



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Central Region  
1234 East Shaw Ave  
Fresno, California 93710  
www.wildlife.ca.gov

**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



Governor's Office of Planning & Research

**Mar 08 2021**

## STATE CLEARINGHOUSE

March 5, 2021

Hector Guerra  
Chief Environmental Planner  
Tulare County Resource Management Agency  
5961 South Mooney Boulevard  
Visalia, California 93277

**Subject: Visalia Landfill – Compost and Biomass Conversion Facility  
Notice of Preparation (NOP)  
SCH No.: 2021020054**

Dear Mr. Guerra:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an NOP from Tulare County Resource Management Agency for the Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

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, we appreciate 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 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

---

<sup>1</sup> 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.

Hector Guerra, Chief Environmental Planner  
Tulare County Resource Management Agency  
March 5, 2021  
Page 2

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:** Tulare County Public Works; Visalia Landfill

**Objective:** The objective of the Project is to development of a Compost and Biomass Conversion Facility at the existing Visalia Landfill. The compost facility will include a processing and composting equipment, a 50,000-square foot processing building, compacted compost pads, 1,000-square foot office, and a lined pond. The biomass facility will produce electricity, heat and biochar using wood fuel that will be provided by local activities to reduce landfill disposal.

**Location:** 8614 Avenue 328, Visalia, California 93291. APN's: 077-020-030, and 077-020-021. Approximately 36-aces on the northeast corner of Avenue 328 and Road 80.

**Timeframe:** Unspecified

## **COMMENTS AND RECOMMENDATIONS**

CDFW offers the comments and recommendations below to assist Tulare County Resource Management Agency 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.

Special-status resources have been documented in and adjacent to the Project area. Though the Landfill has present in the Project area for several years, there is still potential for these resources to occur as a result of habitat presence in the Project area vicinity. These resources may need to be evaluated and addressed prior to any approvals that would allow ground-disturbing activities or land use changes. The NOP indicates there are potentially significant impacts without implementation of mitigation measures, but the mitigation measures listed in the NOP are non-specific and/or may be inadequate to reduce impacts to less than significant. CDFW is concerned regarding potential impacts to special-status species including, but not limited to: the state threatened and federally endangered San Joaquin Kit Fox (*Vulpes macrotis mutica*), and the State threatened Swainson's Hawk (*Buteo swainsoni*) and Tricolored Blackbird (*Agelaius tricolor*). To adequately assess any potential impacts to biological resources, focused biological surveys should be conducted by a qualified wildlife biologist/botanist during the appropriate survey period(s) in order to determine whether any special-status species and/or suitable habitat features may be present within the Project area. Properly conducted biological surveys, and the information assembled from them, are essential to identify any mitigation, minimization, and avoidance

Hector Guerra, Chief Environmental Planner  
Tulare County Resource Management Agency  
March 5, 2021  
Page 3

measures and/or the need for additional or protocol-level surveys, especially in the areas not in irrigated agriculture, and to identify any Project-related impacts under CESA and other species of concern.

#### **I. Environmental Setting and Related Impact**

**Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by CDFW or United States Fish and Wildlife Service (USFWS)?**

##### **COMMENT 1: San Joaquin Kit Fox (SJKF)**

**Issue:** SJKF have been documented to occur near the vicinity of the Project site (CDFW 2021). SJKF den in right-of-ways, vacant lots, etc., and populations can fluctuate over time. Based on aerial imagery, most of the land use surrounding the Project site is active agriculture with isolated patches of annual or ruderal grasslands. SJKF are known to forage in fallow and agricultural fields as well as natural habitats. Fallow fields, annual grasslands, and ruderal grasslands may provide denning opportunities. Presence/absence in any one year is not necessarily a reliable indicator of SJKF potential to occur on a site. SJKF may be attracted to the Project area because of ground-disturbing activities and the loose, friable soils resulting from intensive ground disturbance. As a result, there is potential for SJKF to occur the Project site.

**Specific impact:** Without appropriate avoidance and minimization measures for SJKF, potential significant impacts include den collapse, inadvertent entrapment, reduced reproductive success, reduction in health and vigor of young, and direct mortality of individuals.

**Evidence impact is potentially significant:** Habitat loss resulting from agricultural, urban, and industrial development is the primary threat to SJKF (Cypher et al. 2013). Subsequent ground-disturbing activities have the potential to significantly impact local SJKF populations.

##### **Recommended Potentially Feasible Mitigation Measure(s)**

To evaluate potential impacts to SJKF associated with the Project, CDFW recommends conducting the following evaluation of the Project site, incorporating the following mitigation measures into the EIR prepared for this Project, and that these measures be made conditions of approval for the Project.

##### **Recommended Mitigation Measure 1: SJKF Habitat Assessment**

CDFW recommends that a qualified biologist conduct a habitat assessment in advance of Project implementation, to determine if the Project site or its immediate vicinity contains suitable habitat for SJKF.

Hector Guerra, Chief Environmental Planner  
Tulare County Resource Management Agency  
March 5, 2021  
Page 4

### **Recommended Mitigation Measure 2: SJKF Surveys**

If potential SJKF dens occur on the Project site, CDFW recommends assessing presence/absence of SJKF by conducting surveys following the USFWS “Standardized recommendations for protection of the San Joaquin kit fox prior to or during ground disturbance” (2011). Specifically, CDFW advises conducting these surveys in all areas of potentially suitable habitat no less than 14 days and no more than 30 days prior to beginning of ground disturbing activities.

### **Recommended Mitigation Measure 3: SJKF Take Authorization**

SJKF detection warrants consultation with CDFW to discuss how to avoid take, or if avoidance is not feasible, to acquire an Incidental Take Permit (ITP) prior to ground-disturbing activities, pursuant to Fish and Game Code section 2081 subdivision (b).

### **COMMENT 2: Swainson’s Hawk (SWHA)**

**Issue:** SWHA has the potential to nest or forage near the Project site. The Project location is within known SWHA range and the species occurs throughout the area (CDFW 2021). SWHA have the potential to forage near or on the Project site. The California Natural Diversity Database (CNDDDB) shows SWHA occurrences throughout the area near the Project sites (CDFW 2021). In addition to annual grasslands, SWHA are known to forage in alfalfa, fallow fields, dry-land and irrigated pasture, rice land (during the non-flooded period), cereal grain crops (including corn after harvest), beet, tomato, and other low-growing row or field crops.

**Specific impacts:** 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. Any take of SWHA without appropriate incidental take authorization would be a violation of Fish and Game Code.

**Evidence impact is potentially significant:** SWHA exhibit high nest-site fidelity year after year and lack of suitable nesting habitat in the San Joaquin Valley limits their local distribution and abundance (CDFW 2016). The Project as proposed will involve noise, groundwork, and movement of workers that could affect nests and has the potential to result in nest abandonment, significantly impacting local nesting SWHA.

### **Recommended Potentially Feasible Mitigation Measure(s)**

Because suitable habitat for SWHA is present at and adjacent to the Project site, CDFW recommends conducting the following evaluation of the Project site, incorporating the following mitigation measures into the EIR prepared for this Project, and that these measures be made conditions of approval for the Project.

Hector Guerra, Chief Environmental Planner  
Tulare County Resource Management Agency  
March 5, 2021  
Page 5

#### **Recommended Mitigation Measure 4: SWHA Surveys**

CDFW recommends that a qualified wildlife biologist conduct surveys for nesting SWHA following the survey methods developed by the Swainson's Hawk Technical Advisory Committee (SWHA TAC, 2000) prior to project implementation if Project activities will occur in the normal bird breeding season (March 1 through September 15). The survey protocol includes early season surveys to assist the project proponent in implementing necessary avoidance and minimization measures, and in identifying active nest sites prior to initiating ground-disturbing activities.

#### **Recommended Mitigation Measure 5: No-disturbance Buffer**

CDFW recommends a minimum no-disturbance buffer of ½-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.

#### **Recommended Mitigation Measure 6: SWHA Take Authorization**

CDFW recommends that in the event an active SWHA nest is detected during surveys and the ½-mile no-disturbance buffer around the nest cannot feasibly be implemented, 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 ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA. In addition, compensatory habitat mitigation would be warranted to offset impacts to nesting habitat or habitat utilized by migrating individuals.

#### **Recommended Mitigation Measure 7: SWHA Foraging Habitat**

CDFW recommends compensation for the loss of SWHA foraging habitat to reduce impacts to SWHA foraging habitat to less than significant based on CDFW's "Staff Report Regarding Mitigation for Impacts to Swainson's Hawks" (CDFG, 1994), which recommends that mitigation for habitat loss occur within a minimum distance of 10 miles from known nest sites and the amount of habitat compensation is dependent on nest proximity. In addition to fee title acquisition or conservation easement recorded on property with suitable grassland habitat features, mitigation may occur by the purchase of conservation or suitable agricultural easements. Suitable agricultural easements would include areas limited to production of crops such as alfalfa, dry land and irrigated pasture, and cereal grain crops. Vineyards, orchards, cotton fields, and other dense vegetation do not provide adequate foraging habitat.

#### **COMMENT 3: Tricolored Blackbird (TRBL)**

**Issue:** TRBL have been documented in the Project vicinity (CDFW 2021). Review of aerial imagery indicates that the Project site is near dense low vegetation fields and

Hector Guerra, Chief Environmental Planner  
Tulare County Resource Management Agency  
March 5, 2021  
Page 6

silage fields that may serve as nest colony sites. Directly to the West of the Project site there is a dairy which has the potential for TRBL to aggregate.

**Specific impact:** Without appropriate avoidance and minimization measures for TRBL, potential significant impacts include nest and/or colony abandonment, reduced reproductive success, and reduced health and vigor of eggs and/or young.

**Evidence impact would be significant:** As mentioned above, aerial imagery indicates that the Project site is near dense low vegetation and silage fields that may serve as nest colony sites. TRBL aggregate and nest colonially, forming colonies of up to 100,000 nests (Meese. 2017). Approximately 86% of the global population is found in the San Joaquin Valley (Kelsey 2008, Weintraub et al. 2016). Increasingly, TRBL are forming larger colonies that contain progressively larger proportions of the species' total population (Kelsey 2008). In 2008, for example, 55% of the species' global population nested in only two colonies, which were located in silage fields (Kelsey 2008). In 2017, approximately 30,000 TRBL were distributed among only 16 colonies in Merced County (TBWG 2007). 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 (Meese. 2017).

#### **Recommended Potentially Feasible Mitigation Measure(s)**

To evaluate potential Project-related impacts to TRBL, CDFW recommends conducting the following evaluation of the Project area prior to ground-disturbing activities, incorporating the following mitigation measures into the EIR prepared for this Project, and that these measures be made conditions of approval for the Project.

#### **Recommended Mitigation Measure 8: TRBL Habitat Assessment**

CDFW recommends that a qualified biologist conduct a habitat assessment of the Project site in advance of Project implementation, to determine if the Project site or its vicinity contains suitable habitat for TRBL.

#### **Recommended Mitigation Measure 9: TRBL Surveys**

If suitable habitat occurs on the Project site or its vicinity, CDFW recommends that Project activities be timed to avoid the typical bird breeding season (February 1 through September 15). However, if Project activities must take place during that time, CDFW recommends that a qualified wildlife biologist conduct surveys for TRBL, within a minimum 500-foot buffer from the Project site, no more than 10 days prior to the start of implementation to evaluate presence/absence of TRBL nesting colonies in proximity to Project activities and to evaluate potential Project-related impacts.

Hector Guerra, Chief Environmental Planner  
Tulare County Resource Management Agency  
March 5, 2021  
Page 7

### **Recommended Mitigation Measure 10: TRBL Avoidance**

If an active TRBL nesting colony is found during pre-activity surveys, CDFW recommends implementation of a minimum 300-foot no-disturbance buffer in accordance with CDFW's "*Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agricultural Fields in 2015*" (CDFW 2015b). 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 and for this reason, the colony may need to be reassessed to determine the extent of the breeding colony within 10 days prior to Project initiation.

### **Recommended Mitigation Measure 11: TRBL Take Authorization**

In the event that 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.

## **II. Editorial Comments and/or Suggestions**

**Federally Listed Species:** CDFW recommends consulting with the USFWS on potential impacts to federally listed species including, but not limited to, SJKF. Take under 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 ground-disturbing activities.

## **ENVIRONMENTAL DATA**

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a data base 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 California Natural Diversity Database (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](mailto: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>.

Hector Guerra, Chief Environmental Planner  
Tulare County Resource Management Agency  
March 5, 2021  
Page 8

## FILING FEES

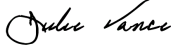
The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order 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 NOP to assist Tulare County Resource Management Agency in identifying and mitigating Project 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 Aimee Braddock, Environmental Scientist at (559) 243-4014 extension 243 or [aimee.braddock@wildlife.ca.gov](mailto:aimee.braddock@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
E A83F09FE08945A...  
Julie A. Vance  
Regional Manager

Attachment

cc: Office of Planning and Research, State Clearinghouse, Sacramento



Hector Guerra, Chief Environmental Planner  
Tulare County Resource Management Agency  
March 5, 2021  
Page 9

## 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.
- CDFW. 2015. Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agricultural Fields in 2015. March 19, 2015.
- 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 March 1, 2021.
- Cypher, B. L., S. E. Phillips, P. A. Kelly, 2013. Quantity and distribution of suitable habitat for endangered San Joaquin kit foxes: conservation implications. *Canid Biology and Conservation* 16(7): 25–31.
- Kelsey, R. 2008. Results of the tricolored blackbird 2008 census. Report submitted to U.S. Fish and Wildlife Service, Portland, OR, USA.
- Meese, R.J. 2017. Results of the 2017 Tricolored Blackbird Statewide Survey. Calif. Dept. of Fish and Wildlife, Wildlife Branch, Nongame Wildlife Program Report 2017-XX, Sacramento, CA.
- Orians, G.H. 1961. The ecology of blackbird (*Agelaius*) social systems. *Ecol. Monogr.* 31:285-312.
- Swainson's Hawk Technical Advisory Committee (SWHA TAC). 2000. Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley. Swainson's Hawk Technical Advisory Committee, May 31, 2000.
- Tricolored Blackbird Working Group (TBWG). 2007. Conservation Plan for the Tricolored Blackbird (*Agelaius tricolor*). <https://www.fws.gov/migratorybirds/pdf/management/focal-species/TricoloredBlackbird.pdf>
- USFWS. 2011. Standardized recommendations for protection of the San Joaquin kit fox prior to or during ground disturbance, January 2011.
- Weintraub, K., T.L. George, and S.J. Dinsmore. 2016. Nest survival of tricolored blackbirds in California's Central Valley. *The Condor* 118(4): 850–861

**Attachment 1****CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE  
RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)****PROJECT: Visalia Landfill – Compost and Biomass Conversion Facility****SCH No.: 2021020054**

<b>RECOMMENDED MITIGATION MEASURE</b>	<b>STATUS/DATE/INITIALS</b>
<i>Before Disturbing Soil or Vegetation</i>	
Mitigation Measure 1: SJKF Habitat Assessment	
Mitigation Measure 2: SJKF Surveys	
Mitigation Measure 3: SJKF Take Authorization	
Mitigation Measure 4: SWHA Surveys	
Mitigation Measure 6: SWHA Take Authorization	
Mitigation Measure 7: SWHA Foraging Habitat	
Mitigation Measure 8: TRBL Habitat Assessment	
Mitigation Measure 9: TRBL Surveys	
Mitigation Measure 11: TRBL Take Authorization	
<i>During Construction</i>	
Mitigation Measure 5: SWHA No-disturbance Buffer	
Mitigation Measure 10: TRBL Avoidance	