



State of California – The 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



Governor's Office of Planning & Research

November 22, 2019

DEC 02 2019

STATE CLEARINGHOUSE

Ronelle Candia
Kern County Planning and Natural Resources Department
2700 "M" Street, Suite 100
Bakersfield, California 93301

**Subject: Lost Hills Composting and Waste to Energy Project (Project),
Notice of Preparation for the Environmental Impact Report
SCH No. 2019100659**

Dear Ms. Candia:

The California Department of Fish and Wildlife (CDFW) received a Notice of Preparation (NOP) of a Draft Environmental Impact Report (EIR) from Kern County Planning and Natural Resources Department for the above-referenced 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 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

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.

need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, construction associated with 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.

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).

PROJECT DESCRIPTION SUMMARY

Proponent: Lost Hills Environmental, LLC

Objective: The Project includes a request for land use entitlements necessary to facilitate the expanded and continued use of a Class III Non-Hazardous Industrial Waste Landfill facility and the establishment of a new Waste to Energy Biomass Gasification Facility.

Location: The Project is located at the east and west side of Holloway Road, approximately 2 miles north of Highway 46, at the GP Road junction and approximately 3.5 miles northwest of the unincorporated community of Lost Hills, California in Kern County. The proposed site for the Waste to Energy Biomass Gasification Facility is a 6-acre parcel located at 14045 Holloway Road, Lost Hills. Assessor's Parcel Numbers for the entire Project area are 057-220-16 and -21, and 057-240-29, -50, and -60.

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 document.

Currently, the NOP acknowledges that the Project area is within the geographic range of several special-status animal species including the State threatened San Joaquin

antelope squirrel (*Ammospermophilus nelsoni*), the State Threatened Swainson's hawk (*Buteo swainsoni*), the State Species of Special Concern western snowy plover (*Charadrius alexandrinus nivosus*), the State and federally Endangered giant kangaroo rat (*Dipodomys ingens*), the State and federally Endangered Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*), 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*). The NOP also acknowledges that the Project area is in the range of several special-status plant species including the State endangered and California Rare Plant Ranked (CRPR) 1B.1 California jewelflower (*Caulanthus californicus*) and the CRPR 1B.2 Kern mallow (*Eremalche parryi ssp. kernensis*) and San Joaquin woollythreads (*Monolopia congdonii*). In addition to these species, CDFW is concerned regarding potential of the Project to impact other special-status species not mentioned in the NOP including, but not limited to, the State species of special concern burrowing owl (*Athene cunicularia*). As such, CDFW requests that the EIR fully identify potential impacts to biological resources, including the above-mentioned species. Further, CDFW recommends that biological surveys be conducted and that the results of these surveys be used to inform the analysis of impacts to resources and to provision suitable avoidance, minimization, and mitigation measures to reduce impacts to less than significant levels.

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 the United States Fish and Wildlife Service (USFWS)?

COMMENT 1: San Joaquin Antelope Squirrel (SJAS)

Issue: The Project area is within the range of SJAS and, based on review of aerial imagery, appears to be located adjacent to undeveloped habitat. SJAS have been documented to occur within 1 mile of the Project area (CDFW 2019a) and may occur on-site where there are potential habitat features (e.g., burrows) or disperse across the Project site between higher quality habitat patches.

Specific impact: Without appropriate avoidance and minimization measures for SJAS, potential significant impacts include burrow abandonment, which may result in reduced reproductive success such as reduced health or vigor of young and direct mortality.

Evidence impact is potentially significant: Habitat loss resulting from development is the primary threat to SJAS. Very little suitable habitat for this species remains along the western floor of the San Joaquin Valley (ESRP 2019a).

The vicinity of the Project area represents some of the only remaining undeveloped land in the area. As a result, ground-disturbing activities within the Project area have the potential to significantly impact local populations of SJAS.

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential Project-related impacts to SJAS, CDFW recommends conducting the following evaluation of the Project area and including the following measures in the EIR.

Recommended Mitigation Measure 1: SJAS Surveys

CDFW recommends that daytime line transect surveys to search for SJAS and potential habitat features (e.g., burrows). CDFW recommends these surveys ensure 100% visual coverage of the Project area and be conducted between April 1 and September 20 when antelope squirrels are more active and thus, more likely to be detected (CDFG 1990).

Recommended Mitigation Measure 2: SJAS Avoidance

If suitable habitat is determined to be present within the Project area and surveys are not feasible, CDFW advises maintenance of a 50-foot minimum no-disturbance buffer around all small mammal burrows of suitable size for SJAS.

Recommended Mitigation Measure 3: SJAS Take Authorization

SJAS 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(b).

COMMENT 2: Giant kangaroo rat (GKR) and Tipton kangaroo rat (TKR)

Issue: The Project area is within the range of GKR and TKR. Review of aerial imagery indicates that portions of the Project area are adjacent to undeveloped land, increasing the likelihood of occurrence.

Specific impact: Without appropriate avoidance and minimization measures for GKR and TKR, potential significant impacts associated with the Project's construction include burrow collapse, inadvertent entrapment, reduced reproductive success, reduction in health and vigor of young, and direct mortality of individuals.

Evidence impact would be significant: Habitat loss resulting from development is the primary threat to GKR and TKR. Very little suitable habitat remains along the

western floor of the San Joaquin Valley (USFWS 1998a). The land adjacent to the Project area represents some of the only remaining undeveloped land in the vicinity and therefore, may support GKR and TKR. As a result, ground-disturbing activities at the Project area have the potential to significantly impact local populations of GKR and TKR.

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential Project-related impacts to GKR and TKR, CDFW recommends conducting the following evaluation of the Project area and including the following measures in the EIR.

Recommended Mitigation Measure 4: GKR and TKR Avoidance

In order to avoid take of GKR or TKR, CDFW recommends a minimum 50-foot no-disturbance buffer be employed around all burrows that could be used by these species.

Recommended Mitigation Measure 5: GKR and TKR Surveys

If burrow avoidance is not feasible, CDFW recommends focused protocol-level trapping surveys be conducted by a qualified wildlife biologist that is permitted to do so by both CDFW and USFWS to determine if GKR or TKR occur in the Project area. CDFW advises that these surveys be conducted in accordance with USFWS's (2013) *"Survey Protocol for Determining Presence of San Joaquin Kangaroo Rats,"* well in advance of ground-disturbing activities in order to determine if impacts to GKR or TKR could occur.

Recommended Mitigation Measure 6: GKR and TKR Take Authorization

If GKR or TKR are identified during surveys, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, acquisition of take authorization through issuance of an ITP by CDFW, pursuant to Fish and Game Code section 2081(b), is necessary to comply with CESA. Alternatively, the Project proponent has the option of assuming presence of GKR and TKR and securing an ITP.

COMMENT 3: Blunt-nosed leopard lizard (BNLL)

Issue: BNLL have been documented to occur on parcels adjacent to the Project area (CDFW 2019a). Suitable BNLL habitat includes areas of grassland and upland scrub that contain requisite habitat elements, such as small mammal burrows. BNLL also use open space patches between suitable habitats, including disturbed sites

and unpaved access roadways. Review of aerial imagery indicates that the Project area and its vicinity are comprised of these habitat features, making it potentially suitable for BNLL.

Specific impact: Without appropriate avoidance and minimization measures for BNLL, potential significant impacts associated with the Project's construction include burrow collapse, nest abandonment, reduced nest success, reduced health and vigor of eggs and/or young, and direct mortality.

Evidence impact is potentially significant: Habitat loss resulting from development is the primary threat to BNLL (ESRP 2019b). Little suitable habitat for BNLL remains in central Kern County (USFWS 1998b). Lands adjacent to the Project area represent some of the only remaining undeveloped land in the vicinity. Therefore, the ground-disturbing and development activities associated with the Project have the potential to significantly impact local BNLL populations.

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential Project-related impacts to BNLL, CDFW recommends conducting the following evaluation of the Project area and including the following measures in the EIR document.

Recommended Mitigation Measure 7: BNLL Habitat Assessment

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

Recommended Mitigation Measure 8: BNLL Surveys

If suitable habitat is determined to be present in the Project area, and prior to initiating any vegetation- or ground-disturbance activities, CDFW recommends conducting surveys in accordance with the "Approved Survey Methodology for the Blunt-nosed Leopard Lizard" (CDFW 2019b). This recommended survey protocol, designed to optimize BNLL detectability, reasonably assures CDFW that ground-disturbance will not result in take of this fully protected species.

CDFW advises completion of BNLL surveys no more than one year prior to initiation of ground disturbance. Please note that protocol-level surveys must be conducted on multiple dates during late spring, summer, and fall and that within these time periods there are specific protocol-level date, temperature, and time parameters which must be adhered to. As a result, protocol-level surveys for BNLL are not synonymous with 30-day "preconstruction surveys" often recommended for other

wildlife species. In addition, the BNLL protocol specifies different survey effort requirements based on whether the disturbance results from maintenance activities or if the disturbance results in habitat removal (CDFW 2019b).

Recommended Mitigation Measure 9: BNLL Take Avoidance

BNLL detection during protocol level surveys warrants consultation with CDFW to discuss how to implement ground-disturbing activities and avoid take. Because BNLL is a State Fully Protected species, no take incidental or otherwise, can be authorized by CDFW.

COMMENT 4: San Joaquin Kit Fox (SJKF)

Issue: SJKF have been documented to occur within the vicinity of the Project area (CDFW 2019a). In addition, SJKF may be attracted to the Project area due to the type and level of ground-disturbing activities and the loose, friable soils resulting from intensive ground disturbance, thus increasing the likelihood of occurrence.

Specific impact: Without appropriate avoidance and minimization measures for SJKF, potential significant impacts associated with Project construction 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 development is the primary threat to SJKF (Cypher et al. 2013). Very little suitable habitat remains in Kern County (Cypher et al. 2013). The Project area is bordered by some of the only remaining suitable habitat in the vicinity, increasing the potential for SJKF to be encountered at the Project site. Therefore, ground-disturbing activities within the Project area have the potential to significantly impact local SJKF populations.

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Environmental Setting and Related Impact Shortcoming)

To evaluate potential Project-related impacts to SJKF, CDFW recommends conducting the following evaluation of the Project area and including the following measures in the EIR.

Recommended Mitigation Measure 10: SJKF Habitat Assessment

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

Recommended Mitigation Measure 11: SJKF Surveys

If suitable habitat is determined to be present in the Project area, 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 12: SJKF Avoidance and Minimization

CDFW recommends that the EIR include all measures as outlined in the USFWS's "Standardized recommendations for the protection of the San Joaquin kit fox prior to or during ground disturbance" (2011).

Recommended Mitigation Measure 13: SJKF Take Authorization

Regardless of the minimization measures recommended above, SJKF detection warrants consultation with CDFW to discuss how to avoid take, or if avoidance is not feasible, to acquire an ITP prior to ground-disturbing activities, pursuant to Fish and Game Code section 2081(b).

COMMENT 5: Burrowing Owl (BUOW)

Issue: BUOW have been documented to occur in the vicinity of the Project area (CDFW 2019a). BUOW occupy open grassland and shrub lands that contain small mammal burrows, a requisite habitat feature used by BUOW for nesting and cover. Lands adjacent to the Project area appear to contain suitable habitat, thus increasing the likelihood of occurrence.

Specific impact: Potentially significant direct impacts associated with the Project's construction include burrow collapse, inadvertent entrapment, nest abandonment, reduced reproductive success, reduction in health and vigor of eggs and/or young, and direct mortality of individuals.

Evidence impact is potentially significant: BUOW rely on burrow habitat year-round for their survival and reproduction. Habitat loss and degradation are considered the greatest threats to BUOW in California's Central Valley (Gervais et al. 2008). Because the Project area is within the range of BUOW and BUOW have been documented to occur in the area, the Project has the potential to significantly impact local BUOW populations.

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Environmental Setting and Related Impact)

To evaluate potential Project-related impacts to BUOW, CDFW recommends conducting the following evaluation of the Project area and including the following measures in the EIR.

Recommended Mitigation Measure 14: BUOW Surveys

CDFW recommends assessing presence/absence of BUOW by having a qualified biologist conduct surveys following the California Burrowing Owl Consortium's "*Burrowing Owl Survey Protocol and Mitigation Guidelines*" (CBOC 1993) and CDFW's *Staff Report on Burrowing Owl Mitigation*" (CDFG 2012). In addition, CDFW advises that surveys include a 500-foot buffer around the Project area.

Recommended Mitigation Measure 15: BUOW Avoidance

CDFW recommends no-disturbance buffers, as outlined in the "*Staff Report on Burrowing Owl Mitigation*" (CDFG 2012), be implemented prior to and during any ground-disturbing activities associated with Project implementation. Specifically, CDFW's Staff Report recommends that impacts to occupied burrows be avoided in accordance with the following table unless a qualified biologist approved by CDFW verifies through non-invasive methods that either: 1) the birds have not begun egg laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival.

Location	Time of Year	Level of Disturbance		
		Low	Med	High
Nesting sites	April 1-Aug 15	200 m*	500 m	500 m
Nesting sites	Aug 16-Oct 15	200 m	200 m	500 m
Nesting sites	Oct 16-Mar 31	50 m	100 m	500 m

* meters (m)

Recommended Mitigation Measure 16: BUOW Passive Relocation and Mitigation

If BUOW are found to occupy the Project site and avoidance is not possible, it is important to note that according to the Staff Report (CDFG 2012), exclusion is not a minimization or mitigation method and is considered a potentially significant impact under CEQA. However, if necessary, CDFW recommends that burrow exclusion be conducted by qualified biologists and only during the non-breeding season, before breeding behavior is exhibited and after the burrow is confirmed empty through non-invasive methods, such as surveillance. CDFW recommends replacement of

occupied burrows with artificial burrows at a ratio of 1 burrow collapsed to 1 artificial burrow constructed (1:1) as mitigation for the potentially significant impact of evicting BUOW. BUOW may attempt to colonize or re-colonize an area that will be impacted; thus, CDFW recommends ongoing surveillance of the Project site during Project activities, at a rate that is sufficient to detect BUOW if they return.

COMMENT 6: Special-status plants

Issue: The Project is within the range of several special-status plants, some of which have been documented to occur within 5 miles of the area (CDFW 2019a). Ground- and vegetation-disturbing activities have the potential to result in take of special-status species. Unauthorized take of species listed as threatened, endangered, or rare pursuant to CESA or the Native Plant Protection Act is a violation of Fish and Game Code.

Specific impact: Without appropriate avoidance and minimization measures for special-status plants, potential significant impacts resulting from ground-and vegetation-disturbing activities associated with the Project include inability to reproduce and direct mortality.

Evidence impact would be significant: Many of the special-status plant species with potential to occur at the Project site, including San Joaquin woollythreads, are threatened by agricultural, urban, energy, and road construction and development. Many historical occurrences of these species are presumed extirpated (CNPS 2019). Though new occurrences have recently been discovered, impacts to existing populations have the potential to significantly impact these species.

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential Project-related impacts to special-status plants, CDFW recommends conducting the following evaluation of the Project site and including the following measures in the EIR.

Recommended Mitigation Measure 17: Special-Status Plant Surveys

CDFW recommends that the Project area 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 Natural Communities" (CDFW 2018). This protocol, which is intended to maximize detectability, includes the identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period. In the absence of protocol-level surveys being performed, additional surveys may be necessary.

Recommended Mitigation Measure 18: Special-Status Plant Avoidance

CDFW recommends special-status plant species be avoided whenever possible by delineation 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.

Recommended Mitigation Measure 19: State-listed Plant Take Authorization

If a plant species listed pursuant to CESA or the Native Plant Protection Act is identified during botanical surveys, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, take authorization prior to any ground-disturbing activities may be warranted. Take authorization would occur through issuance of an ITP by CDFW, pursuant to Fish and Game Code section 2081(b).

II. Editorial Comments and/or Suggestions

Nesting birds: CDFW encourages Project implementation occur during the bird non-nesting season. However, if ground-disturbing activities must occur during the breeding season (February through mid-September), the Project's applicant 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, including western snowy plover, CDFW recommends that a qualified wildlife biologist conduct pre-activity surveys for active nests no more than 10 days prior to the start of ground disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the work site to identify nests and determine their status. A sufficient area means any area potentially affected by the Project. In addition to direct impacts (i.e. nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. Prior to initiation of construction activities, CDFW recommends a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once construction begins, CDFW recommends a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends the work causing that change cease and CDFW consulted for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified wildlife biologist is not feasible, 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 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. Variance from these no-disturbance buffers is possible when there is compelling biological or ecological reason to do so, such as when the construction area would be concealed from a nest site by topography. CDFW recommends that a qualified wildlife biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

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

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database that 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. 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

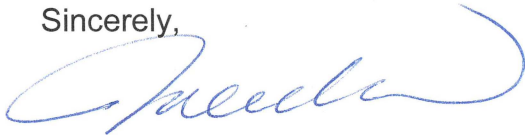
The Project, as proposed, has the potential to impact fish and/or wildlife, and assessment of filing fees may be necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required 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 Kern County in identifying and mitigating subsequent project's impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Jennifer Giannetta, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 243-4014 extension 216, or by electronic mail at Jennifer.Giannetta@wildlife.ca.gov.

Sincerely,



Julie A. Vance
Regional Manager

REFERENCES

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