



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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Governor's Office of Planning & Research

July 01 2021

STATE CLEARINGHOUSE

July 1, 2021

Cindi Hoover, Supervising Planner
Kern County Planning and Natural Resources Department
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Subject: **Lost Hills Composting and Bioenergy Project by Lost Hills Environmental, LLC (Project)**
DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR)
State Clearinghouse No. 2019100659

Dear Cindi Hoover:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a DEIR for an Environmental Impact Report (EIR) from Kern County, as Lead Agency, for the Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹ The Project proponent is Lost Hills environmental LLC.

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.

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

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

As a responsible agency, CDFW is responsible for providing, as available, biological expertise during public agency environmental review efforts (e.g., CEQA), focusing specifically on project activities that have the potential to adversely affect fish and wildlife resources. CDFW provides recommendations to identify potential impacts and possible measures to avoid or reduce those impacts.

PROJECT DESCRIPTION SUMMARY

Proponent: Lost Hills environmental LLC

Objective:

The project includes a request for land use entitlements necessary to facilitate the continued and expanded use of an existing Class III Non Hazardous Landfill; the future construction and operation of an extended Aeration composting facility; and the future construction and operation of a Waste-to-Energy biomass gasification facility and associated infrastructure to generate a combined 3 megawatts of renewable electrical energy on approximately 337 acres of privately-owned land. Implementation of the project as proposed would require: a) Modification No. 1 of Conditional Use Permit (CUP) No. 1, Map 28; b) Issuance of CUP No. 13, Map 28; and c) Modification No. 2 of CUP No. 9, Map 28. 5/18/2021 - Received DEIR

Location: The project site (Sites A and B) is in the unincorporated area of northwestern Kern County on Kern County APNs 057-220-16, 057-240-29, 057-240-50, and 057-240-60 (see **Figure 1-1**, *Regional Vicinity*, and **Figure 1-2**, *Site Vicinity*). The unincorporated community of Lost Hills is located approximately 4.3 miles to the southeast, the City of Wasco is approximately 20 miles to the east, and the Cities of Delano and Shafter are 25 miles northeast and 27 miles southeast, respectively. Two

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State highways (SR-46 and SR-33) are located 1.6 miles south and 6.4 miles west, respectively, from the project site. Interstate (I-) 5 is located approximately 5 miles east of the project site. Land within the project vicinity is generally characterized as a sparsely developed, rural agricultural area located in western Kern County.

Timeframe: Unspecified

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the 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.

Aerial imagery of the Project boundary and its surroundings show the area contains undeveloped land that may have suitable habitat for special status species. Based on a review of the Project description, a review of California Natural Diversity Database (CNDDB) records, and the surrounding habitat, several special-status species could potentially be impacted by Project activities.

Currently, the DEIR acknowledges that the Project area is within the geographic range of several special-status animal species and proposes specific mitigation measures to reduce impacts to less than significant. CDFW has concerns about the ability of some of the proposed mitigation measures, for the State and federally endangered and State fully protected blunt-nosed leopard lizard (*Gambelia sila*) and the State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*), to reduce impacts to less than significant and avoid unauthorized take. In addition, CDFW is concerned Project-related activities may potentially impact the State threatened Swainson's hawk (*Buteo swainsoni*), which is not analyzed in the DEIR. Our specific comments follow.

COMMENT 1: Blunt-nosed Leopard Lizard (*Gambelia sila*; BNLL)

Mitigation Measure 4.3-9:

The DEIR states that focused surveys for BNLL will only be completed if, areas the DEIR has recognized as annual grasslands and/or *Atriplex polycarpa* contains small mammal burrows that cannot be avoided by 50 feet. CDFW is concerned that this measure may not avoid unauthorized take or reduce impacts to less than significant.

CDFW recommends that protocol levels surveys be completed within all suitable habitat as determined by a Level II Biologist as described in the Approved Blunt-nosed Leopard Lizard Survey Methodology (CDFW 2019) prior to all ground- and

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vegetation-disturbing activities regardless of the proximity to burrows. The maximum known dispersal distance for BNLL is 1,509 feet (Tollestrup 1983), therefore, BNLL may occur at distances far greater than 50 feet from an observed burrow. Although activities farther than 50 feet from a burrow entrance may not result in destruction of an occupied burrow, take of BNLL on the surface may occur as a result of Project activities. In addition, CDFW considers suitable habitat to be any habitat features that a BNLL can reasonably disperse through or attempt to disperse through for at least short distances (e.g., dense grasslands, dry farming).

COMMENT 2: San Joaquin Kit Fox (*Vulpes macrotis mutica*; SJKF)

Mitigation Measure 4.3-5:

The DEIR recognizes that there are confirmed kit fox dens within the vicinity of the Project area. Mitigation Measure 4.3-5 states that focused SJKF surveys will be completed in the case that the vegetated areas of Project Site A cannot be avoided. SJKF are known to forage in agricultural crops and on fallowed land as well as urban environments within the City of Bakersfield. SJKF have the potential to den and forage on or adjacent to the Project site and may be attracted to project areas due to the type and level of ground-disturbing activities and the loose, friable soils resulting from intensive ground disturbance. As a result, SJKF may occur within any part of the Project area, even unvegetated area, particularly as they disperse from one location to another.

Therefore, CDFW recommends assessing presence/absence of SJKF on the entire Project site by conducting surveys following the USFWS' "Standardized recommendations for protection of the San Joaquin kit fox prior to or during ground disturbance" (2011) to ensure that no unauthorized take occurs. CDFW advises conducting these surveys no less than 14-days and no more than 30-days prior to beginning of ground disturbing activities.

Mitigation Measure 4.3-5 (a):

CDFW agrees with the Measure 4.3-5 (a) in that buffer zones between 50 and 100 feet should be established around potential and known dens. CDFW recommends that actions for delineation for the buffer zones also be outlined in the EIR in accordance with "Standardized recommendations for protection of the San Joaquin kit fox prior to or during ground disturbance" (2011) such as the use of flagging for potential dens and exclusion zone fencing for known dens. These buffers may be larger for active or natal dens.

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COMMENT 3: Swainson's Hawk (*Buteo swainsoni*; SWHA)

Issue: SWHA have the potential to forage within the Project site. Multiple SWHA nests have been documented to occur between 4 and 10 miles from the Project site (CDFW 2021). Based upon aerial photography and conditions described in the DEIR, the Project site provides potential SWHA foraging habitat, including annual grassland and sparse shrubland features (CDFW 2016 As stated above, no analysis for SWHA was provided in the DEIR. Absent that analysis, CDFW makes the following recommendations.

Specific impact:

Without appropriate avoidance and minimization measures for SWHA, potential significant impacts that may result from Project activities include: nest abandonment, loss of nest trees, loss of foraging habitat that would reduce nesting success (loss or reduced health or vigor of eggs or young), and direct mortality. All trees, including non-native or ornamental varieties, near the Project site may provide potential nesting sites.

Evidence impact would be significant: SWHA exhibit high nest-site fidelity year after year and lack of suitable nesting habitat limits their local distribution and abundance (CDFW 2016). Approval of the Project may lead to subsequent ground-disturbing activities that involve noise, groundwork, construction of structures, and movement of workers that could affect nests and has the potential to result in nest abandonment and loss of foraging habitat, significantly impacting local nesting SWHA. In addition, conversion of undeveloped land can directly influence distribution and abundance of SWHA, due to the reduction in foraging habitat.

Recommended Mitigation Measure 1: Focused SWHA Surveys

To evaluate potential Project-related impacts, CDFW recommends that a qualified wildlife biologist conduct surveys for nesting SWHA following the entire survey methodology developed by the SWHA Technical Advisory Committee (SWHA TAC 2000) prior to Project implementation (during CEQA analysis), including the 0.5-mile survey distance from the limits of disturbance. SWHA detection during protocol-level surveys warrants consultation with CDFW to discuss how to implement Project activities and avoid take.

Recommended Mitigation Measure 2: SWHA Avoidance

CDFW recommends that if Project-specific activities will take place during the SWHA nesting season (i.e., March 1 through September 15), and active SWHA nests are present, a minimum ½-mile no-disturbance buffer be delineated and maintained around each nest, regardless if when it was detected by surveys or incidentally, until

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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, to prevent nest abandonment and other take of SWHA as a result of Project activities.

Recommended Mitigation Measure 3: SWHA Take Authorization

CDFW recommends that in the event an active SWHA nest is detected, and a ½ mile no-disturbance buffer is not feasible, consultation with CDFW is warranted to discuss how to implement the project and avoid take. If take cannot be avoided, take authorization through the acquisition of an Incidental Take Permit (ITP), pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

Recommended Mitigation Measure 4: Loss of SWHA Foraging Habitat

CDFW recommends compensation for the loss of SWHA foraging habitat as described in CDFW's "Staff Report Regarding Mitigation for Impacts to Swainson's Hawks" (CDFG 1994) to reduce impacts to foraging habitat to less than significant. The Staff Report recommends that mitigation for habitat loss occur within a minimum distance of 10 miles from known nest sites. CDFW has the following recommendations based on the Staff Report:

- For projects within 1 mile of an active nest tree, a minimum of 1 acre of habitat management (HM) land for each acre of development is advised.
- For projects within 5 miles of an active nest but greater than 1 mile, a minimum of ¾ acre of HM land for each acre of development is advised.
- For projects within 10 miles of an active nest tree but greater than 5 miles from an active nest tree, a minimum of ½ acre of HM land for each acre of development is advised.

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 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:

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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

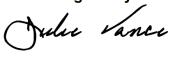
The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order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

CONCLUSION

CDFW appreciates the opportunity to comment on the DEIR to assist Kern County in identifying and mitigating Project impacts on biological resources.

If you have any questions, please contact Jaime Marquez, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 243-4014, extension 291, or by electronic mail at Jaime.Marquez@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Julie A. Vance
Regional Manager

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REFERENCES

CDFG, 1994. Staff Report Regarding Mitigation for Impacts to Swainson's Hawks (*Buteo Swainsoni*) in the Central Valley of California. California Department of Fish and Game.

<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83992&inline>

California Department of Fish and Wildlife (CDFW), 2016. Five Year Status Review for Swainson's Hawk (*Buteo swainsoni*). California Department of Fish and Wildlife. April 11, 2016.

CDFW, 2021. Biogeographic Information and Observation System (BIOS).

<https://www.wildlife.ca.gov/Data/BIOS>. Accessed June 17, 2021.

Estep, J. 2009. The influence of vegetation structure on Swainson's hawk (*Buteo swainsoni*) foraging habitat suitability in Yolo County, California. Prepared for the Yolo Natural Heritage Program, Woodland, CA.

Swainson's Hawk Technical Advisory Committee (SWHA TAC), 2000. Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in the Central Valley of California. Swainson's Hawk Technical Advisory Committee. May 31, 2000.

USFWS. 2011. Standard Recommendations for the Protection of the San Joaquin Kit Fox Prior to or During Ground Disturbance. United States Fish and Wildlife Service. January 2011.

Attachment 1

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

**PROJECT: Lost Hills Composting and Bioenergy
SCH No.: 2019100659**

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Mitigation Measure 1: Focused SWHA Surveys	
Mitigation Measure 3: SWHA Take Authorization	
Mitigation Measure 4: Loss of SWHA Foraging Habitat	
<i>During Construction</i>	
Mitigation Measure 2: SWHA Avoidance	