

DOCKETED	
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Project Title:	Potentia-Viridi Battery Energy Storage System
TN #:	269326
Document Title:	CDFW's Comments on the DEIR
Description:	Comment letter from California Department of Fish and Wildlife on the CEC's Staff Report/Draft Environmental Impact Report for the Potentia-Viridi Project
Filer:	Gabriele Quillman
Organization:	California Department of Fish and Wildlife
Submitter Role:	Public Agency
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STATE OF CALIFORNIA
DEPARTMENT OF FISH AND WILDLIFE

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March 25, 2026

Ann Crisp, Project Manager
California Energy Commission
715 P Street, MS 40
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Subject: Potentia-Viridi Battery Energy Storage System Project, Notice of Preparation of a Draft Environmental Impact Report, SCH No. 2025090227, Alameda County

Dear Ann Crisp:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a Draft Environmental Impact Report (EIR) from the California Energy Commission (CEC) for the Potentia-Viridi Battery Energy Storage System Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹ CDFW previously submitted comments to the CEC in a letter dated October 6, 2025 in response to the Notice of Preparation of the draft EIR.

CDFW is taking this opportunity to provide comments and recommendations regarding proposed Project activities that may affect fish and wildlife resources.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the state. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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The proposed Project would ordinarily require one or more discretionary approvals by CDFW because it may result in substantial adverse impacts to fish and wildlife resources such as Lake and Streambed Alteration (LSA) (Fish & G. Code, § 1602); and incidental take of species protected under the California Endangered Species Act (CESA). (*Id.*, § 2081, subds. (b)-(c).) CDFW would typically submit comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) However, because the Project proponent opted into the Assembly Bill (AB) 205 certification process, the CEC has exclusive jurisdiction over the proposed Project and is responsible for ensuring any certification of the proposed Project includes all conditions necessary to ensure compliance with the Fish and Game Code and its implementing regulations found in Title 14 of the California Code of Regulations. (Pub. Resources Code, §§ 25545.1, subd. (b), & 25545.5, subd. (a).) Thus, CDFW does not have a direct permitting role in the process that would ordinarily trigger a Responsible Agency role. CDFW instead submits these comments as a Trustee Agency under CEQA.

Pursuant to AB 205, the CEC and CDFW developed a coordination plan through a Memorandum of Understanding (MOU) to ensure that all potential impacts to fish, wildlife, and plant resources, and the habitats upon which they depend, including, but not limited to incidental take of species protected under CESA, are consistent with the Fish and Game Code and its implementing regulations found in Title 14 of the California Code of Regulations. (Pub. Resources Code, § 25545.5, subd. (a).) The MOU also ensures timely and effective consultation between the CEC and CDFW with respect to any proposed CEC findings and actions regarding potential impacts to fish, wildlife, and plant resources. (*Ibid.*) CDFW is thus also submitting these comments in its **consultation role** under AB 205 and the MOU.

PROJECT DESCRIPTION AND LOCATION SUMMARY

Proponent: Levy Alameda, LLC, a wholly owned subsidiary of Obra Maestra Renewables, LLC

Objective: The Project proposes to construct a 400-megawatt (MW) Battery Energy Storage System (BESS) facility on approximately 102 acres of mostly annual grasslands. Primary components of the proposed BESS facility include an Operations and Maintenance (O&M) building, a project substation, a 500-kilovolt overhead intertie transmission (gen-tie) line, and interconnection facilities within the Pacific Gas and Electric Company (PG&E) owned and operated Tesla Substation. The BESS would have an energy storage capacity of up to 3,200 MW-hours.

Location: The proposed Project is located at 17257 Patterson Pass Road, approximately 2.5 miles southwest of the City of Tracy in Alameda County; southwest of Interstate 580 and Interstate 205, within Assessor's Parcel Number (APN) 99B-7890-002-04; latitude 37.711434, longitude -121.573156. The Project's gen-tie line would run approximately 2,500 feet, extending southeast from the Project substation, crossing Patterson Pass Road, and then

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proceeding east to the Point of Interconnection at the Tesla Substation, approximately 500 feet east of the Project site. The gen-tie would be located on APNs 99B-7890-2-4, 99B-7890-2-6 and 99B-7885-12.

Timeframe: The Project is anticipated to be built over an approximately 15 to 18-month period from late 2026 through 2028.

Consultation with CDFW: CDFW appreciates the opportunity to have engaged with CEC staff and/or the Project proponent in numerous meetings, phone calls and other communications for the Project, including a pre-filing meeting on March 22, 2024, and meetings following CEC's notice to CDFW of receipt of the Opt-in Application on August 8, 2024. CDFW and CEC met frequently to discuss the Project's data requests until the application was deemed complete by the CEC on August 29, 2025. CDFW also participated in the public informational and scoping meeting on September 18, 2025 and the public meeting on the Staff Assessment for the proposed Project on March 2, 2026. CDFW provided recommended avoidance, minimization, and mitigation measures to the CEC for preparation of the draft EIR in October 2025 and provided a comment letter on the Notice of Preparation for the draft EIR on October 6, 2025. CDFW will continue to collaborate with, and provide support to, the CEC throughout the AB 205 certification process.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the CEC in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document.

COMMENT 1: Proposed Mitigation Ratios for Animal Species Protected under the California Endangered Species Act

The draft EIR states that the proposed mitigation ratio for 60.7 acres of permanent impacts and 6.7 acres of temporary impacts to habitat for Crotch's bumble bee (*Bombus crotchii*), California tiger salamander (*Ambystoma californiense*), western burrowing owl (*Athene cunicularia hypugaea*), and San Joaquin kit fox (*Vulpes macrotis mutica*) is 3:1 (pages 5.2-73, 5.2-79, 5.2-101 and 5.2-105, respectively and Condition of Certification [COC] BIO-26. However, the draft EIR also states that the Project will offset the total permanent impacts and temporary impacts to habitat for Crotch's bumble bee, western burrowing owl and San Joaquin kit fox by mitigating with a total of 188.8 acres of mitigation lands (or equivalent mitigation bank credits). For California tiger salamander, the draft EIR indicates that the 6.7 acres of temporary impacts would be restored but does not include compensatory mitigation for those impacts.

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Please clarify in the EIR the specific calculations for determining the 188.8 acres of compensatory mitigation for both the permanent and temporary impacts. For example, 188.8 acres of mitigation could result from a 3:1 mitigation ratio for 60.7 acres of permanent impacts and a 1:1 ratio for 6.7 acres of temporary impacts.

COMMENT 2: Proposed Compensatory Mitigation for Impacts to Wetland, Riparian, and Streambed Habitat

Pages 5.2-119 and 5.2-120 of the draft EIR state that the Project will mitigate for impacts to wetland, riparian, and streambed habitat with compensatory mitigation including 0.12 acre for impacts identified in consultation with the Central Valley Regional Water Quality Control Board, 2.80 acres for impacts identified in an Army Corps of Engineers Nationwide Permit application, and 2,100 square feet for impacts to ephemeral streambed identified in consultation with CDFW. However, the draft EIR does not clarify whether mitigation for impacts to these habitat types overlap and whether this mitigation is required in addition to compensatory mitigation required for permanent and temporary impacts to habitat for special-status animal species. On page 5.2-120, the draft EIR states that “[m]itigation shall include permanent protection of habitat through placement of a conservation easement and funding of an endowment for long-term management of the mitigation site as outlined in COC BIO-26”. The draft EIR also states that COC BIO-26 “would offset the permanent loss of and degradation to jurisdictional waters, including riparian habitat, by mitigating at a 3:1 ratio”. However, COC BIO-26 specifies a mitigation land area of 188.8 acres, which corresponds to the amount proposed to mitigate for impacts to animal species protected under CESA as discussed in Comment 1 above.

CDFW typically does not accept compensatory mitigation that uses the same area to mitigate for different permits (i.e., for LSA and CESA Incidental Take Permits), unless the mitigation is addressing the same project impacts and the proposed compensatory mitigation lands have sufficient habitat values and protections to meet both CESA and LSA mitigation standards.

CDFW recommends that the EIR include a detailed description of impact amounts (both permanent and temporary) to stream and wetland habitat and required compensatory mitigation for each type of habitat impact. The EIR should also clearly describe any overlapping mitigation areas, explain how any overlapping mitigation areas will meet applicable CESA, LSA, and CEQA mitigation requirements, and describe the total combined area of compensatory mitigation land proposed to offset these impacts.

The draft EIR states on page 5.2-115 that no riparian habitat is present on-site but also states that COC BIO-26 would “offset the permanent loss of and degradation to jurisdictional waters, including riparian habitat”. Please clarify whether the Project area supports riparian habitat and avoid conflicting information in the EIR. If riparian habitat is present, please describe the specific impacts to that habitat type and related mitigation.

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Page 5.2-120 states that impacts to 2,100 square feet of stream habitat resulting from placement of rip rap at the outfall structure and installation of the low water crossing will be mitigated at a 1:1 ratio. Please note that CDFW evaluates mitigation necessary to meet LSA requirements on a project by project basis and may require a higher ratio than 1:1 (for example, a 2:1 or 3:1 ratio) for streambed and other habitat impacts such as wetlands in LSA Agreements in order to account for project-specific factors such as temporal loss of habitat, distance between impact areas and mitigation areas, and indirect impacts. However, a 1:1 mitigation ratio may be considered on a project by project basis if the proposed mitigation is significantly ecologically superior to the impacted habitat. CDFW recommends that the EIR provide a detailed justification for a 1:1 mitigation ratio for sensitive habitat types such as streambed and wetlands or consider a higher mitigation ratio such as 3:1 similar to the required mitigation in the draft EIR for riparian habitat if appropriate based on project-specific factors including, but not limited to, temporal loss of habitat and habitat value of the proposed mitigation compared to the habitat being impacted.

COMMENT 3: Special-Status Plant Avoidance Measures

COC BIO-9.2 (page 5.2-153) states that, if avoidance of special-status plants is not feasible, the Project proponent will provide compensatory mitigation at a ratio of 3:1 for "any state or federally listed plants and CRPR [California Rare Plant Rank] 1 or 2 ranked species" or 2:1 for "CRPR 1 or 2 ranked species". However, the draft EIR does not clarify which mitigation ratio will apply to a plant that is not state or federally listed but is a CRPR 1 or 2 ranked species would fall into. CDFW recommends revising COC BIO-9.2 to clarify the mitigation ratio that will apply to CRPR 1 and 2 ranked species that are not state or federally listed.

The draft EIR does not state that the Project proponent is requesting take authorization for any state-listed plant species as part of the AB 205 certification process. If the Project proponent is not seeking take coverage for any plant species as part of the AB 205 certification process, the Project may not legally take any state-listed plant species unless later take authorization is obtained through amendment to the certification or take is otherwise authorized under the Fish and Game Code. However, COCs BIO-9.2 through BIO-9.9 describe compensatory mitigation measures that will be taken should a state-listed plant species be found on the Project site and avoidance of the plant species is not feasible. CDFW recommends that COC BIO-9.2 clarify that the Project proponent will demonstrate compliance with CESA, either by completely avoiding take or by obtaining incidental take authorization, in the event a state-listed plant species is found on or near the Project site.

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COMMENT 4: Golden Eagle

On page 5.2-97, the draft EIR discusses potential direct impacts to golden eagle (*Aquila chrysaetos*), including loss of foraging habitat and disturbance of nesting, and states that COCs BIO-1 through BIO-7 and BIO-17 would avoid or reduce impacts to golden eagle. The draft EIR also mentions on page 5.2-99 that Project activities during operations could affect nesting golden eagle. BIO-17 appears to require full avoidance of golden eagle nests, but it is not stated explicitly that this is the case.

CDFW recommends that COC BIO-17 explicitly state that take of golden eagle and their nests must be fully avoided. CDFW also recommends that COC BIO-17 include language clarifying whether nesting surveys and buffers will be implemented and maintained during operations, and if not, how disturbance of nesting golden eagle will be avoided.

In addition, MM BIO-11 requires pre-construction surveys within 30 days prior to the start of ground disturbance and coordination with the U.S. Fish and Wildlife Service on a mitigation plan if the species or active nests are found within a 1-mile radius of the Project site. Because golden eagle is a fully protected species (Fish & G. Code § 3511(b)(5)), CDFW recommends that MM BIO-11 also require consultation with CDFW and full avoidance of take.

COMMENT 5: Project Conformance with Applicable Laws, Ordinances, Regulations, and Standards

Table 5.2-8: Conformance With Applicable Laws, Ordinances, Regulations, and Standards (LORS) includes CEC's determination regarding the Project's compliance with CESA in the section for compliance with the Federal Endangered Species Act (16 USC §§ 1531 et seq. and 50 CFR part 17.1 et seq.). CDFW recommends correcting this error in the EIR.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

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ENVIRONMENTAL DOCUMENT FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the environmental document filing fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

CONCLUSION

CDFW appreciates the opportunity to comment on the draft EIR to assist the CEC in identifying, analyzing, and mitigating Project impacts on biological resources.

If you have any questions regarding this letter, please contact Gabriele Quillman, Senior Environmental Scientist (Specialist), at (707) 815-9867 or Gabriele.Quillman@wildlife.ca.gov; or Brenda Blinn, Senior Environmental Scientist (Supervisory) at (707) 339-0334 or Brenda.Blinn@wildlife.ca.gov.

Sincerely,

DocuSigned by:

Erin Chappell

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Erin Chappell
Regional Manager
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