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California Energy Commission
Dockets Unit
1516 Ninth Street
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Subject: **GENESIS SOLAR LLC'S RESPONSE TO STAFF'S RECENT EXHIBIT
MODIFYING CONDITION BIO-19
GENESIS SOLAR ENERGY PROJECT
DOCKET NO. (09-AFC-8)**

Enclosed for filing with the California Energy Commission is the original of **GENESIS SOLAR LLC'S RESPONSE TO STAFF'S RECENT EXHIBIT MODIFYING CONDITION BIO-19**, for the Genesis Solar Energy Project (09-AFC-8). This document was originally docketed and served on July 20, 2010.

Sincerely,



Marie Mills

SPECIAL-STATUS PLANT IMPACT AVOIDANCE, MINIMIZATION AND COMPENSATION

BIO-19 This condition contains the following four sections:

- **Section A: Special-Status Plant Impact Avoidance and Minimization Measures** contains the Best Management Practices and other measures designed to avoid accidental impacts to plants occurring outside of the Project Disturbance Area and within 100 feet of the Project Disturbance Area during construction, operation, and closure.
- **Section B: Conduct Late Season Botanical Surveys** describes guidelines for conducting summer-fall 2010 surveys to detect special-status plants that would have been missed during the spring 2010 surveys.
- **Section C: Avoidance Requirements for Special-Status Plants Detected in the Summer/Fall 2010 Surveys** outlines the level of avoidance required for plants detected during the summer-fall surveys, based on the species' rarity and status codes.
- **Section D: Off-Site Compensatory Mitigation for Special-Status Plants** describes performance standards for mitigation for a range of options for compensatory mitigation through acquisition, restoration/enhancement, or a combination of acquisition and restoration/enhancement.

"Project Disturbance Area" encompasses all areas to be temporarily and permanently disturbed by the Project, including the plant site, linear facilities, and areas disturbed by temporary access roads, fence installation, construction work lay-down and staging areas, parking, storage, or by any other activities resulting in disturbance to soil or vegetation.

The Project owner shall implement the following measures in Section A, B, C, and D to avoid, minimize, and compensate for impacts to special-status plant species:

Section A: Special-Status Plant Impact Avoidance and Minimization Measures

To protect all special-status plants¹ located outside of the Project Disturbance Area and within 100 feet of the permitted Project Disturbance Area from

¹ Staff defines special-status plants as described in *Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Natural Communities* (California Natural Resources Agency, Department of Fish and Game, issued November 24, 2009).

accidental and indirect impacts during construction, operation, and closure, the Project owner shall implement the following measures:

1. Designated Botanist. An experienced botanist who meets the qualifications described in Section **B-2** below shall oversee compliance with all special-status plant avoidance, minimization, and compensation measures described in this condition throughout construction and closure. The Designated Botanist shall oversee and train all other Biological Monitors tasked with conducting botanical survey and monitoring work. During operation of the Project, the Designated Biologist shall be responsible for protecting special-status plant occurrences within 100 feet of the Project boundaries.
2. Special-Status Plant Impact Avoidance and Minimization Measures. The Project owner shall incorporate all measures for protecting special-status plants in close proximity to the site into the BRMIMP (**BIO-7**). These measures shall include the following elements:
 - a. Site Design Modifications: Incorporate site design modifications to minimize impacts to special-status plants along the Project linears: limiting the width of the work area; adjusting the location of staging areas, lay downs, spur roads and poles or towers; driving and crushing vegetation as an alternative to blading temporary roads to preserve the seed bank, and minor adjustments to the alignment of the roads and pipelines within the constraints of the ROW. Design the engineered channel discharge points to maintain the natural surface drainage patterns between the engineered channel and the outlet of the natural washes that flow toward the south and east, downstream of the Project. These modifications shall be clearly depicted on the grading and construction plans, and on report-sized maps in the BRMIMP.
 - b. Establish Environmentally Sensitive Areas (ESAs). Prior to the start of any ground- or vegetation-disturbing activities, the Designated Botanist shall establish ESAs to protect avoided special-status plants that occur outside of the Project Disturbance Areas and within 100 feet of Project Disturbance Areas. This includes plant occurrences identified during the spring 2009-2010 surveys and the late season 2010 surveys. The locations of ESAs shall be clearly depicted on construction drawings, which shall also include all avoidance and minimization measures on the margins of the construction plans. The boundaries of the ESAs shall be placed a minimum of 20 feet from the uphill side of the occurrence and 10 feet from the downhill side. Where this is not possible due to construction constraints, other protection measures, such as silt-fencing and sediment controls, may be employed to protect the occurrences. Equipment and vehicle maintenance areas, and wash areas, shall be located 100 feet from the uphill side of any ESAs. ESAs shall be clearly delineated in the field with temporary construction fencing and signs prohibiting movement of the fencing or sediment

controls under penalty of work stoppages and additional compensatory mitigation. ESAs shall also be clearly identified (with signage or by mapping on site plans) to ensure that avoided plants are not inadvertently harmed during construction, operation, or closure.

- c. Special-Status Plant Worker Environmental Awareness Program (WEAP). The WEAP (**BIO-6**) shall include training components specific to protection of special-status plants as outlined in this condition.
- d. Herbicide and Soil Stabilizer Drift Control Measures. Special-status plant occurrences within 100 feet of the Project Disturbance Area shall be protected from herbicide and soil stabilizer drift. The Weed Control Program (**BIO-14**) shall include measures to avoid chemical drift or residual toxicity to special-status plants consistent with guidelines such as those provided by the Nature Conservancy's *The Global Invasive Species Team*², the U.S. Environmental Protection Agency, and the Pesticide Action Network Database³.
- e. Erosion and Sediment Control Measures. Erosion and sediment control measures shall not inadvertently impact special-status plants (e.g., by using invasive or non-native plants in seed mixes, introducing pest plants through contaminated seed or straw, etc.). These measures shall be incorporated in the Drainage, Erosion, and Sedimentation Control Plan required under **SOIL&WATER-1**.
- f. Avoid Special-Status Plant Occurrences. Areas for spoils, equipment, vehicles, and materials storage areas; parking; equipment and vehicle maintenance areas, and wash areas shall be placed at least 100 feet from any ESAs.
- g. Monitoring and Reporting Requirements. The Designated Botanist shall conduct weekly monitoring of the ESAs that protect special-status plant occurrences during construction and decommissioning activities.

Section B: Conduct Late-Season Botanical Surveys

The Project owner shall conduct late-summer/fall botanical surveys for late-season special-status plants prior to start of construction or by the end of 2010, as described below:

1. Survey Timing. Surveys shall be timed to detect: a) summer annuals triggered to germinate by the warm, tropical summer storms (which may occur any time between June and October). Fall-blooming perennials that

² Hillmer, J. & D. Liedtke. 2003. Safe herbicide handling: a guide for land stewards and volunteer stewards. Ohio Chapter, The Nature Conservancy, Dublin, OH. 20 pp. Online: <<http://www.invasive.org/gist/products.html>>

³ Pesticide Action Network of North America. Kegley, S.E., Hill, B.R., Orme S., Choi A.H., PAN Pesticide Database, Pesticide Action Network, North America. San Francisco, CA, 2010 <<http://www.pesticideinfo.org>>

respond to the cooler, later season storms (typically beginning in September or October) shall only be required if blooms and seeds are necessary for identification or the species are summer-deciduous and require leaves for identification. The surveys shall not be timed to coincide with the statistical peak bloom period of the target species but shall instead, if possible, be based on plant phenology and the timing of a significant storm event (i.e. g., a 10mm or greater rain or multiple storm events of sufficient volume to trigger germination as determined by a qualified botanist, ~~as measured at or within 1 mile of the Project site~~). If possible, surveys shall occur at the appropriate time to capture the characteristics necessary to identify the taxon. Construction of Phase 1A ~~as outlined in Condition of Certification BIO-28~~ is authorized to commence following a 2010 late season September survey.

2. Surveyor Qualifications and Training. Surveys shall be conducted by a qualified botanist knowledgeable in the complex biology of the local flora, and consistent with CDFG protocols (CDFG 2009). Each surveyor shall be equipped with a GPS unit and record a complete tracklog; these data shall be compiled and submitted along with the Summer-Fall Survey Botanical Report (described below). Prior to the start of surveys, all crew members shall, at a minimum, visit reference sites (where available) and/or review herbarium specimens of all BLM Sensitive plants, CNPS List 1B or 2 (Nature Serve rank S1 and S2) or proposed List 1B or 2 taxa, and any new reported or documented taxa, to obtain a search image. Because the potential for range extensions is unknown, the list of potentially occurring special-status plants shall include all special-status taxa known to occur within the Sonoran Desert region and the eastern portion of the Mojave in California. The list shall also include taxa with bloom seasons that begin in fall and extend into the early spring as many of these are reported to be easier to detect in fall, following the start of the fall rains.
3. Survey Coverage. The survey coverage or intensity shall be in accordance with BLM Survey Protocols (issued July 2009)⁴, 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.
4. Documenting Occurrences. If a special-status plant is detected, the full extent of the population onsite shall be recorded using GPS in accordance with BLM survey protocols. Additionally, the extent of the population within one mile of Project boundaries shall be assessed at least qualitatively to facilitate an accurate estimation of the proportion of the population affected by the Project. For populations that are very dense or very large, the population size may be estimated by simple sampling techniques.

⁴ Bureau of Land Management (BLM), California State Office. *Survey Protocols Required for NEPA/ESA Compliance for BLM Special Status Plant Species*. Issued July 2009.

When populations are very extensive or locally abundant, the surveyor must provide some basis for this assertion and roughly map the extent on a topographic map. All but the smallest populations (e.g., a population occupying less than 100 square feet) shall be recorded as area polygons; the smallest populations may be recorded as point features. All GPS-recorded occurrences shall include: the number of plants, phenology, observed threats (e.g., OHV or invasive exotics), and habitat or community type. The map of occurrences submitted with the final botanical report shall be prepared to ensure consistency with definition of an occurrence by CNDDDB, i.e., occurrences found within 0.25 miles of another occurrence of the same taxon, and not separated by significant habitat discontinuities, shall be combined into a single 'occurrence'. The Project owner shall also submit the raw GPS shape files and metadata, and completed CNDDDB forms for each 'occurrence' (as defined by CNDDDB).

5. Reporting. Raw GPS data, metadata, and CNDDDB field forms shall be provided to the CPM within two 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 CDFG guidelines (CDFG 2009), and BLM 2009 guidelines and shall include all of the following components:

- a. the BLM designation, NatureServe Global and State Rank of each species or taxon found (or proposed rank, or CNPS List);
- b. the number or percent of the occurrence that will be directly affected, and indirectly affected by changes in drainage patterns or altered geomorphic processes;
- c. the habitat or plant community that supports the occurrence and the total acres of that habitat or community type that occurs in the Project Disturbance Area;
- d. an indication of whether the occurrence has any local or regional significance (e.g., if it exhibits any unusual morphology, occurs at the periphery of its range in California, represents a significant range extension or disjunct occurrence, or occurs in an atypical habitat or substrate);
- e. a completed CNDDDB field form for every occurrence (occurrences of the same species within one-quarter mile or less of each other combined as one occurrence, consistent with CNDDDB methodology), and

- f. two maps: one that depicts the raw GPS data (as collected in the field) on a topographic base map with Project features; and a second map that follows the CNDDDB protocol for occurrence mapping.

Section C: Avoidance Requirements for Special-Status Plants Detected in the Summer/Fall 2010 Surveys

The Project owner shall apply the following avoidance standards to late blooming special-status plants that might be detected during late summer/fall season surveys. Avoidance and/or the mitigation measures described in Section D below would reduce impacts to these special-status plant species to less than significant levels.

1. Mitigation for CNDDDB Rank 1 Plants (Critically Imperiled) - Avoidance Required: If late blooming species with a CNDDDB rank of 1 are detected within the Project Disturbance Area the Project owner shall prepare and implement a Special-Status Plant Mitigation Plan (Plan). The goal of the Plan shall be to retain at least 75% of the local population of the affected species. Compensatory mitigation, as described in Section D of this condition, and at a mitigation ratio of 3:1, shall be required for the 25% or portion that is not avoided. The Plan shall include, at a minimum, the following components and definitions:
 - a. A description of the occurrences of the CNDDDB rank 1 species on the Project, ecological characteristics such as micro-habitat requirements, ecosystem processes required for maintenance of the habitat, reproduction and dispersal mechanisms, pollinators, local distribution, a description of the extent of the population off-site, the percentage of the local population affected, and a description of how these occurrences would be impacted by the Project, including direct and indirect effects. The "local population" shall be measured by the ~~include the~~ number of individuals occurring on the Project Site and within the Palo Verde immediate watershed of the Project for wash dependent-species or species of unknown dispersal mechanism, or within the local sand transport corridor for wind dispersed species boundaries. Occurrences shall be considered impacted if they are within the Project footprint, and if they would be affected by Project-related hydrologic changes or changes to the local sand transport system.
 - b. A description of the avoidance and minimization measures that would achieve complete avoidance of occurrences on the Project linears and construction laydown areas, unless such avoidance would cause disturbance to areas not previously surveyed for biological resources (GSEP 2009a, TTEC 2010m) or would create greater environmental impacts in other resource areas (e.g. Cultural Resource Sites) or other

restrictions (e.g., FAA or other restrictions for placement of transmission poles).

- c. A description of the measures that would be implemented to avoid or minimize impacts to occurrences on the solar facility. Avoidance is generally considered not feasible if the species is located within the Permanent Project Disturbance Area (bounded by the permanent tortoise exclusion fence and the drainage channels).
 - d. If avoidance on the linears, construction laydown areas, and solar facility combined protect less than 75% of the local population of the affected species, the project owner shall implement offsite mitigation that demonstrates that the impacts will not cause a loss of viability for that species. Implementation of the compensatory offsite mitigation must meet the performance standards described in section D of this Condition, and may include land acquisition or implementation of a restoration/enhancement program for the species.
 - e. "Avoidance" shall include protection of the ecosystem processes essential for maintenance of the protected plant occurrence. For all but one of the late blooming plant species with potential to occur, the plant species are annuals that depend on a viable seed bank to maintain population health and persistence. The primary goal of avoidance for these annual species will be protection of the soil integrity and the seed bank that is closely associated with undisturbed soils. Any impacts to the soil structure or surface features will be considered an impact, but measures like temporary mowing or brush removal that does not disturb the soil will not be considered impacts to the population. Isolated 'islands' of protected plants disconnected by the Project from natural fluvial, aeolian (wind), or other processes essential for maintenance of the species, shall not be considered to be protected and shall not be credited as contributing to the 75% avoidance requirement because such isolated populations are not sustainable.
2. Mitigation for CNDDDB Rank 2 Plants (Imperiled) –Avoidance on Linears Required: If species with a CNDDDB rank of 2 are detected within the Project Disturbance Area, the Project owner shall prepare and implement a Special-Status Plant Mitigation Plan (Plan) that describes measures to achieve complete avoidance of occurrences on the Project linears and construction laydown areas, unless such avoidance would cause disturbance to areas not previously surveyed for biological resources (GSEP 2009a, TTEC 2010m) or would create greater environmental impacts in other resource areas (e.g. Cultural Resource Sites) or other restrictions (e.g., FAA or other restrictions for placement of transmission poles). The Project owner shall provide compensatory mitigation, at a ratio of 2:1, as described below in Section D for impacts to Rank 2 plants

that could not be avoided. The content of the Plan and definitions shall be as described above in subsection C.1.

3. Mitigation for CNDDDB Rank 3 Plants – No On-Site Avoidance Required Unless Local or Regional Significance: If species with a CNDDDB rank of 3 are detected within the Project Disturbance Area, no onsite avoidance or compensatory mitigation shall be required unless the occurrence has local or regional significance, in which case the plant occurrence shall be treated as a CNDDDB rank 2 plant species. A plant occurrence would be considered to have local or regional significance if:
 - a. It occurs at the outermost periphery of its range in California;
 - b. It occurs in an atypical habitat, region, or elevation for the taxon that suggests that the occurrence may have genetic significance (e.g., that may increase its ability to survive future threats), or;
 - c. It exhibits any unusual morphology that is not clearly attributable to environmental factors that may indicate a potential new variety or sub-species.
4. Pre-Construction Notification for State- or Federal-Listed Species, or BLM Sensitive Species. If a state or federal-listed species or BLM Sensitive species is detected, the Project owner shall immediately notify the CDFG, USFWS, BLM, and the CPM.
5. Preservation of the Germplasm of Affected Special-Status Plants. For all significant impacts to special-status plants, regardless of whether compensatory mitigation is required, mitigation shall include seed collection from the affected special-status plants on-site prior to construction to conserve the germplasm and provide a seed source for restoration efforts. The seed shall be collected under the supervision or guidance of a reputable seed storage facility such as the Rancho Santa Ana Botanical Garden Seed Conservation Program, San Diego Natural History Museum, or the Missouri Botanical Garden. The costs associated with the long-term storage of the seed shall be the responsibility of the Project owner. Any efforts to propagate and reintroduce special-status plants from seeds in the wild shall be carried out under the direct supervision of specialists such as those listed above and as part of a Habitat Restoration/Enhancement Plan approved by the CPM.

Section D: Off-Site Compensatory Mitigation for Special-Status Plants

Where compensatory mitigation is required under the terms of Section C, above, the Project owner shall mitigate Project impacts to special-status plant occurrences with compensatory mitigation. Compensatory mitigation shall consist of acquisition of habitat supporting the target species, or

restoration/enhancement of populations of the target species, and shall meet the performance standards for mitigation described below. In the event that no opportunities for acquisition or restoration/enhancement exist, the Project owner can fund a species distribution study designed to promote the future preservation, protection or recovery of the species. Compensatory mitigation shall be at a ratio of 3:1 for Rank 1 plants, with three acres of habitat acquired or restored/enhanced for every acre of habitat occupied by the special status plant that will be disturbed by the Project Disturbance Area (for example if the area occupied by the special status plant collectively measured is $\frac{1}{4}$ acre then the compensatory mitigation will be $\frac{3}{4}$ of an acre). The mitigation ratio for Rank 2 plants shall be 2:1. So, for the example above, the mitigation ratio would be one-half acre for the Rank 2 plants.

1. The Project owner shall provide funding for the acquisition and/or restoration/enhancement, initial improvement, and long-term maintenance and management of the acquired or restored lands. The actual costs to comply with this condition will vary depending on the Project Disturbance Area, the actual costs of acquiring compensation habitat, the actual costs of initially improving the habitat, the actual costs of long-term management as determined by a Property Analysis Record (PAR) report, and other transactional costs related to the use of compensatory mitigation.

The Project owner shall comply with other related requirements in this condition:

I. Compensatory Mitigation by Acquisition: The requirements for the acquisition, initial protection and habitat improvement, and long-term maintenance and management of special-status plant compensation lands include all of the following:

1. **Selection Criteria for Acquisition Lands.** The compensation lands selected for acquisition may include any of the following three categories:
 - a. **Occupied Habitat, No Habitat Threats:** The compensation lands selected for acquisition shall be occupied by the target plant population and shall be characterized by site integrity and habitat quality that are required to support the target species, and shall be of equal or better habitat quality than that of the affected occurrence. The occurrence of the target special-status plant on the proposed acquisition lands should be viable, stable or increasing (in size and reproduction).
 - b. **Occupied Habitat, Habitat Threats.** Occupied compensation lands characterized by habitat threats may also be acquired as long as the population could be reasonably expected to recover with habitat restoration efforts (e.g., OHV or grazing exclusion, or removal of invasive non-native plants) and is accompanied by a Habitat Enhancement/Restoration Plan as described in Section D.II, below.
 - c. **Unoccupied but Adjacent.** The Project owner may also acquire habitat for which occupancy by the target species has not been documented, if

the proposed acquisition lands are adjacent to occupied habitat. The Project owner shall provide evidence that acquisitions of such unoccupied lands would improve the defensibility and long-term sustainability of the occupied habitat by providing a protective buffer around the occurrence and by enhancing connectivity with undisturbed habitat. This acquisition may include habitat restoration efforts where appropriate, particularly when these restoration efforts will benefit adjacent habitat that is occupied by the target species.

2. 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 special-status plants in relation to the criteria listed above, and must be approved by the CPM.
3. Management Plan. The Project owner or approved third party shall prepare a management plan for the compensation lands in consultation with the entity that will be managing the lands. The goal of the management plan shall be to support and enhance the long-term viability of the target special-status plant occurrences. The Management Plan shall be submitted for review and approval to the CPM.
4. Integrating Special-Status Plant Mitigation with Other Mitigation lands. If all or any portion of the acquired Desert Tortoise, Waters of the State, or other required compensation lands meets the criteria above for special-status plant compensation lands, the portion of the other species' or habitat compensation lands that meets any of the criteria above may be used to fulfill that portion of the obligation for special-status plant mitigation.
5. Compensation Lands Acquisition Requirements. The Project owner shall comply with the following requirements relating to acquisition of the compensation lands after the CPM, has approved the proposed compensation lands:
 - a. Preliminary Report. The Project owner, or an 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. 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. 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 BLM or other public agency approved by the CPM. 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 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 of the terms of any transfer of fee title or conservation easement to the compensation lands.

- c. Initial Protection and Habitat Improvement. The Project owner shall fund activities that the CPM 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 trash removal, construction and repair of fences, invasive plant removal, and similar measures to protect habitat and improve habitat quality on the compensation lands. The costs of these activities are estimated to be \$330 per acre, using the estimated cost per acre for Desert Tortoise mitigation as a best available proxy, at the ratio of 3:1 for Rank 1 plants and 2:1 for Rank 2 plants, but actual costs 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.
- d. 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 before it can be used to establish funding levels or management activities for the compensation lands.
- e. Long-term Maintenance and Management Funding. ~~In accordance with BIO-28 (phasing), the~~ The Project owner shall deposit in NFWF's REAT Account a non-wasting capital long-term maintenance and management fee in the amount determined through the Property

Analysis Record (PAR) or PAR-like analysis conducted for the compensation lands.

The CPM, in consultation with CDFG, may designate another 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 to manage the long-term maintenance and management fee for CDFG and with CDFG supervision. .

- f. Interest, Principal, and Pooling of Funds. The Project owner shall ensure that an agreement is in place with the long-term maintenance and management fund (endowment) holder/manager to ensure the following requirements are met:
 - i. Interest. Interest generated from the initial capital long-term maintenance and management fund 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 that is approved by the CPM and is designed to protect or improve the habitat values of the compensation lands.
 - ii. Withdrawal of Principal. The long-term maintenance and management fund principal shall not be drawn upon unless such withdrawal is deemed necessary by the CPM or by the approved third-party long-term maintenance and management fund manager, to ensure the continued viability of the species on the compensation lands.
 - iii. Pooling Long-Term Maintenance and Management Funds. An entity approved to hold long-term maintenance and management funds for the Project may pool those funds with similar non-wasting funds that it holds from other projects for long-term maintenance and management of compensation lands for special-status plants. However, for reporting purposes, the long-term maintenance and management funds for this Project must be tracked and reported individually to the CPM.
- g. Other Expenses. In addition to the costs listed above, the Project owner shall be responsible for all other costs related to acquisition of compensation lands and conservation easements, including but not limited to the title and document review costs incurred from other state agency reviews, overhead related to providing compensation lands to

CDFG or an approved third party, escrow fees or costs, environmental contaminants clearance, and other site cleanup measures.

- h. Mitigation Security. The Project owner shall provide financial assurances in accordance with ~~BIO-28 (phasing)~~ to the CPM 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 Project activities. Financial assurances shall be provided to the CPM in the form of an irrevocable letter of credit, a pledged savings account or another form of security ("Security") approved by the CPM. The amount of the Security shall be \$2,280 per acre, using the estimated cost per acre for Desert Tortoise mitigation as a best available proxy, at a ratio of 3:1 for Rank 1 plants and 2:1 for Rank 2 plants, for every acre of habitat supporting the target special-status plant species which is significantly impacted by the project. The actual costs to comply with this condition will vary depending on the actual costs of acquiring compensation habitat, the costs of initially improving the habitat, and the actual costs of long-term management as determined by a PAR report. Prior to submitting the Security to the CPM, the Project owner shall obtain the CPM's approval of the form of the Security. The CPM may draw on the Security if the CPM determines the Project owner has failed to comply with the requirements specified in this condition. 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, and the Project owner remains responsible for satisfying the obligations under this condition if the Security is insufficient. The unused Security shall be returned to the Project owner in whole or in part upon successful completion of the associated requirements in this condition.
- i. The Project owner may elect to comply with the requirements in this condition for acquisition of compensation lands, initial protection and habitat improvement on the compensation lands, or long-term maintenance and management of the compensation lands by funding, or any combination of these three requirements, by providing funds to implement those measures 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 (as set forth in the Security section of this condition) of implementing the requirement. If the actual cost of the acquisition, initial protection and habitat improvements, or long-term funding 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, and the long-term funding requirements as established in an approved PAR or PAR-like analysis. 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.

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, BLM and USFWS, 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 start of ground disturbance~~Energy Commission's certification of the Project.~~

II. Compensatory Mitigation by Habitat Enhancement/Restoration: As an alternative or adjunct to land acquisition for compensatory mitigation the Project owner may undertake habitat enhancement or restoration for the target special-status plant species. Habitat enhancement or restoration activities must achieve protection at a 3:1 ratio for Rank 1 plants and 2:1 for Rank 2 plants, with improvements applied to three acres, or two acres, respectively, of habitat for every acre special-status plant habitat directly or indirectly disturbed by the Project Disturbance Area (for example if the area occupied by the special status plant collectively measured is ¼ acre then the improvements would be applied to an area equal to ¾ of an acre at a 3:1 ratio, or one-half acre at a 2:1 ratio). Examples of suitable enhancement projects include but are not limited to the following: i) control unauthorized vehicle use into an occurrence (or pedestrian use if clearly damaging to the species); ii) control of invasive non-native plants that infest or pose an immediate threat to an occurrence; iii) exclude grazing by wild burros or livestock from an occurrence; or iv) restore lost or degraded hydrologic or geomorphic functions critical to the species by restoring previously diverted flows, removing obstructions to the wind sand transport corridor above an occurrence, or increasing groundwater availability for dependent species.

If the Project owner elects to undertake a habitat enhancement project for mitigation, the project must meet the following performance standards: The proposed enhancement project shall achieve rescue of an off-site occurrence that is currently assessed, based on the NatureServe threat ranking system⁵

⁵ Master, L., D. Faber-Langendoen, R. Bittman, G. A., Hammerson, B. Heidel, J. Nichols, L. Ramsay, and A. Tomaino. 2009. *NatureServe Conservation Status Assessments: Factors for Assessing Extinction Risk*. NatureServe, Arlington, VA. Online: http://www.natureserve.org/publications/ConsStatusAssess_StatusFactors.pdf, "Threats". See also: Morse, L.E., J.M. Randall, N. Benton, R. Hiebert, and S. Lu. 2004. An Invasive Species Assessment

with one of the following threat ranks: a) long-term decline >30%; b) an immediate threat that affects >30% of the population, or c) has an overall threat impact that is High to Very High. "Rescue" would be considered successful if it achieves an improvement in the occurrence trend to "stable" or "increasing" status, or downgrading of the overall threat rank to slight or low (from "High" to "Very High").

If the Project owner elects to undertake a habitat enhancement project for mitigation, they shall submit a Habitat Enhancement/Restoration Plan to the CPM for review and approval, and shall provide sufficient funding for implementation and monitoring of the Plan. The amount of the Security shall be \$2,280 per acre, using the estimated cost per acre for Desert Tortoise mitigation as a best available proxy, at the ratio of 3:1 for Rank 1 plants and 2:1 for Rank 2 plants, for every acre of habitat supporting the target special-status plant species which is directly or indirectly impacted by the project. The amount of the security may be adjusted based on the actual costs of implementing the enhancement, restoration and monitoring. The implementation and monitoring of the enhancement/restoration may be undertaken by an appropriate third party such as NFWF, subject to approval by the CPM. The Habitat Enhancement/Restoration Plan shall include each of the following:

1. Goals and Objectives. Define the goals of the restoration or enhancement project and a measurable course of action developed to achieve those goals. The objective of the proposed habitat enhancement plan shall include restoration of a target special-status plant occurrence that is currently threatened with a long-term decline. The proposed enhancement plan shall achieve an improvement in the occurrence trend to "stable" or "increasing" status, or downgrading of the overall threat rank to slight or low (from "High" to "Very High").
2. Historical Conditions. Provide a description of the pre-impact or historical conditions (before the site was degraded by weeds or grazing or ORV, etc.), and the desired conditions.
3. Site Characteristics. Describe other site characteristics relevant to the restoration or enhancement project (e.g., composition of native and pest plants, topography and drainage patterns, soil types, geomorphic and hydrologic processes important to the site or species).
4. Ecological Factors. Describe other important ecological factors of the species being protected, restored, or enhanced such as total population, reproduction, distribution, pollinators, etc.
5. Methods. Describe the restoration methods that will be used (e.g., invasive exotics control, site protection, seedling protection, propagation

techniques, etc.) and the long-term maintenance required. The implementation phase of the enhancement must be completed within five years.

6. Budget. Provide a detailed budget and time-line, and develop clear, measurable, objective-driven annual success criteria.
7. Monitoring. Develop clear, measurable monitoring methods that can be used to evaluate the effectiveness of the restoration and the benefit to the affected species. The Plan shall include a minimum of five years of quarterly monitoring, and then annual monitoring for the remainder of the enhancement project, and until the performance standards for rescue of a threatened occurrence are met. At a minimum the progress reports shall include: quantitative measurements of the projects progress in meeting the enhancement project success criteria, detailed description of remedial actions taken or proposed, and contact information for the responsible parties.
8. Reporting Program. The Plan shall ensure accountability with a reporting program that includes progress toward goals and success criteria. Include names of responsible parties.
9. Contingency Plan. Describe the contingency plan for failure to meet annual goals.
10. Long-term Protection. Include proof of long-term protection for the restoration site. For private lands this would include conservations easements or other deed restrictions; projects on public lands must be contained in a Desert Wildlife Management Area, Wildlife Habitat Management Area, or other land use protections that will protect the mitigation site and target species.

III. Compensatory Mitigation by Conducting or Contributing to a Special-Status Plant Species Distribution Study: As a contingency measure in the event that there are no opportunities for acquisition or restoration/enhancement, a Scientific Study of Special-status Plant Species Distribution Study may be funded. Distribution and occurrence health data is very limited for many of the sensitive species that occur on the Project or have potential to occur on the project, especially the late summer and fall blooming species. Some of these late blooming species are only known from a few viable occurrences in California, and historic occurrences that have not been re-located or surveyed since they were first documented. The objectives of this study would be to better understand the full distribution of the affected species, the degree and immediacy of threats to occurrences, and ownership and management opportunities, with the primary goal of future preservation, protection, or recovery. This study would include the following:

1. Historical Occurrence Review. The Study would include an evaluation of historical localities for the species known to occur on the project or with potential to occur. This would include a review of the CNDDDB database,

herbarium records from regional herbaria (U.C. Riverside, San Diego Natural History Museum, etc.), other biotechnical reports from the region, and information from regional botanical experts.

2. Conduct Site Visits to Historical Localities. Historical occurrences would be evaluated in the field during the appropriate time of the year for each late blooming species. If located, these occurrences would be evaluated for population size, numbers, plant associates, soils, habitat quality, and potential threats, degree and immediacy of threats, ownership and management opportunities. GPS location data would also be collected during these site visits.
 3. Survey Areas with habitat potential that surround each of these species occurrences to better determine the full range of distribution. If additional populations are found, collect data (GPS and assessment) on these additional populations consistent with III.2 above.
 4. Prepare a Distribution Study Report. A report that discusses the finding from the historical information and the range extension surveys would be prepared that summarizes the information for each of the late season surveys. This report will provide valuable information and a better understanding of the actual distribution of these late blooming species within California and will help to determine when and when not there is potential for these species to occur. This valuable information will include a better understand of the ecological factors driving the distribution of these species and will help to better target appropriate habitat for both future surveys as well as potential future mitigation lands. All data from this study will be submitted for incorporation into the CNDDDB system and the study report will be made available to resource agencies, conservation groups, and other interested parties.
2. Currently there is no program or study in place that is attempting to address the distributional issues for these late blooming species. If an existing study is identified or if one is developed prior to the study outlined here, an option to fund the existing study may be considered. If an existing study cannot be indentified then one will be developed that follows the guidelines discussed above. The funding provided for the program would be no greater than the cost for acquisition, enhancement, and long-term management of compensatory mitigation lands based on impacts to late blooming sensitive plant species.

Verification: The Special-Status Plant Impact Avoidance and Minimization Measures shall be incorporated into the BRMIMP as required under Condition of Certification **BIO-7.**

Raw GPS data, metadata, and CNDDDB field forms shall be submitted to the CPM within two weeks of the completion of each survey. A preliminary summary of results for the late summer/fall botanical surveys shall also be submitted to the CPM and BLM's State Botanist within two weeks following the completion of the surveys. If surveys are split

into more than one period, then a summary letter shall be submitted following each survey period. The Final Summer-Fall Botanical Survey Report, GIS shape files and metadata shall be submitted to the BLM State Botanist and the CPM no less than 30 days prior to the start of ground-disturbing activities. The Final Report shall include a detailed accounting of the acreage of Project impacts to special-status plant occurrences.

The draft conceptual Special-Status Plant Mitigation Plan shall be submitted to the CPM for review and approval no less than 30 days prior to the start of ground-disturbing activities.

The Project owner shall immediately provide written notification to the CPM, CDFG, USFWS, and BLM if it detects a State- or Federal-Listed Species, or BLM Sensitive Species at any time during its late summer/fall botanical surveys or at any time thereafter through the life of the Project, including conclusion of Project decommissioning.

No less than 30 days prior to the start of ground-disturbing activities the Project owner shall submit grading plans and construction drawings to the CPM which depict the location of Environmentally Sensitive Areas and the Avoidance and Minimization Measures contained in Section A of this Condition.

If compensatory mitigation is required, no less than 30 days prior to the start of ground-disturbing activities, the Project owner shall submit to the CPM the form of Security adequate to acquire compensatory mitigation lands and/or undertake habitat enhancement or restoration activities, as described in this condition. Actual Security shall be provided 7 days prior to start of ground-disturbing activities.

No fewer than 90 days prior to acquisition of compensatory mitigation lands, the Project owner shall submit a formal acquisition proposal and draft Management Plan for the proposed lands to the CPM, with copies to CDFG, USFWS, and BLM, describing the parcels intended for purchase and shall obtain approval from the CPM prior to the acquisition. No fewer than 90 days prior to acquisition of compensatory mitigation lands, the Project owner shall submit to the CPM and obtain CPM approval of any agreements to delegate land acquisition to an approved third party, or to manage compensation lands; such agreement shall be executed and implemented within 18 months of the start of ground disturbance.

No fewer than 30 days after acquisition of the property the Project owner shall deposit the funds required by Section I e above (long term management and maintenance fee) and provide proof of the deposit to the CPM.

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 of such completion no later than 18 months after the start of Project ground-disturbing activities. If NFWF or another approved third party is being used for the acquisition, the Project owner shall ensure that funds needed to accomplish the

acquisition are transferred in timely manner to facilitate the planned acquisition and to ensure the land can be acquired and transferred prior to the 18-month deadline. If habitat enhancement is proposed, no later than six months following the start of ground-disturbing activities, the Project owner shall obtain CPM approval of the final Habitat Enhancement/Restoration Plan, prepared in accordance with Section D, and submit to the CPM or a third party approved by the CPM Security adequate for long-term implementation and monitoring of the Habitat Enhancement/Restoration Plan.

Enhancement/restoration activities shall be initiated no later than 12 months from the start of construction. The implementation phase of the enhancement project shall be completed within five years of initiation. Until completion of the five-year implementation portion of the enhancement action, a report shall be prepared and submitted as part of the Annual Compliance Report. This report shall provide, at a minimum: a summary of activities for the preceding year and a summary of activities for the following year; quantitative measurements of the Project's progress in meeting the enhancement project success criteria; detailed description of remedial actions taken or proposed; and contact information for the responsible parties.

If a Distribution Study is implemented as contingency mitigation, the study shall be initiated no later than 6 months from the start of construction. The implementation phase of the study shall be completed within two years of the start of construction.

Within 18 months of ground-disturbing activities, the Project owner shall transfer to the CPM or an approved third party the difference between the Security paid and the actual costs of (1) acquiring compensatory mitigation lands, completing initial protection and habitat improvement, and funding the long-term maintenance and management of compensatory mitigation lands; and/or (2) implementing and providing for the long-term protection and monitoring of habitat enhancement or restoration activities.

Implementation of the special-status plant impact avoidance and minimization measures shall be reported in the Monthly Compliance Reports prepared by the Designated Botanist. Within 30 days after completion of Project construction, the Project owner shall provide to the CPM, for review and approval, in consultation with the BLM State Botanist, a written construction termination report identifying how measures have been completed.

The Project owner shall submit a monitoring report every year for the life of the project to monitor effectiveness of protection measures for all avoided special-status plants to the CPM and BLM State Botanist. The monitoring report shall include: dates of worker awareness training sessions and attendees, completed CNDDDB field forms for each avoided occurrence on-site and within 100 feet of the Project boundary off-site, and description of the remedial action, if warranted and planned for the upcoming year. The completed forms shall include an inventory of the special-status plant occurrences and description of the habitat conditions, an indication of population and habitat quality trends.



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
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**APPLICATION FOR CERTIFICATION FOR THE
GENESIS SOLAR ENERGY PROJECT**

Docket No. 09-AFC-8

**PROOF OF SERVICE
(Revised 7/23/10)**

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DECLARATION OF SERVICE

I, Scott Galati, declare that on July 20, 2010, I served and filed copies of the attached: **GENESIS SOLAR LLC'S RESPONSE TO STAFF'S RECENT EXHIBIT MODIFYING CONDITION BIO-19**. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at: [http://www.energy.ca.gov/sitingcases/genesis_solar].

The documents have been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, in the following manner:

(Check all that Apply)

FOR SERVICE TO ALL OTHER PARTIES:

- sent electronically to all email addresses on the Proof of Service list;
- by personal delivery;
- by delivering on this date, for mailing with the United States Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date to those addresses **NOT** marked "email preferred."

AND

FOR FILING WITH THE ENERGY COMMISSION:

- sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address below (**preferred method**);

OR

- depositing in the mail an original and 12 paper copies, as follows:

CALIFORNIA ENERGY COMMISSION

Attn: Docket No. 09-AFC-8
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512

docket@energy.state.ca.us

I declare under penalty of perjury that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.



for Scott Galati
Counsel to Genesis Solar, LLC