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**STATE OF CALIFORNIA
Energy Resources Conservation
and Development Commission**

In the Matter of:

Application for Certification of the
Willow Rock Energy Storage Center

Docket No. 21-AFC-02

APPLICANT'S OPENING BRIEF

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I. INTRODUCTION

In accordance with the Committee's direction at evidentiary hearings¹ and *Hearing Officer Memo After Evidentiary Hearing*², GEM-A CAES LLC (the "Applicant") submits this opening brief on behalf of the Willow Rock Energy Storage Center ("WRESC") project. WRESC is the first utility scale advanced compressed air energy storage ("A-CAES") proposed in the United States. WRESC will provide 500 megawatts of capacity and eight-hour storage, helping facilitate further integration and utilization of intermittent renewable energy resources.

This brief focuses on the three areas where California Energy Commission ("CEC") Staff and the Applicant disagree as to the conclusions of CEC Staff's analysis of impacts or proposed mitigation. These areas are Biological Resources, Water Resources relating to the Division of Dam Safety, and Visual Resources. The Applicant respectfully requests that the Committee adopt the Conditions of Certification as revised in the Applicant's Opening Testimony.³ This brief also provides a discussion of the evidence in the record supporting the issuance of a Statement of Overriding Considerations pursuant to the California Environmental Quality Act ("CEQA"), should the Commission find that there are any significant and unavoidable impacts. As demonstrated below and in the record in this proceeding, potential environmental impacts from the WRESC are less than significant with mitigation, and the WRESC is consistent with applicable laws, ordinances, regulations, and standards ("LORS"). For these reasons, and the specific economic, legal, social, technological, and other benefits that will result from the WRESC, the Commission should certify the project.

II. BIOLOGICAL RESOURCES: MITIGATION SHOULD BE BASED UPON ACTUAL IMPACTS.

As described in the Applicant's Opening Testimony, CEC Staff's proposed Condition of Certification BIO-14 inconsistently requires mitigation based on estimated, maximum disturbance amount, and in other areas providing for flexibility based upon actual impacts. CEC Staff testified at hearings that Staff is not seeking mitigation for sections of the site that are not impacted. CEC Staff further testified that it is willing to ensure that there is flexibility in the condition language to ensure that flexibility for berm and no-berm scenarios, and that mitigation acreages can be based on designs prior to site mobilization.⁴ Both the Applicant and CEC Staff are in agreement that mitigation acreages should ultimately be based upon actual impacts.⁵ The Commission should similarly ensure that mitigation acreages, should the project be approved, be based upon actual impacts of the project.

¹ References to the *Official Transcript of the August 21, 2025 Evidentiary Hearing* (TN: 265793) will be designated with the abbreviation "8/21/25 RT" followed by page and line references separated by a colon. For example, the Hearing Officer's direction regarding briefing can be found at: 8/21/25 RT 276:15-25, 277:1-2.

² TN: 265796.

³ TN: 1233. The Applicant notes that CEC Staff has proposed further changes to certain biological resources conditions. The Applicant will docket a supplement to the compendium filed by Staff (TN #: 265702), which will be focused solely on the Conditions that remain in dispute and incorporate any proposed changes to the new language.

⁴ 8/21/25 RT 107:4-7.

⁵ Applicant: 8/21/25 RT 90:16-17 and Ex. 1233, p. 37; Staff: 8/21/25 RT 153:20-22.

III. BIOLOGICAL RESOURCES: PROPOSED BIOLOGICAL RESOURCES CONDITIONS OF CERTIFICATION, INCLUDING THE APPLICANT'S PROPOSED MITIGATION RATIOS, SATISFY THE INCIDENTAL TAKE PROVISIONS OF THE CALIFORNIA ENDANGERED SPECIES ACT.

The California Endangered Species Act ("CESA") provides that the California Department of Fish and Wildlife ("CDFW"), or in this case the Commission by virtue of its in-lieu authority⁶, may authorize by permit "take" of an endangered, threatened, or candidate species if incidental to an otherwise lawful activity.⁷ CESA provides that "the impacts of the authorized take shall be minimized and fully mitigated", and that minimization and mitigation measures "shall be roughly proportional in extent to the impact of the authorized taking on the species."⁸

Both CEC Staff and the Applicant are in agreement that potential impacts to biological resources from the WRESC are less than significant with mitigation, and that the WRESC can be constructed and operated in compliance with all applicable LORS relating to biological resources. However, CEC Staff and the Applicant diverge with respect to the appropriate mitigation ratios for potential impacts to the Western Burrowing Owl and Crotch's Bumble Bee, both candidate species under CESA. The Applicant recommends a habitat mitigation ratio of two to one (2:1) for permanent impacts and one to one (1:1) for temporary impacts based on site-specific surveys, habitat assessments, and revegetation and other required measures for temporarily disturbed areas in accordance with other proposed conditions of certification.⁹ In contrast, CEC Staff recommends habitat mitigation at a three to one (3:1) ratio for both permanent and temporary impacts.¹⁰ As demonstrated below, CEC Staff's proposed mitigation is excessive, disproportional to the impact of the potential take on either candidate species, not in accordance with CESA's requirement that mitigation for authorized take be roughly proportional to the impact and not consistent with mitigation required for other similarly situated Kern County projects.

A. A 3:1 Mitigation Ratio for Temporary Impacts Is Not Roughly Proportional to the Potential Impact Where Obligations for Revegetation Are Imposed.

The FSA treats all potential habitat impacts as permanent and imposes a 3:1 mitigation ratio.¹¹ The FSA also imposes strict revegetation requirements in detailed, five-pages, single spaced Condition BIO-8.¹² Neither applicable law nor precedent support conflating temporary and permanent impacts and then treating temporary impacts from the WRESC even more severely than permanent impacts.

⁶ See, Pub. Resources Code § 25500.

⁷ Cal. Fish & Game Code § 2081(b).

⁸ Cal. Fish & Game Code § 2081(b).

⁹ Ex. 1233, p. 38.

¹⁰ Ex. 2000, p. 5.20183.

¹¹ Ex 2000, *passim*; see for example, pp. 5.2-183 and 5.2-240.

¹² Ex. 2000, p. 5.2-271 to 5.2-276.

As Applicant's witness testified, permanent habitat loss is described as areas that will no longer be available to wildlife for the duration of the project because they have been converted into part of the facility by installing a building or impermeable surface.¹³ Temporary habitat loss is generally used to describe areas that will become available to wildlife after construction is complete, although potentially in a modified or altered state.¹⁴ Proposed COC BIO-8 provides that the Applicant will be required to maintain these areas and control weeds for five years post construction. Areas that will be used for laydown will be cleared of vegetation for the duration of the construction, but soils will be decompacted and recontoured post-construction.¹⁵ These areas will also be revegetated with native grasses and forbs that can support native wildlife species, including Crotch's bumble bee.¹⁶

Treating temporarily impacted habitat more severely than permanent does not acknowledge that the area will become available for wildlife after construction nor does it consider the replanting and maintenance requirements of BIO-8. The result of regarding the areas the same is that the FSA's Conditions BIO-14 and BIO-8 together actually require more mitigation for temporarily impacted areas than permanent, as these areas not only require offsetting equal to permanent loss but also replanting and restoration measures.¹⁷

The imbalance is even more apparent for temporary disturbances along the preferred gen-tie route for the WRESC, which will include areas subject to a franchise agreement with Kern County.¹⁸ The intensity of construction along the gen-tie is "extraordinarily lower" than that of construction activity on site.¹⁹ Poles are micro-sited in coordination with qualified biological and cultural resources experts to avoid resources to the extent feasible, and each location is subject to approximately only a few days of activity.²⁰ Requiring a 3:1 mitigation ratio in these areas does not comport with CESA's requirement that mitigation for authorized take must be roughly proportional to the impact given the difference in impacts.

B. Burrowing Owl: A 2:1 Ratio for Permanent Impacts and a 1:1 Ratio for Temporary Impacts Results in a "Net Gain" Per CDFW Guidance.

The FSA recommends a 3:1 mitigation ratio for all permanent and temporary impacts for burrowing owl. This high ratio is not supported by evidence in the record. Specifically, the results of the 2023 and 2024 burrowing owl surveys demonstrate: (1) the general lack of high-quality habitat within the Project Area; (2) the absence of active burrows within the Project Area and adjacent 500-foot buffer zones; (3) the absence of burrowing owl observations within the Project Area; and (4) the infrequent and transient nature of burrowing owl observations outside

¹³ 8/21/25 RT 92:11-15.

¹⁴ 8/21/25 RT 92:15-18.

¹⁵ Ex. 1233, p. 44; 8/21/25 RT 93:1-7.

¹⁶ 8/21/25 RT 92:19-25.

¹⁷ Ex. 44-45; 8/21/25 RT 93:10-22.

¹⁸ Ex. 1032, p. 3-1.

¹⁹ RT 157:23-25; 158:1-18.

²⁰ RT 158:1-18.

of the project footprint.²¹ While the WRESC site may be potential habitat, it is not “high quality” habitat, nor is there any documented presence on the site of the species.²²

The Project’s burrowing owl evaluation established a 500-foot buffer to account for potential impacts to habitat adjacent to the Project Area. As no active burrows were identified within this buffer, it is therefore unlikely that the Project would result in burrowing owl abandonment due to noise and vibration.²³ Therefore, a 2:1 mitigation ratio for permanent impacts accurately reflects the site-specific, surveyed biological conditions. Similarly, a 1:1 ratio for temporary impacts would more accurately reflect the site-specific, surveyed biological conditions. The CDFW Staff Report on Burrowing Owl Mitigation provides clear guidance distinguishing between permanent and temporary impact mitigation requirements, providing that a 1:1 mitigation ratio for temporary impacts to burrowing owl is appropriate for this project as temporarily impacted areas will be revegetated with native grass and forb species as per COC BIO-8.²⁴

BIO-8 requires the owner to salvage and respread topsoil, recontour temporarily disturbed areas, decompact soils, and manage for invasive plant species. As burrowing owls can occupy modified habitats (e.g. road verge, agricultural fields) and given the revegetation of temporarily disturbed areas as required by BIO-8, temporarily disturbed areas would be available to burrowing owls during Project operation.²⁵ With the implementation of BIO-8 and a 1:1 mitigation ratio for temporarily impacted areas it is expected that the Project will result in a net gain in burrowing owl habitat. Application of a 2:1 ratio for permanent habitat loss and a 1:1 ratio for temporary habitat loss is consistent with, and higher than, the ratios applied to approved projects in Kern County as summarized in Table 1.²⁶

C. Crotch’s Bumble Bee: the Record Supports a 2:1 Ratio for Permanent Impacts and a 1:1 Ratio for Temporary Impacts.

Evidence in the record, particularly the site-specific Crotch’s bumble bee surveys conducted by expert biologists, support mitigation ratios of 2:1 and 1:1, respectively, for permanent and temporary impacts.²⁷ The results of the 2023 and 2024 Crotch’s bumble bee surveys support the application of a 2:1 mitigation ratio for permanent impacts due to: (1) the limited diversity and early senescence of nectar sources within the Project Area with documented flowering only early in the flight season; (2) the absence of hive establishment or nesting behavior within the Project Area; and (3) the transient and localized nature of observed foraging activity.²⁸

BIO-8 requires revegetation of temporarily disturbed areas and sets success criteria for native cover and weed control. In compliance with BIO-8, all temporarily impacted areas will be recontoured, scarified, and stabilized with a seed mix consisting of local natives, including grasses and wildflowers preferred by Crotch’s bumble bee. Salvaged topsoil, seed bank and

²¹ Ex. 1233, p. 44; also see pp. 38-47; 8/21/25 RT 94:22-25, 95:1-10.

²² Ex. 1233, p. 44; 8/21/25 RT 94:1-7, 132:14-18.

²³ Ex. 1233, p. 44; 8/21/25 RT 94: 8-12.

²⁴ Ex. 1233, p. 44; 8/21/25 RT 94:8-12.

²⁵ Ex. 1233, p. 44; 8/21/25 RT 93:5-22.

²⁶ Ex. 1233, pp. 41-43.

²⁷ Ex. 1233, pp. 44-45.

²⁸ Ex. 1233, p. 45; 8/21/25 RT 94:22-25, 95:1-10.

woody debris will be respread on temporarily disturbed areas, supporting the recovery of Crotch's bumble bee forage plants and promoting the development of complex microhabitats necessary for diversity.²⁹

With the application of BIO-8, temporarily disturbed areas are expected to be available for Crotch's bumble bee during the operational phase of the Project. The application of COC BIO-8 in conjunction with providing mitigation habitat at a ratio of 1:1 is expected to provide a net increase in available Crotch's bumble bee habitat regionally during the operational phase of the project.³⁰

D. The Applicant's Proposed Mitigation Ratios are Greater Than and thus More Protective Compared to those of Similarly Situated Projects.

The Applicant's proposed mitigation ratios of 2:1 and 1:1 exceed the mitigation requirements of other similarly situated projects in Kern County. Table 1 of the Applicant's Opening Testimony provides a detailed catalog of the mitigation requirements imposed upon fourteen other similarly situated projects within the Kern County region.³¹ For animals listed as threatened endangered or special status none of these projects were required to mitigate at a 3:1. A 3:1 ratio for animal species, threatened, endangered, or otherwise, is found nowhere on this table of fourteen.³² Several projects were required to mitigate at 2:1 for borrowing owl: Edwards Air Force Base Solar Project, Sandrini Solar Project and the Clean Harbors project.³³ In the case of the federally and state protected desert tortoise the following projects were required to mitigate for direct impacts to these listed species at a lower, 1:1 ratio: Bullhead Solar, Edwards Air Force Base, and AVEP Solar project. The Edwards Air Force Base and Clean Harbor projects were required to replace Burrows for burrowing owl at 2:1. Burrowing owl was mitigated at 1:1 for the Bullhead City, Enterprise, Pelican Jaw and Sandrini projects.³⁴ Each of these projects is also in the desert setting of Kern County, yet for state CESA and federal ESA species, a 2:1 for burrows affected or a 1:1 ratio for listed species was imposed.

Crotch's bumble bee mitigation is almost without any precedent given the relatively recent candidate status of the species. Only one of the fourteen projects provided any mitigation for Crotch's bumble bee. The Pelican jaw project's Crotch's bumble bee mitigation was one half-to-1 (0.5:1) – one-quarter of the Applicant's proposed 2:1 ratio, and one-sixteenth of Staff's proposed 3:1. ratio.³⁵

For the most relevant local precedent, the Committee need to look only approximately 1 mile north on the Sierra Highway to the Mojave Micro Mill project. Given their close proximity, the potential habitat of the Mojave Micro Mill Project site and the WRESC site are substantially similar. The Mitigation measures listed in the Mojave Micro Mill EIR include habitat mitigation for burrowing owl and pre-construction surveys to document Crotch's bumble bee and determine

²⁹ Ex. 1233, p. 45; 8/21/25 RT 93:1-8.

³⁰ Ex. 1233, p. 45.

³¹ Ex. 1233, pp. 41-43.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

whether an Incidental Take Permit would be required.³⁶ The Mojave Micro Mill EIR *does not* recommend habitat mitigation ratios; rather it requires that the owner provide compensatory mitigation for lost breeding and/or wintering habitat, should burrowing owls be found on the site. Compensation habitat would be provided in accordance with the Staff Report on Burrowing Owl Mitigation guidance (CDFW 2012). No mitigation lands are required for Crotch’s bumble bee for this similarly situated project, located less than one mile away from WRESC.³⁷ The Director of Kern County Planning and Natural Resources, Lorelei Oviatt, asked the Committee to “dig into” and “thoughtfully work your way through” the proposed mitigation ratios “because we are interested in not creating this precedent.”³⁸

For the 88.6 acre WRESC site, the FSA’s BIO-14 requests a total of 843 acres of offsite compensatory mitigation. Eight hundred forty-three (843) acres of mitigation is effectively a mitigation ratio of nine and one-half acres to one (9.5:1) in comparison to the proposed site. A 9.5:1 mitigation requirement on this critical long-duration energy storage project is unsound policy and contrary to applicable law and Kern County precedents.

In conclusion for all of the issues in Biological Resources, the Committee should accept the Applicant’s proposed changes to the Biological Resources Conditions in the Applicant’s Opening Testimony.³⁹ With the implementation of the measures set forth in Applicant’s evidence and the revisions to the Conditions as proposed, the evidentiary record supports the conclusion that potential impact to Biological Resources are less than significant.⁴⁰

IV. WATER RESOURCES: THE COMMISSION SHOULD ENTER INTO AN MOU OR OTHER AGREEMENT TO SECURE THE EXPERTISE IT SEEKS FROM DSOD AND DELETE PROPOSED CONDITIONS WATER-5 AND WATER-6.

As proposed in the FSA, conditions WATER-5 and WATER-6 would require that the Applicant file a post-certification application with the Division of Dam Safety (“DSOD”) and pay application fees to obtain a certificate of approval for construction of the hydrostatically compensating surface reservoir. By way of comparison, the application fee to DSOD is estimated to be nearly the same as a permit application fee with the CEC.⁴¹

Pursuant to the Warren Alquist Act, the Commission has the “exclusive power to certify all sites and related facilities in the state.”⁴² Certification by the Commission “shall be in lieu of any permit, certificate, or similar document required by any state, local, or regional agency, or federal agency to the extent permitted by federal law, for such use of the site and related facilities,”⁴³ including any permit, certificate, or similar document that would otherwise be required by the DSOD for construction of the hydrostatically compensating surface reservoir.

³⁶ Ex. 1233, p. 43.

³⁷ *Id.*

³⁸ RT 54 L:2-25 and 55 L:1-4.

³⁹ Ex. 1233, pp. 45-47.

⁴⁰ Ex. 1233, pp. 92-24; 8/21/25 RT 91:7-19.

⁴¹ For reference, Pub. Resources Code § 25806 provides for a non-refundable deposit of \$750,000 for the processing of an application for certification, in addition to “all costs incurred by the commission in processing the application.”

⁴² Pub. Resources Code § 25500.

⁴³ Pub. Resources Code § 25500.

WATER-5 and WATER-6 should be deleted as they are not necessary and contrary to Commission precedent. As explained below, to the extent the Commission seeks DSOD's input, the Commission should enter into a MOU with DSOD to secure the Division's expertise.

It is true that the Commission can delegate "compliance verification" to other entities.⁴⁴ The distinction between the delegation of statutory authority and the delegation of "compliance verification" is foundational and central to the Commission. Read together, the Commission has the authority to delegate compliance verification to DSOD or any other entity -- so long as it follows the strictures of law.

Given these combinations of legal authorities, the Commission implements its ability to delegate compliance verification to other entities through Condition GEN-3. This "standard" Condition is standard precisely because it sets out the implementation path for the Commission to secure the outside expertise it seeks -- as it has done for every project since 1976. Proposed GEN-3 expressly provides that the "project owner shall make payments to the DCBO for design review, plan checks, construction inspections, and other applicable DCBO activities, based upon a reasonable fee schedule to be negotiated between the project owner and the DCBO." Fee negotiation with the project owner and cost accounting consistent with accounting GAAPs protect Due Process and fundamental fairness.

Taken together these legal authorities create a very clear picture. The Energy Commission's statutory authority is exclusive and unqualified. The Commission can and regularly does seek assistance in "compliance verification" from agencies like DSOD. Condition GEN-3 provides a mechanism for negotiated funding of DCBO costs, subject to reasonable past containment and reporting. As discussed at the Evidentiary Hearings, if the Commission seeks DSOD's expertise, it can enter into a MOU or other agreement with DSOD -- subject to the strictures of law and the Applicant's right to negotiate reasonable fees, per these clear legal authorities, implemented in the usual course via GEN-3.

Collectively, these legal authorities lead to one simple conclusion: the Commission should pursue an MOU or other similar cost reimbursement agreement with the DSOD, if the Commission seeks DSOD's expertise. Conditions WATER-5 and WATER-6 are not required to demonstrate LORS compliance, and they do not mitigate any potentially significant environmental effects. Because they are not required for LORS or CEQA compliance, Conditions WATER-5 and WATER-6 are unnecessary. There are no legal or regulatory "gaps" to be filled by these Conditions. Consequently, Conditions WATER-5 and WATER-6 should be deleted in their entirety.

V. VISUAL RESOURCES: WITH THE IMPLEMENTATION OF PROPOSED CONDITIONS OF CERTIFICATION, POTENTIAL IMPACTS TO VISUAL RESOURCES ARE LESS THAN SIGNIFICANT.

Visual resources refer to the natural and cultural landscape features surrounding the Project, as well as their qualities and contribution to landscape character.⁴⁵ Natural landscape features

⁴⁴ Pub. Resources Code § 25532; 20 C.C.R. § 1770.

⁴⁵ Ex. 1032, p. 5.13-1.

include landforms, water features, and vegetation.⁴⁶ In evaluating whether a project will have a significant effect on the environment, the CEQA Guidelines sets forth a series of four questions relating to visual resources that examines whether a project would: (a) have a substantial adverse effect on a scenic vista; (b) substantially damage scenic resources; (c) in non-urbanized areas, substantially degrade the existing visual character or quality of public views of the site and its surrounding; and (d) create a new source of substantial light or glare which would adversely affect day or nighttime views in the area.⁴⁷

Both CEC Staff and the Applicant are in agreement that the WRESC will not have a substantial adverse effect on a scenic vista⁴⁸ and will not substantially damage scenic resources.⁴⁹ Both CEC Staff and the Applicant are in agreement that with the proposed conditions of certification, the WRESC will not create a new source of substantial light or glare which would adversely affect day or nighttime views in the area.⁵⁰ Further, CEC Staff and the Applicant both agree with the proposed Conditions of Certifications, VIS-1, VIS-2, and VIS-3.⁵¹ Thus, the sole area of disagreement between CEC Staff and the Applicant relates to whether the WRESC will substantially degrade the existing visual character or quality of public views of the site and its surroundings. As demonstrated below, by failing to account for potential changes to the viewer experience, CEC Staff incorrectly concludes that the WRESC will have a significant unmitigable impact to visual resources.

A. Though Largely In Accord, the Analyses of the Applicant and CEC Staff Diverge Due to the Applicant's Proper Emphasis on The Potential Change in Viewer Experience.

The findings of the FSA and the Applicant diverge due to differing methodologies.⁵² The FSA's analysis, while consistent with Staff's own methodology, does not take into consideration the interaction of predicted visual changes from the Project *within the context of viewer's experience* at KOPs in determining the significance of visual effects. Specifically, the FSA states: "Staff does not evaluate viewer sensitivity—that is, the sensitivity of the viewer to the perceive change to the condition of the existing physical environment caused by the proposed project (subjective psychological feelings)."⁵³

Instead, the FSA places great weight on "Visual Absorption Capability" or the "Existing landscape capability to absorb the physical change by the proposed project without alteration to its landscape."⁵⁴ This emphasis means, for example, that a new project in an existing industrial setting will always score lower potential impacts, because the existing setting can "absorb" the new facilities – even where that new facility in an existing industrial setting may be seen by many, varied viewers. Absorption is a bias against uses other than those in a highly urbanized or industrial setting. In other words, CEC Staff's unpublished methodology focuses on the ability

⁴⁶ Ex. 1032, p. 5.13-1.

⁴⁷ 14 C.C.R. Appendix G, I.(a)-(d).

⁴⁸ Ex. 2000, pp. 5.15-11 through 5.15-13; Ex. 1032, p. 5.13-9.

⁴⁹ Ex. 2000, pp. 5.15-13 through 5.15-15; Ex. 1032, p. 5.13-9.

⁵⁰ Ex. 2000, pp. 5.15-41 through 5.15-46; Exs. 1032, p. 5.13-9, 1233, pp. 77-79.

⁵¹ Ex. 1233, p. 99.

⁵² Ex. 1032, p. 99.

⁵³ Ex. 2000, p. 5.15-54.

⁵⁴ Ex. 2000, p. 5.15-17.

of the environment to “accept” new forms and features in the visual landscape, irrespective of potential change to viewer experience. This approach is contrary to many established visual assessment methods, which determine the level of visual impact by combining factors related to the sensitivity of viewers to visual change with a predicted measure of the degree of visual change.⁵⁵

In marked contrast, the Applicant’s visual assessment reasonably considered not just visual change resulting from the visual properties of the Project, but how the visual contrast of the Project components interacts with a viewer’s experience at identified KOP locations.⁵⁶ Specifically, the Applicant’s methodology examines not just to anticipated visual change resulting from the visual properties of the Project, but how the visual contrast of the Project may interact with a viewer’s experience.⁵⁷ The viewers are predominantly automobile drivers, who by the nature of their focused activities are less sensitive viewers.⁵⁸ In this case, the project is located between a major Highway (Highway 14), a major local roadways (the Sierra Highway, the former main highway), an active railroad line, and a new steel mill less than one mile away.⁵⁹ Given the existing environment and low sensitivity of viewers, the WRESC will not substantially degrade the existing visual character or quality of public views of the site and its surrounding, and will have a less than significant impact on visual resources with the implementation of the proposed conditions of certification.

B. Proposed Condition of Certification VIS-1 Effectively Mitigates Potential Impacts to Visual Resources to Less Than Significant.

The FSA incorrectly concludes that the potential impacts to visual resources are unmitigable.⁶⁰ In response to the PSA, which identified color as a key element of visual contrast in the visual assessment, the Applicant provided several visual simulations demonstrating the effectiveness of surface treatments in concert with the other measures identified in VIS-1 to mitigate potential visual impacts to less than significant.⁶¹

As a result, as shown in Applicant’s photo simulations, the Project can be effectively treated with exterior coatings, colors, or finishes to mitigate the degrading of the existing visual character or quality of the public view by blending with the general hues of the natural physical environment of the Project site.⁶² In summary, the simulations demonstrate that with the use of exterior surface coatings, colors, finishes, materials, and a gloss level that minimize contrast with the existing physical landscape, in combination with the measures provided for in proposed condition of certification VIS-1, potential visual impacts are less than significant.⁶³

⁵⁵ Ex. 1032, p. 5.13-9.

⁵⁶ Ex. 1233, p. 97.

⁵⁷ Ex. 1233, p. 97.

⁵⁸ Ex. 1032, pp. 5.13-14 through 5.13-17.

⁵⁹ Ex. 1233, p. 4.

⁶⁰ Ex. 2000, p. 1-18.

⁶¹ Ex. 1233, p. 98; Ex. 1155, Appendix C.

⁶² Ex. 1233, p. 98-99.

⁶³ Ex. 1233, p. 98.

C. Staff Found a Potentially Significant Effect from Only Three of the Applicant's Seven KOPs, at Sites With Few Viewers and No Significant Viewsheds

The Applicant analyzed seven key observation point (KOPs) presented in Appendix 5.13A and found the potential impacts to be less than significant at all seven.⁶⁴ In contrast, the FSA analyzed *a subset of four of the seven KOPs*, finding a potentially significant effect from a minority of those seven, only three of the seven KOPs in the record.⁶⁵ While partially obscured by the omission of three KOPs from the FSA, the fact remains that the Staff found a less than significant effect from a majority of the applicant's KOPs, four of the seven KOPs. In contrast, the Applicant found less than significant effects from all seven KOPs, as mitigated.⁶⁶

The three Staff-identified significant impact KOPs are not visible to sensitive viewers. Staff KOP 2 (State Highway 14, Dawn Road Off-ramp East) is from the elevated Highway 14 Off ramp, with viewers being predominately drivers and passengers, less sensitive viewers engaged in focused activities.⁶⁷ Staff KOP 3 (10th Street West, Parallel To The Project Site) is a dirt "unimproved road", accessible only to all-terrain vehicles.⁶⁸ Staff KOP 4 (Rosamond Boulevard West, Near LADWP Easement) is of a single gen-tie pole in an area already characterized by electrical infrastructure that will be available for high speed glimpses by vehicle drivers and passengers.⁶⁹

At the closest KOP to the site, Staff KOP 1 (State Highway 14, South of the Dawn Road Highway Overpass), the Staff found the potential impact to be less than significant. This finding of less than significant effects is consistent with the Applicant's findings, and no doubt reflects a lack of viewer sensitivity and the project's location between Highway 14, the Sierra Highway, and the active railroad line, near the Mojave Micro Mill steel mill site. Given the lack of viewer sensitivity and the lack of access at these three KOPs, 3 of 7, the potential Visual Resources impacts are less than significant.

The evidence provided by the Applicant demonstrates that the Project would not substantially degrade the existing visual character or quality of the landscape setting for *viewers* at all seven KOPs and that Project effects on the existing visual character of the site and its surroundings for viewers would be less than significant with VIS-1's mitigation.⁷⁰

VI. OVERRIDE: BECAUSE VIS-1'S MEASURES MITIGATE THE POTENTIAL IMPACTS TO A LEVEL OF LESS THAN SIGNIFICANT, A STATEMENT OF OVERRIDING CONSIDERATIONS IS NOT REQUIRED.

CEQA requires a balancing of "economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project against its

⁶⁴ Ex. 1032, Section 5.13; Ex. 1037, Appendix 5.13A; Ex. 1155, pp. 20, Appendix C; Ex. 1233, pp. 94-98.

⁶⁵ Ex. 2000, pp. 5.15-16 to 5.15-21.

⁶⁶ Ex. 1233, pp. 94-99.

⁶⁷ Ex. 2000, p. 5.15-19.

⁶⁸ Ex. 2000, p. 5.15-20.

⁶⁹ Ex. 2000, pp. 5.15-20 through 21.

⁷⁰ See, Ex. 1155, Appendix C.

unavoidable environmental risks when determining whether to approve the project.”⁷¹ Based on the evidence in this proceeding, the Commission should find that the potential visual resources impacts from the WRESC are less than significant with the implementation of the proposed visual resources conditions of certification. However, should the Committee determine that the potential visual resources impacts from the WRESC are significant and avoidable, the Commission should adopt a statement of overriding considerations finding that “specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment.”⁷²

A. Specific Overriding Economic, Legal, Social, Technological, and Other Benefits, Including Region-Wide and Statewide Environmental Benefits, Identified in the Record Support a Statement of Overriding Considerations

Both Staff and the Applicant agree that the record in this proceeding supports a Statement of Overriding Considerations.⁷³ The benefits of Willow Rock clearly outweigh the potential effects. To begin, WRESC is located strategically to facilitate the further integration of variable renewable resources, including those located in the Tehachapi Renewable Resource Area, which will help avoid curtailment of variable renewable energy resources through energy storage. To meet California and regional electric grid reliability needs, Willow Rock will help minimize expensive curtailment and/or out-of-state export of intermittent renewable energy generation, and maximize the net utilization of renewables through off-peak energy storage, and on-peak energy generation.⁷⁴ Willow Rock will provide 500 MW of quick-starting, flexible, controllable generation with the ability to ramp up and down through a wide range of electrical output to facilitate the integration of renewable energy into the electrical grid in satisfaction of California’s Renewable Portfolio Standard and climate objectives, by displacing older and less efficient generation.⁷⁵

Willow Rock will use A-CAES technology to provide the following benefits: dispatchable long-duration storage and energy delivery for a minimum of 8 hours; fossil fuel and greenhouse gas emissions-free operation; flexible capacity with minimal response time; long-duration storage to avoid curtailment through energy storage and to facilitate the further integration of renewable resources; peaking energy for local contingencies; voltage support and primary frequency response, including synchronous power output to support grid resiliency without the need for fossil fuel; superior transient response attributes, including synchronous power output; and superior round-trip thermodynamic efficiency.⁷⁶ In terms of reliability and advancement of the State’s climate policies, the Project’s A-CAES technology provides the following beneficial attributes that are important in reliable grid operations: GHG emissions-free spinning reserve; flexible capacity with minimal start time; peaking energy for local contingencies; voltage support and primary frequency response; and superior transient response attributes.⁷⁷

⁷¹ 14 C.C.R. § 15093.

⁷² Pub. Resources Code § 21081(b); 14 C.C.R. § 15093.

⁷³ Ex 2000, pp. 1-18 to 1-19; 7.1 to 7.4.

⁷⁴ Ex. 1233, p. 8; 8/21/25 RT 231:22-25, 323:1-4.

⁷⁵ Ex. 1233, p. 7.

⁷⁶ Ex. 1233, p. 8.

⁷⁷ Ex. 1233, pp. 8-9; 8/21/25 RT 232:5-16.

Energy storage is the key to California’s energy future. Long Duration Energy Storage (“LDES”) like Willow Rock plays a very important role in that future. Current utility-scale lithium-ion battery storage projects typically cannot replicate many of these critical grid reliability attributes. Additionally, the project will significantly expand California’s energy storage capacity as well as diversify our storage technology portfolio.⁷⁸

Willow Rock is sited on compatibly zoned parcels in a sparsely populated area. There are no schools, parks, recreational areas, or other sensitive land uses immediately adjacent to the WRESC Site. The project is consistent with the applicable local land uses and land use plans. Willow Rock will provide rapid-response delivery of energy and synchronous condenser voltage support services that are essential to providing reliability support and stability to the grid and integrating intermittent renewable energy sources into the electrical grid.⁷⁹

Willow Rock will provide approximately 275 to 750 construction jobs (average to peak) with an expected construction payroll of approximately \$400-450 million over the 60-month construction and commissioning period.⁸⁰ The project will require over two million person-hours of construction labor. Willow Rock will provide approximately 40 full time jobs for operation of the facility.⁸¹

The Project will pay sales tax and local taxes, and unlike renewable technologies like solar, the Willow Rock Project is not exempt from local property tax obligations.⁸² In terms of local benefits to Kern County and local schools, with its sizeable capital cost (estimated at approximately \$1.5 billion), Willow Rock will generate significant income in the form of annual property tax payments, and therefore will provide a robust boost to Kern County’s economy and local schools.⁸³ In addition to the direct employment benefits, Willow Rock will require and use the services of local or regional firms for major maintenance and overhauls, plant supplies, and other support services throughout the life of the Willow Rock facility. The project will not significantly impact local housing, educational, or emergency response resources.⁸⁴

In sum, the Willow Rock Project’s economic, legal, social, technological, and other benefits, including region-wide and statewide environmental benefits, identified in the record decidedly outweigh the potential, subjective Visual Resources impacts and thus support a Statement of Overriding Considerations out of an abundance of caution.

B. Proposed Findings of Fact

1. Finding of Fact 1: No Significant Visual Impacts

The potential Visual Resources impacts are avoided by project design features and minimized to a level of less than significant through Conditions of Certification VIS-1 through VIS-3.

⁷⁸ Ex. 1233, p. 9.

⁷⁹ Ex. 1233, p. 9.

⁸⁰ 8/21/25 RT 232:17-25.

⁸¹ 8/21/25 RT 232:23-24.

⁸² 8/21/25 RT 233:3-5.

⁸³ Ex. 1233, p. 9; 8/21/25 RT 233:6-9.

⁸⁴ Ex. 1233, p. 9; 8/21/25 RT 233:1-13.

2. Finding of Fact 2: Good Practice Dictates a Finding of Override

As a matter of good practice and to ensure CEQA defensibility, the Commission should find both (1) a statement of overriding considerations is not required because the potential impacts are less than significant, and (2) notwithstanding this finding of no significant effects, the Commission also finds that it would have approved the Project with a Statement of Overriding Considerations if, hypothetically, the impacts were considered significant.

3. Finding of Fact 3: Specific Benefits of the Project Support a Statement of Overriding Considerations

Notwithstanding the finding that the potential Visual Resources impacts are less than significant, the Commission finds that it has balanced the applicable economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of the proposed WRESC Project against its unavoidable environmental risks and found that those benefits outweigh the unavoidable adverse environmental effects and also out of an abundance of caution approves the Project with a Statement of Overriding Considerations.

VII. CONCLUSION

As set forth above, CEC Staff and the Applicant are largely aligned in the conclusion that with mitigation, the WRESC will have less than significant impacts to the environment and can be constructed and operated in compliance with all applicable LORS. With respect to the areas of disagreement, the evidence in the record demonstrates that with mitigation, the WRESC will have less than significant impacts to Visual Resources given the low sensitivity of viewers and less than significant change in viewer experience. The evidence in the record also demonstrates that the Project site has low habitat values for the Burrowing Owl and Crotch's Bumble Bee, that temporary impacts should be treated differently from permanent impacts given the totality of the circumstances, and that a 2:1 mitigation ratio is appropriate for permanent impacts, and 1:1 for temporary. Lastly, given the Commission's exclusive siting jurisdiction over the WRESC, the project should not undergo a separate application process with DSOD. Instead, the Commission should work with DSOD to incorporate the agency into the post-certification compliance activities, with DSOD acting in a similar role as the Delegate Chief Building Official.

For these reasons, and the specific economic, legal, social, technological, and other benefits that will result from the WRESC, the Commission should certify the project.

Dated: September 8, 2025

Respectfully Submitted,

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