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**DOCKET**  
**09-AFC-8**

DATE APR 29 2010

RECD. APR 29 2010

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OF COUNSEL  
THOMAS R. ADAMS  
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April 29, 2010

California Energy Commission  
Attn Docket No. 09-AFC-8  
1516 Ninth Street, MS-4  
Sacramento, CA 95814-5512

Re: Genesis Solar Energy Project; 09-AFC-8

Dear Docket Clerk:

Enclosed are an original and one copy of **California Unions for Reliable Energy Petition for Inspection and Copying of Records for the Genesis Solar Energy Project**. Please docket the original, conform the copy and return the copy in the envelope provided.

Thank you for your assistance.

Sincerely,

/s/

Rachael E. Koss

REK:bh  
Enc.

2364-051a

**STATE OF CALIFORNIA**  
**California Energy Commission**

In the Matter of:

The Application for Certification for the  
GENESIS SOLAR ENERGY PROJECT

Docket No. 09-AFC-8

**CALIFORNIA UNIONS FOR RELIABLE ENERGY  
PETITION FOR INSPECTION AND COPYING OF RECORDS  
FOR THE GENESIS SOLAR ENERGY PROJECT**

April 29, 2010

Rachael E. Koss  
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Attorneys for the CALIFORNIA UNIONS  
FOR RELIABLE ENERGY

## I. INTRODUCTION

Pursuant to section 2506 of Title 20 of the California Code of Regulations, California Unions for Reliable Energy (“CURE”) petitions to inspect and copy the following documents regarding the *Genesis Solar Energy Project* (hereinafter referred to as the “*seven enumerated filings*”):

1. Draft Class II and Class III Cultural Resources Inventories for the Genesis Solar Energy Project, Riverside County, California, as referenced in the confidential cover submittal, dated 08/31/2009 from J. Farrell to M. Jones, Docket: 53095.
2. Data Adequacy Supplemental Cultural Resource (AFC Section 5.16 Information), as referenced in confidential cover submittal from J. Farrell to M. Jones, Docket: 53610, dated 10/12/2009, including
  - Department of Parks and Recreation (DPR) 523 Forms for the following previously recorded archaeological resources: P-33-9037, P-33-9038, P-33-13088, P-33-13089, P-33-13467, P-33-13470, P-33-13471, P-33-13657, and CA-RIV-9084 and P-33-17834 (total of 41 pages);
  - Maps: Appendix H: Class III Archaeological site Locations within ROW and Surveyed Corridor and Appendix H: Class III Archaeological site Locations within ROW and Surveyed Corridor (total of 4 maps); and
  - Draft Historical Resources Inventory Genesis Solar Energy Project, Riverside County, California (total of 34 pages).
3. Application for Confidential – Data Adequacy Supplement Cultural Resources, dated 11/02/09, Docket: 53923.
4. Revised Draft II and Class III Cultural Resources Inventories for the Proposed Genesis Solar Energy Project, Riverside County, California, as referenced in confidential cover submittal from J. Farrell to M. Jones, dated 11/02/2009.
5. Final Draft: Class II and Class III Cultural Resources Inventories for the Proposed Genesis Solar Energy Project, Riverside County, California, from R. Gladden to M. Jones, dated 11/16/09, Docket: 54200.

6. Data Responses 1B – Cultural Resources, from R. Gladden to M. Jones, dated 01/11/2010, Docket: 54874.
7. Final Draft Class II and Class III, from M. Mills to M. Jones, dated 03/04/2010, Docket: 55822.

CURE seeks to review the above seven enumerated filings because they will enable CURE to evaluate the impacts to cultural resources related to the application for certification (“AFC”) for the Genesis Solar Energy Project (“Project”) and to develop comments and prepare expert testimony regarding the identification, avoidance and mitigation of cultural resources impacts associated with Project siting and development. CURE has retained cultural resources preservation expert Russell Kaldenberg to assist in the review of these materials.<sup>1</sup>

CURE is an active intervenor in this siting proceeding and a formal consulting party in the National Historic Preservation Act Section 106 consultation process. As such, CURE will be working with the Bureau of Land Management, the Energy Commission, the State Historic Preservation Office, the Advisory Council on Historic Preservation, the tribes and other consulting parties in developing a programmatic agreement for protection of the cultural resources on the Project site, pursuant to the National Historic Preservation Act, 16 U.S.C. § 470f. In order to ensure confidentiality, CURE proposes to enter into a nondisclosure agreement with Genesis Solar, LLC. A proposed nondisclosure agreement is attached as Exhibit B.

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<sup>1</sup> Russell Kaldenberg’s resume is attached as Exhibit A.

## II. DISCUSSION

On August 31, 2009, Genesis Solar, LLC (“Applicant”) submitted an AFC for the Project. On September 30, 2009, the Energy Commission found the Project data inadequate in nine sections. On October 12, 2009, the Applicant submitted a Data Adequacy Supplement to the AFC. On November 4, 2009, the Commission accepted the AFC as data adequate. The Applicant has filed a number of documents under confidential cover relating to the cultural resources on the Project site. The Project contains numerous cultural resource sites including temporary camps, rock rings, and lithic, historic refuse and ceramic scatters. However, detailed information about these historic resources has been deemed confidential.

The Applicant submitted an initial request for confidential designation of cultural resource information on August 31, 2009.<sup>2</sup> Specifically, the Applicant requested confidential designation for the cultural resource reports on the grounds that the information “specifically identifies site locations and areas of potential cultural significance” which may be subject to “destruction and or ‘looting’” if the “locations of these cultural resources are released to the public domain.”<sup>3</sup> The Commission granted the application.

CURE petitions to inspect and copy the seven enumerated filings to enable CURE to review the cultural resources technical reports and prepare

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<sup>2</sup> Confidential Cover Submittal of the Genesis Solar Energy Project Draft Class II and Class III Cultural Resources Inventories for the Genesis Solar Energy Project, Riverside County, California, August 31, 2009.

<sup>3</sup> *Id.*

expert testimony regarding strategies for identification, avoidance and mitigation of cultural resources impacts associated with Project development.

On March 22, 2010, CURE requested to become a consulting party to the Section 106 consultation process. On April 5, 2010, BLM granted CURE's request to be a consulting party in the National Historic Preservation Act Section 106 consultation process. BLM agreed with CURE that it was entitled to consulting party status due to CURE's clear interest in the historic properties on the Project site and CURE's legal and technical expertise that may be beneficial to the consultation process.<sup>4</sup>

CURE has retained cultural resources preservation expert Russell Kaldenberg to assist in the review of these materials.<sup>5</sup> CURE will sign a nondisclosure agreement with Genesis Solar, LLC to further protect sensitive information relating to the resources. The purpose of the nondisclosure agreement is to ensure that the requested materials will remain confidential and will not be used except as necessary to participate in the proceeding and the NHPA Section 106 consultation process. CURE's counsel and consultants have routinely been parties to nondisclosure agreements in CEC and CPUC proceedings and are experienced at protecting confidential, sensitive information from public disclosure.

CURE is a coalition of unions whose members construct and operate power plants in California. CURE intervened in this proceeding because the

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<sup>4</sup> Letter from John R. Kalish, Field Manager, to Rachael E. Koss, Adams, Broadwell Joseph and Cardozo, April 5, 2010.

<sup>5</sup> Resume of Russell Kaldenberg is attached as Exhibit A.

Project directly affects the union members' economic and environmental interests.<sup>6</sup> Specifically here, without proper avoidance and/or mitigation, destruction of cultural resources in one solar proceeding may jeopardize the approval of future development in the region due to either significant individual and/or cumulative impacts on these irreplaceable resources. Additionally, union members live in and around this community and have a direct interest in protecting cultural and other historic resources. CURE's ability to exercise its rights as an intervenor in the CEC proceeding is dependent on thorough review of the cultural resources information in the seven enumerated filings.

### **III. CONCLUSION**

Because CURE seeks to protect the cultural resources on the Project site as an Intervenor in the CEC proceeding, CURE has retained a cultural resources preservation expert, and is willing to enter into a non-disclosure agreement with the Applicant, CURE requests that the Commission grant CURE's petition to inspect and copy the seven enumerated filings above. The requested information is necessary for CURE to fully exercise its rights as a party in this proceeding.

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<sup>6</sup> Petition to Intervene by California Unions for Reliable Energy, In the Matter of the Application for Certification for the Genesis Solar Energy Project, Docket No. 09-AFC-8 (December 4, 2009).

Dated: April 29, 2010

Respectfully submitted,

*/s/*

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Rachael E. Koss  
Tanya A. Gulesserian  
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Attorneys for the CALIFORNIA UNIONS  
FOR RELIABLE ENERGY

EXHIBIT A

**Russell L. Kaldenberg, M.A.**  
**Principal/Government Liaison**  
**Years of Experience: 38**

**Education:**

M.A. 1976/Anthropology/San Diego State University  
B.A. 1971/Anthropology/San Jose State University

**Registrations:**

1976 Register of Professional Archaeologists

**Professional Profile:**

Mr. Kaldenberg joined ASM in 2007 after 31 years in federal service as an archaeologist. Most recently, he served as the Command Archaeologist at NAWA China Lake, located in the southern California Mojave Desert. He has received awards for his work to preserve archaeological and historical resources in the southwest. Mr. Kaldenberg served as the BLM's State Archaeologist, Tribal Liaison, Paleontologist and Deputy Historic Preservation Officer in the State of California from 1993-2003. He has served as Chair of the California SHPO's Task Force on archaeological mitigation/banking and as a co-chairperson of the Paleontology and Cultural Resources Action Team for the California Desert Manager's group.

Mr. Kaldenberg was a member of many cultural resources management review teams for the BLM, U.S. Forest Service (USFS) and National Park Service (NPS). In this role, he examined uses of budget and resources and reviewed guidance for implementing effective cultural resource and recreation management programs. He also served as team lead on a number of reviews. He served as the national program lead for coordination with INAH, the Border Manager's Group and the BLM. Mr. Kaldenberg authored the policy that was later adopted for compliance with NHPA when projects cross international boundaries. He received BLM State Director's award for role in developing policy. He has taught and developed seminars, annual conferences, and training classes for over 30 years dealing with historic preservation, Native American consultation and coordination, ARPA, recreation, wind energy development, mining, and other uses of the public lands.

**Selected Project Experience:**

NHPA Evaluation for Sunrise Powerlink Transmission Line, San Diego Gas & Electric Company, Imperial and San Diego counties, California, ongoing. As Principal Investigator, managed NHPA compliance with the BLM and conducted Native American coordination. Developed a strategy for compliance with Section 106 and Native American direction. Worked closely with client and directed staff to ensure timely compliance and evaluation of cultural resources. Coordinated with BLM staff.

Expert Witness for Glamis Dunes Project, Imperial County, California, 2007. Served as expert witness for the U.S. State Department NAFTA Arbitration Division on 36 CFR 800 regulations and Native American involvement. Provided testimony on behalf the State Department in preparation for arbitration and during arbitration hearing.

Eagle Mountain Pumped Storage Facility, GEI Consultants, Riverside County, California, 2009. Provided Section 106 and Native American coordination and consultation on behalf of FERC for the project for BLM and the California Office of Historic Preservation.

Inventory for Cocopah Nurseries, Bureau of Land Management, Riverside County, California, 2008-2009. ASM designed and conducted a cultural resources inventory in support of a Federal Land Policy and Management Act land sale, inventory and evaluation, Native American coordination. Prepared budget, worked with BLM and the client to identify suitable lands; designed inventory strategy and worked with Native Americans.

Marine Corps Air Ground Combat Center Proposed Expansion EIS, TEC, 29 Palms, San Bernardino County, California, ongoing. As Principal Investigator, prepared the cultural resources and Native American sections of the EIS being prepared for the expansion of the installation. Coordinated with the Navy, to ensure timely delivery of sections for the EIS. Reviewed previous archaeological inventories and summarized the information for the EIS.

NHPA Evaluation for Cal Portland Cement, Enviroscentists, Kern County, California, 2008-2009. As Principal Investigator, managed a NRHP evaluation and compliance, Native American coordination, and Plan of Development for minerals evaluation and development.

NAWS China Lake Cultural Resources Manager, Department of the Navy NAVAIR, NAWS China Lake, Ridgecrest, Kern County, California, 2003-2007. As Command Archaeologist, provided oversight of projects requiring Section 106 and Section 110 work at NAWS China Lake. Developed Cultural Resources Program including research projects, public outreach program, and compliance with NHPA. Developed contract needs and budgets. Managed subcontractors and cultural resource specialists. Developed and managed curation facility. Created a strong volunteer program to assist with the management of resources on the base. Worked with various Native American families and old time China Lake families to develop oral histories, access to plant resources and historic sites.

Coso Rock Art National Historic Landmark Cultural Resources Manager, Department of the Navy, NAWS China Lake, Ridgecrest, Kern County, California, 2003-2007. As Cultural Resource Manager for the Coso Rock Art National Historic Landmark, worked with Navy command, the National Park Service, professional researchers, various public entities, museums, and docents to manage cultural resources, ensure public visitation,

refine visitor programs, install interpretive signage, and develop a vandalism monitoring program. Created Native American education program regarding protocol for entering a restricted portion of the base to enable Indian tribal members to visit their heritage areas.

California Archaeological Site Steward Program, Bureau of Land Management and California Office of Historic Preservation, California, 1998-2003. As Instructor, developed and taught an educational program related to archaeological site stewardship on behalf of the BLM and the California SHPO. Other partners include the Native American Heritage Commission (NAHC) and the California Off-Highway Vehicle Division. Received grants to provide instruction and to train several hundred Site Stewards to protect and monitor cultural resources. Taught program in California, Baja California, and Puerto Rico. Received Governor's Historic Preservation Award for role in the development of the program.

Kern River Pipeline Project FERC Compliance, Director of BLM Wyoming, through Utah and Nevada to California, 2001-2003. As Liaison to all four states and FERC, developed Programmatic Agreement with FERC to ensure project compliance. As the National Cultural Resources Team Lead, provided guidance and oversight for the archaeological, historical, and Native American portions of the pipeline. Project received award from the Society for American Archaeology for project management.

Algodones Cultural Landscape Study, Bureau of Land Management, Imperial County, California, 2002. As Cultural Resource Consultant, successfully completed study for a BLM grant to develop an approach to study cultural landscapes. Oversaw the Algodones Cultural Landscape study, which considered an extensive sand dunes system, which crosses the Mexico-United States border. Conducted consultation and data gathering that included archaeology, history, and Native peoples in the United States and Mexico. Received recognition for the efforts through the Association of Environmental Planners and the BLM.

Glamis Gold Development Compliance, Bureau of Land Management, Imperial County, California, 1997-2001. As BLM Lead Archaeologist and contact for proposal, worked closely with applicant, local historic preservation interests and Native American tribes in identifying issues, developing creative methods to study resource issues with the SHPO and ACHP, and worked closely with the NAHC and the State Director to ensure compliance with the NHPA.

Education and Implementation of Executive Order (EO) 13007, Bureau of Land Management, United States, 1998-2003. As the national Lead Archaeologist for BLM, coordinated and developed protocol documents among California Indian tribes and the Bureau of Land Management to comply with Government-to-Government EO 13007. Tracked implementation of protocol, worked with various federally recognized tribes and non-federally recognized tribes to develop protocols. Instructed BLM managers and staff in procedures to follow with tribes to develop such protocols. Designated as National Lead by BLM Director for implementing EO 13007. This involved representing the BLM

throughout the U.S. in multiagency forums while meeting with many of the over 500 federally recognized Indian tribes.

Medicine Lake Highlands Geothermal Development Project on the Modoc National Forest, Bureau of Land Management, California, 2002-2003. As State Lead Archaeologist, worked with geothermal proponent, interested publics, the Pit River, Klamath, and Modoc tribes, BLM, the USFS, the SHPO and the ACHP and facilitators to resolve issues related with development of geothermal energy and important Native American locales. Presented issues and strategy to both USFS Chief and BLM Director.

National Register Nominations for Various Historic Properties Located on Under Federal Jurisdiction, Bureau of Land Management, California, 1997-2003. As State Archaeologist, worked with the SHPO and the Keeper of the NRHP to write and develop NRHP nominations for historic properties located on Federal lands and those on private lands affected by federally licensed and permitted projects. Projects included the Boulder Dam to Los Angeles Transmission Line, Newberry Cave, Blackwater Well, the L.A. Aqueduct, the Plank Road, and many others. Also managed the nomination for Mt. Cuchaama the first Native American Traditional Cultural Property (TCP) to be submitted to and listed in the NRHP.

Section 110 Compliance, Bureau of Land Management, California, 1993-2003. As State Archaeologist, worked closely with the BLM management team to ensure that Section 110 of the NHPA responsibilities were carried out as a normal part of managing resources on public lands. Worked with budgeting staff to target no less than 10% of staff time to work on Section 110 projects. Developed Instruction Memoranda and worked closely with the BLM Field Offices and the California SHPO to identify projects.

Southern San Joaquin Valley Oil Development Programmatic Agreement, Bureau of Land Management, California State Office, 2001-2004. As BLM Lead Archaeologists for the development of a Programmatic Agreement related to oil development in central California, developed strategies to examine historic properties and Native American concerns in an existing oil field and devise streamlining procedures to meet energy as well as historic and heritage needs.

Various Pipeline Projects Development, Bureau of Land Management, 1978-2003 in Arizona, California, Nevada, Oregon and Baja California Norte. As BLM Cultural Program Lead, managed many linear projects including the Northern Baja Pipeline Project, Tuscorara Pipeline, Palo Verde to Devers, Boulder Power Line, Sun Desert Transmission Line, and Kern River Pipeline. Ensured compliance with regulations and consultation.

Southern California Indian Land Transfer Act, Bureau of Land Management, California, 1983-1987. As Project Area Manager and Regional Archaeologist, initiated the Southern California Indian Land Transfer Act and worked with elected officials to transfer over 8,000 acres of public lands to southern California Indian tribes. The land was transferred

as a result of legislation sponsored by the local congressional delegation as a result of legislation drafted on their behalf.

## EXHIBIT B

**STATE OF CALIFORNIA**  
**California Energy Commission**

In the Matter of:

The Application for Certification for the  
GENESIS SOLAR ENERGY PROJECT

Docket No. 09-AFC-8

**NON-DISCLOSURE AGREEMENT REGARDING  
CONFIDENTIALITY OF GENESIS SOLAR  
ENERGY PROJECT CULTURAL RESOURCE  
DOCUMENTS**

1. This Non-Disclosure Agreement (NDA) is entered into between Genesis Solar, LLC (Genesis) and California Unions for Reliable Energy (CURE, as defined herein). This NDA shall govern access to and the use of all Confidential Records of Genesis in California Energy Commission (Commission or CEC) Docket No. 09-AFC-8, as hereinafter defined. Notwithstanding any order terminating this docket, this NDA shall remain in effect unless lifted by Genesis pursuant to paragraph 12 below.
2. **Definitions –**
  - a. The term “Project” shall mean the Genesis Solar Energy Project as described in Docket 09-AFC-8.
  - b. The term “redacted” refers to situations in which confidential information in a document, whether the document is in paper or electronic form, has been covered, masked or blocked out. The term “un-redacted” refers to situations in which confidential information in a document, whether in paper or electronic form, has not been covered, masked or blocked out.
  - c. The term “Confidential Records” means the confidential information contained in the Genesis Solar Energy Project docket, specifically limited to the information in the following seven filings:
    1. Draft Class II and Class III Cultural Resources Inventories for the Genesis Solar Energy Project, Riverside County, California, as

referenced in the confidential cover submittal, dated 08/31/2009 from J. Farrell to M. Jones, Docket: 53095.

2. Data Adequacy Supplemental Cultural Resource (AFC Section 5.16 Information), as referenced in confidential cover submittal from J. Farrell to M. Jones, Docket: 53610, dated 10/12/2009, including
  - Department of Parks and Recreation (DPR) 523 Forms for the following previously recorded archaeological resources: P-33-9037, P-33-9038, P-33-13088, P-33-13089, P-33-13467, P-33-13470, P-33-13471, P-33-13657, and CA-RIV-9084 and P-33-17834 (total of 41 pages);
  - Maps: Appendix H: Class III Archaeological site Locations within ROW and Surveyed Corridor and Appendix H: Class III Archaeological site Locations within ROW and Surveyed Corridor (total of 4 maps); and
  - Draft Historical Resources Inventory Genesis Solar Energy Project, Riverside County, California (total of 34 pages).
3. Application for Confidential – Data Adequacy Supplement Cultural Resources, dated 11/02/09, Docket: 53923.
4. Revised Draft II and Class III Cultural Resources Inventories for the Proposed Genesis Solar Energy Project, Riverside County, California, as referenced in confidential cover submittal from J. Farrell to M. Jones, dated 11/02/2009.
5. Final Draft: Class II and Class III Cultural Resources Inventories for the Proposed Genesis Solar Energy Project, Riverside County, California, from R. Gladden to M. Jones, dated 11/16/09, Docket: 54200.
6. Data Responses 1B – Cultural Resources, from R. Gladden to M. Jones, dated 01/11/2010, Docket: 54874.
7. Final Draft Class II and Class III, from M. Mills to M. Jones, dated 03/04/2010, Docket: 55822.

“Confidential Records” shall also include: (A) any information contained in or obtained from the materials described in the preceding paragraph; (B) any testimony requested to be treated as confidential by Genesis and filed in the matter of the Application for Certification for the Genesis Solar Energy Project, Docket No. 09-AFC-8; (C) any other materials that are made subject to this NDA by the Commission, the Committee, or any designee of such, pursuant to applicable regulations, or by any court or other body having appropriate authority. Genesis, when creating any Confidential Records, shall

physically mark such records on each page (or in the case of non-documentary materials such as computer diskettes, on each item) as “CONFIDENTIAL RECORDS,” or with words of similar import as long as one or more of the terms “Confidential Records” or “Confidential” is included in the designation to indicate that the materials in question are Confidential Records.

Confidential Records shall not include: (A) any information or document contained in the public files of the CEC or any other state or federal agency, or in any state or federal court, unless such information or document has been determined to be protected by such agency or court; or (B) information that is public knowledge, or which becomes public knowledge, other than through disclosure in violation of this NDA.

- d. The term “Non-Disclosure Certificate” shall mean the certificate annexed hereto as Appendix A by which persons shall be granted access to the Confidential Records. Such persons shall, as a condition of such access, certify their understanding that such access is provided pursuant to the terms and restrictions of this NDA, and that such persons have read such NDA and agree to be bound by it. All Non-Disclosure Certificates shall be sent to and retained by Genesis.
- e. The term CURE shall refer to California Unions for Reliable Energy. By executing this NDA, CURE represents (1) that it is not an entity that engages in the vandalism, harm or collection of cultural resources, or an association comprised of entities that engage in such activities, or any affiliate of such an entity or association; (2) that it is an entity seeking to preserve the cultural resources on the Project site; and (3) that it is not an entity engaged in consulting or advising other entities on where cultural resources are located on BLM land.
- f. The term “CURE Reviewing Representative” shall mean a person who is
  - 1. An officer of CURE whose duties involve assisting CURE in preparing for or participating in Docket 09-AFC-8 and the related National Historic Preservation Act Section 106 consultation process; or an attorney, paralegal, consultant or employee of a consultant retained by CURE for the purpose of advising, preparing for or participating in Docket 09-AFC-8 and the related National Historic Preservation Act Section 106 consultation process; and

2. Approved by Genesis pursuant to the following process:
  - a. CURE shall identify its proposed Reviewing Representatives to Genesis.
  - b. Upon request by Genesis, CURE shall provide a *curriculum vitae* of any particular candidate.
  - c. Genesis shall advise CURE in writing if Genesis objects to any proposed Reviewing Representative, setting forth in detail the reasons therefore.

Access of CURE Reviewing Representatives to Confidential Records shall be granted only pursuant to the terms of this NDA.

3. Confidential Records shall be treated as confidential by each CURE Reviewing Representative in accordance with the certificate executed pursuant to Paragraphs 2.e and 6 hereof. Confidential Records shall not be used except as necessary for the conduct of Docket No. 09-AFC-8 and the related National Historic Preservation Act Section 106 consultation process, and shall not be disclosed in any manner to any person except other CURE Reviewing Representatives who are engaged in this proceeding or the 106 process and need to know the information in order to carry out their responsibilities.
4. In the event CURE is requested or required by applicable laws or regulations, or in the course of administrative or judicial proceedings (in response to oral questions, interrogatories, request for information or documents, subpoena, civil investigative demand or similar process) to disclose any Confidential Records, CURE agrees to oppose disclosure on the grounds that the requested information has been designated as Confidential Records subject to this NDA and therefore may not be disclosed. CURE shall also immediately inform Genesis of the request, and Genesis may, at its sole discretion and cost, direct any challenge or defense against the disclosure requirement, and CURE shall cooperate with Genesis to the maximum extent practicable to either oppose the disclosure of the Confidential Records consistent with applicable law, or obtain confidential treatment of Confidential Records by the entity that wishes to receive the Confidential Records prior to any such disclosure.
5. It shall be a rebuttable presumption that (i) any study that incorporates, describes or otherwise employs Confidential Records in a manner that could reveal any part of the Confidential Records, or (ii) any model that relies upon Confidential Records for algorithms or other computation(s) critical to the functioning of the model, shall also be considered Confidential Records subject to this NDA. However, models that merely use Confidential Records as inputs will not themselves be considered Confidential Records. It shall

also be a rebuttable presumption that where the inputs to studies or models include Confidential Records, or where the outputs of such studies or models reveal such inputs or can be processed to reveal the Confidential Records, such inputs and/or outputs shall be considered Confidential Records subject to this NDA, unless such inputs and/or outputs have been redacted or aggregated to the satisfaction of Genesis. Unless the Commission, Committee, or Designee issues a ruling holding that the applicable presumption(s) from among the foregoing has been rebutted with respect to the model or study at issue, then any model or study devised or performed by CURE that incorporates, uses or is based upon Confidential Records shall also be Confidential Records subject to the terms of this NDA.

6. No CURE Reviewing Representative shall be permitted to inspect, participate in discussions regarding, or otherwise be granted access to Confidential Records pursuant to this NDA unless such CURE Reviewing Representative has first executed a Non-Disclosure Certificate and it has been delivered to Genesis. Upon request, Genesis shall provide copies of executed Non-Disclosure Certificates to Commission Staff. Attorneys qualified as CURE Reviewing Representatives shall ensure that persons under their supervision or control comply with this NDA.
7. In the event that a CURE Reviewing Representative to whom Confidential Records are disclosed ceases to be engaged in proceedings in this docket, then access to Confidential Records by that person shall be terminated. Even if no longer engaged in such proceedings, every such person shall continue to be bound by the provisions of this NDA and the Non-Disclosure Certificate.
8. All documents containing Confidential Records that are filed with the Commission or served shall be placed in sealed envelopes or otherwise appropriately protected and shall be endorsed to the effect that they are filed or served under seal pursuant to this NDA. Such documents shall be marked with the words “**CONFIDENTIAL RECORDS**” or one of the other, similar terms set forth in paragraph 2.c hereof, and shall be served upon all CURE Reviewing Representatives and persons employed by or working on behalf of the CEC who are eligible to see the Confidential Records.
9. Nothing in this NDA shall be construed as limiting the right of Genesis or CURE from objecting to the use of Confidential Records on any legal ground, such as relevance or privilege.
10. All Confidential Records filed with judicial or administrative bodies other than the Commission, whether in support of or as part of a motion, brief or other document or pleading, shall be filed and served in sealed envelopes or other appropriate containers bearing prominent markings indicating that the contents include Confidential Records that are subject to this NDA.

11. Neither Genesis nor CURE waives its rights to pursue any other legal or equitable remedy that may be available in the event of actual or anticipated disclosure of Confidential Records.
12. Genesis may agree at any time to remove the “Confidential Records” designation from any material if, in Genesis’ sole opinion, its confidentiality is no longer required. In such a case, Genesis will notify CURE of the change of designation.
13. Review of and use of the Confidential Records by CURE and any CURE Reviewing Representative is solely for the purpose of participating in the Application for Certification for the Genesis Solar Energy Project and the related National Historic Preservation Act Section 106 consultation process, and any other use or disclosure of the Confidential Records is a breach of this NDA.

Dated April \_\_, 2010, at South San Francisco, California.

BY: \_\_\_\_\_  
On Behalf of Genesis  
Solar LLC

BY: \_\_\_\_\_  
On Behalf of California  
Unions for Reliable Energy

**APPENDIX A**  
**STATE OF CALIFORNIA**  
**California Energy Commission**

In the Matter of:

The Application for Certification for the GENESIS SOLAR ENERGY PROJECT

Docket No. 09-AFC-8

**NON-DISCLOSURE CERTIFICATE**

I, \_\_\_\_\_, have been asked by \_\_\_\_\_ (California Unions for Reliable Energy (CURE)) to inspect certain materials that have been designated as “Confidential Records” under Paragraph 2 of the Non-Disclosure Agreement (NDA) entered into between Genesis Solar LLC (Genesis) and CURE dated \_\_\_\_\_, 2010.

1. I hereby certify my understanding that access to Confidential Records is provided to me pursuant to the terms and restrictions of the NDA, that I have been given a copy of and have read the NDA, and that I agree to be bound by it. I understand that the contents of the Confidential Records, any notes or other memoranda, or any other form of information that copies or discloses Confidential Records shall not be disclosed to anyone other than in accordance with the NDA.

2. I understand that my review of Confidential Records is solely for the purpose of participating in the above-captioned matter and the related National Historic Preservation Act Section 106 consultation process and that any other use or disclosure of Confidential Records by me is a violation of the NDA.

3. I hereby agree to submit to the exclusive jurisdiction of the California Energy Commission for the enforcement of the undertakings I have made hereby and I waive any objection to venue laid with the Commission for enforcement of the Order.

Dated:

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

REPRESENTING: \_\_\_\_\_

## DECLARATION OF SERVICE

I Bonnie Heeley declare that on April 29, 2010, I served and filed copies of the attached  
**CALIFORNIA UNIONS FOR RELIABLE ENERGY  
 PETITION FOR INSPECTION AND COPYING OF RECORDS  
 FOR THE GENESIS SOLAR ENERGY PROJECT**

dated April 29, 2010. The original document, filed with the Docket Office, 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 document has been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Office via email and U.S. mail.

I declare under penalty of perjury that the foregoing is true and correct. Executed at South San Francisco, CA on April 29, 2010.

\_\_\_\_\_/s/\_\_\_\_\_  
 Bonnie Heeley

CALIFORNIA ENERGY COMMISSION Attn: Docket No. 09-AFC-8 1516 Ninth Street MS 4 Sacramento, CA 95814-5512 <a href="mailto:doCKET@energy.state.ca.us">doCKET@energy.state.ca.us</a>	Ryan O'Keefe, Vice President Genesis Solar LLC 700 Universe Boulevard Juno Beach, Florida 33408 <a href="mailto:Ryan.okeefe@nexteraenergy.com">Ryan.okeefe@nexteraenergy.com</a> <b>EMAIL ONLY</b>	Scott Busa/Project Director Meg Russell/Project Mgr Duane McCloud/Lead Engr NextEra Energy 700 Universe Boulevard Juno Beach, FL 33408 <a href="mailto:Scott.bus@nexteraenergy.com">Scott.bus@nexteraenergy.com</a> <a href="mailto:Meg.Russell@nexteraenergy.com">Meg.Russell@nexteraenergy.com</a> <a href="mailto:Daune.mccloud@nexteraenergy.com">Daune.mccloud@nexteraenergy.com</a>  Matt Handel/Vice Pres. <a href="mailto:Matt.Handel@nexteraenergy.com">Matt.Handel@nexteraenergy.com</a> <b>VIA EMAIL ONLY</b>  Kenny Stein, Environmental Srvs Mgr <a href="mailto:Kenneth.Stein@nexteraenergy.com">Kenneth.Stein@nexteraenergy.com</a> <b>VIA EMAIL ONLY</b>
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