

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION**DOCKET****07-AFC-1C**DATE 9/9/2009RECD. 9/15/2009**In the Matter of:****VICTORVILLE 2 HYBRID POWER
PROJECT****CITY OF VICTORVILLE****) Docket No. 07-AFC-1C****) Order No. 09-909-1****) ORDER APPROVING a Petition to Amend
) the Victorville 2 Hybrid Power Project**

On June 1, 2009, the city of Victorville, the owner/ operator of the Victorville 2 Hybrid Power Project, submitted a petition requesting to modify Condition of Certification BIO-11.

STAFF RECOMMENDATION

Energy Commission staff reviewed the petition and finds that it complies with the requirements of Title 20, Section 1769(a) of the California Code of Regulations and recommends approval of the city of Victorville's petition to modify the Victorville 2 Hybrid Power Project and amend Condition of Certification BIO-11.

ENERGY COMMISSION FINDINGS

Based on staff's analysis, the Energy Commission concludes that the changes proposed by the project owner and staff will not result in any significant impact to public health and safety, or the environment. The Energy Commission finds that:

- The petition meets all the filing criteria of Title 20, section 1769(a) of the California Code of Regulations concerning post-certification project modifications;
- The modification will not change the findings in the Energy Commission's Final Decision pursuant to Title 20, section 1755;
- The project will remain in compliance with all applicable laws, ordinances, regulations, and standards, subject to the provisions of Public Resources Code section 25525; and
- The change will be beneficial to the project owner, in that it will allow more time to secure funding and land acquisition.

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CONCLUSION AND ORDER

The California Energy Commission hereby adopts staff's recommendations and approves the following changes to the Commission Decision for the Victorville 2 Hybrid Power Project. New language is shown as **bold and underlined**, and deleted language is shown in ~~strikeout~~.

CONDITIONS OF CERTIFICATION

Desert Tortoise, Mohave Ground Squirrel, Burrowing Owl, and Creosote ring Compensation

BIO-11 To compensate for temporary and permanent impacts to desert tortoise, Mohave ground squirrel, burrowing owl, creosote rings, and their habitat, the project owner shall implement a habitat compensation strategy that guarantees the perpetual care of at least 1,315.5 acres of off-site habitat in the region of the proposed project. The selected compensation land must be suitable for all three special-status species and creosote rings as determined by the CPM through consultation with the Mohave ground squirrel technical advisory group, CDFG, other technical advisory groups recommended by CDFG, and USFWS.

The project owner shall attempt to acquire parcels that are as contiguous as possible in the same timeframe rather (i.e., avoid significantly separated parcels and "piecemeal" acquisition). This mitigation acreage shall not overlap with other previously planned compensation land requirements set aside for other city projects. As part of this condition, project owner shall:

1. Transfer fee title for the habitat compensation lands or a conservation easement over the habitat compensation lands to CDFG or to a third party non-profit habitat conservation organization (hereafter referred to as "third party"), such as DTPC, with experience in acquiring and protecting desert tortoise, Mohave ground squirrel, and burrowing owl habitat, approved by the CPM, in consultation with CDFG, under terms approved by the CPM. No third party shall be approved by the CPM until after the CPM has reviewed the third party's management plan. In the alternative, if approved by the CPM, the project owner may provide a check or a letter of credit to CDFG with a copy to the CPM in an amount deemed sufficient by the CPM, in consultation with CDFG, for acquisition of the habitat compensation lands identified in this condition of certification.
2. Provide to the third party or CDFG a check in the amount acceptable to the CPM, in consultation with CDFG, drawn from a banking institution located within California, for use as principal for a permanent, non-wasting capital endowment. The endowment amount shall be determined through a PAR analysis. Interest from this amount shall be available for the operation, management and protection of the habitat compensation lands, including reasonable administrative overhead, biological monitoring, improvements to

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carrying capacity, law enforcement measures, and any other action designed to protect or improve the habitat values of the habitat compensation lands. The endowment principal shall not be drawn upon unless such withdrawal is deemed necessary by the CPM, in consultation with CDFG, to ensure the continued viability of the species on the habitat compensation lands. The CPM, in consultation with CDFG, will decide how the funds will be spent. Monies received by CDFG pursuant to this provision shall be deposited in a special deposit account established pursuant to Fish and Game Code section 13014.

3. The project owner shall provide to the third party or CDFG funds for the initial protection and enhancement of the habitat compensation lands, if the PAR analysis indicates that such activities are needed for the specific parcels selected. The amount required for initial protection and enhancement needs to be approved by the CPM, in consultation with CDFG, once the project owner identifies the habitat compensation lands. Alternatively, project owner may fund CDFG's initial protection and enhancement of the lands by providing the funds required for the initial protection and enhancement as determined by the CPM, in consultation with CDFG, to CDFG.

The project owner may proceed with ground-disturbing project activities before completing all of the required mitigation (including acquisition of habitat compensation lands), monitoring, and reporting activities only if the project owner ensures funding to complete those activities by providing to the CPM and CDFG prior to commencing ground-disturbing activities ~~or within 12 months of publication of the Energy Commission Decision, whichever occurs first:~~ an irrevocable letter of credit, a pledged savings account, or another form of security ("Security") approved by the Office of the General Counsel at the Energy Commission, in consultation with CDFG, in the amount necessary to ensure that all funds required pursuant to 1 – 3 above are available. The Security shall allow the Energy Commission and CDFG, to draw on the principal sum if the CPM, in consultation with CDFG, determines that project owner has failed to comply with the conditions of certification.

Verification: Thirty (30) days prior to commencing ground-disturbing project activities, the project owner will provide proof of mitigation funding in the form of an irrevocable letter of credit, a pledged savings account, or another form of approved security.

No later than 12 months following the commencement of ground disturbance the project owner will provide written verification to the CPM that the habitat compensation purchase has been completed. At the same time, the project owner will provide a certified check for the endowment and for initial protection and restoration activities, if required, to the third party or CDFG and written verification to the CPM that the check has been provided. Within six months of the land purchase (as determined by the date on title), the project owner shall provide the CPM a management plan for the habitat compensation lands and associated funds for review and approval in consultation with CDFG. Within 90 days after completion of

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project construction, the project owner shall provide the CPM aerial photographs taken after construction and an analysis of the amount of any habitat disturbance additional to that identified in this staff assessment. The CPM will notify the project owner of any additional funds required to compensate for any additional habitat disturbances at the adjusted market value at the time of construction to acquire and manage habitat.

REFERENCES

VV2 (Victorville 2 Hybrid Power Project) 2007a – Application for Certification. Submitted to the California Energy Commission on February 28, 2007.

VV2 (Victorville 2 Hybrid Power Project) 2009a – Petition to Amend Final Commission Decision (07-AFC-1). Submitted to the California Energy Commission on

September 23, 2009.

IT IS SO ORDERED.

Date: September 9, 2009

STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION



KAREN DOUGLAS
Chairman