

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

901



FROM: Planning Department

SUBMITTAL DATE:
April 12, 2012

SUBJECT: Memorandum of Understanding between the Bureau of Land Management (BLM) and County of Riverside regarding coordinated environmental review for the Desert Harvest Solar Project.

RECOMMENDED MOTION:

1. Approve the Memorandum of Understanding ("MOU") between the Bureau of Land Management (BLM) and County of Riverside regarding coordinated environmental review for the Desert Harvest Solar Project.
2. Authorize the Chairman of the Board to execute the attached Memorandum of Understanding.

Carolyn Syms Luna
Carolyn Syms Luna, Planning Director

(Continued on attached page)

FINANCIAL DATA	Current F.Y. Total Cost:	\$ N/A	In Current Year Budget:	YES
	Current F.Y. Net County Cost:	\$ N/A	Budget Adjustment:	NO
	Annual Net County Cost:	\$ N/A	For Fiscal Year:	2011/2012

SOURCE OF FUNDS: Deposit-based fees.

Positions To Be Deleted Per A-30	<input type="checkbox"/>
Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION: Approve as presented without the referenced schedule of deadlines.

APPROVE

County Executive Office Signature

BY: *Denise C. Harden*
Denise C. Harden

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Tavaglione, seconded by Supervisor Benoit and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended and IT WAS FURTHER ORDERED that the Executive Office's recommendation is incorporated herein.

Ayes: Buster, Tavaglione, Stone, Benoit and Ashley
Nays: None
Absent: None
Date: June 5, 2012
xc: Planning

Kecia Harper-Ihem
Clerk of the Board
By: *[Signature]*
Deputy

Prev. Agn. Ref.

District: 4/4

Agenda Number:

3.49

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD
Revised 2/28/11

FORWARDED TO COUNTY SUPERVISORS
 BY: *[Signature]* 5/29/12
 DATE: TIFANY N. NORRIS

Departmental Concurrence

Dept Rec'd: Consent Policy
 Per Exec. Ofc.: Consent Policy

The Honorable Board of Supervisors

RE: Memorandum of Understanding between the Bureau of Land Management and County of Riverside for coordinated environmental review for the Desert Harvest Solar Project.

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BACKGROUND:

enXco Development Corporation ("enXco") proposes to construct and operate a 150 megawatt (MW) solar photovoltaic (PV) energy-generating project known as the Desert Harvest Project ("Project"). The majority of the Project, including the solar power plant, will be located on Federal land managed by BLM. The solar power plant is not within the County's jurisdiction. The Project includes construction of a 12 mile generation transmission intertie line ("Gen-Tie") connecting the electrical output of the solar power plant to Southern California Edison's proposed Red Bluff Substation. A portion of the Gen-Tie will run under, along, across or upon the Kaiser Road rights-of-way and other areas within the County's jurisdiction.

enXco has applied for a Public Use Permit (PUP 914) pursuant to Ordinance No. 348. Other discretionary approvals by the County required for the Project include an encroachment permit and franchise pursuant to Ordinance No. 499 for the parts of the Project within the County's jurisdiction. Ordinance No. 499 provides that an encroachment permit may be issued if the applicant holds a current County franchise. The County is authorized to grant a franchise pursuant to Article 11, Section 7, of the California Constitution and Government Code Section 26001. The Project is also subject to the requirements of Board of Supervisors Policy B-29.

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.

FISCAL:

There are no financial impacts to the County associated with this item, as any applicable costs will be fully funded by the Project applicant.

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:

enXco Development Corporation (enXco) is proposing to build the 150 megawatt (MW) Desert Harvest Project, a solar photovoltaic energy generating facility including a 12 mile generation transmission intertie (Gen-Tie) line to the Red Bluff Substation (hereinafter referred to as "Project"). The 150 MW solar power plant site is entirely on federal land but the Gen-Tie would be within County road rights-of-way and other areas within the County's jurisdiction. The federal lands are subject to BLM jurisdiction, and enXco 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 enXco can construct the Gen-Tie, in accordance with California Environmental Quality Act (CEQA) guidelines, CEQA is triggered. Such discretionary decisions include a public use permit, franchise agreement or other similar development agreement, and encroachment permits. The BLM will begin preparing an Environmental Impact Statement (EIS) in September 2011 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, 15221, and all other applicable laws, executive orders, regulations, and direction. The BLM personnel will work with County staff to include discussion of the Gen-Tie elements, and write the EIS 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 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, applying in particular to the Gen-Tie, and including the implementation of the mitigation measures and monitoring developed through the NEPA 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 15221 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 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 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 EIS;
 5. Ensure that the BLM approved EIS contractor will complete the environmental analysis and prepare the 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 EIS;
 7. Provide updated mailing lists to the EIS contractor for distributing the public notice of availability of the 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 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, 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;
- II. 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 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 EIS.

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

(f) The EIS contractor shall produce an internal administrative Draft EIS for review by the BLM and County prior to publication of the Draft EIS. The administrative draft shall include all text, maps, appendices, tables, charts, and other materials that will be incorporated in the Draft 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.

(g) The Draft EIS will include evaluation of potential Gen-Tie routes, alternative designs, and impacts. The Draft and Final 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.

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

(i) 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 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 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 Gen-Tie portion of 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 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 an EIS for the Project to remove such inconsistencies and allow the Project to be carried forward.

D. COUNTY SHALL:

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

2. Should the level of detail in the EIS be insufficient in meeting CEQA standards, the BLM will continue the EIS development, and the County will perform a Environmental Impact Report or Mitigated Negative Declaration (whichever is required) separately, 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 August 6, 2012. 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, Aspen Environmental Group, will be used for the preparation of the EIS. Aspen Environmental Group 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

Name: Lynnette A. Elser
Title: Project Manager
Address: 22835 Calle San Juan De Los Lagos
Address: Moreno Valley, CA 92553
Phone: (951) 697- 5387
FAX: (951) 697- 5299
E-Mail: lelser@blm.gov

County Representative

Name: Greg Neal, Deputy Planning Director
Agency: Planning Department, County of Riverside
Address: 4080 Lemon Street, 12th Flr.
Address: PO Box 1409, Riverside, CA 92501
Phone: (951) 955-3200
FAX: (951) 955-1817
E-Mail: GNEAL@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 Gen-Tie and 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 EIS. The BLM in coordination with the County as a cooperating agency shall determine the final scope of the 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 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 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 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 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 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

Teresa Paul
Bureau of Land Management

11/2/11
Date

[Signature]
County of Riverside **JOHN TAVAGLIONE**
CHAIRMAN, BOARD OF SUPERVISORS
6-5-12
Date

FORM APPROVED COUNTY COUNSEL
BY: *[Signature]* 5/24/12
TIFANY N. NORTH DATE

ATTEST:
KECIA HARPER-IHEM, Clerk
By *[Signature]*
DEPUTY