal and state laws, regulations and policies. Parties agree to label as "Confidential" documents that they believe are privileged and should not be disclosed. Neither Party will disclose privileged information received from the other Party, regardless of whether it is labeled "Confidential," without first notifying other Party. The BLM will obtain information that they maintain is confidential directly from BLM.

9. Freedom of Information Act. Any information furnished to the BLM under this Memorandum of Understanding is subject to the Freedom of Information Act (5 U.S.C. 552).

10. Effective Dates. This MOU is executed as of the date of the last signature and is effective through, or the date on which all mitigation measures required in connection with approval of the Project have been fully implemented, whichever date is earlier, at which time it will expire unless extended.

11. Modification. Modifications to this MOU shall be made only by mutual written consent of the Parties, by the issuance of a written instrument, signed and dated by all Parties.

12. Termination. Either of the Parties, in writing, may terminate this MOU in whole, or in part, at any time before the date of expiration upon 30 days written notice to the other party. During any such 30-day waiting period, the Parties will actively attempt to resolve any disagreement between them. In the event of termination of this MOU, both the BLM and County shall have access to all documentation, reports, analyses, and data developed by the contractor.

13. Rights and Responsibilities of Parties. This MOU sets forth the Parties' rights and responsibilities for preparing the joint EIR/EIS, and for subsequent activities related to the document. This MOU in no way restricts the BLM or the County from participating in similar activities with other public or private agencies, organizations, and individuals. This MOU does not authorize the transfer of funds between parties. Each Party is responsible for its own acts and omissions in collection with activities undertaken pursuant to this MOU.

THE PARTIES HERETO have executed this instrument

Douglas J Herrema, Acting Field Manager
Bureau of Land Management
Palm Springs Field Office

County of Riverside

Date

Date

FORM APPROVED COUNTY COUNSEL
BY: Tiffany N. North 9/12/16
TIFFANY N. NORTH DATE