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

Subject: **GENESIS SOLAR, LLC OPENING BRIEF – EVIDENTIARY HEARING DAY
3 TOPICS
GENESIS SOLAR ENERGY PROJECT
DOCKET NO. (09-AFC-8)**

Enclosed for filing with the California Energy Commission is the original of **GENESIS SOLAR, LLC OPENING BRIEF – EVIDENTIARY HEARING DAY 3 TOPICS**, for the Genesis Solar Energy Project (09-AFC-8).

Sincerely,



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STATE OF CALIFORNIA

Energy Resources
Conservation and Development Commission

In the Matter of:

Application for Certification for the
Genesis Solar Energy Project

DOCKET NO. 09-AFC-8

**GENESIS SOLAR, LLC OPENING
BRIEF – EVIDENTIARY HEARING
DAY 3 TOPICS**

In accordance with the Committee direction at the evidentiary hearings held on July 12, 13 and 21, 2010 Genesis Solar, LLC (Genesis) files this Opening Brief for the topics adjudicated during the evidentiary hearing on Day 3 (July 21).

At the Evidentiary Hearing held on July 21, 2010, the Committee accepted into evidence the testimony and evidence addressing the minor matters of:

- Air Quality: related to the FDOC (Exh 404) release and RSA conditions proposed by CEC accepted by Genesis¹
- Transmission System Engineering: status update for Phase II system impact study by CEC Staff expert, Mark Hesters²
- Soil and Water: clarification of Conditions 4, 15 and 19 (Exh 443) agreed by Genesis³
- Biological Resources: Conditions of Certification **BIO-8** with Staff modification to 65 dba noise limit⁴ and revised **BIO-19** received into evidence⁵

In addition to these issues, the Committee took evidence for Cultural Resources. This Opening Brief addresses Cultural Resources and also includes an updated Conditions of Certification Table with modifications to the Table that was included in Genesis' Opening Brief for Day 1 topics. The updated Table now includes citations to the July 21, 2010 transcript which was not available at the time the original Table was created

¹ Exhibit 440; 7/21/10 RT 16

² 7/21/10 RT 41 – redacted version referenced by Mr. Hesters; subsequently docketed by Genesis on July 23, 2010

³ 7/21/10 RT 75

⁴ 7/21/10 RT 127

⁵ Id at 120

I.

INTRODUCTION

The study, analysis and reporting undertaken by Genesis in its Cultural Resources investigations are more than sufficient to establish the baseline of conditions, prompt appropriate mitigation and otherwise meet the standards required by CEQA. A significant, detailed and in depth CEQA review process was undertaken by Staff and reported to this Committee by way of Staff Assessment and direct testimony. The evidence presented at evidentiary hearing is not only sufficient, but substantial in pointing out to the Committee that the GSEP will comply with all laws, ordinances, regulations and standards (LORS) and will not result in significant unmitigated impacts to Cultural Resources.

The fundamental point that the Committee should keep in mind when it reads the testimony and CURE's brief is that Genesis has redesigned the project numerous times to avoid potentially sensitive cultural resources. This is the way the Commission Certification Process is supposed to work. When issues are identified early in the siting and permitting process, an Applicant can respond in some cases by redesigning the project. That is exactly what happened in this case and CURE gives no weight to that fact. In fact, CURE never raised any issues that Genesis did not redesign the project appropriately or move the footprint farther from potentially sensitive areas until its testimony.

Additionally, CURE challenges the approach taken by the Commission for this and other solar projects seeking ARRA funding. Yet in this case, and in the case of the other solar projects seeking ARRA funding, the CEC Staff have taken a more conservative approach as described by Staff in the RSA Supplement.⁶ Based on data gathered in the field by professional archeologists, Staff has made a recommendation of "eligibility" (i.e. significance) and is requiring mitigation whereas on other projects they may have allowed additional field work prior to certification in order to remove certain sites from being considered eligible/significant.

Perhaps most importantly, CURE ignores the fact that the GSEP is undergoing a Nation to Nation consultation and fully public consultation under Section 106 of the National Historic Preservation Act and will also be subject to conditions imposed by BLM to protect Cultural Resources. CURE is consulting party in that process.

II.

GENESIS PERFORMED ALL NECESSARY STUDIES TO SATISFY CEQA COMPLIANCE AND IMPLEMENTATION

A. The AFC, supporting documentation and the RSA Supplements establish a sufficient baseline for the Committee to evaluate and approve the GSEP

⁶ Exhibit 400, p. C.3-79

As set forth in the AFC and subsequently filed documents by Genesis (all admitted into evidence)⁷, the GSEP site does have cultural artifacts within its project boundary. The reason this is known to the Committee is due to the efforts and studies undertaken by Genesis. Genesis is acutely aware of the sensitive nature of Cultural resources within the project site and near the linear facilities. Similarly, Staff in its RSA and subsequent supplements has treated most potential cultural resources as significant requiring mitigation.⁸

The debate of the thoroughness of the investigation is the focal-point of CURE's witness, Dr. Whitley. Simply put, CURE argues that without subsurface testing prior to Licensing, the Committee cannot approve the GSEP. CEQA and caselaw does not require subsurface testing in every case and Dr. Whitley's opinion is based only on his experience with other agencies but is not required by the CEQA Guidelines or caselaw.

CURE does cite the law correctly in its Opening Brief for Day 1 topics at page 5 and 6:

"The EIR must demonstrate that the significant environmental impacts of the proposed project were adequately investigated and discussed and it must permit the significant effects of the project to be considered in the full environmental context." (*Cadiz Land Co., supra*, 83 2364-111a 6 Cal.App.4th at p. 92.) CEQA guidelines require "a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences . . . [t]he courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure." (*County of Amador, supra*, 76 Cal.App.4th at 954, quoting CEQA Guidelines § 15151; *see also Berkeley Keep Jets Over the Bay Com. v. Bd. of Port Commrs.* (2001) 91 Cal.App.4th 1344, 1367.)

However, there is more case law on point that demonstrates what the courts expect when it comes to an agency making a good faith effort at disclosure and analysis. For example, "CEQA does not require a lead agency to conduct every recommended test and perform all recommended research to evaluate the impacts of a proposed project, [t]he fact that additional studies might be helpful does not mean that they are required."⁹ A study, required by an agency, which "takes place over two winters could conflict with the requirement that EIR's for private projects be prepared and certified within one year."¹⁰ CEQA requires the EIR performed on a potential project to "reflect a good faith effort at full disclosure", and does not "mandate perfection or the EIR to be exhaustive" and "will be judged in light of what was reasonably feasible."¹¹ In the case of Cultural Resources, full pedestrian studies of the area that could potentially be affected by the GSEP were performed. Based on these studies, Genesis redesigned the project by realigning the transmission line and access road and by removing portions of the solar array to avoid

⁷ Exhibits 1, 3, 7, 8, 21, 38, 62 and 64

⁸ Exhibits 400, 401 and 403

⁹ *Gray v. County of Madera*, (2008) 167 Cal. App.4th 1099. (Quoting *Associated of Irrigated Residents v. County of Madera*, (2003) 107 Cal.App.4th 1383).

¹⁰ *Id.* (See also, Public Resources Code 21100.2, 21151.5; CEQA Guidelines 15108)

¹¹ *City of Long Beach v. Los Angeles Unified School District*, (2009) 176 Cal. 889.

sensitive areas. . Staff’s proposed Conditions of Certification ensure that all of the sites that are even potentially significant are carefully and thoroughly treated prior to commencing construction in that area.

B. The Cultural Resources Conditions of Certification and Avoidance already undertaken by Genesis will mitigate Cultural Resource potential impacts to less than significant levels.

1. Avoidance of Cultural Resources has already been undertaken

Contrary to the implication by CURE’s witness, Dr. Whitley¹², avoidance measures were not neglected by Genesis or by Staff in its assessments. One need only review the testimony of Dr. Bagwell:

“Mitigation in the form of avoidance, as I mentioned earlier, has taken place. The applicant has avoided several cultural resources sites in changes in their transmission line, in the shape of their project, the shape and the size of their project. And we consider that part of the process of participating in avoidance of cultural resources. That leaves us with data recovery. And those are the mitigations that we've suggested”¹³.

A grand total of 63 sites that were located within the original project ROW have been avoided by reconfiguring the project APE. These include:

- a. Seven previously recorded prehistoric sites (CA-RIV-260, -663,-2159, P33-01222, P33-01818, P33-01840, and P33-02157)
- b. Forty prehistoric sites recorded by Tetra Tech during the Class II survey (CA-RIV-9032 through -9034, -9036 through -9057, -9060 through -9062, 9064 through -9071, 9075 through -9081, and -9083)
- c. Five historic sites recorded by Tetra Tech during the Class II survey (CA-RIV-9035H, -9059H, -9063H, -9074H, and -9077H),
- d. Two dual component sites recorded by Tetra Tech during the Class II survey (CA-RIV-9058/H and -9082/H),
- e. Seven prehistoric sites recorded by Tetra Tech during the Class III survey (CA-RIV-9222, -9226, -9229, -9249, - 9250, -9255, and -9260)
- f. Two dual component sites recorded by Tetra Tech during the Class III survey (CA-RIV-9224/H and -9247/H),

¹² 7/21/10 RT 255

¹³ 7/21/10 RT 193

2. Excavation Studies are not required under CEQA for project approval

Dr. Whitley states in his written rebuttal testimony that a Phase II investigation for sites recorded by a Phase I survey have been implemented by other agencies conducting CEQA review, even being “standard practice”¹⁴. Dr. Whitley does not cite to any CEQA regulations that require Phase II test excavations for every find recorded by a Phase I survey --because there are none. His assumption totally ignores the investigation and high level of analysis undertaken by Genesis and Staff set forth in the testimony and exhibits admitted at hearing.

It is the CEQA lead agency, not the unsupported opinion of a witness that determines what level of information gathering is appropriate to evaluate each cultural resource and then impose the corresponding mitigation. And, that is exactly what Staff has accomplished by proffering the Conditions of Certification for Cultural Resources.¹⁵ Conversely and conspicuously lacking in Dr. Whitley’s oral testimony and his written rebuttal is that he does not cite to any *CEC Rules of Practice and Procedure* that designate or require any standardized Phase II research. In fact, he contradicts his own assertion by indicating that these are “...informally adopted... procedures...”¹⁶

Dr. Whitley further ignores the fact that the Conditions of Certification to which Genesis agreed are based upon a “compressed Phase II – Phase III” protocol¹⁷ that calls for immediate data recovery in the event that any Phase II activities identify buried deposits.¹⁸ This would occur prior to grading in the area that could be potentially affected.

Dr. Whitley argues that this is not enough and cites to his opinion that there is a high probability that there are “major villages” in the project APE with a high likelihood of burials. He also opined concerning the ages of the soil units in the GSEP, though he has no direct expertise in the geology of the immediate area. The facts are that there is not a high likelihood of discovering human remains within the disturbance area,

The geoarchaeology study¹⁹ of the area conducted for the GSEP establishes that Ford Dry Lake was never a perennial lake, but was a playa and only held water intermittently. Dr. Whitley infers otherwise in his testimony, with no supporting documentation about Ford Dry Lake²⁰. More specifically, the geoarcheological report states:

“Many of the BRGP {Basin and Range Geomorphic Province} valley sinks contained lakes during the glacial maximums of the Pleistocene (Morrison, 1991; Reheis, 1999; Reheis, 2005; Castiglia and Fawcett, 2006; Reheis et. al., 2007). A distinction can be made between Pluvial and Playa lakes. Pluvial or perennial lakes formed

¹⁴ CURE Exhibit 512, p. 2 and 3

¹⁵ Exhibit 441

¹⁶ Id at p. 2

¹⁷ Exhibit 403, at p. C.3-81

¹⁸ This approach was formulated in light of the divergence from the BLM-CEC joint process and to set up for complimentary treatment by the State and Federal agency approaches as the BLM forms their Programmatic Approach. Id. at pp. C.3-80--82

¹⁹ Exhibit 35 (prepared by Dr. Miles Kinney, Professional Geologist; February 2010)

²⁰ 7/21/10 RT 260

during Pleistocene glacial maximums that existed for thousands of years. Playa lakes are quite ephemeral with life cycles of one to a few tens of years G.I. Smith (Dohrenwend, 1991) has provided several contrasts between pluvial and playa lake deposits..... Using these criteria and deep boring data within Palen and Ford Dry lakes, Smith (Dohrenwend, 1991) showed that both of these basins bear playa lake deposits to depths of ~160 meters (bottom of borings).” (Exh. 35, p. 3)

The report later examines potential shorelines and shows that throughout most of the Late Pleistocene and Holocene, Ford Dry Lake held water only seasonally at long intervals. There is a very low likelihood that it served as a dependable fresh water source that would have encouraged the settlement of permanent villages on its shore with attendant build-up of occupation trash midden and possible burials. The nature and extent of the sites recorded is more in accordance with the scenario of multiple short-term visits to the playa when it held water seasonally over a period of thousands of years.

The report also describes the Holocene deposit (Qal) in the project area that could possibly contain archaeological remains dating for the last 12,000 years (emphasis ours):

“**Qal**: Quaternary Alluvium exists across most of the site and is composed of unconsolidated very fine to coarse sand with small gravels, brown (7.5YR 5/3 dry), moderate to well bedded, and loose. This unit typically exhibits an upper member soil Bw horizon ranging in age from 1 to 3 ky (soil designation S3a this report) which commonly overlies buried soils within unit Qal some of which are estimated to be 7 to 8 ky old (soil designation S3a). The soil bearing portions of the unit are generally light yellowish brown (10YR 6/4 dry) to light brown (7.5YR 6/4 dry, 5/4 damp). Smooth gravel lag surfaces overly the older members of this unit. This unit typically overlies older alluvium above elevation 374’ msl, or lake deposits below Elevation 374’ msl (~ elevation of latest Pleistocene shoreline). Unit Qal appears to be a tabular sedimentary body that extends over the vast majority of the Project (Solar Array and Linears) **with an average thickness of 1 foot** (see Plate 2 cross section A-A’, and Plate 3 cross section B-B’).” (Exh. 35, p. 14-15)

The charts referenced here were provided during the evidentiary hearing. Frankly there is little room for large midden deposits and the large cemeteries that Dr. Whitley believes may be buried here in a soil unit that averages a foot thick. A close examination of the report also shows that the Holocene unit slopes to the south and has been subject to continual erosion, such that the earlier Pleistocene land surface has been exposed in large areas. It seems most probable if large numbers of human burials were present in an eroding deposit averaging a foot thick, traces of them would have been seen in the three years fieldwork has been conducted for the GSEP. Yet none have been seen. In addition, no human remains have been observed in two large sites located on the south shore of Ford Dry Lake recorded by other researchers.

Finally, in his oral testimony, Dr. Whitely confidently asserts that the Pleistocene soil unit (Qoaf) in the project area dates to 9000 years ago and is likely to contain buried sites. Dr. Miles Kenney, the Professional Geologist who conducted the field investigations, disagrees:

“Qoaf: Older alluvial fan deposits likely associated with regional aggradational depositional events associated with major Pleistocene glaciations. The unit is ubiquitous across the site in the near surface except for below elevation 374’ (old shore line) where it may exist at depth. These deposits are distal fan facies consisting of silty fine to very coarse sand with small to medium dense and massive gravels. Unit bears multiple surface soils and paleosols that may be subdivided into additional members. The youngest soil is a minimum 12 to 20 kya old (soil designation S4), and a second common soil is estimated to be older than 20 kya at a minimum.” (Exh. 35, p. 15)

Accordingly, Genesis believes that the position of Dr. Whitley is overcome by the facts and evidence submitted in this matter.

IV.

CONCLUSION

Genesis submits that the substantial evidence presented in this matter establish that the investigation, assessment and mitigation in the topic area of Cultural Resources comply with all LORS and, with the imposition of the proposed conditions of certification, results in impacts that are less than significant.

Dated: August 3, 2010

/original signed/

Scott A Galati
Counsel to Genesis Solar, LLC

TABLE 1
[Updated]

GENESIS SOLAR ENERGY PROJECT
Conditions of Certification

TOPIC AREA	RECORD CITATION WHERE CONDITION MAY BE FOUND	RECORD CITATION WHERE STAFF SUPPORTS CONDITION	RECORD CITATION WHERE GENESIS SUPPORTS CONDITION
ALTERNATIVES	N/A	N/A	N/A
AIR QUALITY	<p>AQ-SC1, AQ-SC2 and AQ-SC6, Exhibit 400</p> <p>AQ-SC3, AQ-SC4, AQ-SC5, AQ-SC-7, and AQ-SC8, Exhibit 444</p> <p>AQ-1 through AQ-51, Exhibit 440</p>	Exhibit 400, Exhibit 440 and Exhibit 444	7/21/10 RT 16, 27
BIOLOGICAL RESOURCES	<p>BIO 1 through BIO-7, Exhibit 400</p> <p>BIO-8, Exhibit 438, (Admitted with 65 dBA correction on July 21st)</p> <p>BIO-9 through BIO-18, Exhibit 435</p> <p>BIO-19, Exhibit 445</p> <p>BIO-20, Exhibit 435</p> <p>BIO-21, Exhibit 400</p> <p>BIO-22, Exhibit 400</p> <p>BIO-23, Exhibit 60 Closure Plan (BLM) with CPM review</p>	<p>Exhibit 400</p> <p>Exhibit 438</p> <p>Exhibit 435</p> <p>Exhibit 445</p> <p>Exhibit 435</p> <p>Exhibit 400</p> <p>Exhibit 400</p> <p>7/12/10 RT 177</p>	<p>7/12/10 RT 62; Exhibit 60, Genesis Revised Opening Testimony – Biological Resources, Page 4</p> <p>7/21/10 RT 129</p> <p>7/12/10 RT 58-61</p> <p>7/21/10 RT 123</p> <p>7/12/10 RT 61</p> <p>7/12/10 RT 67</p> <p>7/12/10 RT 62</p> <p>7/12/10 RT 68</p>

TOPIC AREA	RECORD CITATION WHERE CONDITION MAY BE FOUND	RECORD CITATION WHERE STAFF SUPPORTS CONDITION	RECORD CITATION WHERE GENESIS SUPPORTS CONDITION
	BIO-24 , Exhibit 400 BIO-25 , Exhibit 435 BIO-26 and BIO-27 , Exhibit 400 BIO-28 , Exhibit 435 as modified at 7/12/10 RT 62-66	Exhibit 400 Exhibit 435 Exhibit 400 Exhibit 435 and agreed to modifications at 7/12/10 RT 63-66	7/12/10 62 7/12/10 RT 62 7/12/10 RT 62 7/12/10 RT 62-66
CULTURAL RESOURCES	Exhibit 441	Exhibit 441	7/21/10 RT 223
FACILITY DESIGN	Exhibit 400	7/12/10 RT 44	Exhibit 60, Genesis Revised Opening Testimony - Facility Design, Page 2 7/12/10 RT 44
GEOLOGY AND PALEONTOLOGY	Exhibit 400	7/12/10 RT 44	Exhibit 60, Genesis Revised Opening Testimony - Geology and Paleontology, Page 2 7/12/10 RT 44
HAZARDOUS MATERIALS	HAZ-1 through HAZ-5 , Exhibit 400 HAZ-6 , Exhibit 400 as modified by Exhibit 60, Genesis Revised Opening Testimony – Hazardous Materials, Pages 2 and 3	Exhibit 400 7/12/10 RT 362	Exhibit 60, Genesis Revised Opening Testimony – Hazardous Materials, Page 2 Exhibit 60, Genesis Revised Opening Testimony – Hazardous Materials, Pages 2 and 3
LAND USE	N/A	N/A	N/A
NOISE AND VIBRATION	Exhibit 400	7/12/10 RT 44	Exhibit 60, Genesis Revised Opening Testimony - Noise and Vibration, Page 2 7/12/10 RT 44

TOPIC AREA	RECORD CITATION WHERE CONDITION MAY BE FOUND	RECORD CITATION WHERE STAFF SUPPORTS CONDITION	RECORD CITATION WHERE GENESIS SUPPORTS CONDITION
POWER PLANT EFFICIENCY	N/A	N/A	N/A
POWER PLANT RELIABILITY	N/A	N/A	N/A
PROJECT DESCRIPTION	N/A	N/A	N/A
PUBLIC HEALTH	Exhibit 400	7/12/10 RT 44	Exhibit 60, Genesis Revised Opening Testimony – Public Health, Page 2 7/12/10 RT 44
SOCIOECONOMICS	N/A	N/A	N/A
SOIL AND WATER RESOURCES	SOIL&WATER-1, 5, 7, 9, 10, 12, 13, 14, 16, 17, and 18, Exhibit 400 SOIL&WATER-2, 3, 6, 8, 11, 20 and Appendix B; Exhibit 434 SOIL&WATER-4, 15 AND 19, Exhibit 443	Exhibit 400 Exhibit 434 7/21/10 RT 11 Exhibit 443	Exhibit 60, Genesis Revised Opening Testimony – Soil & Water Resources, Page 13 Exhibit 60, Genesis Revised Opening Testimony – Soil & Water Resources, Pages 14-18, 22-26 7/21/10 RT 75
TRAFFIC AND TRANSPORTATION	Exhibit 400	7/12/10 RT 44	Exhibit 60, Genesis Revised Opening Testimony – Traffic and Transportation, Page 2 7/12/10 RT 44

TOPIC AREA	RECORD CITATION WHERE CONDITION MAY BE FOUND	RECORD CITATION WHERE STAFF SUPPORTS CONDITION	RECORD CITATION WHERE GENESIS SUPPORTS CONDITION
TRANSMISSION LINE SAFETY AND NUISANCE	Exhibit 400	7/12/10 RT 44 - not clarified in testimony; minor change to TLSN-2 reserved for comment to PMPD	Exhibit 60, Genesis Revised Opening Testimony – Transmission Line Safety and Nuisance, Page 2 7/12/10 RT 44
TRANSMISSION SYSTEM ENGINEERING	Exhibit 400	Exhibit 400	Exhibit 60, Genesis Revised Opening Testimony – Transmission System Engineering, Page 2
VISUAL RESOURCES	VIS-1, VIS-2, VIS-4 through VIS-6 , Exhibit 400 as modified by Exhibit 60, Genesis Revised Opening Testimony – Visual Resources, Pages 3-5 VIS-3 , stipulation on Monopole: VIS-3 not needed 7/13/10 RT 158-161	7/12/10 RT 440 7/13/10 RT 158-161	Exhibit 60, Genesis Revised Opening Testimony- Visual Resources, Pages 3-5 7/12/10 RT 443-445
WASTE MANAGEMENT	WASTE-1 through WASTE-7 and WASTE-9 , Exhibit 400 WASTE-8 DISPUTED WASTE-10 , Exhibit 400 as modified by Exhibit 402, pages 34 and 35 WASTE-11 , Exhibit 60, Revised Opening Testimony – Waste Management, Pages 5 and 6	Exhibit 400 Exhibit 400, 7/12/10 RT 360 Exhibit 400 and Exhibit 402, pages 34 and 35 Exhibit 402	7/12/10 RT 360 Exhibit 60, Genesis Revised Opening Testimony – Waste Management, Page 3 7/12/10 RT 360 Exhibit 60, Genesis Revised Opening Testimony – Waste Management, Pages 5 and 6

TOPIC AREA	RECORD CITATION WHERE CONDITION MAY BE FOUND	RECORD CITATION WHERE STAFF SUPPORTS CONDITION	RECORD CITATION WHERE GENESIS SUPPORTS CONDITION
WORKER SAFETY	WORKER SAFETY-1, WORKER SAFETY-2, and WORKER SAFETY-4 , Exhibit 400	Exhibit 400	Exhibit 60, Genesis Revised Opening Testimony – Worker Safety and Fire Protection, page 2, 7/12/10 RT 391
	WORKER SAFETY-3 , Exhibit 400, as modified by Exhibit 60, Genesis Revised Opening Testimony – Worker Safety, page 2	7/12/10 RT 422	Exhibit 60, Genesis Revised Opening Testimony – Worker Safety and Fire Protection, Page 2
	WORKER SAFETY-5 , Exhibit 400 as modified by Exhibit 60, Genesis Revised Opening Testimony – Worker Safety, page 3	7/12/10 RT 414 – not clarified in testimony; reserved for comment to PMPD	Exhibit 60, Genesis Revised Opening Testimony – Worker Safety and Fire Protection, Page 3
	WORKER SAFETY-6 , Exhibit 433 as modified by Testimony of Scott Busa at 7/12/10 RT 394-395	7/12/10 RT 395, and 414-415	7/12/10 RT 394-395
	WORKER SAFETY 7 , Exhibit 433	Exhibit 433	7/12/10 RT 395



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**APPLICATION FOR CERTIFICATION FOR THE
GENESIS SOLAR ENERGY PROJECT**

Docket No. 09-AFC-8

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(Revised 7/23/10)**

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DECLARATION OF SERVICE

I, Ashley Y. Garner, declare that on August 3, 2010, I served and filed copies of the attached: **GENESIS SOLAR, LLC OPENING BRIEF – EVIDENTIARY HEARING DAY 3 TOPICS** dated August 3, 2010. 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:
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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.



Ashley Y. Garner