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 DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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May 13, 2024

Governor's Office of Planning & Research

May 13 2024

STATE CLEARINGHOUSE

McKina Alexander
 City of Carson
 701 E. Carson St
 Carson, CA 90745
 Email: malexander@carsonca.gov

Subject: Mitigated Negative Declaration for Avocet Energy Storage System Project, SCH #2024040695, City of Carson, Los Angeles County

Dear McKina Alexander:

The California Department of Fish and Wildlife (CDFW) has reviewed the Mitigated Negative Declaration (MND) for the Avocet Energy Storage System Project (Project) proposed by the City of Carson (City). Supporting documentation for the Project includes the *Biological Constraints Analysis Memorandum* dated December 9, 2022, and the *Biological Resources Technical Memorandum* dated November 14, 2023. CDFW appreciates the opportunity to provide comments regarding aspects of the Project that could affect fish and wildlife resources and may be subject to CDFW's regulatory authority under the Fish and Game Code.

CDFW's 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, subdivision (a) & 1802; Pub. Resources Code, § 21070; California Environmental Quality Act (CEQA) Guidelines, § 15386, subdivision (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 State fish and wildlife resources.

CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code, including 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.), or CESA-listed rare plant pursuant to the Native Plant Protection Act (NPPA; Fish & G.

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McKina Alexander
City of Carson
May 13, 2024
Page 2 of 10

Code, § 1900 et seq.), CDFW recommends the City obtain appropriate authorization under the Fish and Game Code.

Project Summary

Project Applicant: Avocet Energy Storage, LLC.

Objective: The proposed Project includes the development of an approximately 200-megawatt battery energy storage system within the Project site. The proposed Project would consist of lithium-ion batteries (or similar technology available at the time of construction) installed in racks, inverters, medium-voltage transformers, switchgear, a collector substation, and other associated equipment to interconnect into the Southern California Edison (SCE) Hinson Substation. A generation transmission line (gen-tie line) would interconnect the proposed Project to the existing SCE Hinson Substation. The overhead portion of the gen-tie line will span from the Project site to the east for approximately 0.45-mile, crossing over Dominguez Channel and the Union Pacific Railroad to the transition point. Two approximately 175-foot-tall transmission poles would be required for the overhead portion. At the transition point, up to three transition poles (approximately 175 feet in height) may be built and the gen-tie line would transition underground.

Location: The Project is located on a 6.96-acre site at 23320 Alameda Street in the City of Carson. The proposed gen-tie route would cross three jurisdictions including: the City of Carson, the City of Los Angeles, and the City of Long Beach. The Project site is located in the eastern portion of the City of Carson, east of South Alameda Street and north of East Sepulveda Boulevard. The Project site is approximately 0.95 miles south of Interstate 405 and is bordered by Alameda Street to the west, industrial uses to the north and south, and the Dominguez Channel to the east. The SCE Hinson Substation or point of interconnection is located approximately 0.62 miles to the northeast in the City of Long Beach.

Biological Setting: The Project site is in an area characterized by a mix of industrial uses and is currently developed as an aggregate recycling center. Non-native grasses and forbs occur along the banks of Dominguez Channel and within the eastern portion of the study area within the transmission line easement. This community is characterized by disturbance both historic (i.e., excavation and grading) and ongoing (i.e., regular mowing activities). It supports a dense herbaceous layer primarily comprised of non-native grasses and forbs such as brome grass (*Bromus* sp.), short-podded mustard (*Hirschfeldia incana*), and Russian thistle (*Salsola* sp.). Isolated occurrences of non-native tree tobacco (*Nicotiana glauca*) occur along the banks of Dominguez Channel as well. Overall wildlife diversity and abundance in the study area is low, and no sensitive species have been recorded in the study area. The Project site is fully developed and surrounded by industrial land use with scattered ornamental landscaping. Local wildlife may use the Project site as a travel corridor.

McKina Alexander
City of Carson
May 13, 2024
Page 3 of 10

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. Editorial comments or other suggestions may also be included to improve the document.

Comment #1: Impacts to Streams

Issue: Project activities may impact the Dominguez Channel.

Specific impacts: On page 17, the *Biological Resources Technical Memorandum* states, “[i]nstallation of the gen-tie line will not result in a discharge of dredged or fill material to the Dominguez Channel as the poles for the overhead transmission line will be installed outside of the channel. Therefore, the project will not be subject to the regulatory jurisdiction of the [...] California Department of Fish and Wildlife (CDFW) pursuant to Sections 1600 et seq. of the California Fish and Game Code (FGC) [...].” The installation of the gen-tie line is proposed to occur on the bank of the channel, which may be subject to Fish and Game Code, section 1600.

Why impacts would occur: According to Fish and Game Code, section 1600 et seq., substantial changes to the bank of a channel may require notification to CDFW prior to beginning these activities.

Installation activities may cause erosion, soil compaction, increased sediment aggradation downstream, and may result in loss of vegetation communities. Additionally, Project implementation may directly affect water quality downstream. The MND does not indicate that an LSA Agreement notification will be submitted; therefore, it has not been determined that an LSA Agreement will be required for this Project. As a result, the Project could result in unmitigated impacts to streams and associated habitats.

Evidence impacts would be significant: CDFW exercises its regulatory authority as provided by Fish and Game Code, section 1600 et seq. to conserve fish and wildlife resources which includes rivers, streams, or lakes and associated natural communities. Fish and Game Code, section 1602 requires any person, State or local governmental agency, or public utility to notify CDFW prior to beginning any activity that may do one or more of the following:

- Divert or obstruct the natural flow of any river, stream, or lake;
- Change the bed, channel, or bank of any river, stream, or lake;
- Use material from any river, stream, or lake; or,
- Deposit or dispose of material into any river, stream, or lake.

McKina Alexander
City of Carson
May 13, 2024
Page 4 of 10

CDFW requires an LSA Agreement when a Project activity may substantially adversely affect fish and wildlife resources. The Project may result in significant impacts on streams and associated natural communities if development would be in close proximity to these resources. Without appropriate mitigation, the Project continues to have a substantial adverse direct, indirect, and cumulative effect, either directly or through habitat modifications, on fish and wildlife resources, including rivers, streams, or lakes and associated natural communities identified by CDFW.

Recommended Potentially Feasible Mitigation Measure(s):

Mitigation Measure #1: The Project Applicant shall notify CDFW pursuant to Fish and Game Code, section 1602 and may need to obtain an LSA Agreement from CDFW prior to obtaining a grading permit. The Project Applicant shall comply with the mitigation measures detailed in an LSA Agreement issued by CDFW. The Project Applicant shall also provide compensatory mitigation for any impacted stream and associated natural community. Please visit CDFW's [Lake and Streambed Alteration Program](#) webpage for more information (CDFW 2024a).

Recommendation #1: CDFW's issuance of an LSA Agreement for a project that is subject to CEQA will require CEQA compliance actions by CDFW as a Responsible Agency. As a Responsible Agency, CDFW may consider the CEQA document from the Lead Agency/Project Applicant for the project. To minimize additional requirements by CDFW pursuant to Fish and Game Code, section 1600 et seq. and/or under CEQA, a project's CEQA document should fully identify the potential impacts to the stream or riparian resources and provide adequate avoidance, mitigation, monitoring, and reporting commitments for issuance of the LSA Agreement. To compensate for any on- and off-site impacts to aquatic and riparian resources, additional mitigation conditioned in any LSA Agreement may include the following: erosion and pollution control measures; avoidance of resources; protective measures for downstream resources; on- and/or off-site habitat creation; enhancement or restoration; and/or protection and management of mitigation lands in perpetuity.

Additional Recommendations

Recommendation #2: The MND provides mitigation for nesting birds; however, language in the Project's mitigation measure for nesting birds may not fully mitigate impacts to nesting birds in and around the Project site. CDFW recommends the City revise Mitigation Measure BIO-1 by adding underlined language and removing the language with a strikethrough:

"If work activities occur within the avian nesting season (generally defined as January 15 through September 15), a qualified biologist should conduct a nesting bird and raptor survey within ~~30~~ 14 days of the anticipated start date, and no less than 3 days prior to ground disturbance, to identify any active nests within 500 feet of suitable nesting habitat. If an active nest is found, the nest should be

McKina Alexander
City of Carson
May 13, 2024
Page 5 of 10

avoided, and a suitable buffer zone delineated in the field where no impacts would occur until the chicks have fledged the nest as determined by a qualified biologist. Construction avoidance buffers are generally 300 feet for non-listed passerines and 500 feet for listed avian species and raptors; however, avoidance buffers may be reduced for non-listed species or increased for listed species at the discretion of the biologist, depending on the location of the nest and species tolerance to human presence and construction-related noises and vibrations.”

Recommendation #3: Rodenticides and second-generation anticoagulant rodenticides should be prohibited during the life of the Project.

Recommendation #4: CDFW recommends that any fencing used during and after the Project be constructed with materials that are not harmful to wildlife. Prohibited materials should include, but are not limited to, spikes, glass, razors, or barbed wire. Use of chain link and steel stake fence should be avoided or minimized as this type of fencing can injure wildlife or create barriers to wildlife dispersal. All hollow posts and pipes should be capped to prevent wildlife entrapment and mortality. These structures mimic the natural cavities preferred by various bird species and other wildlife for shelter, nesting, and roosting. Raptor’s talons can become entrapped within the bolt holes of metal fence stakes resulting in mortality. Metal fence stakes used on the Project site should be plugged with bolts or other plugging materials to avoid this hazard. Fences should not have any slack that may cause wildlife entanglement.

Mitigation and Monitoring Reporting Plan

CDFW recommends the City adopting the mitigation measures and recommendations in this letter into the MND. Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments [(Pub. Resources Code, § 21081.6; CEQA Guidelines, § 15126.4(a)(2)]. As such, CDFW has provided comments and recommendations to assist the City in developing mitigation measures that are (1) consistent with CEQA Guidelines, section 15126.4; (2) specific; (3) detailed (i.e., responsible party, timing, specific actions, location), and (4) clear for a measure to be fully enforceable and implemented successfully via mitigation, monitoring, and/or reporting program (Pub. Resources Code, § 21081.6; CEQA Guidelines, § 15097).

The City is welcome to coordinate with CDFW to further review and refine the Project’s mitigation measures. Per Public Resources Code, section 21081.6(a)(1), CDFW has provided the City with a summary of our suggested mitigation measures and recommendations in the form of an attached Draft Mitigation and Monitoring Reporting Plan (MMRP; Attachment 1).

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

McKina Alexander
City of Carson
May 13, 2024
Page 6 of 10

subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, sub. (e)) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The [CNNDDB field survey form](#) can be filled out and submitted online (CDFW 2024b). Please visit CDFW online to access [the types of information reported to CNDDDB](#).

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. (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. To ensure significant impacts are adequately mitigated to a level less-than-significant, the feasible mitigation measures described above should be incorporated as enforceable conditions in the MND for the Project. CDFW requests an opportunity to review and comment on any response that the City has to our comments and to receive notification of any forthcoming hearing date(s) for the Project [CEQA Guidelines, § 15073(e)].

Questions regarding this letter or further coordination should be directed to Felicia Silva, Senior Environmental Scientist (Specialist), by email at Felicia.Silva@wildlife.ca.gov or by phone at (562) 292-8105 to schedule a meeting with CDFW.

Sincerely,

DocuSigned by:



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Heather A. Pert
Environmental Program Manager
South Coast Region

Attachments

Attachment A Draft Mitigation and Monitoring Plan

McKina Alexander
City of Carson
May 13, 2024
Page 7 of 10

EC: California Department of Fish and Wildlife
Baron Barrera, Senior Environmental Scientist (Supervisory)
Felicia Silva, Senior Environmental Scientist (Specialist)
Cindy Hailey, Staff Services Analyst
CEQA Program Coordinator – Sacramento

Office of Planning and Research
State Clearinghouse – Email: State.Clearinghouse@opr.ca.gov

References:

- [CDFW] California Department of Fish and Wildlife. 2024a. [Lake and Streambed Alteration Program](#).
- [CDFW] California Department of Fish and Wildlife. 2024b. [Submitting Data to the CNDDDB](#).

Attachment A: Draft Mitigation and Monitoring Reporting Plan

CDFW recommends the following language to be incorporated into the Project's environmental document.

Biological Resources (BIO)

Name	Mitigation Measure (MM) or Recommendation (REC)	Timing	Responsible Party
MM-BIO-1-LSA Notification	The Project Applicant will notify CDFW pursuant to Fish and Game Code, section 1602 and may need to obtain an LSA Agreement from CDFW prior to obtaining a grading permit. The Project Applicant shall comply with the mitigation measures detailed in an LSA Agreement issued by CDFW. The Project Applicant shall also provide compensatory mitigation for any impacted stream and associated natural community. Please visit CDFW's Lake and Streambed Alteration Program webpage for more information (CDFW 2024a).	Prior to issuance of development permit	City of Caron (City)/Project Applicant
REC-1-CEQA Compliance	CDFW's issuance of an LSA Agreement for a project that is subject to CEQA will require CEQA compliance actions by CDFW as a Responsible Agency. As a Responsible Agency, CDFW may consider the CEQA document from the Lead Agency/Project Applicant for the project. To minimize additional requirements by CDFW pursuant to Fish and Game Code, section 1600 et seq. and/or under CEQA, a project's CEQA document should fully identify the potential impacts to the stream or riparian resources and provide adequate avoidance, mitigation, monitoring, and reporting commitments for issuance of the LSA Agreement. To compensate for any on- and off-site impacts to aquatic and riparian resources, additional mitigation conditioned in any LSA Agreement may include the following: erosion and pollution control measures; avoidance of resources; protective measures for downstream resources; on- and/or off-site habitat creation; enhancement or restoration; and/or protection and management of mitigation lands in perpetuity.	Prior to issuance of development permit	City/Project Applicant
REC-2-Nesting Birds	The MND provides mitigation for nesting birds; however, language in the Project's mitigation measure for nesting birds may not fully mitigate impacts to nesting birds in and around the Project site.	Prior to issuance of	City/Project Applicant

Conserving California's Wildlife Since 1870

McKina Alexander
 City of Carson
 May 13, 2024
 Page 9 of 10

	<p>CDFW recommends the City revise Mitigation Measure BIO-1 by adding underlined language and removing the language with a strikethrough:</p> <p>“If work activities occur within the avian nesting season (generally defined as January 15 through September 15), a qualified biologist should conduct a nesting bird and raptor survey within 30 <u>14</u> days of the anticipated start date, and no less than 3 days prior to ground disturbance, to identify any active nests within 500 feet of suitable nesting habitat. If an active nest is found, the nest should be avoided, and a suitable buffer zone delineated in the field where no impacts would occur until the chicks have fledged the nest as determined by a qualified biologist. Construction avoidance buffers are generally 300 feet for non-listed passerines and 500 feet for listed avian species and raptors; however, avoidance buffers may be reduced for non-listed species <u>or increased for listed species</u> at the discretion of the biologist, depending on the location of the nest and species tolerance to human presence and construction-related noises and vibrations.”</p>	development permit	
REC-3-Rodenticides	Rodenticides and second-generation anticoagulant rodenticides shall be prohibited during the life of the Project.	Prior to finalizing CEQA document	City/Project Applicant
REC-4-Wildlife fencing	CDFW recommends that any fencing used during and after the Project be constructed with materials that are not harmful to wildlife. Prohibited materials shall include, but are not limited to, spikes, glass, razor, or barbed wire. Use of chain link and steel stake fence shall be avoided or minimized as this type of fencing can injure wildlife or create barriers to wildlife dispersal. All hollow posts and pipes shall be capped to prevent wildlife entrapment and mortality. These structures mimic the natural cavities preferred by	Prior to finalizing CEQA document	City/Project Applicant

McKina Alexander
City of Carson
May 13, 2024
Page 10 of 10

	<p>various bird species and other wildlife for shelter, nesting, and roosting. Raptor's talons can become entrapped within the bolt holes of metal fence stakes resulting in mortality. Metal fence stakes used on the Project site shall be plugged with bolts or other plugging materials to avoid this hazard. Fences shall not have any slack that may cause wildlife entanglement.</p>		
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