



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
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GAVIN NEWSOM, Governor
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November 4, 2024

Noelle Tomlinson
Kings County Community Development Agency
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**Subject: Outlaw Battery Energy Storage Project (Project)
Mitigated Negative Declaration (MND)
State Clearinghouse No. 2024071051**

Dear Noelle Tomlinson:

The California Department of Fish and Wildlife (CDFW) received a recirculated MND from Kings County for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

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, 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.

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

¹ 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.

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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.), related authorization as provided by the Fish and Game Code may be required.

PROJECT DESCRIPTION SUMMARY

Proponent: Outlaw Energy Storage, LLC

Objective: The Project proposes to construct, operate, and decommission a utility-scale Battery Energy Storage System (BESS) that would be rated as a 110-megawatt (MW) 4-hour system (440 MW-hours). The Project would include approximately 120 containerized lithium-ion units and will be connected to the SoCal Edison Mascot Substation via a 1-mile gen-tie line along the south shoulder of Grangeville Blvd.

Location: The Project Site is located at 9135 7th Avenue, Hanford, within Assessor's Parcel Number (APN) 014-260-036-000. The Project site is located on the south side of Grangeville Boulevard between 6th Avenue to the east and 7½ Avenue to the west in northeastern Kings County. The Project will be sited on 10 acres in the northeastern corner of the 154-acre parcel.

Timeline: Project construction is anticipated to take 8 months to complete.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist Kings County 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 CEQA document prepared for this Project.

Aerial imagery of the Project site and its surroundings show the area contains several active agricultural lands, including orchards. Based on a review of the Project description, California Natural Diversity Database (CNDDDB) records, and the surrounding habitat, several special-status species could potentially be impacted by Project activities. Currently, the MND acknowledges that the Project area is within the

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geographic range of several special-status animal species and proposes specific mitigation measures to reduce impacts to less than significant. CDFW originally submitted a comment letter for the Project MND on August 26, 2024, and recommended additional mitigation measures to incorporate into Mitigation Measure BIO-2(b) ii to mitigate for potential impacts to the State threatened Swainson's hawk (*Buteo swainsoni*). On October 3, 2024, CDFW received a recirculated version of the MND that included updates to biological resource measures. After reviewing the recirculated MND, CDFW has comments regarding mitigation measures for Swainson's hawk and the State candidate burrowing owl (*Athene cunicularia hypugaea*).

Swainson's Hawk

On October 3, 2024, CDFW received a recirculated version of the MND that included updates to Mitigation Measure BIO-2(b). Within the recirculated MND, Mitigation Measure BIO-2(b) ii states "Alternatively, a qualified biologist shall continuously monitor identified nests for the first 24 hours prior to any construction related activities to establish a behavioral baseline. Once work commences, the biologist shall continuously monitor all nests to detect any behavioral changes when work is initiated, when work activities increase in intensity or when work moves closer to the nest location. If behavioral changes are not observed, then a 100-foot work avoidance buffer shall be implemented for non-raptors, a 250-foot work avoidance buffer shall be implemented for raptors other than Swainson's hawk, and a 0.5 mile buffer shall be implemented for Swainson's hawk. Continue monitoring nests as described above. If behavior changes are detected then implement the full 200-foot and, 500-foot and 0.5-mile buffers described above, and continue to implement a 0.5-mile buffer for Swainson's hawk.

In the event an active SWHA nest is detected, and a 0.5-mile no-disturbance buffer is not feasible, then the Project Applicant shall consult with CDFW regarding additional avoidance and minimization measures or obtaining an Incidental Take Permit (ITP), pursuant to Fish and Game Code section 2081 subdivision (b) if take is unavoidable."

CDFW concurs with the updated Mitigation Measure BIO-2 (b) and recommends this measure be incorporated within the final CEQA document and implemented prior to the initiation of ground disturbance activities.

Burrowing owl

The California Fish and Game Commission (FGC) approved burrowing owl (BUOW) as a candidate for potential listing as a protected species under CESA on October 10, 2024, and published these findings in the California Regulatory Notice Register (Notice Register) on October 25, 2024. As such, BUOW is now considered a candidate under CESA and receives the same legal protection afforded to an endangered or threatened species (Fish & G. Code, §§ 2074.2 & 2085).

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BUOW typically inhabit open grasslands containing small mammal burrows, but are also known to occupy fallowed agricultural fields, canal banks, vacant lots, etc. containing small mammal burrows, a requisite habitat feature used for nesting and cover. BUOW may also attempt to use “man-made burrows” such as pipes or culverts. As the Project site is within the known geographic range of BUOW and there is suitable habitat within the Project site (e.g., along the canals within the gen-tie route), CDFW recommends that surveys, following CDFW’s “Staff Report on Burrowing Owl Mitigation” (CDFG 2012) be conducted within areas of suitable habitat the survey season immediately prior to construction. If BUOW or known (active or inactive) BUOW burrows are found, either during surveys or Project activities, consultation with CDFW is recommended to discuss how to implement the Project and avoid take; or if avoidance is not feasible, to potentially acquire an ITP prior to any ground disturbing activities, pursuant to Fish and Game Code section 2081 subdivision (b).

Editorial Comments and/or Suggestions

Lake and Streambed Alteration: An agricultural ditch (Settlers Ditch) runs north-south along North 7½ Avenue and crosses under Grangeville Blvd through a culvert within the western portion of the proposed gen-tie route. Another agricultural ditch (Melga Canal) runs north-south through the northeastern portion of the Project site parcel. These features may be subject to CDFW’s lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Project activities that substantially change the bed, bank, and channel of any river, stream, or lake are subject to CDFW’s regulatory authority pursuant Fish and Game Code section 1600 et seq. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake (including the removal of riparian vegetation); (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. “Any river, stream, or lake” includes those that are ephemeral or intermittent as well as those that are perennial and may include those that are highly modified such as canals and retention basins.

CDFW acknowledges the additional analysis provided in the recirculated MND concerning potential impacts to streams and recommends the Project proponent notify if it is determined that Project activities, such as trenching or boring, would have the potential to substantially change the bed, bank, or channel of the features located in the Project site. For information on notification requirements, please refer to CDFW’s website (<https://wildlife.ca.gov/Conservation/LSA>) or contact CDFW staff in the Central Region Lake and Streambed Alteration Program at (559) 243-4593.

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

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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 CNDDDB. The CNDDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

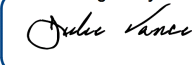
FILING FEES

If it is determined that the Project has the potential to impact biological resources, an assessment of filing fees will be 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 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).

CDFW appreciates the opportunity to comment on the Project to assist Kings County 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 Ren Cotter, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 767-0956, or by electronic mail at Ren.Cotter@wildlife.ca.gov.

Sincerely,

DocuSigned by:

FA83F09FE08945A...
Julie A. Vance
Regional Manager

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REFERENCES

California Department of Fish and Game. 2012. Staff report on burrowing owl mitigation.
California Department of Fish and Game, Sacramento, California, USA.