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STATE CLEARINGHOUSE

Mr. Nedzlene Ferrario, Senior Planner
Solano County Department of Resource Management
675 Texas Street, Suite 5500
Fairfield, CA 94533

Subject: Recology Hay Road Landfill Land Use Permit Amendment No. 2, Draft Subsequent Environmental Impact Report, SCH #2018032031, Solano County

Dear Mr. Ferrario:

The California Department of Fish and Wildlife (CDFW) reviewed the draft Subsequent Environmental Impact Report (SEIR) provided for the Recology Hay Road Landfill Land Use Permit Amendment No. 2 (Project) located at 6426 Hay Road, Solano County. The draft SEIR was received in our office on December 9, 2019.

CDFW previously submitted comments on the Notice of Preparation for the Project on April 10, 2018, included in the draft SEIR in Appendix A, pages 19 to 24.

CDFW is a Trustee Agency pursuant to the California Environmental Quality Act (CEQA) Section 15386 and has authority to comment on projects that could impact fish, plant and wildlife resources. CDFW is also considered a Responsible Agency if a project would require discretionary approval, such as permits issued under the California Endangered Species Act (CESA), Lake and Streambed Alteration (LSA) Program, and other provisions of the Fish and Game Code that afford protection to the State's fish and wildlife trust resources.

PROJECT DESCRIPTION AND LOCATION

Proponent: Recology Hay Road

Objective and Location: The Project includes expanding the existing Recology Landfill located at 6426 Hay Road, Solano County, by 24 acres to increase overall size capacity by 8.8 million cubic yards of material over 9 years. The existing groundwater and landfill gas monitoring network, and leachate collection system will be modified with an additional disposal area.

The site already includes an 18-acre Bird Sanctuary Pond, 95 acres of undeveloped open space, and an approximately 180-acre conservation area (Eastern and Western).

The draft SEIR identifies that the Eastern and Western Conservation Areas "are currently being placed under a permanent conservation easement to preserve biological habitat values" (page 3-4). **CDFW recommends identifying the previous CEQA document** that required preservation of the Eastern Conservation Area and Western Conservation Area and clarifying that this land mitigates for previous activities at the landfill, not the current Project.

ENVIRONMENTAL SETTING

The Project area contains grassland, wetland, and vernal pool habitat. Fully protected, threatened or endangered, candidate, and other special-status species that are known to occur, or have the potential to occur in or near the Project site, include, but are not limited to:

- California tiger salamander (CTS; *Ambystoma californiense*)
- Swainson's hawk (*Buteo swainsoni*)
- burrowing owl (*Athene cunicularia*)
- tricolored blackbird (*Agelaius tricolor*)
- black rail (*Laterallus jamaicensis coturniculus*)
- giant garter snake (*Thamnophis gigas*)
- white-tailed kite (*Elanus leucurus*)
- conservancy fairy shrimp (*Branchinecta conservation*)
- vernal pool fairy shrimp (*Branchinecta lynchi*)
- vernal pool tadpole shrimp (*Lepidurus packardii*)
- special-status plants

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations below to assist Solano County (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 document.

California Tiger Salamander

The draft SEIR identifies potential CTS aquatic and upland habitat within the Project site. Project activities with potentially significant impacts to CTS are "ground disturbance, vegetation removal, grading, and permanent conversion of vernal pool and grassland habitat" (Page 4.4-21). As noted in the draft SEIR, CTS are listed as threatened under the federal Endangered Species Act (ESA) and CESA. Habitat loss, degradation, and fragmentation pose the greatest risks to the continued existence of CTS¹. Mitigation Measure 4.4-2a: California Tiger Salamander Avoidance and Compensatory Mitigation for Habitat Loss provides a good framework to reduce impacts to CTS to less-than-significant. However, CDFW recommends including the following details to ensure compliance with CESA and minimization of impacts:

- References to U.S. Fish and Wildlife Service (USFWS) approval and take authorization under the ESA should also include CDFW approval and proper take authorization under CESA.
- Surveys of the work area are currently required "in mornings following measurable precipitation events." CDFW recommends clarifying and quantifying when surveys will occur. Specifically, surveys should occur each day that the 72-hour National Weather Service (NWS) forecast predicts a 40% chance or greater of precipitation. And, surveys should occur after rain events of a tenth of an inch or greater.
- To avoid ongoing and unnecessary take of CTS in the future, CDFW recommends erecting

¹ CDFW. Report to the Fish and Game Commission: A Status Review of the California Tiger Salamander (*Ambystoma californiense*). 2010. <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=21754&inline>

a permanent barrier between the Project site and existing CTS habitat. The best barriers are typically opaque, 1-3 feet high, and buried 6 inches below the soil surface. If a permanent barrier is feasible, the design and location should be submitted to CDFW and USFWS for review and approval prior to installation.

Swainson's hawk

The draft SEIR identifies the Project site as potential foraging habitat for Swainson's hawk, a threatened species under CESA. In addition, nesting habitat occurs within a half-mile of the Project (page 4.4-13). Project activities could lead to removal of Swainson's hawk foraging habitat or could result in the abandonment of nests and loss of young. CDFW agrees that Mitigation Measure 4.4-2g: Swainson's Hawk Foraging Habitat Mitigation, which proposes a 1:1 mitigation ratio for Swainson's hawk foraging habitat, reduces habitat loss impacts to less-than-significant. However, Mitigation Measure 4.4-2f: Special-Status and Other Nesting Bird Surveys and Avoidance does not adequately reduce potential impacts to nesting Swainson's hawks. CDFW recommends the following changes to Mitigation Measure 4.4-2f:

- Nesting bird season should encompass the entire nesting season of Swainson's hawks (March 1 – September 15). Please revise the proposed nesting bird window from February 1 through August 31 to February 1 through **September 15**.
- If ground disturbance or removal of vegetation will occur within the nesting bird season, then **protocol-level surveys** for Swainson's hawk nest sites should occur to determine the appropriate mitigation to reduce impacts to less-than-significant. CDFW recommends using the Swainson's Hawk Technical Advisory Committee's *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley* (TAC Report) available at: <https://www.wildlife.ca.gov/Conservation/Survey-Protocols>. Please be advised that such surveys require multiple site visits during multiple periods of the nesting season and would require more than 30 days prior to Project activities.

Tricolored Blackbird and Nesting Birds

The draft SEIR identifies tricolored blackbird as "likely to occur. This species has been observed nesting within the Bird Sanctuary area adjacent to the project site..." (page 4.4-13). The draft SEIR also identifies tricolored blackbird as a candidate species for listing under CESA. Please revise the status of tricolored blackbird to reflect that it is now **listed as endangered pursuant to CESA**. Project activities that occur between February 15 and August 31 could disturb nesting tricolored blackbirds leading to reduced nest success, a potentially significant impact. To reduce impacts to less-than-significant, please revise Mitigation Measure 4.4-2f: Special-Status and Other Nesting Bird Surveys and Avoidance, so that nesting bird surveys will occur no more than **7 days** before Project Activities. A period longer than 7 days would provide enough time for birds to begin nesting between the survey and when activities occur, resulting in potential impacts to nesting tricolored blackbirds or other nesting birds.

Black Rail

The draft SEIR identifies black rail, a threatened species under CESA and a fully protected species, as a species with potential to occur near the Project site (page 4.4-12). Black rails are highly secretive and sensitive to disturbance during the nesting season. Any Project activities that occur during black rail nesting season (February 1 - August 31) may have potentially significant impacts on black rail. CDFW strongly recommends working outside of black rail

nesting season. If work must occur during the nesting season, then vetted presence/absence surveys for black rail should occur prior to Project activities. To reduce potential impacts to black rail to less-than-significant, CDFW recommends the following changes to Mitigation Measure 4.4-2f: Special-Status and Other Nesting Bird Surveys and Avoidance:

- If ground disturbance or removal of vegetation will occur within the nesting bird season, then **protocol-level surveys** for black rail presence should occur to determine the appropriate mitigation to reduce impacts to less-than-significant. Please be advised that such surveys require multiple site visits during multiple periods of the nesting season and would require more than 30 days prior to Project activities.
- If black rails are detected on-site, do not conduct work during the rail nesting season, or consult with CDFW to determine adequate buffer distances around the black rail nest site.

Giant Garter Snake

The draft SEIR identifies giant garter snake, a threatened species pursuant to both ESA and CESA, as having potential to occur on the Project site (page 4.4-12). The draft SEIR notes that “project activities, including removal and re-routing of the drainage ditch, ground disturbance, vegetation removal, and grading could result in disturbance or direct loss of giant garter snake if present. This would be a potentially significant impact” (page 4.4-23). To reduce impacts to less-than-significant, Mitigation Measure 4.4-2b: Protection of Giant Garter Snake should be revised to address the following:

- References to USFWS approval and take authorization under the ESA should also include CDFW approval and proper take authorization under CESA. In addition, the aquatic habitat delineation and report should be submitted to CDFW and USFWS in addition to the Solano County Department of Resource Management.
- The proposed active period for giant garter snakes (May 1 to September 15) should be revised to May 1 to **October 1**¹.
- The proposed exclusionary fencing and high-visibility fencing should be made from material that will not cause entanglement (e.g., silt fencing and stakes with flagging and/or poly wire). Fencing should be constructed following the same Mitigation Measures as all other Project activities.

Conservancy Fairy Shrimp – Permanent Barrier

The draft SEIR includes Mitigation Measure 4.4-2d: Protection of Conservancy Fairy Shrimp Habitat from Indirect Effects, which identifies a permanent, impermeable barrier will be constructed to protect conservancy fairy shrimp from Project runoff. CDFW recommends this barrier be included in the Project maps and plans to clearly identify the location of the barrier. In addition, if feasible, CDFW recommends extending this barrier to permanently exclude CTS from the Project site.

Special-Status Plants

The draft SEIR identifies numerous special-status plants with potential to occur in the Project site (Table 4.4-2). Project activities “including ground disturbance and vegetation removal, could

¹ Wylie, Glenn D., Michael L. Casazza, Brian J. Halstead, and Christopher J. Gregory. 2009. Sex, Season, and Time of Day Interact to Affect Body Temperatures of the Giant Gartersnake. *Journal of Thermal Biology* 34: 183–189.

result in disturbance to or loss of special-status plants...[that] could substantially affect the abundance, distribution, and viability of local and regional populations of these species" (page 4.4-19). To reduce impacts to special-status plants to less-than-significant, CDFW recommends the following:

- In Mitigation Measure 4.4-1a, Special-Status Plan Surveys, please specify that botanical surveys set to occur "prior to commencement of ground disturbance" will occur not more than one to two seasons before Project activities. Surveys that occur greater than two seasons prior to Project activities are unlikely to adequately capture the species and locations of special-status plants on-site by the time Project activities commence, leading to potentially significant impacts to these resources.
- Thank you for referencing CDFW's *Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Natural Communities*. Please update this reference to reflect the **2018** revised version of these protocols¹.

Sensitive Natural Communities

The draft SEIR discusses and identifies sensitive natural communities within the Project site and references the California Natural Diversity Database (CNDDDB) (page 4.4-15). Please be advised that the CNDDDB records for sensitive natural communities have not been updated since the mid-1990s and do not necessarily provide a reliable source of sensitive natural communities in California². Rather, CDFW recommends vegetation mapping following the standards in the Manual of California Vegetation and referencing CDFW's list of over 1,500 vegetation associations identified as sensitive³.

REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a CESA Permit must be obtained if the Project has the potential to result in "take" of plants or animals listed under CESA, either during construction or over the life of the Project. Issuance of a CESA Permit is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain a CESA Permit.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially impact threatened or endangered species (CEQA §§ 21001(c), 21083, and CEQA Guidelines §§ 15380, 15064, 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency's FOC does not eliminate the Project proponent's obligation to comply with Fish and Game Code § 2080.

¹ CDFW. Protocols for Surveying and Evaluating Impacts to Special-status Native Plant Populations and Natural Communities. 2018. <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>

² For further information, please visit CDFW's Natural Communities web page: <https://wildlife.ca.gov/Data/VegCAMP/Natural-Communities>

³ CDFW. California Sensitive Natural Communities, November 8, 2019. 2019. <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=153609&inline>

Lake and Streambed Alteration Agreement

CDFW will require an LSA Agreement, pursuant to Fish and Game Code §§ 1600 et. seq. for Project-related activities within any 1600-jurisdictional waters within the proposed Project area. Notification is required for any activity that will substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake or stream. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to notification requirements. CDFW, as a responsible agency under CEQA, will consider the CEQA document for the Project. CDFW may not execute the final LSA Agreement until it has complied with CEQA (Public Resources Code § 21000 et seq.) as the responsible agency.

Migratory Birds and Raptors

CDFW also has jurisdiction over actions that may result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code Sections protecting birds, their eggs, and nests include 3503 (regarding unlawful take, possession or needless destruction of the nests 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). Fully protected species may not be taken or possessed at any time (Fish and Game Code Section 3511). Migratory raptors are also protected under the federal Migratory Bird Treaty Act.

FILING FEES

CDFW anticipates that the Project will have an impact on fish and/or wildlife, and assessment of filing fees is necessary (Fish and Game Code, § 711.4; Pub. Resources Code, § 21089). 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.

CONCLUSION

CDFW appreciates the opportunity to comment on the draft SEIR to assist Solano County in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Ms. Amanda Culpepper, Environmental Scientist, at (707) 428-2075 or amanda.culpepper@wildlife.ca.gov; or Ms. Karen Weiss, Senior Environmental Scientist (Supervisory), at karen.weiss@wildlife.ca.gov.

Sincerely,



Gregg Erickson
Regional Manager
Bay Delta Region

cc: State Clearinghouse (SCH #2018032031)