

Appendix A: Terms and Conditions

General Terms and Conditions

1. The Holder shall comply with all stipulations contained in this right-of-way grant unless otherwise approved in writing by the Authorized Officer. Non-compliance with the stipulations by the Holder or any of its agents may at the option of the Authorized Officer result in cancellation or suspension of the right-of-way grant or adverse action against the Holder.
2. The Holder shall construct, operate, maintain and decommission the boreholes within this right-of-way in strict conformity with the project description as described in the plan of development (POD) submitted as part of the application (received January 2011).
3. Upon completion of the geotechnical study, boreholes and all construction related materials shall be removed from each bore site. Any components deemed to be unrecoverable shall be disposed of in approved landfills.
4. The Holder shall comply with applicable Federal and State laws and regulations issued there under, existing or hereafter enacted or promulgated, affecting in any manner construction, operation, maintenance or termination of the right-of-way grant.
5. BLM reserves the right to approve of the post geotechnical restoration activities to ensure acceptable restoration as identified in the Environmental Assessment, Section 2.1.2.
6. The Bureau of Land Management retains the right to occupy and use the right-of-way and to issue or grant rights-of-way or other land uses over, upon, under and through the lands, provided that the occupancy and use will not unreasonably interfere with the rights granted herein.
7. The Holder shall confine all activities within the area specifically defined in the right-of-way. All vehicle travel shall be restricted to designated routes of travel or in the authorized location for those areas that leave existing roadways.
8. The Holder or its agents shall follow only the prescribed route to enter and leave the project location. The monitors will lead the other members in to the site for borehole installation.
9. The Holder or its agents shall define and respect work area limits.
10. In the event of the discovery of human remains on BLM lands, the holder or contractors shall notify the Imperial County Coroner at 760-339-6328 and BLM authorities immediately. BLM Law Enforcement may be reached at 909-383-5654, if unable to contact BLM dispatch at the number above call Emergency Services at 911.
11. The Holder shall protect all survey monuments found within the right-of-way. Survey monuments include, but are not limited to, General Land Office and BLM Cadastral Survey Corners, reference corners, witness points, U.S. Coastal and Geodetic benchmarks and

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triangulation stations, military control monuments, and recognizable civil (both public and private) survey monuments. In the event of obliteration or disturbance of any of the above, the Holder shall immediately report the incident, in writing, to the Authorized officer and the respective installing authority if known. Where General Land Office or BLM right-of-way monuments or references are obliterated during operations, the Holder shall secure the services of a registered land surveyor or a BLM cadastral surveyor to restore the disturbed monuments and references using surveying procedures found in the Manual of Surveying Instructions for the Survey of the Public Lands in the United States, latest edition. The Holder shall record such survey in the appropriate county and send a copy to the Authorized Officer. If the BLM cadastral surveyors or other Federal surveyors are used to restore the disturbed survey monument, the holder shall be responsible for the survey cost.

12. In the event that the public land underlying the right-of-way (ROW) encompassed in this grant, or a portion thereof, is conveyed out of Federal ownership and administration of the ROW or the land underlying the ROW is not being reserved to the United States in the patent/deed and/or the ROW is not within a ROW corridor being reserved to the United States in the patent/deed, the United States waives any right it has to administer the right-of-way, or portion thereof, within the conveyed land under Federal laws, statutes, and regulations, including the regulations at 43 CFR Part [2800][2880], including any rights to have the holder apply to BLM for amendments, modifications, or assignments and for BLM to approve or recognize such amendments, modifications, or assignments. At the time of conveyance, the patentee/grantee, and their successors and assigns, shall succeed to the interests of the United States in all matters relating to the right-of-way, or portion thereof, within the conveyed land and shall be subject to applicable State and local government laws, statutes, and ordinances. After conveyance, any disputes concerning compliance with the use and the terms and conditions of the ROW shall be considered a civil matter between the patentee/grantee and the ROW Holder.
13. The permittee/grant Holder, contractor or anyone conducting activities authorized under the grant must have a copy of the grant/terms and conditions on site at the time the activity is being conducted pursuant to the authorization.
14. The permit holder, and its contractors are liable for damages related to its activities and is responsible for incidents on its construction sites, including but not limited to, hazmat, vandalism, and accidents with recreational visitors. Permit holder will take measures to ensure visitor safety such as signing, flagging, lighting, etc.

Biological Terms and Conditions

General Biological Stipulations

- 1) In order not to create an illegal trail, no shrub vegetation shall be cleared/bladed using mechanical or manual methods. The Holder or its agents shall preserve existing vegetation. All work performed as the result of project activities shall try to avoid all vegetation within the project area. Precautions shall be taken to avoid damage to vegetation by people or equipment.

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- 2) To prevent the introduction of new invasive weedy plant species into the project area, holder shall require the designated contractor to ensure that vehicles and equipment that have been used on sites outside of the project area have been cleaned prior to starting work on the project.
 - a) Maintain a log of the vehicle cleaning schedule for right-of-way grant monitoring.
- 3) Construction is not to be performed in the spring when the annual vegetation is setting seed.
- 4) A post construction biological report is to be submitted within 30 days of the completion of a borehole site installation.
- 5) The Holder or its agents shall be prohibited from collecting plants and wildlife.
- 6) The area of disturbance shall be confined to the smallest practical area. Area boundaries shall be delimited with flagging or other marking to minimize surface disturbance associated with vehicle straying. Special habitat features, such as burrows, identified by the qualified biologist shall be avoided.
- 7) All potential pitfalls to wildlife will be covered when not attended.
- 8) Existing roads shall be used for travel and equipment storage whenever possible.
- 9) The project proponent shall designate a field contact representative (FCR) who will be responsible for overseeing compliance with protective stipulations for the flat-tailed horned lizard, BLM sensitive species and migratory bird pre-construction surveys and for coordination on compliance with the BLM. The FCR must be on-site during all project activities. The FCR shall have the authority to halt all project activities that are in violation of the stipulations. The FCR shall have a copy of all stipulations when work is being conducted on the site. The FCR may be a crew chief or field supervisor, a project manager, any other employee of the project proponent, or a contracted biologist.
- 10) Only biologists approved by the BLM shall conduct preconstruction surveys. The project proponent shall submit the name(s) and resumes of proposed biologist(s) to the BLM for review and approval at least 15 days prior to the onset of activities. No activities shall begin until a biologist is approved.

Migratory Birds

1. For the protection of migratory birds during the migratory bird breeding season (January 15 through August 15), prior to construction, the qualified biologist shall conduct a preconstruction migratory bird nesting survey in the project area that takes place; b) If any active nest is located, the nest area shall be flagged for avoidance, and a 200-foot buffer zone shall be delineated, flagged, or otherwise marked; 300-foot buffers shall be established for Federally listed bird nests and 500-foot for nesting raptors; c) No work activity shall occur

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within this avoidance buffer areas until an approved biologist determines that the fledglings are independent of the nest or has verified nest failure.

2. No later than 30 days after completion of the project, the qualified biologist /biological monitor shall prepare a report for the Bureau. Upon locating a dead or injured migratory bird, the project proponent or agent is to notify the BLM Resource Area Office and the appropriate field office (Carlsbad or Ventura) of the USFWS by telephone (960) 337-4452. Written notification must be made within five days of the finding, both to the appropriate USFWS field office and to the USFWS Division of Law Enforcement in Torrance. The information provided must include the date and time of the finding or incident (if known), location of the carcass or injured animal, a photograph, cause of death, if known, and other pertinent information.

Burrowing Owl

1. During the BUOW nesting season (February 1 to August 31), the qualified biologist shall establish and mark a 250 foot non-disturbance buffer circle around the burrow. The buffer shall be staked and roped-off prior to initiating any activity onsite including geotechnical boring. No activity shall take place within the avoidance buffer area to ensure that disturbance to nesting birds does not occur. Any disturbance to nesting BUOW would require prior consultation, approval and mitigation in accordance with California Fish and Game requirements.
2. No disturbance to nesting BUOW is authorized that may cause changes of behavior, plugging the burrow entrance or causing the burrow to collapse could effectively destroy the nest, and as such, require a State permit.
3. If an active, non-breeding BUOW burrow is detected the geotechnical boring should be located at a 160-foot radius as determined by a qualified biologist, from the occupied burrow to create and mark a non-disturbance buffer around the burrow. The non-disturbance buffer would be established with flagging by the biological monitor prior to any geotechnical activities.

BLM Sensitive Species

1. All kit fox and badger burrows will be marked, flagged and monitored. All project activity will take place outside breeding season or a 200 foot buffer will be established encircling the burrows.

Flat-tailed Horned Lizard (FTHL)

- 1) Prior to project initiation, an individual shall be designated as a field contact representative. The field contact representative shall have the authority to ensure compliance with protective measures for the FTHL and will be the primary agency contact dealing with these measures.

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The field contact representative shall have the authority and responsibility to halt activities that are in violation of these terms and conditions.

- 2) All project work areas shall be clearly flagged or similarly marked at the outer boundaries to define the limit of work activities. All construction and restoration workers shall restrict their activities and vehicles to areas that have been flagged to eliminate adverse impacts to the FTHL and its habitat. All workers shall be instructed that their activities are restricted to flagged and cleared areas.
- 3) Within FTHL habitat, the area of disturbance of vegetation and soils shall be the minimum required for the project. Clearing of vegetation and grading shall be minimized. Wherever possible, rather than clearing vegetation and grading the ROW, equipment and vehicles shall use existing surfaces or previously disturbed areas. Where grading is necessary, surface soils shall be stockpiled and replaced following construction to facilitate habitat restoration. To the extent possible, disturbance of shrubs and surface soils due to stockpiling shall be minimized.
- 4) A biological monitor shall be present in each area of active surface disturbance throughout the work day from initial clearing through habitat restoration, except where the project is completely fenced and cleared of FTHLs by a biologist. The monitor(s) shall perform the following functions:
 - a) Develop and implement a worker education program. Wallet-cards summarizing this information shall be provided to all construction and maintenance personnel. The education program shall include the following aspects at a minimum:
 - i) biology and status of the FTHL,
 - ii) protection measures designed to reduce potential impacts to the species,
 - iii) function of flagging designating authorized work areas,
 - iv) reporting procedures to be used if a FTHL is encountered in the field, and
 - v) importance of exercising care when commuting to and from the project area to reduce mortality of FTHL's on roads.
 - b) Ensure that all project-related activities comply with these measures. The biological monitor shall have the authority and responsibility to halt activities that are in violation of these terms and conditions.
 - c) Examine areas of active surface disturbance periodically (at least hourly when surface temperatures exceed 85°F) for the presence of FTHLs. In addition, all hazardous sites (e.g., open pipeline trenches, holes, or other deep excavations) shall be inspected for the presence of FTHLs prior to backfilling.
 - d) Work with the project supervisor to take steps, as necessary, to avoid disturbance to FTHLs and their habitat. If avoiding disturbance to a FTHL is not possible or if a FTHL is found trapped in an excavation, the affected lizard shall be captured by hand and relocated.

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- 5) A designated field contact representative/biological monitor is required for all subsequent borehole site visits. The biological monitor will follow all the aforementioned FTHL avoidance and minimization measures.
- 6) No dogs are allowed on the project site.
- 7) All trash and food items shall be promptly contained within closed, raven-proof containers. These shall be regularly removed from the project site to reduce the attractiveness of the area to ravens and other FTHL predators.

Cultural Resource Terms and Conditions

- 1) If the construction staff or others observe previously unidentified archaeological resources during construction, they should halt work immediately in the vicinity of the find(s) and notify the project archaeologist and BLM El Centro Field Office, so that the resource value may be documented and assessed as soon as possible. The finds shall be formally recorded and evaluated. The proponent should protect the cultural resource discovery from further disturbance pending evaluation.
- 2) Pursuant to 43 CFR 10.4 the holder of this authorization or its contractor must notify the BLM El Centro Field Office (760-337-4400), by telephone, with written confirmation, immediately upon the discovery of human remains, funerary items, sacred objects, or objects of cultural patrimony. Further, pursuant to 43 CFR 10.4 the holder must stop activities in the vicinity of the discovery and protect it for 30 days or until notified to proceed by the Field Office. Protective and/or mitigation measures specified by the Field Office may be required.
- 3) If human remains and/or cultural items defined by the Native American Graves Protection and Repatriation Act (NAGPRA) are inadvertently discovered during construction activities, all work in the vicinity of the find shall cease and the Imperial Valley County Coroner and the BLM El Centro Field Office Archaeologist shall be contacted immediately pursuant to Section (3)(d)(1) of the Act. If the remains are found to be Native American as defined by NAGPRA, work may be delayed in the vicinity of the find up to 30 days.
- 4) The Holder or its agents shall not disturb, handle, move or collect cultural resources.

**United States Department of the Interior
BUREAU OF LAND MANAGEMENT
El Centro Field Office
1661 South 4th Street
El Centro, CA 92243
www.blm.gov/ca/elcentro/**

In Reply Refer To:

CA-670-12-020/ DOI-BLM-CA-D070-2012-0003-CX/ CACA-51552/ 8100 (P)

Memorandum

To: Field Manager, El Centro Field Office (CA-670)

From: Archaeologist, El Centro Field Office (CA-670)

Subject: Agency Findings and Determinations under Section 106 of the National Historic Preservation Act

Project: Ocotillo Wind Energy Facility Geotechnical Investigation, Imperial County, California

The Bureau of Land Management (BLM) El Centro Field Office (ECFO) proposes to allow Ocotillo Express, LLC to conduct geotechnical investigations to provide preliminary information that would assist with seismic and geologic conditions that will evaluate the engineering design of roads, structures, foundations, and other design elements of the project. The geotechnical field work as proposed and described in the Plan of Development is within the proposed Right of Way for the proposed Ocotillo Wind Energy Facility. This field work consists of:

- 155 MASW surveys
- 16 geotechnical borings
- 16 electrical resistivity surveys
- Soil sample collection

Pursuant to the *State Protocol Agreement Between The California State Director of The Bureau of Land Management And The California State Historic Preservation Officer (2007)* and in accordance with 36 CFR Part 800, BLM professional cultural resources staff have reviewed this undertaking and have made the following recommendations regarding historic properties that may be affected.

Identification and evaluation efforts for the entire Ocotillo Wind Energy Facility project area are described in a report entitled *Draft Archaeological Survey Report for the Ocotillo Wind Energy Project, Imperial County, California*, prepared by Tierra Environmental, October 2011. Tierra Environmental has reviewed the undertaking and recommended in the letter report, *Ocotillo Express Geotechnical Soil Sampling and Archaeological Resources* dated October 14, 2010 (sic), that archaeological sites would not be affected by the proposed action. Due to the close proximity of several cultural sites to boring locations, the BLM recommends that an archaeological monitor be present during all work. In the event that any cultural resources are

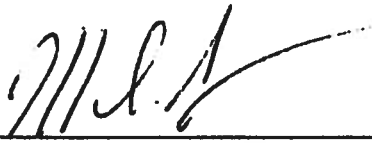
discovered during the geotechnical investigations, all work is to stop and the ECFO Resource Branch Chief and archaeologist is to be notified immediately by phone.

The BLM has determined that the overview and inventory efforts are adequate to identify and avoid historic properties on public lands that might be affected by this undertaking. Therefore, the BLM staff archaeologist has recommended that the proposed undertaking would have no effect on historic properties provided there is an archaeological monitor present.

The BLM makes the following finding for this undertaking.

The BLM finds that there will be *no historic properties affected* by this undertaking.

This memorandum documents the recommendations of the cultural resources staff, the acceptance of these recommendations by the Agency Official (as defined in 36 CFR §800.2(a), Protection of Historic Properties), and constitutes the formal statement of Agency findings and determinations for Section 106 of the National Historic Preservation Act as implemented in the *Protocol*. In accordance with the *Protocol*, BLM has satisfied its responsibilities to take into account the effects of this undertaking on historic properties that may be included or eligible for listing in the NRHP.

Reviewed by: 

Archaeologist, El Centro Field Office

12/6/2011

Date

Reviewed by: 

Reviewing Archaeologist, El Centro Field Office

12/6/11

Date

Accepted by Agency Official:


Field Manager, El Centro Field Office

12/6/11

Date

		Boring Location Coordinates (NAD83, CasP_VI, US Feet)				Access and Disturbance Area Details					
Boring_ID	Section	Township	Range	Lot	Easting	Northing	Approx. Road Length, ft	Disturbance Width, ft	Disturbance Area, Acres	Method of Turn-around	GIS Shape File?
39	31	T16S	9E	5	6607553.09	1848250.10	36	12	0.02	Back In/Out	YES
40	31	T16S	9E	8	6607816.70	1847468.98	95	12	0.03	Stub Path	YES
44	30	T16S	9E	28	6612718.12	1850082.29		NA	0.00	Back In/Out	YES
76	32	T16S	9E	1	6621606.58	1847812.51	48	12	0.02	Back In/Out	YES
77	33	T16S	9E	7	6622021.81	1847107.72	239	12	0.07	Stub Path	YES
90	28	T16S	9E	22	6623338.99	1850110.07	121	12	0.04	Stub Path	YES
101	21	T16S	9E	16	6623516.75	1855970.96	188	12	0.06	Back In/Out	YES
104	20	T16S	9E	15	6620366.36	1856331.85	108	12	0.04	Back In/Out	YES
117	2	T16.5S	9.5E	NA	6637697.96	1841234.57	199	12	0.06	Stub Path	YES
129	1	T16.5S	9.5E	6	6640728.67	1842023.46	243	12	0.07	Stub Path	YES
169	23	T16S	9E	Tract 52 A	6634923.66	1856504.51	331	12	0.09	Stub Path	YES
148	22	T16S	9E	12	6632303.26	1857548.73	111	12	0.04	Back In/Out	YES
176	23	T16S	9E	Tract 52 A	6635543.08	1855901.85	189	12	0.06	Stub Path	YES
SUB2	28	T16S	9E	24	6624839.34	1849927.40	1311	12	0.37	Stub Path	YES
SWY1	28	T16S	9E	25	6625231.83	1849839.53	Same route as SUB2			Stub Path	YES
SWY2	28	T16S	9E	25	6625494.75	1849708.24	Same route as SUB2			Stub Path	YES