

CALIFORNIA ENERGY COMMISSION

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December 1, 2009

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1625 Shattuck Avenue, Suite 270
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09-AFC-6

DOCKET

09-AFC-7

DATE DEC 01 2009

RECD DEC 01 2009

Subject: ***New Alternate Approach to Staff Review for Cultural Resources on Solar Millennium Blythe Solar Power Project (09-AFC-6) and Solar Millennium Palen Solar Power Project (09-AFC-7)***

Dear Gavin:

The California Energy Commission (Energy Commission) and the US Bureau of Land Management (BLM), in an effort to facilitate timely review and decision on power plant license and right-of-way grant applications that have the potential to qualify for American Recovery and Reinvestment Act (ARRA) funds, have developed a new alternate approach for reviewing cultural resources for the Solar Millennium Blythe and Palen Solar Power projects. Energy Commission staff would like to inform you of the approach, disclose a number of its potential advantages and disadvantages, and ask that you inform Energy Commission staff whether you would like to avail yourself of it.

There are presently two approaches to facilitate Federal (National Environmental Policy Act (NEPA) and section 106), State (California Environmental Quality Act (CEQA)), and local review for cultural resources for solar thermal power plant applications under joint consideration by the Energy Commission and the BLM. The first approach typically covers solar thermal projects that encompass a modest number (≤ 75) of cultural resources. Under this approach, the Energy Commission and the BLM normally try to conclude all investigations necessary to identify, evaluate the historical significance of, and assess the reasonably foreseeable and particular effects to the cultural resources in a project area of analysis prior to the Energy Commission's or the BLM's respective decisions on such projects. Where historically significant cultural resources are affected, the conclusion of these investigations prior to agency decisions facilitates the development of more refined measures to reduce significant project effects, which, in turn, reduces post-decision delays to construction start-up, reduces redirection or stoppage of work during construction, and can substantially reduce the overall cost of cultural resources compliance. Federal agency responsibility under section 106 of the National Historic Preservation Act to reduce any significant project effects is typically accomplished through the execution of a memorandum of agreement (MOA) that is the result of consultation among the California State Historic Preservation Officer, the Advisory Council on Historic Preservation, and other consulting parties.

The second approach for solar thermal power projects that encompass a large number (> 75) of cultural resources is for Energy Commission and BLM staff to draft the joint NEPA and CEQA analysis for this technical area on the basis of a relatively large (\geq 25%) and reliable sample of the cultural resources inventory in a project area of analysis, and to ensure the thorough consideration and treatment of all of the resources in that inventory through the negotiation and execution of a programmatic agreement (PA) pursuant to the section 106 regulatory process. Staff subsequently incorporates the PA into the joint analysis by reference. The implementation of a PA under the section 106 process facilitates cultural resources compliance under both NEPA and CEQA for large and complex projects by helping to reduce the effort, time, and cost to gather information prior to a decision. The use of a PA allows for modifications in the scheduling of efforts to identify and evaluate the historical significance of the total complement of cultural resources in a project area of analysis. Such modifications in schedule can substantially reduce the scope of the effort and the time necessary to gather cultural resources information prior to a decision and, consequently, the pre-decision cost of cultural resources compliance. The major drawback to the second approach is that it may result in significant post-decision delays in construction start-up as most of the cultural resources investigations that, under the first approach, would have been done prior to the decision would, instead, be done after the decision. The *overall* cost of cultural resources compliance under either the first or second approach, on the basis of cost per cultural resource, is approximately the same, and the applicant may also enjoy comparable reductions in construction monitoring obligations.

Energy Commission and BLM staff have developed a third approach for the review of cultural resources exclusive to the Solar Millennium Blythe and Palen Solar Power projects. The proposed approach handles cultural resources that are known prior to construction differently from those that are discovered during construction. Prior to construction, the third approach would streamline the time necessary to produce the joint cultural resources analyses under NEPA and CEQA by foregoing potentially lengthy investigations to evaluate the historical significance of the cultural resources found on the surface of a project area of analysis, and, instead, addressing those cultural resources that are demonstrably subject to project effects, as though they were historically significant. Energy Commission and BLM staff would, prior to any decision, study the results of the cultural resources pedestrian survey, identify those cultural resources on the surface of the project area of analysis that would be subject to project effects, assume that all surface cultural resources are historically significant, and then develop measures to reduce project effects to those surface resources to less than significant through the use of a phased treatment plan. Staff would ensure the thorough consideration and treatment of all of the surface resources through the negotiation and execution of an MOA pursuant to the section 106 regulatory process, which staff would subsequently incorporate, by reference, into the joint analysis. The primary benefit of the proposed approach is that, depending on the nature of the cultural resources and the potential character of resulting project effects, it has the potential to substantively reduce both the amount of time necessary to gather information for the cultural resources analysis and the amount of time necessary to draft the actual analysis. This approach, however, has the real potential to result in post-decision delays in

construction start-up, increases in requisite construction monitoring, and cost. Contrary to the regulatory review process under either the first or second approaches, every cultural resource in a project area of analysis known prior to the onset of construction, many of which may have otherwise been found not to be historically significant, would, under the third approach, be subject to potentially costly post-decision and pre-construction data recovery investigation. The only exceptions would be those cultural resources that staff could demonstrate that the proposed project would not affect or those resources which staff could determine were not historically significant on the basis of extant information.

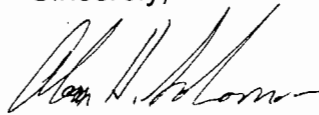
Due to the absence of the finer resolution data that the first and second approaches provide, Energy Commission and BLM staff would be unable, under the third approach, to tailor a unique construction monitoring protocol for each of the subject projects. As a consequence, construction monitoring could become requisite across the entirety of each project area, and each discovery of a new archaeological deposit, during construction, would have to be dealt with on an individual basis. Each new construction discovery would be subject to an evaluation of historical significance and resources thought to be historically significant would then be subject to data recovery investigation as construction progressed. Potential increases in the overall number of requisite data recovery investigations, both for surface cultural resources known prior to construction and for new resources found during construction, in the extent and duration of construction monitoring, and in construction discovery events may cause greater construction delays and result in higher overall costs for cultural resources compliance.

Energy Commission and BLM staff ask that you consider the advantages and disadvantages of the three approaches above and advise us of your preference on how you would like to proceed within three days of your receipt of this letter. If staff is to implement the first or second approach, then the presently proposed schedule for your project will be more difficult to meet. If staff were to implement the proposed third approach then that schedule is more achievable, but the potential increase in your compliance costs and construction delays may be significant.

A further consequence of the implementation of the third approach would be that it may become unnecessary to respond to many of the data requests that the Energy Commission may soon publish or that you may have already received. The data requests provide options that correspond with the different review approaches among which you may choose. Please address only those data requests that correspond with the review approach that you choose.

If you have any questions or need additional clarification about the approaches for proceeding with the cultural resources review for your project or about the particular data requests to which you will need to respond, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Alan Solomon". The signature is fluid and cursive, with a long horizontal stroke at the end.

Alan Solomon
Siting Project Manager

cc: Eileen Allen, Manager, Siting Office, California Energy Commission
Bob Worl, Supervisor, Siting Office, California Energy Commission
Eric Knight, Manager, Environmental Protection Office, California Energy
Commission
Rick York, Supervisor, Biological and Cultural Resources Unit, California Energy
Commission
Beverly Bastian, Planner II, California Energy Commission
Docket (08-AFC-5)
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