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July 11, 2011

File No. 039610-0003

VIA FEDEX

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 08-AFC-9
1516 Ninth Street, MS-4
Sacramento, California 95814-5512

Re: City of Palmdale Hybrid Power Plant Project: Docket No. 08-AFC-9

Dear Sir/Madam:

Pursuant to California Code of Regulations, title 20, Sections 1209, 1209.5, and 1210, enclosed herewith for filing please find Applicant's Comments on Presiding Member's Proposed Decision.

Please note that the enclosed submittal was filed today via electronic mail to your attention and to all parties on the attached proof of service list.

Very truly yours,

Paul E. Kihm
Senior Paralegal

Enclosure

cc: 08-AFC-9 Proof of Service List (w/encl., via e-mail and U.S. Mail)
Michael J. Carroll, Esq. (w/encl.)
Marc T. Campopiano, Esq. (w/encl.)

Michael J. Carroll
Marc T. Campopiano
LATHAM & WATKINS LLP
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Costa Mesa, CA 92626
(714) 540-1235

STATE OF CALIFORNIA
ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

IN THE MATTER OF:	)	DOCKET NO. 08-AFC-9
	)	
APPLICATION FOR CERTIFICATION, FOR THE PALMDALE HYBRID POWER PROJECT BY THE CITY OF PALMDALE	)	APPLICANT'S COMMENTS ON PRESIDING MEMBER'S PROPOSED DECISION

On behalf of the City of Palmdale ("Applicant") for the Palmdale Hybrid Power Plant Project (08-AFC-9) ("PHPP"), we hereby submit Applicant's comments on the Presiding Member's Proposed Decision ("PMPD"). Applicant agrees with the PMPD's overall conclusions and findings. Applicant concurs that there are no significant areas of dispute remaining and the PHPP will not result in any significant environmental impacts. Applicant strongly supports the current schedule for the full Energy Commission to consider the PMPD at its July 27, 2011 meeting.[1]

Applicant's comments on the PMPD fall into two categories.

I. Changes to Conditions of Certification ("COCs") previously agreed upon by Staff and Applicant following the issuance of the Final Staff Assessment ("FSA") that resolved all outstanding areas of dispute between Staff and Applicant prior to the Evidentiary Hearing.

II. Minor Comments By Applicant on PMPD.

I. CHANGES TO COCS PREVIOUSLY AGREED UPON BY STAFF AND APPLICANT FOLLOWING ISSUANCE OF THE FSA

Following the issuance of the FSA on December 22, 2010, Staff held several public workshops whereby Staff and Applicant came to agree on certain changes to the FSA Conditions of Certification ("COCs") that resolved all outstanding areas of dispute between Staff and Applicant prior to the Evidentiary Hearing.[2] The PMPD, however, does not reflect all of these previously agreed-upon

[1] *See* Application For Certification For The Palmdale Hybrid Power Project, Docket No. 08-AFC-9, Notice Of Availability Of The Presiding Member's Proposed Decision And Notice Of Committee Conference And Notice Of Full Commission Hearing, dated June 16, 2011, at p. 3.

[2] *See* Transcript for the Prehearing Conference, Application for Certification for Palmdale Hybrid Power Plant, Docket No. 08-AFC-8, dated February 14, 2011, Pages 38-43; Staff's Prehearing Conference Statement,

changes. To facilitate the Committee's review, Applicant provides a copy of all the changes agreed to by Staff and Applicant following the issuance of the FSA that were not reflected in the PMPD, as follows:

A. Attachment A – The following changes to COCs in the FSA were proposed by Applicant (see Exhibit 116) and agreed to by Staff in Staff's Preahearing Conference Statement: AQ-SC11, AQT-2, AQT-5, AQT-7, AQT-12, AQT-13, AQT-15, AQT-25, AQAB-8, AQAH-6, ABHH-7, AQEG-3, AQFS-3, BIO-25, PAL-4, TRANS-9, TLSN-4, and VIS-2. These changes are shown in Attachment A.

B. Attachment B – Staff's Prehearing Conference Statement (see pages 10 to 31 of Staff's Prehearing Conference Statement, attached hereto as Attachment B) proposed changes to the following COCs, which Applicant agreed to: AQ-SC14, AQ-SC15, AQ-SC19, AQT-16, BIO-13, BIO-18, HAZ-9, TRANS-8, and WASTE-2. These changes are shown in Attachment B. (Please note that Staff's Prehearing Conference Statement included proposed changes to TRANS-1 and BIO-17 that do not reflect the final agreement between Staff and Applicant, but, as noted below and in Attachment B, the PMPD properly reflects the agreed-upon changes to TRANS-1 and BIO-17 and no additional changes to TRANS-1 or BIO-17 are needed.)

Please note, Staff and Applicant also agreed to certain changes to BIO-8, BIO-10, BIO-17, and TRANS-1 that were properly reflected in the PMPD so no additional changes to the PMPD are needed.[3]

II. APPLICANT'S MINOR COMMENTS ON PMPD

Applicant also provides certain minor comments on the PMPD. These comments do not challenge the overall conclusions of the PMPD or create any new areas of dispute. Proposed deletions are made in ~~red strikethrough~~ text and proposed insertions are made in green underlined text.

A. Project Site Acreage

Many sections of the PMPD indicate that the Project power plant site is 377 acres. (*See, e.g.*, Project Description (p. 2-1), Cultural Resources (p. 7.3-17), Land Use (p. 8.1-1), Socioeconomics (p. 8.3-1), Noise (p. 8.4-1) and Visual Resources (p. 8.5-1). As indicated by Applicant previously (Exhibit 99, General Comment II.A; Exhibit 116, I. Executive Summary), the correct Project power plant site acreage is 333 acres.

B. Biological Resources -- Pages 7.1-33, Finding of Fact No. 4

Biological Resources Finding of Fact No. 4 indicates that the mitigation plan for Swainson's hawk habitat must account for 10.22 acres of farmland. The changes agreed to by Staff and the Applicant in BIO-17 (as discussed above) no longer reference the 10.22 acres, as follows:

---

issued February 4, 2011; Joint Stipulation of Energy Commission staff and Applicant Regarding Changes to the Final Staff Assessment, issued February 25, 2011.

3 *See* Transcript for the Prehearing Conference, Application for Certification for Palmdale Hybrid Power Plant, Docket No. 08-AFC-8, dated February 14, 2011, Pages 38-43.

The Swainson's hawk habitat mitigation plan requiring acquisition of 610 acres, including a minimum of 366.3 acres of Joshua tree woodland (loss of site habitat) ~~plus 10.22 acres (loss of farmland habitat)~~ is adequate to compensate for the permanent loss of habitat in the event that the Mohave ground squirrel mitigation strategy does not provide sufficient Swainson's hawk habitat.

C. Biological Resources – Page 7.1-33, Finding of Fact No. 9

Applicant proposes the following changes to Biological Resources Finding of Fact No. 9:

9. Alternative Route 4, the partially undergrounded 12.8-mile transmission line described in the record, is the preferred alternative of the alternative transmission line routes considered by Staff. ~~because it would substantially reduce impacts to biological resources, the loss of habitat, and the mitigation costs associated with the proposed 35-mile Segment 1 and 2 transmission line alignments.~~

As stated on page 3-10 of the PMPD: "there was no dispute regarding transmission line routes and the Applicant and Staff agreed that the Commission certify both the Applicant's proposed transmission route and Staff's Alternative Transmission Route 4 (Underground/Overhead Along Sierra Highway), thereby giving the project owner the option to elect which route to construct." Applicant believes the reference to a "preferred" route relates to the alternative routes considered by Staff and not as compared to the Applicant's proposed route. Neither Applicant's proposed transmission route nor Staff's Alternative Transmission Route 4 is the "preferred" route because CEQA does not demand differentiating between two alternatives when there is not a significant environmental impact to be mitigated. (*See* Public Resources Code §§ 21100(b)(3), 21150; Title 14, California Code of Regulations, §15126.4(a)(3); s*ee San Franciscans for Reasonable Growth v. City & County of San Francisco*, 209 Cal. App. 3d 1502, 1517 (1989).)

As such, Applicant requests that the PMPD clarify that Alternative Route 4 is the preferred alternative route among the alternative routes considered by Staff but not relative to the Applicant's proposed route. In addition, although Applicant concurs that there is not a dispute regarding the overall evaluation of the transmission line routes, Applicant has provided substantial evidence into the record that Staff's alternative routes may not reduce impacts relative to Applicant's proposed route to the extent identified by Staff. (*See* Exhibit 116, p. 13-17; Exhibit 142.) Therefore, Applicant also requests that the PMPD remove the language comparing Alternative Route 4 to Applicant's proposed route because it may not be factually accurate and, in any instance, it is an irrelevant distinction under CEQA because neither route would result in a significant environmental impact. (*See San Franciscans for Reasonable Growth*, 209 Cal. App. 3d at 1517 (holding that EIR need not "require measures to alleviate threats to open space" because the EIR does "not identify impacts on open space as a significant environmental effect").)

D. SOIL&WATER 10 and 11

In the Staff's Rebuttal Testimony dated January 21, 2011, Staff proposed a number of COCs to supplement the FSA related to the Applicant's proposal to pave roads for Emission Reduction Credits.

The PMPD correctly includes most of these supplemental COCs. However, although the PMPD references COCs SOIL&WATER 10 and 11 on page 7.2-14 and in the Finding of Fact on page 7.2-17, SOIL&WATER 10 and 11 are missing from the COCs in the PMPD and should be added.

DATED: July 11, 2011

Respectfully submitted,

/S/ Marc Campopiano

_____

Marc Campopiano
LATHAM & WATKINS LLP
Counsel to Applicant

Attachment A

Attachment A

The following changes to COCs in the FSA were proposed by Applicant (see Exhibit 116) and agreed to by Staff in Staff's Preahearing Conference Statement. See Exhibit 116 for a complete discussion of the changes to the COCs.

A. AIR QUALITY

1. AQ-SC11

AQ-SC11 The project owner shall establish an inspection and maintenance program to determine, repair, and log leaks in HTF piping network and expansion tanks. Inspection and maintenance program and documentation shall be available to District staff upon request.

A. All pumps, compressors and pressure relief devices (pressure relief valves or rupture disks) shall be electronically, audio, or visually inspected once every operating period.

B. The project owner shall maintain record of the amount of HTF replaced on a monthly basis for a period of five years. The Applicant may subtract quantifiable liquid losses from the 'replaced' total to determine the amount lost to atmosphere. Any HTF losses that cannot be quantified as liquid losses are presumed lost to atmosphere. Should HTF loss to the atmosphere exceed the Applicant's estimate of 0.2 tons per year, the project owner shall implement the following leak detection and repair measures:

…

2. AQT-2

AQT-2 This equipment shall be exclusively fueled with pipeline quality natural gas with a sulfur content not exceeding 0.2 grains per 100 dscf on a rolling twelve month average basis, and shall be operated and maintained in strict accord with the recommendations of its manufacturer or supplier and/or sound engineering principles. Compliance with this limit shall be demonstrated by providing evidence of a contract, tariff sheet or other approved documentation that shows that the fuel meets the definition of pipeline quality gas.

Verification: The project owner shall complete or obtain from the fuel supplier, on a monthly basis, a laboratory analysis showing the sulfur content of natural gas being burned at the facility. The sulfur analysis reports shall be incorporated into the quarterly compliance reports.

3. AQT-5

AQT-5 Emissions of CO and NOx from this equipment shall only exceed the limits contained in Condition AQT-4 during startup and shutdown periods as follows:

a. Startup is defined as the period beginning with ignition and lasting until the equipment has reached operating permit limits, i.e., the applicable emission limits listed in Condition AQT-4. Cold startup is defined as a startup when the CTG has not been in operation during the preceding continuous 48 hours, although a startup after an aborted partial cold start is still considered a cold start (a cold start that does not reach 85% output). Other startup is defined as a startup that is not a cold startup. Shutdown is defined as the period beginning with the lowering of equipment from base load and lasting until fuel flow is completely off and combustion has ceased.

…

4. AQT-7

AQT-7 Emissions from this facility, including the duct burner, auxiliary equipment, engines, cooling tower and fugitive dust for vehicle use in the solar field, shall not exceed the following emission limits, based on a rolling 12 month summary:

…

Verification: The project owner shall submit to the District and CPM the quarterly and annual compliance reports as required by AQT-17. Note, the requirement for compliance tests applies only to the stationary sources and fugitive emissions will be verified according to a District-approved calculation protocol.

5. AQT-12

AQT-12 Emissions of NOx, CO, oxygen and ammonia slip shall be monitored using a Continuous Emissions Monitoring System (CEMS). Turbine fuel consumption shall be monitored using a continuous monitoring system. Stack gas flow rate shall be monitored using either a Continuous Emission Rate Monitoring System (CERMS) meeting the requirements of 40 CFR 75 Appendix A or a stack flow rate calculation method. The o/o shall install, calibrate, maintain, and operate these monitoring systems according to a District-approved monitoring plan, ~~and~~ AVAQMD Rule 218, 40 CFR 60 and/or 40 CFR 75 as applicable. ~~and they shall be installed prior to initial equipment startup after initial~~

~~steam blows are completed. Two (2) months prior to installation the operator shall submit a monitoring plan for District review and approval. The o/o shall notify the APCO and the USEPA of the date of first fire and the date of initial commercial operation of each affected unit.~~

Verification: The o/o shall install, calibrate, maintain, and operate these monitoring systems according to a District-approved monitoring plan and ~~MDAQMD~~AVAQMD Rule 218, and they shall be installed prior to initial equipment startup after initial steam blows are completed. Two (2) months prior to installation the operator shall submit a monitoring plan for District review and approval.

6. AQT-13

AQT-13 The o/o shall conduct all required compliance/certification tests in accordance with a District-approved test plan. Thirty (30) days prior to the compliance/certification tests the operator shall provide a written test plan for District review and approval. Written notice of the compliance/certification test shall be provided to the District ten (10) days prior to the tests so that an observer may be present. A written report with the results of such compliance/certification tests shall be submitted to the District within forty-five (45) days after testing.

Verification: The project owner shall notify the District and the CPM within ten (10) working days before the execution of the source tests required in this condition. Source test results shall be submitted to the District and to the CPM within ~~60~~ 45 days of the date of the tests.

7. AQT-15

AQT-15 The o/o shall, at least as often as once every five years (commencing with the initial compliance test), include the following supplemental source tests in the annual compliance testing:

…

Verification: The project owner shall notify the District and the CPM within ~~seven (7)~~ ten (10) working days before the execution of the source tests required in this condition. Source test results shall be submitted to the District and to the CPM within 60 days of the date of the tests.

8. AQT-25

AQT-25 Within 60 days after achieving the maximum firing rate at which the facility will be operated, but not later than 180 days after initial startup, the operator shall perform an initial compliance test. This test shall demonstrate that this equipment is capable of operation at 100% load in compliance with the emission limits in Condition AQT-4.

Verification: No later than 30 working days before the commencement of the source tests, the project owner shall submit to the District and the CPM a detailed source test plan designed to satisfy the requirements of this condition. ~~In addition, the source tests shall include a minimum of three start-up and three shutdown periods and shall include at least one cold start, and one hot or warm start.~~ The project owner shall incorporate the District and CPM comments into the test plan. The project owner shall notify the District and the CPM at least ~~seven (7)~~ ten (10) working days prior to the planned source testing date. Source test results shall be submitted to the District and the CPM within 60 days of the source testing date.

9. AQAB-8

AQAB-8 A non-resettable four-digit (9,999) hour timer shall be installed and maintained on this unit to indicate elapsed operating time.

Verification: The project owner shall make the site available for inspection of records and equipment by representatives of the District, ARB, and the Energy Commission.

10. AQHH-6

AQHH-6 The o/o shall perform the following annual compliance tests on this equipment in accordance with the AVAQMD Compliance Test Procedural Manual. The test report shall be submitted to the District no later than six weeks prior to the expiration date of this permit. The following compliance tests are required:

…

Verification: The project owner shall notify the District and the CPM within ~~seven (7)~~ ten (10) working days before the execution of the source tests required in this condition. Source test results shall be submitted to the District and to the CPM within 60 days of the date of the tests.

11. ABHH-7

AQHH-7 A non-resettable four-digit (9,999) hour timer shall be installed and maintained on this unit to indicate elapsed operating time.

Verification: The project owner shall make the site available for inspection of records and equipment by representatives of the District, ARB, and the Energy Commission.

12. AQEG-3

AQEG-3 This unit shall be limited to use for emergency power, defined as when commercially available power has been interrupted. In addition, this unit may be operated as part of a testing program that does not exceed 50 hours of testing or maintenance per calendar year. Furthermore, pursuant to District Rule 1110.2, this unit shall be operated less than 200 hours per calendar year. This requirement includes usage during emergencies.

13. AQFS-3

AQFS-3 This unit shall be limited to use for emergency fire fighting. In addition, this unit may be operated as part of a testing program that does not exceed 50 hours of testing or maintenance per calendar year. Furthermore, pursuant to District Rule 1110.2, this unit shall be operated less than 200 hours per calendar year. This requirement includes usage during emergencies.

II. BIOLOGY

A. BIO-25

BIO-25 The project owner shall implement and incorporate into the facility closure plan measures to address the local biological resources related to facility closure. A funding mechanism shall be developed in consultation with the Energy Commission staff to ensure sufficient funds are available for revegetation, reclamation, and decommissioning if the project site will not be re-powered or developed. The facility closure plan shall address biological resources-related mitigation measures. In addition to these measures, the plan shall include the following:

1. Removal of transmission conductors when they are no longer used and useful;

2. Removal of all above-ground and subsurface power plant site facilities and related facilities;

3. Methods for restoring wildlife habitat and promoting the re-establishment of native plant and wildlife species;

4. Revegetation of the project site and other disturbed areas utilizing appropriate methods for establishing native vegetation if the site will not be repowered or developed; and

5. A cost estimate to complete closure-related activities.

In addition, the project owner shall secure funding to ensure implementation of the plan and provide to the CPM written evidence of the dedicated funding mechanism(s).

Verification: ~~Prior to initiating ground-disturbing project activities, the project owner shall provide financial assurances to the CPM to guarantee that an adequate level of funding will be available to implement decommissioning and closure activities described above. The financial assurances may be in the form of an irrevocable letter of credit, a performance bond, a pledged savings account, or another equivalent form of security, as approved by the CPM.~~

At least 12 months prior to commencement of planned closure activities, the project owner shall address all biological resources-related issues associated with facility closure, and provide final measures, in a Biological Resources Element. The draft planned permanent or unplanned closure measures shall be submitted to the CPM for comment by staff, CDFG, and USFWS. After revision,

final measures shall comprise the Biological Resources Element, which shall include the items listed above as well as written evidence of the dedicated funding mechanism(s) for these measures. The final Biological Resources Element shall become part of the facility closure plan, which is submitted to the CPM within 90 days of the permanent closure or another period of time agreed to by the CPM.

In the event of an unplanned permanent closure, the project owner shall notify the CPM, as well as other responsible agencies, by telephone, fax, or e-mail, within 24 hours and shall take all necessary steps to implement the on-site contingency plan (see Compliance Conditions of Certification).

Upon facility closure, the project owner shall implement measures in the Biological Resources Element and provide written status updates on all closure activities to the CPM at a frequency determined by the CPM.

III. GEOLOGY & PALEONTOLOGY

A. PAL-4

PAL-4 Prior to ground disturbance and for the duration of construction activities involving ground disturbance, the project owner and the PRS shall prepare and condzauct weekly CPM-approved training for the following workers: project managers, construction supervisors, foremen, and general workers involved with or who operate ground-disturbing equipment or tools. Workers shall not excavate in sensitive units prior to receiving CPM-approved worker training. Worker training shall consist of ~~a CPM-approved video or in-person presentation~~ training based on a CPM-approved video script or other presentation materials. Following initial training, a CPM-approved video, other approved training presentation, or in-person training may be used for new employees. The training program may be combined with other training programs prepared for cultural and biological resources, hazardous materials, or other areas of interest or concern. No ground disturbance shall occur prior to CPM approval of the Worker Environmental Awareness Program (WEAP), unless specifically approved by the CPM.

…

Verification: At least 30 days prior to ground disturbance, the project owner shall submit the proposed WEAP, including the

brochure, with the set of reporting procedures for workers to follow.

At least 30 days prior to ground disturbance, the project owner shall submit the training program presentation/materials ~~script and final video~~ to the CPM for approval if the project owner is planning to use a presentation format other than a video for ~~a video~~ for interim ~~-~~training or a script if a video is to be used for training.

If the owner requests an alternate paleontological trainer, the resume and qualifications of the trainer shall be submitted to the CPM for review and approval prior to installation of an alternate trainer. Alternate trainers shall not conduct training prior to CPM authorization.

In the monthly compliance report (MCR), the project owner shall provide copies of the WEAP certification of completion forms with the names of those trained and the trainer or type of training (in-person or other approved presentation format ~~video~~) offered that month. The MCR shall also include a running total of all persons who have completed the training to date.

IV. TRAFFIC & TRANSPORTATION

A. TRANS-9

TRANS-9 Throughout the construction and operation of the project, the project owner shall work with the Air Force Plant 42 Commander or his or her designated representative to develop and implement a process for documenting, investigating, evaluating, and resolving all project-related glare complaints.

The project owner or authorized agent shall:

…

3. If glint or glare is project-related, project owner shall take all feasible measures to reduce glint and glare at its source within 24 hours, or will notify the Commander as soon as possible when such measures can be completed.

V. TRANSMISSION LINE SAFETY & NUISANCE

A. TLSN-4

TLSN-4 The project owner shall ensure that the rights-of-way of those portions of the transmission line that are under the Project owner's control are kept free of combustible material, as

required under the provisions of section 4292 of the Public Resources Code and section 1250 of Title 14 of the California Code of Regulations."

VI. VISUAL RESOURCES

A. VIS-2

VIS-2 – (E) In the event that color treatments or textures differ substantially from what was proposed by the Applicant in the AFC or in subsequent submittals, o~~O~~ne set of 11" x 17" color photo simulations at life size scale of the proposed treatment for project structures, including structures treated during manufacture, from the Key Observation Points;

Attachment B

STATE OF CALIFORNIA

Energy Resources Conservation
And Development Commission

In the Matter of: Application for Certification For the Palmdale Hybrid Power Project	Docket No. 08-AFC-9

Energy Commission Staff's Prehearing Conference Statement

On January 31, 2011, the Committee assigned to this proceeding issued a Second Revised Notice of Prehearing Conference and Evidentiary Hearing and Order requiring all parties to file Prehearing Conference Statements and specifying what information the prehearing conference statements must contain. Staff provides the requested information below.

Due to a planned vacation, staff must file this prior to receiving the intervenor's testimony on staff's rebuttal testimony. We, therefore, respectfully reserve the right to orally augment this statement at the Prehearing Conference in response to testimony submitted by the intervenors.

Additionally, staff would like to bring to the Committee's attention the issue of alternative routes for the transmission line. The applicant has proposed a route and staff has identified an additional route, Route 4, that it believes is also feasible. Staff and the applicant propose that the Commission certify both routes and let the applicant determine which to construct. Staff recommends that the testimony of both parties on this matter be entered by declaration. If, however, the Committee has questions regarding this issue, staff is able to provide witnesses to answer any questions regarding staff's identified alternative route.

Staff also has included a few items in this submittal. The Visual Resources analysis of the roadpaving proposal was mistakenly left out of the Rebuttal Testimony and is attached to this document along with a declaration by the author. And an analyst's declaration and resume were inadvertently left out of the Final Staff Assessment and are included here to ensure a complete record.

a) **The topic areas that are complete and ready to proceed to evidentiary hearing.**

All topic areas are complete and ready to proceed to evidentiary hearings.

b) The topic areas that are not complete and not yet ready to proceed to evidentiary hearing, and the reasons therefor.

All topic areas are complete and ready to proceed to evidentiary hearings.

c) The topic areas that remain disputed and require adjudication, and the precise nature of the dispute for each topic.

Staff believes that the following items will need adjudication if they are not resolved before the evidentiary hearing.

Biological Resources – Based on discussion at the February 3, 2011 staff workshop, staff understands that the following : BIO-8, 10, 14, 17. The issues involve the necessity of topsoil salvage, the need for the applicant to pay a raven fee for the project site acreage, the need for Swainson's Hawk habitat compensation to consist of a minimum of 366.3 acres of Joshua Tree woodland. Staff believes it is likely that we will be able to come to some agreement with the applicant on the wording of Bio-17 at the workshop staff intends to hold on the morning of February 14, 2011 prior to the Prehearing Conference.

Air Quality – The applicant objects to staff's proposed offset ratio of 1.5:1 instead of 1.3:1 for inter-district/inter-basin ERC transfers for NOx and VOC offsets in AQ-SC18. The applicant is arguing that the AVAQMD offset ratio is applicable to the PHPP ERCs from the SJVAPCD. Rule 1305(C)(3) meets the requirement of HSC section 40709.6 listed below by requiring that:

> "*The ratio for Offsets obtained from outside the District for any Nonattainment Air Pollutant shall be equal to the offset ratio which would have applied had such Offsets been obtained within the District*."

Therefore, from a LORS standpoint, the AVAQMD's 1.3:1 offset ratio would apply. However, given the large distance between the PHPP and proposed offsets, staff believes that the proposed ERCs would not be adequate to demonstrate a new air quality benefit, both under Clean Air Act requirements and under CEQA. The AVAQMD is a very small district that does not have any distance ratios noted in their rules and regulations. Federal guidance on the requirement for a positive net air quality benefit is presented in Appendix S of 40 CFR 51, which requires a demonstration of a positive net air quality benefit that can require modeling if emission offset ratios are insufficient and/or the location of the offsets are significantly different than the emissions being offset. Therefore, the SJVAPCD limitations on the distance between the ERC and new emission source should be considered as a guide in determining the relative effectiveness of the proposed ERCs. SJVAPCD Rule 2201 requires that an offset

ratio of 1.5 to 1 be used for all ERCs that are more than 15 miles from the source. To ensure that the project fully mitigates it's impacts, staff believes an offset ratio of 1.5 to 1 is required.

Hazardous Materials Management – Staff does not agree to the applicant's proposed changes to HAZ-2. Staff believes that the preparation of a Process Safety Management Plan and a Spill Prevention and Control Countermeasure Plan are necessary to ensure the proposed project does not result in any significant adverse impacts under CEQA.

The applicant objects to the requirement to prepare and implement a Process Safety Management (PSM) Plan for the HTF system. The applicant disagrees that HTF is "highly flammable" and cites OSHA definitions of a "flammable" material and therefore requests that this requirement be removed.

Staff agrees that at standard temperature and pressure, Therminol is not flammable; it is, however, combustible. However, at the operating temperatures and pressures of a solar power plant, Therminol meets the definition of "flammable" and therefore staff believes that during routine operations and uses of Therminol, it is "highly flammable" Instances of fires were cited by staff in the FSA as well as one case of auto-ignition. However, even if the PSM standard did not apply, staff believes that it is an excellent safety measure that should be required at power plants that use Therminol as the HTF. Staff is not restricted to relying solely on LORS; if that were the case, a SA would not be needed and all staff would have to propose is "comply with all LORS". Since CEQA does not compel or allow staff to rely solely on LORS compliance to mitigate impacts to below a level of significance, staff reiterates its strong recommendation – one that is consistent with the other thermal solar projects that propose to use Therminol as the HTF – to require a PSM Plan.

The applicant also disagrees with staff's proposal to require the preparation of a Spill Prevention, Control, and Countermeasure (SPCC) Plan. The applicant opines that 40 CFR §112.1(d)(1)(i), does not apply.

As stated in the FSA, staff agrees that a SPCC Plan is not required by 40 CFR 112 but is required pursuant to California HSC Sections 25270 through 25270.13. Therefore, the PHPP would be required to prepare a SPCC because it will store 1,320 gallons or more of petroleum (diesel fuel, lube oil, and mineral oil) on-site. Furthermore, as explained above, staff is not obligated to require only those mitigations that are already required by LORS. The preparation and implementation of a SPCC Plan will contribute to reducing the risk of spills occurring and of migrating off-site to a level of insignificance.

Traffic and Transportation – Staff does not accept the applicant's proposed changes to TRANS-1. Because SR-14 and Sierra Highway currently have very poor LOS levels, staff believes it is necessary to ensure that the proposed project does not further degrade those LOS levels and result in a significant adverse impact by restricting all project-related construction-worker traffic along these two

roads during peak travel periods. However, staff understands the applicant's concern that restrictions to construction from air quality conditions of certification could, during certain times of the year, impact the applicant's ability to conform to this condition. Therefore, staff will work on possible language to address the applicant's concern and discuss the issue further at the staff workshop on February 14, 2011.

d) The identity of each witness sponsored by each party, the topic area(s) which each witness will present; a brief summary of the testimony to be offered by each witness; qualifications of each witness; the time required to present direct testimony by each witness; and whether the party seeks to have the witness testify in person or telephonically.

The following expert witnesses will represent staff at the evidentiary hearing to testify and be available for cross examination.

Topic Area: Biological Resources
Witness: Chris Huntley
Witness: Erinn Wilson, Staff Environmental Scientist, CDFG
Summary of Testimony: Biological Resources section of the FSA and rebuttal testimony. Staff will respond to the following issues raised by the applicant, if not resolved prior to the evidentiary hearing:

1. Staff and applicant differ on the amount of topsoil required to be salvaged during project construction. The applicant has recently raised concerns about the feasibility of safely storing onsite the amount required under staff's proposed conditions of certification 8 and 10. Staff and applicant have agreed to discuss this issue further at the staff workshop on February 14, 2011.
2. Staff does not agree to applicant's proposed change to Bio-14, and believes the Raven Fee should apply to the project site's acreage in addition to the transmission line acreage.
3. Staff believes that it is important that some of the Swainson's Hawk habitat compensatory mitigation provided under Bio-17 contain Joshua tree woodland. Staff currently has a minimum amount of woodland required in this condition, to which the applicant objects. Staff will work on possibly rewording this requirement to address the applicant's concern about being pinned in by an absolute amount while still ensuring that the condition ensures a certain amount of Joshua tree woodland will be provided.

Qualifications: Resume contained in the FSA

Topic Area: Air Quality
Witness: Steve Radis
Summary of Testimony: Air Quality section of the FSA . Staff will respond to the following issue raised by the applicant and CBD: Staff does

not agree with the applicant's position that the interdistrict/inter-basin offset ratio in AQ-SC18 should be 1.3 to 1.

Qualifications: Resume contained in the FSA

Topic Area: Hazardous Materials Management
Witness: Dr. Alvin Greenberg
Summary of Testimony: Hazardous Materials Management section of the FSA and Rebuttal Testimony. Staff will respond to the following issue raised by the applicant: Staff and applicant disagree about the necessity of a Process Safety Management Plan and a Spill Prevention and Control Countermeasure Plan, as required by HAZ-2

Qualifications: Resume contained in the FSA

Topic Area: Traffic and Transportation
Witness: James Adams
Summary of Testimony: Traffic and Transportation section of the FSA and Rebuttal Testimony. Staff will respond to the following issue raised by the applicant: Staff does not agree to applicant's proposed change to TRANS-1 but is working on language that might address the applicant's concern with implementation of this condition.

Qualifications: James Adams' resume is contained in the FSA.

For those matters not subject to dispute by the applicant or intervenors, staff proposes to enter testimony into the record by declaration. The testimony and the respective authors are identified below and signed declarations are contained in the FSA and Rebuttal Testimony, where appropriate:

Environmental Analysis
Cultural Resources – Beverly E. Bastian and Pamela Daly
Land Use – Negar Vahidi and Susanne Huerta
Noise and Vibration – Shahab Khoshmashrab and Erin Bright
Public Health and Safety – Alvin Greenberg, Ph.D.
Socioeconomics– Kristin Ford
Soil and Water Resources – Christopher Dennis, PG
Transmission Line Safety and Nuisance – Obed Odoemelam, Ph.D.
Visual Resources – James Adams
Waste Management – Suzanne Phinney, D. Env.
Worker Safety and Fire Protection – Alvin J. Greenberg, Ph.D. and Rick Tyler

Engineering Assessment
Facility Design – Erin Bright
Geology, Paleontology, and Minerals – Dal Hunter, Ph.D., C.E.G.
Power Plant Efficiency – Shahab Khoshmashrab
Power Plant Reliability – Shahab Khoshmashrab
Transmission System Engineering – Laiping Ng and Mark Hesters

Alternatives – Hedy Born Koczwara
Alternatives Appendix A – Suzanne Phinney, D. Env.
General Conditions Including Compliance Monitoring and Closure Plan – Chris Davis

e) Topic areas upon which a party desires to cross-examine witnesses, a summary of the scope of such cross-examination, and the time desired for each such cross-examination.

Staff would like to reserve the right to cross-examine applicant in the following areas if the outstanding issues are not resolved before the evidentiary hearing:

Air Quality – 30 minutes
Biological Resources – 30 minutes
Traffic and Transportation – 15 minutes
Hazardous Materials Management – 30 minutes

Staff respectfully reserves the right to identify times for cross-examining any witnesses the intervenor may produce in the event that intervenor testimony is filed.

f) A list identifying exhibits and declarations that each party intends to offer into evidence and the technical topics to which they apply.

The exhibit list is attached. Staff respectfully reserves the right to identify additional exhibits in the event that intervenor testimony is filed.

g) Topic areas for which the Applicant will seek a commission override due to public necessity and convenience pursuant to Public Resources Code §25525.

Not Applicable.

h) Proposals for briefing deadlines, impact of vacation schedules, and other scheduling matters.

Staff Counsel will be on vacation from March 11, 2011 through March 21, 2011 and respectfully requests that reply briefs be due on March 25, 2011.

i) For all topics, any proposed modifications to the proposed Conditions of Certification listed in the Final Staff Assessment (FSA) based upon enforceability, ease of comprehension, and consistency with the evidence.

Staff agrees to the applicant's proposed changes to the following conditions:

AQ-SC 11, AQT-2, AQT -5, AQT -7, AQT -12, AQT -13, AQT -15, AQT -25, AQAB-8, AQAH-6, ABHH-7, AQEG-3, AQFS-3, BIO-25, PAL-4, TRANS-9, TLSN-4, and VIS-2.

Staff proposes changes to the conditions listed below. For ease of reference, staff lists the condition here and provides the entirety of the condition, with proposed changes in underline/strikeout as an attachment. In general, these changes stem from a realized need for clarification or additional language deemed necessary in response to accepting other changes proposed by the parties.

AQ-SC 19	BIO-13	TRANS-1
AQ-SC 14	BIO-17	TRANS-8
AQ-SC 15	BIO-18	WASTE-2
AQT-16	HAZ-9	

Dated: February 4, 2011

Respectfully submitted,

/s/ Lisa M. Decarlo

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Docket Number: 08-AFC-9 Date: 1/28/11

Project Name: Palmdale Hybrid Power Project

STAFF EXHIBIT LIST

Exhibit	Witness	Brief Description	Offered	Admitted
300	Various	Final Staff Assessment dated December 22, 2010 and docketed December 22, 2010 (a) Air Quality (b) Biological Resources (c) Cultural Resources (d) Hazardous Materials (e) Land Use (f) Noise and Vibration (g) Public Health (h) Socioeconomic Resources (i) Soil and Water Resources (j) Traffic and Transportation (k) Transmission Line Safety and Nuisance (l) Visual Resources (m) Waste Management (n) Worker Safety (o) Facility Design (p) Geology and Paleontology (q) Power Plant Efficiency (r) Power Plant Reliability (s) Transmission System Engineering (t) Alternatives (u) Alternatives Appendix A (v) General Conditions		

301	**Various**	**Staff's Rebuttal Testimony** **(a) Biological Resources** **(b) Cultural Resources** **(c) Geology and Paleontology** **(d) Hazardous Materials Management** **(e) Land Use** **(f) Public Health** **(g) Socioeconomics** **(h) Soil and Water Resources** **(i) Traffic and Transportation** **(j) Worker Safety and Fire Protection**		
302	**Steve Radis**	**Antelope Valley Air Quality Management District Final Determination of Compliance, Palmdale Hybrid Power Project, May 13, 2010**		
303	**Chris Huntley**	**Reducing Predation by Common Ravens on Desert Tortoises in the Mojave and Colorado Deserts, USGS, July 18, 2002**		
304	**Chris Huntley**	**Environmental Assessment to Implement a Desert Tortoise Recovery Plan Task: Reduce Common Raven Predation on the Desert Tortoise, Final, USFWS, March 2008**		
305	**Chris Huntley**	**Region 8 Interim Guidelines for the Development of a Project-Specific Avian and Bat Protection Plan for Solar Energy Plants and Related Transmission Facilities, USFWS Pacific Southwest Region, September 2, 2010**		
306	**Jim Adams**	**Energy Commission Staff's Prehearing Conference Statement** **(a) Visual Resources**		

STAFF PROPOSED CHANGES TO CONDITIONS OF CERTIFICATION IN PALMDALE 2-3-11

AQ-SC19 The project owner shall provide 137 tons per year of PM10 ERCs (128 tons per year for PM10 emissions and 9 tons per year for PM10-precursor SOx emissions) that are banked consistent with the Rules and Regulations of the AVAQMD. ~~Once the District has adopted one or more rules to bank PM offsets from road paving,~~Should the project owner pursue road paving as the method to obtain the necessary PM10 ERCs, the project owner shall pave, with asphalt concrete that meets the current county road standards, unpaved local roads to provide emission reductions of 137 tons per year of PM10, prior to start of construction of the project. The project owner shall submit a road paving plan that includes a list and pictures of candidate roads to be paved, their actual daily average traffic count including classifications of vehicles (ADT), and daily vehicle miles travel (DVMT), their actual road dust silt content, and calculations showing the appropriate amount of emissions reductions due to paving of each road segment. Calculations of PM10 emission reduction credits shall be performed in accordance with Sections 13.2.1 and 13.2.2 of the U.S. EPA's AP-42 "Compilation of Air Pollutant Emission Factors, Volume 1: Stationary Point and Area Sources", Fifth Edition.

~~Should the project owner pursue an alternate method of obtaining PM10 ERCs, such as inter-pollutant trading of NOx and SOx for PM10, the project owner shall provide, at a minimum, NOx and SOx ERCs at ratios of 2.629:1 and 1:1, respectively, per guidance from SJVAPCD rules.~~ ← Staff recommended that this provision be removed.

Verification: At least ~~one year~~ 30 days prior to start of construction, t submit documentation showing that the project has obtained 137 tons of b the project owner chooses to use road paving to obtain the necessary ERCs, the project owner shall submit to the CPM for review and approval, the road paving plan 30 days prior to submittal of the plan to the AVAQMD. ~~plans and other documents to demonstrate compliance with this condition.~~ Construction shall not begin until the CPM has approved all ~~ERCS~~ERCs. This approval shall be done in consultation with the District. ~~Documents shall include a list and pictures of candidate roads to be paved, their actual daily average traffic count including classifications of vehicles (ADT), and daily vehicle miles travel (DVMT), their actual road dust silt content, and calculations showing the appropriate amount of emissions reductions due to paving of each road segment.~~ All paving of roads done for PM-10 offset purposes shall be completed at least 15 days prior to start construction of the project.

AQ-SC14 Expansion tank roof appurtenances shall not exhibit emissions exceeding 10,000-ppmv as methane measured with an instrument calibrated with methane and conducted in accordance with ~~U.S.~~EPA Method 21 or equivalent. All accessible valves, connectors, and PRV's (including rupture disks) shall be inspected quarterly using an AVAQMD approved leak detection device calibrated for methane.

Verification: The project owner shall make the site available for inspection of records and equipment by representatives of the District, ARB, and the Energy Commission.

AQ-SC15 Each expansion tank shall be maintained leak-free. A "leak" is defined as the dripping of liquid volatile organic compounds at a rate of three or more drops per minute, or vapor volatile organic compounds in excess of 10,000-ppm as equivalent methane as determined by EPA Test Method 21 or equivalent. All accessible valves, connectors, and PRV's (including rupture disks) shall be inspected quarterly using an AVAQMD approved leak detection device calibrated for methane.

Verification: The project owner shall make the site available for inspection of records and equipment by representatives of the District, ARB, and the Energy Commission.

AQT-16 Continuous monitoring systems shall meet the following acceptability testing requirements from 40 CFR 60 Appendix B (or otherwise District approved): a. For NOx, ~~Performance Specification 2~~.40 CFR 75.

…

Verification: ~~At least 60 days prior to construction of the turbine stacks, the project owner shall provide the District and CPM, for approval, a detailed drawing and a plan on how the measurements and recordings, required by this condition, will be performed by the chosen monitoring system.~~ The owner/operator shall install, calibrate, maintain, and operate these monitoring systems according to a District-approved monitoring plan and AVAQMD Rule 218, and they shall be installed prior to initial equipment startup after initial steam blows are completed. Sixty (60) days prior to installation, the operator shall submit a monitoring plan for District review and approval and the CPM for review.

DESERT TORTOISE CLEARANCE SURVEYS AND EXCLUSION FENCING

BIO-13 The project owner shall undertake appropriate measures to manage construction at the plant site and linear facilities in a manner to avoid impacts to desert tortoise. Methods for clearance surveys, fence installation, and other procedures shall be consistent with those described in the *Guidelines for Handling Desert Tortoise During Construction Projects* (Desert Tortoise Council 1999) or more current guidance provided by CDFG and USFWS. These measures include, but are not limited to, the following:

1. Fence Installation. Prior to ground disturbance, the entire plant site shall be fenced with permanent desert tortoise-exclusion fence. To avoid impacts to desert tortoise during fence construction, the proposed fence alignment shall be flagged and the alignment surveyed within 24 hours prior to fence construction. Surveys shall be conducted by the Designated Biologist using techniques approved by the USFWS and CDFG. Biological Monitors may assist the Designated Biologist under his or her supervision. These surveys shall provide 100% coverage of all areas to be disturbed during fence construction and an additional transect along both sides of the proposed fence line. This fence line transect shall cover an area approximately 90 feet wide centered on the fence alignment. Transects shall be no greater than 30 feet apart. All desert tortoise burrows, and burrows constructed by other species that might be used by desert

tortoises, shall be examined to assess occupancy of each burrow by desert tortoises and handled in accordance with USFWS-approved protocol.

a. Timing, Supervision of Fence Installation. The exclusion fencing shall be installed prior to the onset of site clearing and grubbing. The fence installation shall be supervised by the Designated Biologist and monitored by the Biological Monitors to ensure the safety of any tortoise present.

b. Fence Material and Installation. The permanent tortoise exclusionary fencing shall be constructed in compliance with current USFWS guidelines. ~~consist of galvanized hard wire cloth 1 by 2 inch mesh sunk 12 inches into the ground, and 24 inches above ground (USFWS 2008b, Appendix D).~~

c. Security Gates. Security gates shall be designed with minimal ground clearance to deter ingress by tortoises, including gates that would exclude public access to the PHPP site.

d. Tower Fencing. If tortoises are discovered during clearance surveys of the linear routes, the tower locations shall be temporarily fenced with tortoise exclusion fencing to prevent desert tortoise entry during construction. Temporary fencing must follow current USFWS guidelines for permanent fencing and supporting stakes shall be sufficiently spaced to maintain fence integrity.

e. Fence Inspections. Following installation of the desert tortoise exclusion fencing for both the permanent site fencing and temporary fencing in the utility corridors, the fencing shall be regularly inspected. Permanent fencing shall be inspected monthly and during/following all major rainfall events. Any damage to the fencing shall be temporarily repaired immediately to keep tortoises out of the site, and permanently repaired within two days of observing damage. Inspections of permanent site fencing shall occur for the life of the project. Temporary fencing must be inspected weekly and, where drainages intersect the fencing, during and immediately following major rainfall events. All temporary fencing shall be repaired immediately upon discovery and, if the fence may have permitted tortoise entry while damaged, the Designated Biologist shall inspect the utility corridor or tower site for tortoise.

2. Desert Tortoise Clearance Surveys. Following construction of the tortoise exclusionary fencing around the Plant Site, all fenced areas shall be cleared of tortoises by the Designated Biologist, who may be assisted by Biological Monitors. A minimum of two clearance surveys, with negative results, must be completed, and these must coincide with heightened desert tortoise activity from late March through May and during October. To facilitate seeing the ground from different angles, the second clearance survey shall be walked at 90 degrees to the orientation of the first clearance survey.

3. Relocation for Desert Tortoise. If desert tortoises are detected on the PHPP plant site during clearance or other activities, the owner shall halt ground disturbing activities within 500 feet of the tortoise, prepare a Desert Tortoise Translocation Plan, and coordinate with the USFWS, CDFG, and CPM regarding the

disposition of the animals. If located during clearance surveys within the transmission line project-project route, the tortoise would be allowed to continue unimpeded out of harm's way. ~~impact area~~ Only in the event that a tortoise required relocation to prevent injury the Designated Biologist shall move the tortoise the shortest possible distance, keeping it out of harm's way but still within its home range. Desert tortoise encountered during construction of any of the utility corridors shall be similarly treated in accordance with the techniques described in the *Guidelines for Handling Desert Tortoise during Construction Projects* (Desert Tortoise Council 1999) or more current guidance on the USFWS website. Any person handling tortoise must be ~~trained and~~ approved by the USFWS and CDFG and be on site during ground disturbance or construction. If a desert tortoise is discovered on the PHPP power plant site the project owner shall prepare a Desert Tortoise Translocation Plan. The Translocation Plan shall follow the most current USFWS guidelines for the translocation of desert tortoise and shall be submitted to the USFWS, CDFG, and CPM for approval. Desert tortoise shall not be moved pending the approval of the Plan. Prior to initiating further ground disturbance at the project site the project owner shall conduct additional clearance surveys of the power plant site. ~~A site where tortoises will be moved must be pre-approved, and acquired prior to ground disturbing activities. The health of any tortoise to be translocated must be assessed prior to moving; a quarantine site located for any ill tortoise must be designated. The host population of tortoise surveyed prior to any translocated tortoise being moved, and a study to determine the efficacy of the translocation and impact to host population be conducted for a minimum of 5 years.~~

4. Burrow Inspection. All potential desert tortoise burrows within the fenced area shall be searched for presence. In some cases, a fiber optic scope may be needed to determine presence or absence within a deep burrow. To prevent reentry by a tortoise or other wildlife, all burrows shall be collapsed once absence has been determined. ~~Tortoises excavated from burrows shall be translocated to unoccupied natural or artificial burrows immediately following excavation in an area approved by the Designated Biologist if environmental conditions warrant immediate relocation.~~

5. Burrow Excavation. Burrows inhabited by tortoises shall be excavated by the Designated Biologist or other USFWS/CDFG/CPM approved handler, using hand tools, and then collapsed or blocked to prevent re-occupation. If excavated during May through July, the Designated Biologist shall search for desert tortoise nests/eggs. All desert tortoise handling and removal, and burrow excavations, including nests, shall be conducted by the Designated Biologist or other USFWS/CDFG/CPM approved handler (See Paragraph 3 above) in accordance with the USFWS-approved protocol (Desert Tortoise Council 1999) or more current guidance on the USFWS website.

6. Monitoring During Clearing. Following construction of the desert tortoise exclusion fencing and clearance surveys ~~desert tortoise clearance removal from the plant site and translocation to a new site~~, heavy equipment shall be allowed to enter the project site to perform earth work such as clearing, grubbing, leveling, and trenching. A Biological Monitor shall be onsite during initial clearing and grading activities. Should a tortoise be discovered, the measures outlined in

Paragraph 3 shall be followed~~. it shall be translocated as described above in accordance with the Desert Tortoise Translocation Plan.~~

7. Reporting. The Designated Biologist shall record the following information for any desert tortoises observed or handled: a) the locations (narrative and maps) and dates of observation; b) general condition and health, including injuries, state of healing and whether desert tortoise voided their bladders; c) location moved from and location moved to (using GPS technology); d) gender, carapace length, and diagnostic markings (i.e., identification numbers or marked lateral scutes); e) ambient temperature when handled and released; and f) digital photograph of each handled desert tortoise as described in the paragraph below. Desert tortoise moved from within project areas shall be marked for future identification as described in *Guidelines for Handling Desert Tortoise during Construction Projects* (Desert Tortoise Council 1999) or more current guidance on the USFWS website. Digital photographs of the carapace, plastron, and fourth costal scute shall be taken. Scutes shall not be notched for identification. Any desert tortoises observed within the project area or adjacent habitat shall be reported to the USFWS, CDFG, and CPM by written and electronic correspondence within 24 hours.

Verification: ~~No less than 60 days prior to start of any site mobilization or disturbance activities, the applicant shall submit to Energy Commission Staff, USFWS and CDFG a draft Desert Tortoise Translocation Plan. At least 60 days prior to start of any project-related ground disturbance activities, the project owner shall provide the CPM with the final version of a Translocation Plan that has been approved by Energy Commission staff in consultation with USFWS and CDFG. The CPM will determine the plan's acceptability within 15 days of receipt of the final plan. All modifications to the approved Desert Tortoise Translocation Plan must be made only after approval by the Energy Commission staff in consultation with USFWS and CDFG. The project owner shall notify the CPM no fewer than 5 working days before implementing any CPM-approved modifications to the Translocation Plan.~~

~~Within 30 days after initiation of translocation activities, the Designated Biologist shall provide to the CPM for review and approval, a written report identifying which items of the Translocation Plan have been completed, and a summary of all modifications to measures made during implementation.~~

Within 30 days of completion of desert tortoise clearance surveys the Designated Biologist shall submit a report to the CPM, USFWS, and CDFG describing how each of the mitigation measures described above has been satisfied. The report shall include the desert tortoise survey results, capture and release locations of any relocated desert tortoises, and any other information needed to demonstrate compliance with the measures described above.

If a desert tortoise is located on the power plant site the project owner shall submit to Energy Commission Staff, USFWS and CDFG a draft Desert Tortoise Translocation Plan. The CPM will review the Plan and provide comments within 30 days receipt of the draft plan. All modifications to the Desert Tortoise Translocation Plan must be made only after approval by the Energy Commission staff in consultation with USFWS and CDFG. The project owner shall notify the CPM no fewer than 5 working days before implementing any CPM-approved modifications to the Translocation Plan.

Within 30 days after initiation of translocation activities, the Designated Biologist shall provide to the CPM for review and approval, a written report identifying which items of the Translocation Plan have been completed, and a summary of all modifications to measures made during implementation.

Swainson's Hawk HABITAT COMPENSATORY MITIGATION

BIO-17 The project owner shall either assume that Swainson's hawk nest within five miles of the project site and provide compen[illegible]d below or complete CFDG protocol surveys within five m[illegible]esult in permanent impacts to Swainson's hawk foragin[illegible]leted they shall include the following components.

NO CHANGES ARE REQUIRED IN PMPD FOR BIO-17. THE PMPD ALREADY REFLECTS CHANGES TO BIO-17 AGREED TO BETWEEN STAFF AND APPLICANT AT THE PUBLIC WORKSHOPS.

The survey periods shall follow a sp[illegible]curs from 1 January to 31 March, Period II occurs from 1[illegible]curs from 1 may to 30 May, and Period IV occurs from [illegible]an three surveys per period in at least two survey per[illegible]ediately prior to the start of project construction. All nest[illegible]oped using GIS and provided to the CPM and CDFG. Co[illegible]1 ratio shall be required for permanent impacts. If active Swainson's hawk nests (i.e., any nest active within five years) are not detected within 5 miles of the project site or linear facilities, the project owner will not be required to provide compensatory mitigation.

If the project owner assumes presence, the project owner shall provide compensatory mitigation acreage for 610 acres of Swainson's hawk habitat lands, adjusted to reflect the final project footprint, as specified in this condition. In addition, the project owner shall provide funding for initial improvement and long-term maintenance, enhancement, and management of the acquired lands for protection and enhancement Swainson's hawk populations, and comply with other related requirements of this condition.

a. Loss of foraging habitat for Swainson's hawks shall be mitigated by providing Habitat Management (HM) lands at a ratio of 2:1 for any foraging habitat impacted within a 5-mile radius of active Swainson's hawk nest(s) (CDFG considers a nest active if it was used one or more times within the last 5 years). Foraging habitat includes but is not limited to alfalfa; fallow fields; beet, tomato, onions, and other low-growing row or field crops; dry-land and irrigated pasture; and cereal grain crops (including corn after harvest). Joshua tree woodland shall be considered foraging habitat in the Antelope Valley.

b. Lands which are currently in urban use or lands that have no existing or potential value for foraging Swainson's hawks will not require mitigation. The project owner will provide the CPM and CDFG a report of potential foraging lands impacted by the proposed project as determined by consultation with the CDFG and recent site-specific surveys conducted by a CDFG-qualified raptor biologist.

This acreage was calculated as follows: a ratio of 2:1 for the PHPP power plant site (610 acres) and a 2:1 ratio (10.22 acres) for the loss of agricultural lands associated with Segment 1 of the transmission line. Costs of these requirements are estimated

to be $9,000,550.00 (see **Biological Resources Tables 4a** for a complete breakdown of costs and acreage). All costs are best estimates as of fall 2010. Actual costs will be determined at the time of the transactions and may change the funding needed to implement the required mitigation obligation based on changing land costs or management fees. Regardless of the estimates, the project owner is responsible for providing adequate funding to implement the required mitigation.

These impact acreages shall be 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 Palmdale Hybrid Power Plant Project Site and 10.22 acres of agricultural lands that occur on Segment 1.

This compensation acreage may be included ("nested") within the acreage acquired and managed as Mohave ground squirrel habitat compensation (Condition of Certification **BIO-20**) only if:

- A minimum of 610 acres of suitable foraging habitat including a minimum of 366.3 acres of Joshua tree woodland~~, 233.1 acres of Mojave creosote bush scrub and 10 acres of agricultural lands~~ are present.
- The Mohave ground squirrel habitat compensation lands are acquired and dedicated as permanent conservation lands within 18 months of the start of project construction.

If these two criteria are not met, then the project owner shall provide the required number of acres of Swainson's hawk habitat compensation lands, adjusted to reflect the final project footprint and additional delineation of suitable habitat, independent of any compensation land required under other conditions of certification, and shall also provide funding for the initial improvement and long-term maintenance and management of the acquired lands, and shall comply with other related requirements this condition.

The project owner shall provide financial assurances as described below in the amount of $9,000,550.00. In lieu of acquiring lands itself, the Project owner may satisfy the requirements of this condition by depositing funds into a Renewable Energy Action Team (REAT) Account established with the National Fish and Wildlife Foundation (NFWF), as described below. If the Project owner elects to establish a REAT NFWF Account and have NFWF and the agencies complete the required habitat compensation, then the total estimated cost of complying with this condition is $9,252,876.50. The amount of security or NFWF deposit shall be adjusted up or down to reflect any revised cost estimates recommended by REAT.

The actual costs to comply with this condition will vary depending on the final footprint of the project, the costs of acquiring compensation habitat, the costs of initially improving the habitat, and the actual costs of long-term management as determined by a Property Analysis Report or similar analysis (below). The 610 acre habitat requirement, and associated funding requirements based on that acreage, shall be adjusted up or down if there are changes in the final footprint of the project or the associated costs of evaluation, acquisition, management, and other factors

listed in **Biological Resources Tables 4a**. Regardless of actual cost, the project owner shall be responsible for funding all requirements of this condition.

COMPENSATORY MITIGATION LAND ACQUISITION

1. Method of Acquisition. Compensation lands shall be acquired by either of the two options listed below. Regardless of the method of acquisition, the transaction shall be complete only upon completion of all terms and conditions described in this Condition of Certification.

a. The project owner shall acquire lands and transfer title and/or conservation easement to a state or federal land management agency or to a third-party non-profit land management organization, as approved by the CPM in consultation with CDFG; or

b. The Project owner shall deposit funds into a project-specific subaccount within the REAT Account established with the NFWF, in the amount as indicated in **Biological Resources Tables 4a** (adjusted to reflect final project footprint and any applicable REAT adjustments to costs).

2. Selection Criteria for Compensation Lands. The compensation lands selected for acquisition to meet Energy Commission and CESA requirements shall be equal to or better than the quality and function of the habitat impacted and:

   a. Be within the Western Mojave Desert;

   b. Provide moderate to good quality foraging habitat for Swainson's hawk with capacity to improve in quality and value for this species; and

   c. Be near lands for which there is reasonable evidence (for example, recent (<15 years) CNDDB occurrences on or immediately adjacent to the proposed lands) suggesting current occupation by Swainson's hawk ideally with populations that are stable, recovering, or likely to recover.

   d. be near larger blocks of lands that are either already protected or planned for protection, or which could feasibly be protected long-term by a public resource agency or a non-governmental organization dedicated to habitat preservation;

   e. not have a history of intensive recreational use or other disturbance that might cause future erosional damage or other habitat damage, and make habitat recovery and restoration infeasible;

   f. not be characterized by high densities of invasive species, either on or immediately adjacent to the parcels under consideration, that might jeopardize habitat recovery and restoration; and

   g. not contain hazardous wastes that cannot be removed to the extent that the site could not provide suitable habitat; and

h. have water and mineral rights included as part of the acquisition, unless the CPM, in consultation with CDFG, agrees in writing to the acceptability of land without these rights.

3. Review and Approval of Compensation Lands Prior to Acquisition. The project owner shall submit a formal acquisition proposal to the CPM describing the parcel(s) intended for purchase. This acquisition proposal shall discuss the suitability of the proposed parcel(s) as compensation lands for Swainson's hawk in relation to the criteria listed above and must be approved by the CPM. The CPM will share the proposal with and consult with CDFG before deciding whether to approve or disapprove the proposed acquisition.

4. Compensation Lands Acquisition Conditions: The project owner shall comply with the following conditions relating to acquisition of the compensation lands after the CPM, in consultation with CDFG approved the proposed compensation lands:

   a. Preliminary Report: The Project owner, or approved third party, shall provide a recent preliminary title report, initial hazardous materials survey report, biological analysis, and other necessary or requested documents for the proposed compensation land to the CPM. All documents conveying or conserving compensation lands and all conditions of title are subject to review and approval by the CPM, in consultation with CDFG. For conveyances to the State, approval may also be required from the California Department of General Services, the Fish and Game Commission and the Wildlife Conservation Board.

   b. Title/Conveyance: The Project owner shall acquire and transfer fee title to the compensation lands, a conservation easement over the lands, or both fee title and conservation easement as required by the CPM in consultation with CDFG. Any transfer of a conservation easement or fee title must be to CDFG, a non-profit organization qualified to hold title to and manage compensation lands (pursuant to California Government Code section 65965), or to other public agency approved by the CPM in consultation with CDFG. If an approved non-profit organization holds fee title to the compensation lands, a conservation easement shall be recorded in favor of CDFG or another entity approved by the CPM. If an approved non-profit holds a conservation easement, CDFG shall be named a third party beneficiary. If an entity other than CDFG holds a conservation easement over the compensation lands, the CPM may require that CDFG or another entity approved by the CPM, in consultation with CDFG, be named a third party beneficiary of the conservation easement. The Project owner shall obtain approval of the CPM, in consultation with CDFG, of the terms of any transfer of fee title or conservation easement to the compensation lands.

   c. Property Analysis Record. Upon identification of the compensation lands, the Project owner shall conduct a Property Analysis Record (PAR) or PAR-like analysis to establish the appropriate amount of the long-term maintenance and management fund to pay the in-perpetuity management of the compensation lands. The PAR or PAR-like analysis must be approved by the CPM, in consultation with CDFG, before it can be used to establish funding levels or management activities for the compensation lands.

5. Compensation Lands Acquisition Costs: The Project owner shall pay all other costs related to acquisition of compensation lands and conservation easements. In addition to actual land costs, these acquisition costs shall include but shall not be limited to the items listed below. Management costs including site cleanup measures are described separately, in the following section.

a. Level 1 Environmental Site Assessment;

b. Appraisal;

c. Title and document review costs;

d. Expenses incurred from other state, federal, or local agency reviews;

e. Closing and escrow costs;

f. Overhead costs related to providing compensation lands to CDFG or an approved third party;

g. Biological survey(s) to determine mitigation value of the land; and

h. Agency costs to accept the land (e.g., writing and recording of conservation easements; title transfer).

COMPENSATORY MITIGATION LAND IMPROVEMENT

1. Land Improvement Requirements: The Project owner shall fund activities that the CPM, in consultation with the CDFG, requires for the initial protection and habitat improvement of the compensation lands. These activities will vary depending on the condition and location of the land acquired, but may include surveys of boundaries and property lines, installation of signs, trash removal and other site cleanup measures, construction and repair of fences, invasive plant removal, removal of roads, and similar measures to protect habitat and improve habitat quality on the compensation lands.

   The costs of these activities are estimated at $250 an acre, but will vary depending on the measures that are required for the compensation lands. A non-profit organization, CDFG or another public agency may hold and expend the habitat improvement funds if it is qualified to manage the compensation lands (pursuant to California Government Code section 65965), if it meets the approval of the CPM in consultation with CDFG, and if it is authorized to participate in implementing the required activities on the compensation lands. If CDFG takes fee title to the compensation lands, the habitat improvement fund must be paid to CDFG or its designee.

COMPENSATORY MITIGATION LAND LONG-TERM MANAGEMENT

1. Long-term Management Requirements: Long-term management is required to ensure that the compensation lands are managed and maintained to protect and enhance habitat for desert tortoise. Management activities may include maintenance of signs, fences, removal of invasive weeds, monitoring, security and enforcement, and control or elimination of unauthorized use.

2. Long-term Management Plan. The project owner shall pay for the preparation of a Management Plan for the compensation lands. The Management Plan shall

reflect site-specific enhancement measures on the acquired compensation lands. The plan shall be submitted for approval of the CPM, in consultation with CDFG.

3. Long-Term Maintenance and Management Funding. The Project owner shall provide money to establish an account with a non-wasting capital that will be used to fund the long-term maintenance and management of the compensation lands. The amount of money to be paid will be determined through an approved PAR or PAR-like analysis conducted for the compensation lands. The amount of required funding is initially estimated to be $1,450 for every acre of compensation lands. If compensation lands will not be identified and a PAR or PAR-like analysis completed within the time period specified for this payment (see the verification section at the end of this condition), the Project owner shall provide initial payment of $854,500.00 calculated at $1,450 an acre for each compensation acre, as shown in **Biological Resources Tables 4a** (above) into an account for long-term maintenance and management of compensation lands. The amount of the required initial payment or security for this item shall be adjusted for any change in the Project footprint as described above. If an initial payment is made based on the estimated per-acre costs, the project owner shall deposit additional money as may be needed to provide the full amount of long-term maintenance and management funding indicated by a PAR or PAR-like analysis, once the analysis is completed and approved. If the approved analysis indicates less than $1,450 an acre will be required for long-term maintenance and management, the excess paid will be returned to the Project owner.

   The project owner must obtain the CPM's approval of the entity that will receive and hold the long-term maintenance and management fund for the compensation lands. The CPM will consult with the project owner and CDFG before deciding whether to approve an entity to hold the project's long-term maintenance and management funds on any lands. The CPM, in consultation with the project owner and CDFG, may designate another state agency or non-profit organization to hold the long-term maintenance and management fee if the organization is qualified to manage the compensation lands in perpetuity.

   If CDFG takes fee title to the compensation lands, CDFG shall determine whether it will hold the long-term management fee in the special deposit fund, leave the money in the REAT Account, or designate another entity such as NFWF to manage the long-term maintenance and management fee for CDFG and with CDFG supervision.

   The Project owner shall ensure that an agreement is in place with the long-term maintenance and management fee holder/manager to ensure the following conditions:

   i. Interest. Interest generated from the initial capital shall be available for reinvestment into the principal and for the long-term operation, management, and protection of the approved compensation lands, including reasonable administrative overhead, biological monitoring, improvements to carrying capacity, law enforcement measures, and any other action approved by CDFG designed to protect or improve the habitat values of the compensation lands.

   ii. Withdrawal of Principal. The long-term maintenance and management fee principal shall not be drawn upon unless such withdrawal is deemed necessary

by the CPM, in consultation with CDFG, or the approved third-party long-term maintenance and management fee manager to ensure the continued viability of the species on the compensation lands. If CDFG takes fee title to the compensation lands, monies received by CDFG pursuant to this provision shall be deposited in a special deposit fund established solely for the purpose to manage lands in perpetuity unless CDFG designates NFWF or another entity to manage the long-term maintenance and management fee for CDFG.

iii. Pooling Funds. A CPM- approved non-profit organization qualified to hold long-term maintenance and management fees solely for the purpose to manage lands in perpetuity, may pool the fund with other funds for the operation, management, and protection of the compensation lands for local populations of desert tortoise. However, for reporting purposes, the long-term maintenance and management fee fund must be tracked and reported individually to the CDFG and CPM.

iv. Reimbursement Fund. The project owner shall provide reimbursement to CDFG or an approved third party for reasonable expenses incurred during title, easement, and documentation review; expenses incurred from other State or State-approved federal agency reviews; and overhead related to providing compensation lands.

COMPENSATORY MITIGATION LAND SECURITY

1. Compensation Mitigation Security: The project owner shall provide security sufficient for funding acquisition, improvement, and long-term management of Swainson's hawk compensation land. Financial assurance can be provided to the CPM in the form of an irrevocable letter of credit, a pledged savings account or another form of security ("Security"). Prior to submitting the Security to the CPM, the Project owner shall obtain the CPM's approval, in consultation with CDFG of the form of the Security.

   The security amount shall be based on the estimates provided in **Biological Resources Tables 4a.** This amount shall be updated and verified prior to payment and shall be adjusted to reflect actual costs or more current estimates as agreed upon by the REAT agencies.

   The Project owner shall provide verification that financial assurances have been established to the CPM with copies of the document(s) to CDFG, to guarantee that an adequate level of funding is available to implement any of the mitigation measures required by this condition that are not completed prior to the start of ground-disturbing activities described in Section A of this condition.

   In the event that the project owner defaults on the Security, the CPM may use money from the Security solely for implementation of the requirements of this condition. The CPM's use of the security to implement measures in this condition may not fully satisfy the Project owner's obligations under this condition. Any amount of the Security that is not used to carry out mitigation shall be returned to the Project owner upon successful completion of the associated requirements in this condition.

   Security for the requirements of this condition shall be provided in the amount of $9,252,876.50 if the project owner elects to use the REAT Account with NFWF

pursuant to paragraph 4 of this condition, below). The Security is calculated in part from the items that follow but adjusted as specified below (consult **Biological Resources Tables 4a** for the complete breakdown of estimated costs). However, regardless of the amount of the security or actual cost of implementation, the project owner shall be responsible for implementing all aspects of this condition.

i. land acquisition costs for compensation land, calculated at $10,000/acre;

ii. Site assessments, appraisals, biological surveys, transaction closing and escrow costs, calculated as $18,000 total per parcel (presuming 60 acres per parcel)

iii. Initial site clean-up, restoration, or enhancement, calculated at $250/acre;

iv. Third-party and agency administrative transaction costs and overhead, calculated as percentages of land cost;

v. Long-term management and maintenance fund, calculated at $1,450 per acre;

vi. NFWF fees to establish a project-specific account; manage the sub-account for acquisition and initial site work; and manage the sub-account for long term management and maintenance.

2. The project owner may elect to comply with some or all of the requirements in this condition by providing funds to implement the requirements into the Renewable Energy Action Team (REAT) Account established with the National Fish and Wildlife Foundation (NFWF). To use this option, the Project owner must make an initial deposit to the REAT Account in an amount equal to the estimated costs of implementing the requirement (as set forth in the Security section of this condition, paragraph 3, above). If the actual cost of the acquisition, initial protection and habitat improvements, long-term funding or other cost is more than the estimated amount initially paid by the project owner, the project owner shall make an additional deposit into the REAT Account sufficient to cover the actual acquisition costs, the actual costs of initial protection and habitat improvement on the compensation lands, the long-term funding requirements as established in an approved PAR or PAR-like analysis, or the other actual costs that are estimated in the table. If those actual costs or PAR projections are less than the amount initially transferred by the applicant, the remaining balance shall be returned to the project owner.

4. The responsibility for acquisition of compensation lands may be delegated to a third party other than NFWF, such as a non-governmental organization supportive of desert habitat conservation, by written agreement of the Energy Commission. Such delegation shall be subject to approval by the CPM, in consultation with CDFG prior to land acquisition, enhancement or management activities. Agreements to delegate land acquisition to an approved third party, or to manage compensation lands, shall be executed and implemented within 18 months of the Energy Commission's certification of the project.

5. The project owner may request the CPM to provide it with all available information about any funds held by the Energy Commission, CDFG or NFWF as project security, or funds held in a NFWF sub-account for this project, or other project-specific account held by a third party. The CPM shall also fully cooperate

with any independent audit that the project owner may choose to perform on any of these funds.

Verification: The project owner shall provide the CPM with either the results of the nesting surveys or written verification that the project owner shall assume presence no less than 60 days prior to ground disturbance or site mobilization. on the project site.

If the mitigation actions required under this condition are not completed at least 30 days prior to the start of ground-disturbing activities, the Project owner shall provide verification to the CPM and CDFG that an approved Security has been established in accordance with this condition of certification no later than 30 days prior to beginning Project ground-disturbing activities. Financial assurance can be provided to the CPM in the form of an irrevocable letter of credit, a pledged savings account or another form of security ("Security"). Prior to submitting the Security to the CPM, the project owner shall obtain the CPM's approval, in consultation with CDFG of the form of the Security. The project owner, or an approved third party, shall complete and provide written verification to the CPM and CDFG of the compensation lands acquisition and transfer within 18 months of the start of Project ground-disturbing activities.

No later than 12 months after the start of any ground-disturbing project activities, the project owner shall submit a formal acquisition proposal to the CPM describing the parcel(s) intended for purchase, and shall obtain approval from the CPM, in consultation with CDFG prior to the acquisition. If NFWF or another approved third party is handling the acquisition, the project owner shall fully cooperate with the third party to ensure the proposal is submitted within this time period. The project owner or an approved third party shall complete the acquisition and all required transfers of the compensation lands, and provide written verification to the CPM and CDFG of such completion, no later than 18 months after the issuance of the Energy Commission Decision.

The project owner shall complete and submit to the CPM a PAR or PAR-like analysis no later than 60 days after the CPM approves compensation lands for acquisition associated with any phase of construction. The project owner shall fully fund the required amount for long-term maintenance and management of the compensation lands for that phase of construction no later than 30 days after the CPM approves a PAR or PAR-like analysis of the anticipated long-term maintenance and management costs of the compensation lands. Written verification shall be provided to the CPM and CDFG to confirm payment of the long-term maintenance and management funds.

No later than 60 days after the CPM determines what activities are required to provide for initial protection and habitat improvement on the compensation lands for any phase of construction, the project owner shall make funding available for those activities and provide written verification to the CPM of what funds are available and how costs will be paid. Initial protection and habitat improvement activities on the compensation lands for that phase of construction shall be completed, and written verification provided to the CPM, no later than six months after the CPM's determination of what activities are required on the compensation lands.

The project owner, or an approved third party, shall provide the CPM and CDFG with a management plan for the compensation lands associated with any phase of construction within 180 days of the land or easement purchase, as determined by the date on the title. The CPM, in consultation with CDFG shall approve the management plan after its content is acceptable to the CPM.

Within 90 days after completion of all project related ground disturbance, the project owner shall provide to the CPM and CDFG an analysis, based on aerial photography, with the final accounting of the amount of habitat disturbed during Project construction. If this analysis shows that more lands were disturbed than was anticipated in this condition, the project owner shall provide the Energy Commission with additional compensation lands and funding commensurate with the added impacts and applicable mitigation ratios set forth in this condition. A final analysis of all project related ground disturbance may not result in a reduction of compensation requirements if the deadlines established under this condition for transfer of compensation lands and funding have passed prior to completion of the analysis.

Burrowing Owl Impact Avoidance, Minimization, AND COMPENSATION Measures

BIO-18 The project owner shall implement the following measures to avoid and offset impacts to burrowing owls:

1. Pre-Construction Surveys. Concurrent with desert tortoise clearance surveys the Designated Biologist shall conduct pre-construction surveys for burrowing owls within the project site and along all linear facilities in accordance with CDFG guidelines (CBOC 1993). Pre-construction surveys for burrowing owls shall occur no more than 30 days prior to initiation of ground disturbance or site mobilization activities. The survey area shall include the Project Disturbance Area and surrounding 500 foot survey buffer where access is legally available.

2. Implement Avoidance Measures. If an active burrowing owl burrow is detected within 500 feet from the Project Disturbance Area the following avoidance and minimization measures shall be implemented:

    a. Establish Non-Disturbance Buffer. Fencing shall be installed at a 250-foot radius from the occupied burrow to create a non-disturbance buffer around the burrow. The non-disturbance buffer and fence line may be reduced to 160 feet if all Project-related activities that might disturb burrowing owls would be conducted during the non-breeding season (September 1st through January 31st). Signs shall be posted in English and Spanish at the fence line indicating no entry or disturbance is permitted within the fenced buffer.

    b. Monitoring: If construction activities would occur within 500 feet of the occupied burrow during the nesting season (February 1 – August 31st) the Designated Biologist or Biological Monitor shall monitor to determine if these activities have potential to adversely affect nesting efforts, and shall implement measures to minimize or avoid such disturbance.

3. Passive Relocation of Burrowing Owls. If pre-construction surveys indicate the presence of burrowing owls within the Project Disturbance Area (the Project Disturbance Area means all lands disturbed in the construction and operation of the PHPP Project), the Project owner shall prepare and implement a Burrowing Owl Relocation and Mitigation Plan, in addition to the avoidance measures described above. The final Burrowing Owl Relocation and Mitigation Plan shall be approved by the CPM, in consultation with USFWS and CDFG, and shall:

    a. Identify and describe suitable relocation sites on the project site or within 1 mile of the Project Disturbance Area, and describe measures to ensure

that burrow installation or improvements would not affect sensitive species habitat or existing burrowing owl colonies in the relocation area;

b. Provide guidelines for creation or enhancement of at least two natural or artificial burrows per relocated owl, including a discussion of timing of burrow improvements, specific location of burrow installation, and burrow design. Design of the artificial burrows shall be consistent with CDFG guidelines (CDFG 1995) and shall be approved by the CPM in consultation with CDFG and USFWS;

c. Passive relocation sites shall be in areas of suitable habitat for burrowing owl nesting, and be characterized by minimal human disturbance and access. Relative cover of non-native plants within the proposed relocation sites shall not exceed the relative cover of non-native plants in the adjacent habitats;

d. Provide detailed methods and guidance for passive relocation of burrowing owls occurring within the Project Disturbance Area; and

4. Acquire Compensatory Mitigation Lands for Burrowing Owls. The following measures for compensatory mitigation shall apply only if burrowing owls are detected within the Project Disturbance Area. The Project owner shall acquire, in fee or in easement, 19.5 acres of land for each burrowing owl that is displaced by construction of the Project. This compensation acreage of 19.5 acres per single bird or pair of nesting owls assumes that there is no evidence that the compensation lands are occupied by burrowing owls. If burrowing owls are observed to occupy the compensation lands, then only 9.75 acres per single bird or pair is required, per CDFG (1995) guidelines. If the compensation lands are contiguous to currently occupied habitat, then the replacement ratio will be 13.0 acres per pair or single bird. The Project owner shall provide funding for the enhancement and long-term management of these compensation lands. The acquisition and management of the compensation lands may be delegated by written agreement to CDFG or to a third party, such as a non-governmental organization dedicated to habitat conservation, subject to approval by the CPM, in consultation with CDFG and USFWS prior to land acquisition or management activities. Additional funds shall be based on the adjusted market value of compensation lands at the time of construction to acquire and manage habitat. 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 described in Section 3.i. of Condition of Certification **BIO-20**.

a. Criteria for Burrowing Owl Mitigation Lands. The terms and conditions of this acquisition or easement shall be as described in Paragraph 1 of **BIO-20** [Mohave ground squirrel Compensatory Mitigation], with the additional criteria to include: 1) the mitigation land must provide suitable habitat for burrowing owls, and 2) the acquisition lands must either currently support burrowing owls or be within dispersal distance from areas occupied by burrowing owls ~~from an active burrowing owl nesting territory~~ (generally approximately 5 miles). The burrowing owl mitigation lands may be included with the Mohave ground squirrel mitigation lands ONLY if these two burrowing owl criteria are met. If the burrowing owl mitigation land is separate from the acquisition required for Mohave ground squirrel compensation lands, the Project owner shall fulfill the requirements described below in this condition.

b. Security. If burrowing owl mitigation land is separate from the acreage required for Mohave ground squirrel compensation lands the Project owner or an approved third party shall complete acquisition of the proposed compensation lands prior to initiating ground-disturbing Project activities. Alternatively, financial assurance can be provided by the Project owner to the CPM with copies of the document(s) to CDFG and the USFWS, to guarantee that an adequate level of funding is available to implement the mitigation measure described in this condition. These funds shall be used solely for implementation of the measures associated with the Project. Financial assurance can be provided to the CPM in the form of an irrevocable letter of credit, a pledged savings account or another form of security ("Security") prior to initiating ground-disturbing Project activities. Prior to submittal to the CPM, the Security shall be approved by the CPM, in consultation with CDFG and the USFWS to ensure funding. The estimated costs of enhancement and endowment (see subsection, Mohave ground squirrel, for a discussion of the assumptions used in calculating the Security, which are based on an estimate of $15,169 per acre to fund acquisition, enhancement, and long-term management). The final amount due will be determined by the PAR analysis conducted pursuant to **BIO-17**.

Verification: If pre-construction surveys detect burrowing owls within 500 feet of proposed construction activities, the Designated Biologist shall provide to the CPM, CDFG and USFWS documentation indicating that non-disturbance buffer fencing has been installed at least 10 days prior to the start of any construction-related ground disturbance activities. The Project owner shall report monthly to the CPM, CDFG, and USFWS for the duration of construction on the implementation of burrowing owl avoidance and minimization measures. Within 30 days after completion of construction the Project owner shall provide to the CPM, CDFG and USFWS a written construction termination report identifying how mitigation measures described in the plan have been completed.

If pre-construction surveys detect burrowing owls within the Project Disturbance Area, the Project owner shall notify the CPM, CDFG and USFWS no less than 10 days of completing the surveys that a relocation of owls is necessary. The Project owner shall do all of the following if relocation of one or more burrowing owls is required:

a. Within 30 days of completion of the burrowing owl pre-construction surveys, submit to the CPM, CDFG and USFWS a Burrowing Owl Relocation and Mitigation Plan.

b. No less than 90 days prior to acquisition of the burrowing owl compensation lands, the Project owner, or an approved third party, shall submit a formal acquisition proposal to the CPM, CDFG, and USFWS describing the parcel intended for purchase. At the same time the Project owner shall submit a PAR or PAR-like analysis for the parcels for review and approval by the CPM, CDFG and USFWS.

c. Within 90 days of the land or easement purchase, as determined by the date on the title, the Project owner shall provide the CPM with a management plan for review and approval, in consultation with CDFG and USFWS, for the compensation lands and associated fund

d. No later than 30 days prior to the start of construction-related ground disturbing activities, the Project owner shall provide written verification of Security in accordance with this condition of certification.

e. No later than 18 months after the start of construction-related ground disturbance activities, the Project owner shall provide written verification to the CPM, CDFG and USFWS that the compensation lands or conservation easements have been acquired and recorded in favor of the approved recipient.

f. On January 31st of each year following construction for a period of five years, the Designated Biologist shall provide a report to the CPM, USFWS, and CDFG that describes the results of monitoring and management of the burrowing owl relocation area. The annual report shall provide an assessment of the status of the relocation area with respect to burrow function and weed infestation, and shall include recommendations for actions the following year for maintaining the burrows as functional burrowing owl nesting sites and minimizing the occurrence of weeds.

HAZ-9 The project owner shall prepare a site-specific Security Plan for the operational phase and shall submit it to the CPM for review and approval. The project owner shall implement site security measures addressing physical site security and hazardous materials storage. The level of security to be implemented shall not be less than that described as below (as per NERC 2002).

The Operation Security Plan shall include the following:

1. Permanent full perimeter fence or wall, at least eight feet high around the Power Block and Solar Field and meet the requirements specified in Condition of Certification BIO-11.
2. Main entrance security gate, either hand operable or motorized;
3. Evacuation procedures;
4. Protocol for contacting law enforcement and the CPM in the event of suspicious activity or emergency;
5. Written standard procedures for employees, contractors and vendors when encountering suspicious objects or packages on-site or off-site;
6.
    a. A statement (refer to sample, attachment “A”) signed by the project owner certifying that background investigations have been conducted on all project personnel. Background investigations shall be restricted to ascertain the accuracy of employee identity and employment history, and shall be conducted in accordance with state and federal law regarding security and privacy;
    b. A statement(s) (refer to sample, attachment “B”) signed by the contractor or authorized representative(s) for any permanent contractors or other technical contractors (as determined by the CPM after consultation with the project owner) that are present at any time on the site to repair, maintain, investigate, or conduct any other technical duties involving critical components (as determined by the CPM after consultation with the project owner) certifying that background investigations have been conducted on contractor personnel that visit the project site.

7. Site access controls for employees, contractors, vendors, and visitors;
8. A statement(s) (refer to sample, attachment "C") signed by the owners or authorized representative of Therminol, hydrogen, 93% sulfuric acid, and aqueous ammonia transport vendors certifying that they have prepared and implemented security plans in conformity with 49 CFR 172.802, and that they have conducted employee background investigations in accordance with 49 CFR Part 1572, subparts A and B;
9. Closed Circuit TV (CCTV) monitoring system able to pan, tilt, and zoom (PTZ), recordable, and viewable in the power plant control room and security station (if separate from the control room) providing a view of the main entrance gate, the entrance to the control room, and the ammonia storage tank but angled and physically restricted so as to not view or record any activity at Air Force Plant 42; and
10. Additional measures to ensure adequate perimeter security consisting of either:
    a. Security guard(s) present 24 hours per day, seven days per week, or
    b. Power plant personnel on-site 24 hours per day, seven days per week and:
        1) The northern and ~~eastern~~ western sections of the perimeter fence around the solar array shall be viewable by the CCTV system; or
        2) have perimeter breach detectors or on-site motion detectors for all fence lines.

The project owner shall fully implement the security plans and obtain CPM approval of any substantive modifications to the security plans. The CPM may authorize modifications to these measures, or may require additional measures, such as protective barriers for critical power pant components (e.g., transformers, gas lines, compressors, etc.) depending on circumstances unique to the facility or in response to industry-related standards, security concerns, or additional guidance provided by the U.S. Department of Homeland Security, the U.S. Department of Energy, or the North American Electrical Reliability Council, after consultation with appropriate law enforcement agencies and the applicant.

Verification: At least 30 days prior to the initial receipt of hazardous materials on-site, the project owner shall notify the CPM that a site-specific Operations Site Security Plan is available for review and approval. In the Annual Compliance Report, the project owner shall include a statement that all current project employee and appropriate contractor background investigations have been performed, and updated certification statements are appended to the Operations Security Plan. In the Annual Compliance Report, the project owner shall include a statement that the Operations Security Plan includes all current hazardous materials transport vendor certifications for security plans and employee background investigations.

TRANS-1 ~~The project owner shall prepare and implement a construction~~ The traffic control plan must include but not be limited to the

- Prepare and distribute a map of the route for construction access the proposed project site (SR-14 and Sierra Highv PHPP site;
- Make improvements to East Avenue M (e.g. turn and acc lanes) consistent with existing project access features to

NO CHANGES ARE REQUIRED IN PMPD FOR TRANS-1. THE PMPD ALREADY REFLECTS CHANGES TO TRANS-1 AGREED TO BETWEEN STAFF AND APPLICANT AT THE PUBLIC WORKSHOPS.

arrival/departure to/from the project site;

- Limit heavy equipment and building materials deliveries to between 9:30am and 3:30pm, per Palmdale General Plan Circulation Element, to minimize impacts and route truck traffic around residential development;
- Provide signing, lighting, and traffic control device placement during construction impacting regional and local roadways;
- Ensure construction traffic avoids using the SR-14 on and off-ramps to East Avenue M and the intersection of Sierra Highway and East Avenue M during peak morning and afternoon traffic periods;
- Traffic diversion plans (in coordination with the cities of Palmdale and Lancaster) to ensure access during temporary lane/road closures;
- Ensure of access for emergency vehicles to the project site;
- Ensurance of pedestrian and bicycle safety from construction vehicle travel routes and any construction-related temporary travel lane closures or disruptions;
- Temporary closure of travel lanes or disruptions to street segments and intersections during reconductoring activities or any other utility tie- ins;
- Establish a parking plan for workers, construction vehicles, and trucks during transmission line and pipeline construction;
- Installation of the natural gas pipeline and water line to occur during non-peak hours; and
- Use flagging, flag men, signage and cover open trenches when needed.

Verification: At least 90 days prior to the start of site mobilization, the project owner shall submit a traffic control plan that outlines each component above to Caltrans and the cities of Palmdale and Lancaster Planning Departments for review and comment and to the CPM for review and approval. The project owner shall provide the CPM with any comments from Caltrans and the cities of Palmdale and Lancaster.

TRANS-8 Prior to the start of construction, the project owner shall provide a plan to the CPM and the Air Force Plant 42 Commander identifying all reasonable measures the project owner will take to minimize the creation of glint and glare on Air Force Plant 42 airfield traffic including, but not limited to, the following:

1. Ensure the mirrors are (1) brought out of stowage before sunrise and are aligned to catch the first rays of the morning sun; and (2) returned to stow position after sunset. Ensure mirrors are continuously monitored for malfunctions and remain properly aligned with the sun. Acquire appropriate equipment and establish procedures ~~to cover inoperative or malfunctioning mirrors immediately after malfunctions are discovered to prevent the escape of errant reflections.~~ for a timely repositioning of inoperative or malfunctioning mirrors to minimize the probability of glint or glare exposure. Procedures shall address the mirror trajectory path to a stowage position, or

in the event that stowage is not possible, an alternate trajectory to a neutral positioning with respect to glare. Mirror repositioning due to a mirror alignment malfunction shall be accomplished as soon as practical to minimize glint or glare exposure.

2. Minimize reflections from bellows shields by using a non-reflective or diffuse material or coating (for example, paint) for the shields.

3. Ensure PHPP operator establishes and maintains a communication link with Air Force Plant 42 control tower to ensure that ~~when necessary~~ mirrors are positioned so as not to interfere with critical flight operations.

4. Establish procedures to avoid glare when intentionally moving individual collectors off-axis to "dump" power incident on the heat collection elements during periods of high insolation.

~~If the plant operator needs to dump power and rotate several modules off-axis, the operator shall start with the modules at the north-most and west-most parts of the collector field, which is furthest from the Air Force Plant 42 to the southeast. For each module that is rotated off-axis, the operator shall consider the nearest flight pattern; if it is to the east, then the module shall be rotated to the west, and vice-versa. This rotating shall be done in a manner that minimizes the impact of glare on aircraft (for example, rotating modules furthest from the airport in a direction that is away from flight patterns).~~ The plant operator shall develop and implement a plan to address events in which mirror modules need to be rotated off-axis, such as an event in which it is necessary to dump power. The mirrors' rotational trajectory and final positioning shall ensure the safe movement and positioning of the mirror modules with respect to operational flight patterns to minimize the occurrence and impact of glint or glare events.

In addition, this plan shall include specific provisions for tracking and compiling data involving any and all mirror malfunctions. This data shall include the (1) date, time and location of offending mirror or mirrors; (2) specific adjustments made to correct each mirror or mirrors; (3) date and time specific adjustments were evaluated for effectiveness; and (4) effectiveness of each adjustment. That information shall be included in the monthly compliance reports during construction and in the semi-annual compliance reports during operation. This information will be used to ensure that the offending mirrors are quickly adjusted, thereby having a minimum impact on flight operations. In addition, this information will provide data for the plant operator to use in monitoring mirror operations and preventing malfunctions.

Verification: Within 30 days prior to the start of construction, the project owner shallsubmit the required plan to the Air Force Plant 42 Commander for comment and to the CPM for review and approval. The project owner shall also notify the CPM when the required modifications have been made and are available for inspection.

In addition, the project owner shall include in the monthly compliance reports all data concerning malfunctions of any mirrors during construction and initial start-up operation of the plant and in the semi-annual compliance reports during regular operation.

WASTE-2 In areas where the land has been or is currently being farmed, and where excavation or significant ground disturbance will occur for the construction of the project transmission line, soil samples shall be collected and tested for herbicides, pesticides, and fumigants to determine the presence and extent of any material levels of contamination.

The sampling and testing plan shall be prepared in consultation with the appropriate Los Angeles County agency, conducted by an appropriate California licensed professional, and sent to a California Certified laboratory for testing. Sampling and analysis shall be consistent with the DTSC's 'Interim Guidance for Sampling Agricultural Properties ~~Fields for School Sites~~ (Third Revision)' or equivalent. A report documenting the areas proposed for sampling, and the process used for sampling and testing shall be submitted to the Energy Commission for review and approval at least 90 days before transmission line construction occurs in the affected areas. Results of the laboratory testing and recommended resolutions for handling and excavation of material found to exceed regulatory requirements shall be submitted to the Energy Commission 60 days prior to transmission line construction occurs in the affected areas. Should sampling indicate additional remediation or mitigation is required, Conditions of Certification **WASTE-3** and **-4** would apply.

Excavated materials containing elevated levels of pesticide or herbicide require special handling and disposal according to procedures established by the regulatory agencies. Effective dust suppression procedures shall be used in construction areas to reduce airborne emissions of these contaminants and reduce the risk of exposure to workers and the public. Regulatory agencies for the State of California and Los Angeles County shall be contacted by Applicant or its contractor to plan handling, treatment, and/or disposal options.

Verification: The project owner shall identify the current/previous land use for the project transmission tower locations and associated laydown and staging areas for construction of the transmission line. The project owner shall submit a report documenting the areas proposed for sampling, and the process used for sampling and testing to the CPM for approval at least 90 days before transmission line construction occurs in the affected areas. Results of the laboratory testing and recommended mitigation or remediation plan for handling and excavation of material found to exceed regulatory requirements shall be submitted to the CPM for review and approval 60 days prior to transmission line construction.

STATE OF CALIFORNIA
ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

In the Matter of:	)	Docket No. 08-AFC-9
	)	
Application for Certification,	)	**PROOF OF SERVICE**
for the CITY OF PALMDALE HYBRID	)	
POWER PLANT PROJECT	)	(Revised March 22, 2011)
	)	
	)	

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DECLARATION OF SERVICE

I, Paul Kihm, declare that on July 11, 2011, I served and filed copies of the attached document to all parties identified on the Proof of Service List above in the following manner:

APPLICANT'S COMMENTS ON THE PRESIDING MEMBER'S PROPOSED DECISION

California Energy Commission

☒ Transmission via electronic mail and by depositing a copy with FedEx overnight mail delivery service at Costa Mesa, California, with delivery fees thereon fully prepaid and addressed to the following:

CALIFORNIA ENERGY COMMISSION
Attn: DOCKET NO. 08-AFC-09
1516 Ninth Street, MS-4
Sacramento, California 95814-5512
docket@energy.state.ca.us

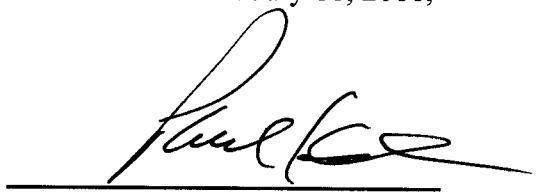
For Service to All Other Parties

☒ Transmission via electronic mail to all email addresses on the Proof of Service list; and

☒ by depositing one paper copy with the United States Postal Service via first-class mail at Costa Mesa, California, with postage fees thereon fully prepaid and addressed as provided on the Proof of Service list to those addresses **NOT** marked "email preferred."

I further declare that transmission via electronic mail and U.S. Mail was consistent with the requirements of California Code of Regulations, title 20, sections 1209, 1209.5, and 1210.

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 11, 2011, at Costa Mesa, California.



Paul Kihm