



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



November 27, 2023

Jeremy Shaw, Planner
Fresno County, Department of Public Works
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Fresno, California 93721
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Subject: Draft Environmental Impact Report (EIR) No. 8189, CUP No. 3734, Key Energy Storage, LLC Project (Project) SCH No.: 2022070414

Dear Jeremy Shaw:

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, the California Department of Fish and Wildlife (CDFW) appreciates 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 Fish and Game Code. While the comment period may have ended, CDFW appreciates it if you would still consider our comments.

After reviewing the provided CEQA document, CDFW concurs with the biological resources related analysis and measures proposed in the Draft EIR and recommends that all such measures in the Draft EIR be carried forward into the Final EIR. CDFW has determined that most of the biological resource mitigation measures as currently documented in the Draft EIR are sufficient for mitigation of potential project related impacts to listed species. Please note that take of any species listed under the California Endangered Species Act (CESA) would be unauthorized if an Incidental Take Permit (ITP) pursuant to Fish and Game Code section 2081 subdivision (b) was not acquired in advance of such actions. It is recommended to consult with CDFW before any ground disturbing activities commence and to obtain an ITP if take of CESA listed species cannot be avoided.

Mitigation Measure 3.5-3 (Protection of Nesting Birds) states that the nesting bird season is February 1 to August 31. CDFW recognizes the nesting bird season as February 1 to September 15. This measure also includes information stating that surveys shall be conducted no more than 14 days prior to each phase of construction

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activities. CDFW recommends that pre-construction surveys for active nests are conducted no more than 10 days prior to the start of ground or vegetation disturbance to maximize the probability that nests that could potentially be impacted are detected.

This mitigation measure also states that if active nests are found, a suitable buffer would be 300-feet for common raptors, and 0.25-mile for Swainson's hawk. CDFW recommends a 500-foot no-disturbance buffer around active nests of non-listed (common) raptors and 0.5-mile around active Swainson's hawk nests (SWHA TAC 2000).

In conclusion, CDFW recommends updating Mitigation Measure 3.5-3, Protection of nesting Birds, to include the following:

1. That nesting bird season runs to September 15 of any given year.
2. That pre-construction surveys for nesting birds occur no more than 10 days prior to each phase of construction.
3. The no-disturbance buffer for common raptors is 500 feet.
4. The no disturbance buffer around Swainson's hawk nests is 0.5 miles.

CDFW appreciates the opportunity to comment on the Project to assist the County of Fresno in identifying and mitigating the Project's impacts on biological resources.

More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>). If you have any questions, please contact Kelley Nelson, Environmental Scientist, at the address provided on this letterhead, or by electronic mail at Kelley.Nelson@wildlife.ca.gov.

Sincerely,

DocuSigned by:

Bob Stafford

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Bob Stafford for Julie A. Vance
Regional Manager

ec: State Clearinghouse
Governor's Office of Planning and Research
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REFERENCES

Swainson's Hawk Technical Advisory Committee. 2000. Recommended Timing and methodology for Swainson's hawk nesting surveys in California's Central Valley. Swainson's Hawk Technical Advisory Committee.