

DOCKET

09-AFC-8

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California Energy Commission
Dockets Unit
1516 Ninth Street
Sacramento, CA 95814-5512

Subject: **GENESIS SOLAR, LLC REPLY TO LATE BRIEF OF INTERVENOR TOM BUDLONG ON VISUAL RESOURCES – EVIDENTIARY HEARING DAY 1 TOPIC
GENESIS SOLAR ENERGY PROJECT
DOCKET NO. (09-AFC-8)**

Enclosed for filing with the California Energy Commission is the original of **GENESIS SOLAR, LLC REPLY TO LATE BRIEF OF INTERVENOR TOM BUDLONG ON VISUAL RESOURCES – EVIDENTIARY HEARING DAY 1 TOPIC**, for the Genesis Solar Energy Project (09-AFC-8).

Sincerely,



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STATE OF CALIFORNIA

Energy Resources
Conservation and Development Commission

In the Matter of:

Application for Certification for the
Genesis Solar Energy Project

DOCKET NO. 09-AFC-8

**GENESIS SOLAR, LLC REPLY TO
LATE BRIEF OF INTERVENOR TOM
BUDLONG ON VISUAL
RESOURCES – EVIDENTIARY
HEARING DAY 1 TOPIC**

In accordance with the Committee direction at the evidentiary hearings held on July 12, 13 and 21, 2010 Genesis Solar, LLC (Genesis) submits this Reply Brief in response to the (late filed) Opening Brief of Tom Budlong on Visual Resources, as follows:

**I. ALL POTENTIAL DIRECT AND/OR CUMULATIVE SIGNIFICANT VISUAL
RESOURCE IMPACTS HAVE BEEN SUFFICIENTLY MITIGATED TO LESS
THAN SIGNIFICANT LEVELS**

Direct: After significant evaluation, California Energy Commission (CEC) Staff and Genesis Solar, LLC, (Genesis) agree that the Genesis Energy Solar Project (GSEP) will not result in significant direct impacts to visual resources.¹ In addition, Staff is proposing six (6) Visual Resource Conditions of Certification which, in Staff's testimony, will reduce the GSEP's potential direct visual impact to a "less-than-significant" level.² It should be noted that while Mr. Budlong has argued through the submission of testimony that the GSEP will present a significant unmitigatable impact, Mr. Budlong has never suggested, argued or been qualified by the CEC as an expert in the field of Visual Resources, nor has he provided any visual analysis other than Staff's and his own.

¹ 7/12/10 RT 427-431, and 433-434; Exhibit 400 p. C.12-1

² Exhibit 403, p. D.5-55; see also Exhibit 400, p. C.12-41.

Cumulative: Mr. Budlong also asserts the GSEP will result in what he identifies as “[a]ggregate [i]mpacts” or in other words cumulative impacts on the surrounding scenic vista. A majority, if not all, of Mr. Budlong’s conclusions in this area are based upon Staff’s analysis and conclusions of what the evaluation of cumulative impacts should be. Previous briefing on this subject by Genesis has identified that Staff is placing an extraordinary number of projects within the consideration of a cumulative visual resource impact.³ However, as noted in the prior briefing, the Committee should determine the standard to be whether or not the GSEP and other projects can be seen at the same time from an appropriately selected Key Observation Point (KOP). As we have argued in our Reply briefing to Staff, while the CEC does have broad discretion in determining the scope of the inquiry, agencies should not abandon common sense and simply include all renewable projects within an extraordinarily large region simply because it could be characterized as being within the “desert”.⁴ Since no other projects can be seen from the appropriately selected KOPs, the rule of reason would dictate the GSEP does not contribute to a cumulative visual resource impact.

As such, Genesis maintains that with the imposition of the Visual Resource Conditions of Certification, the visual impacts (direct and cumulative) are less than significant as established by evidence at hearing and set forth in the Genesis Solar, LLC Opening Brief.

II. STAFF APPROPRIATELY CONSIDERED, EVALUATED, AND CONCLUDED ON THE POTENTIAL GSEP VISUAL RESOURCE IMPACTS OF DRY COOLING, NIGHTTIME GLARE and TO THE PALEN-MCCOY WILDERNESS

Dry Cooling Option: Mr. Budlong’s assertion that CEC Staff did not consider a dry cooling scenario under Visual Resources is inaccurate. In fact, Mr. Budlong cites the areas in which Staff does identify, evaluate, and conclude on potential visual impacts of the GSEP under a dry cooling scenario.⁵ Staff’s analysis of potential visual impacts under a dry cooling scenario included the location and size of the air-cooled condensers, under construction and operation.⁶

Nighttime Glare: Additionally, Mr. Budlong argues CEC Staff did not properly consider or mitigate night lighting impacts. However, in an effort to minimize any potential nighttime light pollution Staff has proposed Condition of Certification VIS-2, which would require all exterior lighting lamps and reflectors are not visible from beyond the project site, that the lighting does not cause excessive reflected glare and that direct lighting does not illuminate the nighttime sky with few exceptions.

³ Genesis Solar, LLC Opening Brief – Evidentiary Hearing Day 1 and 2 Topics, 7/26/10

⁴ Genesis Solar, LLC Reply Brief – Evidentiary Hearing Day 1 and 2 Topics, Part 1 – Reply to Staff, p.2, 8/2/10

⁵ Exhibit 400, p. C.12-28 et seq.

⁶ Id.

Wilderness: In regards to the Palen-McCoy Wilderness Area Staff identified the issue and appropriately considered and analyzed the potential impact in their RSA.⁷ Any view of the GSEP from the Palen-McCoy Wilderness Area valley floor would appear as a “thin horizontal line”.⁸ In order to reduce potential visual impacts, Staff is suggesting Condition of Certification VIS-4, which would screen the GSEP using slatted fencing to mitigate any brightness or reflective glare. After thorough analysis, Genesis agrees with Staffs’ conclusion that the “[o]veral visual change with recommended mitigation would thus be moderately low” and present a “less-than-significant level of impact.”⁹

Mr. Budlong’s claim that the Staff analysis falls short is unfounded.

III. CONCLUSION: STAFF’S ANALYSIS OF VISUAL IMPACTS IS SUFFICIENT AND COMPLETE

Finally, Mr. Budlong asks that Staff re-evaluate its analysis regarding the potential visual impacts of the GSEP by considering aggregate direct impacts upon, KOP’s 1-4, the dry cooling alternative, and night lighting. What this position encompasses is a wholesale disregard of the thorough analysis by Staff (exhibit 400), the in depth reporting of Genesis (Exhibit 1) as well as the respective testimony on Visual Resources on Day 1 of the Evidentiary Hearings.

As described above and set forth in the prior briefs filed by Genesis that delineate the evidence submitted, substantial evidence exists for the Committee to find that with the Conditions of Certification, the GSEP will result in less than significant direct and cumulative Visual Resource impacts.

Dated: August 5, 2010

/original signed/

Scott A Galati
Counsel to Genesis Solar, LLC

⁷ Exhibit 400, p. C.12-20

⁸ Id.

⁹ Exhibit 400, p. C.12-21



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**APPLICATION FOR CERTIFICATION FOR THE
GENESIS SOLAR ENERGY PROJECT**

Docket No. 09-AFC-8

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(Revised 8/5/10)**

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DECLARATION OF SERVICE

I, Ashley Garner, declare that on August 5, 2010, I served and filed copies of the attached: **GENESIS SOLAR, LLC REPLY TO LATE BRIEF OF INTERVENOR TOM BUDLONG ON VISUAL RESOURCES – EVIDENTIARY HEARING DAY 1 TOPIC** dated August 5, 2010. 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/genesis_solar].

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:
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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.



Ashley Garner