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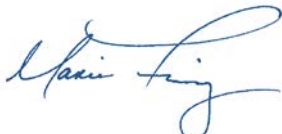
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**Subject: PALEN SOLAR HOLDINGS, LLC'S FINAL COMMENTS ON THE
PRELIMINARY STAFF ASSESSMENT
PALEN SOLAR ELECTRIC GENERATING SYSTEM
DOCKET NO. (09-AFC-7C)**

Enclosed for filing with the California Energy Commission is the electronic version of **PALEN SOLAR HOLDINGS, LLC'S FINAL COMMENTS ON THE PRELIMINARY STAFF ASSESSMENT**, for Palen Solar Electric Generating System (09-AFC-7C).

Sincerely,



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STATE OF CALIFORNIA

Energy Resources
Conservation and Development Commission

In the Matter of:

DOCKET NO. 09-AFC-7C

Petition For Amendment for the **PALEN
SOLAR ELECTRIC GENERATING
SYSTEM**

**PALEN SOLAR HOLDINGS, LLC's
FINAL COMMENTS ON THE
PRELIMINARY STAFF ASSESSMENT**

Palen Solar Holdings, LLC (PSH) hereby submits these final comments on the Preliminary Staff Assessment (PSA) for the Palen Solar Electric Generation System (PSEGS) Petition For Amendment published on June 28, 2013. PSH previously filed Initial Comments on the PSA in preparation for the Workshops which were held on July 17, 22, 25 and 26. Based on the workshop discussions, these Final Comments indicate where Staff and PSH have agreed to modifications to Conditions of Certification; for those few areas where agreement has not been reached, an explanation is provided.

The PSA showed Staff's proposed modifications to the Conditions of Certification using ~~strikethrough~~ and **bold underline** formatting. To more easily show the modifications proposed by PSH, we have used similar formatting but have shown our proposed modifications using a red font with ~~strikethrough~~ for deletions and **bold underline** to indicate additions. At this time, proposed Conditions of Certification and any modifications proposed by Staff not addressed in these Final Comments are acceptable to PSH.

In general, PSH requests that any references to submittal timeframes and due dates be removed from the condition language and placed in the verification section.

As discussed in the comments below, Staff modified the definitions in the General Condition and Compliance section of the PSA. The new definitions are "Site Assessment and Preconstruction Activities" and "Site Mobilization and Construction". Several of the Conditions of Certification and Verifications continue to use the old definitions which are no longer defined (e.g., preconstruction site mobilization). PSH requests that Staff modify the Conditions of Certifications and Verifications for the FSA..

AIR QUALITY

Condition of Certification AQ-SC5

Staff revised Condition of Certification **AQ-SC5** “to reflect the most recent condition”. While PSH disagrees that any revisions are necessary since the modified project decreases overall grading equipment as grading has been reduced from 4.5 million cubic yards to 200,000 cubic yards of earthwork, in order to address Staff’s concerns relating to the new condition, PSH provides the following modifications to ensure that the Condition of Certification is consistent and workable during construction.

AQ-SC5 Diesel-Fueled Engine Control: The AQCMM shall submit to the CPM, in the ~~Monthly Compliance Report~~ **MCR**, a construction mitigation report **table** that demonstrates compliance with the AQCMP mitigation measures for purposes of controlling diesel construction-related **combustion** emissions. ~~The following off road diesel construction equipment mitigation measures shall be included in the Air Quality Construction Mitigation Plan (AQCMP) required by AQ-SC2, and any deviation from the AQCMP mitigation measures shall require~~ **requires** prior CPM notification and approval.

All diesel fueled engines **off-road diesel construction equipment with a rating of 50 hp or greater** used in the construction of ~~the~~ this facility shall have clearly visible tags issued **be powered** by the onsite AQCMM showing that the engine meets the Conditions set forth herein. **cleanest engines reasonably and locally available that also comply with the California Emissions Standards Air Resources Board’s (ARB’s) Regulation for In-Use Off-Road Compression Ignition Engines, as specified in Diesel Fleets (California Code of Federal Regulations Title 13, section 2423(b)(1), unless a good faith effort to Article 4.8, Chapter 9, Section 2449 et. Seq.) and shall be included in the satisfaction of Air Quality Construction Mitigation Plan (AQCMP) required by AQ-SC2. The AQCMP measures shall include** the CPM that is certified by following, with the onsite AQCMM demonstrated that such **lowest-emitting** engine is not **chosen in each case, as** available:

BIOLOGICAL RESOURCES

Condition of Certification BIO-1, Verification

Staff extended the verification timeline from 30 days to 90 days prior to preconstruction site mobilization. PSH requested that the verification timeline be modified to 60 days prior to preconstruction site mobilization. PSH renews its request.

Condition of Certification BIO-2

Staff made several modifications to this Condition of Certification. The first relates to modification of the Designated Biologist’s roles and responsibilities. Generally, Staff has removed the responsibility to prepare, submit and implement provisions of the BRMIMP

from the Project Owner and shifted it to the Designated Biologist. This shift of responsibility may lead to confusion and we requested the modifications below to provide clarity of responsibility. After discussion at the Workshops, Staff and PSH agreed to the following modification to Item 2 of the Condition.

2. ~~Consult on the preparation of~~ **Approve and submit** ~~Consult on the preparation of~~ the Biological Resources Mitigation Implementation and Monitoring Plan (BRMIMP) to be submitted by the Project owner;

Staff also proposed two new responsibilities for the Designated Biologist that as described above should be the responsibility of the Project Owner and not the Designated Biologist. PSH accepts the responsibility of the two new activities (responding to standing water and notification of kit fox injury or death). Staff and PSH discussed these issues at the Workshops and jointly agreed to incorporate the approach of referencing more specific conditions that address standing water and kit fox. In accordance with those discussions PSH provides the following modifications.

8. **Determine and oversee implementation of remedial actions any time water has been observed standing onsite in accordance with Condition of Certification BIO-8 for 24 hours. The ~~Designated Biologist~~ Project Owner shall initiate remedial methods in consultation with the Designated Biologist in accordance with Condition of Certification BIO-8 no later than 24 hours after standing water has been observed on the project site. Remedial methods may include grading, pumping spraying, tilling, or any other means to disperse or ensure evaporation and/or absorption of standing water. Other remedial efforts may be determined in conjunction with CPM review and approval. Descriptions of remedial efforts, including photo documentation, and discussion of results of remedial efforts must be included in the Monthly Compliance Report;**
9. Respond **immediately** to reports of onsite kit fox mortality or injury, and to the extent possible, reports of dead or injured kit fox offsite and immediately adjacent the project boundaries or on access roads **in accordance with Condition of Certification BIO-17, notify the CDFW and CPM within 24 hours,** and undertake restorative and/or disease prevention actions as specified within the American Badger and Kit Fox Management Plan **prepared in accordance with Condition of Certification BIO-17, or as directed by the CDFW, with copies of all CDFW guidance provided to the CPM within 24 hours of receipt;**

Condition of Certification BIO-6

Staff modified this condition to place responsibility of preparation and implementation of the Worker Environmental Awareness Program (WEAP) with the Designated Biologist instead of leaving it the responsibility of the Project Owner. This would create confusion as the Designated Biologist is predominantly on-site during construction and the WEAP will be implemented for the life of the project. After discussion at the Workshop, Staff and PSH agree to the following modification to the condition.

BIO-6 ~~The Project owner~~ **The Project Owner Designated Biologist** shall develop and implement a Project-specific Worker Environmental Awareness Program (WEAP) and shall secure approval for the WEAP from the CPM. The Project owner shall also provide the USFWS and CDFG a copy of all portions of the WEAP relating to desert tortoise and any other federal or state-listed species for review and comment. The WEAP shall be administered to all onsite personnel including surveyors, construction engineers, employees, contractors, contractor's employees, supervisors, inspectors, subcontractors, and delivery personnel. The WEAP shall be implemented during site preconstruction, construction, operation, and closure. The WEAP shall:

Condition of Certification BIO-7

Staff modified Condition of Certification **BIO-7** to include two new provisions in the BRMMP relating to standing water and disease outbreaks as well as the inclusion of a final accounting of land disturbance. PSH supports the inclusion of these two new provisions and after discussion with Staff at the Workshop it was agreed that these new provisions should refer to Conditions of Certification that more specifically address the issues. Therefore, PSH proposes the following minor modifications.

8. All required mitigation measures for each sensitive biological resource, **including remedial actions for standing water onsite in accordance with Condition of Certification BIO-8 and known or suspected disease outbreaks on the project site in accordance with Condition of Certification BIO-17**;
9. **Aerial photographs, at an approved scale, of all areas to be disturbed during project construction activities; include one set prior to any site or related facilities mobilization disturbance and one set subsequent to completion of project construction. Provide planned timing of aerial photography and a description of why times were chosen. Provide a final accounting of the before/after acreages and a determination of whether additional more or less habitat compensation is necessary in the Construction Termination Report prepared in accordance with Condition of Certification BIO-29**;

Condition of Certification BIO-8

Staff modified Condition of Certification **BIO-8** to provide that the Designated Biologist must be on-site during all activities that may disturb soil, vegetation and wildlife. Previously, the Designated Biologist needed to be on site for only those activities that took place outside the areas previously fenced with desert tortoise fencing and cleared. There does not appear to be any justification for requiring the Designated Biologist to now be present during construction activity that takes place inside the desert tortoise fenced exclusion areas due to the change in technology. After discussion with Staff and representatives of the USFWS and CDFW during the Workshops, it was agreed that the purpose of the modification was to accomplish two objectives. The first was to ensure the

Designated Biologist was present on-site during any desert tortoise clearing activities or construction activities outside previously cleared areas such as the linear facilities which do not require desert tortoise fencing. The second was to ensure that only Authorized Biologists (as that term is defined by USFWS) can move desert tortoises. In order to accomplish these two objectives, PSH proposes to modify Item 3 of the condition as follows.

3. Monitor During Construction. ~~In areas that have not been fenced with desert tortoise exclusion fencing and cleared, the~~ **The Designated Biologist must be present on site during desert tortoise surveys and clearance activities and for construction activities that have the potential to disturb soil, vegetation and wildlife in those 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 **clear/monitor** ahead of equipment during brushing and grading activities. If desert tortoises are found during construction monitoring, procedures outlined in **BIO-9** shall be implemented. **Only Authorized Biologists meeting the qualifications outlined by the USFWS may move a desert tortoise.**

Staff added Item 4 to this condition to address relocating wildlife during clearing and grading activities. After discussion at the Workshops, Staff and PSH agree to the following modifications to provide further clarification.

4. **Salvage Wildlife during Clearing, Grading and Grubbing.** The Designated Biologist or Biological Monitor shall salvage and relocate sensitive wildlife during clearing, ~~and grading~~ **and grubbing** operations **when feasible to an off-site location or out of harm's way.** The species shall be **relocated salvaged** ~~when conditions will not jeopardize the health and safety of the monitor~~ ~~and relocated off-site habitat.~~

Staff modified Item 13 of the condition to address kit fox injury discovery and reporting. For the reasons described above under the comments to Condition of Certification **BIO-2**, it is not feasible to have a standard that requires actions to be taken immediately. After discussion with Staff and the USFWS (relating to migratory birds) during the Workshops, Staff and PSH agreed to a reporting timeline of 8 hours after detection for kit fox. We also understand that Staff is considering adding a footnote to reference federal law regarding the permitting necessary to salvage migratory birds. PSH requests that Staff not include federal law requirements in this condition as the federal law is enforceable through other means. Therefore, PSH proposes the following modifications.

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, and CPM within 1 working day of detection (**immediately within 8 hours of detection in the case of a desert kit fox**) of the carcass for guidance on disposal or storage of the carcass; all other road kill shall be disposed of promptly. **Handling of desert kit fox carcasses shall follow handling requirements included in the BIO-18 American Badger and Kit Fox Management Plan.** The Biological Monitor shall provide the special-status species record as described in **BIO-11** below.

Staff inserted additional requirements (Item 16) to the condition for the prevention of the spread of noxious weeds. PSH supports the addition but requests the following modification to Item 16a to clarify that construction areas that will be disturbed or graded will not be required to meet the strict standard imposed by Staff. As Staff has noted in its analysis, there has been no biological credit given to the project for limiting the grading of the site. Therefore, there is no need to overly restrict disturbance of vegetation on ground surfaces in areas that will be disturbed or graded and are necessary for the orderly construction of the project. After discussion with Staff at the Workshops, PSH proposes the following modification to distinguish work within the solar facility fenceline and work on the linear facilities.

- a. **For work outside the solar facility fenceline, limit the size of any vegetation and/or ground disturbance to the absolute minimum and limit ingress and egress to defined routes.**

Staff also added new requirements identified in Item 19 to control fugitive dust. PSH has already agreed to the substantial fugitive dust control conditions included in the original License in the Air Quality section. PSH requests that Item 19 be deleted as all of the requirements are already contained in those Air Quality Conditions of the Certification. At the Workshops, Staff agreed to delete Item 19.

Condition of Certification BIO-9

PSH and Staff discussed at the Workshops the protocol for performing survey transects for desert tortoise clearance surveys. Consistent with that discussion PSH proposes the following modifications to ensure flexibility in conducting the surveys to maximize the opportunity to find all desert tortoises.

1. **Desert Tortoise Clearance Surveys within the Plant Site.** Clearance surveys shall be conducted in accordance with the USFWS Desert Tortoise Field Manual (USFWS 2009) (Chapter 6 – Clearance Survey Protocol for the Desert Tortoise – Mojave Population) **or the most recent agency guidance with the approval of the CPM USFWS Desert Tortoise Field Manual (currently 2009a)** and shall consist of two surveys covering 100 percent the project area by walking transects no more than 15-feet apart. If a desert tortoise is located on the second survey, a third survey shall be conducted. **To maximize the opportunity to find all tortoises, each separate survey shall be walked in a different direction, in opposite directions, and/or offset** to allow opposing angles of

observation. Clearance surveys of the plant site may only be conducted when tortoises are most active (April through May or September through October) unless the project receives approval from CDFW and USFWS. Clearance surveys of linear features may be conducted during anytime of the year. Any tortoise located during clearance surveys of the power plant site and linear features shall be translocated or relocated and monitored in accordance with the Desert Tortoise Relocation/Translocation Plan:

Staff added clarifying language to Item 2 of this condition which is acceptable but PSH requests the following modification to ensure that the requirement applies to desert tortoise fencing only. At the Workshops, Staff agreed to the modification:

2. All **proposed alignments for permanent or temporary desert tortoise** fencing shall be flagged and surveyed within 24 hours prior to the initiation of fence construction.

Staff added language to Item 3 of this condition to ensure that the most recent USFWS guidance is followed. For consistency we have modified the language consistent with other references to specifically identify the most recent guidance to be used. At the Workshops, Staff agreed to the modification:

3. Desert Tortoise Clearance Surveys within the Plant Site. Clearance surveys shall be conducted in accordance with the **most recent** USFWS Desert Tortoise Field Manual (**currently** USFWS 2009) (Chapter 6 – Clearance Survey Protocol for the Desert Tortoise – Mojave Population) ~~or the most recent agency guidance with the approval of the CPM~~

Condition of Certification BIO-12

PSH requests the ability to include as possible mitigation the opportunity to retire grazing allotments and has made the following modification to the condition. Staff, Interveners, USFWS, CDFW, and PSH engaged in productive discussion at the Workshops and Staff said it would discuss the issue further with the REAT agencies. PSH also clarified that it intended to use 3 times the mitigation ratios for retirement of grazing allotments such that the mitigation ratio of 3:1 would apply to non-critical desert tortoise habitat and a mitigation ratio of 15:1 would apply for critical desert tortoise habitat. In addition to respond to the REAT agencies' desire to use mitigation lands close to the project, PSH has further agreed to limit retirement of grazing allotments to no more than 50 percent of the total desert tortoise mitigation package.

BIO-12 To fully mitigate for habitat loss and potential take of desert tortoise, the Project owner shall provide compensatory mitigation per **BIO-29** – Table 2, adjusted to reflect the final Project footprint. For purposes of this condition, the Project footprint means all lands disturbed in the construction and operation of the Palen Project, including all Project linears, as well as undeveloped areas inside the Project's boundaries that will no longer provide

viable long-term habitat for the desert tortoise. To satisfy this condition, the Project owner shall acquire, protect and transfer 5 acres of desert tortoise habitat for every acre of habitat within critical habitat and within the final Project footprint, and 1 acre of desert tortoise habitat for every acre of habitat outside of critical habitat but within the final Project footprint, and provide associated funding for the acquired lands, as specified below. Condition **BIO-28** may provide the Project owner with another option for satisfying some or all of the requirements in this condition. In lieu of acquiring lands itself, the Project owner may satisfy the requirements of this condition by depositing funds into the Renewable Energy Action Team (REAT) Account established with the National Fish and Wildlife Foundation (NFWF), as provided below in section 3.i. of this condition. **In lieu of acquiring lands itself, the Project owner may satisfy up to 50 percent of the mitigation requirements set forth in this condition by purchasing the grazing leases from landowners within the required habitat areas found within the Selection Criteria for Compensation Lands, and permanently retiring those allocations at a ratio of 3:1 for non-critical desert tortoise habitat and 15:1 for critical desert tortoise habitat. The use of permanently relinquishing grazing permits or valid grazing leases would be in accordance with 43 U.S.C. 1781a, Consolidated Appropriations Act 2012 Public Law 112-74, and BLM No.Ca-2013-006 [4100(CA930)].**

PSH requests that the requirement to purchase habitat compensation lands within the Colorado Recovery Unit be changed to allow habitat to be purchased within the USFWS recovery unit as described in the Revised Recovery Plan for the Mojave Population of the Desert Tortoise (USFWS, 2011). This modification would allow a wider selection of potential habitat and would also allow more opportunities for CDFW to implement the SB 34 or other habitat compensation programs. At the Workshops, USFWS and CDFW expressed their opinion that mitigation land acquisition should be within the Colorado Desert Recovery Unit. Therefore, PSH proposes the following modification to address that only grazing allotment retirement could take place outside the Colorado Desert Recovery Unit.

1. Selection Criteria for Compensation Lands. The compensation lands selected for acquisition in fee title or in easement shall:
 - a. be within the Colorado Desert Recovery Unit **(except for retirement of grazing allotments the retirements must be within a USFWS recovery unit as described in the Revised Recovery Plan for the Mojave Population of the Desert Tortoise, USFWS, 2011)**, with potential to contribute to desert tortoise habitat connectivity and build linkages between desert tortoise designated critical habitat, known populations of desert tortoise, and/or other preserve lands;

Condition of Certification BIO-14

Staff did not propose any modifications to this condition. However, the condition needs to be modified to provide the correct reference to the most current version of the Draft Weed

Management Plan. The reference to “AECOM 2010a, Attachment DR-BIO-100” should be replaced with “GalatiBlek 2013, Response to Data Request 52”. Staff agreed to this correction at the Workshops.

Condition of Certification BIO-16a

PSH requests two modifications to this condition. The first is to expressly allow annual payments over the life of the project and the second is to modify the verification consistent with other conditions. Staff, USFWS and PSH engaged in productive discussions at the Workshops where it was agreed that the REAT agencies should meet (possibly every five years) to determine the specific program for funding. This will allow flexibility to direct the finding to the program more closely connected to the impacts that are observed during monitoring and to allow the REAT agencies to evaluate the effectiveness of any program receiving funding. Additionally, while Staff did not oppose the annual payments proposed by PSH, Staff did request consideration of a cost of living increase to the payments. PSH requested the flexibility to address a cost of living increase with the use of a one-time funded interest bearing account. Therefore, PSH requests the following modifications.

- 2. Additional Migratory Bird Conservation: The Project owner shall, prior to the commencement of commercial operation of the facility, pay \$1,500,000.00 to fund the activities of a CPM-approved third party that will perform additional migratory bird conservation measures. Alternatively, the project owner may prepare a promissory note to deposit said funds at the onset of operations while at the same time providing funding of the initial year of mitigation in the non-refundable amount of \$50,000.00 to a project fund as determined by CPM, in conjunction with BLM, CDFW, and USFWS, for the initial year of mitigation in the absence of accrued interest. Alternatively, the project owner may pay \$50,000 annually to fund the annual activities of the CPM-approved third party for the life of the project, not to exceed a period of 30 years, commencing at commercial operation. If the project owner elects to make annual payments, the annual payments should be adjusted for cost of living increases using the CPI-U (All Urban Consumers) for the Los Angeles CMSA (includes the counties of Los Angeles, Orange, Riverside, San Bernardino and Ventura) as calculated and published by the California Department of Finance (http://www.dof.ca.gov/html/fs_data/latestecondata/FS_Price.htm). To avoid the adjustment, the project owner may elect to place the amount of \$50,000 in an interest bearing account that would allow the cost of living increases to be paid from such account.**

Staff and PSH also discussed the timing of the verification of the condition. PSH proposed modifying the deadline to use the term “commercial operation” instead of “prior to any generation of solar flux” because “commercial operation” is a defined construction milestone that will be carefully tracked and specifically defined in the General Conditions, whereby the “generation of solar flux” is not a predictable fixed point in time. To address

Staff's concern for having enough time to review the retrofitting plan, PSH proposes the following modification.

Verification

For power line retrofits:

1. At least ~~60 days~~six months prior to ~~any generation of flux commercial operation~~, the project owner shall submit the draft Retrofit Plan to the CPM for review and approval and CDFW and USFWS for review and comment. At least 30 days prior to ~~start of any flux generation commercial operation~~, the project owner shall provide the CPM the final version of the Retrofit Plan.
2. If the project owner elects not to fund a third party to perform retrofits, then no less than 30 days prior to ~~beginning project commercial~~ operation, the project owner shall provide written verification to the CPM that security has been established in the National Fish and Wildlife Foundation's Bald and Golden Eagle Protection Act account, in accordance with this condition of certification.

At the Workshop, Staff's expert requested the term "non-wasting benefit" fund be replaced with the term "interest-bearing". PSH added that modification to Item 2 above as well as to the following section:

For ~~non-wasting benefit fund~~interest-bearing fund:

1. No later than 30 days prior to ~~beginning of flux generation commercial operation~~ the project owner shall provide the CPM written verification of selection of a ~~non-wasting~~ interest-bearing account held by an approved investment entity, in accordance with this condition of certification. The account shall be fully funded no later than 7 days prior to ~~the beginning of flux generation commercial operation~~.

Condition of Certification BIO-16b

Staff modeled Condition of Certification **BIO-16b** after PSH's proposed **BIO-C**. One of the modifications made by Staff was the removal of the detailed preconstruction baseline section requirements. PSH proposes a conforming change to the first part of the condition to reflect the elimination of the preconstruction baseline survey requirements. Staff agreed to this modification at the Workshops.

BIO-16b ~~The Project owner shall perform preconstruction baseline surveys prior to surface disturbance of avian and bat species for use in development of a Bird and Bat Conservation Strategy (BBCS). The Project owner shall prepare a Bird and Bat Conservation Strategy (BBCS) and submit it to the CPM for review and approval, in~~

conjunction with BLM, CDFW, and USFWS for review and comment. The BBCS shall provide for the following:

Staff included references to USFWS guidance that were not properly referenced. PSH proposes the following modifications to correct the references to the USFWS guidance. Since the references only apply to wind energy, PSH has proposed modifications to ensure that the PSEGS would only be expected to incorporate the requirements that are applicable to a solar tower project. This issue was discussed at the Workshops and Staff acknowledged that the project owner should not be responsible for complying with requirements that are clearly not applicable to the solar tower technology. Therefore, PSH renews its request for the following modifications:

BBCS Components

The project owner shall prepare and implement a ~~Bird and Bat Conservation Strategy~~ BBCS adopting all requirements applicable to solar generation as outlined in current guidelines recommended by the USFWS (currently 2012 USFWS Land Based Wind Energy Guidelines 2010e) ~~or current guidelines~~. The BBCS shall include the following components:

7. Eagle Protection Plan (EPP): The project owner shall prepare and implement an Eagle Protection Plan adopting all requirements applicable to solar generation as outlined in current guidelines recommended by the USFWS (currently 2012 USFWS Land Based Wind Energy Guidelines 2011b) ~~or most current guidelines that may be released~~. The EPP may be prepared as a stand-alone document or included as a chapter within the BBCS. The EPP shall describe all available baseline data on golden eagle occurrence, seasonality, activity, and behavior throughout the project area and vicinity. The EPP shall outline a study protocol consistent with Item 5 above to include annual pedestrian and/or helicopter surveys of golden eagle breeding sites within a 10 mile radius of the project site, to be reviewed and approved by the CPM, in consultation with the USFWS, BLM, and CDFW.

In its initial comments, PSH provided modifications to eliminate the requirement that the EPP categorize distribution lines for retrofitting as that requirement would be covered under Condition of Certification **BIO-16a**. After discussion at the Workshops, Staff and PSH agreed to the following modification to specifically refer to Condition of Certification **BIO-16a**.

The EPP shall describe all proposed measures to minimize death and injury of eagles from (1) collisions with facility features including the heliostats, power towers, and gen-tie line towers or transmission lines, (2) electrocutions on transmission lines or other project components, and (3) concentrated solar flux created over the solar field. The EPP shall describe efforts taken pursuant to BIO-16a. The EPP shall provide an inventory of existing electrical distribution lines within a 20-mile radius of the project site that do not conform to APLIC (2006) design standards to prevent golden eagle electrocution. The inventory

~~shall identify the owner or operator and estimate the number of nonconforming poles for each distribution line.~~

Staff proposed specific language to address the potential for the PSEGS to avoid standby points. The PSEGS will not utilize standby points in the manner that was employed at the Solar I facility. However, in order to be commercially viable, PSEGS will need to focus the heliostats very near the solar receiver in order to quickly respond to calls for energy. These standby “rings” will be very close to the tower and will not generate any more solar flux than during operations. Therefore, PSH proposed in its Initial Comments on the PSA the following modifications to the Staff’s proposed language. At the Workshops, Staff explained the desire for more detail as to operational modifications that could be taken in the event that monitoring indicates a pulse of migratory birds are approaching the site. PSH explained that in order to comply with its PPA obligations, the technical need to maintain steam quality, and the time needed (over 20 minutes) to return the heliostats to a stow position and then to refocus on the receiver, such flexibility is not feasible. PSH experts further explained that the refocusing of the heliostats off the receiver would remove the luminance at the receiver which we believe is a deterrent to birds. Attempting to refocus the heliostats to avoid an oncoming pulse of birds would instead place the solar flux at points in the air, similar to standby points which PSH has worked to eliminate to further minimize avian impacts. Therefore, PSH must renew its request for the modifications below.

The EPP shall also include any feasible modifications to the heliostat standby positioning to proposed plant operation to avoid or minimize concentrated solar flux at individual points outside of the standby ring. focusing heliostats at standby points and, instead, move heliostats into a stowed position or another alternative configuration when the power plant is in partial standby mode. The EPP shall provide a reporting schedule for all monitoring or other activities related to bird or bat conservation or protection during project construction or operation. The EPP shall be subject to review and approval by the CPM in consultation with CDFW, BLM, and USFWS, and shall be incorporated into the project’s BRMIMP and BBCS, and implemented.

Condition of Certification BIO-17

Staff modified PSH’s proposed Condition of Certification **BIO-17** to address kit fox disease transmission issues and at the Workshops presented further modifications. The parties engaged in productive discussions. Because PSH received the most recent modifications on Friday July 26, 2013, we will need additional time to review and will be filing our comments on **BIO-17** under separate cover.

Condition of Certification BIO-19

Staff proposed modifications to Condition of Certification **BIO-19** to ensure that the Project Owner was complying with the most recent guidelines. PSH proposes the following modification to consistently reference such guidelines and to provide for additional time to provide survey results. Staff agreed to these modifications at the Workshops for Part B of the condition:

1. Survey Coverage. The survey coverage or intensity shall be in accordance with most recent BLM Survey Protocols (currently issued July 2009)¹⁵, ~~or most recent BLM protocols~~ which specify that intuitive controlled surveys shall only be accomplished by botanists familiar with the habitats and species that may reasonably be expected to occur in the project area.
6. Reporting. Raw GPS data, metadata, and CNDDDB field forms shall be provided to the CPM and the BLM State Botanist within ~~two~~ four weeks of the completion of each survey. If surveys are split into two or more periods (e.g., a late summer survey and a fall survey), then a summary letter shall be submitted following each survey period.

The Final Summer-Fall Botanical Survey Report shall be prepared consistent with most recent CDFG guidelines (currently CDFG 2009), and currently BLM 2009 guidelines (~~or the most recent version of CDFG and BLM guidelines~~) and shall include all of the following components:

PSH and Staff discussed at the Workshops that Abram's Spurge, currently a CNDDDB Rank 2 Plant, is so abundant along the I-10 corridor that its current ranking is being revisited. The abundance of this plant makes compliance with Section C., Item 2 of this condition's requirement for avoidance not feasible. Complete avoidance on linears will be attempted but may not be possible due to design constraints. Recognizing the Genesis Solar Energy Project (GSEP) owner and Staff worked together to modify the version of BIO-19 in contained in the GSEP Final Decision. Therefore PSH proposes Item 2 or Section C be modified below. Additions to the GSEP language are shown in blue and are requested to increase the effectiveness of the measure.

2. Mitigation for CNDDDB Rank 2¹⁹ Plants (Imperiled). If late-season CNDDDB Rank 2 species are detected within the Project Disturbance Area avoidance is mandatory along the linears, unless such avoidance would cause disturbance to areas not previously surveyed for other biological resources or would create greater environmental impacts in any discipline or other restrictions (e.g., FAA or other restrictions for placement of transmission poles). Complete avoidance is mandatory on and-construction laydown areas. The Project owner shall limit the width of the work area, adjusting the location of staging areas, lay downs, spur roads and poles or towers; driving and crushing vegetation as an alternative to blading temporary roads, and other construction or design modifications as necessary to achieve avoidance of any Rank 2 plants detected.

Conditions of Certification BIO-20, BIO-21 and BIO-28

PSH requested that Conditions of Certification **BIO-21** and **BIO-22** be modified to allow the possibility of mitigation pursuant to SB 34 or other California approved mitigation programs. Staff agreed at the Workshops that it would be more appropriate to modify

Condition of Certification **BIO-28**. Therefore, PSH proposes the following modification to Condition of Certification **BIO-28**.

BIO-28 The Project owner may choose to satisfy its mitigation obligations by paying an in-lieu fee instead of acquiring compensation lands, pursuant to Fish and Game code sections 2069 and 2099 or any other applicable in-lieu fee provision or California approved mitigation program, provided that the Project's in-lieu fee proposal is found by the Commission to mitigate the impacts identified herein. If the in-lieu fee proposal is found by the Commission to be in compliance, and the Project Owner chooses to satisfy its mitigation obligations through the in-lieu fee, the Project Owner shall provide proof of the in-lieu fee payment to the CPM prior to construction related ground disturbance.

Condition of Certification BIO-29

PSH provides the attached Biology Impact and Mitigation table to replace the tables in Condition of Certification **BIO-29**. The table slightly differs from the tables contained in the PSA, due to refined mapping and phasing calculations. Additionally, as was discussed at the Workshops, PSH and Staff sand transport experts agree that reduction in sand transport predicted in Staff's and PSH's reports does not equate to deflation of existing sand dunes and that deflation of existing sand dunes does not necessarily result in significant impacts to the sand species, predominantly the Mohave Fringe Toed Lizard. However, as a compromise and to benefit the species, PSH has offered 89 additional mitigation acres to the table to account for worst-case (although unlikely) indirect impacts due to interference with the sand transport corridor.

CULTURAL RESOURCES

Condition of Certification CUL-8

Staff rewrote Condition of Certification **CUL-8** not because of any modification proposed by the PSEGS but to reflect Staff's new reporting requirements. Although PSH does not agree that this Condition needed to be rewritten it is largely acceptable. However, PSH proposes modifications to more accurately describe under what circumstances full-time archaeological monitoring would be required. Staff committed at the Workshops to consider the following modifications proposed by PSH.

CUL-8 Prior to the start of construction-related ground disturbance or grading, boring, and trenching, as defined in the General Conditions for this project; ~~or surface grading or subsurface soil work during preconstruction activities or site mobilization; or mowing activities and heavy equipment use in loose or sandy soils, at the project site, access roads, and linear facilities,~~ the project owner shall notify the CPM and all interested Native Americans of the date on which ground disturbance will ensue.

The project owner shall ensure that the CRS, alternate CRS, or CRMs monitor full time all of the above following specified construction-related ground disturbance at the project site: 1) surface grading or subsurface soil work during pre- construction activities, site mobilization and installation of the desert tortoise fencing; 2.) mowing activities and heavy equipment use in undisturbed loose or sandy soils defined as Zone 2 or Zone 3 of the sand transport corridor; 3.) excavation and grading of the power block and common facilities areas; 4.) excavation of trenches; and 5.) grading of the access, perimeter, and spoke roads along the linear facilities routes, and at laydown areas, roads, and other ancillary areas, to ensure there are no impacts to undiscovered cultural resources and to ensure that known cultural resources are not affected in an unanticipated manner.

Staff added a requirement to notify the CPM every time a Native American group contacts the Project Owner seeking to be employed as a Native American Monitor. However, Staff will have approved the use of NAMs as part of language already included in **CUL-8** and therefore this requirement seems unnecessary. PSH requests that Item 7. of the Verification be deleted.

Condition of Certification CUL-11, Verification

This condition was developed to ensure that certain sites were further evaluated and, if necessary, data recovery was performed prior to construction that could potentially disturb them. However, the verification is inconsistent with the condition language which allows construction to take place elsewhere for the project as long as the activities were not within 30 meters of the potential sites. PSH proposed in its Initial Comments to simply modify the verification language to be consistent with the language in the condition. At the Workshops, Staff explained that it wanted to revisit the concept of allowing construction to occur within 30 meters of a site that would need additional evaluation pursuant to the condition and indicated that it may modify the condition to provide an interim analysis step to determine whether the buffer distance should be 30 meters of some other distance. Without reviewing Staff's proposal, PSH renews its proposed modification to Item 1 of the Verification below.:

1. At least 45 days prior to ground disturbance **within 30 meters of the "prehistoric sites"**, the project owner shall notify the CPM that data recovery for small sites has ensued.

Condition of Certification CUL-12

PSH requested that the description of Item 2 in this condition be revised as follows to more accurately describe the field evidence relating to playa shorelines as they relate to Palen Dry Lake. Staff did not state at the Workshops whether it agreed with PSH's proposed modification below and therefore, PSH renews its request.

2. Request the PTNCL PG, or equivalent qualified person approved by the CPM and hired by the project owner should the PG not be available, to identify the specific

landform for each site and its relationship to ~~specific ancient lakeshores~~ **prior playa shorelines** of Palen Dry Lake. If an **identifiable shoreline lakeshore** is present within 100 meters of the site boundary, include it on the site map;

Similarly to Condition of Certification **CUL-11**, PSH has proposed the following modification to Item 1 of the Verification for this condition to make it consistent to the language in the condition.

Verification:

1. At least 45 days prior to ground disturbance **within 30 meters of the “complex PreHistoric sites”**, the project owner shall notify the CPM that data recovery for large complex sites has ensued.

Condition of Certification CUL-13

PSH proposes the following modification to the condition to ensure that Site JR-105 is captured and references to Reconfigured Alternatives 2 and 3 are removed. Staff agreed to this modification at the Workshops, as shown below:

CUL-13 DATA RECOVERY FOR HISTORIC-PERIOD REFUSE SCATTERS

Prior to the start of ground disturbance, the project owner shall ensure that a recovery plan is included in the CRMMP for upgrading the recordation of historic-period refuse scatter sites located on the proposed plant site. ~~For Reconfigured Alternative #3,~~ these consist of sites SMP-H-1003, SMP-H- 1004, SMP-H-1006, SMP-H-1008, SMP-H-1009, SMP-H-1010, SMP-H-1011, SMP-H-1012, SMP-H-1013, SMP-H-1020, SMP-H-1021, SMP-H-1022, SMP-H-1023, SMP-H-2002, SMP-H-2003, SMP-H-2004, SMP-H-2006, SMP-H-2007, SMP-H-2008, SMP-H-2010, SMP-H-2011/12, SMP-H-2017, SMP-H-2019, SMP-H-2021; JR-101, JR-102, JR-104, JR-109, JR-110; TC-008, TC-009, TC-020, and TC-032. ~~For Reconfigured Alternative #2, the sites requiring upgraded recordation consist of the same sites as Reconfigured Alternative #3 plus site~~ JR-107 **and JR-105**. These site lists may be revised only with the agreement of the CRS and the CPM.

Similarly to Condition of Certification CUL-11, PSH has proposed the following modification to Item 1 of the Verification for this condition to make it consistent to the language in the condition.

Verification:

1. At least 45 days prior to ground disturbance **within 30 meters of historic-period refuse scatter sites**, the project owner shall notify the CPM that mapping and upgraded in-field artifact analysis has ensued on the historic- period refuse scatter sites.

Condition of Certification CUL-14

PSH proposes modifications to this condition to remove references to Reconfigured Alternatives 2 and 3 and to make the verification timing consistent with the intent of the condition. At the Workshops, Staff agreed to remove the references to the Reconfigured Alternatives 2 and 3 as shown below:

CUL-14 DATA RECOVERY FOR HISTORIC-PERIOD SITES WITH FEATURES

Prior to the start of ground disturbance, the project owner shall ensure that a data recovery plan is included in the CRMMP for evaluation and data recovery from historic-period archaeological sites with features. ~~For Reconfigured Alternative #3,~~ these sites consist of sites SMP-H-1005, SMP- H-1007, SMP-H-2016. ~~For Reconfigured Alternative #2, these sites consist of the same sites as Reconfigured Alternative #3, plus site~~ and JR-108. These site lists may be revised only with the agreement of the CRS and the CPM. The plan shall specify in detail the location recordation equipment and methods to be used and describe any anticipated post-processing of the data. The project owner shall then ensure that the CRS, the PHA, and/or archaeological team members implement the plan, if allowed by the BLM, which shall include, but is not limited to the following tasks:

Condition of Certification CUL-16

Staff deleted CUL-16 in the PSA. At the Workshops, BLM expressed a strong preference that this condition be left in place. PSH supports inclusion of the condition because it provides clear direction if there is a dispute between Commission and BLM Staff when it comes to compliance with federal requirements applicable to cultural resources and requests the following CUL-16 be added to the FSA:

CUL-16 COMPLIANCE WITH BLM PROGRAMMATIC AGREEMENT

If provisions in the BLM PSEGS Programmatic Agreement and associated implementation and monitoring programs conflict with or duplicate these Conditions of Certification, the BLM provisions shall take precedence. Provisions in these Conditions that are additional to or exceed BLM provisions and represent requirements under the Energy Commission's CEQA responsibilities shall continue to apply to the project's activities, contingent on BLM's approval as authorized by federal law.

HAZARDOUS MATERIALS

Condition of Certification HAZ-2

PSH proposed modifications to this condition to ensure that recommendations from Riverside County are only incorporated into the plans if they are required by LORS in order to avoid disputes over the content of plans that are within the ultimate jurisdiction of the CPM. Staff agreed to the following language change at the Workshops:

HAZ-2 The project owner shall concurrently provide a Hazardous Materials Business Plan (HMBP), and a Spill Prevention, Control, and Countermeasure Plan (SPCC), and a ~~Process Safety Management Plan (PSMP)~~ to the Riverside County Department of Environmental Health (RCDEH), the Riverside County Fire Department (RCFD), and the CPM for review. After receiving comments from the RCDEH, RCFD, and the CPM, the project owner shall ~~reflect all~~ **include in the final documents** all recommendations **that ensure LORS compliance in the final documents**. Copies of the final HMBP, **and** SPCC Plan, ~~and PSMP~~ shall then be provided to the RCDEH and RCFD for information and to the CPM for approval.

Condition of Certification HAZ-6

PSH proposed two modifications to this condition. The first is to remove the requirement for barbed wire fencing in order to avoid take of migratory birds. At the Workshops, Staff agreed to this modification but will propose additional security measures to replace the barbed wire, and will include these options in the FSA. The second modification proposed by PSH was to remove the requirement for 100% camera coverage around the perimeter fence as the project will not have a fence around the power block. Staff stated that the additional security measures discussed above will also address the security camera coverage. PSH requested the following modifications.

The Operation Security Plan shall include the following:

1. permanent full perimeter fence or wall, at least eight feet high ~~and topped with barbed wire or equivalent~~;
9. closed circuit TV (CCTV) monitoring system, recordable, and viewable in the power plant control room and security station (if separate from the control room) with cameras able to pan, tilt, and zoom, have low-light capability, and are able to view the outside entrance to the control room, ~~the propane/LPG tank, 100 % of the perimeter fencing around each power block and~~ the front gate, **and key areas of the power block area**; and

Condition of Certification HAZ-4

Staff explained at the Workshops that it would be modifying Condition of Certification **HAZ-4** to reference compliance with NFPA 56 relating to the cleaning of the gas pipeline. PSH does not object to complying with NFPA 56.

SOIL & WATER RESOURCES

Condition of Certification SOIL & WATER-6

This condition refers to Waste Discharge Requirements (WDRs) which Staff did not include in the PSA. At the Workshops, Staff explained that it had reviewed PSH's proposed revisions to the WDRs but believed that the wastestream tables should be

modified. Staff and PSH agreed that the modifications were acceptable if based on the information contained in Appendix 2 of the Petition For Amendment, Evaporation Pond Design Basis.

Condition of Certification SOIL & WATER-17, Verification

The verification to this condition requires compliance within 30 days following certification. To be consistent with other Commission conditions, PSH proposed to modify the verification timeline deleting any reference to “following certification”. At the Workshops Staff stated it agreed with deleting the reference to certification but may need 60 to 90 days prior to initiation of groundwater pumping for grading operations. PSH renews its request as follows:

Verification: Within thirty (30) days ~~following certification~~ **prior to initiation of groundwater pumping for grading operations** of the proposed Project, the project owner shall submit to the CPM for their review and approval a report detailing the results of the modeling effort.

Condition of Certification SOIL & WATER-20

Staff included a requirement that all fencing be designed to withstand a 100-year storm event. PSH believes that such a design is not feasible. PSH’s plan is to implement a fence inspection and repair program and therefore proposes the following modification to this condition. Staff agreed to the following modified language at the Workshops:

The project owner shall ensure that the heliostats ,and diversion channels and perimeter fencing are designed and installed to withstand storm water scour that may occur as a result of a 100-year, 24-hour storm event. The project owner shall implement a fence inspection and repair program to repair fencing after major storm events.

TRAFFIC AND TRANSPORTATION

Condition of Certification TRANS-6, Verification

The verification of this condition introduces the concept that the CPM will inspect the FAA lighting. PSH proposes clarifying language to ensure that the CPM inspection activities do not conflict with the FAA jurisdictional requirements, to which Staff agreed at the Workshops.

Verification: Within 5 days of completion of solar power tower construction and prior to the start of plant operation, the project owner shall install and activate permanent obstruction marking and lighting consistent with FAA requirements and shall inform the CPM in writing within 10 days of installation and activation. The lighting shall be inspected and approved by the CPM (or designated inspector) shall conduct an inspection within 30 days of activation to ensure the lighting is operable and has been installed in accordance with federal installation

and manufacturing standards as established by the FAA under FAA Advisory Circulars.

Condition of Certification TRANS-7

PSH proposed a heliostat positioning plan condition that was negotiated with Riverside County and contained express language that PSH and Riverside County agreed would mitigate potential impacts to the Riverside County Public Safety Enterprise Communication (PSEC) Project. This condition was previously docketed with the Commission in Response to Workshop Query 6 and PSH urges Staff to include it in the FSA. Staff has reviewed the condition and agreed at the Workshops it would be a good framework for mitigating potential heliostat impacts. Staff and PSH discussed the use of mobile cameras and adapting this condition to address potential impact during commissioning.

WORKER SAFETY & FIRE PROTECTION

Condition of Certification WORKER SAFETY-6

PSH agrees with the one-half payment for all terrain fire engines rather than installation of a secondary access road.

Condition of Certification WORKER SAFETY-7

PSH agrees with Staff that the impacts from the PSEGS are less than those assessed to the original project. PSH has completed a Fire Needs Assessment that shows that the capacity of the Riverside County Fire Department, based on current staffing and reported responses from the three closest fire stations, is adequate to support the limited emergency response needs of the PSEGS during both construction and operation. Staff's original analysis for the Approved Project used Staff's Emergency Response Matrix as a basis for allocating responsibility for each of four Commission-regulated projects by comparing their relative risks. PSH believes that the Commission did not include all of the projects that may impact Riverside County Fire and therefore believes that the matrix does not allocate the correct percentages of the needs to the PSEGS.

In addition, PSH urges Staff to consider the information contained in the Fire Needs Assessment. PSH would like the Commission to note that at no time has Riverside County provided any analysis justifying or providing evidence that it needs the financial support it has requested. Riverside County has simply stated that it needs additional equipment and staffing. Notwithstanding the Fire Needs Assessment and the level of mitigation determined for the Rice Solar Energy Project, PSH proposes to provide Riverside County Fire Department with the following:

- During construction the applicant fund the cost of a medium rescue vehicle and equipment. The estimated cost of a medium rescue unit fully equipped is \$1.2 million.

- During construction the applicant would fund one Fire Captain and half the cost of a firefighter to staff the medium rescue unit and during operation the applicant will pay one sixth of the on-going operations cost. Currently there are four CEC projects under construction or consideration, and two Riverside County approved projects. The Genesis Project is currently paying for one additional position at Station 49, and that fire fighter would be moved to the rescue unit for the power projects. Staffing at Station 49 would return to normal RCFD staffing and would be augmented by the rescue unit. Staffing cost of 1 fire captain @ \$167,000 X 3 positions = \$501,000 and 1/2 firefighter @ \$61,000 X 3 positions= \$183,000 for total staffing cost of the first 3 years of \$684,000 per year and one sixth the total cost @\$114,000 each year after.¹

Consistent with the proposal above, PSH proposes to modify Condition of Certification **WORKER SAFETY-7** as follows:

WORKER SAFETY-7 The project owner shall either:

A. ~~Reach an agreement with the Riverside County Fire Department regarding funding of its project-related share of capital costs to build fire protection/response infrastructure and provide appropriate equipment as mitigation of project-related impacts on fire protection services, or, if no agreement can be reached~~ fund its share of the capital costs in the amount of \$850,000 ~~\$1,000,000~~ **\$1,200,000** and shall provide an annual payment of \$375,000 ~~\$313,333~~ **\$684,000** to the RCFD for the support of three fire department staff commencing with the date of site mobilization and continuing annually thereafter on the anniversary **for the three-year construction period. For project operations, the project owner shall provide an annual payment of \$144,000 commencing with the date of commercial operation and continuing annually thereafter on the anniversary** until the final date of power plant decommissioning.

Verification: At least 30 days prior to the start of site mobilization, the project owner shall provide **proof** to the CPM for review and approval either: ~~A copy of the agreement with the RCFD or D documentation that a letter of credit in the amount of \$850,000~~ ~~\$1,000,000~~ **\$1,200,000** has been provided ~~paid to the RCFD for capital costs and documentation that the first of the three annual construction payments of~~ a letter of credit in the amount of \$375,000 will be provided ~~\$313,333~~ **\$684,000** has been paid to ~~the~~ RCFD each year at the start of commercial operations. Proof of the annual **operation payment of \$144,000** ~~\$375,000 letter of credit payment of \$313,333~~ has been made commencing with site mobilization **made each year commencing at commercial operation** shall be included each year in the Project Owner's Annual Report to the CPM.

¹ Costs where provided by Riverside County Fire Department Administration Chief, Deputy Chief Patterson June 2013.

COMPLIANCE

Definitions

Staff modified several of the definitions related to the start of construction activities. PSH requests that the installation of desert tortoise fencing be added to those activities defined as “Site Assessment and Preconstruction Activities” and remove it from the definition of “Site Mobilization and Construction”. Desert tortoise fencing is a critical part of the desert tortoise clearance process; clearance activities cannot take place without the fencing. Therefore, in order to allow fencing and clearance activities to proceed as envisioned by Condition of Certification **BIO-12**, it is important clearance and fencing be allowed under “Site Assessment and Preconstruction Activities”. Staff agreed to these modifications at the Workshops.

Condition of Certification COM-2

Staff increased the amount of documentation that the Project Owner must retain beyond what has been required on other recent solar projects. PSH proposes deletion of two of these items to limit the amount of material to relevant documents. Staff agreed at the Workshops to give this modification further consideration.

~~3. all site-related environmental impact and survey documentation;~~

~~4. all appraisals, assessments, and studies for the project;~~

Condition of Certification COM-4

PSH proposes the following modification to clarify that the PSEGS is an amendment to a Commission Decision. Staff agreed to this modification at the Workshops:

If the project owner anticipates site mobilization immediately following project certification, it may be necessary for the project owner to file compliance submittals prior to project certification. In these instances, compliance verifications can be submitted in advance of the required deadlines and the anticipated authorizations to start construction. The project owner must understand that submitting compliance verifications prior to these authorizations is at the owner’s own risk. Any approval by Energy Commission staff prior to project certification is subject to change based upon the Commission Decision or amendment thereto, and early staff compliance approvals do not imply that the Energy Commission will certify the project for actual construction and operation.

Condition of Certification COM-6

PSH proposes the following modification to this condition to provide enough time to submit the Monthly Compliance Reports. At the Workshops, Staff agreed to give this modification further consideration:

During project pre-construction and construction the project owner or authorized agent will submit an electronic searchable version of the Monthly Compliance Report within ten (10) business days after the end of each reporting month, unless otherwise specified by the CPM. Monthly Compliance Reports shall be clearly identified for the month being reported.

Condition of Certification COM-11

PSH requests that the condition be modified as follows to reflect normal business practices. Staff agreed to this modification at the Workshops:

The project owner will respond to all recorded complaints within twenty- four (24) hours or the next business day.

CONCLUSION

PSH provided Initial Comments on the PSA on July 11, 2013, and now provides these Final Comments on the PSA which include many agreements reached through productive collaboration at the Workshops. PSH urges Staff to publish its FSA on August 23, 2013 in order to facilitate the schedule of this important project.

Dated: July 29, 2013

Respectfully Submitted,



Scott A. Galati
Counsel to Palen Solar Holdings, LLC

Attachment A

BIO-29 Tables

BIO-29 Table 1. Area of Habitat Type Disturbed by Construction Phase (acres)

Habitat Type	Reconfigured Alternative 2 Disturbance Area		Reconfigured Alternative 3 Disturbance Area		PSEGS	
	Phase 1	Phase 2	Phase 1	Phase 2	Phase 1	Phase 2
MFTL Habitat						
Stabilized & Partially Stabilized Dunes	44	112	59	128	0	186.8
Non-Dunes	637	711	509	845	27.7	1264.7
Indirect Impacts	117	27	280	-186	0	178
TOTAL	754	738	789	659	27.7	1629.5
DT Habitat						
DT Habitat - inside critical habitat	225	0	225	0	172.2	52.2
DT Habitat - outside critical habitat	2115	1855	1969	1933	770.2	2902
DT Indirect Habitat - inside critical habitat	0	0	0	0	3.7	0
DT Indirect Habitat - outside critical habitat	0	0	0	0	8	39.7
TOTAL	2340	1855	2194	1933	954.1	2993.9
WBO Habitat						
Impacts to 4 WBO	4 WBO	0	4 WBO	0	4 WBO	0
TOTAL	4 WBO	0	4 WBO	0	4 WBO	0
Jurisdictional Waters (Direct Impact)						
Dry Desert Wash Woodland	202	6	193	5	17.95	188.5
Unvegetated Ephemeral Wash	99	81	95	73	10.9	157.3
Subtotal	301	87	288	78	28.85	345.8
Jurisdictional Waters (Indirect Impact)						
Dry Desert Wash Woodland	0	0	0	0	0.03	0
Unvegetated Ephemeral Wash	17	2	15	2	0.05	0.47
Subtotal	17	2	15	2	0.08	0.47
TOTAL	318	89	303	80	28.93	346.27

BIO-29 Table 2. Mitigation by Habitat Type Disturbed by Construction Phase (acres)

Habitat Type	Mitigation Ratio	Reconfigured Alternative 2 Disturbance Area		Reconfigured Alternative 3 Disturbance Area		PSEGS	
		Phase 1	Phase 2	Phase 1	Phase 2	Phase 1	Phase 2
MFTL Habitat							
Stabilized & Partially Stabilized Dunes	3:1	132	336	178	385	0	560.4
Non-Dunes	1:1	637	711	509	845	27.7	1264.7
Indirect Impacts	0.5:1	59	14	140	-93	0	89
TOTAL		828	1061	827	1137	27.7	1914.1
DT Habitat							
DT Habitat - inside critical habitat	5:1	1127	0	1126	0	861	261
DT Habitat - outside critical habitat	1:1	2115	1855	1969	1933	770.2	2902
DT Indirect Habitat - inside critical habitat (161 kv line)	5:1	0	0	0	0	18.50	0
DT Indirect Habitat - outside critical habitat (161 kV line and private parcel)	1:1	0	0	0	0	8	39.7
TOTAL		3242	1855	3095	1933	1657.7	3202.7
WBO Habitat							
Impacts to 4 WBO	19.5 acre/WBO	78	0	78	0	78	0
TOTAL		78	0	78	0	78	0
Jurisdictional Waters (Direct Impact)							
Dry Desert Wash Woodland	3:1	605	18	578	15	53.9	565.5
Unvegetated Ephemeral Wash	1:1	99	81	95	73	10.9	157.3
Subtotal		704	99	673	88	64.8	722.8
Jurisdictional Waters (Indirect Impact)							
Dry Desert Wash Woodland	1.5:1	0	0	0	0	0.05	0.00
Unvegetated Ephemeral Wash	0.5:1	8	1	8	1	0.03	0.24
Subtotal		8	1	8	1	0.07	0.24
TOTAL		712	100	681	89	64.8	723.0



**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
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**PALEN SOLAR ELECTRIC
GENERATING SYSTEM AMENDMENT**

**Docket No. 09-AFC-07C
PROOF OF SERVICE
(Revised 07/09/2013)**

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Adviser for Facility Siting

DECLARATION OF SERVICE

I, Marie Fleming, declare that on July 29, 2013, I served and filed copies of **PALEN SOLAR HOLDINGS, LLC'S FINAL COMMENTS ON THE PRELIMINARY STAFF ASSESSMENT** dated July 29, 2013. The most recent Proof of Service List, which I copied from the web page for this project at: <http://www.energy.ca.gov>, is attached to this Declaration.

(Check one)

For service to all other parties and filing with the Docket Unit at the Energy Commission:

I successfully uploaded the document to the Energy Commission's e-filing system and I personally delivered the document or deposited it in the US mail with first class postage to those persons for whom a physical mailing address but no e-mail address is shown on the attached Proof of Service List. [The e-filing system will serve the other parties and Committee via e-mail when the document is approved for filing.]

I e-mailed the document to docket@energy.ca.gov and I personally delivered the document or deposited it in the US mail with first class postage to those persons for whom a physical mailing address but no e-mail address is shown on the attached Proof of Service List. [The e-filing system will serve the other parties and Committee via e-mail when the document is approved for filing.]

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California Energy Commission – Docket Unit
Attn: Docket No. 09-AFC-7C
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am over the age of 18 years.

Dated: July 29, 2013



Marie Fleming