Staff consideration of PSPP applicant's request to delete BIO-27 by adding avoidance and minimization components of BIO-27 to BIO-8 and BIO-14

Staff concurs that the applicant should not be required to conduct habitat restoration for temporarily disturbed lands (linears) that have already been mitigated for through habitat acquisition (in **BIO-12, BIO-20 and BIO-21)**, under the condition that: 1) avoidance and minimization measures described in **BIO-27** are incorporated into **BIO-8** (general Avoidance and Minimization Measures), and 2) weed management measures described in **BIO-27** are incorporated into **BIO-14** (Weed Management Plan). Restoration and revegetation of the solar facility and other permanently disturbed areas upon decommissioning is addressed separately in **BIO-22**.

Staff is also concerned about potential use of non-native or non-local plant species for erosion control seeding that may be implemented under soil stabilization or erosion control requirements in conditions of certification for Soil & Water or Air Quality, or **BIO-8** (#16). Staff has also included some guidelines for seed selection in the proposed revisions to **BIO-8** and **BIO-14**. With all of the revisions summarized above and depicted in the revised **BIO-8** and **BIO-14**, below, staff agrees to delete **BIO-27**.

New text is depicted in bold underline; deleted text is depicted as ~~strikethrough.~~

IMPACT AVOIDANCE AND MINIMIZATION MEASURES

BIO-8 The Project owner shall undertake the following measures to manage the Project site and related facilities during construction, operation and maintenance in a manner to avoid or minimize impacts to biological resources:

1. Limit Disturbance Areas. **Minimize soil disturbance by locating staging areas, laydowns, and temporary parking or storage for linears in existing disturbed areas. Equipment maintenance and refueling shall not be conducted within 100 feet of any sensitive resource (for example, waters of the state, desert dry wash woodland, dune habitats and rare plant populations). Limit the width of the work area near sensitive resources. Avoid blading temporary access roads where feasible and instead drive over and crush the vegetation to preserve the seed bank and biotic soil crusts.** The boundaries of all areas to be disturbed (including staging areas, access roads, and sites for temporary placement of spoils) shall be delineated with stakes and flagging prior to construction activities in consultation with the Designated Biologist. Spoils and topsoil shall be stockpiled in disturbed areas lacking native vegetation and which do not provide habitat for special-status species. Parking areas, staging

and disposal site locations shall similarly be located in areas without native vegetation or special-status species habitat. All disturbances, Project vehicles and equipment shall be confined to the flagged areas.

2. Minimize Road Impacts. New and existing roads that are planned for construction, widening, or other improvements shall not extend beyond the flagged impact area as described above. All vehicles passing or turning around would do so within the planned impact area or in previously disturbed areas. Where new access is required outside of existing roads or the construction zone, the route shall be clearly marked (i.e., flagged and/or staked) prior to the onset of construction.
3. Minimize Traffic Impacts. Vehicular traffic during Project construction and operation shall be confined to existing routes of travel to and from the Project site, and cross country vehicle and equipment use outside designated work areas shall be prohibited. The speed limit shall not exceed 25 miles per hour within the Project area, on maintenance roads for linear facilities, or on access roads to the Project site
4. Monitor During Construction. In areas that have not been fenced with desert tortoise exclusion fencing and cleared, the Designated Biologist shall be present at the construction site during all Project activities that have potential to disturb soil, vegetation, and wildlife. The Designated Biologist or Biological Monitor shall walk immediately ahead of equipment during brushing and grading activities. If desert tortoises are found during construction monitoring, procedures outlined in **BIO-9** shall be implemented.
5. Minimize Impacts of Transmission/Pipeline Alignments, Roads, and Staging Areas. Staging areas for construction on the plant site shall be within the area that has been fenced with desert tortoise exclusion fencing and cleared. For construction activities outside of the plant site (transmission line, pipeline alignments) access roads, pulling sites, and storage and parking areas shall be designed, installed, and maintained with the goal of minimizing impacts to native plant communities and sensitive biological resources. Transmission lines and all electrical components shall be designed, installed, and maintained in accordance with the Avian Power Line Interaction Committee's (APLIC's) S*uggested Practices for Avian Protection on Power Lines* (APLIC 2006) and *Mitigating Bird Collisions with Power Lines* (APLIC 1994) to reduce the likelihood of large bird electrocutions and collisions. **Where feasible avoid impacts to desert washes and special-status plants by adjusting the locations of poles and laydown areas, and the alignment of the roads and pipelines. Construction drawings and grading plans shall depict the locations of sensitive resources and demonstrate where temporary impacts to sensitive resources can be avoided and where they cannot.**

6. Avoid Use of Toxic Substances. Soil bonding and weighting agents used on unpaved surfaces shall be non-toxic to wildlife and plants.

7. Minimize Lighting Impacts. Facility lighting shall be designed, installed, and maintained to prevent side casting of light towards wildlife habitat.

8. Minimize Noise Impacts. A continuous low-pressure technique shall be used for steam blows, to the extent possible, in order to reduce noise levels in sensitive habitat proximate to the Project site. Loud construction activities (e.g., unsilenced high pressure steam blowing, pile driving, or other) shall be avoided from February 15 to April 15, when it would result in noise levels over 65 dBA in nesting habitat (excluding noise from passing vehicles). Loud construction activities may be permitted from February 15 to April 15 only if:

    a. The Designated Biologist provides documentation (i.e., nesting bird data collected using methods described in **BIO-15** and maps depicting location of the nest survey area in relation to noisy construction) to the CPM indicating that no active nests would be subject to 65 dBA noise, OR

    b. The Designated Biologist or Biological Monitor monitors active nests within the range of construction-related noise exceeding 65 dBA. The monitoring shall be conducted in accordance with Nesting Bird Monitoring and Management Plan approved by the CPM. The Plan shall include adaptive management measures to prevent disturbance to nesting birds from construction related noise. Triggers for adaptive management shall be evidence of Project-related disturbance to nesting birds such as: agitation behavior (displacement, avoidance, and defense); increased vigilance behavior at nest sites; changes in foraging and feeding behavior, or nest site abandonment. The Nesting Bird Monitoring and Management Plan shall include a description of adaptive management actions, which shall include, but not be limited to, cessation of construction activities that are deemed by the Designated Biologist to be the source of disturbance to the nesting bird.

9. Avoid Vehicle Impacts to Desert Tortoise. Parking and storage shall occur within the area enclosed by desert tortoise exclusion fencing to the extent feasible. No vehicles or construction equipment parked outside the fenced area shall be moved prior to an inspection of the ground beneath the vehicle for the presence of desert tortoise. If a desert tortoise is observed outside the areas permanently fenced with desert tortoise exclusion fencing it shall be left to move on its own. If it does not move within 15 minutes, a Designated Biologist or Biological Monitor under the Designated Biologist's direct supervision may move

it out of harms way as described in the USFWS Desert Tortoise Field Manual (USFWS 2009a)

10. Install Box Culvert. To provide for connectivity for desert tortoise and other wildlife, the Project owner shall install a box culvert suitable for passage by desert tortoise and other wildlife under the Project Site Access Road.

11. Avoid Wildlife Pitfalls. To avoid trapping desert tortoise and other wildlife in trenches, pipes or culverts, the following measures shall be implemented:

    a. Backfill Trenches. At the end of each work day, the Designated Biologist shall ensure that all potential wildlife pitfalls (trenches, bores, and other excavations) outside the area fenced with desert tortoise exclusion fencing have been backfilled. If backfilling is not feasible, all trenches, bores, and other excavations shall be sloped at a 3:1 ratio at the ends to provide wildlife escape ramps, or covered completely to prevent wildlife access, or fully enclosed with desert tortoise-exclusion fencing. All trenches, bores, and other excavations outside the areas permanently fenced with desert tortoise exclusion fencing shall be inspected periodically throughout the day, at the end of each workday, and at the beginning of each day by the Designated Biologist or a Biological Monitor. Should a tortoise or other wildlife become trapped, the Designated Biologist or Biological Monitor shall move the tortoise out of harm's way as described in the USFWS Desert Tortoise Field Manual (USFWS 2009a). Any wildlife encountered during the course of construction shall be allowed to leave the construction area unharmed.

    b. Avoid Entrapment of Desert Tortoise. Any construction pipe, culvert, or similar structure with a diameter greater than 3 inches, stored less than 8 inches aboveground and within desert tortoise habitat (i.e., outside the permanently fenced area) for one or more nights, shall be inspected for tortoises before the material is moved, buried or capped. As an alternative, all such structures may be capped before being stored outside the fenced area, or placed on elevated pipe racks. These materials would not need to be inspected or capped if they are stored within the permanently fenced area after the clearance surveys have been completed.

12. Minimize Standing Water. Water applied to dirt roads and construction areas (trenches or spoil piles) for dust abatement shall use the minimal amount needed to meet safety and air quality standards in an effort to prevent the formation of puddles, which could attract desert tortoises and common ravens to construction sites. A Biological Monitor shall patrol these areas to ensure water does not puddle and shall take appropriate action to reduce water application where necessary.

13. Dispose of Road-killed Animals. Road killed animals or other carcasses detected by personnel on roads associated with the Project area will be reported immediately to a Biological Monitor or Designated Biologist (or Project Environmental Compliance Monitor, during Project operations), who will promptly remove the roadkill. For special-status species road-kill, the Biological Monitor or Designated Biologist (or Project Environmental Compliance Monitor, during Project operations) shall contact CDFG and USFWS within 1 working day of detection of the carcass for guidance on disposal or storage of the carcass; all other road kill shall be disposed of promptly. The Biological Monitor shall provide the special-status species record as described in **BIO-11** below.

14. Minimize Spills of Hazardous Materials. All vehicles and equipment shall be maintained in proper working condition to minimize the potential for fugitive emissions of motor oil, antifreeze, hydraulic fluid, grease, or other hazardous materials. The Designated Biologist shall be informed of any hazardous spills immediately as directed in the Project Hazardous Materials Plan. Hazardous spills shall be immediately cleaned up and the contaminated soil properly disposed of at a licensed facility. Servicing of construction equipment shall take place only at a designated area. Service/maintenance vehicles shall carry a bucket and pads to absorb leaks or spills.

15. Worker Guidelines. During construction all trash and food-related waste shall be placed in self-closing containers and removed daily from the site. Workers shall not feed wildlife or bring pets to the Project site. Except for law enforcement personnel, no workers or visitors to the site shall bring firearms or weapons. Vehicular traffic shall be confined to existing routes of travel to and from the Project site, and cross country vehicle and equipment use outside designated work areas shall be prohibited. The speed limit when traveling on dirt access routes within desert tortoise habitat shall not exceed 25 miles per hour.

16. Implement **Sediment** ~~Erosion~~ Control Measures **Near Desert Washes**. Standard erosion control measures shall be implemented for all phases of construction and operation where sediment run-off from exposed slopes threatens to enter waters of the state. Sediment and other flow-restricting materials shall be moved to a location where they shall not be washed back into the stream. ~~All disturbed soils and roads within the Project site shall be stabilized to reduce erosion potential, both during and following construction.~~ Areas of disturbed soils (access and staging areas) which slope toward drainages shall be stabilized to reduce erosion potential.

17. Monitor Ground Disturbing Activities Prior to Pre-Construction Site Mobilization. If pre-construction site mobilization requires ground-disturbing activities such as for geotechnical borings or hazardous

waste evaluations, a Designated Biologist or Biological Monitor shall be present to monitor any actions that could disturb soil, vegetation, or wildlife.

18. Control Unauthorized Use of the Project Access Roads. The secondary access road shall be gated at both ends and restricted to emergency response personnel as per proposed **COC WORKER SAFETY-6**. The Project owner shall also monitor and control any unauthorized use of the Project roads with gates, signage, and fencing as necessary to minimize traffic-related roadkills and ORV disturbance off-roads.

19. **Implement Erosion Control Measures. All disturbed soils and roads within the Project site shall be stabilized to reduce erosion potential, both during and following construction. All areas subject to temporary disturbance shall be restored to pre-project grade and stabilized to prevent erosion and promote natural revegetation. Temporarily disturbed areas within the Project area include, but are not limited to: linear facilities, temporary access roads, temporary lay-down and staging areas. If erosion control measures include the use of seed, only locally native plant species from a local seed source shall be used. Local seed includes seeds from plants within the Chuckwalla Valley or Colorado River Hydrologic Units.**

20. **Avoid Spreading Weeds. Prior to the start of construction, flag and avoid dense populations of highly invasive noxious weeds. If these areas cannot be avoided, they shall be pre-treated by the methods described in BIO-14 (Weed Management Plan). Noxious weeds and other invasive non-native plants in the temporarily disturbed areas shall be managed according to the requirements in BIO-14.**

21. Salvage Topsoil. Topsoil from the Project site shall be salvaged, preserved and re-used for restoration of temporarily disturbed areas. Salvaged topsoil shall be collected, stored and applied in a way that maintains the viability of seed and soil crusts. The Project owner shall excavate and collect the upper soil layer (the top 1 to 2 inches that includes the seed bank and biotic soil crust) as well as the lower soil layer up to a depth of 6 to 8 inches. The upper and lower soil layers shall be stockpiled separately in areas that will not be impacted by other grading, flooding, erosion, or pollutants. If the soil is to be stored more than 2 weeks it shall be spread out to a depth of no more than 6 inches to maintain the seed and soil crust viability. The Project owner shall install temporary construction fencing around stockpiled topsoil, and signage that indicates whether the pile is the upper layer seed bank, or the lower layer, and clearly indicates that the piles are for

use only in erosion control. After construction, the Project owner shall replace the topsoil in the temporarily disturbed areas in the reverse order of stockpiling, starting with the 6-8 inch layer of subsoil, and then the seed-containing upper layer using a harrow or similar equipment to thinly distribute the layer to depths no greater than 1 to 2 inches.

22. **Decommission Temporary Access Roads with Vertical Mulching. Discourage ORV use of temporary construction roads by installing vertical mulching at the head of the road to a distance necessary to obscure the road from view. Boulder barricades and gates shall not be used unless the remainder of the site is fenced to prevent driving around the gate or barricade. Designated ORV routes and roads shall not be closed.**

Verification: All mitigation measures and their implementation methods shall be included in the BRMIMP and implemented. Implementation of the measures shall be reported in the Monthly Compliance Reports by the Designated Biologist. Within 30 days after completion of Project construction, the Project owner shall provide to the CPM, for review and approval, a written construction termination report identifying how measures have been completed. As part of the Annual Compliance Report, each year following construction the Designated Biologist shall provide a report to the CPM that describes compliance with avoidance and minimization measures to be implemented during operation (for example, a summary of the incidence of roadkilled animals during the year, implementation of measures to avoid toxic spills, erosion and sedimentation, efforts to enforce worker guidelines, etc.).

No less than 30 days prior to construction-related ground disturbance the Project owner shall provide the CPM, USFWS and CDFG with plans showing the design of a culvert under the Project Site Access Road that would provide access for desert tortoise and other wildlife. No less than 30 days after of completion of construction of the Project site access road the Project owner shall provide as-built drawings of the culvert.

If loud construction activities are proposed between February 15 to April 15 which would result in noise levels over 65 dBA in nesting habitat, the Project owner shall submit nest survey results (as described in 8a) to the CPM no more than 7 days before initiating such construction. If an active nest is detected within this survey area the Project owner shall submit a Nesting Bird Monitoring and Management Plan to the CPM for review and approval no more than 7 days before initiating noisy construction.

WEED MANAGEMENT PLAN

BIO-14 The Project owner shall implement a Weed Management Plan (Plan) that meets the approval of the CPM. The objective of the Plan shall be to prevent the introduction of any new weeds and the spread of existing weeds as a result of Project construction, operation, and decommissioning. The Draft Weed Management Plan, submitted by the Applicant (AECOM 2010a, Attachment DR-BIO-100), shall provide the basis for the final Plan, subject to review and revisions from the CPM. The Plan shall include the following:

1. **Weed Plan Requirements**. **The Project owner shall provide a map to the CPM indicating the location of the Weed Management Area, which shall include all areas within 100 feet of the Project Disturbance Area, access roads, staging and laydown sites, and all other areas subject to temporary disturbance. The Project owner shall provide a Plan for the Weed Management Area** that includes at a minimum the following information: specific weed management objectives and measures for each target non-native weed species; baseline conditions; map of existing populations of target weeds within 100 feet of the Project Disturbance Area and access roads; weed risk assessment; measures to prevent the introduction and spread of weeds; measures to minimize the risk of unintended harm to wildlife and other plants from weed control activities; monitoring and surveying methods; and reporting requirements. **Weed control described in the Plan shall focus on prevention, early detection of new infestations, and early eradication for the life of the Project. Weed control along the Project linears shall be limited to the areas where soils were disturbed during construction. Weed monitoring shall occur a minimum of once per year during the early spring months (March-April) to detect seedlings before they set seed. The focus of the Plan shall be on avoiding the introduction of new invasive weeds or the spread of highly invasive species, such as Sahara mustard. Non-native species with low ecological risk, or that are very widespread, such as Mediterranean grass, shall be noted but control shall not be required. When detected, infestations of high priority species shall be eradicated immediately.**

2. **Avoidance and Treatment of Dense Weed Populations**. The Plan shall include a requirement to flag and avoid dense populations of the most invasive non-native weeds during any Project-related construction operation in or adjacent to infestations. If these areas cannot be avoided, they shall be pre-treated by one of the following methods: a) treating the infested areas in the season prior to construction by removing and properly disposing of seed heads by

hand, prior to maturity, or spraying the new crop of plants that emerge in early spring, the season prior to construction, to reduce the viable seed contained in the soil, or b) removing and disposing the upper 2 inches of soil and disposing it offsite at a sanitary landfill or other site approved by the County Agricultural Commissioner , or burying the infested soil, e.g., under the solar facility or in a pit, and covering the infested soil with at least three feet of uncontaminated soil.

3. **Cleaning Vehicles and Equipment**. The Plan shall include specifications and requirements for the cleaning and removal of weed seed and weed plant parts from vehicles and equipment involved in Project-related construction and operation. Vehicles and equipment working in weed-infested areas (including previous job sites) shall be required to clean the equipment tires, tracks, and undercarriage *before* entering the Project area and before moving to infested areas of the Project Disturbance Area to uninfested areas. Cleaning shall be conducted on all track and bucket/blade components to adequately remove all visible dirt and plant debris. Cleaning using hand tools, such as brushes, brooms, rakes, or shovels, is preferred. If water must be used, the water/slurry shall be contained to prevent seeds and plant parts from washing into adjacent habitat.
4. **Safe Use of Herbicides**. The final Plan shall include detailed specifications for avoiding herbicide and soil stabilizer drift, and shall include a list of herbicides and soil stabilizers that will be used on the Project with manufacturer's guidance on appropriate use. The Plan shall indicate where the herbicides will be used, and what techniques will be used to avoid chemical drift or residual toxicity to special-status species and their pollinators, and consistent with the Nature Conservancy guidelines and the criteria under #2, below. Only weed control measures for target weeds with a demonstrated record of success shall be used, based on the best available information from sources such as The Nature Conservancy's The Global Invasive Species Team, California Invasive Plant Council: http://www.cal-ipc.org/ip/management/plant_profiles/index.php, and the California Department of Food & Agriculture Encycloweedia: http://www.cdfa.ca.gov/phpps/ipc/encycloweedia/encycloweedia_hp.htm.
5. The methods for weed control described in the final Plan shall meet the following criteria:

    a. Manual: Well-timed removal of plants or seed heads with hand tools; seed heads and plants must be disposed of in accordance with guidelines from the Riverside County Agricultural Commissioner.

b. Chemical: Herbicides known to have residual toxicity, such as pre-emergents and pellets, shall not be used in natural areas or within the engineered channels. Only the following application methods may be used: wick (wiping onto leaves); inner bark injection; cut stump; frill or hack and squirt (into cuts in the trunk); basal bark girdling; foliar spot spraying with backpack sprayers or pump sprayers at low pressure or with a shield attachment to control drift, and only on windless days, or with a squeeze bottle for small infestations (see Nature Conservancy guidelines described above);

c. Biological: Biological methods may be used subject to review and approval by CDFG and USFWS and only if approved for such use by CDFA, and are either locally native species or have no demonstrated threat of naturalizing or hybridizing with native species;

d. Mechanical: Disking, tilling, and mechanical mowers or other heavy equipment shall not be employed in natural areas but hand weed trimmers (electric or gas-powered) may be used. Mechanical trimmers shall not be used during periods of high fire risk and shall only be used with implementation of fire prevention measures.

Verification: No less than 10 days prior to start of any Project-related ground disturbance activities, the Project owner shall provide the CPM with the final version of a Weed Management Plan that has been reviewed by BLM and Energy Commission staff. Modifications to the approved Weed Control Plan shall be made only with approval from the CPM in consultation with BLM.

Within 30 days after completion of Project construction, the Project owner shall provide to the CPM for review and approval, a written report identifying which items of the Weed Management Plan have been completed, a summary of all modifications to mitigation measures made during the Project's construction phase, and which items are still outstanding.

As part of the Annual Compliance Report, each year following construction the Designated Biologist shall provide a report to the CPM and BLM that includes: a summary of the results of noxious weeds surveys and management activities for the year; a discussion of whether weed management goals for the year were met; and recommendations for weed management activities for the upcoming year.

Other Changes in Conditions Prompted by Deletion of BIO-27

MITIGATION FOR IMPACTS TO STATE WATERS

BIO-21 The Project owner shall implement the following measures to avoid, minimize and mitigate for direct and indirect impacts to waters of the state and to satisfy requirements of California Fish and Game Code sections 1600 and 1607.

5. Road Crossings at Streams. The Project owner shall preserve pre-development downstream flows and sediment transport in washes crossed by permanent roads by incorporating culverts and Arizona crossings at stream crossings. Arizona crossings are the preferred option and shall be employed wherever such crossings do not present a safety hazard and where the roadbed elevation allows the construction of such crossings. Drainages that have been graded for temporary construction access shall be restored to original contours and surface drainage patterns and shall be revegetated according to specifications in **BIO- 8 ~~27~~**.

BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION OF THE STATE OF CALIFORNIA
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APPLICATION FOR CERTIFICATION FOR THE *PALEN SOLAR POWER PLANT PROJECT*

Docket No. 09-AFC-7

PROOF OF SERVICE
(Revised 8/27/10)

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DECLARATION OF SERVICE

I, Sabrina Savala, declare that on September 30 , 2010, I served and filed copies of the attached Following RSA Workshop the Revised Biology CoC's. 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 documents have been sent to both 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:

__x__ sent electronically to all email addresses on the Proof of Service list;

_____ by personal delivery;

__x__ 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 that date to those addresses NOT marked "email preferred."

AND

FOR FILING WITH THE ENERGY COMMISSION:

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

OR

_____ depositing in the mail an original and 12 paper copies, 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 county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.

Original Signed by:
Sabrina Savala