



November 21, 2024

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City of Daly City  
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Subject: Cormorant Energy Storage Project, Mitigated Negative Declaration,  
SCH No. 2024110049, San Mateo County

Dear Sam Fielding:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from the City of Daly City (City) for the Cormorant Energy Storage Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

#### CDFW ROLE

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

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's Lake and Streambed Alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

#### California Endangered Species Act (CESA) and Native Plant Protection Act

Please be advised that a CESA Incidental Take Permit (ITP) must be obtained if the Project has the potential to result in "take" of plants or animals listed under CESA or NPPA, either during construction or over the life of the Project. Under CESA, take is defined as "to hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture or kill." Issuance of an ITP is subject to CEQA documentation. If the Project will impact CESA or NPPA listed species, early consultation with CDFW is encouraged, as significant modification to the Project and mitigation measures may be required to obtain an ITP. Issuance of an ITP is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and

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

reporting program. Fully protected species may not be taken or possessed at any time (Fish and Game Code, §§ 3511, 4700, 5050, and 5515.)

CEQA requires a Mandatory Finding of Significance if a Project is likely to substantially impact threatened or endangered species (Pub. Resources Code, §§ 21001(c), 21083, and CEQA Guidelines §§ 15380, 15064, 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency's FOC does not eliminate the Project proponent's obligation to comply with Fish and Game Code, § 2080 et. seq.

### **Lake and Streambed Alteration**

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et seq., for Project activities affecting lakes or streams and associated riparian habitat. Notification is required for any activity that may substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank (including associated riparian or wetland resources); or deposit or dispose of material where it may pass into a river, lake, or stream. Work within ephemeral streams, drainage ditches, washes, watercourses with a subsurface flow, and floodplains are generally subject to notification requirements. In addition, infrastructure installed beneath such aquatic features, such as through hydraulic directional drilling, is also generally subject to notification requirements. Any impacts to the mainstems, tributaries and floodplains or associated riparian habitat would likely require an LSA Notification. CDFW, as a responsible agency under CEQA, will consider the MND for the Project. CDFW may not execute a final LSA Agreement until it has complied with CEQA as the Responsible Agency.

### **Raptors and Other Nesting Birds**

CDFW has authority over actions that may result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections protecting birds, their eggs, and nests include §§ 3503 (regarding unlawful take, possession or needless destruction of the nests or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird). Migratory birds are also protected under the federal Migratory Bird Treaty Act.

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** City of Daly City

**Objective:** The objective of the Project is to amend the General Plan land use designation of the Project site from "Commercial Retail and Office" to "Industrial," and rezone the Project site from "Light Commercial" to "Heavy Commercial." These changes would allow construction of a 6.9-acre, 250 mega-watt battery energy storage system (BESS) facility and an associated 0.71-acre substation, and an underground 115-kilovolt transmission line to the Pacific Gas and Electric Company (PG&E) Martin Substation. Energy would be received from the PG&E electric transmission system and stored on-site. Primary Project activities include developing the 11.5-acre parcel with the BESS facility on 6.9 acres, the substation on 0.71 acres, and the remainder of the site used for a driveway, access road, and landscaping.

**Location:** The Project is located at 2150 Geneva Avenue in the City of Daly City, California, 94014; APN 005-050-202; Latitude: 37.706285, Longitude: -122.422862; at the intersection of Geneva Avenue and Carter Street.

**Timeframe:** Construction activities are anticipated to occur over a 23-month period, with the precise dates to be determined.

## COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

### Project Description and Related Impact Shortcoming

**Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or by CDFW or U.S. Fish and Wildlife Service (USFWS)?**

#### COMMENT #1: Crotch's Bumble Bee

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**Issue:** The MND does not identify potential impacts to Crotch's bumble bee (*Bombus crotchii*, CBB). The current range of CBB, a species listed as candidate endangered under CESA, encompasses the proposed Project area, and proposed Project activities as described in the MND could impact bumble bees if they are present on-site. Bumble bees, including CBB, are found in a wide variety of natural, agricultural, urban and rural habitats, and require suitable nesting and overwintering sites as well as availability of nectar and pollen from floral resources (Hatfield et al. 2018).

**Specific impacts, why they may occur and be potentially significant:** Project activities as described in the MND would include site grading and excavation to a depth of up to approximately five feet across the majority of the site to allow installation of underground electrical equipment, as well as excavation of a small portion of the site up to 15 feet deep to accommodate the main power transformer foundation, resulting in 26,400 cubic yards of soil export. The proposed transmission line would involve excavation of a three-foot-wide by six-foot-deep trench within an approximately 20-foot-wide work area, as well as excavation of a seven-foot-wide by 30-foot-deep foundation for a Point of Change of Ownership pole and overhead transmission lines. Bumble bee nests are most often located underground in abandoned holes made by ground squirrels and rodents, and occasionally in abandoned bird nests. Any near-surface or subsurface ground disturbance could result in the direct take of bumble bee colonies or overwintering queens.

Portions of the Project site contain ruderal areas of non-native, flowering plant species including Italian thistle (*Carduus pycnocephalus*), fennel (*Foeniculum vulgare*), Bermuda buttercup (*Oxalis per-caprae*), bird's-foot trefoil (*Lotus corniculatus*), and gorse (*Ulex europaeus*). Bumble bees are generalist foragers, and do not depend on any one flower type, often visiting native and non-native flowering plants alike to collect the pollen and nectar resources needed to sustain their colonies and provision nest cells. The Project's site grading and excavation would involve removal of ruderal, flowering plants present on-site as a part of the extensive ground disturbance, thus potentially impacting bumble bee habitat.

Many bumble bee species, once common in the western United States, have undergone a dramatic decline in both distribution and abundance and are now extirpated from much of their historic ranges. Many bumble bees are threatened with extinction due primarily to reductions in habitat from urbanization, intensive agriculture, and invasive species introductions. CBB is a candidate species under CESA and therefore should be considered a threatened, endangered, or rare species under CEQA pursuant to CEQA Guidelines section 15380. Therefore, if CBB occur at the Project site and Project impacts to CBB would occur, this may result in a substantial reduction in the species' population, which would be a mandatory finding of significance (CEQA Guidelines, § 15065).

## **Recommended Potentially Feasible Mitigation Measures**

### **Mitigation Measure #1: Crotch's Bumble Bee Habitat Assessment**

CDFW recommends the MND be updated to include a thorough habitat assessment for Crotch's bumble bee within the Project area and surrounding areas that may be impacted by Project construction and operations. The assessment should be conducted by a qualified entomologist knowledgeable with the life history and ecological requirements of Crotch's bumblebee, and include all areas of suitable overwintering, nesting, and foraging habitats.

Suitable habitat includes areas of grasslands and upland scrub that contain requisite habitat elements such as small mammal burrows and forage plants. Potential nest habitat (late February to late October) could contain underground abandoned small mammal burrows, perennial bunch grasses and/or thatched annual grasses, brush piles, old bird nests, dead trees, or hollow logs. Overwintering sites (November through early February) utilized by mated queens in self-excavated hibernacula could be present in soft, disturbed soil, sand, well-drained, or loose soils, under leaf litter or other debris with ground cover requisites such as barren areas, tree litter, bare patches within short grass in areas lacking dense vegetation.

### **Mitigation Measure #2: Crotch's Bumble Bee Surveys**

The MND should address specific requirements for bumble bees. It should state that pre-construction surveys will be conducted within the Project area and surrounding areas which may be impacted by Project construction and/or operations. CDFW recommends following the guidance outlined in the California Bumble Bee Atlas Habitat surveys- Cali Bumble Bee Atlas – California Bumble Bee Atlas (<https://www.cabumblebeeatlas.org/habitat-surveys.html>).

The peak flying time for Crotch's bumble bee is March to August, but bees could be flying anytime between February 1 and October 31. Surveys between March and June are expected to have highest detection probability and are therefore the period recommended for pre-construction surveys. Surveys should be conducted no more than 30 days prior to start of Project construction activities, assessing all areas of suitable habitat for overwintering, nesting and foraging at, and within 100 feet of the proposed work area. Surveys should include a minimum of three survey efforts, over a three-day period within a temperature range of 15C and 30C although bumblebees and can fly and forage at near freezing temperatures. If the surveyor suspects Crotch bumble bee detection or occupancy, CDFW should be consulted immediately.

Goals of the surveys should be to potentially identify the bee species through non-take methods (close lens photography), foraging plants, and potential ground nest sites on-site. Surveys should include examining flowering vegetation, any potential preferred nectar plants, small mammal burrows, bunch grasses, thatch, brush piles, old bird nests, dead trees, or hollow logs. Survey results, after the protocol was followed, would be good for one year (until the next flying period season) but a pre-activity survey would still be needed prior to ground-disturbing activities.

### **Mitigation Measure #3: Avoidance of Crotch's Bumble Bee Nesting Colonies**

CDFW recommends that inactive small mammal burrows and thatched/bunch grasses be avoided whenever feasible. If an inactive burrow may be disturbed by Project activities, it should be resurveyed for Crotch's bumble bee presence within seven days prior to the scheduled disturbance. If Crotch's bumblebee has been detected during surveys, the qualified entomologist should identify the location of all nests in or adjacent to the Project site. If nests are identified, 45-foot no-disturbance buffer zones should be established around nests to reduce the risk of disturbance or

accidental take. If Project activities may result in disturbance or potential take, the qualified entomologist should expand the buffer zone as necessary to prevent disturbance or take.

#### **Mitigation Measure #4: Crotch's Bumble Bee Take Authorization**

If surveys document presence of Crotch's bumblebee within the Project area, due to the difficulty of completely avoiding take of individuals of the species, CDFW strongly recommends that the Project proponent apply for an ITP under CESA to provide take authorization for Crotch's bumblebee as a covered species.

#### **Mitigation Measure #5: Crotch's Bumble Bee Compensatory Mitigation**

CDFW recommends that the MND include compensatory mitigation for the loss of all suitable Crotch's bumble bee habitat. Bumble bee floral resources should be mitigated at a 3:1 ratio for permanent impacts in the absence of information regarding the compensatory mitigation site. Floral resources should be replaced as close to their original location as is feasible. If active Crotch's bumble bee nests have been identified and floral resources cannot be replaced within 600 feet of their original location, floral resources should be planted in the most centrally available location relative to identified nests. This location should be no more than 4,900 feet (1.5-kilometers) from any identified nest. Replaced floral resources may be split into multiple patches to meet distance requirements for multiple nests.

### **ENVIRONMENTAL DATA**

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

### **ENVIRONMENTAL DOCUMENT FILING FEES**

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

### **CONCLUSION**

CDFW appreciates the opportunity to comment on the MND to assist the City in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Shannon Husband, Environmental Scientist, at (707) 337-1364 or [Shannon.Husband@Wildlife.ca.gov](mailto:Shannon.Husband@Wildlife.ca.gov); or Wesley Stokes, Senior Environmental Scientist at (707) 339-6066 or [Wesley.Stokes@Wildlife.ca.gov](mailto:Wesley.Stokes@Wildlife.ca.gov).

Sam Fielding  
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Sincerely,

Erin Chappell  
Bay Delta Region  
Regional Manager

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2024110049)

## REFERENCES

Hatfield, R., S. Jepsen, S. F. Jordan, M. Blackburn, and A. Code. 2018. A petition to the state of California Fish and Game Commission to list the Crotch bumble bee (*Bombus crotchii*), Franklin's bumble bee (*Bombus franklini*), Suckley cuckoo bumble bee (*Bombus suckleyi*), and western bumble bee (*Bombus occidentalis occidentalis*) as endangered under the California Endangered Species Act. Xerces Society for Invertebrate Conservation, Defenders of Wildlife, and Center for Food Safety. Sacramento, CA.  
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=161902&inline>