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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 REPLY BRIEF

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I. INTRODUCTION

In accordance with the *Hearing Officer Memo After Evidentiary Hearing*¹, GEM-A CAES LLC (the “Applicant”) submits this reply brief on behalf of the Willow Rock Energy Storage Center (“WRESC”) project.

This brief focuses on the issues raised in the post-evidentiary hearing opening briefs filed by the Center for Biological Diversity (“CBD”)² and California Energy Commission (“CEC”) Staff.³ As demonstrated by the extensive evidentiary record, a complete Western Joshua Tree census has been conducted for the project site, including preferred generation interconnection tie (“gen-tie”) line.

II. WITH THE INCORPORATION OF BIO-12, AS PROPOSED BY THE APPLICANT, THE PROJECT REMAINS CONSISTENT WITH THE WESTERN JOSHUA TREE CONSERVATION ACT .

CBD’s brief is based upon the incorrect premise that a decision by the CEC to certify the WRESC constitutes a blanket take authorization of Western Joshua Tree. This is incorrect. As acknowledged by CBD and CEC Staff, the CEC’s process differs from a traditional local agency permitting process in that the Incidental Take provisions are incorporated into the CEC’s licensing process. However, CBD errs in two primary aspects by asserting that certification by the CEC would not be consistent with the Western Joshua Tree Conservation Act.

First, CBD asserts that “absent a complete census, the CEC would authorize take at the time of certification in areas where the number and distribution of western Joshua trees remain unknown.”⁴ This assertion is incorrect. At the time of certification, the Applicant cannot immediately commence activities that may result in “take” of the Western Joshua Tree. Instead, both CEC Staff and the Applicant have proposed condition of certification BIO-12, which would mitigate potential impacts on the Western Joshua Tree and incorporates the take permitting provisions of the Western Joshua Tree Conservation Act. While “take” is not defined by the Western Joshua Tree Conservation Act, actions requiring a permit under the Act include removal and trimming of both dead and live Western Joshua Trees.⁵ Under Condition of Certification BIO-12, and several other biological resources conditions of certification, there are conditions precedent that must be satisfied before the Applicant can commence site mobilization, let alone “take” of a Western Joshua Tree.⁶ These include provision for submission of a Western Joshua Tree Relocation Plan, updated census information, and payment of mitigation fees. As proposed in the Final Staff Assessment, Condition of Certification BIO-12 specifically states that “No impacts to WJT shall be authorized until confirmation by CDFW that the mitigation fee has been

¹ TN: 265796.

² TN: 265921.

³ TN: 265879.

⁴ CBD Opening Brief, p. 4.

⁵ See, for example, Cal. Fish & Game Code § 1927.4.

⁶ See, Ex. 2003.

received.”⁷ The provisions of proposed BIO-12 ensure that any “take” of the Western Joshua Tree will be authorized in accordance with the provisions of the Western Joshua Tree Conservation Act.

Second, CBD asserts that the “record confirms that a complete census has not been conducted across the entire Willow Rock Project site, which includes the gen-tie alignments.”⁸ This is incorrect. Complete census surveys were conducted for Western Joshua tree across the project area, including the preferred gen-tie alignment, in 2023, April of 2024, and verified again in December of 2024.⁹ Areas with no right-of-way entry were necessarily excluded from the survey, as described in the January 2025 Supplemental Joshua Tree Census Report.¹⁰ However, these limited areas within one segment of one alternative gen-tie alignment would be spanned during construction to avoid impact as feasible, in the highly unlikely event that an alternative alignment were to be used.¹¹ Significantly, all areas likely to be potentially impacted, those along the preferred gen-tie line have been surveyed for Western Joshua Tree.¹² The surveys conducted and BIO-12 provide assurance all potentially impacted areas have been surveyed and will be surveyed, consistent with the Act and the Commission’s final decision. The plain language of Fish and Game Code section 1927.3 requires only that “a census of all western Joshua trees on the project site” be submitted prior to the authorization of take. The Western Joshua Tree Conservation Act does not require a census of trees in buffer areas, or that areas without access rights be surveyed, nor does the Act restrict or limit the Commission authority to certify the project, as suggested by CBD.¹³ As described in the Applicant’s Rebuttal Testimony, “any Western Joshua tree that will be potentially subject to take as a result of the WRESC has already been included in the complete Western Joshua tree census.”¹⁴ Further, BIO-12 contains provisions requiring surveys in any areas that were previously surveyed, or surveyed more than 12 months prior to ground disturbance in the area. Consistent with these principles, the Applicant’s markup of BIO-12 is set forth in Attachment A

III. THE WARREN ALQUIST ACT AUTHORIZES THE CEC TO APPROVE A PROJECT IF EVEN IF, HYPOTHETICALLY, THE COMMISSION WERE TO FIND ANY POTENTIAL LORS INCONSISTENCY.

Notwithstanding the substantial evidence in the record confirming that the WRESC complies with applicable laws, ordinances, regulations, and standards (“LORS”), CBD asserts that the Commission cannot certify the WRESC in conformance with the Western Joshua Conservation Act without the results of surveys in an area where the Applicant was not granted access by

⁷ Ex. 2000, p. 5.2-291.

⁸ CBD Opening Brief, p. 3.

⁹ 8/27/25 RT 95:16-25, 96:1-2, 144:1-25, 145:1-25, 146:1-6; See also, Exs. 1083, 1047, 1048, 1110, 1125, 1142, 1185, 1212.

¹⁰ Ex. 1234. P. 5.

¹¹ 8/27/25 RT 95:16-25, 96:1-2.

¹² Ex. 1234, p. 5.

¹³ The Applicant has reviewed CEC Staff’s proposed changes to BIO-12, and has proposed clarifications to ensure that there is no requirement to survey where access has not been granted by property owners.

¹⁴ Ex. 1232, p. 5.

property owners. The Applicant agrees with CEC Staff that the WRESC is consistent with Section 1927.3 of the Fish and Game Code with the incorporation of Condition of Certification BIO-12¹⁵, and that the record demonstrates that any Western Joshua tree that will be potentially subject to take as a result of the WRESC has already been included in the complete Western Joshua tree census.¹⁶ However, out of an abundance of caution, the Applicant provides the following summary of the Commission’s authority pursuant to Public Resources Code section 25525 and substantial evidence supporting the conclusion that if, hypothetically, the Commission did find a non-compliance with applicable LORS, that the WRESC should be approved notwithstanding any alleged noncompliance.

Public Resources Code section 25525 provides that the Commission is authorized to certify a project that does not “conform with any applicable state, local, or regional standards, ordinances, or laws” if the Commission determines that the facility is required for public convenience and necessity and that there are not more prudent and feasible means of achieving public convenience and necessity. In making this determination, the Commission must consider the entire record of the proceeding, “including, but not limited to, the impacts of the facility on the environment, consumer benefits, and electric system reliability.”¹⁷ The record clearly demonstrates that the WRESC is required for public convenience and necessity and that there are not more prudent and feasible means of achieving public convenience and necessity.

While the Warren Alquist Act does not define “public convenience and necessity”, the California Supreme Court has stated “that the word ‘necessity’ must be taken in a relative sense” and determined by reference to the context and the purposes of the statute in which it is found.¹⁸ In enacting the Warren Alquist Act, the Legislature specifically found and declared “electrical energy is essential to the health, safety and welfare of the people of this state and to the state economy, and that it is the responsibility of state government to ensure that a reliable supply of electrical energy is maintained at a level consistent with the need for such energy for protection of public health and safety, for promotion of the general welfare, and for environmental quality protection.”¹⁹ The Legislature further found and declared that, “there is a pressing need to accelerate research and development into alternative sources of energy and into improved technology of design and siting of power facilities.”²⁰

When viewed in this context, substantial evidence in the record demonstrates that the WRESC is necessary for public convenience and necessity as the project will facility a reliable supply of electricity and accelerate development of alternative sources of energy and improved technology of power facilities. WRESC will utilize Hydrostor’s patented advanced compressed air energy storage technology (“A-CAES”).²¹ The A-CAES design utilizes proven generating technologies

¹⁵ CEC Staff Opening Brief, pp. 2-3.

¹⁶ Ex. 1232, p. 5.

¹⁷ Pub. Resources Code § 25525.

¹⁸ San Diego & Coronado Ferry v. Railroad Commission (1930) 210 Cal. 504, 511-512.

¹⁹ Pub. Resources Code § 25001.

²⁰ Pub. Resources Code § 25004.

²¹ 8/21/25 RT 236:22-25.

in innovative combinations to supply safe and reliable long-duration energy storage.²² WRESC will facilitate further integration of variable renewable resources located in the Tehachapi Renewable Resource Area, which will help avoid curtailment of variable renewable energy resources and meet California and regional electric grid reliability needs.²³ WRESC will also have significant consumer benefits, and is estimated to generate approximately \$18.45 million in property taxes annually, and will create a significant number of construction jobs (estimated 271 (average), 751 (peak)).²⁴

Substantial evidence in the record also demonstrates that there are not more prudent and feasible means of achieving the same public convenience and necessity as the WRESC.²⁵ Alternative technologies were considered and appropriately dismissed by CEC Staff and the Applicant due to infeasibility and the inability to achieve the basic project objectives of the WRESC.²⁶ Based on the foregoing, substantial evidence in the record supports the conclusion that the Commission can certify the WRESC notwithstanding any alleged nonconformance with applicable LORS as the WRESC is required for public convenience and necessity and there are not more prudent and feasible means of achieving this public convenience and necessity than the WRESC.

IV. WHILE THE APPLICANT AGREES WITH CEC STAFF'S POSITION ON LIMITED MITIGATION FOR TRANSMISSION LINES IN ROAD RIGHTS-OF-WAY, BIO-14 MUST STILL BE REVISED TO REFLECT THE APPROPRIATE MITIGATION RATIOS AND THE LIMITATION OF MITIGATION OBLIGATIONS TO THE LANDS ACTUALLY IMPACTED.

The Applicant agrees with CEC Staff's position adopting the recommendations of Kern County's Planning Director that the road rights-of-way do not warrant habitat mitigation at the FSA's proposed mitigation ratios.²⁷ However, the CEC Staff's proposed changes still utilize 843 acres as a proposed mitigation, continuing to apply a 3:1 mitigation ratio that treats temporary impacts as permanent without any citation to applicable law or precedent, among other infirmities.

While the newly proposed changes do incorporate some flexibility, there is still language in CEC Staff's proposed BIO-14 that remains rigid and inconsistent with applicable law and precedent in the Kern County Region.²⁸ Accordingly, the Applicant proposes revisions to BIO-14 that reflect the sound principles set forth in the hearing record: mitigation obligations should be based on actual impacts²⁹; a 2:1 mitigation ratio for permanent impacts and a 1:1 ratio for temporary

²² 8/21/25 RT 237:1-19.

²³ Ex. 1033, p. 1-11.

²⁴ Ex. 2000, 7-1.

²⁵ See also, the Applicant's Opening discussing WRESC project benefits. (Applicant's OB, pp. 10-13.) While the Section 25525 approval and the Statement of Overriding Considerations are separate legal constructs, the project benefits of the WRESC set forth in the record of this proceeding are, as a factual matter, one basis in the record to support both such approvals.

²⁶ Ex. 2000, p. 8-1; Ex. 1032, Section 6.0, pp. 6-24 to 6-25.

²⁷ CEC Staff Opening Brief, p. 3; see also Kern County at RT 173-179: See also RT 175 L:3-4: "I think that requiring 3-to-1 for that is a huge 3 precedence, and it should be 1-to-1."

²⁸ Applicant's Opening Brief, Section III.D, pp. 5-6; See also Sections III.B and C, pp. 3-5.

²⁹ Applicant's Opening Brief, Section II, pp. 1-2.

impacts for both the candidate CESA species, the burrowing owl and the Crotch's bumble bee³⁰; mitigation ratios that are consistent with both applicable law and Kern County regional precedent³¹; and an acknowledgement that the Applicant's proposed mitigation is more protective of these candidate species than the mitigation imposed on other, similarly situated projects in the region and the State.³²

The Applicant's proposed BIO-14 which embodies these important legal and policy issues, is attached hereto in Attachment A.³³ The Applicant's proposed BIO-14 places the WRESC on equal footing with other, similarly-situated projects, advancing the important protections of Due Process and Equal Protection under California law.³⁴

V. CONCLUSION

In sum, the Commission should certify the WRESC. If it determines necessary, substantial evidence in the record demonstrates that the WRESC can be certified notwithstanding any alleged unmitigable impacts to visual resources or non-conformance with the census requirement in the Western Joshua Tree Conservation Act. WRESC is required for the public convenience and necessity and 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 and, if deemed necessary by the Committee, a Section 25525 LORS override approval hybrid approach using a combination of both mitigation bank credits and purchased (or donated) mitigation land, out of an abundance of caution.

Dated: September 17, 2025

Respectfully Submitted,

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³⁰ Applicant's Opening Brief, Sections III.B and C, pp. 2-5.

³¹ Applicant's Opening Brief, Section III.D, pp. 5-6.

³² *Id.*

³³ The ordered fifteen page limit for this Reply Brief precludes the attachment of a redline comparing the Applicant's language for BIO-14 to Staff's.

³⁴ California Constitution, Cal. Const. art. I, § 7; *Hensler v. City of Glendale* (1994) 8 Cal.4th 1; *Nollan v. California Coastal Commission* (1987) and *Dolan v. City of Tigard* (1994).

ATTACHMENT A

BIO-12

Note: The Applicant proposes the following clarifying changes to Condition of Certification BIO-12, as proposed in Exhibit 2003. The double underlined language reflect CEC Staff's proposed changes to FSA language. The Applicant's further changes are shown in single underlined and highlighted font.

BIO-12 Western Joshua Tree Avoidance, Minimization, and Mitigation Measures. To avoid, minimize, and mitigate impacts to western Joshua tree (WJT), the project owner shall ensure the following are implemented:

1. Western Joshua Tree Census, Relocation Plan, and Conservation Fund Fees. The project owner shall submit an updated Western Joshua Tree Census and Western Joshua Tree Relocation Plan to the CPM for review and approval, and to CDFW for review and comment, prior to any site mobilization or ground-disturbing activities within 50 feet of any WJT. The updated census shall confirm the location of previously mapped WJTs, survey the portions of the project area that were not previously surveyed by the project owner due to site access constraints if site access is available, and incorporate any new WJT stems or trunks that have arisen since completion of the prior surveys. The updated census shall include all WJT within the project area and a 50-foot buffer around the project area, including but not limited to, the generation tie-line, new access roads, laydown areas, staging areas, and other facilities. Additionally, the project owner shall update the Western Joshua Tree Relocation Plan if necessary to account for any newly and any trees no longer living identified or previously unmapped WJTs. The Western Joshua Tree Relocation Plan shall include, at a minimum, the following:***

h. ~~In addition, the project owner shall conduct an updated Joshua Tree census prior to site mobilization for any areas that have not been disturbed such as the generation tie line, new access roads, laydown, staging, or other project components.~~ In addition, to submitting an updated Western Joshua Tree Census prior to site mobilization or ground-disturbing activities within 50 feet of any WJT as specified in BIO-12, Item 1, the project owner shall conduct an updated Western Joshua Tree census prior to site mobilization for each phase of construction in any areas that were surveyed more than 12 months ago but have remained undisturbed, as confirmed in consultation with CDFW. This requirement applies to all project components that will be disturbed, including, but not limited to, the generation tie line, new access roads, laydown areas, staging areas, and other facilities. The project owner shall update the Western Joshua Tree Relocation Plan to account for any newly identified trees and any trees no longer living and provide this prior to site mobilization for each phase of the project. The survey methods and schedule shall be included in the Western Joshua Tree Relocation Plan.

* * *

5. Recurring Assessment: The project owner shall conduct a Recurring Assessment of the project site to determine whether any new WJT individuals have emerged. The Recurring Assessments shall begin six months after the completion of ground-disturbing

activities for each phase of project construction and be repeated annually for the duration of construction activities following the initial assessment, then every five years for the life of the project for the off-site gen-tie, unless approved by the CPM. If a new WJT is found or if and any trees are no longer living, the project owner shall identify such trees and for the newly found living trees prepare and submit a Notification of New Stem or Trunk and submit it to the CPM before conducting project activities that will impact it. The project owner shall submit the results of the Recurring Assessment as part of Annual Status Report and during operation the results shall be submitted as part of the Annual Compliance Report.

BIO-14

Note: The Applicant proposes the following revised Condition BIO-14. The attached is based on, but not a redline of, Staff's proposal in its Reply Brief.

BIO-14 Habitat Management Land Acquisition for Crotch's Bumble Bee and Western Burrowing Owl

To mitigate for impacts to Crotch's bumble bee and western burrowing owl the project owner shall fulfill the following requirements. The project owner shall mitigate for impacts to Crotch's bumble bee and western burrowing owl habitat as follows.³⁵

	Permanent Acres Mitigated at 2:1	Temporary Acres Mitigated at 1:1	Estimated Mitigation Acreage
Without Berm Option	88.8 @ 2:1 = 177.6 acres	122.2 @ 1:1	299.8 acres
With Berm Option	163.5 @ 2:1 = 327 acres	117.3 @ 1:1	444.3 acres

- a) **Election of With Or Without Berm Option:** Within 18 months from start of site mobilization, the project owner shall notify the CPM whether it intends to build the Without Berm Option or the With Berm Option.
- b) **Mitigation Options:** The project owner shall mitigate for impacts to Crotch's bumble bee and western burrowing owl habitat as follows
 - i. **Credit Purchase:** Purchase credits for Crotch's bumble bee and western burrowing owl mitigation or conservation bank credits at a location approved in advance by the CPM, in coordination with CDFW based on the Mitigation Acreage described in the table above, as may be adjusted in accordance with subsections (e) and (f) below; or
 - ii. **Habitat Management Lands:** Provide for the acquisition, permanent protection, and management of the Mitigation Acreage, as may be adjusted in accordance with subsections (e) and (f) below, of Habitat Management (HM) lands pursuant to the Item 3 (Habitat Management Lands Acquisition and Protection) and the calculation and deposit of the management funds pursuant to Item 5 (Endowment Fund).

³⁵ Table 2.3, Applicant's Opening Testimony, Ex. 1233.

- iii. A combination of (i) and (ii), the Hybrid approach, in accordance with subsections (e) and (f) below.
- c) **Schedule for Acquisition of Project Mitigation Acreage.** The project owner shall purchase conservation bank credits or complete acquisition and funding for habitat mitigation lands before the start of construction based on the Mitigation Acreages described above.
- In lieu of the above, the project owner may choose to provide Security for some or all of the mitigation, with completion of the mitigation options to occur within 18 months from start of site mobilization. Should Project Owner elect to exercise the With Berm Option at any time during construction, Project Owner shall purchase conservation bank credits or complete acquisition and funding for habitat mitigation lands before the start of construction of the onsite berm based on the Mitigation Acreage described above for the Without Berm Option Supplement. Security will be provided as provided pursuant to the Security provisions below and based on the acreages described above.
- d) **Security Calculation Acreage:** for the purposes of calculating the Security, the acreages identified in the table above will be utilized.
- e) **Mitigation for Actual Impacts, Final Project Mitigation Acreage:** The Final Project Mitigation Acreage below for either the Without Berm or With Berm option elected to be constructed by the project owner will be adjusted for actual impacts to lands. Final Project Mitigation Acreage is estimated to be:
- **Without Berm:** Final Project Mitigation Acreage is an estimated 299.8 acres, subject adjustment up or down for acreages actually impacted.
 - **With Berm:** Final Project Mitigation Acreage is an estimated 444.3 acres, subject adjustment up or down for acreages actually impacted.
- f) **Hybrid Mitigation:** The project owner may elect to use a hybrid approach for the Final Project Mitigation Acreage, using a combination of both (1) mitigation bank or similar credits and (2) mitigation lands obtained and endowed per this Condition's requirements to satisfy the Final Project Mitigation Acreage.
- g) **Exclusion from Habitat Mitigation Lands:** Mitigation lands shall not be required for areas of the project site that are avoided and areas of the project site or transmission line construction that comprise roadway rights-of-way that support disturbed or developed habitat or are subject to routine vegetation management unless they have the potential to support sensitive plants or wildlife. The project owner shall submit detailed maps or other documentation identifying areas of permanent and temporary habitat loss, areas avoided, and areas exempt under this

condition for approval by the CPM, in consultation with CDFW. Maps and/or documentation shall be provided in a format acceptable to the CPM.

- h) **Reopening if Candidate Species Are Not Listed:** Both the Crotch's bumble bee and western burrowing owl are currently "candidate" species under CESA. If one or both of these candidate species are not ultimately listed as threatened or endangered by the California Fish and Wildlife Commission, then the project owner may seek to reopen the obligations in this Condition, first through a meet and confer with the CPM and CDFW, and at the project owner's election, through a post-Certification amendment thereafter.

VERIFICATION

1. **Cost Estimates.** For the purposes of determining the Security amount, it is estimated the cost for the CPM or its contractors to complete acquisition, protection, and perpetual management of the HM lands is as follows:
 - a. Land acquisition costs for HM lands identified in the Item 3 (Habitat Management Lands Acquisition and Protection) below, estimated at \$2,698.00/acre for Final Project Mitigation Acreage. The adjusted Security amount shall be determined by the CPM, in coordination with CDFW, based on the final acre amount calculated, as detailed above. Land acquisition costs are estimated using local fair market current value per acre for lands with habitat values meeting mitigation requirements.
 - b. All other costs are necessary to review and acquire the land in fee title and record a conservation easement for the Final Project Mitigation Acreage shall be paid by the project owner as described below in Item 3b. (Conservation Easement) estimated to be \$663/acre³⁶.
 - c. Start-up costs for HM lands, including initial site protection and enhancement costs as described in the Item 3f (Start-up Activities) for the Final Project Mitigation Acreage shall be paid by the project below, estimated at \$409/acre.³⁷
 - d. Interim management period funding as described in the Item 4 (Interim Management) (Initial and Capital)) below for the Final Project Mitigation Acreage shall be paid by the project owner,

³⁶ Calculated using Staff's dollar figures from Staff's Opening Brief (TN #: 265879): \$558,750 divided by 843 acres = \$662.81/acre

³⁷ \$344,549.00 divided by 843 acres = \$408.71/acre

estimated at \$554/acre³⁸.

- e. Long-term management funding as described in the Item 5 (Endowment Fund) below for the Final Project Mitigation Acreage shall be paid by the project owner, estimated at \$3,663/acre³⁹.
- f. Related transaction fees including but not limited to account set-up fees, administrative fees, title and documentation review and related title transactions, expenses incurred from other state agency reviews, and overhead related to transfer of HM lands to CDFW as described in the Item 10 (Reimburse CDFW), estimated at \$17/acre⁴⁰.
- g. All costs associated with the CPM engaging an outside contractor to complete the mitigation tasks, including but not limited to acquisition, protection, and perpetual funding and management of the HM lands and restoration of temporarily disturbed habitat. These costs include but are not limited to the cost of issuing a request for proposals, transaction costs, contract administration costs, and costs associated with monitoring the contractor's work estimated at \$54/acre.⁴¹

2. Mitigation Bank Credits. If the project owner elects to purchase credits to complete Crotch's bumble bee and western burrowing owl compensatory mitigation obligations, then project owner shall secure or purchase Final Project Mitigation Acreage. The adjusted Security amount shall be determined by the CPM, in coordination with CDFW, based on the Final Project Mitigation Acreage, of Covered Species credits from a mitigation or conservation bank approved in advance by the CPM prior to initiating project activities, or no later than 18 months from the start of site mobilization, if Security is provided pursuant to Item 11 (Security) below. Prior to the purchase of credits, the project owner shall obtain CPM approval to ensure the mitigation or conservation bank is appropriate to compensate for the impacts of the project. The project owner shall submit to the CPM a copy of the Bill of Sale(s) and Payment Receipt prior to initiating site mobilization or within 18 months from start of site mobilization, if Security is provided.

³⁸ \$466,799.00 divided by 843 acres = \$553.73/acre

³⁹ \$2,918,823.00 for 843 acres = \$3,662.42/acre

⁴⁰ \$13,600.00 for 843 acres = \$16.13/acre

⁴¹ \$45,479.00 for 843 acres = \$53.95/acre

3. **Habitat Management Lands Acquisition and Protection.**

* * *

***Note:** Staff's BIO-14 Sections 3-10 from the FSA (Ex. 2000; pp. 5.2-301 to 5.2-306) are acceptable so long as these provisions are part of the "Verification" language in this, the Applicant's revised BIO-14.*

* * *

11. **Security:** The project owner may proceed with project activities only after the project owner has ensured the funding (Security) to complete any activity required by the Item 3 (Habitat Management Land Acquisition and Protection) that has not been completed before project activities begin. Permittee shall provide Security as follows:

a. Security Amount. The Security shall be in ~~the amount of \$6,622,414.00 or in~~ the amount identified in the Item 1 (Cost Estimates) specific to the obligation that has not been completed. This amount is determined by the CPM and is based on cost estimates which are sufficient for the CEC or its contractors to complete land acquisition, property enhancement, startup costs, initial management, long-term management, and monitoring.

b. Security Form. * * *

***Note:** Staff's BIO-14 Sections 11.b-12 from the FSA (Ex. 2000; pp. 5.2-306 to 5.2-307) are acceptable so long as these provisions are part of the "Verification" language in this, the Applicant's revised BIO-14.*

* * *