



TETRA TECH EC, INC.

**DOCKET**

**09-AFC-8**

DATE FEB 25 2010

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February 25, 2010

California Energy Commission  
Docket No. 09-AFC-8  
1516 9<sup>th</sup> St.  
Sacramento, CA 95814

**Genesis Solar Energy Project - Docket Number 09-AFC-8**

Docket Clerk:

Included with this letter is one hard copy and one electronic copy of the ***Alternative Proposal for Desert Tortoise Mitigation: A Habitat-Based Approach*** for the Genesis Solar Energy Project.

Sincerely,

A handwritten signature in cursive script that reads "Emily Festger".

Emily Festger  
(For Tricia Bernhardt, Project Manager/Tetra Tech EC)

cc: Mike Monasmith /CEC Project Manager



# **Genesis Solar Energy Project**

## **Alternative Proposal for Desert Tortoise Mitigation: A Habitat-Based Approach**

**Submitted by:**

**Genesis Solar, LLC  
700 Universe Boulevard  
Juno Beach, Florida 33408**

**February 2010**

## BACKGROUND

Bureau of Land Management's (BLM's) Northern and Eastern Colorado Desert Coordinated Management Plan (NECO) is the primary land use planning document governing the areas where the Genesis Solar Energy Project (GSEP) is located. NECO was approved via a formal National Environmental Policy Act (NEPA) process that included input from the U.S. Fish and Wildlife Service (USFWS) and California Department of Fish and Game (CDFG). Under NECO, and the various planning documents that support NECO, compensation for impacts to desert tortoise are only required if the area to be impacted has a Category I, II or III designation. The Category I, II and III lands are mapped in NECO and, with the exception of a small segment of the Project's linear facility route, the GSEP Project Area does not fall within any mapped category and, therefore is uncategorized (see Attachment 1, Desert Tortoise Compensation Analysis, for more detail on the relevant language from NECO and its supporting documents).

BLM considers one situation where uncategorized lands nevertheless could be considered as Category III lands: if the uncategorized habitat is occupied by tortoises. In the NEPA document supporting CDCA Plan Amendment 19, which was approved by BLM in 1989/1990 and formally adopted the categorization of desert tortoise habitat on BLM lands, states:

The resulting depiction of the category boundaries may exclude some **occupied** habitat; if such areas are found, they are automatically inside Category III, the lowest category (emphasis added).

Accordingly, the BLM criterion for treating uncategorized/unmapped areas as Category III habitat is not whether the area constitutes suitable habitat for the tortoise, but whether the habitat is occupied by tortoises. In fact, the BLM considered a scenario that would have included *all* suitable habitat, regardless of whether or not it is occupied, as Category III, in the "No Action" alternative for Amendment 19, which states:

Delineate the desert tortoise 'crucial habitat' shown on Map 4 of the CDCA Plan as Category I **and all other tortoise habitat on public land as Category III** (see Appendix A, Map 19B) (emphasis added).

However, the No Action alternative was not selected in either Amendment 19 or in NECO, demonstrating that BLM and the other agencies supporting NECO explicitly rejected the notion of including all habitat suitable for desert tortoise, regardless of occupation, as Category III in favor of limiting treatment as Category III to only those uncategorized lands that are occupied by tortoises. This not only makes biological sense – i.e., providing greater protection for occupied habitat vs. unoccupied habitat – but also makes good policy in that it provides an incentive for development to be directed to unoccupied areas.

This strategy was very successful in the case of Genesis where, after carefully considering the language in NECO, Genesis attempted to find a site that was not occupied by tortoises in order to minimize its impacts to the species and to reduce compensation requirements.

As described in other technical GSEP documents, and in more detail below, extensive protocol-level surveys did not reveal a single sign that tortoises currently occupy the Project Area (i.e., the footprint of the project). Protocol level surveys are widely accepted as a way of determining if tortoises occupy an area. In the case of the GSEP, surveys showed that the Project Area is clearly unoccupied, although some sign was found in the surrounding area. Accordingly, under NECO, the Project should be required to compensate for desert tortoise impacts only in those parts of the Project Area that are categorized.

Nevertheless, in recent publicly-noticed workshops on the Project, representatives from the BLM USFWS, the CDFG and the California Energy Commission (CEC) expressed an interest in exploring compensation for potential Project impacts to the desert tortoise based on the presence of habitat alone in the uncategorized areas of the Project, regardless of whether or not it is currently occupied, and Genesis has agreed to consider providing compensation based on impacts to those areas of habitat that could support desert tortoise at some point in the future. Presented below is an evaluation of which portions of the uncategorized Project Area constitute suitable desert tortoise habitat and which areas do not.

## **DESERT TORTOISE HABITAT EVALUATION**

The desert tortoise is a generalist species that occupies many different habitats and variations of habitats over its relatively broad geographic range. This widely variable species behavior has made it challenging for scientists to accurately and statistically identify the specific habitat parameters that would be associated with tortoise abundance on a rangewide basis. As a result, no studies have attempted to quantify these variables and their variability range-wide, in a meaningful and predictive fashion. Weinstein (1989) actually found that none of several quantitative models he tested performed well. All studies to date have been restricted in one or several ways. The habitat models that cover the broadest geographical area have been restricted to single states (Karl 1983, Weinstein 1989) or to presence/absence only, rather than tortoise abundance (Nussear et al. 2009). Several models have been highly localized (Anderson et al 2000, Chambers 1994), as small as a square mile (Jennings 1997). Others have used coarse-grained habitat parameters (e.g., a broad plant community such as creosote bush scrub) that obscure important heterogeneity in both tortoise density and finer-grained habitat features within the “umbrella” parameters (Schamberger and Turner 1986, Chambers 1994). Still other models have analyzed only a single habitat variable (Wilson 1989). Newer models suffer from using recent tortoise accounts of presence and/or abundance, which is often less related to habitat quality and more related to other factors that have caused the severe rangewide declines since the late 1980’s (Karl 2004, McLuckie et al.

2006, Boarman et al. 2008). Most habitat “models” of the desert tortoise are simple to detailed qualitative descriptions, based on the author’s experience (e.g., Woodbury and Hardy 1948, Luckenbach 1982) or literature reviews (Germano et al. 1994). As with quantitative models, most of these habitat descriptions also suffer from being highly localized (e.g., Woodbury and Hardy 1948) or using broad variables that only generally describe tortoise habitat associations (e.g., Germano et al. 1994). Qualitative observations have the potential to be highly predictive; however, especially when the author’s experience covers a broad geographic range of desert tortoise habitat during periods when tortoise densities were high, as well as detailed observations of habitat features.

At the Genesis Solar Project site (Project Area<sup>1</sup>), no tortoises or evidence of recent tortoise use of the Project Area was observed during intensive surveys in 2009. The survey area included the Project Area (1,824.4 acres) and a substantially larger area (4,640 acres plus 153.6 miles of buffer transects) encompassing the Project Area (Tetra Tech EC and Karl 2009). Tortoises use several to many burrows each year and deposit scat throughout their home ranges, so multiple sign would be expected if a tortoise occupied an area. Furthermore, both scat and burrows can last for several years. The Genesis survey was both intensive and conducted by very experienced tortoise biologists, so it is reasonable to expect that *some* sign would have been found if a tortoise occupied the site. Based on the complete lack of scat and burrows on the Project Area, it can be concluded that no tortoises currently occupy the Project Area; nor have they occupied the Project Area in the last few years.

However, it can also be concluded that tortoises occupy some of the surrounding area. Three burrows were observed approximately four miles west of the Project Area and a single set of tracks was observed a half mile north of the northern border of the Plant Site. Despite the fact that tortoises do not occupy any portion of the Project Area, there is habitat on part of the Project Area that is consistent with occupied habitat adjacent to the Project Area and occupied habitat elsewhere.

In an effort to delineate the boundaries of habitat that could theoretically support tortoises at some point in the future, Dr. Alice Karl walked the site with Mark Massar (Biologist, Bureau of Land Management, Palm Springs South Coast Field Office), Magdalena Rodriquez (Environmental Scientist, California Department of Fish and Game, Eastern Sierra-Inland Deserts Region), and Kenneth Stein (Environmental Manager, Next Era Energy). Potential tortoise habitat was delineated based on the criteria listed in Table 1. These variables were chosen based on Dr. Karl’s 32-plus years of experience assessing tortoise habitat throughout the desert tortoise’s range, plus tortoise presence/absence and mark-recapture surveys at many sites. These variables are also consistent with published habitat assessments that are either more geographically broad habitat

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<sup>1</sup> The Project Area is the Project footprint, which includes the Plant Site and the Linear Facilities.

references or sufficiently detailed localized studies (Luckenbach 1982, Karl 1983, Jennings 1997, Nussear et al. 2009).

**Table 1.** Habitat Variables Used To Delineate Habitat

Habitat Variable	Tortoise Habitat	Not Tortoise Habitat
Shrub Species (including bunch grasses) Richness <sup>1</sup>	> 1 species is common	<i>Larrea tridentata</i> only
Shrub Density	> 7-9% cover	1-6% cover
Dominant Shrub Height	> 1 meter	<1 meter
Drainages: Shrub/grass vegetated	Occasional to common	Rare or none
Arboreal	Occasional to common	Rare or none
Soil Consistence and Texture	Sandy loam or loamy sand Adjacent to dunes	Soft to slightly hard, loamy to silty sand and sandy silt Dunes

1. Species richness is the number of species present, irrespective of which species those are.

The Project Area has relatively consistent elevation, slope aspect, and substrates (i.e., the gravels and rocks that lie on the surface, as opposed to the soil underneath) throughout, so these variables offer little comparative value. Similarly, within the Plant Site, the shrub community comprises only a few variations of creosote bush (*Larrea tridentata*) scrub, so there are no species present that would be considered exclusive of desert tortoise habitat. There are some chenopods (*Atriplex polycarpa*, *A. canescens*) along the linear corridor; also not exclusive of desert tortoise habitat. The variables in Table 1 that separate tortoise habitat from non-habitat all relate to cover site (burrows and other shelter) potential and forage potential. For example, low shrub species richness and very low shrub density (less than about 7%) reflect very low annual species (forage) richness. Both low shrub density and a lack of drainages reflect poor burrowing and cover potential. Lack of vegetated drainages also reflects low forage species availability. Diminutive *Larrea tridentata* individuals are indicative of fine soils and/or low moisture availability, both of which negatively affect the presence of annual tortoise forage species.

Fine soils are reflective of proximity to the lakebed – the southern Project Area (Plant Site and the revised Linear Facilities north of Interstate-10) overlays the historic and current Ford Dry Lake bed and shoreline (see Attachment 2, Plate 1 – Geomorphic Ancient Lake Shoreline Evaluation Map). The lakebed not only experiences periodic flooding and compacted soils, both of which negatively affect burrowing, but there are few forage species. These areas containing lakebed deposits cannot support burrowing. Additionally, dunes cannot support burrowing because of their unstructured soils; however, washes are common adjacent to dunes and there is abundant forage both in the washes and on the dunes.

Except for soils and shrub height, where there is a gradation between tortoise habitat and non-habitat, if any one of the criteria in the “Tortoise Habitat” column were present, then the location was conservatively considered to be tortoise habitat for purposes of this delineation.

Based on mapping these features throughout the Project Area, as well as careful scrutiny of data sheets and photographs taken during the Spring 2009 surveys, all of the eastern Plant Site, some of the western Plant Site, and most of the linear corridor is not tortoise habitat (Figures 1-3). Some of the western Plant Site is marginally suitable habitat.



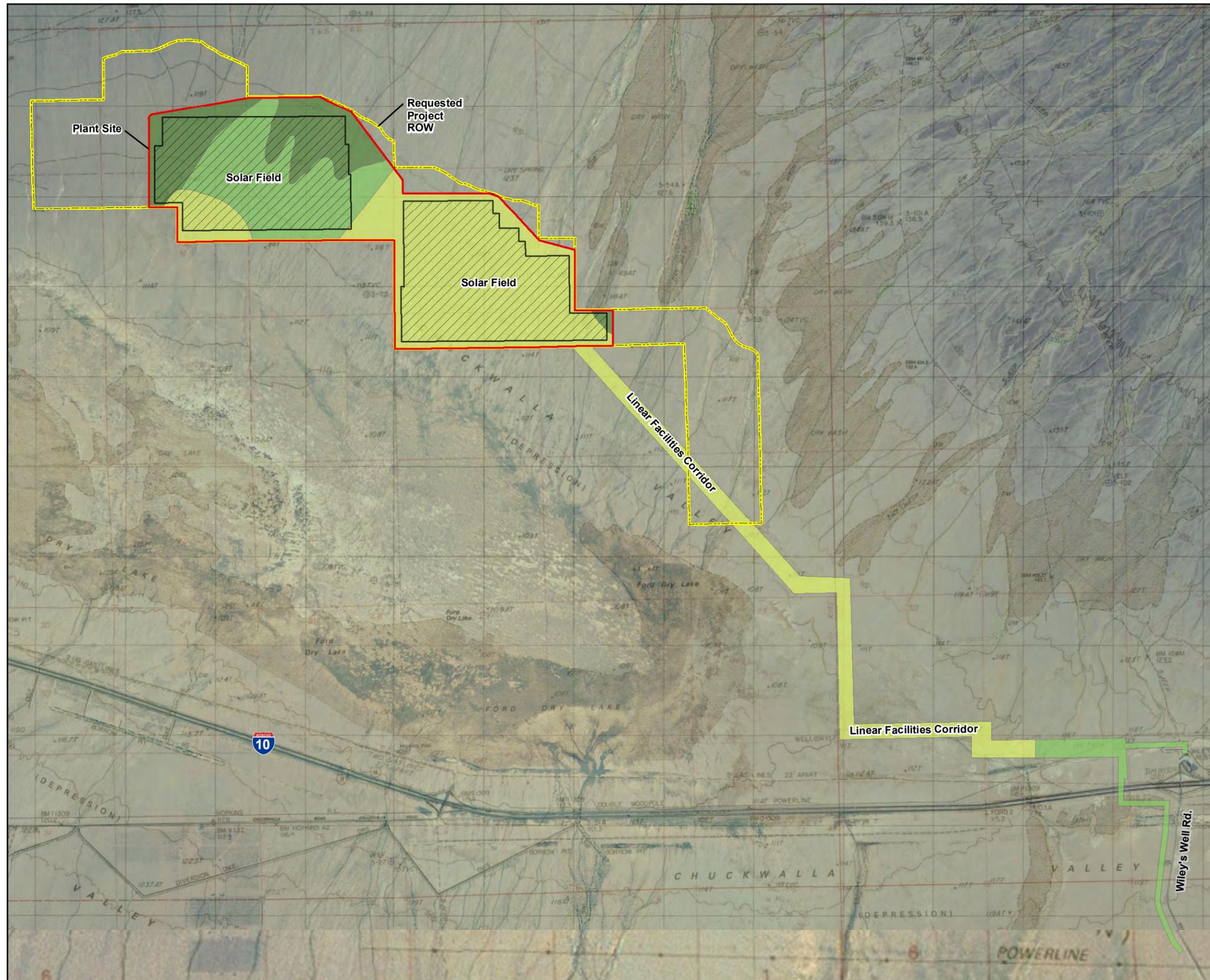
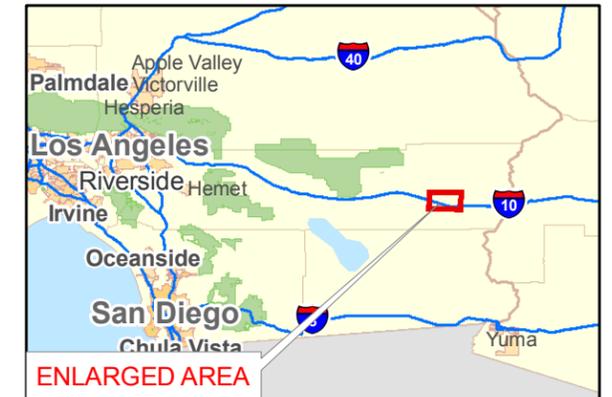
**Figure 1.** Short, sparse *Larrea tridentata* with no to rare drainages. This photograph was taken midway in the Plant Site and is typical of the eastern Plant Site and much of the western Plant Site. This is considered to be non-habitat for desert tortoises.



**Figure 2.** Northwestern portion of the Plant Site showing typical vegetation and hydrology there. Note several shrub species (*Larrea tridentata*, *Ambrosia dumosa*, *Pleuraphis rigida*, *Olneya tesota*) and numerous runnels. This is currently unoccupied habitat that is similar to occupied, offsite habitat and has the potential to be occupied in the future by desert tortoises.

GENESIS SOLAR, LLC

GENESIS SOLAR ENERGY PROJECT  
RIVERSIDE COUNTY,  
CALIFORNIA



Legend

Requested Project ROW

Plant Site

Proposed Solar Field

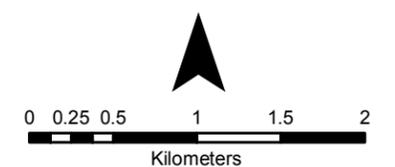
Habitat Potential for Desert Tortoise

Not Habitat (1,306 ac)

Marginally Suitable (542 ac)

Tortoise Habitat (372 ac)

N



Notes:

(a) UTM Zone 11, NAD 1983 Projection.

(b) Source data: ESRI, USDA, TTEC, Alice Karl & Assoc.

**FIGURE 3**  
**HABITAT POTENTIAL FOR**  
**DESERT TORTOISE**



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**ATTACHMENT 1**

**DESERT TORTOISE COMPENSATION ANALYSIS**

**The Genesis Solar Energy Project Plant Site Is Located In  
Uncategorized Desert Tortoise Habitat That Does Not Require  
Compensation Under The Northern and Eastern Colorado Desert  
Coordinated Management Plan (NECO Plan)**

**I. All existing land use maps depict the Genesis Solar Energy Project (Project) Plant Site within habitat that is uncategorized for desert tortoise (DT).**

A. California Statewide Desert Tortoise Management Policy, October 1992, Map 1 – Map of California Desert Conservation Area showing Interim Category I, II and III desert tortoise habitat areas.

B. Northern and Eastern Colorado Desert Coordinated Management Plan, 2002, Map 2-3, Appendix A.

**II. BLM planning documents clearly demonstrate an intent to categorize only lands occupied by DT as Category I, II or III habitat (all of which require compensation for impacts), and do not require compensation for impacts to uncategorized lands. BLM has not adopted any planning document that applies a Category III designation to all uncategorized BLM lands that have potentially suitable habitat for DT.**

**A. 1989/1990 California Desert Conservation Area (CDCA) Plan Amendment 19**

1. In describing the Preferred Alternative for CDCA Plan Amendment 19, the Final Environmental Impact Statement (FEIS) states at pg. 2-13 that the proposed amendment “would merely establish the categories and their boundaries.” It then states that “Some areas (e.g., dry lake beds, lava flows, mountain peaks) *within the management categories* are not habitat for tortoises (emphasis added).” This plainly was meant to exclude a mountain peak (for example) that falls *within* a mapped category. This was intended to carve out areas within mapped categories, not to pull in uncategorized areas.

2. Amendment 19<sup>1</sup> intended to categorize only occupied desert tortoise habitat. In describing the Preferred Alternative, the FEIS states at pg. 2-14: “The resulting depiction of the category boundaries may exclude some *occupied* habitat; if such areas are found, they are automatically inside Category III, the lowest category. In

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<sup>1</sup> **DELINEATION OF DESERT TORTOISE MANAGEMENT CATEGORIES [#19, 89/90]**

Delineate tortoise habitat on public land in the CDCA in three management categories as follows:  
Category I Goal: Maintain stable, viable populations and increase populations where possible.  
Category II Goal: Maintain stable, viable populations. Category III Goal: Limit declines to the extent possible using mitigation measures. The “crucial habitat” as shown on Map 4 of the CDCA Plan [1980] is superseded by this amendment.

other words, Category III habitat includes all other public lands where tortoises occur.” Plainly the word “occur” was intended to mean “occupied.”

3. The No Action alternative in the FEIS (pg. 2-16) proposed to include ALL desert tortoise habitat not already categorized as Category III habitat: “Delineate the desert tortoise `crucial habitat’ shown on Map 4 of the CECA Plan as Category I and all other tortoise habitat on public land as Category III (see Appendix A, Map 19B).” BLM, however, did **not** adopt the No Action alternative, demonstrating its intent to include in Category III only certain Public Lands that met the criteria for Category III habitat, and not all habitat potentially suitable for desert tortoise located on BLM land.

**B. California Statewide Desert Tortoise Management Policy, October 1992, prepared and adopted by BLM and CDFG.**

1. Management goals – p. 23 - discuss only Category I, II and III habitats. No discussion of habitats that are not categorized.

2. Guidelines for attaining management goals – pg. 24 – Guideline 1 – Map 1 depicts Interim Tortoise Category Map as adopted by BLM. Further states: “Note that the category designations only apply to Public Lands; intermingled private lands shown on the map do not carry a category designation. Note also that the depiction of Category III habitat is only an approximation; Category III habitat includes all other Public Lands where tortoises occur.” This demonstrates an intent to include in Category III only those lands on which DT are present – hence the word “occur.”

3. Three of the four criteria for Category I, Category II and Category III lands – pg. 25 – are for presence of DT on those lands, demonstrating an intent to categorize only those lands that are presently occupied by DT:

a. Category I – Habitat Area essential to maintenance of large, viable populations; medium to high density or low density contiguous with medium or high density; and increasing, stable or decreasing population

b. Category II – Habitat Area may be essential to maintenance of viable populations; medium to high density or low density contiguous with medium or high density; and stable or decreasing population

c. Category III – Habitat Area not essential to maintenance of viable populations; low to medium density not contiguous with medium or high density; and stable or decreasing population.

4. Guideline 23 – pg. 32 – Implementation -- specifies that compensation is tied directly to the DT populations on the categorized lands. “Whenever possible, compensation will be in the form of habitat enhancement sufficient to support

the tortoise population on the affected habitat; the objective is to maintain overall tortoise carrying capacity.”

5. Management Goal F – Maintain and Increase Populations Through Translocation of Wild Tortoises into Suitable Unoccupied or Depleted Habitats within the Historic Range – pg. 36 – recognizes there is desert tortoise habitat that is unoccupied.

Includes Guideline 32 – “Relocation or reintroduction areas containing suitable habitat with few or no tortoises (i.e. nonviable populations), with low land use conflicts, and within historic range will be identified.” Pg. 37.

**C. Northern & Eastern Colorado Desert Coordinated Management Plan (NECO Plan), Amendment to the California Desert Conservation Area Plan 1980 (2002) – FEIS (July 2002)**

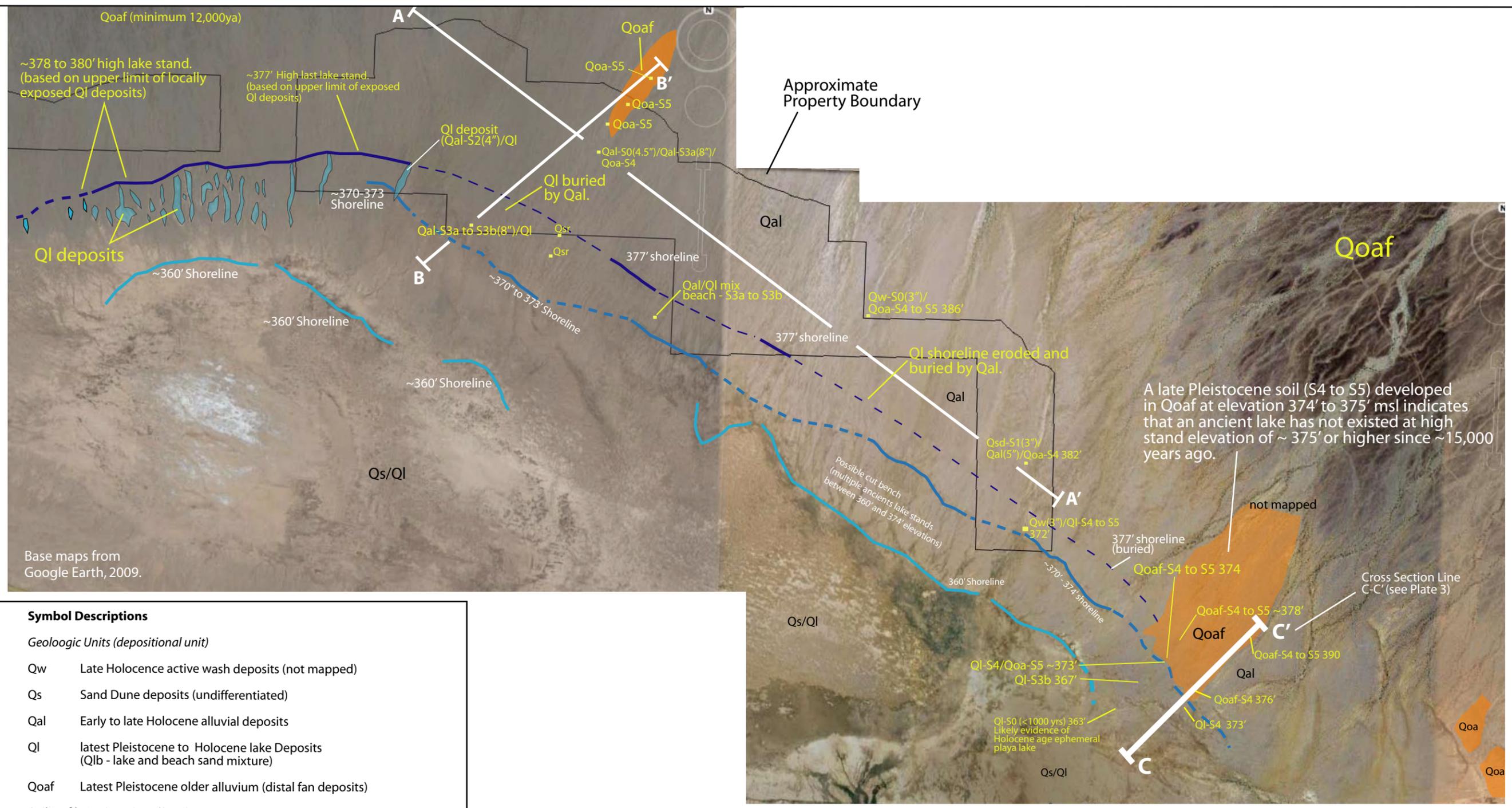
1. The NECO Plan FEIS makes a distinction throughout the analysis between DT habitat that already has been categorized by BLM and DT habitat generally. See pg. 2-5 - Table 2-1 Summary of Issues and Proposed Plan Amendments to the CDCA Plan – Amendment 2 Description – “Change desert tortoise CAT II and CAT III to all CAT I inside DWMA, change all CAT I and CAT II outside DWMA to CAT III.”

2. No Action Alternative – pg. 2-21 – states that Category I and Category II desert tortoise habitat, depicted on Map 2-3, will be managed according to the California Statewide Desert Tortoise Management Policy.

3. Objective e – Mitigate Effects on Tortoise Populations outside DWMA – pg. 2-31 – recognizes distinction between already categorized and uncategorized lands. “All existing Desert Tortoise Category I, II and III outside of DWMA boundaries would be converted to and managed as Category III habitat.” See also Table 2.9 Comparison of Alternatives – pg. 2-105 (same).

**ATTACHMENT 2**

**PLATE 1 – GEOMORPHIC ANCIENT LAKE SHORELINE  
EVALUATION MAP**



Base maps from Google Earth, 2009.

**Symbol Descriptions**

*Geologic Units (depositional unit)*

- Qw Late Holocene active wash deposits (not mapped)
- Qs Sand Dune deposits (undifferentiated)
- Qal Early to late Holocene alluvial deposits
- Ql latest Pleistocene to Holocene lake Deposits (Qlb - lake and beach sand mixture)
- Qoaf Latest Pleistocene older alluvium (distal fan deposits)

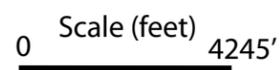
*Soil Profile Designations (Stratigraphy) and Estimated Ages*

- S0 No soil profile observed (<1 Kya)
- S1 1 to 3 ky
- S2 3 to 5 ky
- S3a 5 to 8 ky
- S3b 8 to 12ky
- S4 12 to 20ky
- S5 20 or older

*Nomenclature of Geologic Deposit and Soils*

Qal-S2/Qoa-S4 = 3 to 5ky age soil formed in unit Qal, which overlies Quaternary Older alluvium with a soil profile with minimum age of 12 to 20 ky.

Note: All elevations utilized acquired by evaluating Google Earth.



GENESIS SOLAR, LLC	<b>WorleyParsons</b> resources & energy			
<b>Geomorphic Ancient Lake Shoreline Evaluation Map</b> with Limited Geology, Ford Dry Lake, California		MK	MT	02/05/10
		52011206	Plate 1	



**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT  
COMMISSION OF THE STATE OF CALIFORNIA  
1516 NINTH STREET, SACRAMENTO, CA 95814  
1-800-822-6228 – [WWW.ENERGY.CA.GOV](http://WWW.ENERGY.CA.GOV)**

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

**Docket No. 09-AFC-8**

**PROOF OF SERVICE  
(Revised 2/22/10)**

**APPLICANT**

Ryan O’Keefe, Vice President  
Genesis Solar LLC  
700 Universe Boulevard  
Juno Beach, Florida 33408  
\*E-mail service preferred  
[Ryan.okeefe@nexteraenergy.com](mailto:Ryan.okeefe@nexteraenergy.com)

Scott Busa/Project Director  
Meg Russel/Project Manager  
Duane McCloud/Lead Engineer  
NextEra Energy  
700 Universe Boulevard  
Juno Beach, FL 33408  
[Scott.Busa@nexteraenergy.com](mailto:Scott.Busa@nexteraenergy.com)  
[Meg.Russell@nexteraenergy.com](mailto:Meg.Russell@nexteraenergy.com)  
[Duane.mccloud@nexteraenergy.com](mailto:Duane.mccloud@nexteraenergy.com)

\*E-mail service preferred  
Matt Handel/Vice President  
[Matt.Handel@nexteraenergy.com](mailto:Matt.Handel@nexteraenergy.com)  
\*Email service preferred  
Kenny Stein,  
Environmental Services Manager  
[Kenneth.Stein@nexteraenergy.com](mailto:Kenneth.Stein@nexteraenergy.com)

Mike Pappalardo  
Permitting Manager  
3368 Videra Drive  
Eugene, OR 97405  
[mike.pappalardo@nexteraenergy.com](mailto:mike.pappalardo@nexteraenergy.com)

\*Kerry Hattevik/Director  
West Region Regulatory Affairs  
829 Arlington Boulevard  
El Cerrito, CA 94530  
[Kerry.Hattevik@nexteraenergy.com](mailto:Kerry.Hattevik@nexteraenergy.com)

**APPLICANT’S CONSULTANTS**

Tricia Bernhardt/Project Manager  
Tetra Tech, EC  
143 Union Boulevard, Ste 1010  
Lakewood, CO 80228  
[Tricia.bernhardt@ttech.com](mailto:Tricia.bernhardt@ttech.com)

\*James Kimura, Project Engineer  
Worley Parsons  
2330 East Bidwell Street, Ste.150  
Folsom, CA 95630  
[James.Kimura@WorleyParsons.com](mailto:James.Kimura@WorleyParsons.com)

**COUNSEL FOR APPLICANT**

Scott Galati  
Galati & Blek, LLP  
455 Capitol Mall, Ste. 350  
Sacramento, CA 95814  
[sgalati@gb-llp.com](mailto:sgalati@gb-llp.com)

**INTERESTED AGENCIES**

California-ISO  
[e-recipient@caiso.com](mailto:e-recipient@caiso.com)  
Allison Shaffer, Project Manager  
Bureau of Land Management  
Palm Springs South Coast  
Field Office  
1201 Bird Center Drive  
Palm Springs, CA 92262  
[Allison\\_Shaffer@blm.gov](mailto:Allison_Shaffer@blm.gov)

**INTERVENORS**

California Unions for Reliable  
Energy (CURE)  
c/o: Tanya A. Gulesserian,  
\*Rachael E. Koss,  
Marc D. Joseph  
Adams Broadwell Joesph  
& Cardoza  
601 Gateway Boulevard,  
Ste 1000  
South San Francisco, CA 94080  
[tgulesserian@adamsbroadwell.com](mailto:tgulesserian@adamsbroadwell.com)  
[rkoss@adamsbroadwell.com](mailto:rkoss@adamsbroadwell.com)

Californians for Renewable  
Energy, Inc. (CARE)  
Michael E. Boyd, President  
5439 Soquel Drive  
Soquel, CA 95073-2659  
[michaelboyd@sbcglobal.net](mailto:michaelboyd@sbcglobal.net)

**OTHER**

Alfredo Figueroa  
424 North Carlton  
Blythe, CA 92225  
[lacunadeaztlan@aol.com](mailto:lacunadeaztlan@aol.com)

**ENERGY COMMISSION**

JAMES D. BOYD  
Commissioner and Presiding  
Member  
[jboyd@energy.state.ca.us](mailto:jboyd@energy.state.ca.us)

ROBERT WEISENMILLER  
Commissioner and Associate  
Member  
[rweisenm@energy.state.ca.us](mailto:rweisenm@energy.state.ca.us)

Kenneth Celli  
Hearing Officer  
[kcelli@energy.state.ca.us](mailto:kcelli@energy.state.ca.us)

Mike Monasmith  
Siting Project Manager  
[mmonasmi@energy.state.ca.us](mailto:mmonasmi@energy.state.ca.us)

Caryn Holmes  
Staff Counsel  
[cholmes@energy.state.ca.us](mailto:cholmes@energy.state.ca.us)

Robin Mayer  
Staff Counsel  
[rmayer@energy.state.ca.us](mailto:rmayer@energy.state.ca.us)

Jennifer Jennings  
Public Adviser’s Office  
[publicadviser@energy.state.ca.us](mailto:publicadviser@energy.state.ca.us)

\*indicates change

I, Emily Festger, declare that on February 25, 2010, I served and filed copies of the attached *Alternative Proposal for Desert Tortoise Mitigation: A Habitat-Based Approach*, dated February 25, 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](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:

*(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 or by depositing in the United States mail at Sacramento, California with first-class postage thereon fully prepaid and addressed as provided on the Proof of Service list above to those addresses **NOT** marked "email preferred."

**AND**

**FOR FILING WITH THE ENERGY COMMISSION:**

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

**OR**

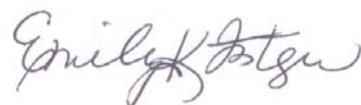
depositing in the mail an original and 12 paper copies, as follows:

**CALIFORNIA ENERGY COMMISSION**

Attn: Docket No. 09-AFC-8  
1516 Ninth Street, MS-4  
Sacramento, CA 95814-5512  
[docket@energy.state.ca.us](mailto:docket@energy.state.ca.us)

I declare under penalty of perjury that the foregoing is true and correct.

Original Signed By:



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