

**DOCKETED**

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## ERRATA

On April 24, 2026, the California Energy Commission (CEC) staff filed an Updated Staff Assessment, including a final environmental impact report (EIR), for the Potentia-Viridi Battery Energy Storage System to the project docket 24-OPT-04 (TN 269622). After reviewing the comments submitted by the applicant on May 12, 2026, (TN 269926) in coordination with the California Department of Fish and Wildlife, and in light of the applicant's docketing of a community benefits agreement with Tri-Valley Nonprofit Alliance (TN 270088), CEC staff incorporates the following changes into the April 24, 2026, Updated Staff Assessment.

The changes set forth below to the Updated Staff Assessment are necessary to correct typographical errors, provide clarifying language, and to address concerns raised by the applicant. The changes do not provide significant new information within the meaning of the California Environmental Quality Act (CEQA) or alter the understanding of the project's environmental impacts. Deleted text is shown in ~~strikethrough~~ and added text is shown in **bold underline**. Page numbers within each technical section retain the numbering from the Staff Assessment and Updated Staff Assessment.

Page 5.2-73 of **Section 5.2, Biological Resources**, is revised as follows:

Direct impacts to Crotch's bumble bee, if present, could include the loss or modification of foraging and nesting habitat, disturbance or destruction of occupied nests, and impacts on individuals and/or nesting sites **resulting from vegetation clearing or ground disturbance, removal or disturbance of vegetation, including mowing,** exposure to human disturbance, collision with vehicles, ground vibration, fugitive dust, and other hazardous materials. Indirect impacts could include the loss or degradation of habitat from invasive plants and noxious weeds, or loss of food resources (native flowering plants) through pesticide use. If this species occurs in the project area or on site, any loss or disturbance to individuals or nesting colonies would be considered a significant impact absent mitigation.

Page 5.2-82 of **Section 5.2, Biological Resources**, is revised as follows:

*Less Than Significant with Mitigation.* Based on the analysis below, the proposed project would not substantially affect California red-legged frog, either directly or through habitat modifications, and impacts would be less than significant with the implementation of staff's proposed COCs **BIO-1 through BIO-8, BIO-12, BIO-25, and through BIO-27, and MM BIO-1, MM BIO-2, MM BIO-13, and MM BIO-14.**

Page 5.2-85 of **Section 5.2, Biological Resources**, is revised as follows:

To avoid and minimize impacts to California red-legged frogs, CEC staff proposed implementation of general mitigation measures, including COCs **BIO-1 through BIO-7.** The project owner would implement the following COCs developed in coordination with CDFW, and **BIO-8** (Vegetation Restoration and Enhancement Plan) which requires the

preparation of a Restoration Plan to return the project site to pre-project conditions. In addition, CEC staff proposed ~~BIO-26 (Habitat Management Land Acquisition)~~, **BIO-25** which requires compliance with Lake and Streambed **Alteration Agreement** equivalency conditions, and **BIO-27** (Post BESS Fire Monitoring and Management Plan).

With implementation of CEC staff's proposed COCs **BIO-1** through **BIO-8**, **BIO-12**, **BIO-25**, ~~BIO-26~~, **BIO-27**, **AQ-SC3**, and **AQ-SC4**, together with the compensatory mitigation required by the USFWS Programmatic Biological Opinion, impacts to California red-legged frog and their habitat would be reduced and would fully satisfy USFWS **requirements** and would be consistent with the guidance provided in the EACCS mitigation.

Page 5.2-86 of **Section 5.2, Biological Resources**, is revised as follows:

*Less Than Significant with Mitigation.* Based on the analysis below, the operations associated with the proposed project would not substantially adversely affect California red-legged frog, either directly or through habitat modification, and impacts would be less than significant with the implementation of staff's proposed COCs **BIO-1** through **BIO-9**, **BIO-12**, **BIO-25**, ~~BIO-26~~, **BIO-28**, **AQ-SC3**, **AC-SC4**, and **MM BIO-1**, **MM BIO-2**, **MM BIO-13**, and **MM BIO-14**.

Operational impacts are expected to result in minimal impacts, largely because the project site will would be a developed facility lacking suitable habitat within its boundaries. To ~~maintain~~ **ensure** this minimal impact, ~~any necessary~~ activities during operation, **including repairs**, maintenance, or facility augmentation, would comply with all required avoidance and minimization measures, ~~to prevent impacts to the species including~~ CEC staff proposed COCs **BIO-1** through **BIO-7**, **BIO-12**, and **BIO-25**, ~~BIO-26~~, **BIO-27**, **AQ-SC3**, and **AQ-SC4**. See Section 3, Project Description, for additional information regarding operation activities.

Page 5.2-87 of **Section 5.2, Biological Resources**, is revised as follows:

To avoid and minimize impacts, staff proposed implementation of general mitigation measures, including COCs **BIO-1** through **BIO-7**. The project owner would implement the following COCs, **BIO-8** (Vegetation Restoration and Enhancement Plan) which requires the preparation of a Vegetation Restoration Plan to return the project site to pre-project conditions, **and BIO-12** (California ~~r~~Red-legged ~~f~~Frog **Avoidance and Minimization Measures**) which requires avoidance and minimization measures for California red-legged frogs, ~~and BIO-26 (Habitat Management Land Acquisition)~~.

With implementation of staff's proposed COCs **BIO-1** through **BIO-7**, **BIO-8**, **and BIO-12**, ~~and BIO-26~~ impacts to California red-legged frogs and their critical habitat would be reduced to less than significant, **and** would fully satisfy USFWS **conservation requirements** and would be consistent with the mitigation guidance provided in the EACCS mitigation. CEC staff concluded that this the

**proposed** mitigation approach **would adequately reduce** impacts to California red-legged frog.

Page 5.2-114 of **Section 5.2, Biological Resources**, is revised as follows:

Impacts to designated critical habitat for **the** California red-legged frogs **would be less than significant with implementation of staff's proposed COC BIO-12, which includes avoidance and minimization measures for the species during construction and operation. In addition, impacts would be addressed through implementation of the compensatory mitigation requirements included under the USFWS Programmatic Biological Opinion, including acquisition and long-term conservation of a turn-key mitigation property within Conservation Zone 10 at a 3:1 ratio, totaling 182.1 acres, to be incorporated into the BRMIMP and implemented pursuant of BIO-6, Item 3. Impacts to habitat for and other special-status species would be mitigated through COC BIO-26 (Habitat Management Land Acquisition for Crotch's Bumble Bee, Western Burrowing Owl, California Tiger Salamander, and San Joaquin Kit Fox),** which requires the acquisition of ~~182~~ **188.8** acres of habitat to offset project related impacts.

In addition, the following changes to the Conditions of Certification are proposed to provide clarifying language:

**BIO-6 Biological Resources Mitigation Implementation and Monitoring Plan.**

The project owner shall develop a Biological Resources Mitigation Implementation and Monitoring Plan (BRMIMP). The project owner shall provide the draft BRMIMP to the CPM for review and comment. No site mobilization or construction activities may occur prior to approval of the final BRMIMP by the CPM. Under no circumstances shall ground disturbance proceed without implementation of all applicable permit conditions.

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

1. All biological resources mitigation, monitoring, and compliance measures proposed and agreed to by the project owner;
2. All biological resources conditions of certification identified as necessary to avoid or mitigate impacts;
3. All biological resource mitigation, monitoring, and compliance measures required in state or federal agency terms and conditions, such as those provided in the **U.S. Army Corps of Engineers 404 Nationwide Permit, Biological Opinion**, National Pollution Discharge Elimination System (NPDES) Construction Activities Stormwater General Permit and Waste Discharge Certification, **and the Regional Water Quality Control Board 401 Certification**;

...

**BIO-7 General Impact Avoidance and Minimization Measures.** The project owner shall ensure implementation of the following measures during site mobilization, construction, operation, and closure to manage their project site and related facilities in a manner to avoid or minimize impacts to biological resources:

...

**23. Mowing and Vegetation Management Plan. The project owner shall develop and implement a Mowing and Vegetation Management Plan to address vegetation management and mowing activities, including to reduce wildfire risk, during construction and operation. The plan shall identify mowing methods, timing of annual mowing and vegetation management activities, required avoidance buffers, and procedures to avoid injury or mortality to wildlife, including special-status species and ground nesting birds, and species covered under BIO-10, BIO-11, BIO-12, BIO-16, BIO-18, and BIO-22. The Mowing and Vegetation Management Plan shall also include procedures for emergency vegetation management based on elevated fire-risk conditions, including implementation of procedures applicable to protected species. Vegetation management activities, including mowing, shall not be implemented until the project owner has received written approval from the CPM of the Mowing and Vegetation Management Plan.**

**24. Emergency Vegetation Management. Emergency vegetation management may occur without completion of otherwise required pre-activity surveys when the project owner determines that immediate fire-risk reduction is necessary to protect life or property related to elevated fire-risk conditions. When emergency vegetation management is authorized, the DB, if available, shall conduct a rapid hazard assessment of the work area to identify sensitive biological resources and establish feasible avoidance buffers around detected sensitive resources. Vegetation management activities shall be limited to the minimum extent necessary to address the immediate fire-risk condition. The project owner shall document the emergency conditions, areas treated, any biological observations, and shall provide an incident report within 24 hours of the emergency vegetation management to the CPM and CDFW for review. Standard survey and monitoring requirements shall resume once the elevated fire-risk conditions have subsided.**

...

**Verification:** All general impact avoidance and minimization measures shall be included in the BRMIMP and implemented. Implementation of the measures shall be reported by **the** DB in the Monthly Compliance Reports during construction

and reported in Annual Compliance Reports during operation, including but not limited to the requirements cited above and in **BIO-2**.

The project owner shall submit the draft WPRP and **Mowing and Vegetation Management Plan** to the CPM for review and comment at least 45 days prior to the start of project site mobilization. The project owner shall provide the final WPRP and **Mowing and Vegetation Management Plan** to the CPM for approval at least 10 days prior to project site mobilization.

Within 30 days after completion of project construction, the project owner shall provide to the CPM, for review and approval, a written construction termination report identifying how measures were completed.

**BIO-10 Crotch's Bumble Bee Measures for Take.** 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 **prior to site mobilization and construction**. 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 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).

1. **Crotch's Bumble Bee Mortality Reduction and Relocation Plan.** The project owner shall submit a Crotch's Bumble Bee Mortality Reduction and Relocation Plan to the CPM for review and approval, and to the CDFW for review and comment, prior to beginning any site mobilization or ground disturbing activities. The Crotch's Bumble Bee Mortality Reduction and Relocation Plan shall include a map of the project area indicating where Crotch's bumble bee are likely to occur; a detailed description of the survey methodology (survey details shall be in accordance with the Colony Active Period Season - Pre-Construction Survey described below under Item 3); bumble bee identification and handling methods; measures that would be implemented to minimize impacts to foraging bees during ground disturbing and vegetation removal activities; measures to minimize impacts to overwintering bees during overwintering habitat removal; and measures to minimize impacts to bumble bee nests that are discovered during project activities. The plan shall identify nest relocation techniques and locations where Crotch's bumble bee nests would be relocated to; an assessment of the habitat and floristic

resources found within the relocation sites; and a detailed description of the relocation process including method of removal, transport, and relocation.

The Mortality Reduction and Relocation Plan shall provide the name and contact information for a native bumble bee researcher who would assist and/or consult on techniques to relocate Crotch's bumble bee nests and the procedure for notification, collection, and salvage of Crotch's bumble bee carcasses. Only the CPM-approved DB(s), or personnel following direction from and under the supervision of the CPM-approved DB(s), are authorized to handle and transport Crotch's bumble bee individuals and Crotch's bumble bee nests for salvage. Handling of Crotch's bumble bee individuals and nests by any personnel not specifically authorized by the CPM is prohibited.

Upon written approval of the Crotch's Bumble Bee Mortality Reduction and Relocation Plan by the CPM, it shall be implemented and remain in effect for the duration of the project license. The plan may be updated by the project owner, in consultation with and subject to the approval of the CPM, to reflect best available science, address unanticipated issues associated with implementation, or update mitigation and conservation strategies. In such cases, the CPM will contact the project owner to discuss needs to update the plan. Any proposed changes to the Crotch's Bumble Bee Mortality Reduction and Relocation Plan shall be submitted, in writing, to the CPM for approval prior to the implementation of any proposed modifications.

2. Overwintering Season Surveys (Pre-Construction and During Operation). If initial **vegetation removal or** ground disturbing construction activities in any given work area occurs during the overwintering season (November 1 through January 31), the CPM approved DBs(s) and/or Biological Monitor(s) shall conduct overwintering season surveys within areas of suitable habitat in each area planned for project activities no more than 10 days in advance of vegetation removal or ground disturbance in that area of the project site. If **vegetation removal or** ground disturbing activities during operation occur within areas of suitable habitat 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, unless approved by the CPM. ~~The CPM has authority, based on the timing, intensity, and location of mowing, to determine when mowing constitutes vegetation removal.~~

**Removal of woody debris, brush piles, leaf litter, or conducting vegetation management activities near rodent burrows, or other potential overwintering refugia during the overwintering season (November 1 through January 31) shall occur only under the**

**supervision of the CPM-approved DB(s) and/or Biological Monitor(s).**

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 During Operation).** 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 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 or resuming (Item 2) 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, 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 DB 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 by the DB, with the approval of the CPM, based on project activities and potential to disturb the nest. **Buffer reductions shall be requested in writing via email to the CPM for review and approval.**

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.

6. Crotch's Bumble Bee Nest Site Buffer (Construction and Operation). If a Crotch's bumble bee nest is identified during Colony Active Period Season focused surveys, during ground and/or vegetation disturbing site mobilization or construction activities, or during operation of the project, the project owner shall ensure establishment of a 50-foot no disturbance buffer around each 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.

To determine if a nest has senesced, the CPM-approved DB(s) and/or Biological Monitor(s) shall monitor the nest for senescence in late summer and fall (September-October). Nest senescence can typically be denoted after the presence of reproductive bees (gynes and males) are observed. Nests shall be monitored for a minimum of one hour per day for three consecutive days during optimal weather conditions (i.e., from 7:00 AM to 6:00 PM, low wind, and low cloud cover conditions, etc.). If there has been no nest activity after the above conditions are met, or the nest has been relocated, the no disturbance buffer may be removed upon approval of the CPM. Survey efforts shall be further detailed in Crotch's Bumble Bee Mortality Reduction and Relocation Plan (Item 1).

7. Daily Work Area Monitoring (Construction and Operation). The CPM approved DB(s) and/or Biological Monitor(s) shall be on-site during all initial ground disturbing site mobilization and/or construction activities, **including vegetation management and mowing**, in any given work area to visually monitor for Crotch's bumble bee and to detect flight activity. Visual sweeps of each work area shall occur prior to beginning daily project activities, and a minimum of three times throughout the workday, unless alternate timing is approved by the CPM.

The CPM approved DB(s) shall be on-site during all ground disturbing **activities during the operational phase operation of the project, including vegetation management and mowing**, occurring within areas of suitable habitat. The DB(s) and/or Biological Monitor(s) shall visually monitor for Crotch's bumble bee and to detect flight activity. Visual sweeps of each work area shall occur prior to beginning ground disturbing activities, and a minimum of three times throughout the workday for the duration of ground disturbing activities, unless alternate timing is approved by the CPM.

8. Crotch's Bumble Bee Observations and Notification. All workers shall inform the CPM-approved DB(s) and/or Biological Monitor(s) if a Crotch's bumble bee nest is observed within or near a work area during implementation of any project activity, including ground or vegetation disturbing construction or operation activities. If a nest is observed all activities occurring within 50 feet of the nest shall cease and the project owner shall implement a 50-foot no disturbance buffer. If an overwintering Crotch's bumble bee nest cannot be avoided, then Item 1 (Crotch's Bumble Bee Mortality Reduction and Relocation Plan) shall be implemented.
9. Crotch's Bumble Bee Salvage. If a Crotch's bumble bee is accidentally killed during survey efforts, the project owner shall stop all work and immediately contact the CPM, and CDFW Regional Representative, for guidance. The carcass shall be photographed, salvaged, and placed in a labeled, clean plastic, resealable bag or vial and stored in a freezer. The label shall include a unique identifier (collection number), species name, time and date of collection, collection location, GPS location (including datum and horizontal error in feet), circumstances surrounding death (e.g. cooler may have been too cold; hot day and extreme shifts in temperature from ambient air to cooler may have contributed), collector name and contact information (phone number or email), and certification tracking number. If deemed necessary by the CPM, in coordination with CDFW, the carcass shall be delivered (on dry ice if possible) to the following address, or current address, and reported with photographs via email to the CPM, and CDFW Regional Representatives, at the time of collection and shipping:  
  
CDFW Wildlife Genetics Research Unit (Wildlife Health Lab)  
Attention: Michael Buchalski  
1415 North Market Blvd., Suite 9  
Sacramento, CA 95834
10. Pesticide and Herbicide Use. The project owner shall not use substances such as herbicides, insecticides, or rodenticides except as allowed under **BIO-7**, Item 20: Herbicide and Pesticide Use.
11. Vegetation Removal. Disturbance or removal of vegetation within Crotch's bumble bee habitat shall be kept to the minimum necessary to complete work. Mower blades shall be set at heights no lower than 4 inches off the ground, unless otherwise approved by the CPM. Routine mowing shall be scheduled to avoid the blooming period, unless surveys do not detect the species or as otherwise approved by the CPM.
12. **During construction and operation, mowing and vegetation management, including mowing within the required 100-foot defensible space to reduce wildfire risk, shall only be implemented following a pre-activity survey completed by the approved DB no more than 48 hours prior to mowing and vegetation management**

**or as otherwise determined pursuant to BIO-7, Item 24 (Emergency Vegetation Management).**

**If Crotch’s bumble bee individuals, nests, overwintering queens, or hibernacula are identified within or adjacent to the vegetation management area, the applicable avoidance and minimization measures identified in this condition shall be implemented, unless otherwise approved in writing by the CPM, in coordination with CDFW. Survey requirements and avoidance measures for mowing activities shall be incorporated into the Mowing and Vegetation Management Plan required under BIO-7, Items 23.**

**Verification:** The project owner shall submit the draft Crotch’s Bumble Bee Mortality Reduction and Relocation Plan no less than 45 days prior to commencing site mobilization or ground disturbing activities to the CPM for review and approval and to the CDFW for review and comment. The project owner shall provide the final plan to the CPM and CDFW at least 7 days prior to the start of any site mobilization or ground disturbing activities.

The project owner shall submit the results of each survey (overwintering and colony active period) to the CPM for review and approval and to the CDFW for review and comment no more than 10 days after the completion of the surveys. The project owner shall submit information describing the findings of the bumble bee surveys and implementation of any avoidance measures in the Monthly Compliance Report (per **BIO-6**) and the Annual Compliance Report, during operation, to the CPM.

...

**BIO-12 California Red-Legged Frog Avoidance and Minimization Measures for Take.** The project owner shall implement the following measures to avoid and minimize ~~and offset~~ impacts to breeding and foraging California red-legged frogs during site mobilization, construction, and operation:

...

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

**17. Mowing and Vegetation Management. During operation, mowing and vegetation management, including mowing within the required 100-foot defensible space to reduce wildfire risk, shall be implemented following a pre-activity survey conducted by the CPM-approved DB and/or Biological Monitor no more than 48 hours prior to mowing. If burrowing owl or occupied burrows are identified within or adjacent to the mowing area, the applicable avoidance and minimization measures identified in this condition shall be implemented unless otherwise**

**approved in writing by the CPM, in coordination with CDFW. Survey requirements and avoidance measures for mowing activities shall be incorporated into the Mowing and Vegetation Management Plan, required under BIO-7, Item 23.**

...

**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 fulfill the following requirements:

...

3. Habitat Management Land Acquisition and Protection. If the project owner elects to provide for the acquisition and perpetual protection and management of HM lands to complete the compensatory mitigation obligations, the project owner shall:
  - c. HM Lands Approval. The project owner shall obtain CPM written approval of the HM lands before acquisition and/or transfer of the land by submitting, at least 90 days before acquisition and/or transfer of the HM lands, documentation identifying the land to be purchased or property interest conveyed to an approved entity as mitigation for the project's impacts **on species covered under this condition.** HM lands shall meet the minimum habitat requirements for the required species **covered under this condition** including, but not limited to **floral resources and suitably-sized burrows for Crotch's bumble bee, ground squirrel burrows for California tiger salamander and burrowing owl, and** one or more aquatic features on-site which have been documented to support successful breeding for **California tiger salamander** in an average or below average rainfall year (abundance and distribution) or adjacent to aquatic features which have been documented to support successful breeding for **California tiger salamander** in an average or below average rainfall year (abundance and distribution) and already conserved and managed to the satisfaction of the CPM for the; no less than 100 acres of suitable upland or adjacent to suitable upland already conserved and managed for the species **covered under this condition;**

Page 5.8-15 of **Section 5.8, Land Use, Agriculture and Forestry**, is revised as follows:

The project's conflict with Williamson Act regulations is a LORS nonconformance, but a less than significant environmental impact. The reason is that although the project site is under a Williamson Act contract, the project site is classified by the DOC as non-prime Grazing Land. This is not an Important Farmland category, so exceeding the permitted development on the site would not affect Important Farmland. Furthermore,

while not directly resolving the LORS conflict, proposed COC **LAND-2**, discussed later, would require the project owner **to work with the land owner to apply for ~~do one of two things: (1) obtain partial cancellation of the existing Williamson Act contract from Alameda County, removing the project site from the contract;~~ or, (2)** conserve agricultural land equivalent to the amount of Grazing Land lost to the project.

Page 5.8-16 of **Land Use, Agriculture and Forestry**, is revised as follows:

**Alameda County Williamson Act Uniform Rules and Procedures – Section III.B.3 – Findings for a Compatible Use Determination (AC 2011, page 2-14).**

If Alameda County was the reviewing agency, the applicant would be required to apply for a Compatible Use Determination with the County, in accordance with Section III of the County’s Uniform Rules. CEC staff has determined that the project does not meet the findings required for a Compatible Use Determination from Alameda County due to its size, although it **and it is not fully consistent with the Principles of Compatibility (located in Alameda County’s Uniform Rules in Section I.A. on page 2-1)** does meet the findings for an Exception to the Compatible Use Determination, as discussed below. The discussion of the **Principles of Compatibility** and Compatible Use Determination findings is below.

Page 5.8-20 through 5.8-22 of **Land Use, Agriculture and Forestry**, is revised as follows:

As discussed above, the project does not fully meet Alameda County’s “Findings for a Compatible Use Determination” (Section III.B.3 of the Uniform Rules) which the County would normally need to make to approve a use on Williamson Act contracted land (AC 2011, page 2-14). However, the Uniform Rules provides an exception for certain projects on non-prime agricultural land that do not meet the first two principles of compatibility. This exception allows these projects to be approved through a conditional use permit, provided required findings are made, as discussed below.

**~~Alameda County Williamson Act Uniform Rules and Procedures – Section III.B.4 – Findings for an Exception to the Compatible Use Determination Findings (AC 2011, page 2-14).~~**

~~Section III.B.4 of the Uniform Rules states that: “An exception to the findings required under Section III.B.3 above shall be made for uses on non-prime land that cannot meet the first two principles of compatibility listed under Section I. A.” As discussed earlier, ~~t~~the project is on non-prime land and is inconsistent with the first two principles of compatibility, which are:~~

- *The use will not significantly compromise the long-term productive agricultural capability of the contracted property or other contracted lands in agricultural preserves; and*
- *The use will not significantly displace or impair current or reasonably foreseeable agricultural operations on the contracted property or on other contracted lands in agricultural preserves. Uses that significantly displace agricultural operations on the*

*contracted property may be deemed compatible if they relate directly to the production of commercial agricultural products on the contracted property or neighboring lands, including activities such as harvesting, processing, or shipping.*

Due to the project's location on non-prime agricultural land and its nonconformance with the first two principles of compatibility, the project qualifies for a possible exception under Section III.B.4 of Alameda County's Uniform Rules (AC 2011). The Uniform Rules allow for uses to be approved on the basis of a conditional use permit provided required findings are made (although the CEC retains exclusive jurisdiction over the project and its certification is in lieu of a conditional use permit). Staff found that the findings can be made for an exception, as discussed below (AC 2011, page 2-14):

Alameda County Williamson Act Uniform Rules and Procedures—Section III.B.4—Findings for an Exception to the Compatible Use Determination Findings (AC 2011, page 2-14):

*a.—There is an existing commercial agricultural use on the parcel that meets one of the thresholds established in Uniform Rule 1.*

Analysis: Consistent. As discussed earlier, the main project parcel, APN 99B-7890-2-4, is currently in use for cattle grazing and has been in use for this since before the creation of the Williamson Act contract in 1972 (Dudek 2025a). According to Uniform Rule 1, grazing of livestock on non-prime land at least 40 acres in size, like the project site, is defined as a commercial use if it yields some gross annual revenue, and if at least 60 percent of the property is used for commercial agriculture (AC 2011, page 1-6). Grazing on the BESS site meets these criteria, and so there is an existing commercial agricultural use on the parcel (Dudek 2025a). The project parcel which the gen-tie line crosses, APN 99B-7890-2-6, is also undeveloped land used for cattle grazing and meets these criteria.

*b.—Conditions imposed on the renewed permit will avoid or mitigate impacts to agriculture that could occur on contracted land or on adjacent lands. These conditions shall include any standards in the New Rules if applicable and if feasible.*

c.—Analysis: Consistent. Grazing land is not an Important Farmland category recognized by the DOC., but COC **LAND-2** would ensure LORS compliance by requiring the project owner **to apply for do one of two things: (1) obtain partial cancellation of the existing Williamson Act contract from Alameda County, removing the project site from the contract., or 2)** to conserve agricultural land equivalent to the amount of grazing land lost to the project. *The effects on agricultural productivity and the loss or displacement of agriculture has been considered.*

d. Analysis: Consistent. Grazing land is not an Important Farmland category recognized by the DOC., but COC **LAND-2** would ensure LORS compliance by requiring the project owner to **apply for do one of two things: (1) obtain**

~~**partial cancellation of the existing Williamson Act contract from Alameda County, removing the project site from the contract,; or, 2)** conserve agricultural land equivalent to the amount of grazing land lost to the project. *The use is consistent with the purposes of the Act to preserve agricultural land and open space land (as defined).*~~

~~**Analysis:** Consistent. The use may be categorized as an electric facility, which the Act permits. The use also would not lead to population growth in the area or affect agriculture on nearby properties.~~

~~*e. The use is not a residential subdivision.*~~

~~**Analysis:** Consistent. The use is not a residential subdivision.~~

~~For these reasons, with implementation of proposed COC **LAND-2**, the project would meet the findings for an Exception to the Compatible Use Determination Findings, which would remedy its with the Compatible Use found in Alameda County’s Uniform Rules (AC 2011, Section II.B.3, page 2-14). However, because **In addition**, the project is inconsistent with the 10/10 Rule in Alameda County’s Uniform Rules (Uniform Rule 2, Section I.B.3.c), it seems unlikely that Alameda County, if they had jurisdiction over the project, would approve a conditional use permit for the project, even with the project meeting the findings for an Exception to the Compatible Use Determination findings.~~

~~**However**, if the applicant works with the land owner to obtains apply for partial cancellation of the Williamson Act contract from Alameda County, and the county approves the partial cancellation, removing the project site from the contract, there would be no conflict with the 10/10 Rule or any of Alameda County’s **Uniform Rules** or regulations. **See COC LAND-2.**~~

In conclusion, the project is consistent with the site’s agricultural zoning and mostly consistent with the Williamson Act regulations contained in Alameda County’s Uniform Rules and Procedures Governing Agricultural Preserves and Williamson Act Contracts. ~~**However, the project does not** While the project meet the meets the findings for an Exception to the Compatible Use **Standards** Determination Findings, **and** it is not consistent with the 10/10 Rule in the Uniform Rules. This is a LORS nonconformance which is discussed further in **Section 11, Project’s Inconsistency with State and Local Laws and Staff’s CEQA Override Findings and Recommendation**, but not an environmental impact, as the project site is classified by the DOC as non-prime Grazing Land, which is not an Important Farmland category.~~

Page 5.8-25 of **Land Use, Agriculture and Forestry**, is revised as follows:

<b>TABLE 5.8-1 CONFORMANCE WITH APPLICABLE LORS</b>	
<b>Alameda County Uniform Rules and Procedures Governing Agricultural Preserves and Williamson Act Contracts</b>	
Alameda County Williamson Act Uniform Rules and Procedures – Sections III.B.3 and III.B.5 – Findings for a Compatible Use Determination and Findings for an Exception to the Compatible Use	Yes. <b>No</b> the project meets the findings for an Exception to the Compatible Use Determination with implementation of COC LAND-2. <b>is not fully consistent with the Principles of</b>

**TABLE 5.8-1 CONFORMANCE WITH APPLICABLE LORS**

**Alameda County Uniform Rules and Procedures Governing Agricultural Preserves and Williamson Act Contracts**

Determination Findings (AC 2011, pages 2-14 and 2-15).	<b><u>Compatibility (located in Alameda County's Uniform Rules in Section I.A. on page 2-1) because it is not consistent with the first two principles of compatibility.</u></b>
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Page 5.8-26 of **Land Use, Agriculture and Forestry**, is revised as follows:

As discussed above, the project would have less than significant impacts with respect to Land Use, Agriculture, and Forestry. With implementation of COCs for the project components within the CEC's Opt-In certification, the project would comply with LORS related to land use, agriculture, and forestry, with the exception of the 10/10 Rule limiting the size of the project to no more than 10 acres **and is not fully consistent with the Principles of Compatibility**. CEC staff concluded that this conflict is not an environmental impact, as the project site is classified by the DOC as non-prime Grazing Land which is not an Important Farmland category. See **Section 11, Project's Inconsistency with State and Local Laws and Staff's CEQA Override Findings and Recommendation**, for discussion of LORS inconsistency and CEC staff's recommendation. No mitigation measures are needed for components of the project outside the CEC's certification authority.

...

**LAND-2** Prior to any grading or development for the permanent project facilities under CEC jurisdiction and in order to ensure compliance with local ordinances regarding land subject to the Williamson Act, the project owner shall **work with the landowner to apply for** either: 1) obtain partial cancellation of the existing Williamson Act contract from Alameda County, removing the project site from the contract; or, 2) conserve agricultural land at an amount equivalent to the Grazing Land 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 submission of a complete application for partial Williamson Act contract cancellation and detailing any response detailing** verifying implementation of the selected option(s) and acceptance by Alameda County.

Page 10-8 of **Section 10, Mandatory Opt-In Requirements**, is revised as follows:

**Proposed Findings of Fact**

Based on the information provided in the application, and additional evidence and information as described below and contained in the record of this proceeding, staff recommends the CEC make the following findings and conclusions, upon the applicant

providing executed agreements consistent with Public Resources Code section ~~25524.10~~ **25545.10**, that:

Page 10-8 of **Section 10, Mandatory Opt-In Requirements**, is revised as follows:

**CBA-1 Community Benefits Agreement.** The project owner shall provide progress reports on the implementation of the community benefits agreement with Tri Valley Haven for Women (TN 269549) and **Tri-Valley Nonprofit Alliance (TN 270088)**, and/or any additional community benefits agreements. The reports shall include:

1. status on fulfillment of any donation and other obligations, commitments, or requirements set forth in its community benefits agreement, including the amount of any funding distributed to the community-based organization at the time of the report,
2. any relevant documentation demonstrating implementation and fulfillment such as an acknowledgement from the community-based organization verifying fulfillment,
3. any changes or updates to the community benefits agreement, including any additional community benefits agreements,
4. details of any issues or barriers regarding implementation, and
5. any other information the project developer deems relevant.

Page 11-1 of **Section 11, Project's Inconsistency with State and Local Laws and Staff's CEQA Override Findings and Recommendation**, is revised as follows:

When conducting the environmental impact assessment, CEC staff evaluated the potential for the project to impact agriculture and forestry resources in its Land Use analysis (see **Section 5.8, Land Use, Agriculture, and Forestry Resources**, in this SA. CEC staff concluded that the project would have less than significant impacts with respect to land use, agriculture, and forestry. CEC staff also concluded that the project is consistent with the site's agricultural zoning and mostly consistent with the Williamson Act regulations contained in Alameda County's Uniform Rules and Procedures Governing Agricultural Preserves and Williamson Act Contracts. However, staff determined that the project conflicts with **several** ~~one~~ of the Williamson Act rules (~~10/10 Rule~~), which **are** ~~is a~~ local land use rules. Because the project site is classified by the Department of Conservation (DOC) as non prime Grazing Land, which is not an Important Farmland category, staff determined that this inconsistency is not an environmental impact (see **Section 5.8, Land Use, Agriculture, and Forestry Resources, in this SA**) and does not require mitigation measures under CEQA. Further, the CEC can issue a certification for the construction and operation of a project that is inconsistent with a Williamson Act contract under the authority set forth in Public Resources Code section 25545.1(b)(1).

Page 11-2 of **Section 11, Project's Inconsistency with State and Local Laws and Staff's CEQA Override Findings and Recommendation**, is revised as follows:

### **11.3 Evidence in the Record Relevant to LORS Inconsistency.**

The project is inconsistent with Alameda County's 10/10 Rule, which restricts the size and scale of non-agricultural structures on Williamson Act contracted property in Alameda County. As detailed in **Section 5.8, Land Use, Agriculture and Forestry**, the 10/10 Rule states that compatible, non-agricultural uses that do not qualify as buildings shall be cumulatively restricted to no more than 10 percent of the contracted property, or 10 acres, whichever is less. The proposed project's size exceeds the County's 10/10 Rule on the main project parcel, which would house the BESS, and is therefore not consistent with Alameda County's 10/10 Rule which governs County Williamson Act contracts. **In addition, the project is not fully consistent with the Principles of Compatibility (located in Alameda County's Uniform Rules in Section I.A. on page 2-1) because it is not consistent with the first two principles of compatibility.** This makes the project inconsistent with the Williamson Act contract and Williamson Act. While CEC staff is recommending the CEC approve the project despite the project conflicting with the 10/10 Rule **Alameda County's Uniform Rules**, CEC staff recommends that the project applicant work with the landowner to seek a Williamson Act contract modification, through a partial cancellation with Alameda County following the requirements set forth in Government Code section 51280 et seq. **See COC LAND-2.** Such action can occur after project certification and, **if the partial cancellation is approved,** would harmonize the Williamson Act contract with the future state of the project site including the certified project.

Response to Comments: Page 2-3 of **Response to Comments**, is revised as follows:

#### **Comment Letter 2 – Alameda County (TN 269056)**

....

2-2. Land Use. 10/10 Rule for Williamson Act properties, in addition to CEC staff's determination that the conflict is minor given that the site is not Prime Farmland. The commenter also noted County staff agreement that proposed Condition of Certification (COC) **LAND-2** remedies certain project inconsistencies with the County's Williamson Act program. As discussed later in this Response to Comment section (see Response to Comment 5-3), staff has revised COC **LAND-2** in the Updated Staff Assessment to provide **for the** applicant an option to either obtain **to work with the land owner to apply to** from the County **for** a partial cancellation of the Williamson Act contract to remove the project site from the contract or conserve agricultural land at an amount equivalent to the Grazing Land lost to project development, as set forth in COC **LAND-2**.

Response to Comments: Page 2-8 of **Response to Comments**, is revised as follows:

#### **Comment Letter 5 – Levy Alameda LLC (Clearway Energy Group) [applicant] (TN 269355)**

...

5.3. Land Use. This comment states that COC LAND 2 is inappropriate because it does not mitigate an environmental impact. As detailed in the Staff Assessment, COC LAND 2 is not for mitigating an environmental impact but is necessary to resolve LORS non-compliance with regulations in Alameda County's "Uniform Rules and Procedures Governing Agricultural Preserves and Williamson Act Contracts" (pp. 5.8-16-5.8-21 of the Staff Assessment). the project does not fully meet the required "Findings for a Compatible Use Determination" for a project on Williamson Act contracted land (Section III.B.3 of the Uniform Rules and Procedures). However, the project's use may be deemed consistent with Alameda County's Uniform Rules and Procedures if the project qualifies for an "Exception to Compatible Use Determination Findings" (Section III.B.4 of the Uniform Rules and Procedures), which it does with implementation of COC LAND-2. Thus, implementation of COC LAND 2 enables CEC staff to determine that the project is compatible with the uses allowed in Alameda County's Uniform Rules and Regulations (although it should be noted that the project is still inconsistent with the 10/10 Rule). County of Alameda staff supported the inclusion of COC LAND 2 in their comments on the Staff Assessment by stating: Staff appreciates the analysis provided on the County's Uniform Rules, and acknowledges that Condition of Certification (COC) Land-2 is being required to address a LORS nonconformance, and does provide mitigation for inconsistencies with the County's WA (Williamson Act) program.

In the comment, the applicant also disagrees with staff's conclusion that COC LAND 2 is necessary to resolve the LORS conflict, stating that because the project has been determined to be incompatible with the Williamson Act Contract, Government Code section 51238.1 (and Section III.B.3 of the Uniform Rules) do not apply. While CEC can issue a certification for the construction and operation of a project that is inconsistent with a Williamson Act contract under the authority set forth in Public Resources Code section 25545.1(b)(1), the exercise of this authority is an extraordinary measure, to be used in as limited a manner as possible. CEC first looks to resolve non-compliance when possible, often through conditions of certification. Because the non-compliance with Government Code section 51238.1 and Section III.B.3 of the Uniform Rules could be resolved through COC LAND 2, staff only found conflict with one of the Williamson Act Rules (10/10 Rule). However, if the applicant obtains partial cancellation of the Williamson Act contract from Alameda County, removing the project site from the contract, as recommended in the Staff Assessment and acknowledged by the applicant in their comment letter on the Staff Assessment, the LORS non-compliance would be addressed and implementation of COC LAND 2 would not be required. Staff has revised COC **LAND-2** in **Section 5.8, Land Use, Agriculture, and Forestry**, of the Updated Staff Assessment **for the** to provide offer the applicant **to work with the land owner to apply for a two options: (1)** partial cancellation of the Williamson Act contract; **or (2)** conserve agricultural land at an amount equivalent to the grazing land lost to project development.