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California Energy Commission
Dockets Unit
1516 Ninth Street
Sacramento, CA 95814-5512

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

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

Sincerely,

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STATE OF CALIFORNIA

Energy Resources
Conservation and Development Commission

In the Matter of:

DOCKET NO. 09-AFC-7C

Petition For Amendment for the PALEN
SOLAR ELECTRIC GENERATING
SYSTEM

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

Palen Solar Holdings, LLC (PSH) hereby submits these initial comments on the Preliminary Staff Assessment (PSA) for the Palen Solar Electric Generation System (PSEGS) Petition For Amendment published on June 28, 2013. In preparation for the Workshops currently scheduled for July 17, 22, 25 and 26, PSH offers these initial comments in advance so that the parties can be more productive towards the resolution of issues and can discuss specific condition of certification language. PSH will submit final comments on the PSA after the Workshops to capture relevant resolutions and agreements resulting from the Workshop discussions. In these initial comments, PSH provides proposed resolution of issues to Staff for consideration.

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

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

AIR QUALITY

Condition of Certification AQ-SC5

Staff revised Condition of Certification **AQ-SC5** “to reflect the most recent condition”. PSH disagrees that any revisions are necessary since the modified project decreases overall grading equipment as grading has been reduced from 4.5 million cubic yards to 200,000 cubic yards of earthwork. In addition, there is no showing that Staff’s modifications are necessary to reduce any impact or comply with any new LORS¹, or that the new restrictions imposed by Staff are feasible. Therefore, PSH requests that the original Condition of Certification AQ-SC5 in the Commission License be adopted in the Final Staff Assessment (FSA).

BIOLOGICAL RESOURCES

Condition of Certification BIO-1, Verification

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

Condition of Certification BIO-2

Staff made several modifications to this Condition of Certification. The first relates to modification of the Designated Biologist’s roles and responsibilities. Generally, Staff has removed the responsibility to prepare, submit and implement provisions of the BRMIMP from the Project Owner and shifted it to the Designated Biologist. This shift of responsibility may lead to confusion and we request the modifications below to provide clarity of responsibility.

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

Staff also proposed two new responsibilities for the Designated Biologist that as described above should be the responsibility of the Project Owner and not the Designated Biologist. PSH accepts the responsibility of the two new activities (responding to standing water and notification of kit fox injury or death) with the following modifications.

8. **Determine and oversee implementation of remedial actions any time water has been observed standing onsite in disturbed areas for 24 hours. The ~~Designated Biologist~~ Project Owner shall initiate remedial methods in consultation with the Designated Biologist no later than 24 hours after standing water has been observed in disturbed areas on the project site. Remedial methods may include grading, pumping spraying, tilling, or any other means to disperse or ensure evaporation and/or absorption of standing**

¹ Laws, ordinances, regulations or standards.

water. Other remedial efforts may be determined in conjunction with CPM review and approval. Descriptions of remedial efforts, including photo documentation, and discussion of results of remedial efforts must be included in the Monthly Compliance Report;

9. Respond **as soon as practical immediately by investigating any** ~~to~~-reports of onsite kit fox mortality or injury, and to the extent possible, reports of dead or injured kit fox offsite and immediately adjacent the project boundaries or on access roads, notify the CDFW and CPM within 24 hours **or no later than the next business day**, and undertake restorative and/or disease prevention actions as specified within the American Badger and Kit Fox Management Plan, or as directed by the CDFW, with copies of all CDFW guidance provided to the CPM within 24 hours of receipt;

Condition of Certification BIO-6

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

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

Condition of Certification BIO-7

Staff modified Condition of Certification **BIO-7** to include two new provisions in the BRMMP relating to standing water and disease outbreaks as well as the inclusion of a final accounting of land disturbance. PSH supports the inclusion of these two new provisions with the following minor modifications.

8. All required mitigation measures for each sensitive biological resource, **including remedial actions for standing water onsite in disturbed areas** and known or suspected disease outbreaks on the project site;
9. **Aerial photographs, at an approved scale, of all areas to be disturbed during project construction activities; include one set prior to any site or related**

facilities mobilization disturbance and one set subsequent to completion of project construction. Provide planned timing of aerial photography and a description of why times were chosen. Provide a final accounting of the before/after acreages and a determination of whether **additional more or less** habitat compensation is necessary in the Construction Termination Report;

Condition of Certification BIO-8

Staff modified Condition of Certification **BIO-8** to provide that the Designated Biologist must be on-site during all activities that may disturb soil, vegetation and wildlife. Previously, the Designated Biologist needed to be on site for only those activities that took place outside the areas previously fenced with desert tortoise fencing and cleared. There does not appear to be any justification for requiring the Designated Biologist to now be present during construction activity that takes place inside the desert tortoise fenced exclusion areas due to the change in technology. Therefore, we have modified Item 3 of the condition to revert back to the version approved by the Commission in the Final Decision.

3. Monitor During Construction. ~~In areas that have not been fenced with desert tortoise exclusion fencing and cleared, the~~ **In areas that have not been fenced with desert tortoise exclusion fencing and cleared, the** ~~The~~ Designated Biologist shall be present at the construction site during all Project activities that have potential to disturb soil, vegetation and wildlife. The Designated Biologist or Biological Monitor shall clear ahead of equipment during brushing and grading activities. If desert tortoises are found during construction monitoring, procedures outlined in **BIO-9** shall be implemented.

Staff added Item 4 to this condition to address relocating of wildlife during clearing and grading activities. With the following clarifications, this addition is acceptable to PSH.

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

Staff modified Item 13 of the condition to address kit fox injury discovery and reporting. For the reasons described above under the comments to Condition of Certification **BIO-2** it is not feasible to have a standard that requires actions to be taken immediately. Therefore, PSH proposed the following modification to require actions to be taken as soon as practical.

13. Dispose of Road-killed Animals. Road killed animals or other carcasses detected by personnel on roads associated with the Project area will be reported immediately to a Biological Monitor or Designated Biologist (or Project Environmental Compliance Monitor, during Project operations), who will promptly remove the roadkill. For

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

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

- a. **Limit the size of any vegetation and/or ground disturbance to the absolute minimum and limit ingress and egress to defined routes. This restriction does not apply during mowing, installation of heliostats, in areas to be graded, or during activities necessary for construction laydown and construction of the linear facilities;**

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

Condition of Certification BIO-9

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

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

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

3. Desert Tortoise Clearance Surveys within the Plant Site. Clearance surveys shall be conducted in accordance with the **most recent** USFWS Desert Tortoise

Field Manual (currently USFWS 2009) (Chapter 6 – Clearance Survey Protocol for the Desert Tortoise – Mojave Population) ~~or the most recent agency guidance with the approval of the CPM~~

Condition of Certification BIO-12

PSH requests the ability to include as possible mitigation the opportunity to retire grazing allotments and has made the following modification to the condition.

BIO-12 To fully mitigate for habitat loss and potential take of desert tortoise, the Project owner shall provide compensatory mitigation per **BIO-29** – Table 2, adjusted to reflect the final Project footprint. For purposes of this condition, the Project footprint means all lands disturbed in the construction and operation of the Palen Project, including all Project linears, as well as undeveloped areas inside the Project’s boundaries that will no longer provide viable long-term habitat for the desert tortoise. To satisfy this condition, the Project owner shall acquire, protect and transfer 5 acres of desert tortoise habitat for every acre of habitat within critical habitat and within the final Project footprint, and 1 acre of desert tortoise habitat for every acre of habitat outside of critical habitat but within the final Project footprint, and provide associated funding for the acquired lands, as specified below. Condition **BIO-28** may provide the Project owner with another option for satisfying some or all of the requirements in this condition. In lieu of acquiring lands itself, the Project owner may satisfy the requirements of this condition by depositing funds into the Renewable Energy Action Team (REAT) Account established with the National Fish and Wildlife Foundation (NFWF), as provided below in section 3.i. of this condition. In lieu of acquiring lands itself, the Project owner may satisfy the requirements of these conditions by purchasing the grazing leases from landowners within the required habitat areas found within the Selection Criteria for Compensation Lands, and permanently retiring those allocations at a ratio of 3:1. The use of permanently relinquishing grazing permits or valid grazing leases would be in accordance with 43 U.S.C. 1781a, Consolidated Appropriations Act 2012 Public Law 112-74, and BLM No.Ca-2013-006 [4100(CA930)].

PSH requests that the requirement to purchase habitat compensation lands within the Colorado Recovery Unit be changed to allow habitat to be purchased within the USFWS recovery unit as described in the Revised Recovery Plan for the Mojave Population of the Desert Tortoise (USFWS, 2011). This modification would allow a wider selection of potential habitat and would also allow more opportunities for CDFW to implement the SB 34 or other habitat compensation programs.

1. Selection Criteria for Compensation Lands. The compensation lands selected for acquisition in fee title or in easement shall:

- a. be within the ~~Colorado Desert Recovery Unit~~ **USFWS recovery unit as described in the Revised Recovery Plan for the Mojave Population of the Desert Tortoise (USFWS, 2011)**, with potential to contribute to desert tortoise habitat connectivity and build linkages between desert tortoise designated critical habitat, known populations of desert tortoise, and/or other preserve lands;

Condition of Certification BIO-14

Staff did not propose any modifications to this condition. However, the condition needs to be modified to provide the correct reference to the most current version of the Draft Weed Management Plan. The reference to "AECOM 2010a, Attachment DR-BIO-100" should be replaced with "GalatiBlek 2013, Response to Data Request 52".

Condition of Certification BIO-16a

PSH requests two modifications to this condition. The first is to expressly allow annual payments over the life of the project and the second is to modify the verification consistent with other conditions.

2. **Additional Migratory Bird Conservation: The Project owner shall, prior to the commencement of commercial operation of the facility, pay \$1,500,000.00 to fund the activities of a CPM-approved third party that will perform additional migratory bird conservation measures. Alternatively, the project owner may prepare a promissory note to deposit said funds at the onset of operations while at the same time providing funding of the initial year of mitigation in the non-refundable amount of \$50,000.00 to a project fund as determined by CPM, in conjunction with BLM, CDFW, and USFWS, for the initial year of mitigation in the absence of accrued interest. Alternatively, the Project owner may pay \$50,000 annually to fund the annual activities of the CPM-approved third party for the life of the project, not to exceed a period of 30 years, commencing at commercial operation.**

Verification

For power line retrofits:

1. At least 60 days prior to ~~any generation of flux~~ **commercial operation**, the project owner shall submit the draft Retrofit Plan to the CPM for review and approval and CDFW and USFWS for review and comment. At least 30 days prior to ~~start of any flux-generation~~ **commercial operation**, the project owner shall provide the CPM the final version of the Retrofit Plan.
2. If the project owner elects not to fund a third party to perform retrofits, then no less than 30 days prior to ~~beginning project~~ **commercial operation**, the

project owner shall provide written verification to the CPM that security has been established in the National Fish and Wildlife Foundation's Bald and Golden Eagle Protection Act account, in accordance with this condition of certification.

For non-wasting benefit fund:

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

Condition of Certification BIO-16b

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

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

Staff included references to USFWS guidance that were not properly referenced. PSH proposes the following modifications to correct the references to the USFWS guidance. Since the references only apply to wind energy, PSH has proposed modifications to ensure that the PSEGS would only be expected to incorporate the requirements that are applicable to a solar tower project.

BBCS Components

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

7. Eagle Protection Plan (EPP): The project owner shall prepare and implement an Eagle Protection Plan adopting all requirements applicable to solar generation as outlined in current guidelines recommended by the USFWS

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

PSH provides the following modifications to eliminate the requirement that the EPP categorize distribution lines for retrofitting as that requirement would be covered under Condition of Certification **BIO-16a**.

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

Staff proposed specific language to address the potential for the PSEGS to avoid standby points. The PSEGS will not utilize standby points in the manner that was employed at the Solar I facility. However, in order to be commercially viable, PSEGS will need to focus the heliostats very near the solar receiver in order to quickly respond to calls for energy. These standby “rings” will be very close to the tower and will not generate any more solar flux than during operations. Therefore, PSH has proposed the following modifications to the Staff’s proposed language.

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

Condition of Certification BIO-17

Staff modified PSH’s proposed Condition of Certification **BIO-17** to address kit fox disease transmission issues. PSH’s proposed version was based on a mitigation measure included in the McCoy Solar Energy Project Draft Environmental Impact Statement (DEIS).

The mitigation measure was revised since that time and BLM recently sent PSH a version and requested agreement to include it as an Applicant Proposed Measure. PSH provided some suggested revisions and whether those revisions are acceptable to BLM will be identified in the Supplemental DEIS due to be published by July 19, 2013. Since PSH would be required to comply with both the requirements imposed by the Commission and the BLM, PSH will provide comments to Staff on **BIO-17** after it reviews the Supplemental DEIS.

Condition of Certification BIO-19

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

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

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

Condition of Certification BIO-20

PSH requests the following modifications to Condition of Certification **BIO-20** to allow the possibility of mitigation pursuant to SB 34 or other California approved mitigation programs

- BIO-20** To mitigate for habitat loss and direct impacts to Mojave fringe-toed lizards the Project owner shall provide compensatory mitigation, which may include compensation lands purchased in fee or in easement in whole or in part, or appropriate mitigation through other California approved programs at the following ratios:

Condition of Certification BIO-21

In order to allow the SB 34 program or other California approved mitigation programs to be utilized if available for the PSEGS, PSH recommends the following modification to Condition of Certification **BIO-21**, Item.

Acquire Off-Site State Waters: The Project owner shall acquire, in fee or in easement, a parcel or parcels of land that includes state jurisdictional waters **or provide appropriate mitigation through other California approved programs** per **BIO-29 – Table 2**, or the area of state waters directly or indirectly impacted by the final Project footprint.

CULTURAL RESOURCES

Condition of Certification CUL-8

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

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

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

Staff added a requirement to notify the CPM every time a Native American group contacts the Project Owner seeking to be employed as a Native American Monitor. However, Staff

will have approved the use of NAMs as part of earlier conditions and therefore this requirement seems unnecessary. PSH requests that Item 7. of the Verification be deleted.

Condition of Certification CUL-11, Verification

This condition was developed to ensure that certain sites were further evaluated and, if necessary, data recovery was performed prior to construction that could potentially disturb them. However, the verification is inconsistent with the condition language which allows construction to take place elsewhere for the project as long as the activities were not within 30 meters of the potential sites. Therefore we request that the Item 1 of the Verification be modified as follows:

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

Condition of Certification CUL-12

PSH requests that the description of Item 2 in this condition be revised as follows to more accurately describe the field evidence relating to playa shorelines as they relate to Palen Dry Lake.

2. Request the PTNCL PG, or equivalent qualified person approved by the CPM and hired by the project owner should the PG not be available, to identify the specific landform for each site and its relationship to **specific ancient lakeshores prior playa shorelines** of Palen Dry Lake. If a **an identifiable shoreline lakeshore** is present within 100 meters of the site boundary, include it on the site map;

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

Verification:

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

Condition of Certification CUL-13

PSH proposes the following modification to the condition to ensure that Site JR-105 is captured and references to Reconfigured Alternatives 2 and 3 are removed.

CUL-13 DATA RECOVERY FOR HISTORIC-PERIOD REFUSE SCATTERS

Prior to the start of ground disturbance, the project owner shall ensure that a recovery plan is included in the CRMMP for upgrading the recordation of historic-

period refuse scatter sites located on the proposed plant site. ~~For Reconfigured Alternative # 3,~~ these consist of sites SMP-H-1003, SMP-H- 1004, SMP-H-1006, SMP-H-1008, SMP-H-1009, SMP-H-1010, SMP-H-1011, SMP-H-1012, SMP-H-1013, SMP-H-1020, SMP-H-1021, SMP-H-1022, SMP-H-1023, SMP-H-2002, SMP-H-2003, SMP-H-2004, SMP-H-2006, SMP-H-2007, SMP-H-2008, SMP-H-2010, SMP-H-2011/12, SMP-H-2017, SMP-H-2019, SMP-H-2021; JR-101, JR-102, JR-104, JR-109, JR-110; TC-008, TC-009, TC-020, and TC-032. ~~For Reconfigured Alternative #2, the sites requiring upgraded recordation consist of the same sites as Reconfigured Alternative #3 plus site- JR-107 and JR-105.~~ These site lists may be revised only with the agreement of the CRS and the CPM.

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

Verification:

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

Condition of Certification CUL-14

PSH proposes modifications to this condition to remove references to Reconfigured Alternatives 2 and 3 and to make the verification timing consistent with the intent of the condition.

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

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

Condition of Certification CUL-16

PSH believes that BLM will request this condition be left in place. PSH supports inclusion of the condition because it provides clear direction if there is a dispute between Commission and BLM Staff when it comes to compliance with federal requirements applicable to cultural resources.

HAZARDOUS MATERIALS

Condition of Certification HAZ-2

PSH proposes modifications to this condition to ensure that recommendations from Riverside County are only incorporated into the plans if they are required by LORS in order to avoid disputes over the content of plans that are within the ultimate jurisdiction of the CPM.

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

Condition of Certification HAZ-6

PSH proposes two modifications to this condition. The first is to remove the requirement for barbed wire fencing in order to avoid take of migratory birds. The second is to remove the requirement for 100% camera coverage around the perimeter fence as the project will not have a fence around the power block.

The Operation Security Plan shall include the following:

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

SOIL & WATER RESOURCES

Condition of Certification SOIL & WATER-6

This condition refers to Waste Discharge Requirements (WDRs) which Staff did not include in the PSA. PSH requests Staff provide these revisions prior to the Workshops to facilitate discussion.

Condition of Certification SOIL & WATER-17, Verification

The verification to this condition requires compliance within 30 days following certification. To be consistent with other Commission conditions, PSH proposes to modify the verification timeline as follows:

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

Condition of Certification SOIL & WATER-20

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

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

TRAFFIC AND TRANSPORTATION

Condition of Certification TRANS-6, Verification

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

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

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

Condition of Certification TRANS-7

PSH proposed a heliostat positioning plan condition that was negotiated with Riverside County and contained express language that PSH and Riverside County agreed would mitigate potential impacts to the Riverside County Public Safety Enterprise Communication (PSEC) Project. This condition was previously docketed with the Commission, is attached, and PSH urges Staff to include it in the FSA.

WORKER SAFETY & FIRE PROTECTION

Condition of Certification WORKER SAFETY-6

PSH agrees with the payment for all terrain fire engines rather than installation of a secondary access road. PSH is currently preparing a Fire Needs Assessment which will verify whether PSH should be bearing one half of the cost these all terrain fire engines. After the Fire Needs Assessment is completed (anticipated July 17, 2013), PSH may propose modifications to this condition if warranted.

Condition of Certification WORKER SAFETY-7

PSH agrees with Staff that the impacts from the PSEGS are less than those assessed to the original project. While PSH supports the use of Staff's Emergency Response Matrix, PSH believes that the Commission did not include all of the projects that may impact Riverside County Fire and therefore believes that the matrix does not allocate the correct percentages of the needs to the PSEGS. PSH is currently preparing a Fire Needs Assessment (anticipated July 17, 2013) which will provide Staff an analysis of PSEGS proportional share of the costs of emergency response and fire services needs from Riverside County. At that time, PSH may propose modifications to this condition if warranted.

Condition of Certification WORKER SAFETY-8

Staff proposed the use of instrumentation to monitor fugitive dust as part of this condition. PSH wishes to discuss the reason for this modification and how Staff envisions the condition's application to construction activities.

COMPLIANCE

Definitions

Staff modified several of the definitions related to the start of construction activities. PSH requests that the installation of desert tortoise fencing be added to those activities defined as "Site Assessment and Preconstruction Activities" and remove it from the definition of "Site Mobilization and Construction". Desert tortoise fencing is a critical part of the desert tortoise clearance process; clearance activities cannot take place without the fencing.

Therefore, in order to allow fencing and clearance activities to proceed as envisioned by Condition of Certification **BIO-12**, it is important clearance and fencing be allowed under “Site Assessment and Preconstruction Activities”.

Condition of Certification COM-2

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

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

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

Condition of Certification COM-4

PSH proposes the following modification to clarify that the PSEGS is an amendment to a Commission Decision.

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

Condition of Certification COM-6

PSH proposes the following modification to this condition to provide enough time to submit the Monthly Compliance Reports.

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

Condition of Certification COM-11

PSH requests that the condition be modified as follows to reflect normal business practices.

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

CONCLUSION

PSH has provided these Initial Comments to enable productive discussions at the upcoming Workshops. While these initial comments focus on the Conditions of Certification, PSH will include in its final comments responses to the project description, findings, analysis and requests for additional data outlined in the PSA.

Dated: July 11, 2013

Respectfully Submitted,



Scott A. Galati
Counsel to Palen Solar Holdings, LLC



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

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

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Commissioners' Technical
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DECLARATION OF SERVICE

I, Marie Fleming, declare that on July 11, 2013, I served and filed copies of the attached **PALEN SOLAR HOLDINGS, LLC'S INITIAL COMMENTS ON THE PRELIMINARY STAFF ASSESSMENT**, dated July 11, 2013. This document is accompanied by the most recent Proof of Service, which I copied from the web page for this project at: <http://www.energy.ca.gov/sitingcases/palen/compliance/>.

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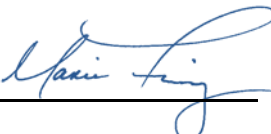
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am over the age of 18 years.

Dated: July 11, 2013



Marie Fleming