

DOCKETED

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Comment Received From: Levy Alameda LLC (Clearway Energy Group)
Submitted On: 3/27/2026
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**Applicant Comments on Staff Assessment for Potentia-Viridi
Battery Energy Storage System**

Additional submitted attachment is included below.



March 27, 2026

Eric W. Veerkamp
Project Manager
California Energy Commission
715 P Street
Sacramento, CA 95814

**RE: Review of Staff Assessment for Potentia-Viridi Battery Energy Storage System
(Docket 24-OPT-04)**

Dear Mr. Veerkamp,

Levy Alameda LLC ("Applicant"), a wholly owned subsidiary of Clearway Energy Group LLC ("Clearway"), appreciates the opportunity to submit comments on the Draft Staff Assessment published on January 26, 2026. Clearway would like to thank the California Energy Commission (CEC) staff for their thorough work on the draft Staff Assessment, which includes a comprehensive review of the Potentia-Viridi Battery Energy Storage System ("Project"). We appreciate the constructive engagement with the CEC throughout the process, as well as the time, effort and thorough analysis that the CEC and all partner agencies took in preparation of this Draft Staff Assessment.

Clearway is a California-based company and one of the largest clean energy companies in the United States, with 13 GW of projects in operations across 27 states, including 6.5 GW operating or under construction in California. If approved, Potentia-Viridi will be Clearway's first project approved via the CEC Opt-in process and will play an important role in increasing grid reliability and advancing California's clean energy goals.

This document provides Clearway's recommended revisions to the Conditions of Certification (COCs) for Biological Resources, Land Use, and compliance-related conditions for the Project. The purpose of these recommendations is to ensure that these requirements are clear, feasible to implement, and consistent with current regulatory practices. The intent is to support a legally defensible, efficient set of COCs that uphold environmental protections while enabling timely project development under the CEC's jurisdiction.

Proposed Design Changes

Based on engagement with local government and utility representatives as the Project has progressed in development, Applicant is proposing three design options for the Project that may result in minor amendments to the Project Description:

- 1) After engaging with Alameda County Department of Environmental Health (ACDEH), Regional Water Quality Control Board and Zone 7 Water Agency, Applicant is proposing optionality regarding septic systems for the project, whereby in the final project design we may elect to use either septic holding tanks (as proposed in the current Application) or a septic system with leachfield, as recommended by the Water Board. Leachfields are a standard low-maintenance design for O&M buildings at projects of this scale and would reduce costs by avoiding pumping septic holding tanks over the life of the project. Applicant will select an option and submit it in the compliance docket for review and approval of ACDEH, Zone 7, the Water Board, and the CEC prior to start of on-site construction.
- 2) Diesel backup emergency generators could be avoided if 12kV electric distribution service from PG&E is brought to the Project substation from Patterson Pass Road. Applicant would like the option to pursue either backup emergency generators (as proposed in the current Application) or 12kV commercial service from PG&E in order to meet the backup energy needs of the Project. New 12kV service would require up to 8 new utility poles to extend PG&E distribution service to the Project substation but would result in minimal additional temporary disturbance area because the majority of the distribution line would be kept within permanent disturbance areas of the project. Such 12kV lines would be constructed and owned by PG&E as part of their distribution system.
- 3) Use of additional construction laydown areas outside of the project footprint for temporary parking and staging may be helpful, but not necessary, during construction. As included in the Project Description, up to four (4) laydown areas are identified within the project footprint totaling fourteen (14) acres. Additional existing laydown areas, located south of the project on Mulqueeny Ranch Road, have been discussed with the landowner, Mulqueeny Ranch Properties, LLC, for temporary use during construction. These existing laydown areas are already disturbed and developed as parking lots and staging areas for construction of a nearby wind farm, therefore no environmental impacts are anticipated should these additional laydown areas be utilized by the Applicant during construction.

1 Land Use

1.1 LAND-1

- **COC LAND-1** requires the Applicant to seek review by Alameda County of the final project site plan to ensure compliance with local zoning standards. We believe this is an unnecessary step that will cause avoidable delays. Given the many confirmations in the record that the project complies with the County's zoning requirements, requiring a post-certification review of plans by the County should not be required. These confirmations include the following:
 - Under the "Existing Zoning" heading on page 5.8-13, the Staff Assessment affirms that the project is fully consistent with the site's agricultural zoning;
 - Under the "Existing Zoning" heading on page 5.8-13, the Staff Assessment affirms that the conditional use permit findings required by Alameda County can be made,

and the project satisfies all development standards related to lot size, height of structures and setbacks.

- On page 5.8-25, the Staff Assessment again confirms that the project complies with the Alameda County Zoning Code, noting that all structures maintain setbacks of at least 100 feet, which is what the zoning district requires.
- The CEC has invited the County to provide comments on the project's consistency with County zoning requirements and, to date, the County has not indicated there are any inconsistencies.
- Given this record, requiring the applicant to submit project plans to the County after approval of the project by the CEC introduces an unnecessary additional layer of review not required by law and reintroduces the very delays AB 205 was enacted to eliminate for qualifying projects.

As such, we recommend that LAND-1 be deleted as follows:

~~**LAND-1** Prior to any grading or development for the permanent project facilities under CEC jurisdiction, the project owner shall develop a site plan and submit it to the Alameda County Planning Department for comment to ensure compliance with local regulations. The project owner shall adhere to CPM approved site plans and ensure that local regulations are complied with during construction and operation.~~

~~Verification: At least 60 days prior to any grading or development for permanent project facilities under CEC jurisdiction, the project owner shall submit proposed site plans for these facilities to the Alameda County Planning Department for review and comment, and to the CPM for approval. The project owner shall provide any review comments from Alameda County to the CPM at least 30 days prior to any grading or development for these permanent project facilities.~~

Alternatively, we recommend that the requirement for the Applicant to submit the site plan for review by the Alameda County Planning Department be modified such that, if no comments are received within 10 days of submission, it is assumed that the site plan conforms to County zoning regulations. As such, we recommend that LAND-1 be revised as follows:

LAND-1 Prior to any grading or development for the permanent project facilities under CEC jurisdiction, the project owner shall develop a site plan and submit it to the Alameda County Planning Department for comment to ensure compliance with local regulations. If no comments are received from the County within 10 days of submission, it shall be presumed that site plan is in compliance with Alameda County zoning regulations. The project owner shall adhere to CPM-approved site plans and ensure that local regulations are complied with during construction and operation.

Verification: At least ~~60~~ 30 days prior to any grading or development for permanent project facilities under CEC jurisdiction, the project owner shall submit proposed site plans for these facilities to the Alameda County Planning Department for review and comment, and to the CPM

for approval. The project owner shall provide ~~any~~ review comments from Alameda County, if any are received within the 10-day period, to the CPM. The CPM shall have five (5) days to incorporate the County's comments into its approval of the site plans and return them to the project owner. ~~at least 30 days prior to any grading or development for these permanent project facilities.~~

1.2 LAND-2

- **COC LAND-2** would require the project owner to conserve agricultural land in an amount equivalent to the Grazing Land displaced by project development. This includes options such as establishing conservation easements with the Tri-Valley Conservancy or California Rangeland Trust, or paying agricultural conservation fees. However, the Staff Assessment's other conclusions indicate that such a requirement is not warranted. Under the Conclusions and Recommendations section on page 5.8-26, the CEC acknowledges that although the project may technically conflict with the County's 10/10 Rule, this conflict does not constitute an environmental impact because the Department of Conservation classifies the site as non-prime Grazing Land, which is not an Important Farmland category. Since no significant environmental impact results from this policy conflict, imposing environmental mitigation for the conversion of this grazing land is inappropriate and unsupported as there is no impact to mitigate.

The CEQA Guidelines are clear that mitigation must be tied to a significant environmental impact. Under CEQA Guidelines Section 15126.4(a)(1), mitigation measures must be designed to avoid or substantially lessen a significant environmental effect. This means mitigation must be tied to an identified significant impact and cannot be imposed where no such impact exists. Similarly, Section 15126.4(a)(4)(A through B) incorporates the Nollan/Dolan constitutional standards, requiring an essential nexus between the mitigation and the project impact and ensuring rough proportionality between the extent of the measure and the nature of the impact. When a project impact is absent, as the Staff Assessment confirms, there can be no nexus or proportionality justification for off-site agricultural conservation requirements.

Provisions of the Williamson Act also do not justify this condition. Here, the CEC has determined that this project is not consistent with the 10/10 rule and, thus, is not consistent with the Williamson Act contract. The CEC has therefore recommended cancellation of the contract. Contract cancellation requires the payment of fees. The Williamson Act does not authorize conservation requirements for cancellation. Further, the Staff Assessment's reference to Government Code section 51238.1 and Alameda County Williamson Act Uniform Rules and Procedures – Section III.B.4 are not applicable here. Those sections provide a mechanism for local agencies to determine that a project meets compatibility principles under specific conditions. But where, as here, a project has been determined incompatible with the contract, Government Code section 51238.1 (to which the County's Uniform Rules refer) does not apply. Thus, the CEC may not rely on Government Code section 51238.1 to impose a conservation requirement.

As such, the agricultural conservation obligations required in COC LAND-2 exceed what CEQA and the Williamson Act allow. The measure attempts to mitigate an impact that the record establishes does not exist, and therefore cannot be considered proportionate, effective, or required under CEQA or the Williamson Act.

As such, we recommend that LAND-2 be deleted, as follows:

~~**LAND-2** Prior to any grading or development for the permanent project facilities under CEC jurisdiction, the project owner shall conserve agricultural land at an amount equivalent to the Grazing and lost to project development. Options include conservation easements with the Tri-Valley Conservancy or California Rangeland Trust, or other arrangements, including fees for agricultural conservation.~~

~~**Verification:** At least 60 days prior to any project grading or building, the project owner shall provide documentation to the CPM verifying implementation of the selected options(s) and acceptance by Alameda County.~~

2 Biological Resources

2.1 BIO-1 Designated Biologist Selection

Revisions are proposed to BIO-1 Designated Biologist Selection below to clarify Qualification 3, specifying that an individual who has previously served as a Designated Biologist (DB) or has implemented any CDFW Incidental Take Permit (ITP) would meet the requirement. Limiting eligibility only to individuals who have served as a DB specifically for Crotch’s bumble bee or burrowing owl—or who have implemented an ITP for those species—would be overly restrictive and potentially infeasible, given the very small number of ITPs issued for these species to date, and would significantly impact the ability to start construction on-time.

Proposed Revision:

For work related to Crotch’s bumble bee and/or burrowing owl, the above qualifications shall also apply. In addition, the DB(s) must meet the following minimum qualifications:

3. Demonstrable experience implementing conditions of a CDFW Incidental Take Permit or acting as a DB for any species, or other experience implementing a CDFW Incidental Take Permit as a Biological Monitor.

2.2 BIO-2 Designated Biologist Duties

Revisions are proposed to BIO-2 Designated Biologist Duties subparagraph #2 to clarify that the DB’s reporting responsibilities for the Conditions of Approval (COCs) are limited to biological resources. The DB is not responsible for implementing or reporting on non-biological COCs, ensuring their duties remain aligned with their technical expertise.

Subparagraph #6 is also proposed for revision to clarify that notification should not be required for species for which petitions for listing have been submitted, but only for species that have achieved candidate status. Being petitioned for candidate status requires no discretionary agency action and does not convey any protections for the species.

Proposed Revisions:

The Designated Biologist Duties shall include the following:

2. Ensure that all biological resource conditions of certification are met and that all reporting standards for each biological resource COC are completed and submitted to the CPM and any other regulatory agencies in compliance with specified timelines;

6. Notify the CPM and CDFW of any observation of an unanticipated sensitive biological resource(s) encountered during all phases of the project. Unanticipated resources include sensitive species not addressed in the environmental document because of a perceived low potential to occur, species that are known to occur but have ~~been proposed as a~~ become candidates for state or federal listing as threatened or endangered, or proposed for federal listing as threatened or endangered after the approval of the project, and common species whose range is unexpected in the project area. Notifications shall occur immediately and no later than the following morning, or Monday morning in the case of a weekend, or the next business day in the case of a state or federal holiday. The initial notification shall be followed by a formal written notification submitted to the CPM and CDFW within 48 hours of the observation;

2.3 BIO-3 Biological Monitor Selection

Revisions to BIO-3 Biological Monitor Selection are recommended to expedite selection of biological monitors. Establishing this timeline is essential, as the absence of a defined response period could delay or hinder project construction.

Proposed Revision:

The project owner's CPM-approved DB shall submit the resume, at least three references, and contact information of the proposed Biological Monitor(s) to the CPM for approval and CDFW for review and comment. If CDFW does not respond in 30 days, the Biological Monitor(s) can be approved by the CPM without further consultation with CDFW, and CPM's determination shall occur no later than 45 days after submission of the resume. The resume shall demonstrate, to the satisfaction of the CPM, the appropriate education and experience to accomplish the assigned biological resource tasks.

2.4 BIO-6 Biological Resources Mitigation Implementation and Monitoring Plan

BIO-6 Biological Resources Mitigation Implementation and Monitoring Plan is recommended for revision as follows because other text in the conditions requires a final accounting of impacted acreage which cannot be provided in the initial BRMIMP.

Proposed Revision:

The BRMIMP shall be prepared in consultation with the DB and shall include the following:

9. In a final version of the BRMIMP, provide a final accounting of the before/after whole acreages and a determination of whether more or less habitat compensation is necessary.

2.5 BIO-7 General Impact Avoidance and Minimization Measures

BIO-7 General Impact Avoidance and Minimization Measures, subparagraph #4, is recommended for revision to specify a 2:1 slope. The previously recommended 3:1 slope can be impractical in constrained construction areas, whereas the 2:1 slope remains both feasible and appropriate for the species present within the project site, per CDFW's guidelines which cite 2:1 as the appropriate maximum slope for escape ramps for western spadefoot toads and California tiger salamander. Additionally, the reference to "(protected: impacted)" appeared to be a copy and paste error and has been corrected to read "horizontal: vertical."

Subparagraph #5 has been revised to clarify that the concern is for vertical pipes and similar features that prevent animals from escaping. Entrapment issues for other types of stored materials are addressed in other species measures.

Proposed Revisions:

4. Inspect Pipes and Trenches. At the end of each workday, the DB, Biological Monitor, and/or site personnel (approved and trained by the DB, as described under **BIO-2**) shall ensure that all potential wildlife pitfalls (trenches, bores, and other excavations) have been backfilled. If site personnel are inspecting trenches, bores, and other excavations and wildlife is trapped, they shall immediately notify the DB and/or Biological Monitor. If backfilling is not feasible, all trenches, bores, and other excavations shall be covered to prevent wildlife entrapment or sloped at a 2:1 (horizontal: vertical) ~~3:1 (protected: impacted)~~ ratio at the ends to provide wildlife escape ramps.

Should wildlife become trapped, the DB or Biological Monitor shall remove and relocate the animal to a safe location. Any wildlife encountered during construction shall not be harassed

and shall be allowed to leave the construction area unharmed. If needed, a qualified biologist possessing the appropriate state and federal scientific collecting permits may guide, handle, or capture an individual non-CESA-listed wildlife species to move it to a nearby safe location within nearby refugium, or it shall be allowed to leave the project area of its own volition. Capture methods may include hand, dip net, lizard lasso, snake tongs and snake hook.

5. Prevent Wildlife Entrapment. All vertical openings to pipes, tubes, ducting, or other cavities, 2 inches or greater, shall be capped to prevent wildlife entrapment. Portable toilets shall require vent pipes to be screened to prevent cavity using birds from becoming trapped in the pipe.

2.6 BIO-8 Vegetation Restoration and Enhancement Plan

BIO-8 Vegetation Restoration and Enhancement Plan subparagraph #2 under Monitoring and Maintenance is recommended for revision to clarify that the requirements outlined in the second paragraph apply specifically to the annual monitoring reports. These requirements do not pertain to the initial six-month report described in the first paragraph.

Proposed Revision:

- 2 Monitoring and Maintenance. The project owner is responsible for monitoring and maintaining the restored areas for a period of three years or until the Restoration Plan success criteria have been met, whichever is longer. Following the initial six-month period after restoration activities conclude, the project owner shall submit a brief monitoring report (10 pages or less, not including figures) to the CPM. This report detailing vegetation establishment, percent invasive plant cover, and other observations regarding restoration success.

The annual reports shall include the following: i) monitoring results (including methods and a discussion of modifications since the previous monitoring period, if applicable); ii) evaluation of conditions relative to success criteria; iii) remedial measures identified and implemented following the previous monitoring period; and iv) overall site progress. Any proposed changes to the performance criteria or timelines shall require the CPM's written approval. The report shall include photos from designated photo stations at the mitigations site. Annual reports must be submitted thereafter.

2.7 BIO-9 Special-Status Plant Avoidance Measures

BIO-9 Special-Status Plant Avoidance Measures is recommended for revision to acknowledge the results of protocol level surveys from 2023 and 2024. These surveys identified one special status species—big tarplant—which will serve as the primary focus for detection and avoidance efforts within the primary project area. Since repeated protocol-level botanical surveys were conducted in 2023 and 2024, it is unnecessary to

conduct repetitive annual surveys when special-status plants have already been identified and mapped on the site. Furthermore, additional floristic surveys are proposed for those areas that were not covered in the 2023 and 2024 surveys.

In the *Compensatory Mitigation* section, the description of compensation lands for occupied habitat is recommended for revision to remove duplicative references to CRPR 1- or 2 ranked species and to incorporate the correct mitigation ratio for the affected resources. This revision provides clearer guidance on the appropriate level of compensatory mitigation required.

We also recommend revisions to the *Monitoring* section of this COC to clarify that the annual report prepared for salvaged plants may be combined with the annual restoration monitoring report. This revision streamlines reporting requirements while maintaining consistency in documentation.

Proposed Revisions:

The DB and/or Biological Monitor(s) shall conduct ~~focused floristic~~ pre-construction surveys for ~~special-status plants~~ big tarplant (*Blepharizonia plumosa ssp. plumosa*) prior to the start of ground or vegetation disturbing project activities, including site mobilization or construction. Surveys shall be conducted with the appropriate protocols approved by the CPM during the appropriate season in all suitable habitat within the project disturbance areas and access roads and within 100 feet of disturbance areas, where accessible. Surveys shall be conducted by qualified botanists or biologists approved by the CPM, pursuant to BIO-1 and/or BIO-3. Other rare plants observed during the focused surveys shall be documented and reported to the CPM. For areas directly disturbed during the construction of the generation tie-line that were not surveyed in 2023 and 2024, floristic protocol surveys shall be conducted consistent with current CDFW botanical field survey protocol (CDFW 2018) and are required for areas that have not previously been surveyed by the project owner to date. The field surveys and reporting shall be consistent with current CDFW botanical field survey protocol (CDFW 2018) or more recent updates. With respect to areas potentially directly disturbed during the construction of the generation tie-line, protocol surveys shall be consistent with current CDFW botanical field survey protocol (CDFW 2018) and are required for areas that have not previously been surveyed by the project owner to date. The survey plan shall identify proposed survey areas and the rationale for any areas not proposed for surveys. The survey plan shall include maps, at an approved scale, clearly defining each proposed survey area. Surveys shall be conducted by qualified botanists or biologists approved by the CPM, pursuant to BIO-1 and/or BIO-3.

During either the focused survey of the full project area or the floristic protocol-level survey of the generation-tie area, any special-status plant species (including state and federally listed threatened or endangered species, candidates for listing, and all CRPR 1A, 1B, 2, 3, and 4 ranked species) detected shall be documented in the pre-construction survey reports. The results shall be submitted to CPM for review and approval, as well as CDFW and USFWS (should federally listed plants be discovered). The reports shall describe any conditions that may have prevented target species from being located or identified, even if they are present as dormant seeds or below-ground root stock (e.g., poor rainfall, disturbance, or wildfire). In some cases following detection of previously unknown locations of special-status plants, follow-up surveys may be necessary to adequately evaluate

impacts. Pre-construction field survey reports shall include maps, at an approved scale, showing locations of survey areas, reference populations, and special-status plants.

The results of these surveys would inform the implementation of appropriate avoidance and minimization measures, as outlined below:

2. Compensatory Mitigation. If avoidance is not feasible, the project owner shall mitigate impacts to any state or federally listed plants that are subject to disturbance from project activities. Should a State listed plant be subject to disturbance the project owner would be required to implement standard categories of mitigation applicable for take coverage through CESA which includes seed salvage, propagation, and the preservation of lands occupied by the species. The measures shall be subject to approval from the CPM, in consultation with CDFW. In addition, the project owner shall provide compensatory mitigation for CRPR 1 or 2 ranked species if project activities result in the loss of more than 10 percent of a defined occurrence due to direct or indirect impacts to soils, vegetation, or water transport that could affect the species' viability.

An occurrence, or local population, shall be defined as the number of individuals occurring on the project site or all plants within a 0.25-mile buffer.

- a. For perennial species, percent avoidance shall be based on population size or number of individuals avoided.
- b. For annuals, avoidance shall be based on occupied habitat, which include habitat containing the species' micro-habitat preferences (e.g., such as "soil types and moist depressions").

Occupied habitat shall be calculated on both the project site and compensation lands as including each special status plant occurrence and a surrounding 100-foot buffer area to account for seed bank. The project owner shall provide compensation lands at the following minimum ratios:

- a. 3:1 (protected: impacted) for any state or federally listed plants ~~and CRPR 1 or 2 ranked species~~; and
 - b. 2:1 (protected: impacted) ratio for CRPR 1 or 2 ranked species.
8. Monitoring. Annual monitoring and documentation of salvaged plants shall include, but not be limited to, details of plants salvaged, stored, and transplanted (salvage and transplanting locations, species, number, size, condition, etc.); adaptive management efforts implemented (date, location, type of treatment, results, etc.); and evaluation of success of transplantation. Transplanted species may not be placed in areas subject to future land disturbance and must be protected by a conservation easement that prohibits disturbance and ensures conservation of the site in perpetuity. Conservation lands would be acquired consistent with the specifications identified above under Section b. Title /Conveyance. Annual monitoring shall occur for a minimum of three years post-relocation to ensure the plants become

established and are not at risk from weeds or other impacts, unless approved by the CPM. The results of annual monitoring shall be reported in an Annual Monitoring Report specific to salvage of propagated plants for a minimum of three years of annual reports. This annual monitoring report can be combined with the annual report for project restoration. Additional monitoring may be necessary if determined upon review of the annual reports by the CPM that the success criteria are not met. Success criteria shall include maintaining habitat occupied by the impacted species at the identified ratios and number of plants for any occupied habitat affected by the project.

2.8 BIO-10 Crotch's Bumble Bee Measures for Take

BIO-10 Crotch's Bumble Bee Measures for Take is proposed for revision as follows based on the lack of species found during focused CBB habitat assessments in 2023 and 2024 and the absence of CNDDDB records for the species within 5 miles of the Project. The Project does assume potential presence of the species due to the suitable foraging floral resources detected during the habitat assessment.

Language has been clarified throughout the COC that routine mowing is not considered "vegetation removal" for the purposes of survey triggers during operations unless the CPM determines otherwise.

The "Pre Construction Survey and Observation Submittal" section should be revised to provide a complete, coherent description of the submittal requirements, as proposed below: namely, that the project owner shall submit the Item 3 (Colony Active Period) or Item 2 (Overwintering Season) survey results to the CPM no more than 10 days prior to initiating or resuming project activities in each work area, unless an alternative is approved. Additionally, the Overwintering Site Buffer needs a clear mechanism for removal once the biological risk has passed, stating that the 50-foot buffer may be lifted upon CPM approval when the DB confirms the overwintering individual has departed or the hibernaculum is no longer occupied, or if a nest has been appropriately relocated.

Proposed Revisions:

The project owner shall implement the following measures to avoid, minimize and offset impacts to Crotch's bumble bee during site mobilization, construction, and operation:

The DB and/or Biological Monitor(s) shall conduct preconstruction surveys and monitoring for Crotch's bumble bee. Surveys shall be conducted by a qualified entomologist(s) or biologist(s) familiar with the life history and ecology of Crotch's bumble bee. All proposed surveyors shall be approved by the CPM, in coordination with the CDFW, pursuant to BIO-1 and/or BIO-3.

Surveys shall cover all project work areas, including staging and parking areas. Surveys shall follow the non-invasive protocols established by CDFW in "Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species" or more recent CDFW-approved methods, as available (CDFW 2023).

2. Overwintering Season Surveys (Pre-Construction and During Operation). If initial ground disturbing construction activities in any given work area occurs during the overwintering season (November 1 through January 31), the CPM approved DB(s) and/or Biological Monitor(s) shall conduct overwintering season surveys described below within areas of suitable habitat (i.e., where suitable vegetation and floral resources occur) in each area planned for project activities no more than 10 days in advance of vegetation removal (exclusive of mowing) or ground disturbance in that area of the project site. If ground disturbing activities during operation occur within areas of suitable habitat (~~i.e., where vegetation and floral resources occur~~) during the overwintering season, the CPM-approved DB(s) shall conduct overwintering season surveys described below throughout the project site in areas planned for ground disturbance no more than 10 days in advance of ground or vegetation removal activities (exclusive of mowing), unless approved by the CPM.

Overwintering season surveys shall look for potential Crotch's bumble bee overwintering queens and hibernacula such as leaf litter, logs, and rodent burrows. If overwintering queens or other Crotch's bumble bee are found utilizing hibernacula during surveys, the project owner shall implement the Overwintering Site Buffer (see Item 5, below).

3. Colony Active Period Season (Pre-Construction and Pre-Maintenance). If initial ground disturbing construction activities, including site mobilization, in any given work area occur during the Colony Active Period (February 1 to October 31), the CPM-approved DB(s) and/or Biological Monitor(s) shall search for Crotch's bumble bee throughout the area planned for project activities in accordance with the Crotch's Bumble Bee Mortality Reduction and Relocation Plan.

Survey efforts for each area shall include at least two visual surveys consisting of meandering transects occurring no more than 10 days prior to the start of ground and vegetation disturbing activities in that area. The CPM approved DB(s) and/or Biological Monitor(s) shall conduct the surveys at least four days apart, with the second survey occurring within two days prior to starting ground and/or vegetation removal activities in that area. The survey duration shall be appropriate to the size of the area planned for project activities plus 50 feet based on the metric of a minimum of one person-hour of searching per three acres of suitable habitat. The CPM approved DB(s) and/or Biological Monitor(s) shall conduct surveys between 7:00 AM and 6:00 PM (Pacific Time) on sunny days between 55- and 95-degrees Fahrenheit with sustained wind speeds measuring less than 10 miles per hour. Survey efforts are further detailed in the Crotch's Bumble Bee Mortality Reduction and Relocation Plan, and any variances to the Survey Protocol, including variances to survey temperatures or timing, shall be submitted to the CPM for review and approval prior to implementation.

If ground disturbing activities (exclusive of vegetation management) occur during operation within areas of suitable habitat during the colony active period, the CPM-approved DB(s) and/or Biological Monitor(s) shall search for Crotch's bumble bee throughout the areas planned for ground disturbance in accordance with the Crotch's Bumble Bee Mortality Reduction and Relocation Plan.

If ground disturbing activities are halted for longer than three days within a work area supporting suitable habitat during the Queen Flight Season (February 1 through March 31), the CPM approved DB(s) and/or Biological Monitor(s) shall perform a minimum of one additional survey in the work area in accordance with the Crotch's Bumble Bee Mortality Reduction and Relocation Plan prior to reinitiating project activities in the work area.

If a Crotch's bumble bee nest is detected during project surveys or any project activities, the project owner shall implement the Crotch's Bumble Bee Mortality Reduction and Relocation Plan unless the nest can be avoided per the Crotch's Bumble Bee Nest Site Buffer measures (Item 6).

4. Pre-Construction Survey and Observation Submittal (Construction and Operation). The project owner shall provide the Colony Active Period Season- Pre-Construction Survey (Item 3) results or Overwintering Survey Results to the CPM no more than ten days prior to initiating project activities in each work area or resuming (Item 2), if initial disturbance not complete, ~~project activities in each work area~~, unless alternate timing is approved by the CPM. The CPM-approved DB(s) and/or Biological Monitor(s) shall notify the CPM if an overwintering individual and/or nest is observed within 100 feet of the project site during site mobilization, construction, or operation. Pre-construction surveys and observational submittals shall include a Keyhole Markup Language (KML) map, or KML-Zipped (KMZ) map, and Geographic Information System (GIS) shapefiles of all Crotch's bumble bee detections and/or nests found during survey efforts or during any incidental observations, and photographs of the individual or nest. The map shall include an outline of the project site, and any distinct work area(s) surveyed within the project site, title, north arrow, scale bar, and legend.
5. Overwintering Site Buffer (Construction and Operation). If any overwintering Crotch's bumble bee are found during focused overwintering surveys, during ground and/or vegetation disturbing activities (exclusive of mowing), including site mobilization or construction activities, or during operation of the project, the project owner, in consultation with the CPM approved DB(s) and/or Biological Monitor(s) shall immediately stop and prohibit all ground disturbing activities within 50 feet of the queen and/or hibernaculum. The project owner shall delineate the 50-foot buffer and notify all workers not to enter the environmentally sensitive area. This buffer may be adjusted with the approval of the CPM based on project activities and potential to disturb the nest. Buffers shall remain in place until the nest has senesced, project activities are complete, or the nest has been relocated in accordance with the Crotch's Bumble Bee Mortality Reduction and Relocation Plan. This buffer may be adjusted with the approval of the CPM based on project activities and potential to disturb the nest.

If an overwintering queen is exposed, the CPM approved DB(s) shall implement the Crotch's Bumble Bee Mortality Reduction and Relocation Plan. The CPM-approved DB(s) and/or Biological Monitor(s) shall record the queen's location with a GPS (including datum and horizontal accuracy in feet) and include photographs and a map of the queen's location as detailed in Item 4 (Pre-Construction Survey and Observation Submittal). Upon notice from

the CPM, the project owner shall increase the size and modify the environmentally sensitive area buffer accordingly.

2.9 BIO-11 California Tiger Salamander Measures for Take

Subparagraph #1d: is proposed for revision to qualify the requirement to cover/cap stored materials. Not all materials are accessible to California tiger salamander (CTS) (i.e. items stacked on pallets with vertical surfaces that CTS cannot climb).

Subparagraph #2c: A 3:1 slope can be impractical in constrained construction areas, whereas the 2:1 slope remains both feasible and appropriate for the species present within the project site, per CDFW's guidelines which cite 2:1 as the appropriate maximum slope for escape ramps for California tiger salamander.

Subparagraph #3 has been moved to Bullet #4 as specifications to the Relocation Plan, rather than its own item, for clarity.

Subparagraph #4 and 5 having DB as the only person who can handle CTS if found could be challenging because they may not always be onsite and ignores the potential for other biologists with federal and state authorizations to safely and adequately handle in compliance with state and federal law.

Proposed revisions to subparagraph #7 are to clarify that the CTS exclusion fencing is intended to remain intact during construction and would not be maintained through project operation.

Subparagraph #8 is recommended for revision in regards to the DB handling requirement above and to acknowledge that 8:00 AM may not be feasible to check coverboards every day because of site conditions. Also removed the requirement to handle CTS on the outside of the fence (refugia along fence), as it places unnecessary stress on the CTS unless they are at risk of desiccation or predation and is better left to the discretion of the biologist.

Subparagraph #12 is recommended for revision to specify daytime humidity, as daytime and overnight humidity are very different values.

Subparagraph #14 The survey is assumed to be a clearance survey, so specification was added to include the full work area and areas underneath cover of all types.

Proposed Revisions:

The project owner shall implement the following measures to avoid, minimize and offset impacts to breeding and foraging California tiger salamander during site mobilization, construction, and operation:

1. Inspections. The following inspections shall be implemented to prevent injury or mortality of California tiger salamander during ground-disturbing or other construction activities:

- a. Daily Morning Inspections: Before the start of work each morning, the DB and/or Biological Monitor shall inspect all vehicles, heavy equipment, materials, and other suitable hiding locations within the project site, per **BIO-2**, Item 7.
 - b. Equipment Moving: All workers shall inspect beneath vehicles and equipment immediately prior to movement. If a California tiger salamander is discovered, work must stop immediately, and the DB and/or Biological Monitor must be notified.
 - c. Excavation and Spoils Inspection: All ruts, holes, and trenches shall be inspected by the DB and/or Biological Monitor prior to and during excavation or backfill activities.
 - d. Stored Materials: Any pipes, structures, or containers (including battery storage containers) with a diameter or opening of 2 inches or greater that are stored overnight in the project site and accessible to the California tiger salamander (i.e., are stored at ground level or within 2 inches of the ground) must be securely capped before storage. See also, **BIO-7**, Item 5.
2. Open Excavations. To prevent inadvertent entrapment of California tiger salamander during construction, the DB and/or Biological Monitor shall implement the following measures for all open excavations (including open holes and trenches more than 6 inches deep):
- a. Daily Morning inspections: All open excavations shall be thoroughly inspected for trapped animals each day no later than 9:00 a.m.
 - b. Inspections During Workday: Before any open trenches or holes are filled, the DB and/or Biological Monitor shall thoroughly inspect them.
 - c. Daily Securing of Excavations: At the close of each working day, all open excavations shall be secured by providing one or more escape ramps constructed of earthen fill or wooden planks with a slope of ~~3~~2:1 or less; or covering the excavations with boards or metal plates placed flush to the ground, with the edges overlaid by loose dirt to ensure no gaps remain for species entry. If any open holes, trenches or other excavations greater than 6-inches deep cannot be covered or fitted with escape ramps as described above, then temporary exclusion fence shall be installed around these trenches, holes, or other excavations to prevent California tiger salamander from becoming trapped.
- ~~3. Relocations. The DB shall relocate any California tiger salamander found within the project site to an active rodent burrow system located no more than 300 feet outside of the project site unless otherwise approved by the CPM in writing. The DB shall document both the capture and relocation areas by photographs and GPS positions. The California tiger salamander shall be photographed and measured in millimeters (snout-vent) for identification purposes prior to relocation. All documentation shall be provided to the CPM within 24 hours of relocation.~~
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4. Relocation Plan. The DB shall prepare a California Tiger Salamander Relocation Plan (Plan). The Plan shall include, but not be limited to, an identification of the survey and hand excavation, capture, handling, and relocation methods, and identification of where the individuals would be relocated to. The DB and/or Biological Monitor(s) shall relocate any California tiger salamander found within the project site to an active rodent burrow system located no more than 300 feet outside of the project site unless otherwise approved by the CPM in writing. The DB shall document both the capture and relocation areas by photographs and GPS positions. The California tiger salamander shall be photographed and measured in millimeters (snout-vent) for identification purposes prior to relocation. All documentation shall be provided to the CPM within 24 hours of relocation. Relocation areas shall be identified by the DB based upon best suitable habitat available and time of year and approved by the CPM prior to the start of site mobilization. The Relocation Plan shall be submitted to the CPM for approval prior to the beginning of project activities. Project activities anywhere within the project site may not proceed until the Relocation Plan is approved in writing by the CPM. Only the approved DB and Biological Monitor(s) with appropriate state and federal authorizations shall is authorized to capture and handle California tiger salamander.

5. Handling and Injury. California tiger salamander shall be handled and assessed according to the Restraint and Handling of Live Amphibians USGS, National Wildlife Health Center (D. Earl Greene, ARMI SOP NO. 100; 16 February 2001) or most recent guidance. If an injured California tiger salamander is found, the individual shall be evaluated by the DB and/or authorized Biological Monitor(s) who shall then immediately contact the CPM, and the CDFW Regional Representative, via email and telephone, to discuss the next steps. If the CPM or the CDFW Regional Representative cannot be contacted immediately, the injured California tiger salamander shall be placed in a shaded container and kept moist. If the CPM or CDFW Regional Representative is not available or has not responded within 15 minutes of initial attempts, then the following steps shall be taken by the DB:
 - a. If the injury is minor or healing and the California tiger salamander is likely to survive, the salamander shall be released immediately in accordance with Item 3.
 - b. If it is determined that the California tiger salamander has major or serious injuries as a result of project-related activities, the DB shall immediately take it to the Lindsay Wildlife Experience or another CDFW- approved facility.
 - c. If taken into captivity, the individual shall remain in captivity and not be released into the wild unless it has been kept in quarantine and the release is authorized by the CPM, CDFW and U.S. Fish and Wildlife Service.
 - d. The project owner shall bear any costs associated with the care or treatment of such injured California tiger salamander. The project owner shall document the circumstances of the injury, the procedure followed, and the final disposition of the injured animal in a written incident report as described in Item 3.

7. Temporary Exclusion Fencing. Prior to commencing construction activities, the project owner shall install temporary exclusion fencing appropriate for exclusion of California tiger salamander according to the approved Temporary Exclusion Fence Plan (Item 8) to prevent California tiger salamanders from dispersing into the project site. Within each project construction phase, the project owner shall ensure that temporary exclusion fencing is installed around the footprint of all planned vegetation- and ground-disturbing activities, including but not limited to disking and seeding involved with restoration. The project owner shall ensure that exclusion fencing remains in place throughout construction until project owner has completed the related vegetation- and/or ground-disturbing activities and removed related equipment from that footprint. The project owner shall remove temporary exclusion fencing at the culmination of related construction activities. To limit barriers to California tiger salamander movement imposed by temporary exclusion fencing, exclusion fencing may be installed and removed in stages (enclosed subsets of fencing) as vegetation- and ground-disturbing activities progress across the project site during construction. This option may not be available outside the dry season work window, as specified under Temporary Exclusion Fence Plan for California Tiger Salamander.
9. Temporary Exclusion Fence Plan for California Tiger Salamander. The project owner shall submit to the CPM a Temporary Exclusion Fence Plan (Fence Plan) for review and approval prior to the start of construction activities. The Fence Plan shall describe the location and design of the temporary exclusion fencing and refugia, and survey method to inspect refugia. The project owner shall design temporary exclusion fencing to allow California tiger salamanders to leave the project site through one-way funnels or another method approved by the CPM. The project owner shall provide refuge opportunities such as coverboards (2-foot x 3-foot or larger plywood) ~~or pitfall traps~~ along both sides of the exclusion fence. ~~If the project owner chooses to use pitfall traps, these shall be placed on the interior of the fence only and coverboards shall be placed on the exterior of the fence.~~ The DB or Biological Monitor shall inspect the temporary exclusion fencing for damage each day. The DB and/or Biological Monitor shall inspect under cover boards for California tiger salamander by 8:00 AM during and after rain events. If site or safety conditions preclude inspection by 8:00 AM, inspections shall occur as soon as conditions allow and before construction activities begin.

The DB shall relocate animals found within the interior fence ~~or in refugia along the fence~~ to a pre-determined location outside the fence line no more than 300 feet from the project boundary per the Relocation Plan described in Item 4. The project owner shall maintain and repair the temporary exclusion fencing immediately to ensure that it is functional and without defects. If initial site grading and restoration of temporary impacts is not completed in the project site by October 31, then temporary exclusion fencing shall be installed between any ungraded and graded portions of the planned grading footprint. Temporary exclusion fencing in place between November 1 and April 30 shall be considered a semi-permanent impact because it may impede potential California tiger salamander movement to breeding ponds. If temporary exclusion fencing is in place between November 1 and April 30, the project owner shall adjust impacts assessment in consultation with the CPM.

If work is approved by the CPM outside of the dry season work window required in Item 11, the following shall apply: Any work site located within 2,000 feet of potential California tiger salamander breeding habitat, including where equipment would be stored overnight, shall be completely fenced with wildlife exclusion fencing. All construction work shall take place within the fenced area. Installation of exclusion fencing does not apply to graveled or well-traveled roads.

10. Roads. The project owner shall construct roadways such that there are no steep curbs, berms, straw wattles, or dikes that could prevent California tiger salamander from crossing or exiting the roadway. If curbs, berms, and/or straw wattles are necessary for safety and/or surface runoff, the project owner shall design and construct them to allow California tiger salamander to walk over them. If steep dikes are required, the project owner shall design and construct them to include over-side drains or curb/dike breaks spaced at intervals of 16.4 to 32.8 feet to allow California tiger salamander passage. If the project owner cannot feasibly comply with any of the road construction requirements, alternative designs for road curbs, straw wattles, dikes, and drains that allow for California tiger salamander passage may be used with prior approval by CPM.
12. Dry Season Work Restriction. During the Dry Season of May 1 to October 31 of each year, the project owner shall limit activities involving ground disturbance and heavy equipment use (including but not limited to excavation, grading, contouring, or disking) to periods of low rainfall (less than 0.10 inches per 24-hour period). If rain exceeds 0.10 inches during a 24-hour period, work shall cease. Construction may resume 24 hours after the rain ceases when there is a less than 40 percent chance of precipitation in the National Weather Service 24-hour forecast for the project area, and daytime humidity, as measured locally on-site at 8:00 am or later, under the supervision of the DB, has fallen below 75 percent. Both rainfall and humidity records shall be kept on-site and subject to inspection.
14. Seasonal Work Window Extension. Activities involving ground disturbing and heavy equipment use (including but not limited to excavation, grading, contouring, and disking) during November 1 to April 30 (Wet Season) shall be subject to written approval of the CPM. The project owner shall submit request for extension to the CPM at least 14 days prior to the desired Wet Season start date of activities. If the CPM approves Wet Season work, the project owner shall monitor the National Weather Service 48-hour hourly forecast for the project area and shall ensure that activities involving ground- disturbing activities and heavy equipment cease 24 hours prior to a 40- percent or greater forecast of precipitation. Activities may resume 24 hours after the precipitation ceases if there is less than a 40 percent chance of precipitation in the 24-hour forecast for the project area. If the CPM approves wet-season work, the DB shall conduct a clearance survey of the full project area and underneath potential cover, including all vehicles, heavy equipment, materials, and other suitable hiding locations within the project site each day precipitation is forecast and the morning after all precipitation events.

If work during the wet season delays restoration of temporarily disturbed areas past December 31 of the year of impact, the project owner shall recategorize these areas as semi-

permanent or permanent impacts depending on the timing of restoration and achievement of performance standards. In this circumstance, the project owner shall adjust impacts assessment in consultation with the CPM.

15. Daily Work Window. The project owner shall terminate all activities 30 minutes before sunset and shall not resume activities until 30 minutes after sunrise during California tiger salamander migration/active season from November 1 to June 15 until the exclusion fencing has been installed. The project owner shall use sunrise and sunset times established by the U.S. Naval Observatory Astronomical Applications Department for the geographic area where the project is located to determine when activities shall terminate and resume.

2.10 BIO-12 California Red-Legged Frog Measures for Take

For BIO-12 California Red-Legged Frog Measures for Take, subparagraph #1 is proposed for revision to reflect the fact that a protocol-level habitat assessment was conducted for this species in 2023, and additional habitat assessment is not necessary.

Subparagraph #2 is proposed for revision to remove duplicative language within the measure regarding notification.

Subparagraph #3 is proposed for revision to allow potential for relocation by other individuals with appropriate federal and state authorizations.

Subparagraph #4 is proposed for revision to clarify that specific stored materials which should be capped to avoid entrapment.

Subparagraph #5 is proposed for revision to focus on the timing of work start rather than time of day.

Subparagraph #6 is recommended for revision to make the relocation measure appropriate for the species; before it appears to be appropriate for California tiger salamander but not necessarily California red-legged frog.

Subparagraph #10 is recommended for revision to clarify that a single Fence Plan could be prepared for all species, and to remove reference to installation of pitfall traps because these have a greater potential for incidental take. Also revised to add flexibility on inspection if site conditions do not allow access.

Verification was revised to clarify the type of survey results provided within 7 days, and full reporting at 60 days.

Proposed Revisions:

The project owner shall implement the following measures to avoid, minimize and offset impacts to breeding and foraging California red-legged frogs during site mobilization, construction, and operation:

1. The DB and/or Biological Monitor(s) shall conduct pre-construction avoidance surveys for California red-legged frogs. Surveys shall be conducted by qualified biologists approved by the CPM, in coordination with CDFW, pursuant to **BIO-1** and/or **BIO-3**. These measures shall be included in the BRMIMP and implemented. Pre-construction avoidance surveys for California red-legged frogs shall be conducted within ~~a 500-foot radius of~~ 50 feet of all project disturbance areas, ~~where legal access is granted,~~ to detect individuals that may be present and suitable habitat features. ~~Habitat features include both aquatic habitat such as plunge pools and ponds and terrestrial habitat such as burrows.~~ Surveys shall be conducted no more than 14 days prior to the start of project activities and include one survey conducted within 48 hours of site mobilization. Surveys shall include diurnal and nocturnal surveys. The project owner may elect to conduct additional surveys to map and detect potential areas this species may occur on or near disturbance areas.

~~The results of the habitat feature assessment shall be submitted to the CPM for written acceptance prior to starting project activities.~~ Habitat features identified in previous protocol-level habitat assessments shall be flagged for avoidance to the extent feasible.

2. If Detected. ~~If a California red-legged frog is encountered or the DB believes that California red-legged frog is likely to occur in the project area, the project owner shall notify the CPM immediately.~~ If California red-legged frogs are encountered during the assessment or during project activities, all work shall cease until the frog is moved out of the construction area, following the requirements in the Relocation Plan, to a USFWS/CDFW approved relocation site and the CPM shall be notified immediately.
3. Relocation Plan. The project owner shall prepare a California Red-legged Frog Relocation Plan that includes all the conservation measures outlined in the Formal Consultation on the Potentia Viridi Battery Storage System Project, Alameda County, California (Corps File Number: SPK-2024-00486) (TN264538). The Plan shall include, but not be limited to, an identification of the survey and hand excavation, capture, handling, and relocation methods, and identification of where the individuals would be relocated to. Relocation areas shall be identified by the DB based upon best suitable habitat available and time of year and approved by the CPM and USFWS prior to the start of site mobilization. The Relocation Plan shall be submitted to the CPM and USFWS for approval at least 30 days ~~and no less than 14 days~~ prior to the beginning of project activities. Project activities anywhere within the project site may not proceed until the Relocation Plan is approved in writing by the CPM. Only the approved DB or another appropriately permitted biologist is authorized to capture and handle California red-legged frogs.
4. Inspections. The following inspections shall be implemented to prevent injury or mortality of California red-legged frogs during ground-disturbing or other construction activities:
 - a. Daily Morning Inspections: Before the start of work each morning, the DB and/or Biological Monitor shall inspect all vehicles, heavy equipment, materials, and other suitable hiding locations within the project site, per **BIO-2**, Item 7.

- b. **Equipment Moving:** All workers shall inspect beneath vehicles and equipment immediately prior to movement. If a California red-legged frog is discovered, work must stop immediately, and the DB and/or Biological Monitor must be notified.
 - c. **Excavation and Spoils Inspection:** All ruts, holes, and trenches shall be inspected by the DB and/or Biological Monitor prior to and during excavation or backfill activities.
 - d. **Stored Materials:** Any pipes, structures, or containers (including battery storage containers) with a diameter or opening of 23 inches or greater that are stored overnight in the project site and are accessible to California red-legged frog (i.e., are stored on or within 12 inches of the ground) must be securely capped before storage. See also, **BIO-7**, Item 5.
5. **Open Excavations.** To prevent inadvertent entrapment of California red-legged frogs during construction, the DB and/or Biological Monitor shall implement the following measures for all open excavations (including open holes and trenches more than 6 inches deep):
- a. **Daily Morning inspections:** Before the start of work each day, all open excavations shall be thoroughly inspected for trapped animals. ~~each day no later than 9:00 a.m.~~
 - b. **Inspections During Workday:** Before any open trenches or holes are filled, the DB and/or Biological Monitor shall thoroughly inspect them.
 - c. **Daily Securing of Excavations:** At the close of each working day, all open excavations shall be secured by providing one or more escape ramps constructed of earthen fill or wooden planks with a slope of 3:1 or less; or covering the excavations with boards or metal plates placed flush to the ground, with the edges overlaid by loose dirt to ensure no gaps remain for species entry. If any open holes, trenches or other excavations greater than 6-inches deep cannot be covered or fitted with escape ramps as described above, then temporary exclusion fence shall be installed around these trenches, holes, or other excavations to prevent California red-legged frogs from becoming trapped.
6. **Relocations.** Pursuant to the approved Recovery Relocation Plan in Item 3, the DB and/or Biological Monitor shall relocate any California red-legged frogs found within the project site to the nearest stream or pond downstream of the project site and within the same watershed, an active rodent burrow system located no more than 300 feet outside of the project site unless otherwise approved by the CPM and USFWS in writing. The DB and/or Biological Monitor shall document both the capture and relocation areas by photographs and GPS positions. The California red-legged frog shall be photographed for identification purposes prior to relocation. All documentation shall be provided to the CPM and USFWS within 24 hours of relocation.
10. **Temporary Exclusion Fence Plan for California Red-legged Frog.** The project owner shall submit to the CPM a Temporary Exclusion Fence Plan (Fence Plan) for review and approval prior to the start of activities. This Fence Plan may be combined with those required for
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other species as appropriate. The Fence Plan shall describe the location and design of the temporary exclusion fencing and refugia, and survey method to inspect refugia. The project owner shall design temporary exclusion fencing to allow California red-legged frogs to leave the project site through one-way funnels or another method approved by the CPM. The project owner shall provide refuge opportunities such as coverboards (2-foot x 3-foot or larger plywood) ~~or pitfall traps~~ along both sides of the exclusion fence. ~~If the project owner chooses to use pitfall traps, these shall be placed on the interior of the fence only and coverboards shall be placed on the exterior of the fence.~~ The DB shall inspect the temporary exclusion fencing for damage each day. The DB and/or Biological Monitor shall inspect under cover boards for California red-legged frogs ~~California tiger salamander~~ by 8:00 AM during and after rain events. If site or safety conditions preclude inspection by 8:00 AM, inspections shall occur as soon as conditions allow access.

The DB shall relocate animals found within the interior fence or in refugia along the fence to a pre-determined location outside the fence line no more than 300 feet from the project boundary per the Relocation Plan described in Items 3 and 5. The project owner shall maintain and repair the temporary exclusion fencing immediately to ensure that it is functional and without defects. If initial site grading and restoration of temporary impacts is not completed in the project site by October 31, then temporary exclusion fencing shall be installed between any ungraded and graded portions of the planned grading footprint. Temporary exclusion fencing in place between November 1 and April 30 shall be considered a semi-permanent impact because it may impede potential California red-legged frog movement to breeding ponds or other aquatic habitat. If temporary exclusion fencing is in place between November 1 and April 30, the project owner shall adjust impacts assessment in consultation with the CPM.

~~Any work site located within 2,000 feet of potential California red-legged frog aestivation or dispersal habitat,~~ including where equipment will be stored overnight, shall be completely fenced with wildlife exclusion fencing. All construction work shall take place within the fenced area. Installation of exclusion fencing does not apply to graveled or well-traveled roads.

Verification: The project owner shall submit a California Red-legged Frog Relocation Plan to the CPM for review and approval 30 days prior to the start of site mobilization activities. The project owner shall submit to the CPM for review and approval a Temporary Exclusion Fence Plan no less than 15 days prior to the start of site mobilization activities. The project owner shall submit a Detention Basin Permanent Barrier Plan to the CPM for review and approval no later than 15 days prior to the start of site mobilization activities. The project owner shall submit the preliminary results of the California red-legged frog pre-construction surveys to the CPM for review and approval no later than 7 days after the survey has been completed, followed by a results report no later than 60 days after the surveys have been completed.

2.11 BIO-13 Western Spadefoot

For BIO-13 Western Spadefoot, modifications are proposed to the pre-construction survey timing from 48 hours prior to one week prior to allow more chance detecting movement during rain or higher humidity events. Verification was revised to clarify the type of survey results provided within 7 days, and full reporting at 60 days.

Proposed Revisions:

If work will be conducted within or near western spadefoot breeding habitat (e.g. vernal pools, ephemeral rain pools, wetlands, and similar features) and would commence during breeding season (approximately February 1 through March 30), the DB and/or Biological Monitor shall complete a pre-construction survey within one week ~~48 hours~~ prior to any site mobilization and/or construction activities. Surveys shall be conducted by qualified biologists approved by the CPM pursuant to BIO-1 and/or BIO-3. The DB shall submit the results of the survey to the CPM prior to start of site mobilization and/or construction. These measures shall be included in the BRMIMP and implemented.

If western spadefoots are found within vernal pools or other wetland areas that cannot be avoided, the DB shall develop a relocation plan and submit it to the CPM for review and approval. Western spadefoots shall be relocated to the nearest available suitable habitat at least 250 feet away from the project site to minimize the potential for spreading disease. The DB shall secure all appropriate handling permits prior to relocating the species.

Verification: The project owner shall submit the preliminary results of the western spadefoot pre-construction survey to the CPM for review and approval no later than 7 days after the survey has been completed, followed by a results report no later than 60 days after the surveys have been completed. In the event relocation is necessary, the project owner shall submit a relocation plan to the CPM for review and approval.

2.12 BIO-14 Western Pond Turtle

The pre-construction survey timing is proposed for modification from 48 hours prior to one week prior to allow for scheduling of appropriately qualified staff and to allow for variations in weather that may limit when it is appropriate to conduct surveys (i.e., for sunny weather). In addition, the original COC does not include a protocol. This COC has been revised to include a protocol because this species is difficult to detect when in uplands and their nests are cryptic. Given that there is no requirement to submit methods ahead of time, there is a risk that CPM or CDFW could reject the findings and require a re-survey. Removed language referring to the BRMIMP since they appear out of place and not necessary.

Also added specification that turtles can only be moved out of harm's way as long as they are not nesting, as relocating nesting individuals could interfere with nesting behavior and reduce reproductive success.

The verification has also been revised to clarify the type of reporting expected within 7 days of survey completion and to allow sufficient time to compile a complete report of survey results.

Proposed Revisions:

Within one week ~~48 hours~~ prior to initiation of site mobilization and/or construction, the DB and/or Biological Monitor shall survey the project site for western pond turtles and their nests. Surveys shall be conducted by qualified biologists approved by the CPM pursuant to BIO-1 and/or BIO-3. Surveys shall consist of visual encounter surveys for western pond turtle individuals, nests, or evidence of nesting prior to any ground disturbance within 656 feet (200 meters) of aquatic habitats. Surveys shall be conducted on sunny days between the hours of 8:00am and 12:00pm to maximize likelihood of observation of individual turtles during basking events in nearby aquatic habitats. If western pond turtles are found in the work area, work shall not commence until the DB contacts the CPM for approval. ~~These measures shall be included in the BRMIMP and implemented.~~

If a nest is found, work within 50 feet of the nest shall be stopped and the DB and/or Biological Monitor shall prepare a nest protection plan, to be reviewed and approved by the CPM, in coordination with CDFW, to ensure the nest is protected until it is no longer active. Turtles may be moved "out of harm's way" to the nearest safe and suitable habitat at least 250 feet away from the project site by the DB and/or Biological Monitor with all appropriate permits if turtles are not nesting.

Verification: The project owner shall submit the preliminary results of the pre-construction survey results to the CPM for review and approval within 7 days after the survey has been completed, followed by a results report no later than 60 days after the surveys have been completed. If required, the project owner shall submit a draft nest protection plan to the CPM for review and approval and to CDFW for review and comment. A final nest protection plan shall be submitted prior to implementation.

2.13 BIO-15 Coast Horned Lizard and San Joaquin Coachwhip

BIO-15 Coast Horned Lizard and San Joaquin Coachwhip is proposed for revision to extend the 48-hour prior survey requirement to one week to allow for scheduling of appropriately qualified staff and to allow for variations in weather that may limit when it is appropriate to conduct surveys (i.e., for sunny weather when reptiles are more likely to be detected). The verification has also been revised to clarify the type of reporting expected within 7 days of survey completion and to allow sufficient time to compile a complete report of survey results (60 days).

Proposed Revisions:

The DB and/or Biological Monitor shall survey the construction site for coast horned lizard and San Joaquin coachwhip, including any and all rock outcrops and mammal burrows and any other potential habitat features. Surveys shall be conducted by qualified biologists approved by the CPM pursuant to BIO-1 and/or BIO-3.

Surveys shall occur within one week ~~48 hours~~ prior to site mobilization and/or construction. These measures shall be included in the BRMIMP and implemented.

If coast horned lizards and/or San Joaquin coachwhips are found, they shall be allowed to leave the site before construction begins. Coast horned lizards and/or San Joaquin coachwhips may be moved "out of harm's way" to the nearest safe and suitable habitat at least 250 feet away from the project site by the DB and/or Biological Monitor with appropriate scientific collecting permits.

Verification: The project owner shall submit the results of the pre-construction survey(s) to the CPM for review and approval within 7 days after the survey has been completed, followed by a results report no later than 60 days after the surveys have been completed.

2.14 BIO-16 Nesting Birds and Bird Buffers

All birds with dedicated COCs (golden eagles, western burrowing owls, Swainson's hawks, white-tailed kits, and California condors) are addressed in in COC BIO-17, BIO-18, BIO-19, BIO-20, and BIO-21, respectively. This COC is proposed for revision to stipulate that their respective measures take precedence over the general NBMP because these listed or otherwise protected species have specific requirements for survey methods, buffers, and reporting and we wish to avoid any potential conflicts or confusion.

The nesting bird season is proposed for modification from January to February to accurately reflect the typical California nesting season when golden eagles are not included, and a single end time has been provided since "to September" and "until August 31" are essentially the same time.

Under subparagraph #1. Survey Requirements, eagles are proposed for removal to reflect above changes in regards to species-specific COC.

Under subparagraph #2. Survey Schedules, survey repetition is proposed for has been removal for redundancy, as it is addressed in #3, below.

In subparagraph #3, Nest and Avian Monitoring and Surveys During Construction, the survey area is proposed to be clarified because ground-nesting birds within the project site are the primary concern during lapses in construction.

In subparagraph #4 text is proposed for revision regarding the ability to adjust a nest buffer so that it was not tied to a default NBMP buffer since that is the purpose of the adjustment.

Under subparagraph #7 nest deterrents, the content was moved under subparagraph #6, NBMP content, because it describes a requirement of the NBMP rather than anything separate.

Proposed Revisions:

The project owner shall develop and implement a Nesting Bird Management Plan (NBMP) in coordination with the DB and submit to the CPM for review and approval. The project owner shall submit the resumes of avian monitors under BIO-1 and/or BIO-3 prior to site mobilization and/or construction, if these activities are planned to occur during the breeding season. The NBMP shall describe methods to minimize potential project effects to nesting birds and avoid any potential for unauthorized take of special status birds without incidental take authorization. Where scheduling allows, the project owner shall clear or remove any vegetation, conduct site preparation in open or barren areas, or other project-related activities that may adversely affect breeding birds outside the nesting season. The NBMP would be applicable throughout the nesting season.

The NBMP applies to general nesting birds; however, golden eagles, western burrowing owls, Swainson's hawks, white-tailed kites, and California condors are addressed in COC BIO-17, BIO-18, BIO-19, BIO-20, and BIO-21, respectively. Species-specific measures shall take precedence over the general NBMP.

Pre-construction nest surveys shall be conducted during the breeding season for local and migratory birds and would be timed to account for seasonal variation that occurs in the project area (February to September for raptors and January February 1 to August 31 for other species).

1. Survey Requirements. Surveys shall cover all potential nesting habitat and substrates within the project area and areas surrounding the project area within 500 feet of the project boundary for sensitive passerines (e.g. shrikes) and raptors ~~and within 2-mile line of sight for eagles~~, unless otherwise prohibited due to legal access or safety issues, upon approval from the CPM. The NBMP shall describe each of the survey methodologies proposed to ensure that common and special status birds (except for golden eagles, western burrowing owls, Swainson's hawks, white-tailed kites, and California condors addressed in COC BIO-17, BIO-18, BIO-19, BIO-20, and BIO-21, respectively) that have the potential to occur in the project area are detected. Surveys shall be repeated during all phases of site mobilization through construction.
2. Survey Schedules. At least two pre-construction surveys shall be conducted, separated by a minimum 10-day interval. Pre-construction surveys shall be conducted no more than 14 days prior to initiation of construction activity. One survey needs to be conducted within the 3-day period preceding initiation of site mobilization, brush clearing, ground disturbance, or construction activity. ~~Surveys shall be repeated throughout site mobilization and construction phases to ensure that birds are not nesting on equipment or have moved into an area after the initial vegetation clearance has been completed.~~
3. Nest and Avian Monitoring and Surveys During Construction. Additional follow-up surveys within the project area for ground-nesting birds shall be required if periods of construction inactivity exceed three weeks during January 1 through September 30 ~~in any given area~~, an interval during which birds may establish a nesting territory and initiate egg laying and incubation.

4. Nest Detection. If active nests are detected during surveys, a no-disturbance buffer zone (protected area surrounding the nest) shall be established around each nest. Fencing and/or flagging would be used to delineate the no-activity zone. To minimize the potential to affect the reproductive success of the nesting pair, the extent of the no-activity zone shall be based on several factors, including the distance of the activity to the nest, the type and extent of the proposed activity, the duration and timing of the activity, the sensitivity and habituation of the species, and the dissimilarity of the proposed activity to background activities. The no-activities zone shall be large enough to avoid nest abandonment. Specific buffers shall also be proposed for any shrike caches should they be detected during construction.

The NBMP shall define species-specific or guild-specific default buffers to be applied if an active nest is encountered. These buffer distances shall be reviewed and approved by the CPM, in consultation with CDFW. The default buffers may be modified in the NBMP, with CPM approval. For special-status species, if an active nest is identified, the size of each buffer zone shall be determined by the DB in consultation with the CPM (or as described in conditions of certification specific for those species). Nest locations shall be mapped using GPS technology.

The plan shall include a table outlining default buffer distances for specific avian groups during construction, detailing the avian groups, species potentially nesting within the project limits and survey area, and corresponding horizontal buffer distances based on disturbance level (DL) in feet, unless alternative table format is approved by the CPM. Typical default buffer distances are 500 feet for most raptors and 250 feet for most passerines, as well as other species or guild-specific buffers.

Nest buffers shall be delineated using the following process:

- a. Upon discovery of an active nest the default buffer identified in the NBMP shall be applied.
 - b. The DB(s) and/or Biological Monitor(s) with avian experience may adjust the buffer based on nest location characteristics (e.g. natural barriers), type and extent of project disturbance, and observed bird behavior. The nest buffer would be sufficiently large to avoid disturbance to the nesting birds ~~and based on the default buffers included in the approved NBMP.~~
 - c. Nest buffer reductions for special status species shall be requested in writing via email to the CPM for review and approval.
6. ~~Active Nest Protection. If active nests are detected during the survey, the DB(s) or Biological Monitor(s) shall monitor all nests with buffers at least once per week, to determine whether birds are being disturbed. If signs of disturbance or distress are observed, the DB(s) or Biological Monitor(s) shall immediately implement adaptive measures to reduce disturbance, in coordination with the CPM. These measures could include, but are not limited to, increasing buffer size, halting disruptive construction activities in the vicinity of the nest until~~

~~fledging is confirmed, or placement of visual screens or sound dampening structures between the nest and construction activity. The DB(s) or Biological Monitor(s) shall monitor the nest until it is determined that nestlings have fledged and dispersed or the nest is no longer active. Activities that might, in the opinion of the DB(s) or Biological Monitor, disturb nesting activities (e.g., exposure to exhaust), shall be prohibited within the buffer zone until such a determination is made. Any nest buffer reduction would require full time monitoring if reduced from the levels identified in the approved NBMP.~~

7. NBMP Content. The NBMP shall include:
- a. definitions of default nest avoidance buffers for each species or group of species, depending on characteristics and conservation status for each species and the nature of planned project activities in the vicinity;
 - b. a notification procedure for buffer distance reductions should they become necessary;
 - c. a pre-construction survey protocol (surveys no longer than 3 days prior to starting work activity at any site);
 - d. a monitoring protocol, to be implemented until adjacent construction activities are completed or the nest is no longer active, including qualifications of monitors, monitoring schedule, and field methods, to ensure that any project-related effects to nesting birds shall be minimized;
 - e. a protocol for documenting and reporting any inadvertent contact with or effects to birds or nests;
 - f. Specify the responsibilities of construction workers and site personnel with regard to nests and nest issues and specify a direct communication protocol to the Biological Monitor and/or DB;
 - g. Specify a procedure to be implemented following accidental disturbance of nests, including wildlife rehabilitation options; and
 - h. Specify a procedure for removal of inactive nests, including verification that the nest is inactive and a notification/approval process.
 - i. Describe any proposed measures or deterrents to prevent or reduce bird nesting activity on project equipment or facilities, such as buoys, visual or auditory hazing devices, bird repellents, securing of materials, and netting of materials, vehicles, and equipment. It shall also include timing for installation of nest deterrents and field confirmation to prevent effects to any active nest; guidance for the contractor to install, maintain, and remove nest deterrents according to product specifications; and periodic monitoring of nest deterrents to ensure proper installation and functioning and prevent injury or entrapment of birds or other animals. If an active nest is located on project facilities, materials or equipment, the project owner shall avoid disturbance or

use of the facilities, materials or equipment (e.g., by red-tag) until the nest is no longer active.

The NBMP would be applicable throughout the nesting season (from January 1 through September 30).

- ~~8. Nest deterrents. The NBMP shall describe any proposed measures or deterrents to prevent or reduce bird nesting activity on project equipment or facilities, such as buoys, visual or auditory hazing devices, bird repellents, securing of materials, and netting of materials, vehicles, and equipment.~~

~~It shall also include timing for installation of nest deterrents and field confirmation to prevent effects to any active nest; guidance for the contractor to install, maintain, and remove nest deterrents according to product specifications; and periodic monitoring of nest deterrents to ensure proper installation and functioning and prevent injury or entrapment of birds or other animals.~~

~~If an active nest is located on project facilities, materials or equipment, the project owner shall avoid disturbance or use of the facilities, materials or equipment (e.g., by red-tag) until the nest is no longer active.~~

2.15 BIO-18 Burrowing Owl Impact Avoidance, Minimization, and Mitigation Measures for Take

Subparagraph #1 is recommended for revision to remove mention of artificial burrow construction. The Burrowing Owl Burrow Replacement Plan requires the creation of artificial burrows, which is double mitigation, as the project is already applying for a take permit and securing offsite mitigation. Further, eight protocol-level survey passes for burrowing owl in 2024 and 2025 did not detect any existing populations on site or in the immediate vicinity.

Subparagraph #2 Burrowing Owl Burrow Replacement Plan is recommended for revision to remove for similar reasoning as under Bullet #1, that negative results from protocol-level surveys.

Subparagraph #6 is recommended for revision to change how "potential" burrows found during preconstruction surveys are treated if they show no sign of occupation or use by burrowing owls. This subparagraph was also revised to provide a mechanism by which the buffer assigned to a "potential" nesting burrow can be reduced if monitoring demonstrates nesting is not occurring.

Bullet #11 is recommended for revision to clarify the DB response during daytime hours versus nighttime hours, that it applies only if active burrowing owl burrows are present, and that it excludes routine mowing activities

Proposed Revisions:

The project owner shall implement the following measures to avoid, minimize and offset impacts to breeding and foraging burrowing owls during site mobilization, construction, operation, and decommissioning:

1. Burrowing Owl Mortality Reduction Plan. The project owner shall submit a Burrowing Owl Mortality Reduction Plan prepared the DB(s) for review and approval to the CPM, and CDFW for review and comment, prior to beginning any project activities including site mobilization, surveying, fencing, or ground disturbance. Burrow exclusion, burrow excavation, monitoring, reducing predator subsidies, ~~artificial burrow construction~~, and other relocation activities shall not proceed until this plan has been approved in writing by the CPM in coordination with the CDFW.

The Burrowing Owl Mortality Reduction Plan shall include, but not be limited to detailed description of survey methodology; detailed burrow exclusion and excavation methods; project activities that may be performed within burrowing owl avoidance buffers; identification of a wildlife rehabilitation center or veterinary facility capable of and willing to treat injured burrowing owl or care for at-risk burrowing owl, burrowing owl eggs, and/or burrowing owl chicks; and procedure for collection and storage of burrowing owl carcasses. Only CPM approved DB(s), or personnel following directions from and under the supervision of the DB(s), are authorized to handle and transport injured burrowing owl for treatment or impacted burrowing owl eggs for salvage. All other burrowing owl handling is prohibited.

Once the Burrowing Owl Mortality Reduction Plan is approved in writing by the CPM, it shall be used for the duration of the project unless updated by request of the CPM to reflect best available science, or to update mitigation and conservation strategies. If any updates are required, the CPM would contact the project owner to discuss potential updates. Any proposed changes to the Burrowing Owl Mortality Reduction Plan shall be submitted, in writing, to the CPM for review and approval and the CDFW for review and comment in writing prior to the implementation of any proposed modifications.

- ~~2. Burrowing Owl Burrow Replacement Plan. The project owner shall replace each known burrowing owl burrow (as defined below under Burrow Avoidance) that cannot be avoided within the project site with an artificial burrow to compensate for the loss of important shelter used by burrowing owls for protection, reproduction, and escape from predators. The project owner shall submit a Burrowing Owl Burrow Replacement Plan prepared by an approved DB(s) to the CPM. The artificial burrows shall be placed within 328 feet of displaced burrows to facilitate detection by displaced owls. Implementation of the Burrowing Owl Burrow Replacement Plan shall not proceed until this plan has been approved in writing by the CPM in coordination with the CDFW. The Burrowing Owl Burrow Replacement Plan shall include, but not be limited to: a discussion and map of potential artificial burrow replacement locations; description of the replacement burrow design and dimensions (e.g., depth and width of burrow, width of burrow entrance, orientation of burrow entrance, number and placement of entrances to natal burrows); artificial burrow installation methods; long-term~~

~~artificial burrow protection and maintenance methods; and timing of burrowing owl burrow installation/construction.~~

~~Once the burrowing owl Burrow Replacement Plan is approved in writing by the CPM, it shall be used for the duration of the project unless it is updated by the CPM to reflect best available science, or to update mitigation and conservation strategies in which case the CPM would contact the project owner to discuss needed updates. If any updates are required, the CPM would contact the project owner to discuss potential updates. Any proposed changes to the Burrowing Owl Mortality Reduction Plan shall be submitted, in writing, to the CPM for review and approval and the CDFW for review and concurrence in writing prior to the implementation of any proposed modifications.~~

6. Burrowing Owl Burrow Avoidance. The DB shall establish no-disturbance buffer zones around ~~potential~~, known and nesting burrowing owl burrows according to the following guidelines:
 - a. If a potential burrowing owl burrow (any subterranean hole three inches or larger for which no evidence is present to conclude that the burrow is being used or any past use by a burrowing owl) is discovered, ~~the DB shall establish a minimum 50-foot no-disturbance~~ no buffer around the burrow shall be necessary unless there is new evidence of occupation that occurs during project implementation.
 - b. If a known burrowing owl burrow (a burrow that is known to have been used or shows evidence of current or past use) or an "atypical" burrow (e.g., a pipe, culvert, buckled concrete, etc.) showing signs of occupancy (e.g. burrowing owl presence, whitewash, pellets, prey remains, etc.) is discovered, the DB(s) shall establish a minimum no-disturbance buffer of at least 100 feet around the burrow. An initial no-disturbance buffer of at least 656 feet shall be established around known burrowing owl burrows currently occupied by burrowing owl during the nesting season (typically February 1 to August 31 in this area). If monitoring indicates that burrowing owls are not nesting and only non-breeding individuals are present, the buffer may be reduced to the 100-foot minimum buffer noted above with approval by the CPM. Additional nest buffer reductions are described below.
 - c. If a nesting burrowing owl burrow (e.g. known burrowing owl burrow with indications of the presence of eggs, chicks, dependent young, and/or brooding or egg incubation) is discovered within or immediately adjacent to the project site, the project owner and/or DB shall notify the CPM and CDFW immediately through email. A no-disturbance buffer of at least 656 feet shall be established around the nest burrow. A no-disturbance buffer of at least 656 feet shall be established around known burrowing owl burrows currently occupied by burrowing owl during the nesting season (February 1 to August 31).
 - d. If burrowing owl burrows cannot be avoided as described above, then the project owner shall follow Item 6 (Burrowing Owl Burrow Blockage), and Item 7 (Burrowing Owl Burrow Excavation), and Item 1 (Burrowing Owl Mortality Reduction Plan), as appropriate. If the approved DB determines burrowing owl are visibly stressed by project activities or by

workers in the vicinity after these no-disturbance buffers the DB shall immediately increase the non-disturbance buffer to a distance where the visible stress is no longer observed. The increased no-disturbance buffers would be reviewed and approved by the CPM, in coordination with CDFW, based on the DB's ~~their~~ behavioral observations of the affected burrowing owl.

The buffers prescribed above shall not be reduced or otherwise modified without prior written approval from the CPM, in coordination with the CDFW. If the approved DB(s) determines that specific project activities are not likely to affect the burrowing owl using known or nesting burrowing owl burrows due to the nature of the specific project activities, or due to objects or topography that might reduce potential noise disturbance and obstruct view of the project activities from the nest, then the CPM approved DB(s) may email a written request to the CPM to reduce the buffer distance with documented observational data (Buffer Reduction Request). The CPM will review each Buffer Reduction Request on a case-by-case basis and provide a determination in response to each Buffer Reduction Request in writing. The CPM may request additional and ongoing biological monitoring prior to approving a Buffer Reduction Request.

11. Operation Activities DB On-site. The approved DB(s) shall be onsite during all ground and vegetation disturbing activities during the day (excluding mowing) if there are active burrowing owl burrows. The approved DB(s) shall be on-site during all non-emergency ground and vegetation disturbing project activities performed at night if there are active burrowing owl burrows.

2.16 BIO-19 Swainson's Hawk Surveys and Avoidance

BIO-19 Swainson's Hawk Surveys and Avoidance is recommended for revision to clarify that surveys would only happen during construction. The buffers mentioned are only focused around construction, which implies but does not expressly state that surveys would occur only during construction.

Proposed Revisions:

If project activities, including site mobilization and construction, are scheduled during the nesting season for Swainson's hawks (March 1 to September 15), prior to beginning work on the project, the DB shall conduct surveys during construction according to the *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley* (SHTA 2000) and prepare a report documenting the survey results. The project owner shall obtain the CPM's written approval of the Designated Biological and/or Biological Monitor, per BIO-1 and/or BIO-3. The survey report shall be submitted prior to starting project activities between March 1 and September 15. Survey methods shall be closely followed by starting early in the nesting season (late March to early April) to maximize the likelihood of detecting an active nest (nests, adults, and chicks are more difficult to detect later in the growing season because trees become less transparent as vegetation increases).

Surveys shall be conducted: 1) within a minimum 0.5-mile radius of the project site or a larger area if needed to identify potentially impacted active nests, unless otherwise approved by the CPM in writing, and 2) for at least the two survey periods immediately prior to initiating project-related construction activities. Surveys shall occur annually for the duration of the project construction.

2.17 BIO-20 White-Tailed Kite Nesting Preconstruction Surveys and Nest Protection Buffers

BIO-20 White-Tailed Kite Nesting Preconstruction Surveys and Nest Protection Buffers is recommended for revision to specify the nesting season time, which is currently vague (months) compared to other species (days). Under Nest Protection Buffers, the text has been revised to at-least 0.25 miles because it was assumed to be missing text. The requirement for baseline monitoring was removed. It is an unusual requirement not included for any other species, the species may not be accessible for monitoring if they are off-site, and they are relatively tolerant of human presence compared to many other raptor species.

Proposed Revisions:

If project activities occur during the white-tailed kite nesting season (January 20 to October 1 with peak nesting occurring from February to August), no more than thirty (30) days prior to activities commencing, including heavy equipment use and staging, the DB shall survey all accessible areas within 0.25-mile of the project site for white-tailed kite nests. The DB shall report white-tailed kite nests to the CPM within 24 hours.

Nest Protection Buffers. The DB shall establish appropriate nest protection buffers of at least 0.25-mile for white-tailed kite during project construction-related activities. The DB and/or Biological Monitor may expand or reduce the buffer, with the CPM approval, if deemed necessary based on specific site conditions, or in instances there is sufficient topographic relief to protect the nest(s) from excessive noise or visual disturbance between the activities and the active nest(s). Depending on site characteristics, the sensitivity of the nest, and surrounding land uses, the DB and/or Biological Monitor may increase the buffer zone to prevent disturbance at the active nest site from construction activities.

~~The DB and/or Biological Monitor shall monitor any white-tailed kite nests for the first two days prior to any construction activities to establish a behavioral baseline of the adults and any nestlings. In addition to direct impacts, such as nest destruction, nesting birds might be affected by noise, vibration, odors and movement of workers or equipment.~~

2.18 BIO-21 California Condor

BIO-21 California Condor is recommended for revision to specifically exclude overflights (where California condors may fly or soar above the project site but not land or interact with any ground-based features) as this species would not be affected by ground-level activities during soaring flight.

Proposed Revision:

The DB and/or Biological Monitor shall temporarily halt project activities if any California condors are observed within the project area prior to the start of work. Overflights of California condors, where birds are above the height of the tallest equipment or landscape features on site and do not land within the project site, would not require work stoppage. The DB and/or Biological Monitor shall allow the California condors to depart on their own before project activities resume. The DB and/or Biological Monitor shall immediately inform the CPM, CDFW and USFWS should any California condor-related work stoppages take place. These measures shall be included in the BRMIMP and implemented.

2.19 BIO-23 American Badger Avoidance and Minimization Measures

BIO-23 American Badger Avoidance and Minimization Measures is recommended for revision to allow sufficient time to identify badger dens. The 48-hour requirement would be difficult to achieve and unnecessary, as preconstruction surveys for the American Badger are often combined with San Joaquin Kit Fox clearance surveys for more efficient use of time for qualified personnel, and burrow construction time is unlikely to differ substantially between the two species.

Proposed Revisions:

The DB and/or Biological Monitor(s) shall conduct pre-construction surveys for American badger.

Surveys shall be conducted by qualified biologists approved by the CPM, in coordination with CDFW, pursuant to **BIO-1** and/or **BIO-3**. These measures shall be included in the BRMIMP and implemented.

1. DB(s) and/or Biological Monitor(s) shall perform preconstruction surveys within ~~48 hours~~ of 15 days prior to ground disturbance to identify badger dens in the project disturbance area, including a 250-foot buffer zone within suitable habitat. If surveys need to be conducted more than ~~48 hours~~ 15 days before construction, approval must be obtained from the CPM.

2.20 BIO-25 Lake and Streambed Equivalency Conditions

Subparagraph 4g is recommended for revision to insert a missing word.

Proposed Revisions:

4. Best Management Practices. The project owner shall comply with the following conditions to protect drainages near the project disturbance area:
 - g. Storage and Stationary Equipment. Stationary equipment such as motors, pumps, generators, compressors and welders, located within or adjacent to the stream, shall be

positioned over drip pans. Stationary heavy equipment shall have suitable containment to handle a catastrophic spill/leak.

2.21 BIO-26 Habitat Management Land Acquisition for Crotch's Bumble Bee, Western Burrowing Owl, California Tiger Salamander and San Joaquin Kit Fox

BIO-26 Habitat Management Land Acquisition for Crotch's Bumble Bee, Western Burrowing Owl, California Tiger Salamander and San Joaquin Kit Fox COC has been revised to align compensatory mitigation requirements with the EACCS. As discussed in application materials and in accordance with mitigation ratios in the EACCS, compensatory mitigation of 182.1 acres is proposed. The mitigation requirements of the EACCS that have been applied to the Project exceed those typically imposed for these species, especially considering the low likelihood of occurrence for San Joaquin kit fox in this region, and that no burrowing owls or Crotch's bumble bee were detected within the Project footprint. Approximately 6.7 acres of lands would be temporarily disturbed; however, because this land would be restored and revegetated, and returned to pre-construction conditions following construction, full recovery of ecological function is anticipated. Due to the relatively short period of disturbance and the higher permanent impact mitigation requirements set by the EACCS, CDFW's fully mitigated standard has been met and the Project requests that compensatory offsite mitigation requirements align with what is being required by USFWS in the Biological Opinion for the Project. Additional edits remove unnecessary specificity that may conflict with requirements of the ITP and associated mitigation for all Covered Species.

Mitigation lands for the project have already been identified, as included in the application. In lieu of security amounts as estimated by CDFW, we propose that the security amount be set at the full value of the mitigation lands purchase agreement, which includes the long-term management plan for the mitigation lands.

Proposed Revisions:

BIO-26 Habitat Management Land Acquisition for Crotch's Bumble Bee, Western Burrowing Owl, California Tiger Salamander and San Joaquin Kit Fox. To mitigate for impacts to Crotch's Bumble Bee, Western Burrowing Owl, California Tiger Salamander and San Joaquin Kit Fox the project owner shall prepare a Habitat Lands Acquisition Plan to fulfill the following requirements:

The project owner shall either 1) purchase 182.1 acres of Covered Species credits from a CDFW-approved mitigation or conservation bank pursuant to Item 2 below within the East Alameda County Conservation Strategy (EACCS) CTS North mitigation area (Chapter 3, Figure 3-10, dated October 2010), 2) shall provide for the permanent protection and management of 182.1 acres of Habitat Management (HM) lands for Covered Species pursuant to Item 3 below and the calculation and deposit of the management funds pursuant to Item 5 below, or 3) shall complete mitigation obligations for 182.1 acres of covered species habitat using a combination of purchasing covered species credits and providing for the permanent protection and management of habitat.

The HM lands for California tiger salamander habitat, San Joaquin kit fox habitat, Crotch's bumble bee habitat and western burrowing owl habitat may be combined if the habitat is suitable for all four Covered Species and approved by the CPM in coordination with CDFW.

Additional credits or HM lands may be required if the CDFW-approved conservation bank site or HM lands site is outside of the EACCS CTS North mitigation area described above. Additional credits may also be required if the project is not within the Service Area of the CDFW-approved conservation bank. The project owner shall provide the CPM with a copy of the credit purchase agreement for the required credits prior to commencing Covered Activities.

Purchase of Covered Species credits at a CDFW-approved conservation bank or permanent protection and funding for perpetual management of HM lands must be complete ~~before starting~~ prior to initiation of Covered Activities, or within 18 months of the effective date of this certification. ~~if Security is provided pursuant to Item 12 below for all uncompleted obligations, such Security shall be secured prior to initiation of Covered Activities, and if the project owner is unable to purchase credits or provide permanent protection and funding for perpetual management of HM lands within the allowed timeframe, an Amendment to this certification may be required.~~

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

a. Security Amount. The Security shall be in the amount of \$5,256,850.00 or in the amount identified in 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 identified in Item 1 above, sufficient for the CEC or its contractors to complete land acquisition, property enhancement, startup costs, initial management, long-term management, and monitoring. In lieu of cost estimate provided in item 1 above, Applicant may provide a cost estimate based on a Purchase and Sale Agreement for mitigation land that covers land acquisition costs, start-up costs, interim management costs, long term management funding, restoration costs and any costs associated with fee title, recordation and other similar administrative costs.

2.22 BIO-27 Post BESS Fire Monitoring and Management Plan

BIO-27 Post BESS Fire Monitoring and Management Plan should be significantly revised to ensure that the plan is based on best practices for analysis of BESS fires and accounts for site-specific characteristics. The Post BESS Fire Monitoring and Management Plan (PBFMMP) should prescribe a testing regime that would be implemented after an event, with testing protocols tailored to the location, duration and extent of the event and based on industry standard analytical methods and best available science. For example, post-fire testing should be targeted based on the results of an industry standard plume analysis, accounting for actual wind

direction and speed, emergency and operational stormwater BMPs, and the direction and amount of water run-off. The plume analysis will be used to develop the PBFMMP, as well as methodology for sampling and determining the radius of potential impacts, based on the specific modeling for the site.

Many of the specific provisions recommended in BIO-27 raise substantial concerns about effectiveness and implementation. Subparagraphs # 1 through 6 should be revised as proposed below to better define post-fire monitoring triggers, monitoring design elements, decontamination measures, and restoration requirements associated with the PBFMMP. The revisions also clarify that geographical scope, application of toxicity thresholds, and verification timing should be based on project-specific analysis. These updates improve clarity and enforceability while maintaining the biological resource protection intent of the COC. Given the range of ongoing activities within five miles of the project – including a substation, a major roadway, warehouses and industrial facilities, and another BESS facility – a simple comparison of “before” and “after” data would not be useful to evaluate impacts of a fire. We have also proposed a clarification that this plan would be specific to a fire that originates within the BESS modules, which appears to be the intent of this COC but is not clearly stated.

Proposed Revisions:

The project owner shall develop a Post BESS Fire Monitoring and Management Plan (PBFMMP), which is to be implemented in the event of a ‘BESS Fire’, defined as a confirmed thermal runaway within a battery module of the Project that results in sustained combustion or open flame. The project owner shall provide the draft PBFMMP to the CPM for review and approval. No site mobilization or construction activities may occur prior to approval of the final PBFMMP by the CPM. The PBFMMP shall be prepared in consultation with the DB and shall include the following:

1. Baseline Data. ~~The development of pr~~Pre-operation sediment sampling locations should be determined as a result of specific plume analysis performed for the project and approved by the CPM, within a two-mile radius of the Project that could reasonably be affected by a BESS Fire event. The sampling shall include a test for the expected post fire constituents, as identified in the BESS manufacturer’s Large Scale Fire Test Report. In addition, known seeps and springs within a five-mile-radius of the Project that could reasonably be affected by a BESS Fire event, are publicly accessible, and that support habitat of a special status species that could be used by special status species, as approved by the CPM, shall be sampled for water quality and chemical constituents. ~~Identify locations along the major drainages downstream of the project site where chemicals could become concentrated after rainfall;~~
2. Toxicity Thresholds. Identify the established regulatory or peer-reviewed toxicity thresholds for toxicity for each chemical constituent of concern to vegetation and wildlife. Where thresholds are not established, the PBFMMP shall identify a scientifically defensible evaluation framework in consultation with the CPM and appropriate resource agencies;
3. Post Fire Monitoring Protocols. Include post fire monitoring requirements including an initial assessment within 2-weeks of the fire and a program of quarterly testing of the same locations used for baseline data collection, as feasible, for the first year then annually for 3-5 years if battery-related contaminants (HF, heavy metals) are detected above established

baseline levels or toxicity threshold levels in water or sediment and are determined to result from the BESS Fire and not from unrelated activities in the area. Conduct additional monitoring if invasive species spread or species decline or patterns of habitat use are detected;

4. Species Specific Monitoring Protocols. Describe post fire monitoring to evaluate potential impacts to sensitive vegetation and wildlife that are attributed to the BESS Fire. The monitoring design should ~~E~~evaluate burn severity and chemical contamination; track vegetation recovery and if there are any increases in non-native vegetation; document species presence and health post fire include observations of changes in nesting behavior or use of habitat; assess soil erosion and soil stability in any areas subject to remediation. The monitoring design should also include ~~C~~onduct surveys for special status species, including burrowing owls. Include protocols for ~~a~~nd include health checks of wildlife where possible and ~~provide mechanisms to provide~~ veterinarian care for injured wildlife;
5. Habitat Recovery Metrics and Decontamination Methods. The PBFMMP should ~~P~~provide a detailed description of the measures and metrics that would be used to assess health impacts to plants and wildlife, evaluate impacts to important foraging habitat and what decontamination methods shall be taken to avoid or mitigate impacts on each special-status species potentially impacted by a BESS fire. The decontamination methods should ~~i~~nclude ~~methods to~~ containment of contaminated storm and firefighting waste water;
6. Restoration, Additional Mitigation, and Adaptive Management. If impacts to plants and wildlife are confirmed and attributed to the BESS Fire, ~~i~~dentify methods for restoration and post fire mitigation ~~restoration~~ if needed outside of areas already subject to approved mitigation ratios, including the acquisition of additional habitat at a 1:1 ratio should soils be contaminated above threshold limits and/or become unavailable to state and/or federally protected wildlife after the fire, or as otherwise approved in collaboration with CDFW, USFWS, and CPM. Include methods for collaborating with CDFW, USFWS, and CPM during these activities; and

Verification: The project owner shall submit the draft PBFMMP to the CPM for review and approval at least ~~45~~90 days prior to start of the delivery of any BESS battery components. The project owner shall provide the final PBFMMP to the CPM at least ~~40~~30 days prior to start of the delivery of any BESS battery components.

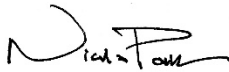
2.23 WORKERS SAFETY-1, WORKERS SAFETY-2, WORKERS SAFETY-7, WORKERS SAFETY-8, HAZ-6, HAZ-8, HAZ-9, HAZ-10, TRANS-1, TRANS- 2, VIS-1, VIS-2, VIS-3

All compliance-related COCs which require review and/or comment and/or review of revisions by Alameda County, Alameda County Fire Department or other Alameda County departments should be revised such that if no comments are received from the County within ten (10) days of receipt of the relevant submission, it shall be presumed that the relevant plan under review is in compliance with relevant Alameda County regulations. This will ensure that review and comment periods do not result in delays to the Project which are inconsistent with the intent of AB205. Should a response not be received by the County within 10 days, the CPM and DCBO are able to proceed without waiting for further County review. The CPM shall have five (5) days to incorporate the County's comments into its approval of the relevant plans and return them to the project owner for a total of fifteen (15) days.

We thank the California Energy Commission for its consideration and evaluation of our comments on the Staff Assessment. We look forward to working with the CEC to complete the permitting process and commence construction in 2027 on this important battery storage project for California.

If you have any questions or require additional information, please contact me at (949) 439-3349 or by email at Nicola.Park@clearwayenergy.com.

Sincerely,



Nicola Park
Director, Development
Clearway Energy Group LLC