



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
1234 East Shaw Avenue
Fresno, California 93710
(559) 243-4005
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



May 28, 2024

Janice Mayes
Kern County Planning and Natural Resources Department
2700 "M" Street, Suite 100
Bakersfield, California 93301
majesj@kerncounty.com

**Subject: Clean Harbors WMU Solid Waste Disposal Facility by Clean Harbors
Buttonwillow, LLC (Project)
DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR)
State Clearinghouse No. 2020069034**

Dear Janice Mayes:

The California Department of Fish and Wildlife (CDFW) received an Notice of Availability of a DEIR from Kern County, as Lead Agency, for the Project pursuant 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 Kern County 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, §§ 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 expertise during public agency environmental review efforts, focusing specifically on

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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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.

CDFW Ecological Reserve: Fish and Game Code section 1583 states "Except in accordance with the regulations of the commission it is unlawful to enter upon any ecological reserves established under the provisions of the article, or to take therein any bird or the nest or eggs thereof, or any mammal, fish, mollusks, crustaceans, amphibia, reptiles or any other form of plant or animal life." In addition, California Code of Regulations, Title 14, Section 630 states "All ecological reserves are maintained for the primary purpose of developing a statewide program for protection of rare, threatened, or endangered native plants, wildlife, aquatic organisms, and specialized terrestrial or aquatic habitat types", and therefore, any other activity on these lands is restricted.

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. Fully protected species may not be taken or possessed at any time and no licenses or permits may be issued for their take except as follows:

- Take is for necessary scientific research,
- Efforts to recover a fully protected, endangered, or threatened species, live capture, and relocation of a bird species for the protection of livestock, or
- They are a covered species whose conservation and management is provided for in a Natural Community Conservation Plan (Fish & G. Code, §§ 3511, 4700, 5050, & 5515).

Additionally, specified types of infrastructure projects may be eligible for an Incidental Take Permit (ITP) for unavoidable impacts to fully protected species if certain conditions

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are met (see Fish & G. Code §2081.15). Project proponents should consult with CDFW early in the project planning process if an ITP may be pursued for the Project.

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, sections 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).

Unlisted Species: Species of plants and animals need not be officially listed as Endangered, Rare, or Threatened (E, R, or T) on any State or Federal list to be considered E, R, or T under CEQA. If a species can be shown to meet the criteria for E, R, or T, as specified in the CEQA Guidelines section 15380, CDFW recommends it be fully considered in the environmental analysis for the Project.

Water Pollution: Pursuant to Fish and Game Code section 5650, it is unlawful to deposit in, permit to pass into, or place where it can pass into "Waters of the State" any substance or material deleterious to fish, plant life, or bird life, including non-native species. It is possible that without mitigation measures implementation of the Project could result in pollution of Waters of the State from storm water runoff or construction-related erosion. Potential impacts to the wildlife resources that utilize the streams and wetlands include the following: increased sediment input from road or structure runoff; and toxic runoff associated with construction activities and Project implementation. The Regional Water Quality Control Board and United States Army Corps of Engineers also have jurisdiction regarding discharge and pollution to Waters of the State.

PROJECT DESCRIPTION SUMMARY

Proponent: Clean Harbors Buttonwillow, LLC

Project Description: The Clean Harbors Buttonwillow Facility is an existing commercial waste management facility that accepts solid, semi-solid, liquid, and hazardous and non-hazardous wastes for treatment, storage, or disposal. The proposed Project includes Kern County's modification of existing land use authorizations to include an expanded permitted disposal area to facilitate the construction and operation of additional non-hazardous waste landfill units and an expanded permitted facility area to accommodate a soil stockpile area; an increase in non-hazardous waste truck traffic; an increase to permitted disposal capacity for additional non-hazardous waste; the construction and operation of four new waste tank treatment buildings; and construction and operation of a latex paint recycling building. In addition, the Project proponent has submitted a renewal application to the Department of Toxic Substance Control (DTSC) for the existing Hazardous Waste Facility Permit.

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Location: The Project is located at 2500 West Lokern Road, approximately eight (8) miles west of Buttonwillow, in the unincorporated area of Kern County. The Project is located within Sections 15 and 16 of Township 29 South Range 22 East, Mount Diablo Base and Meridian. The Accessor Parcel Numbers (APNs) are 099-290-17 and 099-251-32.

Timeframe: Unspecified

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Kern 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 and its surroundings show the 320-acre expansion area consists of all scale scrub and annual grassland habitat, and disturbed or developed lands that are suitable habitat for special-status species. Based on a review of the Project description, a review of California Natural Diversity Database (CNDDDB) records, familiarity with the biological resources on CDFW Ecological Reserves, 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 the proposed mitigation measures to reduce impacts to less than significant and avoid unauthorized take for several special status animal species, including the State and federally endangered and State fully protected blunt-nosed leopard lizard (*Gambelia sila*); and the State threatened Swainson's hawk (*Buteo swainsoni*).

In addition, the DEIR acknowledges that the Project area is within the geographic range of several special-status animal species and determined that species-specific mitigation measures were not warranted. CDFW is concerned about the lack of proposed mitigation measures to mitigate for potential impacts to special-status animals species, including, but not limited to, the following: the State candidate endangered Crotch's bumble bee (*Bombus crotchii*) and Temblor legless lizard (*Anniella alexanderae*); and the State species of special concern American badger (*Taxidea taxus*), San Joaquin pocket mouse (*Perognathus inornatus*), short-nosed kangaroo rat (*Dipodomys nitratoides brevinasus*), Tulare grasshopper mouse (*Onychomys torridus tularensis*), California glossy snake (*Arizona elegans occidentalis*), coast (also known as

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Blainville's) horned lizard (*Phrynosoma blainvillii*), and San Joaquin coachwhip (*Masticophis flagellum ruddocki*).

Please note that the CNDDDB is populated by, and records, voluntary submissions of species detections. As a result, species may be present in locations not depicted in the CNDDDB but where there is suitable habitat and features capable of supporting species. Therefore, a lack of an occurrence record in the CNDDDB is not tantamount to a negative species finding. In order to adequately assess any potential Project-related impacts to biological resources, surveys conducted by a qualified wildlife biologist or botanist during the appropriate survey period(s) and using the appropriate protocol survey methodology are warranted in order to determine whether or not any special-status species are present at or near the Project area.

I. Environmental Setting and Related Impacts

COMMENT 1: Blunt-nosed Leopard Lizard

The DEIR states on page 4.4-21 that, "No blunt-nosed leopard lizards were observed at the project site; however, suitable habitat is present for the species, and it is known to occur within the vicinity of the project site. As such, the blunt-nosed leopard lizard is assumed present for the purpose of this analysis. Suitable habitat for the species occurs east of the Facility, within areas mapped as allscale scrub and seminatural grassland. Focused surveys for the species may be required as part of coordination with USFWS and CDFW to obtain take authorization."

CDFW would like to note that fully protected species, including blunt-nosed leopard lizard (BNLL), may not be taken or possessed at any time and no licenses or permits may be issued for their take except as outlined above (see Fully Protected Species section above and Fish & G. Code §2081.15). As such, CDFW recommends the Project proponent consult with CDFW early in the project planning process if an ITP may be pursued for BNLL for the Project or to discuss a BNLL avoidance plan as outlined in MM 4.4-4.

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COMMENT 2: Swainson's Hawk

According to the DEIR, Swainson's hawks (SWHA) have been detected utilizing the Project site for perching. The Project site also contains habitat suitable for SWHA foraging and any trees nearby may also be suitable for SWHA nesting. Mitigation Measure MM 4.4-5 was provided to mitigate for impacts to SWHA, and included measures for surveys, avoidance, and consultation with CDFW. While CDFW concurs with Mitigation Measure MM 4.4-5, there is a strong potential that SWHA would potentially nest or forage within or adjacent to the Project site over the life of the Project, and as such, CDFW strongly recommends acquiring an ITP pursuant to Fish and Game Code Section 2081(b), prior to initiating ground-disturbing activities.

COMMENT 3: Crotch's Bumble Bee

Table 4.4-4 of the DEIR lists the State candidate endangered Crotch's bumblebee (CBB) as "Not expected to occur on site due to a lack of suitable habitat". CDFW does not concur with the findings as CBB are known to inhabit areas of grassland and scrub habitats that contain requisite habitat elements for nesting, such as small mammal burrows and bunch/thatched grasses, and it appears these habitat elements are present throughout the Project site. As such, CDFW recommends the following:

Recommended Mitigation Measure 1: CBB Surveys

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 2023) during the blooming period immediately prior to construction.

Recommended Mitigation Measure 2: CBB Avoidance Buffer

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.

Recommended Mitigation Measure 3: CBB Take Authorization

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 implementation 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.

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COMMENT 4: Temblor Legless Lizard

The DEIR has Temblor legless lizard (TLL) listed as a species of special concern on their species table on page 4.4-15. On July 1, 2022, TLL was listed as a candidate endangered species under CESA, and therefore receives the same legal protection afforded to an endangered species. Temblor legless lizard has the potential to occur in the Project area; current species information indicates that the range of Temblor legless lizard is restricted to small areas along the east side of the Temblor Mountains, from the western edge of Kern County north to western Fresno County (Center for Biological Diversity 2021). Without appropriate mitigation measures, ground disturbing activities related to the Project may result in inadvertent take. As such, CDFW recommends the following:

Recommended Mitigation Measure 4: TLL Surveys

CDFW recommends that a qualified biologist conduct focused surveys for TLL and their requisite habitat features prior to any ground disturbance activities associated with the Project.

Recommended Mitigation Measure 5: TLL Avoidance Buffer

If a TLL is found prior to or during construction, CDFW recommends implementation of a minimum 50-foot no-disturbance buffer around the individual and the location of its discovery to avoid take and potentially significant impacts. Any detection of TLL prior to or during Project implementation warrants consultation with CDFW to discuss how to avoid take.

Recommended Mitigation Measure 6: TLL Take Authorization

In the event that a TLL is detected during surveys, consultation with CDFW is warranted to determine if the Project can 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.

COMMENT 5: Other State Species of Special Concern

American badger, San Joaquin pocket mouse, short-nosed kangaroo rat, Tulare grasshopper mouse, California glossy snake, coast (also known as Blainville's) horned lizard, and San Joaquin coachwhip have the potential to occur in the Project area.

The DEIR states that the loss of habitat for these species as a result of Project activities would be considered less than significant due to the quantity and quality of the habitat impacted, and thus, no mitigation measures were provided in the DEIR. CDFW is

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concerned that no mitigation measures were provided to reduce the potential for impacts to these species, ensure impacts are less than significant, and avoid unauthorized take. As such, CDFW recommends the following:

Recommended Mitigation Measure 7: SSC Surveys

CDFW recommends that a qualified biologist conduct focused surveys for the species listed above and their requisite habitat features to evaluate potential impacts resulting from ground and vegetation disturbance.

Recommended Mitigation Measure 8: SSC Avoidance Buffer

Avoidance whenever possible is encouraged via delineation and observance a 50-foot no-disturbance buffer around dens of mammals like the American badger as well as the entrances of burrows that can provide refuge for small mammals, reptiles, and amphibians.

Editorial Comments and/or Suggestions

Federally Listed Species: CDFW recommends consulting with USFWS regarding potential impacts to federally listed species including but not limited to the giant kangaroo rat, San Joaquin kit fox, Buena Vista Lake ornate shrew (*Sorex ornatus relictus*), blunt-nosed leopard lizard, California jewelflower (*Caulanthus californicus*), San Joaquin woollythreads (*Monolopia congdonii*) and Kern mallow (*Eremalche parryi* ssp. *kernensis*). 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.

CDFW Ecological Reserve: The Lokern Ecological Reserve is nestled within the greater Lokern Natural Area which includes one of the last remaining intact valley saltbush scrub habitats that provides habitat for federal, and State listed species as well as many other special status species.

In addition to consultation with CDFW's Regional CESA staff, CDFW recommends consultation with CDFW's Regional Ecological Reserve Management Unit staff well in advance of Project initiation to demonstrate accurate delineation of property boundaries to prevent inadvertent encroachment on CDFW-owned lands. Consultation is also recommended to discuss planned ingress and egress to the Project area for the purposes of avoiding impacts on CDFW-owned lands, which is prohibited by Title 14 California Code of Regulations § 630. Please contact John Battistoni, Regional

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Ecological Reserve Management Unit Supervisor, at the address on the letterhead above or via email at John.Battistoni@wildlife.ca.gov.

Lake and Streambed Alteration: Based on the information provided in the DEIR, the Project area contains multiple streams. 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 is required to comply with CEQA in the issuance of a Lake or Streambed Alteration Agreement (LSAA); therefore, if the CEQA document approved for the Project does not adequately describe the Project and its impacts to lakes or streams, a subsequent CEQA analysis may be necessary for LSAA issuance. 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 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: 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

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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.

Please see the enclosed Mitigation Monitoring and Reporting Program (MMRP) table which corresponds with recommended mitigation measures in this comment letter. If you have any questions, please contact Jaime Marquez, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 580-3200, or by electronic mail at Jaime.Marquez@wildlife.ca.gov.

Sincerely,

DocuSigned by:

FA83F09FE08945A...

Julie A. Vance
Regional Manager

cc: United States Fish and Wildlife Service
2800 Cottage Way, Suite W-2605
Sacramento, California 95825

ec: Office of Planning and Research
State Clearinghouse
state.clearinghouse@opr.ca.gov

City of Bakersfield Planning Division
DEVPln@Bakersfieldcity.us

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REFERENCES

California Department of Fish and Wildlife. 2023. Survey considerations for California Endangered Species Act candidate bumble bee species. California Department of Fish and Wildlife, Sacramento, California, USA.

California Department of Fish and Wildlife. 2024. Biogeographic information and observation system. <https://www.wildlife.ca.gov/Data/BIOS>. Accessed 15 May 2024.

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Attachment 1

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

PROJECT: Clean Harbors WMU Solid Waste Disposal Facility

SCH No.: 2020069034

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
CBB	
Recommended Mitigation Measure 1: CBB Surveys	
Recommended Mitigation Measure 3: CBB take authorization	
TLL	
Recommended Mitigation Measure 4: TLL Surveys	
Recommended Mitigation Measure 6: TLL take authorization	
Other State Species of Special Concern	
Recommended Mitigation Measure 7: SSC surveys	
<i>During Construction</i>	
CBB	
Recommended Mitigation Measure 2: CBB avoidance buffer	
TLL	
Recommended Mitigation Measure 5: TLL avoidance buffer	
Other State Species of Special Concern	
Recommended Mitigation Measure 8: SSC avoidance buffer	