

DOCKET

09-AFC-7

DATE AUG 16 2010

RECD. AUG 16 2010

August 16, 2010

Alan Solomon
Project Manager
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

RE: **Palen Solar Power Project, Docket No. 09-AFC-7**
Section: Biological Resources

Dear Mr. Solomon:

Please find the attached Approval Jurisdictional Determination for the Palen Solar Power Project.

If you have any questions on this submittal, please feel free to contact me directly.

Sincerely,



Alice Harron
Senior Director, Development



DEPARTMENT OF THE ARMY
LOS ANGELES DISTRICT, CORPS OF ENGINEERS
PRADO DAM FIELD OFFICE
2493 POMONA-RINCON ROAD
CORONA, CALIFORNIA 92880

August 2, 2010

REPLY TO
ATTENTION OF

Office of the Chief
Regulatory Division

EDAW, Inc.
Attn: Joshua Zinn
1420 Kettner Blvd., Suite 500
San Diego, CA 92101

Solar Millennium LLC
Attn: Elizabeth Ingram
1111 Broadway, 5th Floor
Oakland, CA 94607

SUBJECT: Approved Jurisdictional Determination regarding presence/absence of geographic jurisdiction for the Palen Solar Power Project, Riverside County, California

Dear Mr. Zinn:

Reference is made to your request (File No. SPL-2010-00095-JEM) dated October 23, 2009, for an approved Department of the Army jurisdictional determination (JD) for the Palen Solar Power Project (Solar Millennium LLC, Chevron Energy Solutions), near Desert Center, centered approximately at Latitude 33.77686 Longitude -115.22324, in Riverside County, California.

As you may know, the Corps' evaluation process for determining whether or not a Department of the Army permit is needed involves two tests. If both tests are met, then a permit is required. The first test determines whether or not the proposed project is located in a water of the United States (i.e., it is within the Corps' geographic jurisdiction). The second test determines whether or not the proposed project is a regulated activity under Section 10 of the River and Harbor Act or Section 404 of the Clean Water Act. As part of the evaluation process, pertaining to the first test only, we have made the jurisdictional determination below.

Based on available information, we have determined there are no waters of the United States on the project site. The aquatic resources identified are intrastate isolated waters with no apparent interstate or foreign commerce connection. As such, these waters are not currently regulated by the Corps of Engineers. This disclaimer of jurisdiction is only for Section 404 of the Clean Water Act. Other Federal, State, and local laws may apply to your activities. In particular, you may need authorization from the California State Water Resources Control Board and/or the U.S. Fish and Wildlife Service.

This letter contains an approved jurisdictional determination for the Palen Solar Power Project site. If you object to this decision, you may request an administrative appeal under Corps regulations at 33 CFR Part 331. Enclosed you will find a Notification of Appeal Process (NAP) fact sheet (Appendix A) and Request for Appeal (RFA) form. If you request to appeal this decision you must submit a completed RFA form to the Corps South Pacific Division Office at the following address:


Tom Cavanaugh
Administrative Appeal Review Officer,
U.S. Army Corps of Engineers
South Pacific Division, CESP-D-PDS-O, 2042B
1455 Market Street, San Francisco, California 94103-1399

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 C.F.R. Part 331.5, and that it has been received by the Division Office within 60 days of the date on the NAP. Should you decide to submit an RFA form, it must be received at the above address by October 2, 2010. It is not necessary to submit an RFA form to the Division office if you do not object to the decision in this letter.

This verification is valid for five years from the date of this letter, unless new information warrants revision of the determination before the expiration date. If you wish to submit new information regarding the approved jurisdictional determination for this site, please submit this information to James Mace at the letterhead address by October 2, 2010. The Corps will consider any new information so submitted and respond within 60 days by either revising the prior determination, if appropriate, or reissuing the prior determination. A revised or reissued jurisdictional determination can be appealed as described above.

This determination has been conducted to identify the extent of the Corps' Clean Water Act jurisdiction on the particular Project site identified in your request. This determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985. If you or your tenant are USDA program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service, prior to starting work.

If you have any questions, please me at 951.898.6163 or via e-mail at James.E.Mace@usace.army.mil. Please be advised that you can now comment on your experience with Regulatory Division by accessing the Corps web-based customer survey form at: <http://per2.nwp.usace.army.mil/survey.html>.

Sincerely,


James E. Mace
Senior Project Manager
South Coast Branch
Regulatory Division

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Solar Millennium LLC		File Number: SPL-2010-00098	Date: 08/02/2010
Attached is:			See Section below
<input type="checkbox"/>	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)		A
<input type="checkbox"/>	PROFFERED PERMIT (Standard Permit or Letter of permission)		B
<input type="checkbox"/>	PERMIT DENIAL		C
<input checked="" type="checkbox"/>	APPROVED JURISDICTIONAL DETERMINATION		D
<input type="checkbox"/>	PRELIMINARY JURISDICTIONAL DETERMINATION		E

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <http://usace.army.mil/inet/functions/cw/cecwo/reg> or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:

DISTRICT ENGINEER
Los Angeles District, Corps of Engineers
ATTN: Chief, Regulatory Division
P.O. Box 532711
Los Angeles, CA 90053-2325
Tel. (213) 452-3425

If you only have questions regarding the appeal process you may also contact:

DIVISION ENGINEER
South Pacific Division, Corps of Engineers
Attn: Tom Cavanaugh
Administrative Appeal Review Officer
South Pacific Division, CESPDPDS-O, 2052B
1455 Market Street, San Francisco, California 94103-1399
Phone: (415) 503-6574 Fax: (415) 503-6646
Email: thomas.j.cavanaugh@usace.army.mil

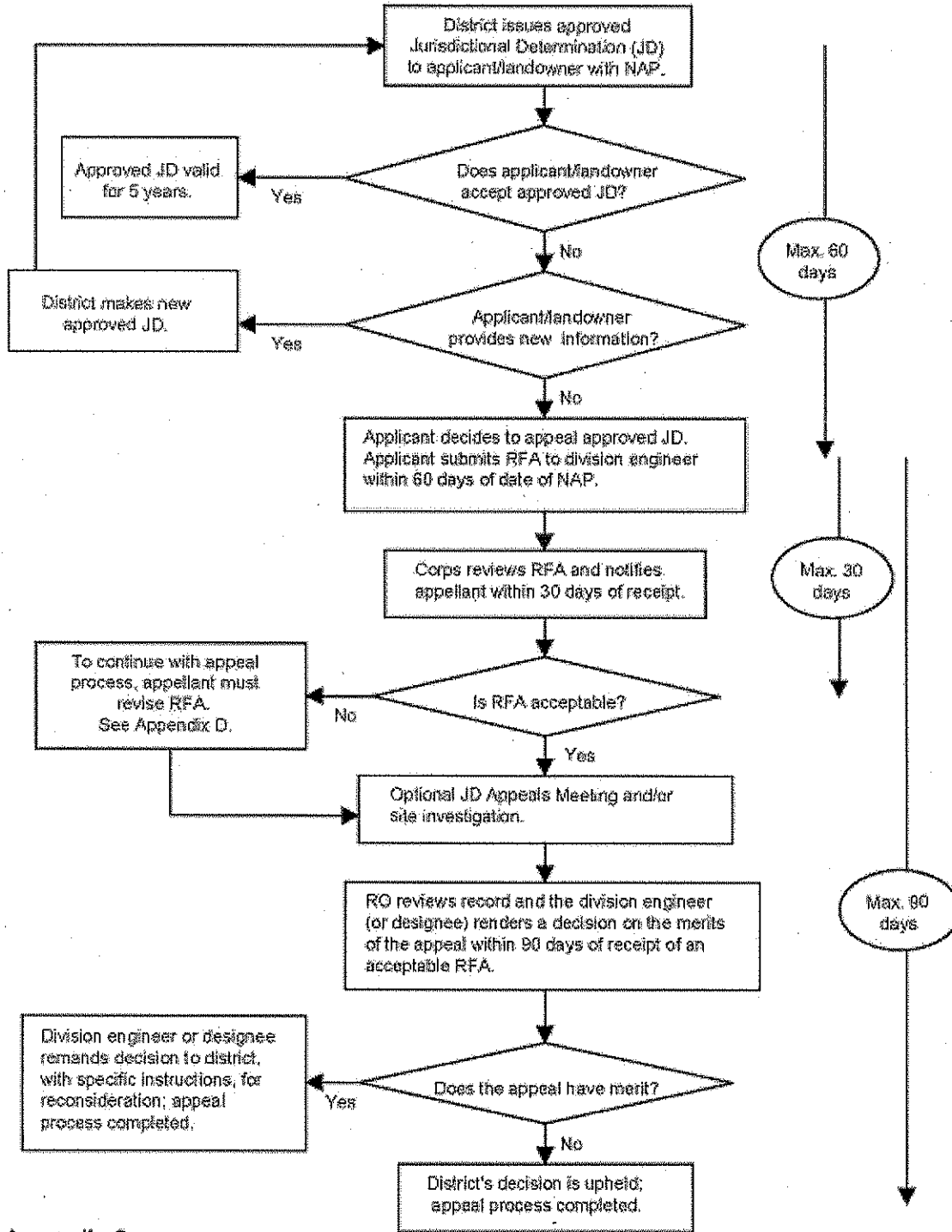
RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

Signature of appellant or agent.

Date:

Telephone number:

Administrative Appeal Process for Approved Jurisdictional Determinations



Appendix C

**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of:
APPLICATION FOR CERTIFICATION
for the *PALEN SOLAR POWER PROJECT*

Docket No. 09-AFC-7
PROOF OF SERVICE
(Revised 7/2/10)

APPLICANT

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INTERVENORS

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INTERESTED AGENCIES

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*indicates change

DECLARATION OF SERVICE

I, Carl Lindner, declare that on, August 16, 2010, I served and filed copies of Approval of Jurisdictional Determination. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at: [http://www.energy.ca.gov/sitingcases/solar_millennium_palen].

The document has been sent to the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, in the following manner:

(Check all that Apply)

FOR SERVICE TO ALL OTHER PARTIES:

- sent electronically to all email addresses on the Proof of Service list;
- by personal delivery
- by delivering on this date, for mailing with the United States Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on the date to those addresses **NOT** marked "email preferred."

AND

For filing with the Energy Commission:

- sending an original paper copy and one electronic copy, mailed respectively, to the address below (**preferred method**);

OR

- depositing in the mail an original and 12 paper copies, along with 13 CDs, as follows:

CALIFORNIA ENERGY COMMISSION

Attn: Docket No. 09-AFC-7
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512

docket@energy.state.ca.us

I declare under penalty of perjury that the foregoing is true and correct, that I am employed in the country where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.

