



STATE OF CALIFORNIA • NATURAL RESOURCES AGENCY

Gavin Newsom, Governor

DEPARTMENT OF FISH AND WILDLIFE

Charlton H. Bonham, Director

Central Region

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August 14, 2023

Chris Brady
Stanislaus County Department of Public Works
1716 Morgan Road
Modesto CA, 95358

**Subject: Aemetis Biogas LLC Dairy Biogas Cluster (Project)
Mitigated Negative Declaration (MND)
SCH No. 2020109027**



Dear Chris Brady:

The California Department of Fish and Wildlife (CDFW) received a mitigated negative declaration (MND) from the Stanislaus County Department of Public Works for the above-referenced Project pursuant to 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 Fish and Game Code. While the comment period may have ended, CDFW would appreciate it if you would 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.*, §

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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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 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.

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: Aemetis Biogas, LLC

Objective: Aemetis Biogas, LLC, in coordination with Stanislaus County Public Works, proposes to construct approximately 26.6 miles of biogas pipeline located in unincorporated Stanislaus and Merced Counties. The pipeline will provide transmission of biogas collected from privately owned dairy farms using a covered anaerobic lagoon digester, then pressurized for transmission to a central Biogas Cleanup Plant co-located at the Aemetis Advanced Fuels Keyes ethanol production facility. The pipeline will be up to eight inches in diameter and carry pressurized methane and CO₂ based biogas.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the Stanislaus County Department of Public Works 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

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suggestions may also be included to improve the CEQA document prepared for this Project.

There are special-status species that may be present at individual Project sites in the Project area and these resources may need to be evaluated and addressed prior to any approvals that would allow ground-disturbing activities or land use changes. The MND states that there is a possibility for Swainson's hawk (*Buteo swainsoni*) to occur in the area and has provided mitigation measures to reduce impacts. CDFW is concerned about the ability of some of the proposed mitigation measures to reduce potential impacts to less than significant and avoid the unauthorized take for special-status species including, but not limited to, the State threatened Swainson's hawk. In order to adequately assess any potential impacts to biological resources, focused biological surveys should be conducted by a qualified biologist during the appropriate survey period(s) in order to determine whether any special-status species 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 measures and/or the need for additional surveys or protocol-level surveys, and to identify any Project-related impacts to State threatened or endangered species 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 the United States Fish and Wildlife Service (USFWS)?

COMMENT 1: Swainson's Hawk (SWHA)

The MND states that surveys were performed to determine presence of SWHA; however, it was not stated that protocol-level surveys, following the survey methods developed by the SWHA Technical Advisory Committee (TAC) (SWHA TAC 2000), were conducted for the Project. CDFW recommends protocol surveys following the SWHA TAC (SWHA TAC 2000) guidelines be conducted the survey season immediately prior to construction by a qualified biologist with knowledge of SWHA natural history and behaviors, in order to properly determine absence. Mitigation Measures BIO-5 within the MND also states, "If vegetation removal is necessary for Project activities and Swainson's hawk nests are discovered within ¼ mile of the Project area, a 300-foot no-work buffer will

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be installed around the nest using ESA fencing and the Project biologist will monitor the nest until it is determined that the young have fledged. Additional appropriate protective measures may be developed in coordination with CDFW." CDFW recommends increasing the no disturbance buffer to a 0.5-mile 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 in order to avoid inadvertent take.

II. Editorial Comments and/or Suggestions

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

If it is determined that the Project has the potential to impact biological resources, an assessment of filing fees will 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 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).

CDFW appreciates the opportunity to comment on the Project to assist the Stanislaus County Department of Public Works in identifying and mitigating the Project's 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>). If you have any questions, please contact Jaime Marquez,

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Environmental Scientist, at the address provided on this letterhead, or by electronic mail at Jaime.Marquez@wildlife.ca.gov.

Sincerely,

DocuSigned by:

FA83F09FE08045A
Julie A. Vance
Regional Manager

ec: State Clearinghouse
Governor's Office of Planning and research
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REFERENCES

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.