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DEPARTMENT OF FISH AND WILDLIFE
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Governor's Office of Planning & Research

December 11 2023

STATE CLEARINGHOUSE

December 11, 2023

Patrick Womble, Environmental Resources Manager
Merced County Regional Waste Management Authority
7040 North Highway 59
Merced, California 95348
(209) 723-4481
pwomble@mcrwma.org

Subject: **Highway 59 Landfill Valley Fill Project (Project)**
Notice of Preparation (NOP)
SCH: 2014061081

Dear Patrick Womble:

The California Department of Fish and Wildlife (CDFW) received a Notice of Preparation (NOP) for an Environmental Impact Report (EIR) from Merced County Regional Waste Management Authority (Authority) for the Highway 59 Landfill Valley Fill Project (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 the Fish and Game Code. While the comment period may have ended, CDFW respectfully requests that the Authority still consider our comments.

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, section 711.7, subd. (a) & 1802; Pub. Resources Code, section 21070; CEQA Guidelines section 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.*, section 1802).

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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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, section 21069; CEQA Guidelines, section 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, section 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, section 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

Fully Protected Species: CDFW has jurisdiction over fully protected species of birds, mammals, amphibians and reptiles, and fish, pursuant to Fish and Game Code sections 3511, 4700, 5050, and 5515. Take of any fully protected species was previously prohibited and CDFW was not able authorize their incidental take. Senate Bill No. 147, which became effective on July 10, 2023, amended Fish and Game Code sections 3511, 4700, 5050, and 5515, and added 2081.15, to authorize CDFW the ability to issue a permit under CESA that authorizes the take of a fully protected species resulting from impacts attributable to the implementation of specified projects if certain conditions are satisfied.

Nesting Birds: CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs, and nests include 3503 (regarding unlawful take, possession or needless destruction of the nest 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).

PROJECT DESCRIPTION SUMMARY

Proponent: Merced County Regional Waste Management Authority

Objective: The proposed Project is a modification to the approved Valley Fill Project, which involves expansion of the current 25,000 ton per year green waste windrow composting facility and development and operation of a covered aerated static pile (CASP) green waste and food waste compost facility to comply with California's Short-Lived Climate Pollutant Reduction Strategy organic waste disposal targets. The compost facility would be designed to accept up to 50,000 tons per year of green waste and food waste and capable of storing up to 100,000 cubic yards on-site of organic

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material. Additional site improvements would include construction of a new lined wastewater storage pond, on-site drainage improvements, and improvements to working surfaces such as paving active composting and/or processing areas or amending/compacting the soil.

The CASP and processing and composting equipment would be installed on a concrete pad draining to a new lined pond within the project site. The organic waste would be delivered to the proposed compost facility by collection vehicles, transfer trailers, and self-haul vehicles. Once received, the organic waste would be sorted to remove non compostable wastes and contamination, then pre-processed by grinding. The active composting area would be located on a compost pad. Some organic material may be delivered pre-processed and feedstock-ready from local material recovery facilities and may be deposited directly into the CASP unit without further processing. Once active composting is complete, the materials are then moved to a curing area, then to final screening and finishing at the compost storage area until products are sold.

Location: The Highway 59 Landfill is located immediately east of State Route (SR) 59 in unincorporated Merced County, approximately 6 miles north of the City of Merced (see Figure 1). The street address is 7040 North Highway 59. The Highway 59 Landfill consists of five parcels which are County Assessor's parcel numbers (APNs) 175-050-003, 175-060-001, 175-060-003, 170-070-001 and 170-070-002. The landfill is located in Sections 13, 14, 23, 24, and 25, Township 6 South, Range 13 East on the U.S. Geological Survey Winton and Yosemite Lake 7.5-minute quadrangles. The Valley Fill project site is located in the southwest portion of the landfill, as shown in Figure 2, and within two of the five landfill parcels (APNs 175-060-001 and a portion of 175-060-003). The total land area associated with the Valley Fill Project is approximately 230 acres.

Timeframe: Undetermined.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the Authority 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.

There are special-status species that may be present at the Project site. These resources may need to be evaluated and addressed prior to any approvals that would allow ground-disturbing activities or land use changes. CDFW is concerned regarding potential impacts to special-status species including, but not limited to, State endangered and fully protected bald eagle (*Haliaeetus leucocephalus*), State

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endangered and federally threatened succulent owl's-clover (*Castilleja campestris* ssp. *succulenta*), State threatened Swainson's hawk (*Buteo swainsoni*) and tricolored blackbird (*Agelaius tricolor*), and State candidate listed endangered Crotch's bumble bee (*Bombus crotchii*).

In order to adequately assess any potential impact to biological resources, focused biological surveys should be conducted by a qualified biologist during the appropriate survey period(s) in order to determine whether any special-status species may be present within the Project site. Properly conducted biological surveys, and the information assembled from them, are essential to identify any mitigation, minimization, and avoidance measures and/or the need for additional or protocol-level surveys, and to identify any Project-related impacts under CESA and other species of concern.

To evaluate Project-related impacts to biological species, CDFW recommends that a general habitat assessment be conducted as part of the biological technical studies conducted in support of the Draft EIR.

Special Status Plants

Plants listed pursuant to the federal Endangered Species Act, CESA, and the Native Plant Protection Act, as well as other special status plants such as well as other special status plants identified by the California Native Plant Society Rare Plant Ranking System California Rare Plant Rank (CRPR) may occur in many locations within the Project. Special Status Species include but are not limited to State endangered and federally threatened succulent owl's-clover (*Castilleja campestris* ssp. *succulenta*).

Special-status plant species are threatened with habitat loss and habitat fragmentation resulting from development, vehicle and foot traffic, and introduction of non-native plant species, all of which may be unintended impacts of the Project. Therefore, impacts of the Project will potentially have significant and cumulative impacts to populations of the species mentioned above if present in the Project vicinity.

CDFW recommends that a qualified botanist conduct a habitat assessment of the Project site well in advance of Project implementation to determine if the Project site or its vicinity contains suitable habitat for special-status plant species. If suitable habitat is present, CDFW recommends that individual Project sites be surveyed for special-status plants by a qualified botanist following the "Protocols for surveying and evaluating impacts to special status native plant populations and sensitive natural communities" (CDFW 2018). This protocol, which is intended to maximize detectability, includes identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period.

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If special-status plants are detected, CDFW recommends special-status plant species be avoided whenever possible by delineating and observing a no-disturbance buffer of at least 50 feet from the outer edge of the plant population(s) or specific habitat type(s) required by special-status plant species. If buffers cannot be maintained, then consultation with CDFW is warranted to determine appropriate minimization and mitigation measures for impacts to special-status plant species.

If a State-listed plant species are identified during botanical surveys, consultation with CDFW is warranted to determine if the Project can avoid take of that species. If take cannot be avoided, take authorization would need to occur through issuance of an Incidental Take Permit (ITP) by CDFW to comply with CESA and/or Fish and Game Code section 1900 and California Code of Regulations, title 14, section 786.9, subdivision (b).

Bald Eagle

The State endangered and fully protected bald eagle has the potential to occur in the Project site (CDFW 2023a). CDFW recommends that focused bald eagle surveys be conducted by experienced individuals as part of the biological technical studies conducted in support of the CEQA document. To avoid impact to the species, surveys following the survey methodology developed by CDFW (CDFW 2010) is advised. In the event that nests of the species are found within 0.5-mile of the Project site, implementation of avoidance measures are warranted. CDFW recommends that a qualified biologist be on-site during all ground-disturbing/construction related activities and that a 0.5-mile no disturbance buffer be implemented. If the 0.5-mile no disturbance buffer cannot feasibly be implemented, contacting CDFW to assist with providing and implementing additional avoidance measures is suggested. CDFW recommends including full impact avoidance measures for nesting bald eagles in the CEQA document prepared for the Project.

Swainson's Hawk

Swainson's Hawk (SWHA) has the potential to forage on the project site (CDFW 2023a). CDFW recommends that surveys be conducted following the survey methods developed by the Swainson's Hawk Technical Advisory Committee (SWHA TAC 2000) for SWHA. In addition, CDFW recommends a minimum no-disturbance buffer of 0.5-mile be delineated around active nests until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival. If take cannot be avoided, CDFW recommends acquiring an ITP pursuant to Fish and Game Code Section 2081(b), prior to initiating ground-disturbing activities.

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Tricolored Blackbird

Tricolored blackbird (TRBL) has the potential to be found at or near the Project site (CDFW 2023a). Without appropriate avoidance and minimization measures for TRBL, potentially significant impacts include nest and/or colony abandonment, reduced reproductive success, and reduced health and vigor of eggs and/or young.

TRBL are known to nest in alfalfa, wheat, and other low agricultural crop fields. TRBL aggregate and nest colonially, forming colonies of up to 100,000 nests (Beedy et al. 2020). Nesting can occur synchronously, with all eggs laid within one week (Orians 1961). For these reasons, depending on timing, disturbance to nesting colonies can cause abandonment, significantly impacting TRBL populations (Beedy et al. 2020). CDFW recommends the following avoidance and minimization measures be incorporated into the subsequent CEQA document that will be prepared for this Project.

CDFW recommends that construction be timed to avoid the normal bird breeding season (February 1 through September 15). However, if construction must take place during that time, CDFW recommends that a survey for suitable habitat be conducted as part of the biological technical studies conducted in support of the CEQA document by a qualified biologist with knowledge of TRBL natural history and behaviors. If suitable habitat is present, CDFW recommends a qualified biologist conduct focused surveys for nesting TRBL as part of the biological technical studies conducted in support of the CEQA document and then repeat those surveys no more than 10 days prior to the start of ground-disturbing activities. If an active TRBL nesting colony is found during the biological technical studies or pre-activity surveys, CDFW recommends implementation of a minimum 300-foot no-disturbance buffer around the colony in accordance with CDFW's "Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agricultural Fields in 2015" (CDFW 2015).

CDFW advises that this buffer remain in place until the breeding season has ended or until a qualified biologist has determined that nesting has ceased, the birds have fledged, and are no longer reliant upon the colony or parental care for survival. It is important to note that TRBL colonies can expand over time. For this reason, CDFW also recommends conducting pre-construction surveys for nesting colonies within 10 days prior to the start of ground or vegetation disturbing activities to reassess the colony's areal extent. If a TRBL nesting colony is detected during surveys, consultation with CDFW is warranted to discuss how to implement the Project and avoid take, or if avoidance is not feasible, to acquire an ITP, pursuant to Fish and Game Code section 2081 subdivision (b), prior to any ground-disturbing activities.

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Crotch's Bumble Bee

Crotch's bumble bee (CBB) are known to inhabit areas of grasslands and scrub that contain requisite habitat elements for nesting, such as small mammal burrows and bunch/thatched grasses. CBB was once common throughout most of central and southern California. However, it now appears to be absent from most of their range, especially in the central portion of its historic range within California's Central Valley (Hatfield et al. 2014). Analyses by the Xerces Society et al. (2018) suggest there have been sharp declines in relative abundance by 98% and persistence by 80% over the last ten years.

If potentially suitable habitat is identified, CDFW recommends that a qualified biologist conduct focused surveys for CBB, and their requisite habitat features following the methodology outlined in the Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species (CDFW 2023b), as part of the biological technical studies conducted in support of the Draft EIR.

If CBB is detected, then CDFW recommends that all small mammal burrows and thatched/bunch grasses be avoided by a minimum of 50 feet to avoid take and potentially significant impacts. If ground-disturbing activities will occur during the overwintering period (October through February), consultation with CDFW is warranted to discuss how to implement Project activities and avoid take. Any detection of CBB prior to or during Project construction warrants consultation with CDFW to discuss how to avoid take.

If take cannot be avoided, CDFW recommends acquiring an ITP pursuant to Fish and Game Code Section 2081(b), prior to initiating ground-disturbing activities.

Nesting birds

CDFW encourages that Project construction occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the breeding season (February 1 through September 15), the Project proponent is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes as referenced above. To evaluate Project-related impacts on nesting birds, CDFW recommends that a qualified biologist conduct pre-construction surveys for active nests 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.

CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding

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season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or on-site parental care for survival.

Editorial Comments and/or Suggestions

Federally Listed Species

CDFW recommends consulting with the United States Fish and Wildlife Service (USFWS) regarding potential impacts to federally listed species including but not limited to the federally threatened succulent owl's-clover (*Castilleja campestris* ssp. *succulenta*).

Take under the Federal Endangered Species Act (FESA) is more broadly defined than CESA; take under FESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS in order to comply with FESA is advised well in advance of any Project activities.

CNDDB

Please note that the CNDDB is populated by and records voluntary submissions of species detections. As a result, species may be present in locations not depicted in the CNDDB but where there is suitable habitat and features capable of supporting species. A lack of an occurrence record in the CNDDB does not mean a species is not present. All project's tiered from this Plan should adequately assess any potential project-related impacts to biological resources by ensuring biological surveys are conducted by a qualified biologist during the appropriate survey period(s) and using the appropriate protocol survey methodology as warranted in order to determine whether or not any special status species are present at or near the Project site.

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, section 21003, subd. (e)). Accordingly, please report any special status species and natural communities detected during Project surveys to the CNDDB. The CNDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDB/Submitting-Data>. The completed form can be mailed electronically to CNDDB at the following email address: CNDDB@wildlife.ca.gov. The types of information reported to CNDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDB/Plants-and-Animals>.

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Filing Fees

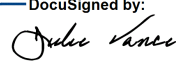
The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order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

Conclusion

CDFW appreciates the opportunity to comment on the NOP to assist the Merced County Regional Waste Management Authority in identifying and mitigating this 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>). Please see the enclosed Mitigation Monitoring and Reporting Program (MMRP) table which corresponds with recommended mitigation measures in this comment letter. Questions regarding this letter or further coordination should be directed to Evelyn Barajas-Perez, Environmental Scientist, at (805) 503-5738 or evelyn.barajas-perez@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Julie A. Vance
Regional Manager

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Xerces Society for Invertebrate Conservation, Defenders of Wildlife, and Center for Food Safety. 2018. A petition to the state of California Fish and Game Commission to list the Crotch's 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. October 2018.

Attachment 1

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM
(MMRP)**

**PROJECT: Highway 59 Landfill Valley Fill Project (Project)
Notice of Preparation (NOP)**

SCH No.: 2014061081

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Mitigation Measure: Special-status plants	
Special-status plants habitat assessment	
ITP Special-status plants (if applicable)	
Mitigation Measure: Swainson's Hawk (SWHA)	
Surveys done following the methods developed by the Swainson's Hawk Technical Advisory Committee (SWHA TAC 2000)	
ITP SWHA (if applicable)	
Mitigation Measure: Tricolored Blackbird (TRBL)	
TRBL habitat assessment	
Mitigation Measure: Crotch's Bumble Bee (CBB)	
CBB Habitat assessment	
ITP CBB (if applicable)	
Mitigation Measure: Nesting Birds	
Pre-construction surveys for active nests no more than 10 days prior	
<i>During Construction</i>	
Mitigation Measure: Special-status plants	
Special-status plants avoidance buffer	
Mitigation Measure: Swainson's Hawk	
No buffer of 0.5 mile around active nests until breeding season is over, if SWHA found	
Mitigation Measure: Tricolored Blackbird (TRBL)	
If found, CDFW recommends implementation of a minimum 300-foot no disturbance buffer around the colony in accordance with CDFW's "Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agricultural Fields in 2015".	
Mitigation Measure: Crotch's Bumble Bee (CBB)	

CDFW recommends that all small mammal burrows and thatched/bunch grasses be avoided by a minimum of 50 feet to avoid take and potentially significant impacts	
Mitigation Measure: Nesting Birds	
CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors.	