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CEC Data Request Response No. 3

Potentia-Viridi Battery Energy Storage Project

JANUARY 2025

Prepared for:

CALIFORNIA ENERGY COMMISSION

Prepared by:

LEVY ALAMEDA LLC

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4 Temporary Impact Revegetation and Habitat Restoration Plan	
5 Nitrogen Deposition Model	
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7 Lake and Streambed Alteration Agreement	
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1 Introduction

On September 6, 2024, Levy Alameda LLC and Affiliates (Applicant) received a Determination of Incomplete Application and Request for Information from the California Energy Commission (CEC) for the Potentia-Viridi Battery Energy Storage Project (Project; Docket Number 24-OPT-04) in response to the Applicant's application filed on August 7, 2024. Table 1 lists the data requests responded to in Responses No. 1 and 2.

Table 1. Data Responses Previously Provided

Data Request Resources Area	Data Request Number
Alternatives	DR ALT-1
Cultural and Tribal Resources	DR CUL/TRI-1 through DR CUL/TRI-12
Geological Resources	DR GEO-1 through DR GEO-2
Paleontological Resources	DR PALEO-1
Traffic and Transportation	DR TRANS-1 through DR TRANS-4
Transmission System Design	DR TSD-1 through DR TSD-6
Transmission System Safety and Nuisance	DR TSSN-1 through DR TSSN-5
Waste Management	DR WASTE-1 through DR WASTE-2
Mandatory Opt-in Requirements	DR MAND-1 and DR MAND-6
Air Quality	DR AQ-1 through DR AQ-13
Greenhouse Gas Emissions (Climate Change)	DR GHG-1 through DR GHG-8
Executive Summary	DR ES-1 through DR ES-3
Hazardous Materials Handling	DR HAZ-1 through DR HAZ-7
Land Use	DR LAND-1 through DR LAND-7
Noise	DR NOISE-1 through DR NOISE-2
Project Description	DR PD-1 through DR PD-4
Public Health	DR PH-1 through DR PH-10
Socioeconomics	DR SOCIO-1 through DR SOCIO-4
Visual Resources	DR VIS-1 through DR VIS-14
Wildfire	DR FIRE-1 through DR FIRE-2
Water Resources	DR WATER-1 through DR WATER-8
Worker Safety	DR WS-1 through DR WS-5

The data requests responded to in Response No. 3 include DR BIO-1 through DR BIO-79. The responses provided below are presented in the same order and with the same numbering provided by the CEC.

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2 Biological Resources

2.1 Data Requests DR BIO-1 through DR BIO-79

2.1.1 Data Request DR BIO-1

DR BIO-1. *Please update the ITP application and provide a detailed habitat assessment for golden eagle. Include in the detailed habitat assessment a description of the suitability of nesting habitat within the project area and surrounding lands and recent protocol-level survey results within suitable nesting habitat to facilitate an assessment of potential take of golden eagle from the project or activity for which the permit is sought and impacts of the proposed taking on this species. Recent surveys are defined as surveys conducted during the most recent breeding/nesting season based on the submittal of the application. At this time of year, it would be this calendar year's breeding/nesting seasons. If protocol surveys were not conducted recently then protocol surveys will need to be conducted during the next breeding/nesting season.*

Response: No take of golden eagle is anticipated. Refer to edits in Section 5.4.2.5 of the Biological Technical Report, and both Section 3.2.3.2 and BIO-MM-6 of the application document for a discussion of potential impacts and avoidance and minimization measures. The Applicant is removing golden eagle from the ITP application.

2.1.2 Data Request DR BIO-2

DR BIO-2. *Please provide additional information to explain whether and how the project may qualify for issuance of an ITP for fully protected species, including information about the nature of the project and its impacts as necessary to assess compliance with the requirements of Fish and Game Code, section 2081.15.*

Response: No fully protected species are proposed for coverage under the ITP. No take of golden eagle is anticipated. Refer to edits in Section 5.4.2.5 of the Biological Technical Report, and both Section 3.2.3.2 and BIO-MM-6 of the application document.

2.1.3 Data Request DR BIO-3

DR BIO-3. *If the project would not comply with the ITP issuance criteria in Fish and Game, section 2081.15, update the ITP application to include measures to ensure that golden eagle would be avoided (i.e., no take of golden eagle would occur).*

Response: Take of golden eagle is not anticipated. Updated discussion of golden eagle, potential impacts, and mitigation measures have been included in Section 5.4.2.5 of the Biological Technical Report (Attachment 2) and Sections 3.1.7.4, 3.2.3.2, and 3.2.5.1 of the application document (Attachment 6).

2.1.4 Data Request DR BIO-4

DR BIO-4. *Please provide a detailed habitat assessment for tricolored blackbird within the project area and surrounding lands within a minimum of 0.5 miles of the project boundaries, include recent results of protocol-level survey results within suitable nesting habitat and a clear analysis of whether and to what extent the project or activity for which the permit is sought could result in take of tricolored blackbird and impacts of the proposed taking on this species. Recent surveys are defined as surveys conducted during the most recent breeding/nesting season based on the submittal of the application. At this time of year, it would be this calendar year's breeding/nesting seasons. If protocol surveys were not conducted recently then protocol surveys will need to be conducted during the next breeding/nesting season.*

Response: The discussion of tricolored blackbird in the Biological Technical Document (Section 5.4.2.4) has been updated to include a comprehensive habitat assessment. Because no breeding habitat occurs within the Project boundaries or within 0.5 mile of the Project, no additional surveys including protocol-level surveys and no species-specific mitigation measures are recommended. No take of this species is anticipated and Tricolored blackbird is not proposed for inclusion in the ITP coverage.

2.1.5 Data Request DR BIO-5

DR BIO-5. *If the additional impacts analysis for tricolored blackbird indicates impacts to this species that were not fully analyzed and mitigated in the current ITP application, then CEC staff, in coordination with CDFW, requests additional proposed measures to minimize and fully mitigate the impacts of the proposed taking of this species.*

Response: Additional impact analysis in the Biological Technical Report does not indicate impacts to breeding habitat or the potential for take of this species. No further surveys, mitigation, or discussion is required. Tricolored blackbird is not proposed for inclusion in the ITP coverage. Mitigation measure BIO-5 of the application document would avoid and/or minimize potential impacts to this species.

2.1.6 Data Request DR BIO-6

DR BIO-6. *Please include a detailed impacts analysis for Crotch's bumble bee and recent results of a protocol-level survey. More information on the appropriate Crotch's bumble bee habitat assessment and survey protocol can be found in the Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species document located on the CDFW website at <https://wildlife.ca.gov/Conservation/CESA>. Recent surveys are defined as surveys conducted during the most recent survey season based on the submittal of the application. At this time of year, it would be this calendar year's survey season. If protocol surveys were not conducted recently then protocol surveys will need to be conducted during the next survey season.*

Response: Impact analysis and discussion is included in Section 5.4.2.1 of the Biological Technical Report, including the results of a habitat assessment based on recommendations outlined in CDFW's *Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species*. The Applicant proposes assuming presence for Crotch's bumble bee and including it in ITP coverage. Discussion, impact analysis, and mitigation measures are included in Sections 3.2.1.7.11, 3.2.3.2, and

3.2.5.1 of the application document. Pre-construction survey, potential nest avoidance, and construction monitoring measures are included in the application document as BIO-MM-11.

2.1.7 Data Request DR BIO-7

DR BIO-7. *If this additional information for Crotch's bumble bee indicates that the project or activities for which the permit is sought may cause take of Crotch's bumble bee, please revise the ITP to request take coverage for this species. This additional request for take coverage must include all information that would be required in an ITP application for CESA-listed or candidate species, including an impacts analysis and proposed mitigation measures (Cal. Code of Regs., tit.14, § s 783.2).*

Response: The ITP application has been revised to include potential take of Crotch's bumble bee.

2.1.8 Data Request DR BIO-8

DR BIO-8. *Please update the ITP application to include a detailed habitat assessment for Swainson's hawk, recent survey results based on a protocol-level methodology, and an impacts analysis to assess the potential for take of Swainson's hawk during construction, operation and decommissioning of the project. Surveys should be based on the Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley (Swainson's Hawk Technical Advisory Committee, May 31, 2000). Recent surveys are defined as surveys conducted during the most recent breeding/nesting season based on the submittal of the application. At this time of year, it would be this calendar year's breeding/nesting seasons. If protocol surveys were not conducted recently then protocol surveys will need to be conducted during the next breeding/nesting season.*

Response: Take of Swainson's hawk is not anticipated. Refer to the updated discussion and avoidance and minimization measures in Section 5.4.2.9 of the Biological Technical Report, and MM-BIO-7 of the application document.

2.1.9 Data Request DR BIO-9

DR BIO-9. *If this additional information for Swainson's hawk indicates that the project or activities for which the permit is sought may cause take of Swainson's hawk, please revise the ITP to request take coverage for this species. This additional request for take coverage must include all information that would be required in an ITP application for CESA-listed or candidate species, including an impacts analysis and proposed mitigation measures (Cal. Code of Regs., tit. 14, § 783.2).*

Response: The additional impact analysis in the Biological Technical Report, in addition to proposed impact avoidance and minimization measures (MM-BIO-7), does not indicate that take of this species is anticipated. Swainson's hawk will not be included in the ITP coverage.

2.1.10 Data Request DR BIO-10

DR BIO-10. *The project site is stated to be 70 acres in the ITP application, while other documents in the application indicate the project site is approximately 85 acres. Please clarify the size of the project site (in acres) and define the sizes for the BESS facility footprint and gen-tie corridor (in acres).*

Response: The acreages have been verified and updated.

2.1.11 Data Request DR BIO-11

DR BIO-11. *Please provide the most current project design and most accurate permanent impact amounts to enable accurate assessment of impacts of the project and covered activities on CESA listed and candidate species and to determine the amount of compensatory mitigation needed to offset the impacts. The impact amounts must be estimated for project construction, any maintenance and repair during operations as well as decommissioning. If actual impacts are greater than what the applicant estimated, additional mitigation would need to be provided.*

Response: To compensate for direct impacts on habitat for California tiger salamander, Crotch's bumble bee, and San Joaquin kit fox, the Applicant will purchase a turnkey mitigation property within the same Conservation Zone as the Project site (Conservation Zone 10) as described in Attachment 6, Incidental Take Permit. Prior to the purchase of this mitigation property, the Applicant would obtain approval from CEC staff, in coordination with CDFW, to ensure the mitigation lands are appropriate to compensate for the impacts of the Project. The Applicant does not plan to provide alternate financial assurances to cover the cost of mitigation. Table 2 provides the proposed mitigation ratios and acreages for each species.

Table 2. Proposed Compensatory Mitigation for Listed Species

Species	Permanent Impacts		
	Impact (acres)	Ratio	Mitigation (acres)
California tiger salamander	60.7	3:1	182.1
Crotch's bumble bee	60.7	3:1	182.1
San Joaquin kit fox	60.7	3:1	182.1

2.1.12 Data Request DR BIO-12

DR BIO-12. *Please clarify whether the ITP application includes a request for take coverage for activities in the PG&E disturbance area and provide the proposed compensatory mitigation for the PG&E portion of the project.*

Response: The ITP does not include take coverage for activities in the PG&E disturbance area.

2.1.13 Data Request DR BIO-13

DR BIO-13. *Please clarify whether PG&E is conducting activities anticipated to cause take of CESA-listed or candidate species and what these activities would be. A separate ITP application may be needed to be submitted by PG&E to CEC in coordination with CDFW.*

Response: PG&E is not conducting activities anticipated to cause take of CESA-listed or candidate species.

2.1.14 Data Request DR BIO-14

DR BIO-14. *Please revise the ITP application to clearly identify which sections of gen-tie may not be consistent with APLIC guidelines and why. For all the sections of gen-tie line that would not conform to APLIC requirements please explain how the applicant would assure that avian electrocution would be avoided.*

Response: All sections of the gen-tie will be designed consistent with APLIC guidelines. The phrase “where feasible” has been removed from the ITP application.

2.1.15 Data Request DR BIO-15

DR BIO-15. *Please clarify the work periods for all ground disturbing and construction activities anticipated during the 18-month construction period.*

Response: All ground disturbing activities will be limited to the period of May 1 to October 31, unless otherwise specified in associated Project permits.

2.1.16 Data Request DR BIO-16

DR BIO-16. *Please provide additional information on the types and purpose of these surveys, including the species to be surveyed for and duration of any surveys.*

Response: Refer to Section 3.2.5.1 of the application document, BIO-MM-1 through -11, for a list of all pre-construction surveys proposed.

2.1.17 Data Request DR BIO-17

DR BIO-17. *Please evaluate and discuss how blasting would impact special-status avian species. Please provide decibel (dB) levels for the activity and duration and timing of blasting.*

Response: No blasting is proposed, and this language has been removed from the Project description.

2.1.18 Data Request DR BIO-18

DR BIO-18. *Please analyze additional impacts to CESA-listed or candidate species during the decommissioning phase.*

Response: All avoidance, minimization, and mitigation measures outlined in Section 3.2.5.1 of the application document pertain to construction, temporary impacts/restoration activities, and decommissioning of the Project.

2.1.19 Data Request DR BIO-19

DR BIO-19. *Please provide clarification on how and to what extent the temporary disturbance would impact the California tiger salamander and propose minimization and/or compensatory mitigation measures to minimize and fully mitigate temporary impacts. Update the ITP application to include a proposed mitigation and monitoring plan to monitor compliance with the minimization and mitigation measures and the effectiveness of the measures.*

Response: The Project will have approximately 6.7 acres of temporary impacts to California tiger salamander upland and dispersal habitat associated with the grassland vegetation community. Temporary impacts will be mitigated onsite through a revegetation plan. Additional AMMs have been incorporated into the revised ITP.

2.1.20 Data Request DR BIO-20

DR BIO-20. *Please include language stating that prior to the purchase of bank credits, the applicant would obtain approval from CEC staff, in coordination with CDFW, to ensure the mitigation bank credits are appropriate to compensate for the impacts of the project.*

Response: The Applicant has identified a turnkey mitigation property to satisfy anticipated compensatory mitigation requirements for the Project. The ITP has been revised to reflect this change in strategy and includes language stating that approval from CEC staff, in coordination with CDFW, would be obtained to ensure the proposed mitigation strategy is appropriate.

2.1.21 Data Request DR BIO-21

DR BIO-21. *Please sign and date the Certification page, Section 6 of the ITP.*

Response: This will be signed once the ITP is finalized.

2.1.22 Data Request DR BIO-22

DR BIO-22. *Please provide the identity and contact information for the applicant proposing the project (name, mailing address, phone number, and e-mail address). For the purposes of notification, the “applicant” is the person, State or local government agency, or public utility proposing the project. “Person” means any natural person or any partnership, corporation or limited liability company, trust, or other type of association (Fish & G. Code, § 67). Please provide the identity and contact information for the contact person/designated representative authorized to act on behalf of the applicant and property owner where project activities will take place, if either or both are different from the applicant.*

Response: Applicant information and Applicant Contact information is shown in Section 1.1 and 1.2. This is also shown below.

Project Applicant

Levy Alameda, LLC
155 Wellington Street West, Suite 2930
Toronto, Ontario M5V 3H1, Canada

Applicant Contact

Kelene Strain, Environmental & Permitting Manager
Capstone Infrastructure Corporation
155 Wellington Street West, Suite 2930
Toronto, Ontario M5V 3H1, Canada
Email: LMcLeod@capstoneinfra.com

2.1.23 Data Request DR BIO-23

DR BIO-23. *Please update and include in the revised LSAA notification a seasonal work period or periods for the specific activity or activities that may affect the bed, bank or channel of Patterson Run or any other streams, rivers, or lakes on-site in the manner specified in Fish and Game Code, section 1602.*

Response: Work period is May 01 through October 31. The attached LSAA application form has been updated to reflect the seasonal work period.

2.1.24 Data Request DR BIO-24

DR BIO-24. *Please provide a clear, detailed description of all activities subject to Fish and Game Code, section 1602. Include each location where a specific activity or activities may affect Patterson Run as well as any other streams, rivers, or lakes on- site. Describe any structures that would be placed or modified in or near any stream, river, or lake including the volumes and dimensions of any materials or features that would be used or installed, and permanent and temporary impacts to the river, stream, or lake and fish and wildlife habitat for each activity.*

Response: A stormwater drainage outfall utilizing a new 36-inch corrugated metal pipe would be constructed from a detention basin located in the southwest portion of the site to the inlet of an existing

culvert on the north side of Patterson Pass Road. Approximately 10 cubic yards of clean rip-rap would be placed as an energy dissipator at the outfall to discharge clean stormwater at or below current rates into the existing drainage on the south side of Patterson Pass Road.

2.1.25 Data Request DR BIO-25

DR BIO-25. *Please clarify if PG&E would conduct activities subject to Fish and Game Code, section 1602. If this is the case, PG&E may need to submit a separate notification for these activities pursuant to section 1602 or sign onto the current notification as a co-applicant, with the understanding that PG&E and the original applicant would be jointly and severally liable for compliance with all Lake and Streambed Agreement terms and conditions and for any violations. Please submit a copy of the PG&E LSAA notification or confirmation that PG&E would be a co- applicant.*

Response: PG&E will not conduct activities subject to Fish and Game Code, Section 1602.

2.1.26 Data Request DR BIO-26

DR BIO-26. *Please clarify in Section 1.1.18 of the revised LSAA notification, whether any operations and/or repair and maintenance as well as decommissioning activities are expected to impact Patterson Run and/or any other streams, rivers, or lakes on-site. The applicant would need to submit a separate notification for decommissioning activities that would occur near the end of the project's operational term if these activities are expected to impact Patterson Run and/or any other streams, rivers, or lakes.*

Response: During the life of the Project, operations and/or repair and maintenance activities, along with decommissioning activities may require impacts to Patterson Run. If impacts to Patterson Run are required beyond initial construction, the Applicant will submit a separate notification to CDFW for those activities.

2.1.27 Data Request DR BIO-27

DR BIO-27. *Please clearly identify all activities that are subject to the Fish and Game Code, section 1602 notification requirement and identify any foreseeable impacts (permanent and temporary) from these activities, including impacts to the flow, bed, channel, or bank of any river, stream, or lake (as these terms are understood under Fish and Game Code, section 1602). If there is ambiguity about whether a particular activity is subject to the notification requirement (which may include activities that impact the "swale-like area"), also include in the notification a detailed description of the activity and its potential impacts to the flow, bed, channel, and/or bank of any river, stream, or lake to enable accurate assessment of the applicability of Fish and Game Code, section 1602 to that activity.*

Response: A stormwater drainage outfall utilizing a new 36-inch corrugated metal pipe would be constructed from a detention basin located in the southwest portion of the site to the inlet of an existing culvert on the north side of Patterson Pass Road. Approximately 10 cubic yards of clean rip-rap would be placed as an energy dissipator at the outfall to discharge clean stormwater at or below current rates into the existing drainage on the south side of Patterson Pass Road. No additional impacts to aquatic resources are proposed.

2.1.28 Data Request DR BIO-28

DR BIO-28. *Provide a detailed description and design plans for each activity that requires notification under Fish and Game Code, section 1602, including acres of temporary and permanent impacts to the bed, banks, and/or channel any river, stream, or lake.*

Response: A stormwater drainage outfall utilizing a new 36-inch corrugated metal pipe would be constructed from a detention basin located in the southwest portion of the site to the inlet of an existing culvert on the north side of Patterson Pass Road. Approximately 10 cubic yards of clean rip-rap would be placed as an energy dissipator at the outfall to discharge clean stormwater at or below current rates into the existing drainage on the south side of Patterson Pass Road. Design Plans are provided in Appendix A.

2.1.29 Data Request DR BIO-29

DR BIO-29. *Please include in the revised LSAA notification a focused biological study that only addresses impacts from the activities subject to notification under Fish and Game Code, section 1602. Please include a habitat assessment, that describes the types of habitat, such as stream, wetland, riparian or other habitat types where activities subject to Fish and Game Code, section 1602 would occur and could be impacted by project activities. The assessment should provide information for staff, in coordination with CDFW, to determine which fish and wildlife resources those habitat types would support and could be substantially adversely affected by project activities.*

Response: The Biological Technical Report and application document contain all relevant information, and a separate report is not warranted.

2.1.30 Data Request DR BIO-30

DR BIO-30. *Please include in the revised LSAA notification a description of impacts (permanent and temporary) to all existing fish and wildlife resources and associated habitat and vegetation for each project activity subject to Fish and Game Code, section 1602 and include proposed measures to protect these resources.*

Response: The revised LSAA notification provides a description of impacts to Patterson Run and any associated potential impacts to wildlife.

2.1.31 Data Request DR BIO-31

DR BIO-31. *Please provided clarification on how the overall impact area in Table 8 of the LSAA notification was determined. Please include specific impact amounts for each activity in the revised LSAA notification.*

Response: The Project includes two features that will require placement of fill materials within regulated Waters of the United States, including improvements to an existing culvert under Patterson Road, and the construction of a new low-water crossing within the corridor of the proposed overhead gen-tie line. The discharge point of the culvert will require placement of rip-rap to provide energy dissipation and prevent bed or bank erosion at the point of discharge. The proposed crossing includes minor grading to the bed and banks of the feature, and placement of rip-rap to create a stable point of crossing for maintenance vehicles.

2.1.32 Data Request DR BIO-32

DR BIO-32. *Please revise the LSAA notification to include measures necessary to protect existing fish and wildlife resources that may be impacted by activities subject to notification under Fish and Game Code, section 1602, including mitigation for impacts to associated habitats and vegetation, as appropriate. Include a proposed mitigation and monitoring plan for the mitigation site to monitor compliance with the minimization and mitigation measures and the effectiveness of the measures.*

Response: Avoidance, minimization, and mitigation measures MM-BIO-01 through -11 provide necessary protection to existing fish and wildlife resources that may be impacted by activities subject to notification under Fish and Game Code, Section 1602.

2.1.33 Data Request DR BIO-33

DR BIO-33. *Please revise Figures 1 and Figure 2 in Appendix 1L to include the anticipated total project area (Project Boundary) acres in the legend.*

Response: Figures 1 and 2 have been revised to include acreages in the legend.

2.1.34 Data Request DR BIO-34

DR BIO-34. *Please describe whether any special-status species such as California tiger salamander have the potential to occur within the grassland restoration areas and reference which avoidance, minimization or mitigation measures proposed in Section 3.2.5.1 of the application or Section 3.3.1 of Appendix 3.2A would be implemented to avoid or reduce impacts to special-status species during ground- disturbing restoration activities. Please include any additional mitigation measures that are proposed for restoration activities.*

Response: Discussion and avoidance, minimization, and mitigation measures added to Sections 1.3 and 3.2.2 of the Plan.

2.1.35 Data Request DR BIO-35

DR BIO-35. *Please provide specific acres for each vegetation and land cover area shown in Figure 3, in Appendix 1L, including Project Boundary, the PG&E Temporary Work Area, Tension Pulling Area as well as Aquatic Feature, Avena spp. – Bromus spp. Herbaceous Semi- Natural Alliance, Disturbed Habitat, and Urban/Developed.*

Response: Acreage of each vegetation and land cover added to Figure 3 legend.

2.1.36 Data Request DR BIO-36

DR BIO-36. *Please include feasible alternatives to ripping the soil. If ripping the soil is necessary, please provide avoidance, minimization or mitigation measures proposed to be implemented to avoid or reduce impacts to special-status species during ground-disturbing restoration activities. Examples of appropriate minimization measures include pre-construction surveys conducted by a designated biologist prior to ground disturbance, installation of California tiger salamander exclusion fencing to ensure that individuals do not enter the revegetation site, and daily monitoring of the exclusion fence until all revegetation activities are complete.*

Response: Added detail and a new section (3.2.2) on special-status species avoidance.

2.1.37 Data Request DR BIO-37

DR BIO-37. *Please revise Figure 4 to include specific acreages for each of the following: Project Boundary, Temporary Impact Revegetation Area, and Native grassland seed mix application.*

Response: Figure 4 has been revised to include acreages.

2.1.38 Data Request DR BIO-38

DR BIO-38. *Please include a revised pre-construction survey protocol that is based on staff's recommendations for nesting birds.*

Response: Pre-construction nesting bird survey protocol has been updated per staff's recommendations in Section 3 of the NBMP. Pre-construction nesting survey details have also been added and updated in Section 2.3 for special-status species including BIO-MM-5, -6, -7, and -8.

2.1.39 Data Request DR BIO-39

DR BIO-39. *Please submit a proposal for pre-construction surveys and include species specific protocol-level surveys for special status species, such as golden eagle or western burrowing owl.*

Response: Additional measures for protocol-level pre-construction surveys for golden eagle, Swainson's hawk, and western burrowing owl have been included in BIO-MMs 6, 7, and 8.

Surveys methods and timing will adhere to recommendations outlined in the following documents:

- Golden eagle: USFWS Interim Golden Eagle Inventory and Monitoring Protocols; and Other Recommendations (Pagel et al. 2010).
- Swainson's hawk: Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley (SHTAC 2000).
- Burrowing owl: Staff Report on Burrowing Owl Mitigation (CDFW 2012).

2.1.40 Data Request DR BIO-40

DR BIO-40. *Please provide clarification on how it would be determined whether nesting golden eagles are present within 0.5 mile of the project site, if surveys are only proposed to be conducted within 500 feet of all impact areas. Provide clarification on the survey window to account for the nesting season for golden eagles beginning in mid-December.*

Response: The survey buffer for golden eagle surveys has been expanded to 2 miles and protocol-level preconstruction surveys have been added, including one survey in the early courtship season and two in the nesting season.

The minimum nest avoidance buffer of 250 feet is included in EACCS Measure BIRD-1; however, measure has been updated to include a minimum avoidance buffer of 1 mile line of site, ½ mile no line of sight, based on results of the pre-construction survey.

2.1.41 Data Request DR BIO-41

DR BIO-41. *Please revise MM-BIO-6 to increase the size of the golden eagle nest buffer to a minimum of 0.5 mile and up to 2 miles.*

Response: MM-BIO-6 has been updated to include a 2-mile survey buffer where accessible.

2.1.42 Data Request DR BIO-42

DR BIO-42. *Please include measures in a revised MM-BIO-6 that would ensure golden eagle would be avoided (i.e., no take of golden eagle would occur), if the project would not comply with section 2081.15 ITP issuance criteria.*

Response: Appropriate no-work buffers and work period restrictions have been added to MM-Bio-6 to ensure no take of golden eagle.

2.1.43 Data Request DR BIO-43

DR BIO-43. *Please consider applying for take coverage for CESA-listed or candidate and fully protected species if it is anticipated that sufficient protective buffers cannot be established between an active nest and the project impact area and take cannot be avoided and submit a revised ITP application If the applicant does not consider take coverage warranted for specific species, then please explain.*

Response: Updated avoidance and minimization measures BIO-MM-6 and -7 will ensure no take of CESA-listed or fully protected bird species such as Swainson's hawk or golden eagle. No take coverage would be required.

2.1.44 Data Request DR BIO-44

DR BIO-44. *Please provide a revised Figure 3.2 (Confidential) detailed at a scale of 1:6,000 or color aerial photographs taken at a recommended scale of 1-inch equals 500 feet (1:6,000) with a 30 percent overlap (provided under confidential cover).*

Please ensure the map legend clearly identifies species.

Response: Figure 3.2-4 - CNDDDB has been revised and included under a confidential cover; is now labeled "3.2-C".

2.1.45 Data Request DR BIO-45

DR BIO-45. *Please resubmit Figure 3.2-6 at a scale of 1:350,000 (for public viewing).*

Response: Figure 3.2-6 has been revised.

2.1.46 Data Request DR BIO-46

DR BIO-46. *Please provide the following:*

- a. *Aerial map of the isopleth graphic depicting modeled nitrogen deposition rates per Appendix B (g) (13) (B) (ii). The geographical extent of the nitrogen deposition map(s) should include the entire plume from the source and a radius of 6 miles from the project site, specifically identifying acres of sensitive habitat(s) within each isopleth. Please provide modeling parameters and files.*

Please provide the GIS shapefiles.

- b. *Perform nitrogen deposition modeling including the complete citations for references used in determining deposition rates and locations, per Appendix B (g) (13) (C) (ii).*
- c. *Amount of total annual nitrogen deposition in kilograms of nitrogen per hectare per year (kg N/ha/yr) in special status species habitats and vegetation types for wet and dry deposition.*
- d. *Description of habitat and species potentially affected.*
- e. *Provide an impact discussion, specifically addressing impacts to sensitive species habitat, per Appendix B (g) (13) (E).*

Response: Model has been run and GIS shapefiles will be included in the data package. Nitrogen deposition model methods and results included in Sections 3.2.1.6 and 3.2.3.2, and Appendix 3.2G of the Application Document.

2.1.47 Data Request DR BIO-47

DR BIO-47. *The header in the Lake and Streambed Alteration Application included as Appendix 3.2F is labeled “Fountain Wind Project” throughout the document.*

Please submit a revised Appendix 3.2F with all relevant data request responses incorporated and ensure that all information pertain to the Potentia-Viridi Battery Energy Storage Project (24-OPT-04) and is labeled correctly.

Figure 3.2-7 in Section 3.2 is not at the appropriate scale.

Response: Header in the LSAA document has been updated. Figure 3.2-7 has been updated to be at the scale of 1:2,400 or 1-inch equals 200 feet.

2.1.48 Data Request DR BIO-48

DR BIO-48. *Please provide a map of the wetland delineation at a scale of 1:2,400 or 1-inch equals 200 feet.*

Response: Figure 3.2-7 has been updated to be at the scale of 1:2,400 or 1-inch equals 200 feet.

2.1.49 Data Request DR BIO-49

DR BIO-49. *Please submit the GIS shapefiles to include the missing datasets for Figures 3.2-5, 3.2-6, 3.2-7, in Section 3.2 and Figure 3 for CUL-01 (culvert) included in Appendix A of the Biological Technical Report (Appendix 3.2A). The missing datasets includes Project Study Area shown in Figure 3.2-6, Project Boundary shown in Figure 3.2-7, Vegetation Cover Types shown in Figure 3.2-5, and Control Points shown in Figure 3.*

Response: GIS shapefile will be provided to CEC.

2.1.50 Data Request DR BIO-50

DR BIO-50. *Please provide copies of all California Natural Diversity Database (CNDDDB) forms completed for species listed by a state or federal agency and other special status species encountered during project surveys. This submittal may be in the form of a data table since CDFW has transitioned to an online CNDDDB field survey form. The CNDDDB Data Submission Template is available at <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data#44524421-digital-data>.*

Response: CNDDDB table prepared for submittal (refer to response Attachment 10).

2.1.51 Data Request DR BIO-51

DR BIO-51. *Please revise Table 3.2-1 to include the full name of each biologist. If their resume was not provided, please provide their resume. See DR BIO-53.*

Response: Table 3.2-1 has been updated with the full name of each biologist.

2.1.52 Data Request DR BIO-52

DR BIO-52. *Please revise Table 3.2-1 to indicate which biologists performed which survey or jointly performed a survey, for the project. Please indicate if there was a lead biologist for the survey.*

Response: Added the following note to Table 3.2-1: “Where more than one biologist is indicated, surveys were performed jointly.”

2.1.53 Data Request DR BIO-53

DR BIO-53. *Please revise the biologists’ resumes to indicate the amount of time spent performing specific surveys/monitoring (e.g., hours/days) or the time period served on each project, if not already provided.*

Response: Biologist resumes include time period served on each project, as well as hours performing specific surveys/monitoring.

2.1.54 Data Request DR BIO-54

DR BIO-54. *Please verify who performed the wetland delineation and provide proof of appropriate wetland delineation training and certification that is dated prior to completion of the survey conducted on January 18, 2024.*

Response: Resume has been provided with detailed information. Although Ms. Bissell had not completed a 40-hour wetland delineation course, she was actively participating in an approved online course from the Wetlands Training Institute at the time of the survey. Combined with her prior experience conducting wetland delineations under direct supervision of senior staff, and review by senior biologists who have completed the course of the data collected in the field, her experience was sufficient for the task at the time of data collection.

2.1.55 Data Request DR BIO-55

DR BIO-55. *Please clarify which biologists were responsible for completing the Ordinary High Water Mark (OHWM) datasheets in Appendix F of Appendix 3.2 D (TN 258199). The initials listed on the form “MRB” do not match the “Personnel” footnote included on Table 3.2-1.*

Response: Updated the personnel in Table 3.2-1. MRB is Mikaela Bissell.

2.1.56 Data Request DR BIO-56

DR BIO-56. *Please provide any communications the applicant had with the relevant state and federal agencies with jurisdiction over wildlife resources (e.g., CDFW and U.S. Fish and Wildlife Service (USFWS)) in the project area. Please provide copies of all communications with the agencies as part of preparation of the opt in application. Please provide the name, title, phone number, address (required), and email address (if known), of the official who was contacted.*

Response: Agency contacts in Table 3.2-5 have been updated. All correspondences with agency staff to date will be provided to CEC (refer to response Attachment 8).

2.1.57 Data Request DR BIO-57

DR BIO-57. *Please provide the completed U.S. Army Corps of Engineers wetland delineation form(s) for any water bodies that may be impacted and potentially considered federal or state jurisdictional wetlands, including full name of biologist conducting the delineation and resumes (if not already included). See also DR WATER-7.*

Response: Wetland delineation datasheets included as an appendix in the Biological Technical Report (Appendix I).

2.1.58 Data Request DR BIO-58

DR BIO-58. *Please include a comprehensive discussion, beyond what was provided on p. 3.2-27 of Section 3.2, evaluating the effectiveness of the mitigation and avoidance measures with respect to cumulative impacts.*

Response: Evaluation of effectiveness of mitigation and avoidance measures has been evaluated in Section 3.2.

2.1.59 Data Request DR BIO-59

DR BIO-59. *Please update Section 3.2.5.1 of the application to provide a complete list of mitigation measures proposed by the applicant for biological resources that includes all measures discussed in Subsection 3.2.5.1 as well as Subsection 3.2.3.2 of Appendix 3.2A, including AMPH-1 and MAMM-1. Please include BIRD-3 from the EACCS or discuss why this measure was not included. Please include a discussion of all proposed avoidance and mitigation measures in a revised Subsection 3.2.3.2.*

Response: Subsection 3.2.5.1 has been revised to include additional EACCS measures as follows:

AMPH-1 added to MM-BIO-3.

MAMM-1 added as MM-BIO-10.

BIRD-2 added to MM-BIO-8.

BIRD-1 added to MM-BIO-6

2.1.60 Data Request DR BIO-60

DR BIO-60. *Please discuss options for “other compensatory mitigation” in detail, including but not limited to alternative approved mitigation banks, options under consideration other than mitigation banks and any necessary monitoring. Please coordinate with CEC staff as well as the other resources agencies (e.g., USFWS and CDFW) to determine if the EACCS mitigation ratio calculation would be an acceptable way to calculate mitigation that would be required.*

Response: The Project plans to purchase and conserve in-kind mitigation land located in the immediate vicinity of the Project (see attached Potentia Viridi BESS Biological Resources Assessment Report) to satisfy anticipated compensatory mitigation requirements for the species identified in the ITP application and impacted aquatic resources. The applicability of EACCS mitigation ratios for the proposed covered species was discussed with CEC and CDFW staff during a November 20, 2024 meeting, after which CEC staff (Ann Crisp) followed up by email indicating that CEC and CDFW would assess mitigation suitability following review of proposed mitigation land. The attached Potentia Viridi BESS Biological Resources Assessment Report is being provided for that purpose.

2.1.61 Data Request DR BIO-61

DR BIO-61. *Please provide a discussion of the educational program to enhance employee awareness during construction and operation to protect biological resources.*

Response: This measure was taken directly from the EACCS; however, we have expanded it to include further detail of the educational program. See Appendix G1 of the original submittal.

2.1.62 Data Request DR BIO-62

DR BIO-62. *Please provide a discussion of all proposed monitoring plans to ensure compliance with and effectiveness of impact avoidance and mitigation measures as required. This includes discussing the Temporary Restoration and Revegetation Plan (Appendix 1L) as well as plans for monitoring for special status species including but not limited to big tarplant, golden eagle, western burrowing owl, and San Joaquin kit fox. These species may warrant development of additional monitoring plans. This would include plans for pre-construction surveys, flagging known locations, establishing buffers and monitoring during construction for rare plants, such as big tarplant.*

Response: Discussion of monitoring plans and effectiveness of mitigation measures have been added to Section 3.2.3.2. Temporary Restoration and Revegetation Plan also discussed in Visual Resources mitigation measure VIS-MM-02.

2.1.63 Data Request DR BIO-63

DR BIO-63. *Please provide copies of all correspondence along with meeting notes with regulatory agencies regarding permitting issues or other relevant topics and include the name of officials contacted within each agency.*

Response: Correspondences with regulatory agencies will be provided to CEC staff. Revised Table 3.2-7 has been updated with relevant agency contact information.

2.1.64 Data Request DR BIO-64

DR BIO-64. *Please update Table 3.2-4 in Section 3.2 to include the page numbers where the application discusses conformance with each LORS.*

Response: Revised Table 3.2-6 has been updated to include relevant sections.

2.1.65 Data Request DR BIO-65

DR BIO-65. *Please provide the name, title, phone number, address (required), and email address (if known), of an official who was contacted within each agency, and also provide the name of the official who will serve as a contact person for CEC staff.*

Response: Revised Table 3.2-7 has been updated with regulatory agency contacts.

2.1.66 Data Request DR BIO-66

DR BIO-66. *Please provide a schedule indicating when permits outside the authority of the CEC will be obtained and the steps the applicant has taken or plans to take to obtain such permits.*

Response: Permits required for the Project, but outside of the authority of the CEC include Clean Water Act permits (both Federal and State), as well as the ancillary consultations that are conducted by the US Army Corps of Engineers, acting as the lead federal agency. These include consultation with the US Fish & Wildlife Service (USFWS) pursuant to Section 7 of the Endangered Species Act (ESA), as well as consultation with local Native American tribes and the State Historic Preservation Officer pursuant to Section 106 of the National Historic Preservation Act.

A Biological Assessment (BA) was provided to the USACE as an appendix to the CWA, Section 404 application. This BA is currently being reviewed under Section 7 Consultation with the USFWS. Consultation was initiated by USACE on September 6, 2024 and the process is on-going.

The USACE was provided with a Cultural Resources Inventory and Evaluation Report Potentia Viridi BESS Project, Alameda County, California, dated June 2024 (by Dudek) for use in conducting cultural and historic consultations. The USACE provided this report in its notification to ten Native American tribal groups as well as the Native American Heritage Council, in the middle of September, 2024, and concluded its consultation on October 25, 2024. No requests for consultation were received by USACE. USACE is currently in the

process of completing consultation with the State Historic Preservation Officer (SHPO). We expect this consultation to conclude by the middle of February, 2025.

The State of California Regional Water Quality Control Board has independent decision-making authority to grant or deny requests for Clean Water Act, Section 401 Water Certifications. This permitting process, however, is coordinated with (and through) the CEC.

2.1.67 Data Request DR BIO-67

DR BIO-67. *Please provide documentation that the site assessment report for California tiger salamander was sent to USFWS. Also, provide documentation from USFWS regarding recommendations for conducting field surveys for California tiger salamander and California red-legged frog. Please provide documentation that all the necessary data and supporting documentation was sent to USFWS for California red-legged frog.*

Response: The Biological Assessment containing the site assessment information was submitted to USFWS on September 6, 2024.

2.1.68 Data Request DR BIO-68

DR BIO-68. *Please revise and submit the Mitigation Score Sheets (Appendix H of the Biological Technical Report) included in the ITP application using the correct mitigation ratios. Please contact CEC staff and CDFW for guidance and assistance in completing this task.*

Response: Updated Mitigation Score Sheets are included as Appendix H of the BTR.

2.1.69 Data Request DR BIO-69

DR BIO-69. *Please specify whether the biologists that prepared the California Red- legged Frog Habitat Assessment Data Sheets in Appendix F of the Biological Technical Report had any prior experience with this process. Please provide clarification on past experience with the EACCS and the qualifications for the biologists who filled out the Mitigation Score Sheets (Appendix G of the Biological Technical Report) included in the ITP application.*

Response: Yes, the biologists responsible for these tasks are qualified. Resumes have been included in Appendix C of the BTR. Mitigation Score Sheets have been updated to Appendix H of the Biological Technical Report.

2.1.70 Data Request DR BIO-70

DR BIO-70. *Please submit a copy of EACSS ratio table used to determine compensatory mitigation and indicate which ratio was used from the table and provide the reasoning for using that ratio.*

Response: The EACCS standardized mitigation ratios for CTS, CRLF and SJKF are 3:1 (three acres preserved for each acre removed) (ICF 2010). However, using the Mitigation Score Sheets in Appendix E of the EACCS, the mitigation ratios are adjusted downward because the mitigation bank provides higher quality habitat for CTS and CRLF than the AA, including suitable breeding habitat (see Appendix D for the

Mitigation Score Sheets). As stated in the Programmatic Biological Opinion for the EACCS, the impact site score is divided by the mitigation site score and then multiplied by the standard mitigation ratio to determine the adjusted ratio:

$$(\text{Impact Score} \div \text{Mitigation Score}) \times \text{Standard Mitigation Ratio} = \text{Adjusted}$$

Mitigation Ratio

Therefore, Permanent impacts will be mitigated at a minimum of 1.9:1 for CTS and 2.3:1 for CRLF. Using the same mitigation formula stated above, permanent impacts will be mitigated at a minimum of 2.5:1 for San Joaquin kit fox.

However, per the USFWS the adjusted mitigation ratios initially approved were not appropriate to use the mitigation correction factor score sheets. The EACCS requires a fine scale analysis of the Project site and the score can be directly correlated with the attributes of the habitat being impacted. Therefore, the USFWS recommended compensation for the proposed Project be based on the ratio tables in the EACCS, which is 3:1 for each species.

EACCS Mitigation Score Sheets are included in the BTR document as Appendix H.

EACCS ratio tables utilized for determining mitigation ratios include the following:

- Table 3-7. Standardized Mitigation Ratios for California Red-Legged Frog in the EACCS Study Area.
- Table 3-8. Standardized Mitigation Ratios for California Tiger Salamander in the EACCS Study Area
- Table 3-11. Standardized Mitigation Ratios for San Joaquin Kit Fox in the EACCS Study Area.

2.1.71 Data Request DR BIO-71

DR BIO-71. *Please address these discrepancies in Subsection 5.4.2.2 and provide an impact analysis that includes assessment of potential impacts to breeding habitat and critical habitat in the project area, and justify how the current proposed mitigation measures for the project will be sufficient to avoid take of the California red-legged frog. Otherwise, provide additional avoidance, monitoring, and mitigation measures to avoid take of California red-legged frog. Please also provide any relevant information regarding the status of the Section 7 consultation between USACE and USFWS. See DR-BIO-74.*

Response: There will be no impacts to breeding habitat. Section 5.4.2.2 has been updated to clarify. Status of Section 7 consultation is presented in Response to DR-BIO-74.

2.1.72 Data Request DR BIO-72

DR BIO-72. *Please explain in more detail how the applicant intends to ensure that the proposed project would not impact these species or be in conflict with the EACCS by explaining how impacts to big tarplant, California red-legged frog, and Patterson Run would be avoided and/or mitigated.*

Response: Discussions of impact avoidance, minimization, and mitigation for big tarplant, California red-legged frog, and aquatic resources have been revised. The mitigation measures are in compliance with the EACCS. Populations of big tarplant are proposed to be completely avoided by construction. Impacts to upland and dispersal habitat for California red-legged frog will be mitigated through either purchase of mitigation credits at an approved bank or through establishment of habitat management lands, or a combination thereof. Similarly, impacts to aquatic resources (Patterson Run) will be mitigated through preservation of like habitat at an approved mitigation bank or turnkey habitat management lands, to be determined in consultation with the CEC/CDFW, USACE, and RWQCB.

2.1.73 Data Request DR BIO-73

DR BIO-73. *Please include a proposal for pre-construction surveys for western burrowing owl that follows the CDFW Staff Report on Burrowing Owl Mitigation (2012) guidance document for this species as well as any other avoidance and minimization measures proposed for this species and provide in a draft burrowing owl mitigation and monitoring management plan. The plan should provide details on how the project would avoid, minimize and fully mitigate impacts to western burrowing owl.*

Response: Pre-construction surveys for burrowing owl will follow guidance outlined in CDFW Staff Report on Burrowing Owl Mitigation (2012), as provided in BIO-MM-8 of the application document.

2.1.74 Data Request DR BIO-74

DR BIO-74. *Please clarify whether Patterson Run contains any potentially suitable aquatic breeding or non-breeding habitat for California red-legged frog.*

Response: Patterson Run is seasonal and does not contain pools with sufficient hydroperiod to sustain California red-legged frog breeding. Patterson Run does provide dispersal and refuge habitat for this species. The discussion of potential habitat in Patterson Run has been added to Section 5.4.2.3 of the BTR.

2.1.75 Data Request DR BIO-75

DR BIO-75. *Please provide any measures that were taken to confirm if diamond- petaled California poppy and caper-fruited tropidocarpum would likely be evident and identifiable during the survey period, if present. This includes visiting a nearby reference population to confirm blooming. Please provide dates and general location of the reference population, as well as who visited the sites, and include a resume, if not previously provided.*

Response: Because reference populations for these species in the region are primarily found on private property that is inaccessible to the public, the following resources were reviewed prior to conducting the botanical surveys to assess the average bloom time for potentially occurring sensitive plant species:

- Consortium of California Herbaria
- Calflora
- iNaturalist
- California Natural Diversity Database
- California Plant Society database

Based on review of these resources, the timing of the April 2023 and 2024 surveys would have coincided with early blooming plant species such as caper-fruited tropidocarpum and diamond-petaled California poppy. The discussion of pre-survey research and results has been updated in Section 5.4.1 of the BTR.

2.1.76 Data Request DR BIO-76

DR BIO-76. *Section 2 of Appendix 3.2D states that “mitigation outlined in EACCS is expected to be required by USFWS and is expected to include wetlands and/or waters to offset impacts to aquatic features”. Please identify the specific mitigation from the EACCS that USFWS is likely to require.*

Response: The following measures outlined in the EACCS will be implemented as part of MM-BIO-1 through -11 in Section 3.2.5 of the application document: GEN-01 through -16; AMPH-1 and -2; BIRD-1 and -2; and MAMM-1.

2.1.77 Data Request DR BIO-77

DR BIO-77. *Please include all avoidance, minimization, mitigation, and monitoring measures for California tiger salamander, California red-legged frog, and San Joaquin kit fox (e.g., pre-construction surveys for San Joaquin kit fox).*

Response: MM-BIO-2 through -4, and -10 in Section 3.2.5 of the application document provide survey, avoidance, minimization, and mitigation for these species.

2.1.78 Data Request DR BIO-78

DR BIO-78. *Table ES-1 in the Biological Assessment, included as Appendix D in Appendix 3.2D, identifies impacts on federally listed species with permanent and temporary acreage listed for California tiger salamander, California red-legged frog, and San Joaquin kit fox. Please demonstrate how the acres were calculated and specify how the applicant would use these acreages in determining compensatory mitigation.*

Response: See response to comment DR BIO-70.

2.1.79 Data Request DR BIO-79

DR BIO-79. *Please confirm if the Nationwide Permit Pre-Construction Notification Supplemental Information has been submitted to the USACE. Please provide any correspondence from USACE and/or USFWS regarding this consultation process, as well as a copy of the Section 404 permit application and Engineering Form 6082, referenced in Appendix 3.2D.*

Response: An application for a Nationwide Permit was submitted to the Sacramento District of the U.S. Army Corps of Engineers on June 14, 2024. The application was assigned to Matthew Di Loreto on July 15, 2024, and he provided receipt of a complete application on July 19, 2024. A Biological Assessment and a Cultural Resources Inventory and Evaluation Report were both provided as attachments to the application. Mr. DiLoreto initiated consultation with the U.S Fish and Wildlife Service on September 6, 2024, pursuant to Section 7 of the Federal Endangered Species Act. He initiated consultation with tribal groups identified by the Native American Heritage Commission on September 11, 2024, pursuant to Section 106 of the National Historic Preservation Act, and tribal consultations concluded on October 25, 2024. There were no specific requests or requirements that were generated from the consultations. On January 7, 2025, Mr. Di Loreto indicated that he was forwarding the cultural and historic information to the State Historic Preservation Officer.

Both the Section 7 and the Section 106 consultations, remain on-going. A copy of the application to the USACE is provided, including attachments, as well as a copy of email correspondence with Mr. Di Loreto.

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Attachment 1

Revised Section 3.2, Biological Resources

Attachment 2

Biological Technical Report

Attachment 3

Nesting Bird Management Plan

Attachment 4

Temporary Impact Revegetation and Habitat Restoration Plan

Attachment 5

Nitrogen Deposition Model

Attachment 6

Incidental Take Permit

Attachment 7

Lake and Streambed Alteration Agreement

Attachment 8

Agency Communications

Attachment 9

Resumes

Attachment 10
CONFIDENTIAL CNDDDB Table

