COUNTY OF ORANGE
OC Waste&Recycling
Our Community. Our Commitment.

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(Letter Sent Via Email)

February 26, 2020

David A. Mayer, Acting Environmental Program Manager
California Department of Fish and Wildlife, South Coast Region
3883 Ruffin Road
San Diego, CA 92123

Subject: OC Waste & Recycling Responses to CDFW Comments on MND for Proposed Capistrano Greenery Composting Operation at the Prima Deshecha Landfill (SCH No. 2020019030)

Dear Mr. Mayer:

The County of Orange, OC Waste & Recycling department (OCWR) has the following responses to CDFW's comment letter dated February 10, 2020 regarding the Mitigated Negative Declaration (MND) for the proposed Capistrano Greenery Composting Operation at the Prima Deshecha Landfill.

Comment 1:

"The Department recommends conducting burrowing owl surveys during the breeding season to conclusively determine the nature of the observed burrows (wintering/breeding). The Department recommends that direct impacts to occupied or previously occupied burrows be avoided. The mitigation measures outlined in MM BIO-2 address appropriate avoidance measures should nesting burrowing owls be identified.

As written, MM BIO-2 prescribes passive relocation techniques such a burrow exclusion, creation of alternative burrow habitat if non-breeding burrowing owls are identified during surveys, and construction of an artificial burrow should a previously occupied burrow be directly impacted during construction. To avoid or minimize impacts to burrowing owl, the Department recommends that the Project adhere to the March 7, 2012 Department of Fish and Game Staff Report on Burrowing Owl Mitigation (Staff Report). In the Staff Report, the Department notes that eviction of burrowing owls is a potentially significant impact. Loss of burrow access can lead to depressed reproduction, increased predation, stress on the species, increased energetic costs, and additional risks from the need to find and compete for new burrows. Successful use of artificial burrows depends on an array of variables such as long-term site protections (e.g., a biological conservation easement), active habitat management measures, funding for management measures, construction materials, location, predators, and surrounding vegetation and the overall success of artificial burrows is unclear. Artificial burrows also require annual maintenance or replacement for long-term reliance as natural burrow replacements (Department of Fish and Game 2012). Any proposal to passively exclude burrowing owl should address each of the variables in a comprehensive mitigation plan approved by the Department.

Based on the information provided in the MND, burrow exclusion is not warranted for the burrows observed 200 feet and 700 feet from the Project site. The Department recommends leaving these burrows undisturbed, developing a burrowing owl monitoring plan in consultation with the Department, and providing ongoing site monitoring during clearing, grading, or grubbing construction activities, as well as submission of a burrowing owl monitoring report. To provide additional protection to the burrows, buffer zones and visual screens are recommended to minimize disturbance impacts during project activities, as determined appropriate by a qualified biologist. Additionally, the Department recommends that visible markers be placed near the burrows and a worker awareness program be implemented to minimize burrowing owl impacts. Therefore, MM BIO-2 should be amended to read as follows:

Mitigation Measure BIO-2 (MM BIO-2): OCWR will develop an owl monitoring plan, reviewed by the Department. Per Department of Fish and Game Staff Report on Burrowing Owl Mitigation, if non-breeding burrowing owls are found within the direct and indirect impact areas (as determined by the qualified biologist), then burrows will be avoided by a buffer no smaller than 300 feet. Visual screens will be used to minimize disturbance impacts during project activities. Visible markers will be used to demarcate burrow location. A worker awareness program will also be implemented."

Response 1:

In response to this comment, Aimee Halligan, Sr. Environmental Resources Specialist for OC Waste & Recycling South Region Landfills consulted with Jennifer Turner of CDFW on January 15, 2020 with regards to the potential owl burrows located 200ft from the proposed composting operation (two burrows located within approximately 5-10ft of each other). During this coordination, CDFW concurred that the observed owls were most likely only over-winter residents, and unlikely to be breeding on site or present year-round due to site history (no past observation of nesting owls, only over-wintering and passthrough) and results of over-winter surveys conducted during October 2019 – January 2020 (1 owl observation in 4 surveys, presence of undisturbed webs in the burrows). In addition, the burrows were in close proximity not only to the proposed compost facility but also to active landfill operations. Thus CDFW allowed for the exclusion of these two burrows prior to the start of the breeding season, after ensuring that the burrows continued to be unoccupied. The burrows were monitored prior to exclusion on two separate occasions and on the second monitoring visit, a video borescope was also conducted to determine and confirm that the burrows were vacant prior to closure.

The other potential burrow location, located in a rock pile approximately 700ft north of the proposed composting operations and set away from landfill operations was left undisturbed. This burrow is at such a distance that it will not be directly or indirectly impacted by construction of the composting operation. OCWR will monitor and implement burrowing owl surveys during the breeding season in 2020 to conclusively determine the nature of the observed burrow in this location (wintering/breeding). The results of this study will be provided to CDFW upon completion.

Since the two burrows located nearest the proposed compost operation (200ft) have been closed, it is not anticipated that owls will be present during construction. However, OCWR will provide for site monitoring during construction during the breeding season (i.e. clearing, grading,

grubbing, or construction activities) to ensure no new burrows are located. In the event that burrowing owls are encountered in the project vicinity, OCWR will coordinate with CDFW to prepare a burrowing owl mitigation and monitoring plan.

Please let me know if you have any questions or if you need any additional information. I can be reached at (949) 728-3063 or by email at aimee.halligan@ocwr.ocgov.com.

Sincerely,

Aimee Halligan

Aimee Halligan
Senior Environmental Resources Specialist
Prima Deshecha Landfill

State of California – Natural Resources Agency
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director

February 10, 2020

Mr. John Arnau
OC Waste & Recycling
601 N. Ross Street, 5th Floor
Santa Ana, CA 92701
John.arnau@ocwr.ocgov.com

Subject: Comments on the Draft Mitigated Negative Declaration for the Capistrano Greenery Composting Operation at Prima Deshecha Landfill (SCH # 2020019030), San Juan Capistrano, California

Dear Mr. Arnau:

The California Department of Fish and Wildlife (Department) has reviewed the above-referenced Draft Mitigated Negative Declaration (MND) for the Capistrano Greenery Composting Operation at Prima Deshecha Landfill (Project). The following statements and comments have been prepared pursuant to the Department's authority as Trustee Agency with jurisdiction over natural resources affected by the project (California Environmental Quality Act, [CEQA] Guidelines § 15386) and pursuant to our authority as a Responsible Agency under CEQA Guidelines section 15381 over those aspects of the proposed project that come under the purview of the California Endangered Species Act (Fish and Game Code § 2050 *et seq.*) and Fish and Game Code section 1600 *et seq.*

The 1,530-acre Prima Deshecha Landfill property is located in San Juan Capistrano, unincorporated Orange County, and San Clemente, California. The property is an active Class III landfill that accepts municipal solid waste for disposal. The Project proposes to develop an open windrow composting operation on an 18.6-acre section in the western portion of the property that is not currently being used for landfilling operations. According to the Project's Draft Initial Study/Mitigated Negative Declaration, the site consists of disturbed, non-native grassland with patches of mixed herbaceous invasive species and bare ground. Surrounding land uses included undeveloped open space, residential developments, and active landfill operations. Restoration areas adjacent to the site support chaparral vegetation and mature coastal sage scrub, which provide potentially suitable habitat for several special-status species.

California horned lark (*Eremophila alpestris actia*) was documented on site on July 10, 2019 and two burrowing owls (*Athene cunicularia*; California Species of Special Concern) were observed outside of the site boundary but in the immediate project vicinity in October through November 2019. The Project is sited nearly a quarter mile, and separated by natural topographic barriers, from the nearest documented nest location of coastal California gnatcatcher (*Polioptila californica californica*; Endangered Species Act-listed threatened)

The Department offers the following comments and recommendations to assist Orange County Waste and Recycling (OCWR) in avoiding or minimizing potential Project-related impacts to biological resources:

COMMENT #1: Impacts to Burrowing Owl (*Athene cunicularia*)

Issue: During the general biological surveys, conducted October through November 2019 (Dudek, 2019), two burrowing owls were observed foraging outside of the compost facility immediately adjacent to the project vicinity. Ongoing focused burrowing owl protocol surveys are being conducted through January 2020 to evaluate the nature and extent of the burrowing owl occupancy and determine if they are overwintering, breeding, or migrating. A survey in November 2019 indicated that no burrows were found within the Project site; however, an active burrow was observed approximately 200 feet east of the site boundary and another active burrow was observed approximately 700 feet north of the site boundary.

Specific impact: The project may result in direct and indirect disruption of natural burrowing owl breeding behavior and loss of breeding, wintering and foraging habitat for the species, ultimately contributing to a statewide population decline for burrowing owl.

Why impact would occur: Impacts to burrowing owl could result from visual disruption or flushing of individuals, noise, and vibration related to construction activities. Vegetation clearing or other ground disturbing activities could also contribute to impacts to this species.

Mitigation measures proposed in the Draft Mitigated Negative Declaration for the Capistrano Greenery Composting Operation at Prima Deshecha Landfill are as follows:

"Mitigation Measure BIO-1 (MM BIO-1): Any vegetation removal, construction, or grading activities should take place outside of the active nesting bird season (i.e., February 1–August 31), when feasible. Should these activities take place during this period, a qualified biologist should conduct a nesting bird survey no more than 3 days prior to the start of such activities. Any available focused survey data, particularly with regard to CAGN and/or burrowing owl nesting locations, should be referenced prior to the survey. If construction activities using heavy equipment (i.e., graders, bulldozers, and excavators, etc.) continue through the nesting season, weekly nesting bird surveys shall be conducted until the construction activities are completed. Each nesting bird survey shall include the work area and areas adjacent to the site (within 500 feet, as feasible) that could potentially be affected by project-related activities such as noise, vibration, increased human activity, and dust, etc. For any active nest(s) identified, the qualified biologist shall establish an appropriate buffer zone around the active nest(s). The appropriate buffer shall be determined by the qualified biologist based on species, location, and the nature of the proposed activities. Project activities shall be avoided within the buffer zone until the nest is deemed no longer active, as determined by the qualified biologist

Mitigation Measure BIO-2 (MM BIO-2): Consistent with the Conservation Strategy for burrowing owl as established in Section 13.2.5 (a)(2)(b) of the Orange County Southern Subregion Habitat Conservation Plan (HCP), focused pre-construction surveys will continue through January 2020 to determine the nature and extent of burrowing owl occupancy within 1,000 feet of the project site. Pre-construction nesting surveys will be conducted in conjunction with those described in Mitigation Measure BIO-1. If construction is planned to occur while burrowing owls are present within 1,000 feet of the project site (including access routes), a qualified biologist will monitor project construction activities and burrowing owl status, and determine appropriate avoidance, minimization, or compensation measures to be implemented.

If nesting burrowing owls are found within the direct and indirect impact areas (as determined by the qualified biologist), avoidance measures will be implemented, including no direct disturbance of active dens during the breeding season and maintaining approximately 6-7 acres of undisturbed, contiguous foraging habitat (or about a 300-foot radius) around the nest site throughout the breeding season or until the nest site is no longer active and no burrowing owls are present. If a previously-occupied nesting burrow is directly impacted during construction (following confirmation that no owls are present), an artificial burrow in suitable habitat will be constructed at least 300 feet from the impacted areas and such that at least 6-7 acres of suitable foraging habitat are contiguous with the new burrow.

If non-breeding burrowing owls are found within the direct and indirect impact areas (as determined by the qualified biologist), passive relocation techniques (e.g., burrow exclusion and creation of alternative burrow habitat) may be employed outside of the nesting season to avoid direct and indirect impacts to occupied sites. Burrow exclusion is a technique of installing one-way doors in burrow openings during the nonbreeding season to allow owls to leave the burrow and temporarily exclude burrowing owls from re-entering, or permanently exclude burrowing owls and close burrows after verifying burrows are empty during site monitoring and scoping. If a previously-occupied burrow is directly impacted during construction (following burrow exclusion and confirmation that no owls are present), an artificial burrow in suitable habitat will be constructed at least 300 feet from the impacted areas and such that at least 6-7 acres of suitable foraging habitat are contiguous with the new burrow.

If occupied burrows are not directly impacted either through burrow exclusion or project construction activities, then no compensatory mitigation or construction of artificial burrows is required."

Recommended Amendments to Proposed Mitigation Monitoring and Reporting Program:

The Department recommends conducting burrowing owl surveys during the breeding season to conclusively determine the nature of the observed burrows (wintering / breeding). The Department recommends that direct impacts to occupied or previously occupied burrows be avoided. The mitigation measures outlined in MM BIO-2 address appropriate avoidance measures should nesting burrowing owls be identified.

As written, MM BIO-2 prescribes passive relocation techniques such as burrow exclusion, creation of alternative burrow habitat if non-breeding burrowing owls are identified during surveys, and construction of an artificial burrow should a previously occupied burrow be directly impacted during construction. To avoid or minimize impacts to burrowing owl, the Department recommends that the Project adhere to the March 7, 2012 Department of Fish and Game Staff Report on Burrowing Owl Mitigation (Staff Report). In the Staff Report, the Department notes that eviction of burrowing owls is a potentially significant impact. Loss of burrow access can lead to depressed reproduction, increased predation, stress on the species, increased energetic costs, and additional risks from the need to find and compete for new burrows. Successful use of artificial burrows depends on an array of variables such as long-term site protections (e.g., a biological conservation easement), active habitat management measures, funding for management measures, construction materials, location, predators, and surrounding vegetation, and the overall success of artificial burrows is unclear. Artificial burrows also require annual maintenance or replacement for long-term reliance as natural burrow replacements (Department of Fish and Game 2012). Any proposal to passively exclude burrowing owl should address each of the above variables in a comprehensive mitigation plan approved by the Department.

Based on the information provided in the MND, burrow exclusion is not warranted for the burrows observed 200 feet and 700 feet from the Project site. The Department recommends leaving those burrows undisturbed, developing a burrowing owl monitoring plan in consultation with the Department, and providing ongoing site monitoring during clearing, grading, or grubbing construction activities, as well as submission of a burrowing owl monitoring report. To provide additional protection to the burrows, buffer zones and visual screens are recommended to minimize disturbance impacts during project activities, as determined appropriate by a qualified biologist. Additionally, the Department recommends that visible markers be placed near the burrows and a worker awareness program be implemented to minimize burrowing owl impacts. Therefore, MM-BIO-2 should be amended to read as follows:

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Per CEQA Guidelines Section 21081.6(a)(1), the Department has provided OCWR with a suggested mitigation measure and recommendations (Comment #1).

We appreciate the opportunity to comment on the referenced MND. If you have questions or comments regarding this letter, please contact Jessie Lane at (858) 636-3159 or Jessie.Lane@wildlife.ca.gov.

Sincerely,

David A. Mayer
Acting Environmental Program Manager
South Coast Region

ec: State Clearinghouse
David Zoutendyk, U.S. Fish and Wildlife Service, Carlsbad Field Office

References

County of Orange. Orange County Waste and Recycling. 2020. Draft Mitigated Negative Declaration – Initial Study No. 679 for the Proposed Capistrano Greenery Composting Operation at the Prima Deshecha Landfill.

Department of Fish and Game. 2012. Staff Report on Burrowing Owl Mitigation. (https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843)