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STATE OF CALIFORNIA

**State Energy Resources Conservation and
Development Commission**

In the Matter of:

WILLOW ROCK ENERGY
STORAGE CENTER

Docket No. 21-AFC-02

**INTERVENOR CENTER FOR BIOLOGICAL DIVERSITY
RECOMMENDED REVISIONS TO FINAL STAFF ASSESSMENT
CONDITIONS OF CERTIFICATION
FOR WILLOW ROCK ENERGY STORAGE CENTER**

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**INTERVENOR CENTER FOR BIOLOGICAL DIVERSITY
RECOMMENDED REVISIONS TO FINAL STAFF ASSESSMENT
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Intervenor Center for Biological Diversity (the “Center”) respectfully submits these comments and recommended revisions to the CEC Staff’s Final Staff Assessment (“FSA”) Conditions of Certification (“COCs”) for the Willow Rock Energy Storage Center Project (“Willow Rock Project”).

As invited by counsel for CEC staff, the Center submits suggested edits to the COCs, with an explanation or rationale for the requested changes, to address the issues previously raised by the Center. These comments supplement the Center’s prior comments on the Preliminary Staff Assessment (TN 264342).

I. Western Joshua Tree Woodland

As the FSA correctly acknowledges, sensitive natural communities are defined by the California Department of Fish and Wildlife (“CDFW”) as “communities that are of limited distribution statewide or within a county or region and are often vulnerable to environmental effects of projects.” (FSA 5.2-21.) Sensitive natural communities, ranked S1 to S3, must be addressed in the environmental review process under CEQA and its functional equivalents. (*Id.*; *see also* CEQA Guidelines, App’x G, item IV., b.)

Joshua tree woodland is a sensitive natural community with a state rank of S3 (CDFW 2025) and is known to occur within the project area. (FSA 5.2-6, 5.2-148.) CEC staff acknowledge that project construction within an optional section of the gentie alignment would likely result in permanent impacts to Joshua tree woodlands due to pole foundation placement and from the construction of new access roads, as well as temporary impacts from pole construction and potential pull and tensioning sites. Staff estimate that these impacts could range from 0.5 acres up to 2 acres, depending on the size of the road and the alignment selected. Staff also note that additional areas within the project site—particularly the WRESC site, P1, P2 North, and P2 South—exhibit vegetation characteristics consistent with Joshua tree woodland, although these areas were mapped differently by the applicant. (FSA 5.2-148.)

While the precise acreage of Joshua tree woodland that would be impacted remains uncertain pending additional surveys, the FSA makes clear that potentially

significant impacts to this sensitive natural community are likely. According to the FSA, impacts to Joshua tree woodland would include:

permanent and temporary loss of habitat, the loss or disruption of native seedbanks, or alterations [to] local drainage patterns that results in offsite runoff and increased erosion and sedimentation to adjacent habitats. Indirect impacts to native vegetation and Joshua tree woodland would include long-term type conversion of desert habitats, long-term alterations to hydrology, and degradation of habitat from non-native invasive weeds.

(FSA 5.2-148.) Additionally, although the acreage of impact may vary, Staff concludes that such variation “would not alter the significance conclusions in the PSA.” (FSA 5.2-238 to 239.)

With respect to mitigation, CEC staff assert that COC BIO-12—which requires accounting for and mitigation of individual western Joshua trees taken—adequately offsets project impacts to woodlands. (FSA 5.2-224 to 225.) However, BIO-12 is narrowly focused on impacts to *individual* trees and does not address the broader impacts to the Joshua tree woodland community. Mitigation for the removal of individual trees cannot substitute for the loss or degradation of a sensitive natural community. CEQA requires that mitigation measures address the actual impact identified, be fully enforceable, and reduce the impacts to a less-than-significant level.

Accordingly, the Center urges revisions to COC BIO-12 to ensure adequate analysis and mitigation of impacts to Joshua tree woodland. Specifically, BIO-12 should be revised to:

- (1) Require appropriate surveys to delineate the extent of Joshua tree woodland within the project area and appropriate buffers, consistent with the California Native Plant Society’s Manual of California Vegetation (CNPS 2025);
- (2) Include appropriate avoidance and minimization measures specifically targeted at preserving the integrity of woodland communities; and
- (3) Require compensatory mitigation for Joshua tree woodland where avoidance is infeasible.

II. Western Joshua Tree

A. An Updated Western Joshua Tree Census Is Required Before Take Can Be Authorized

Under the Western Joshua Tree Conservation Act (“WJTCA”), take of WJT may only be authorized if statutory conditions are met. One such condition requires the applicant to submit “a census of all western Joshua trees on the project site, including size information and photographs” that categorize trees by CDFW-defined classes. (Fish & Game Code § 1927.3(a)(1).)

As the Center previously noted (TN 264342 at 8–10) and the FSA acknowledges (FSA 5.2-24), the applicant’s existing census data is incomplete, as portions of the project site—including segments of the gen-tie alignment—have not been surveyed for western Joshua trees. CEC staff concur that supplemental surveys for WJTs should be required, and revised BIO-12 accordingly. (FSA 5.2-225.) Staff assert that BIO-12 includes a requirement for updated surveys prior to ground disturbance to account for newly sprouted or previously missed trees. (*Id.*)

However, as currently drafted, BIO-12’s provisions regarding new or missed trees apply only *after* the site has been cleared of the WJTs identified in the applicant’s initial, incomplete census. Specifically, BIO-12 Condition 3 states:

During construction, once the project site has been fully cleared of the WJT identified in the census, if a new western Joshua tree stem or trunk arises from the ground . . . [the] project owner shall prepare a Notification of New Stem or Trunk and submit it to the CPM before conducting or resuming project activities that will impact any WJT individual that was not included in the census and included in the invoice, including any new WJT stem or trunk that arises from the ground ...”

(5.2-291.)

Although BIO-12 Condition 3 addresses missing or new trees, it does so only *after* take of the identified trees in the incomplete census has been authorized. However, absent a complete and accurate pre-construction census of all WJTs within the project area—including all portions of the gen-tie alignment—the statutory requirements of the WJTCA have not been satisfied, and take cannot lawfully be authorized.

A complete WJT census is essential not only to quantify the total number of affected trees, but also to evaluate whether the applicant has avoided and minimized

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impacts to, and the taking of, each individual WJT to the maximum extent practicable, as required by Fish & Game Code § 1927.3(a)(2). Without this baseline information, the CEC cannot assess the full scope of the project's impacts on WJT or whether impact reduction measures could be implemented to minimize or avoid those impacts.

Accordingly, the Center urges revisions to COC BIO-12 to include a requirement that the project owner conduct and submit a complete, accurate, site-wide census of all WJTs. This census must cover the entire project area, including all segments of the preferred and alternative gen-tie routes, pull and tensioning sites, new access roads, and the appropriate survey buffer. It must also be submitted before any take is authorized and be consistent with Fish and Game Code § 1927.3(a)(1).

B. Impacts Must be Avoided and Minimized to the Maximum Extent Practicable Before Take Can Be Authorized

The WJTCA, together with the Western Joshua Tree Conservation Plan, establish a clear mitigation hierarchy: avoid, minimize, and then mitigate impacts to WJTs (*See* Fish & Game Code § 1927.3(a); CDFW 2025 at 5-8, 5-9, 6-11). Consistent with this hierarchy, the WJTCA prohibits the authorization of take unless the applicant avoids and minimizes impacts to, and the taking of, each individual WJT to the maximum extent practicable. (*See* Fish & Game Code § 1927.3(a)(2).)

For this Project, feasible avoidance and minimization measures may include, for example:

- Eliminating, redesigning, or relocating the optional aboveground architectural berm to avoid or reduce impacts to the approximately 467 WJTs proposed for permanent removal and 17 proposed for relocation under the “with berm” option, particularly given that the berm has not yet been fully designed (FSA 3-28, 5.2-155);
- Obtaining take authorization to trim, encroach upon, or relocate trees instead of lethally removing them;
- Reconfiguring or relocating non-essential project components, such as laydown/staging and parking areas.

To ensure compliance with Fish & Game Code § 1927.3(a)(2), the Center urges revisions to COC BIO-12 to incorporate feasible avoidance and minimization measures, such as those listed above. Such measures should be implemented unless the project owner demonstrates, to the satisfaction of the CPM, that they are infeasible.

III. Reservoir Management Plan

COC BIO-7 was revised in the FSA to require submission of a Reservoir Management Plan prior to construction of the reservoir. (FSA 5.2-266 to 267.) While this revision appropriately acknowledges the need for site-specific mitigation and outlines the expected components of the plan, it impermissibly defers formulation of specific mitigation measures until after project certification, in violation of CEQA. (*See* 14 Cal. Code Regs. § 15126.4(a)(1)(B) (“Formulation of mitigation measures shall not be deferred until some future time.”))

As CEC staff note, “[e]vaporation ponds are common at industrial facilities, including other CEC jurisdictional facilities, and the strategies to prevent wildlife access and ultimate injury are well understood.” (FSA 5.2-227). Given this established body of knowledge, it is feasible to identify specific, effective mitigation measures prior to certification. Even if some flexibility is necessary, the condition fails to include the specific performance standards required under CEQA to justify any deferral. For example, general language such as “minimize wildlife entrapment” does not provide a clear, enforceable threshold for success or failure, such as zero mortality for sensitive species or a quantitative limit on annual entrapments.

Deferring the analysis of potentially significant impacts and the formulation of mitigation measures until after project certification risks precluding adequate mitigation altogether. Without knowing the design, performance objectives, and contingency triggers of the Reservoir Management Plan, CEC staff and the public cannot meaningfully evaluate whether wildlife impacts have been adequately avoided, minimized, or mitigated—or whether the measures proposed are feasible and effective.

Accordingly, the Center urges revisions to COC BIO-7 to require that a complete Reservoir Management Plan be developed and publicly disclosed prior to project certification.

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The Center appreciates the opportunity to provide these recommended revisions to the Conditions of Certification. As discussed above, COCs BIO-7 and BIO-12, as currently drafted, do not fully satisfy the requirements of CEQA or the Western Joshua Tree Conservation Act. To ensure that significant impacts to sensitive natural communities, western Joshua trees, and associated wildlife are properly avoided,

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minimized, and mitigated, CEC staff should revise these conditions in accordance with the above recommendations prior to certification.

We thank CEC staff for their consideration of these comments and look forward to continued engagement on this matter.

Respectfully,

A handwritten signature in black ink, appearing to read "Zeynep J. Graves", written over a horizontal line.

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