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STATE OF CALIFORNIA

Energy Resources Conservation
and Development Commission

In the Matter of:)
)
Application for Certification of the) Docket No. 09-AFC-7C
Palen Solar Power Project.)
)
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**PETITIONER’S RESPONSE TO QUESTIONS POSED IN NOTICE OF ENERGY
COMMISSION’S HEARING ON PETITION FOR OWNERSHIP TRANSFER FROM
PALEN SEGS I, LLC TO MAVERICK SOLAR, LLC AND PETITIONS FOR
EXTENSION OF DEADLINE FOR COMMENCEMENT OF CONSTRUCTION FOR
THE PALEN SOLAR POWER PROJECT, POSSIBLE ASSIGNMENTS OF
COMMITTEE AND FURTHER ORDERS**

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INTRODUCTION

On December 15, 2015, Petitioner Palen SEGS I, LLC (“Palen SEGS I”) filed a Petition for Ownership Transfer from Palen SEGS I, LLC to Maverick Solar, LLC (“Petition for Ownership Transfer”).¹ On December 22, 2015, Palen SEGS I filed a Petition for Extension of Deadline for Commencement of Construction for the Palen Solar Power Project (“Petition for Extension”).² Both petitions pertain to the California Energy Commission (“Commission”) license to construct and operate the Palen Solar Power Project (“PSPP” or “Project”).³ On January 11, 2016, the Commission issued notice of a hearing on the petitions and ordered the Petitioner to respond to 10 questions by noon January 22, 2016.⁴

¹ Petition re: Transfer of Ownership, 09-AFC-07C TN# 207034 (Dec. 15, 2015).

² Petition for Extension of Deadline for Commencement of Construction, 09-AFC-07C TN# 207099 (Dec. 22, 2015).

³ Commission Decision (Order No. 10-1215-19), 09-AFC-07 TN# 59350 (Dec. 22, 2010) (hereinafter the “Certificate” or the “PSPP license”).

⁴ Notice of Energy Commission Hearing on Petition for Ownership Transfer from Palen SEGS I, LLC to Maverick Solar, LLC & Petitions, 09-AFC-07C TN# 207270 (Jan. 11, 2016).

RESPONSES TO ENERGY COMMISSION QUESTIONS

1. Did the existing Palen license expire on December 15 when no petition to amend was filed by December 22, 2015?

No. The Palen license did not expire on December 15, 2015 for two reasons, each of which independently suffices to extend the existing license. First, Palen SEGS I timely filed the Petition for Ownership Transfer prior to the start-of-construction deadline. If the Commission approves the Petition for Ownership Transfer, it must allow the new owner additional time to begin construction pursuant to Pub. Res. Code § 25534(j). Second, and in the alternative, Palen SEGS I timely filed the Petition for Extension. The Petition for Extension establishes the requisite good cause, and it should be granted.

A. Pub. Res. Code § 25534(j) mandates an extension.

The Warren-Alquist Act⁵ provides for mandatory start-of-construction deadline extensions where, as here, a project is sold to a new entity:

This section does not prevent a certificate holder from selling its license to construct and operate a project prior to its revocation by the commission. **In the event of a sale to an entity that is not an affiliate of the certificate holder, the commission shall adopt new deadlines or milestones for the project that allow the new certificate holder up to 12 months to start construction of the project or to start to meet the applicable deadlines or milestones.**⁶

As discussed in more detail in the response to Question (8) below, section 25534(j) applies to the ownership transfer here.

Where the legislature in section 25534 gave the Commission authority to revoke or amend a facility's certification, it spoke in permissive terms. The Commission "*may*, after one or more hearings . . . revoke the certification" of a facility in certain instances.⁷ By contrast, where the legislature placed limits on the Commission, it left no such room for discretion. If a certificate holder sells its license to an unaffiliated party, the Commission "*shall*" allow the new

⁵ Pub. Res. Code § 25000 *et seq.*

⁶ *Id.* § 25534(j) (emphasis added).

⁷ *Id.* § 25534(a) (emphasis added). For example, the Commission may revoke certification where (a) the facility has not met construction deadlines, (b) the California Consumer Power and Conservation Financing Authority has notified the Commission it is "willing and able to construct the project," and (c) the applicant failed to meet its start-of-construction deadline without "good cause." *Id.* §25534(a)(4), (c)-(d).

owner additional time to begin construction.⁸ Thus, the section 25534(j) extension is mandatory.⁹ Commission regulations, including section 1720.3, do not (and of course, cannot) contravene the unambiguous, mandatory section 25534(j) extension for ownership transfers.

On December 15, 2015, Palen SEGS I transferred the Certificate to Maverick Solar, LLC (“Maverick”), an unaffiliated entity, and timely filed the Petition for Ownership Transfer. Once the Commission grants a Petition for Ownership Transfer, it must extend the start-of-construction deadline — in this instance with the result that the existing License will not have expired on December 15, 2015.

B. The Petition for Extension was timely filed and demonstrates good cause pursuant to 20 C.C.R. § 1720.3.

In addition to section 25534(j), Commission regulations also provide for a start-of-construction deadline extension for good cause:

Unless a shorter deadline is established pursuant to § 25534, the deadline for the commencement of construction shall be five years after the effective date of the decision. Prior to the deadline, the applicant may request, and the commission may order, an extension of the deadline for good cause.¹⁰

By order adopted on September 9, 2015,¹¹ the Commission established two applicable deadlines, both of which Petitioner has satisfied. First, the order extends the original start-of-construction deadline until December 16, 2016.¹² Second, the order provides that if the Petitioner did not submit a petition to amend by December 22, 2015, the extension would be automatically rescinded and the permit would be deemed to have expired as of December 15, 2015.¹³ Petitioner submitted its good cause Petition for Extension on December 22, 2015 — that is, prior to the expiration of either deadline described in the September 9, 2015 order, at a time when the PSPP license was unquestionably in effect. The Petition is timely, it establishes good cause, and the Commission should grant it.

⁸ *Id.* 25534(j) (emphasis added).

⁹ *Id.* § 15 (“‘Shall’ is mandatory and ‘may’ is permissive.”).

¹⁰ 20 C.C.R. § 1720.3.

¹¹ Order Granting Extension of Time to Construct, 09-AFC-07C TN# 206118 (Sept. 16, 2015).

¹² *Id.*

¹³ *Id.*

i. The Petition for Extension was timely filed.

Certain comments submitted in response to the Petition for Extension claim that because Palen SEGS I did not submit the petition to amend contemplated by the September 9, 2015 order, the Commission is now prohibited from granting a good-cause extension.¹⁴ For three reasons, there is no support for these claims.

First and foremost, granting an extension pursuant to section 1720.3 necessarily entails excusing a project owner from compliance with deadlines set forth in previous orders. For example, the Commission's December 15, 2010 order approving the PSPP provides that "this license expires by operation of law when the project's [five-year] start-of-construction deadline passes with no construction."¹⁵ Notwithstanding this condition, section 1720.3 permitted the Commission to extend the start-of-construction deadline via its September 9, 2015 order. So too does section 1720.3 permit the Commission to modify the deadlines set forth in the September 9, 2015 order. In this respect, the Petition for Ownership Transfer submitted on December 15, 2015 and the Petition for Extension submitted on December 22, 2015 also operate as requests to modify the September 9, 2015 order. Thus, the Commission may modify the September 9, 2015 order either in recognition of the petition submitted on December 15, before the retroactive "deemed" expiration, or in recognition of the petition submitted on December 22, before the expiration of the time to comply with the order.

Second, even if the Commission could somehow issue an order that prohibited an applicant from subsequently seeking a section 1720.3 extension (we are aware of no such authority, and no commenter suggests any), the September 9, 2015 order cannot reasonably be read as having such an effect. That order does not expressly prohibit the future applicability of section 1720.3 — let alone discuss the provision — and to imply the Commission intended such

¹⁴ Center Opposition To December 22, 2015 Petition for Extension of Deadline for Commencement of Construction, 09-AFC-07C TN# 207189 at 1–2 (Jan. 5, 2016); Colorado River Indian Tribes Response to Second Petition for Extension of Deadline, 09-AFC-07C TN# 207196 at 2 (Jan. 6, 2016); [Basin & Range Watch] Opposition to Second Petition for Extension, 09-AFC-07C TN# 207216 at 2 (Jan. 7, 2016).

¹⁵ Certificate, 09-AFC-07 TN# 59350 at 3. While that order expressly acknowledges section 1720.3, it has not been suggested that only Commission orders that contain such a reference may be modified by section 1720.3, nor would such a position find any support under California law.

a drastic result would be contrary to long-held background principles disfavoring repeal by implication.¹⁶

Third, no applicable statute or regulation prohibits extensions in the circumstances present here. To the contrary, the sole Commission regulation providing for the expiration of Commission licenses such as the Certificate is section 1720.3, which also provides the very basis for the extension Petitioner seeks. The Warren-Alquist Act sets only one start-of-construction deadline, and it does not apply here.¹⁷

Other commenters claim that under section 1720.3, the Commission can only grant an extension “prior to the deadline,” even where the project owner has timely filed its petition.¹⁸ This reading would cause needless confusion, unnecessary filings, and hasty decision-making. The Commission need not and should not adopt it.

As the Commission is aware, it has significant flexibility with respect to when it rules on section 1720.3 petitions. The regulations in effect at the time of the Petition for Extension, for example, required only that the presiding member “schedule further hearings or written responses on the petition” within 30 days of its receipt.¹⁹ Current regulations give the presiding member even broader discretion.²⁰ This flexibility allows the Commission to tailor its review of a given petition to the amount of time and resources it requires. For at least two reasons, reading section 1720.3 to demand a Commission decision before the original start-of-construction deadline would seriously disrupt this prudent regulatory scheme. First, given the discretion vested in the Commission, such an interpretation would leave certificate holders guessing as to when their filings must be made. This uncertainty would in turn encourage parties to seek extensions far in advance of the start-of-construction deadline should they even suspect an extension might later become needed, resulting in premature petitions that otherwise might never have been filed. Second, this reading might also place the Commission in the position of having

¹⁶ See, e.g., *Schatz v. Allen Matkins Leck Gamble & Mallory LLP*, 45 Cal. 4th 557, 573 (2009) (“[A]ll presumptions are against a repeal by implication.”).

¹⁷ The Commission may revoke a certificate if the applicant has without good cause failed to begin construction within 12 months of obtaining all permits and the California Consumer Power and Conservation Financing Authority has notified the Commission that “it is willing and able to construct the project.” Pub. Res. Code § 25534(a)(4), (d). The Authority not having so notified the Commission, and all permits not having been obtained, this statutory deadline does not apply.

¹⁸ Colorado River Indian Tribes Response to Second Petition for Extension of Deadline, 09-AFC-07C TN# 207196 at 2 (Jan. 6, 2016).

¹⁹ 20 C.C.R. § 1716.5.

²⁰ See *id.* at § 1211.5(a).

to rush its decision on a petition (and be deprived of the benefit of helpful briefing or hearings) lest it lose the ability to rule at all. Both are absurd results, and must be avoided.²¹

The only reasonable reading of section 1720.3 is simply that so long as the applicant files its petition prior to the start-of-construction deadline, the Commission may grant it for good cause. Under California law, the Commission's interpretation to that effect will be given great weight.²²

ii. Good cause exists for granting the Petition for Extension.

As explained in the Petition for Extension, there is ample good cause to grant the extension under section 1720.3.²³ By its September 9, 2015 order, the Commission recognized that each owner of the PSPP had diligently and actively worked to bring the Project to fruition, that outside forces had kept prior owners from meeting the original start-of-construction deadline, that time and resources will be conserved by using the existing record, and that an extension was in the public interest. While some commenters would have the Commission revisit old arguments to the contrary,²⁴ that determination has already been made. Instead of wasting the resources of the Commission or the parties, we add only the following.

From the time of the Commission's September 9, 2015 order, the Petitioner has diligently pursued development and construction of the PSPP. While intervenors largely take issue with previous PSPP owners' desire to construct a modified project,²⁵ such modifications are entirely appropriate under Commission regulations.²⁶ There is simply no basis for the contention that the

²¹ See, e.g., *Smith v. Superior Court*, 39 Cal. 4th 77, 83 (2006) (statutes should not be read so as to produce absurd results); *Dep't of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.*, 109 Cal. App. 4th 1687, 1695–96 (2003) (“Generally, the same sections of construction and interpretation applicable to statutes are used in the interpretation of administrative regulations . . . Regulations are not interpreted in a manner that results in absurd consequences or defeats the core purpose of their adoption.”) (citations omitted).

²² See, e.g., *S. California Edison Co. v. Pub. Utilities Comm'n*, 85 Cal. App. 4th 1086, 1096 (2000) (“A court is more likely to defer to an agency's interpretation of its own regulation than to its interpretation of a statute.”) (quoting *Yamaha Corp. of Am. v. State Bd. of Equalization*, 19 Cal. 4th 1, 12 (1998)).

²³ Petition for Extension of Deadline for Commencement of Construction, 09-AFC-07C TN# 207099 (Dec. 22, 2015).

²⁴ See Center Opposition To December 22, 2015 Petition for Extension of Deadline for Commencement of Construction, 09-AFC-07C TN# 207189 at 4–10 (Jan. 5, 2016); Colorado River Indian Tribes Response to Second Petition for Extension of Deadline, 09-AFC-07C TN# 207196 at 2–3 (Jan. 6, 2016); [Basin & Range Watch] Opposition to Second Petition for Extension, 09-AFC-07C TN# 207216 at 2 (Jan. 7, 2016).

²⁵ See Center Opposition To December 22, 2015 Petition for Extension of Deadline for Commencement of Construction, 09-AFC-07C TN# 207189 at 4–6 (Jan. 5, 2016); Colorado River Indian Tribes Response to Second Petition for Extension of Deadline, 09-AFC-07C TN# 207196 at 2–3 (Jan. 6, 2016).

²⁶ See, e.g., 20 C.C.R. § 1769.

diligent pursuit of a modified project equates somehow to a lack of diligence for purposes of section 1720.3.

As explained in the Petition for Extension, it is equally clear that forces beyond the Petitioner’s control have prevented it from submitting the petition to amend contemplated by the September 9, 2015 order. Casting (as some intervenors do²⁷) the pre-insolvency proceedings of Abengoa Solar LLC — a global company over which Palen SEGS I had no control — as the project owner’s voluntary choice strains credulity. So does the suggestion that the amendment process culminating in withdrawal of the proposal to use “power tower” technology was “completely within the applicant’s control”²⁸ — particularly given the vehement opposition that proposal engendered.

Contrary to the suggestions of some intervenors,²⁹ making use of the existing record is entirely consistent with the California Environmental Quality Act³⁰ (“CEQA”) and its strong statutory presumption against additional environmental review.³¹ Where, as here, an environmental review document has been prepared for a project, supplemental review is appropriate only where and to the extent that changes result in new or more intense significant impacts.³² Indeed, “agencies are prohibited from requiring further environmental review unless the stated conditions are met.”³³ The age of the original environmental document is irrelevant if subsequent events do not trigger the need for further environmental review.³⁴ As stated by the

²⁷ See Center Opposition To December 22, 2015 Petition for Extension of Deadline for Commencement of Construction, 09-AFC-07C TN# 207189 at 6–7 (Jan. 5, 2016).

²⁸ *Id.* at 7.

²⁹ *Id.* at 7-9; Colorado River Indian Tribes Response to Second Petition for Extension of Deadline, 09-AFC-07C TN# 207196 at 3 (Jan. 6, 2016); [Basin & Range Watch] Opposition to Second Petition for Extension, 09-AFC-07C TN# 207216 at 2 (Jan. 7, 2016).

³⁰ Pub. Res. Code §§ 21000–21177.

³¹ *San Diego Navy Broadway Complex Coalition v. City of San Diego*, 185 Cal. App. 4th 924, 934 (2010) (“After an initial EIR is certified, there is a statutory presumption against additional environmental review.”); *Moss v. County of Humboldt*, 162 Cal. App. 4th 1041, 1049–50 (2008) (“after a project has been subjected to environmental review, the statutory presumption flips in favor of the developer and against further review”).

³² See Pub. Res. Code § 21166; 14 C.C.R. § 15162.

³³ *San Diego Navy Broadway Complex Coal.*, 185 Cal. App. 4th at 935; *Melom v. City of Madera*, 183 Cal. App. 4th 41, 48–49 (2010) (same); *Moss*, 162 Cal. App. 4th at 1050 (“Thus, while section 21151 is intended to create a ‘low threshold requirement for preparation of an EIR’ [citation], section [21166] indicates a quite different intent, namely, to restrict the powers of agencies ‘by prohibiting [them] from requiring a subsequent or supplemental environmental impact report’ unless the stated conditions are met. [Citation.]”); *Bowman v. City of Petaluma*, 185 Cal. App. 3d 1065, 1073–74 (1986) (same).

³⁴ See, e.g., *Snarled Traffic Obstructs Progress v. City & County of San Francisco*, 74 Cal. App. 4th 793 (1999) (modifications to project for which a negative declaration had been issued nine years earlier did not require either changes in the negative declaration or preparation of an EIR).

California Supreme Court, once an environmental review document has been adopted, “the interests of finality are favored over the policy of encouraging public comment,” even if the original CEQA document was flawed.³⁵ Similar principles apply to draft CEQA documents as well.³⁶

Lastly, an extension remains in the public interest. Most fundamentally, an extension will allow all involved to build upon the considerable work they have already performed to analyze and evaluate the PSPP. Starting afresh, on the other hand, will result in the needless production of another large administrative record and further delay of a project that will contribute significantly to the renewable energy goals of the State of California and the President’s Climate Action Plan.

2. If not, explain why a petition for extension of a construction deadline should be deemed to meet the requirement for a petition to amend.

Petitioner does not contend that its Petition for Extension is a petition to amend the project description to update the solar trough design and incorporate energy storage into the Project. That the Petition for Extension is not the petition to amend contemplated by the September 9, 2015 order, however, is ultimately immaterial. As explained above in response to Question (1), Palen SEGS I timely filed a Petition for Ownership Transfer as well as a Petition for Extension. The Commission’s grant of either is sufficient to extend the start-of-construction deadline independent of the September 9, 2015 order. Moreover, both petitions operate as requests to modify the September 9, 2015 order.

3. If the license has expired, what legal authority allows the Commission to revive the certificate and extend the construction commencement deadline?

Assuming for the sake of argument that the PSPP license has expired (as explained in response to Questions (1) and (2), the PSPP license has *not* expired), the Commission has authority to “revive” it and extend the construction commencement deadline.

As described above, Pub. Res. Code § 25534(j) requires and 20 C.C.R. § 1720.3 allows the Commission to extend the start-of-construction deadline. If the PSPP license is seen to have

³⁵ *Laurel Heights Improvement Assn. v. Regents of Univ. of California*, 6 Cal. 4th 1112, 1130 (1993), *as modified on denial of reh'g* (1994); *Friends of Davis v. City of Davis*, 83 Cal. App. 4th 1004 (2000).

³⁶ *Laurel Heights*, 6 Cal. 4th at 1130; 14 C.C.R. § 15088.5.

“expired,” it is only because the previous deadline has lapsed without the Commission having yet ruled on the timely petitions now before it. Viewed through such a lens, sections 25534(j) and 1720.3 clearly allow the Commission to “revive” the Certificate.

As mentioned above, the only reasonable reading of section 1720.3 is that so long as a project owner files a petition for extension prior to the start-of-construction deadline, the Commission may issue the extension upon a finding of good cause, even if it does so after the deadline.

As also explained above, section 25534(j) unambiguously mandates a start-of-construction deadline extension where a license has been sold to an unaffiliated entity. For the same reasons the Commission may act on a timely 1720.3 extension request after the original deadline has passed, so too may the Commission act on a section 25534(j) extension after the start-of-construction deadline so long as the sale triggering section 25534(j) occurred before the deadline.

In these respects, the Commission should observe that the legislature has: expressly vested the Commission with broad authority with respect to facility siting decisions;³⁷ mandated that “provisions specifying any power or duty of the commission shall be liberally construed;”³⁸ and empowered the Commission to “take any action[] it deems reasonable and necessary to carry out” the Warren-Alquist Act.³⁹

4. Who was the project owner of the PSPP on December 22, 2015?

As of December 14, 2015, the Commission license to construct and operate the Project was owned by Palen SEGS I. Ownership of additional Project assets, including contracts, books and records, other permits and permit applications, property rights, and insurance benefits, were (and continue to be) allocated among three entities: Palen SEGS I, Palen SEGS II, LLC (“Palen

³⁷ See, e.g., Pub. Res. Code § 25539.

³⁸ *Id.* § 25218.5.

³⁹ *Id.* § 25218(e). Moreover, “an agency’s powers are not limited to those expressly granted in the legislation; rather, “[i]t is well settled in this state that [administrative] officials may exercise such additional powers as are necessary for the due and efficient administration of powers expressly granted by statute, or as *may fairly be implied* from the statute granting the powers.” *Duarte & Witting, Inc. v. New Motor Vehicle Bd.*, 104 Cal. App. 4th 626, 635 (2002) (quoting *Rich Vision Centers, Inc. v. Board of Medical Examiners*, 144 Cal. App. 3d 110, 114 (1983)). See also *Cox v. Kern County. Civil Service Comm’n*, 156 Cal. App. 3d 867, 873 (1984) (“Public agencies possess not only expressly granted powers but also such implied powers as are necessary or reasonably appropriate to the accomplishment of their express powers.”) (quoting *County of San Joaquin v. Stockton Swim Club*, 42 Cal. App. 3d 968, 972 (1974)).

SEGS II”), and Palen Solar III, LLC (“Palen III”). All ownership interest in Palen SEGS I and II and Palen III was (and continues to be) fully held by Palen Solar Holdings, LLC (“PSH”), which was then a wholly owned direct subsidiary of Abengoa SP Holdings LLC (“Abengoa SP”). Abengoa SP was, in turn, a wholly owned direct subsidiary of Abengoa Solar LLC.

On December 15, 2015, Palen SEGS I sold its license to construct and operate the Project to Maverick. Maverick is a wholly owned subsidiary of EDF Renewable Energy, Inc., the U.S. subsidiary of EDF Energies Nouvelles. All other Project assets continued to be owned by Palen SEGS I and II and Palen III, then wholly owned third-tier subsidiaries of Abengoa Solar LLC.

Maverick acquired full ownership of PSH from Abengoa SP through the closing of an Equity Purchase Agreement on December 22, 2015. Maverick thereby became the 100 percent owner of Palen SEGS I, Palen SEGS II, and Palen III, and, through those entities, the 100 percent owner of all assets of every kind associated with the Project. Maverick is involved in the Project’s Commission proceedings as the owner of Palen SEGS I.

5. Who is the project owner of the PSPP today?

See the response to Question (4) above. Maverick is the Project Owner.

6. If the license held by Palen SEGS I, LLC will be sold, identify by when, and to whom, it be sold.

See the response to Question (4) above. The license previously held by Palen SEGS I, then a wholly owned third-tier subsidiary of Abengoa Solar LLC (and now a third-tier subsidiary of Maverick) was sold to Maverick on December 15, 2015. No future transfer of the Certificate is anticipated.

7. Explain how, if at all, bankruptcy proceedings mentioned in the petitions (i.e. the bankruptcy stay) affect orders from the California Energy Commission.

As of January 11, 2016, the U.S. Bankruptcy Court has fully and finally approved⁴⁰ the acquisition by PSH of certain reversion rights in the Project assets, including the license to

⁴⁰ In bankruptcy cases, agreements outside of the ordinary course of the debtor’s business are subject to approval by the Bankruptcy Court. 11 U.S.C. §§ 363, 1129, 1141; Fed. R. Bankr. Proc. 9019; *In re Stroud Ford, Inc.*, 205 B.R. 722, 724–25 (Bankr. M.D. Pa. 1996); *In re Sparks*, 190 B.R. 842, 843–45 (Bankr. N.D. Ill. 1996). Because the vast

construct and operate the Project, that were previously held by the STA Liquidation Trust. As a result, Maverick and its direct and indirect subsidiaries, PSH, Palen SEGS I and II and Palen III, now own all of the right, title and interest in the assets related to the Project and the Bankruptcy Court no longer has any jurisdiction over the Project assets. The bankruptcy proceedings mentioned in the petitions consequently have no effect on orders from the Commission.

8. Explain the relevance of PRC § 25534(j) to the license for this project, including whether it applies to projects not subject to PRC § 25534(a)(4).

The relevance of section 25534(j) to the license for the Project is described in the response to Question (1), above. Section 25534(j) applies here, even though section 25534(a)(4) does not. For several reasons, Section 25534(j) is not limited to certification transfers where section 25534(a)(4) is implicated.

First — and dispositively — the plain language of section 25534(j) unambiguously applies to all ownership transfers, not just those circumstances triggering section 25534(a)(4). Under California law, that is the end of the inquiry: “a statute’s plain language controls unless its words are ambiguous.”⁴¹

Second, where the legislature sought to limit the applicability of subdivisions in section 25534, it knew how to do so, and it did so explicitly and clearly.⁴² The lack of similar language in section 25534(j) demonstrates that the legislature did not intend to limit the applicability of that section; reading such a constraint into it in spite of this is not permissible.⁴³

Third, section 25534(j) is an independent exception to, rather than an integral part of, the revocation framework of 25534. The second sentence of section 25534(j) is located within

majority of significant asset sales are inherently outside the ordinary course of business, these sales generally require court approval and are subject to third party objections.

⁴¹ *People v. Maultsby*, 53 Cal. 4th 296, 299 (2012).

⁴² See Pub. Res. Code § 25534(k) (“Paragraph (4) of subdivision (a) and subdivisions (c) to (j), inclusive, do not apply to licenses issued for the modernization, repowering, replacement, or refurbishment of existing facilities or to a qualifying small power production facility or a qualifying cogeneration facility within the meaning of Sections 201 and 210 of Title II of the federal Public Utility Regulatory Policies Act of 1978.”); *id.* § 25534(l) (“Paragraph (4) of subdivision (a) and subdivisions (c) to (j), inclusive, do not apply to licenses issued to ‘local publicly owned electric utilities,’ as defined in Section 224.3 of the Public Utilities Code, whose governing bodies certify to the commission that the project is needed to meet the projected native load of the local publicly owned utility.”).

⁴³ See, e.g., *California Fed. Sav. & Loan Assn. v. City of Los Angeles*, 11 Cal. 4th 342, 349 (1995) (“We may not, under the guise of construction, rewrite the law or give the words an effect different from the plain and direct import of the terms used. We must assume that the Legislature knew how to create an exception if it wished to do so.”) (quotations omitted).

section 25534 — instead of within a different section of the Act — because section 25534 is the only section of the Warren-Alquist Act that concerns the duration of licenses; it is the most appropriate “home” for the extension-by-transfer provision. Commission regulations also cite section 25534 as a reference for 20 C.C.R. § 1769, which governs petitions to transfer project ownership, because 25534(j) is the only provision in the Warren-Alquist Act that refers to changes in ownership, thereby further underscoring section 25534(j)’s larger role beyond the revocation framework of section 25534.⁴⁴

Lastly, the purpose of section 25534(j) is clear: to balance the interest in expeditious construction of power generating facilities with fairness to certificate holders. To limit section 25534(j) only to circumstances implicating section 25534(a)(4) would be to adopt a rule whereby new owners are given automatic extensions even after all project permits have been obtained *and* a state agency has expressed interest in building the project itself, but not where more time is required for a new owner to obtain all project permits and build the project itself.

9. If the new project owner seeks to waive the jurisdictional exclusion of PV, does PRC 25502.3 require the project be required to proceed with a Notice of Intention?

No. Maverick may waive the jurisdictional exclusion of solar photovoltaic (“PV”) facilities under section 25502.3 without filing a Notice of Intention (“NOI”) for two reasons, each of which is independently sufficient.⁴⁵ First, Maverick’s proposal to modify the Project would qualify for an NOI exemption as a modification of an existing facility under section 25540.6(a)(2). This interpretation is supported by existing Commission precedent and is the best reading of the exemption in light of clear legislative intent to update assessment procedures and avoid wasting regulatory resources. Second, the Project itself qualifies for an NOI exemption under section 25502 as a site and related facility that have already been found acceptable. This interpretation is the only appropriate reading of that provision, given the present-day statutory scheme’s substitution of NOI proceedings with Application for Certification (“AFC”)

⁴⁴ For these reasons, it is clear that section 25534(j) is not rendered obsolete simply because the larger section makes reference to the California Power Authority.

⁴⁵ The *[Proposed] Commission Decision Affirming that Warren-Alquist Act Section 25502.3 Applies to Photovoltaic Electrical Generating Facilities*, 09-AFC-09 TN# 63046 (Dec. 5, 2011), generally identified the correct interpretation of the Warren-Alquist Act: the Commission can exercise jurisdiction over appropriate solar PV facilities where the project owner waives the jurisdictional exclusion. Section 25502.3 would be read out of existence if this were not the case.

proceedings, and the Project site's repeated selection as a uniquely suitable location for solar development after multiple regulatory assessments of the Project site at the project and landscape level.

A. Maverick's proposed modification of the Project would be exempt from the NOI requirement as a modification of an existing facility.

Section 25540.6(a) of the Warren-Alquist Act enumerates five broad exemptions from the NOI requirement that effectively swallow the rule by exempting every type of project the CEC has sited in the past thirty years.⁴⁶ As a result, except for one 1989 filing that was later withdrawn, not a single NOI has been filed since 1984.⁴⁷ Among these exemptions is section 25540.6(a)(2), which provides: “[n]otwithstanding any other provision of law, no notice of intention is required . . . [for] a modification of an existing facility.”⁴⁸ Maverick's proposal to use solar PV technology for the Project would be a “modification of an existing facility” for purposes of this exemption. This interpretation is consistent with regular Commission usage and is the best reading of the provision in its present-day statutory context.

First, the Commission has routinely construed the term “facility” to apply to approved projects that have not commenced construction, including in the proceedings for this Project.⁴⁹ Under these precedents, “modification of an existing facility” includes “modification of an

⁴⁶ Cal. Energy Commission, *Public Participation in the Siting Process: Practice and Procedure Guide*, CEC-700-2006-002, 34.

⁴⁷ *Id.*

⁴⁸ Section 25540.6 requires that such projects instead employ the Application for Certification procedures under section 25523. The Project has already completed the Application for Certification procedures, culminating in the issuance of the Certificate. 09-AFC-07 TN# 59350. Commission regulations at 20 C.C.R. §1769 specify the procedures to be followed for proposed project modifications “[a]fter the final decision is effective.” Although the Commission disclaimed jurisdiction through section 1769 over a PV facility in 2011, no appropriate request for a waiver of the jurisdictional exclusion had been made in that proceeding. 08-AFC-13C TN# 61296 (July 1, 2011).

⁴⁹ For example, Commission regulations regarding petitions to transfer ownership or operational control refer to “[a] petition to transfer ownership or operational control of a facility.” 20 C.C.R. § 1769(b) (emphasis added). In Commission proceedings, petitions to transfer ownership of an approved project are granted under these regulations even where no substantial construction has commenced. *See, e.g.*, Order No. 12-0711-3, 09-AFC-07C TN# 66219 (July 13, 2012) (PSPP); Order No. 11-0711-4, 09-AFC-06C TN# 66220 (July 13, 2012) (Blythe). Similarly, Commission regulations regarding petitions to amend a project's design, operation, or performance requirements refer to “the impact of the modification on the facility's ability to comply with applicable laws, ordinances, regulations, and standards.” 20 C.C.R. § 1769(a)(1)(F) (emphasis added). In Commission consideration of petitions to amend an approved project, this discussion is routinely expected of approved projects even where no substantial construction has commenced. *See, e.g.*, Palen Solar Holdings LLC's Petition for Amendment, 09-AFC-07C TN# 68910 at section 2.15 (Dec. 17, 2012); Revised Presiding Member's Proposed Decision, 09-AFC-07C TN# 203061 at Appendix A (Sept. 15, 2014); Petition to Amend-Equipment Change to Reduce Emissions, 07-AFC-05C TN# 64038 at 1-2 (Mar. 8, 2012) (Ivanpah); Order Approving a Petition to Amend to Update Equipment Descriptions, 07-AFC-05C TN# 206686 (Nov. 19, 2015).

existing approved project.” Thus, exempting Maverick’s proposal to modify the existing approved Project is fully consistent with regular Commission usage.

Second, the section 25540.6(a)(2) NOI exemption encompasses a modification of an existing approved project irrespective of when construction commences because, as explained below: (i) the purpose of the NOI procedure was to save regulatory resources, not waste them — that purpose would be completely contravened by requiring duplicative analysis for a project that has already been approved; (ii) the Legislature has replaced the outdated NOI process with the modern AFC process, and in so doing has created a new statutory context for section 25502.3 ; (iii) reading the statute to require an NOI of a Maverick solar PV proposal would produce the absurd result of rehashing years of regulatory analysis; and (iv) the substantive requirements of the NOI process have already been more than satisfied for this Project.

- i. The NOI process was created to save regulatory resources, not waste them.*

The NOI was a threshold process in which the applicant submitted multiple proposed sites and related facilities for the Commission’s consideration before it could file an AFC. The process allowed the Commission to perform a preliminary assessment of the “technical, environmental, public health and safety, economic, and social and land use acceptability” of possible project locations and configurations.⁵⁰ In this way, the Commission could avoid becoming mired in “detailed scrutiny of engineering and design aspects,” “detailed identification and analysis of significant adverse environmental impacts,” or a “precise analysis of need for new generating facilities” before a proposed location was even determined to be a viable option.⁵¹ Thus, the NOI process served to “prevent any needless commitment of financial resources and regulatory effort prior to a determination of the basic acceptability of, and need for, the proposed facilities, and the suitability of proposed sites to accommodate the facilities.”⁵²

Given that the NOI process was designed to conserve resources, it follows that to require a project owner to submit to that process in order to modify an already exhaustively analyzed and approved project would be to contravene the very purpose of the NOI structure. Underscoring this point, the Legislature and the Commission have confirmed on multiple occasions that NOIs

⁵⁰ 20 C.C.R. § 1721(b).

⁵¹ *Id.* § 1721(c).

⁵² *Id.* § 1721(b)(8).

should not be required where they would serve only to duplicate prior efforts.⁵³ The original purpose of the NOI process would be subverted rather than served if section 25540.6(a)(2) exemption did not include modifications of existing approved projects irrespective of when construction commences.

ii. *The legislature has replaced the NOI process with the AFC process.*

As originally conceived, the primary functions of the NOI process included analysis of project feasibility, identification of potential serious environmental impacts, and assessment of alternative project designs and alternative sites.⁵⁴ As the Commission has explained, the “most important purpose” of an NOI was the assessment of alternative sites.⁵⁵ Over the past three decades, multiple legislative and regulatory efforts have recognized that the modern AFC process fully satisfies the NOI’s primary purpose of ensuring the assessment of alternatives and alternative sites, and have promulgated more and more exemptions to reflect this reality and “ensure the timely construction of new electricity generation capacity.”⁵⁶ As a result, except for one 1989 filing that was later withdrawn, not a single NOI has been filed since 1984.⁵⁷ The exceptions have effectively swallowed the rule: they have covered every type of project the CEC has sited in the past thirty years.

Any interpretation of section 25502.3 must be informed by this broader shift in the statutory scheme over the past 30 years.⁵⁸ Given the demonstrated intent of the legislature to

⁵³ Not only does section 25502 make this explicit (“Any site and related facility once found to be acceptable pursuant to Section 25516 [referring to the NOI process] is, and shall continue to be, eligible for consideration in an application for certification without further proceedings required for a notice under this chapter.”), but multiple exemptions demonstrate the same intent. Section 25540.6 exempts from the NOI process, among other things, “modification[s] of existing facilities” and “thermal powerplant[s] which [are] only technologically or economically feasible to site at or near the energy source,” and additionally exempts from any alternatives discussion “noncogeneration projects” that have “a strong relationship to [an] existing industrial site.” Pub. Res. Code § 25540.6(a)(2), (a)(3), (b). All of these exemptions show a recognition that the NOI process would be a waste of resources where a project site has already been clearly determined to be acceptable through other means.

⁵⁴ See 20 C.C.R. § 1721(b)(2)–(7).

⁵⁵ Cal. Energy Commission, *Public Participation in the Siting Process: Practice and Procedure Guide*, CEC-700-2006-002, 34.

⁵⁶ *Id.*; Pub. Res. Code § 25009.

⁵⁷ Cal. Energy Commission, *Public Participation in the Siting Process: Practice and Procedure Guide*, CEC-700-2006-002, 34.

⁵⁸ See *Smith v. Superior Court*, 39 Cal. 4th 77, 83, (2006) (“In construing a statute, our fundamental task is to ascertain the Legislature’s intent so as to effectuate the purpose of the statute. We begin with the language of the statute The language must be construed in the context of the statute as a whole and the overall statutory scheme, and we give significance to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose.”) (citations omitted).

replace the NOI procedures with present-day, CEQA-certified AFC procedures,⁵⁹ section 25540.6(a)(2) is appropriately read to exempt from the NOI requirement the modifications of existing approved projects that have already been subject to AFC procedures.⁶⁰

iii. Requiring the duplication of years of analysis is an impermissible absurd result.

Statutes must be read in such a way as to avoid absurd results.⁶¹ Were section 25540.(6)(a)(2) interpreted to depend on the completion of project construction, proposals to modify of approved but unbuilt projects would be forced to undergo the duplication of years of resource-intensive analysis and siting proceedings that, as described further below, have already more than satisfied the requirements of an NOI. This is an absurd result which the Legislature did not intend;⁶² as explained above, the NOI process was intended to save resources, not waste them.⁶³ Under the longstanding rule that statutes should be interpreted so as not to produce absurd results, section 25540.6(a)(2) reaches Maverick’s proposal to modify the Project.

iv. The substantive requirements of the NOI process have already been more than satisfied.

Finally, it is important to recognize that requiring an NOI would serve no purpose other than to delay the construction of a project that will contribute significantly to the achievement of the renewable energy and greenhouse gas emission reduction goals of the State of California, because the substantive requirements of the NOI process have already been met. As discussed in detail below, the Commission has already thoroughly vetted the universe of potential alternative sites for utility-scale solar projects, not only through the AFC proceedings for the PSPP, but also through its AFC proceedings for other proposed solar projects in Southern California and

⁵⁹ 14 C.C.R. § 15251(j) (listing the Commission’s power plant site certification program as a certified program under CEQA).

⁶⁰ The definition of “modification of an existing facility” provided in section 25123 does not change this result, as section 25100 directs the Commission not to use such definitions when “the context otherwise requires.” Nor do the temporary provisions in section 25500.1 affect the result. No authority prevents the legislature from temporarily enacting clarifications of the law as it already exists.

⁶¹ *See, e.g., Smith v. Superior Court*, 39 Cal. 4th 77, 83, (2006) (statutes should not be read so as to produce absurd results).

⁶² *See, e.g., People v. Mendoza*, 23 Cal. 4th 896, 908 (2000) (“We must also avoid a construction that would produce absurd consequences, which we presume the Legislature did not intend.”).

⁶³ *See* 20 C.C.R. § 1721(b)(8) (describing the purpose of the NOI process to “prevent any needless commitment of financial resources and regulatory effort prior to a determination of the basic acceptability of, and need for, the proposed facilities, and the suitability of proposed sites to accommodate the facilities”).

through coordinated multi-agency analysis at the landscape scale for the Desert Renewable Energy Conservation Plan (“DRECP”). BLM has also independently vetted the Project site at a programmatic landscape-level through its own 2012 Solar Energy Development PEIS (“Solar PEIS”) and resulting Western Solar Plan.

For these reasons, no policy of the Warren-Alquist Act would be served by construing section 25540.6(a)(2) to exclude modifications to unbuilt approved projects. Such a reading would result in precisely the sort of duplication of regulatory efforts that the Warren-Alquist Act discourages,⁶⁴ and would needlessly reanimate a process that adds little to the present-day statutory scheme.

B. The Project is exempt from the NOI requirement as a site and related facility that has already been found acceptable.

Section 25502 provides expressly that “[a]ny site and related facility once found to be acceptable pursuant to Section 25516 [governing the approval of NOIs] is, and shall continue to be, eligible for consideration in an application for certification without further proceedings required for a notice under this chapter.” The only reasonable interpretation of this provision in today’s statutory context is that it applies equally well to any site and related facility once found to be acceptable by the Commission through the modern CEQA-certified AFC process. As stated above, to find otherwise would contravene the intent of the NOI process to save regulatory resources rather than waste them. It would also produce the absurd result of duplicating regulatory efforts.

It is especially appropriate to apply the 25502 exemption. The exemption must be read in harmony with subsequent amendments effectively replacing NOI procedures with today’s AFC procedures and other recent changes in the Warren-Alquist Act. In addition, the analysis conducted to date of the Project site and its potential alternatives has already far exceeded the goals of section 25502 and even surpassed the capability of the NOI process. The Project site has repeatedly been selected as uniquely suitable for solar development in multiple regulatory assessments at the project and programmatic landscape level.

⁶⁴ See, e.g., Pub. Res. Code § 25502 (expressly forbidding duplicates NOIs); *id.* § 25540.6(a) (providing NOI exemptions that have prevented projects from having to go through both NOI proceedings and AFC proceedings for the past thirty years).

i. *The AFC process is now a substitute for the NOI process.*

As discussed above, over the past three decades, multiple legislative and regulatory efforts have recognized that the present-day AFC process fully satisfies the NOI's primary purpose of ensuring the assessment of alternatives and alternative sites. As the Commission itself has stated: "The most important purpose of a Notice of Intention, the assessment of alternatives, especially alternative sites, is now usually covered in the Application for Certification."⁶⁵

This is because statutory NOI exemptions have been promulgated that effectively swallow the rule: except for one 1989 filing that was later withdrawn, not a single NOI has been filed since 1984 — the exemptions have covered every type of project the CEC has sited in the past thirty years.⁶⁶ Section 25502 must be read in the context of the statute as a whole rather than in isolation.⁶⁷ In particular, it is especially appropriate to apply section 25502's NOI exemption for "previous findings of acceptability" to NOI-equivalent approvals under today's AFC procedures.

That section 25502 cannot be construed in isolation is further demonstrated by the first provision of that section, which calls for the NOI process to include an assessment of the need for additional electricity generation.⁶⁸ As stated by the Legislature in section 25009, such an assessment is no longer appropriate in light of the 1996 restructuring of the California electricity industry that created a competitive electricity generation market.⁶⁹ Just as the first provision of section 25502 must be reconciled with section 25009, so too must section 25502's NOI exemption be reconciled with subsequent statutory amendments replacing the NOI process with the AFC process.

⁶⁵ Cal. Energy Commission, *Public Participation in the Siting Process: Practice and Procedure Guide*, CEC-700-2006-002, 34.

⁶⁶ *Id.*

⁶⁷ *See Smith v. Superior Court*, 39 Cal. 4th 77, 83, (2006) ("In construing a statute, our fundamental task is to ascertain the Legislature's intent so as to effectuate the purpose of the statute. We begin with the language of the statute The language must be construed in the context of the statute as a whole and the overall statutory scheme, and we give significance to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose.") (citations omitted).

⁶⁸ Pub. Res. Code § 25502 ("The notice shall be an attempt . . . to determine the general conformity of the proposed sites and related facilities with standards of the commission and assessments of need adopted pursuant to Sections 25305 to 25308, inclusive.").

⁶⁹ *Id.* § 25009 ("Therefore, it is necessary to modify the need for determination requirements of the state's powerplant siting and licensing process to reflect the economics of the restructured electricity industry and ensure the timely construction of new electricity generation capacity."). Section 25009 was added to the Warren-Alquist Act in 1999. Stats.1999, c. 581 (S.B.110), § 1.

- ii. *Regulatory assessments of the Project site have already far exceeded the goals of section 25502.*

In establishing the purposes of requiring an NOI, section 25502 reflects the understanding that the “most important purpose” of the NOI is the assessment of alternative sites.⁷⁰ In particular, section 25502 states that the goal of the NOI process shall be “primarily to determine the suitability of the proposed sites to accommodate the [proposed] facilities.” The section contemplates a one-time determination of site acceptability: once that determination has been made, an NOI is no longer required for that site and related facility.⁷¹ In this case, the Project’s site has already been found suitable, indeed uniquely suitable, for utility-scale solar development through a variety of efforts by the Commission and other agencies. These include: (i) the Commission’s review of the Project’s AFC and approval of the Project after joint CEQA and National Environmental Policy Act⁷² (“NEPA”) review with BLM; (ii) the Commission’s assessment of proposed and alternative sites for multiple other utility-scale solar projects in Southern California; (iii) the thorough, landscape-scale site evaluations of the Solar PEIS prepared by BLM and the Department of Energy; and (iv) the Final EIS/EIR for the multi-agency DRECP. These significant efforts, all of which involved extensive public participation, more than satisfy the goals of the NOI process and even surpass the analytical capabilities of that process. As such, the goals of section 25502 have been thoroughly fulfilled and its exemption is appropriately read to apply to the Project.

Before granting a license to the Project, the Commission thoroughly vetted the Project through its AFC procedures, including by completing a CEQA-compliant Joint Staff Assessment and Draft EIS in coordination with BLM. In particular, the Commission extensively analyzed a wide range of site location and generation alternatives to the Project as originally proposed,⁷³ including five alternative locations at Cibola, Palen Pass, Desert Center, Palo Verde Mesa, and North of Desert Center.⁷⁴ The Commission further performed a detailed analysis of the North of

⁷⁰ See Cal. Energy Commission, *Public Participation in the Siting Process: Practice and Procedure Guide*, CEC-700-2006-002, 34.

⁷¹ Pub. Res. Code § 25502 (“Any site and related facility once found to be acceptable pursuant to Section 25516 [governing NOI approvals] is, and shall continue to be, eligible for consideration in an application for certification without further proceedings required for a notice under this chapter.”).

⁷² 42 U.S.C. § 4321 *et seq.*

⁷³ Commission Decision (Order No. 10-1215-19), 09-AFC-07 TN# 59350 at Alternatives 41 (Dec. 22, 2010).

⁷⁴ *Id.* at 5.

Desert Center alternative, fulfilling the Warren-Alquist Act's NOI aspiration that the Commission find at least two potential sites "acceptable."⁷⁵ As a result of the Commission's extensive alternatives analysis, the Project owner developed new reconfigured alternatives that best took advantage of solar insolation and grid connectivity while reducing impacts to biological resources below the level of significance.⁷⁶ This is precisely what the NOI process contemplates.⁷⁷

Beyond the proceedings specifically concerned with the Project, the Commission has now thoroughly vetted the universe of viable alternative sites for large-scale solar development in Southern California through its AFC proceedings for other projects. For example, the Commission has performed extensive analysis of the proposed and alternative sites for the Ridgecrest Solar Power Project, the Calico Solar Power Project, the Ivanpah Solar Electric Generating System, the Blythe Solar Power Project, and the Rice Solar Energy Project, among others. In the Ridgecrest proceeding, the Commission evaluated twenty-six alternatives to the proposed project in northeastern Kern County, including five alternative locations, and carried through to detailed analysis an alternative location at Garlock Road.⁷⁸ In the Calico proceeding, the Commission evaluated twenty-four alternatives to the proposed project in San Bernardino County, including seven alternative locations, and carried through to detailed analysis an alternative location on private land.⁷⁹ In the Ivanpah proceeding, the Commission evaluated twenty-three alternatives to the proposed project in San Bernardino County, including eight alternative locations, but none were found suitable for detailed analysis.⁸⁰ In the Blythe proceeding, the Commission evaluated twenty-two alternatives to the proposed project in

⁷⁵ *Id.* (finding that the North of Desert Center alternative would substantially reduce impacts relative to the original Project proposal while meeting most Project objectives); Pub. Res. Code § 25516. "Acceptable" is not defined by statute or regulations, but must be assessed by the Commission along "technical, environmental, public health and safety, economic, and social and land use" dimensions. 20 C.C.R. § 1721(b). More "detailed scrutiny" during the CEQA-certified AFC process can narrow "acceptable" sites down to the one approved site. *Id.* § 1721(c); *see* 14 C.C.R. § 15251(j).

⁷⁶ Presiding Member's Proposed Decision for the Palen Solar Power Project, 09-AFC-07 TN# 58990 at Introduction 2, Alternatives 3 (Nov. 12, 2010).

⁷⁷ *See* Pub. Res. Code § 25516; 20 C.C.R. § 1721(b) ("The purpose of notice of intention proceedings shall be to engage the applicant, the commission, interested agencies and members of the public in an open planning process designed to identify sufficient acceptable sites and related facilities.").

⁷⁸ Staff Assessment and Draft Environmental Impact Statement and Draft California Desert Conservation Area Plan Amendment for the Ridgecrest Solar Power Project, 09-AFC-09 TN# 56046 at 1, B.2-1 (Mar. 26, 2010).

⁷⁹ Supplemental Staff Assessment for the Calico Solar Power Project, 08-AFC-13 TN# 57666 at B.1-2, B.2-1-B.2-4 (July 21, 2010).

⁸⁰ Final Staff Assessment, 07-AFC-05 TN# 53962 at 1-2, 4-1 (Nov. 4, 2009).

Riverside County, including three alternative locations, and carried through to full CEQA analysis an alternative location at Blythe Mesa.⁸¹ Finally, in the Rice proceeding, the Commission evaluated twenty-eight alternatives to the proposed project in Riverside County, including twelve alternative locations, and carried through to detailed analysis two alternative locations at SR 62/Rice Valley Road and North of Desert Center.⁸² Taken together, these reviews have resulted in the Commission's identification of the Project site as one of a relatively small number of acceptable sites for a utility-scale solar energy project in Southern California.

Moreover, BLM has exhaustively screened and analyzed locations ideally suited for utility-scale solar development on BLM-administered lands through the Solar PEIS. After multiple rounds of alternatives analysis involving extensive interdisciplinary evaluation, BLM has recognized the Project's location as uniquely suited for effective utility-scale solar development with minimal environmental, cultural, and socioeconomic impacts,⁸³ and therefore designated the site as part of the Riverside East Solar Energy Zone ("SEZ").⁸⁴ Only nineteen locations have achieved the SEZ designation to date, and only three of these are in California.⁸⁵ The SEZ designation further underscores that the Project is sited in one of the best possible locations for utility-scale solar energy development.⁸⁶

Finally, the DRECP, in which the Commission has been heavily involved since its inception,⁸⁷ is further refining the analysis of ideal locations for solar development at a landscape level. Out of 22.5 million acres of federal and non-federal lands in the Mojave and Colorado desert regions of California, the preferred alternative of the DRECP designates only 388,000 acres of BLM land as Development Focus Areas ("DFAs") for solar, wind, and geothermal projects.⁸⁸ By contrast, the vast majority of BLM lands would receive designations that are not compatible with renewable energy development.⁸⁹ The Project site is located entirely within a

⁸¹ Revised Staff Assessment, 09-AFC-06 TN# 56992 at 2, B.2-1, B.2-3 (June 4, 2010).

⁸² Staff Assessment and Draft Environmental Impact Statement, 09-AFC-10 TN# 58746 at 1-2, 4-1 (Oct. 11, 2010).

⁸³ Solar PEIS, ES-1-45.

⁸⁴ *Id.* at ES-12-13; *see also* Palen Solar Electric Generating System FSA - Part A, 09-AFC-07C TN# 200442 at 4.2-199 (Sept. 10, 2013) ("The PSEGS project is located in the Riverside Solar Energy Zone.").

⁸⁵ *Solar Energy Zones*, BLM Solar Energy Program, <http://blmsolar.anl.gov/sez/> (last updated Jan. 10, 2014).

⁸⁶ Solar PEIS, ES-7, 11.

⁸⁷ Executive Order S-14-08, Cal. Office of the Governor.

⁸⁸ DRECP Proposed Land Use Amendment and Final Environmental Impact Statement, Exec. Summary 17.

⁸⁹ *Id.*

DFA.⁹⁰ Thus, the DRECP's intensive landscape-scale assessment of biological, cultural, and solar resources — a more comprehensive and coordinated tool than the NOI process — again demonstrates that the Project site is properly suited to solar development.

These extensive regulatory assessments, all of which identify the Project site as ideally suited to utility-scale solar development, more than fulfill the alternatives assessment goals of the NOI process and even exceed the analytical potential of that process. As such, the purposes of section 25502, particularly its primary purpose of ensuring site suitability, have been fully satisfied. Given the fulfillment of the section's purposes and the substitution of the NOI process with the AFC process, the section 25502 NOI exemption is appropriately applied to a project like the PSPP that has been approved through the AFC process, particularly if other, landscape-scale assessments have drawn the same conclusion.

Under either or both of the section 25540.6(a)(2) and 25502 NOI exemptions, Maverick may waive the jurisdictional exclusion of solar PV facilities under section 25502.3 without filing an NOI.

10. If the Commission must process a Notice of Intention, how would the project owner be able to commence construction by June 15, 2017?

If the Commission chooses to require NOI procedures, it is unlikely that construction on the Project could commence by June 15, 2017 because the NOI process would take up to an additional 12 months to complete.⁹¹

⁹⁰ DRECP Gateway, Figure II.3-1, Integrated Preferred Alternative map of the DRECP Proposed LUPA and Final EIS, *available at* <http://drecp.databasin.org/maps/dbaa5e285e06441095d23627507e9b50> (last modified Nov. 13, 2015).

⁹¹ Pub. Res. Code § 25516.6.

CONCLUSION

For the foregoing reasons, the Commission should grant the Petition for Ownership Transfer and the Petition for Extension.

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Respectfully submitted,

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