

DOCKETED	
Docket Number:	09-AFC-08C
Project Title:	Genesis Solar Energy Project
TN #:	270552
Document Title:	CEC-GSEP Settlement Agreement - October 17, 2024
Description:	Settlement Agreement Between California Energy Commission and GSEP for violation of violation of Compliance-2, Compliance-13, Cultural Resources-7, and Cultural Resources-8.
Filer:	Anwar Ali
Organization:	California Energy Commission
Submitter Role:	Commission Staff
Submission Date:	6/11/2026 1:25:04 PM
Docketed Date:	6/11/2026

SETTLEMENT AGREEMENT AND RELEASE
CALIFORNIA ENERGY COMMISSION and GENESIS SOLAR, LLC
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The California Energy Commission ("Energy Commission" or "Commission") and NextEra Energy Resources "NextEra" or "NEER") as owner of the Genesis Solar Energy Project ("GSEP" or "Facility"), enter into this Settlement Agreement and Release ("Agreement").

I. INTRODUCTION

1. Pursuant to California Public Resources Code section 25500, the Energy Commission "shall have the exclusive power to certify all sites and related facilities in the state." A "facility" includes any thermal power plant with generating capacity of 50 megawatts or more, and any facilities appurtenant thereto. (Pub. Resources Code §§ 25110, 25120.)
2. The Genesis Solar Energy Project, owned by Genesis Solar, LLC (Genesis) is a 2-unit, nominal 250-megawatt, concentrated solar electric generating facility located in eastern Riverside County. The project was certified by the CEC on September 29, 2010. Unit 1 began commercial operation on March 7, 2014 and Unit 2 on November 30, 2013. The Final Commission Decision (09-AFC-08 "Final Decision") governs the construction and operation of the Facility.
3. Pursuant to Public Resources Code section 25532, the Energy Commission has established a monitoring system to assure that any facility certified by the Commission is constructed and operated in compliance with applicable laws and conditions specified in the Commission Decision certifying such Facility.
4. Pursuant to California Code of Regulations, title 20, section 1770, the Energy Commission is to provide adequate monitoring of all conditions and measures set forth in the Final Decision required to mitigate potential impacts and to assure that facilities are constructed and operated in compliance with all applicable laws including, but not limited to, air quality, water quality, and public health and safety laws, ordinances, regulations, and standards ("LORS").
5. Pursuant to California Code of Regulations, title 20, section 1769, after a license becomes effective, "the owner shall petition the commission for any change it proposes to the project design, operation, or performance requirements."
6. Pursuant to Public Resources Code section 25534, subdivision (b), the Energy Commission may after notice and a hearing administratively impose a civil penalty against a facility owner for reasons that include significant failure to comply with the terms or conditions of approval of the application for certification, as specified by the Commission in its written decision. Any civil penalty shall be imposed in accordance with section 25534.1 and may not exceed seventy-five thousand dollars (\$75,000) per violation. A civil penalty may be increased by an amount not to exceed \$1,500 for each day the violation occurs or persists, but the total per day penalties may not exceed fifty thousand dollars (\$50,000).

II. SUMMARY OF PERTINENT FINAL DECISION PROVISIONS

The Final Decision contains a Compliance Monitoring Plan, including General Conditions and Closure Plan and includes the following requirements.

COMPLIANCE RECORD (COMPLIANCE-2)

The project owner shall maintain project files on-site or at an alternative site approved by the CPM for the life of the project unless a shorter time is specified by the conditions of certification. The files shall contain copies of all "as-built" drawings, documents submitted as verification for conditions, and other project-related documents.

CEC staff and delegate agencies shall, upon request to the project owner, be given unrestricted access to the files maintained pursuant to this condition.

POST CERTIFICATION CHANGES TO BLM'S ROW GRANT AND/OR THE ENERGY COMMISSION DECISION: AMENDMENTS, OWNERSHIP CHANGES, STAFF APPROVED PROJECT MODIFICATIONS AND VERIFICATION CHANGES (COMPLIANCE-13)

The project owner must petition the CEC pursuant to Title 20, California Code of Regulations, section 1769, in order to change the project (including linear facilities) design, operation or performance requirements. It is the responsibility of the project owner to contact the CPM to determine if a proposed project change requires a petition pursuant to section 1769. Implementation of a project change to the design, operation, or performance requirements, without first securing CEC, or CEC staff approval, may result in enforcement action that could result in civil penalties in accordance with section 25534 of the Public Resources Code.

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CBO DELEGATION AND AGENCY COOPERATION

In performing construction and operation monitoring of the project, CEC staff acts as, and has the authority of, the Chief Building Official (CBO). CEC staff may delegate CBO responsibility to either an independent third-party contractor or the local building official. CEC staff retains CBO authority when selecting a delegate CBO, including enforcing and interpreting state and local codes, and use of discretion, as necessary, in implementing the various codes and standards.

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WORKER ENVIRONMENTAL AWARENESS PROGRAM (WEAP) (CULTURAL-7)

Prior to and for the duration of ground disturbance, the project owner shall provide Worker Environmental Awareness Program (WEAP) training to all new workers within their first week of employment at the project site, along the linear facilities routes, and at laydown areas, roads, and other ancillary areas. The training shall be prepared by the CRS in consultation with local Native Americans and shall incorporate the traditions and

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beliefs of local Native American groups into the presentation. If consultation with local Native Americans is not possible, the CRS shall consult, instead, with an ethnographer, either the PTNCL Ethnographer or the GSEP PE, on the content of the presentation. The presentation may be conducted by any member of the archaeological team and a Native American, if possible (preferably the Native American serving as a construction monitor under CUL-8) and may be presented in the form of a video. A consulting fee or honorarium shall be negotiated with the local Native American consultants and presenter and paid to them for their participation. The CRS shall be available (by telephone or in person) to answer questions posed by employees. The training may be discontinued when ground disturbance is completed or suspended, but must be resumed when ground disturbance, such as landscaping, resumes.

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CONSTRUCTION MONITORING PROGRAM (CULTURAL-8)

Staff expects the alluvium associated with older Quaternary alluvial fans (Qoaf, hereinafter referred to as "Qoaf Alluvium") to be reached during grading across most of the site. The project owner shall ensure that the CRS, alternate CRS, or CRMs monitor full time all ground disturbance, if allowed by the BLM, until the CRS, alternate CRS, or CRMs certify that the sterile Qoaf alluvium has been reached. This will include ground disturbance at the project site, along the linear facilities routes, and at laydown areas, roads, and other ancillary areas, to ensure there are no impacts to undiscovered resources and to ensure that known resources are not impacted in an unanticipated manner.

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III. INVESTIGATION FINDINGS

1. On September 16, 2020, GSEP submitted a post-certification petition under Title 20, section 1769, requesting to build a carport structure at the GSEP. After GSEP submitted the filing fee in December 2020, CEC staff reviewed the petition and discovered that approximately half for the heavy equipment carport had already been constructed in 2017. The petition did not mention the half-completed structure. In response to staff's inquiries, GSEP could not verify that it had complied with the relevant monitoring and worker training conditions of certification during the 2017 construction, nor could GSEP document that it had used a CEC Delegate Chief Building Official (DCBO) for code compliance.
2. Based on its investigation, CEC staff determined that GSEP employees had begun construction a of the heavy equipment carport bays at the GSEP in 2017, without the knowledge or approval of the CEC, prior to submitting the post-certification petition under Title 20, section 1769 as required by Condition of Certification **Compliance-13** in the Final Decision. Staff also determined that GSEP did not have the required workers environmental awareness program (WEAP) training records per Condition of Certification **CUL-7** and **Compliance-2**. In addition, GSEP did not retain qualified cultural resources specialists or Native American monitors to observe construction per Condition of Certification **CUL-8**. Staff recommended issuing a Notice of Violation to GSEP for violations of conditions of certification **Compliance-2**, **Compliance 13**, **CBO Delegation**, **CUL-7**, and **CUL-8**.

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3. Staff's investigation included calls and discussions with GSEP personnel and a review of all relevant documents. Based on this information, Energy Commission staff determined that the GSEP failed to follow the requirements of its Final Decision.
4. On February 24, 2022 CEC staff sent GSEP a Notice of Violation alleging that GSEP was out of compliance with various conditions of certification contained in the GSEP Final Commission Decision, dated September 2010 (Final Decision) for the activity associated with construction of a heavy equipment carport during the May-September 2017 period. CEC staff (staff) has alleged Genesis Solar, LLC (GSEP) to be in violation of Compliance-2, Compliance-13, Cultural Resources-7, and Cultural Resources-8. Finally, GSEP engaged with an outside firm for code compliance independent from the required CEC process.
5. The Parties share the common objective of ensuring that the fire protection systems at the Facility operate in a safe and reliable manner. GSEP cooperated with the Commission throughout the Commission's investigation and has submitted all documents requested by Commission staff and Commission staff and GSEP participated in numerous meetings.

IV. RESPONSE TO COMMISSION INVESTIGATION

1. GSEP has worked cooperatively with Energy Commission staff since the February 24, 2022 Notice of Violation.
2. Given GSEP's continuing and diligent cooperation, the Energy Commission staff and GSEP believe that rather than engaging in formal adjudication, it would be more productive to enter into this Agreement to allow the Parties to focus on ensuring that operations at GSEP remain safe, reliable, and compliant.
3. In developing this Agreement, the Commission considered the cooperation of GSEP, the facts developed by the Energy Commission staff and GSEP during the course of the investigation and applied the relevant factors in Public Resources Code Section 25534.1(e), to determine that settlement, rather than formal adjudication, is a more appropriate use of the Commission's and GSEP's collective resources.

V. TERMS

To resolve the above-described alleged violations and terminate and settle these matters, and in consideration of Energy Commission staff not pursuing an administrative action under Public Resources Code section 25534 or otherwise seeking legal redress against Genesis for the above-described alleged violations, the Energy Commission and Genesis agree as follows:

1. Genesis shall execute the Agreement and provide a copy no later than thirty (30) days

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to the attention of:

Elizabeth Huber
Deputy Director, Siting Transmission and Environmental Protection
Division California Energy Commission
715 P Street
Sacramento, CA 95814

2. Genesis shall submit to the California Energy Commission a payment in the amount of \$185,000 (the "Settlement Amount") to settle these matters. One half of the settlement payment (\$92,500) is due within 30 days after Genesis receives written notification by the Commission's Compliance Project Manager ("CPM") of the execution of the Settlement Agreement by the Executive Director. The other half of the settlement payment (\$92,500) is due by January 31, 2025. Payment shall be made by electronic transfer to the California Energy Commission. Banking information and instructions necessary to complete the electronic transfer shall be provided by the Energy Commission.
3. This Agreement shall apply to and be binding upon Genesis and its principals, officers, directors, receivers, trustees, employees, successors and assignees, subsidiary corporations, affiliates, and parent corporations, and upon the Energy Commission and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.
4. This Agreement shall constitute the full and final settlement of the matters identified in Articles I and III herein, subject to Genesis's payment of the Settlement Amount.
5. In consideration for Genesis's entry into this Agreement and for the one-time payment of the Settlement Amount, the Commission hereby releases Genesis and its principals, directors, officers, agents, employees, shareholders, subsidiaries, affiliates, parent corporations, and predecessors and successors from any and all claims for violations of the Warren-Alquist Act, the Commission's Regulations, the Final Decisions, LORS, and applicable fire codes, for the matters identified in Articles I and III above (the "Release").
6. Genesis does not admit, and this Agreement does not constitute an admission by Genesis as to any of the Energy Commission Staff's allegations outlined herein, and further does not constitute an admission by Genesis that it violated the Conditions of Certification contained in the Final Decision or any other law, ordinance, regulation or standard applicable to the Genesis.
7. Genesis will file a petition with the CEC for any change in operation, design, or performance of the facility. Genesis reserves the right to contest the use of this Agreement in any other matter or proceeding except in a proceeding to enforce the Agreement itself.

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8. Except to the extent required by law, neither Party shall disclose any confidential information provided in support of this Agreement unless (a) written permission to do so has been provided by the Party providing the information, or (b) disclosure is required by law. To be confidential, information must be marked with wording such as "Confidential," "Proprietary," "Trade Secret," or other terms sufficient to provide notice of the confidential nature of such information. In connection with requests for disclosure under law to the extent allowed by law, the disclosing Party will use reasonable efforts to: (i) notify the other Party prior to any disclosure of confidential information, and (ii) reasonably cooperate with the other Party's efforts to prevent or limit such disclosure.
9. This Agreement constitutes the entire agreement and understanding between the Parties and this Agreement fully supersedes and replaces any and all prior negotiations and agreement of any kind regarding the matters herein, whether written or oral, between the Energy Commission and Genesis.
10. No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement, or any portion thereof, shall be valid or enforceable unless it is in writing and signed by all parties to this Agreement.
11. Each Party to this Agreement has reviewed the Agreement independently, has had the opportunity to consult counsel, is fully informed of the terms and effect of this Agreement, and has not relied in any way on any inducement, representation, or advice of any other Party in deciding to enter into this Agreement.
12. This Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without regard to California's choice of law rules.
13. Any civil litigation to enforce this Agreement shall be filed in the Superior Court of California, County of Sacramento.
14. Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement remains in full force and effect.
15. The failure of any Party to enforce any provision of this Agreement shall not be construed as a waiver of any such provision, nor prevent such Party thereafter from enforcing such provision or any other provision of this Agreement. The rights and remedies granted all Parties herein are cumulative and the election of one right or remedy by a Party shall not constitute a waiver of such Party's right to assert all other legal remedies available under this Agreement or otherwise provided by law.
16. This Agreement is deemed to have been drafted equally by the Parties; it will not be interpreted for or against either Party on the ground that said Party drafted it.
17. The undersigned represent that they have the authority to execute this Agreement.

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18. This Agreement is effective upon the last date of execution by all of the undersigned.

19. The Parties agree that pdf signatures and multiple signature pages are acceptable for purposes of executing this Agreement.

California Energy Commission

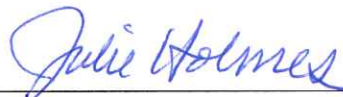
Genesis Solar, LLC

By: _____

Name: Drew Bohan

Title: Executive Director

Date: 10/19/2024

By: _____

Name: Julie Holmes

Title: Vice President

Date: 10/15/2024