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Document Title:	NOTICE OF RECEIPT AGREEMENT STAFF PROJECT OWNER JOINTLY INITIATED AMENDMENT TO COMMISSION DECISION
Description:	NOTICE OF RECEIPT AGREEMENT STAFF PROJECT OWNER JOINTLY INITIATED AMENDMENT TO COMMISSION DECISION FOR THE BLYTHE SOLAR ENERGY PROJECT
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CALIFORNIA ENERGY COMMISSION

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NOTICE OF RECEIPT/AGREEMENT
STAFF/PROJECT OWNER JOINTLY INITIATED AMENDMENT TO
COMMISSION DECISION FOR THE
BLYTHE SOLAR ENERGY PROJECT (09-AFC-06C)

On April 10, 2020, NextEra Blythe Solar Energy Center, LLC (project owner) filed a petition for a jointly initiated amendment (TN# 232709) to the January 2014 California Energy Commission (CEC) Decision for the Blythe Solar Power Project Amendment (TN# 201580). The Amended Blythe Solar Energy Project (BSPP) is a 485-megawatt (MW) solar photovoltaic (PV) facility located at 4000 Dracker Drive, in Blythe, Riverside County. The Amended BSPP Units 1 and 2 were completed and began commercial operation in 2016, while Units 3 and 4 are currently under construction.

SUMMARY OF PROPOSED CHANGES

Staff and the project owner propose removal of Condition of Certification TRANS-8 in the Commission Decision because compliance with the condition is legally impossible. In the petition, the project owner contends that the application of the requirement for an avigation easement was applied erroneously, since the United States Bureau of Land Management (BLM), the owner of the property, is legally preempted from executing an avigation easement on public lands.

Condition of Certification TRANS-8 for the Amended BSPP reads as follows:

TRANS-8 Prior to the start of operation of any phase of the project, the project owner shall prepare an Avigation Easement in accordance with Appendix D of the California Airport Land Use Planning Handbook and have it signed by the Bureau of Land Management.

Verification: At least 60 days prior to the start of construction, the project owner shall submit a BLM-signed avigation easement to the CPM [CEC Compliance Project Manager] for review and approval. Once approved by the CPM, applicant shall send the Avigation Easement to the Riverside County Land Use Commission staff for review and recording purposes. Once recorded, applicant shall send a copy of the recorded document to the CPM.

An email dated April 1, 2020 from Daniel Ryan, BSPP Project Manager for the BLM, acknowledges that the BLM has reviewed Condition of Certification TRANS-8, and agrees that the BLM cannot grant an avigation easement on public lands. The BLM requests that the CEC send the BLM a written response stating its intent to remove TRANS-8. This email is included as Attachment A of the petition.

REVIEW PROCESS, JOINTLY INITIATED AMENDMENT

In accordance with Title 20, California Code of Regulations, section 1769.1(a), "Staff and a project owner may jointly initiate an amendment to a final decision adopted under this chapter...to modify a condition that is moot, impossible, or otherwise unnecessary to avoid potentially significant effects and remain in compliance with all applicable laws, ordinances, regulations, and standards."

The review process includes an evaluation to determine whether the proposed change would result in a significant effect on the environment, or cause the project to not comply with applicable laws, ordinances, regulations, and standards (LORS.)

STAFF EVALUATION

Staff reviewed the April 10, 2020 petition, the July 2010 staff Aviation Assessment for the originally approved (solar trough) BSPP (included as Attachment B of the petition), the September 2010 Final Commission Decision for the originally approved BSPP (TN# 58591), the January 2014 Amended BSPP Commission Decision, and the October 2004 Riverside County Airport Land Use Compatibility Plan. Staff is in agreement with the project owner that removal of TRANS-8 would not conflict with the Findings and Conclusions from the 2014 Commission Decision on the Amended BSPP.

The 2010 Final Commission Decision appears to have included TRANS-8 in the following statement in error:

"It is important to note that there have been no complaints of flash blindness or other adverse effects from pilots using Daggett airport, which is located next to a parabolic trough solar facility. Nevertheless, Conditions of Certification TRANS- 7, TRANS-8, TRANS-9, and TRANS-10 are included to ensure proper notification of pilots regarding glint and glare potential; to require preparation of an Avigation Easement; to ensure that the project is built and operated to minimize the creation of glint and glare; and require complaint notification and follow-up procedures. These Conditions would reduce, to the extent feasible, potential significant adverse impact to pilots at the Blythe Airport related to glint and glare from the BSPP facilities. (Ex. 207, Aviation Assessment, p. 33.) However, we find that overriding considerations warrant acceptance of this possible cumulative impact in this case, and have included override findings elsewhere in this Decision."

The reference provided as the basis for above excerpt points to Exhibit 207, Aviation Assessment, page 33. Page 33 of the Aviation Assessment contains the "Aviation Safety Impacts of Glint and Glare" subsection within the Assessment of Impacts and Discussion of Mitigation portion of the assessment. This subsection recommended TRANS-7, TRANS-9, and TRANS-10 to reduce the potential significant adverse impact to pilots at the Blythe

Airport to the extent feasible. There is no mention of the requirement of an avigation easement or TRANS-8 in the Assessment of Impacts and Discussion of Mitigation portion of the Aviation Assessment.

The requirement for an avigation easement and the resulting TRANS-8 were only analyzed within the Traffic and Transportation Table 2 on pages 43 and 46 under the "Compliance with LORS" portion of the Aviation Assessment. An avigation easement is an easement or right of overflight in the airspace above or in the vicinity of a particular property. It also includes the right to create such noise or other effects as may result from the lawful operation of aircraft in such airspace and the right to remove any obstructions to such overflight. Therefore, staff concludes that this is a LORS issue related to property rights and not an environmental impact issue related to pilot safety from glint and glare. Whereas TRANS-7, TRANS-9, and TRANS-10 all include mention of glint and glare.

The 2014 Amended BSPP Commission Decision deleted TRANS-7 and TRANS-9, and added TRANS-11, TRANS-12, and TRANS-13. TRANS-7 and TRANS-9 were no longer applicable with the technology change from solar parabolic trough with steam turbine generation and cooling towers to solar PV. TRANS-11, TRANS-12, and TRANS-13 were included to ensure any potential for interference with airport operation would remain reduced below the level of significance with the implementation of these new conditions of certification appropriate to the use of the amended PV technology. At the time of the amendment neither the project owner nor CEC or BLM staff identified that TRANS-8 was impossible to comply with. The CEC made the following Findings and Conclusions in the Amended BSPP Decision:

Based on the evidence, we find and conclude that:

1. The project as amended will continue to comply with all applicable LORS.
2. The revised Conditions of Certification set forth below are appropriate and will ensure that the project is designed and constructed both in accordance with applicable law and in a manner that protects environmental quality and public health and safety and to ensure compliance with all applicable LORS.
3. The Traffic and Transportation aspects of the amended project do not create significant direct or cumulative environmental effects.

Upon further review of the October 2004 Riverside County Airport Land Use Compatibility Plan, staff agrees with the project owner and BLM staff that the inclusion of the TRANS-8 requirement of an avigation easement in the LORS table of the Aviation Assessment was in error. Staff has confirmed, as reported in the petition on page 2-3, that the Introduction section of the Riverside County Airport Land Use Compatibility Plan contains the following statement on page 2.1.2: "One final limitation worth noting is that ALUCs

[Airport Land Use Commissions] have no jurisdiction over federal lands such as lands controlled by the U.S. Forest Service, Bureau of Land Management, or Indian tribes. ALUCs can merely inform these agencies about the ALUC policies and seek their cooperation.”

Therefore, staff concludes the deletion of TRANS-8 would not cause a conflict with the above Findings and Conclusions from the 2014 Amended BSPP Commission Decision. The project would remain in compliance with applicable LORS because the aviation easement requirement that TRANS-8 was envisioned to enforce was never applicable to a project on public lands managed by the BLM. Deletion of TRANS-8 would not result in a significant effect on the environment; the project has been designed and is being constructed in a manner that protects environmental quality and public health and safety, in accordance with TRANS-10 through TRANS-13. If any physical changes to the project are proposed in the future, the project owner is required to notify the CEC, which would trigger further review for potential aviation impacts.

Staff herein has completed its independent review and analysis of this jointly initiated amendment, which along with the petition itself, shall serve as staff’s assessment for public review and comment. Staff intends to schedule the proposed jointly initiated amendment to be heard for consideration by the CEC at its May 13, 2020 Business Meeting. HYPERLINK "https://ww2.energy.ca.gov/sitingcases/blythe_solar/index.html" \h

PUBLIC PARTICIPATION

This Notice of Receipt and Agreement has been mailed to the facility’s mail list of interested parties and property owners adjacent to the facility site. The petition requesting the project change has been docketed and is available on [the CEC’s webpage for this facility](https://ww2.energy.ca.gov/sitingcases/blythe_solar/index.html) at:
https://ww2.energy.ca.gov/sitingcases/blythe_solar/index.html

Any person may comment or file an objection. To use the CEC’s electronic commenting feature, go to the CEC’s webpage for this facility, cited above, click on the “[Submit e-Comment](#)” link, and follow the instructions in the on-line form. Be sure to include the facility name in your comments.

Written comments may also be mailed or hand-delivered to:

California Energy Commission
Docket Unit, MS-4
Docket No. 09-AFC-06C
1516 Ninth Street
Sacramento, CA 95814-5512

All comments and materials filed with the Docket Unit will be added to the facility Docket Log and become publicly accessible on the CEC's webpage for the facility. To receive future filings related to this project, go to the CEC's webpage for this facility, cited above, scroll down the right side of the project's webpage to the box labeled "Subscribe," and provide the requested contact information.

If you have questions about this notice, please contact Chris Davis, Compliance Office Manager, at (916) 654-4842, or via e-mail at chris.davis@energy.ca.gov.

For information on public participation, please contact the Public Advisor, at (916) 654-4489 or (800) 822-6228 (toll-free in California) or send your e-mail to publicadvisor@energy.ca.gov.

News media inquiries should be directed to the Media Office at (916) 654-4989, or by e-mail to mediaoffice@energy.ca.gov.

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