



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Governor's Office of Planning & Research

September 16 2021

STATE CLEARINGHOUSE

September 16, 2021

Chuck Kinney
Kings County Community Development Agency
1400 W. Lacey Blvd
Hanford, California 93230

**Subject: High Roller Dairy CUP
Notice of Preparation (NOP)
State Clearinghouse No. 2021070369**

Dear Mr. Kinney:

The California Department of Fish and Wildlife (CDFW) received a NOP for an Environmental Impact Report (EIR) from the Kings County Community Development Agency, as Lead Agency, for the 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 the exercise of its own regulatory authority under the Fish and Game Code. While the comment period may have ended, CDFW would appreciate if you will 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.*, § 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

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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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 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: High Roller Dairy

Objective: The Project includes the addition of an anaerobic lagoon digester and associated infrastructure adjacent to the western boundary of the dairy. The digester is located approximately 1,194 feet from the nearest residence (Figure 2-3). The digester is 300 feet x 264 feet x 32 feet and will hold approximately 10.5 million gallons. Once the digester and biogas infrastructure are operational, the site will generate approximately 20,749 million BTU/year, thus reducing dependence on fossil fuels that generate air pollution and greenhouse gases emissions, meeting the County and State's climate and energy goals to reduce energy usage, increase energy efficiency and increase the use of forms of renewable energy. In addition, several new dairy-related structures are proposed. The existing High Roller Dairy facility includes 5,333 dairy cows (Animal Units) housed in open lot shade structures and free stall barns. Existing manure travels to an existing storage lagoon in the center of the parcel, and cows are milked in the northeast corner. There is no proposed increase in the number of Animal Units.

Location: The Project site is located on the northwest corner of the intersection between State Route 43 and Jackson Ave, south of Hanford.

Timeframe: Unspecified

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COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the Kings County Community Development 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 CEQA document.

The Project area is within the geographic range of several special-status animal species. Of particular concern to CDFW are the State threatened Swainson's hawk (*Buteo swainsoni*), and tricolored blackbird (*Agelaius tricolor*), and the Species of Special Concern burrowing owl (*Athene cunicularia*), because potential habitat features exist on or adjacent to the Project site. As such, CDFW requests that the EIR fully identify potential impacts to these species and evaluate if they may be significant. In order to adequately assess any potential impact to biological resources, focused biological surveys conducted by a qualified wildlife biologist during the appropriate survey period(s) may be necessary to determine whether these species or their habitat may be present within the Project area. Information from these surveys may also be necessary to identify any mitigation, minimization, and avoidance measures and/or the need for additional or protocol level surveys, and to identify any Project-related impacts under CESA and other species of concern. CDFW has the following recommendations.

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 (*Buteo swainsoni*; SWHA)

Issue: SWHA have been documented in the Project vicinity (CDFW 2021) and have the potential to occur in the Project area. Landscape trees may also provide suitable nesting habitat. In addition, grassland and agricultural land in the surrounding area provide suitable foraging habitat for SWHA, increasing the likelihood of SWHA occurrence within the vicinity. SWHA have the potential to nest and forage near the Project site. Based on aerial photography, the proposed Project area appears to include large, mature trees adjacent to the Project site that may serve as potential nest sites and ruderal grasslands, fallow fields, and some agricultural crops that occur in the Project vicinity may serve as foraging habitat.

Specific impact: Without appropriate avoidance and minimization measures for SWHA, potential significant impacts that may result from Project activities include:

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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. All trees, including non-native or ornamental varieties, near the Project site may provide potential nesting sites.

Evidence impact would be 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). Approval of the Project may lead to subsequent ground-disturbing activities that involve noise, groundwork, construction of structures, and movement of workers that could affect nests and has the potential to result in nest abandonment and loss of foraging habitat, significantly impacting local nesting SWHA.

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential impacts to SWHA associated with Project activities, CDFW recommends conducting the following evaluation of the Project area and implementing the following mitigation measures as enforceable conditions in the EIR.

Recommended Mitigation Measure 1: Focused SWHA Surveys

To evaluate potential Project-related impacts, CDFW recommends that a qualified wildlife biologist conduct surveys for nesting SWHA following the entire survey methodology developed by the SWHA Technical Advisory Committee (SWHA TAC 2000) prior to Project implementation within 0.5-mile from the limits of Project-associated disturbance.

Recommended Mitigation Measure 2: SWHA Avoidance

CDFW recommends that if Project-specific activities will take place during the SWHA nesting season (i.e., March 1 through September 15), and active SWHA nests are present, a minimum 0.5-mile no-disturbance buffer be delineated and maintained around each nest, regardless if when it was detected by surveys or incidentally, 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, to prevent nest abandonment and unauthorized take of SWHA as a result of Project activities.

Recommended Mitigation Measure 3: 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

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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.

Recommended Mitigation Measure 4: SWHA Take Authorization

CDFW recommends that in the event an active SWHA nest is detected, and a 0.5-mile no-disturbance buffer is not feasible, 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 Incidental Take Permit (ITP), pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

COMMENT 2: Tricolored Blackbird (TRBL)

Issue: TRBL are documented to occur in the Project vicinity (CDFW 2021). TRBL colonies require suitable nesting habitat, nearby freshwater, and nearby foraging habitat including grasslands, low-growing agricultural croplands (e.g., alfalfa, irrigated pastures, cut grain fields such as silage), or alkali scrub (Beedy et al. 2017).

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

Evidence impact would be significant: The Project site has the potential to contain elements that have the potential to support TRBL nesting colonies. TRBL aggregate and nest colonially, forming colonies of up to 100,000 nests (Beedy et al. 2017). This species has been steadily declining due to annual breeding losses due to crop-harvesting activities, insufficient insect resources, and habitat loss due to land conversion for agriculture, rangeland, and urban development (Beedy et al. 2017).

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential Project-related impacts to TRBL, CDFW recommends conducting the following evaluation of the Project site and including the following measures in the EIR if suitable habitat is present.

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Recommended Mitigation Measure 5: Habitat Assessment

If the Project site contains fallow agricultural fields, ruderal grasslands, or other low growing vegetation, 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 TRBL.

Recommended Mitigation Measure 6: TRBL Surveys

If suitable habitat is present, CDFW recommends that Project activities be timed to avoid the normal 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 nesting TRBL 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.

Recommended Mitigation Measure 7: TRBL Avoidance

If an active TRBL nesting colony is found during preconstruction 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 Agriculture Fields in 2015" (CDFW 2015). 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 should be reassessed to determine the extent of the breeding colony within 10 days for Project initiation.

Recommended Mitigation Measure 8: TRBL Take Authorization

If 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.

COMMENT 3: Burrowing Owl (BUOW)

Issue: BUOW may occur within and/or adjacent to the Project site if suitable small mammal burrows are present. BUOW may inhabit small mammal burrows, a requisite habitat feature used by BUOW for nesting and cover, adjacent to open grasslands, ROWs, vacant lots, low-growing crops, etc., where they can find suitable foraging habitat.

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Specific impact: Potentially significant direct impacts associated with subsequent activities and development 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). The northwest corner of the Project site is adjacent to some of the only remaining suitable habitat in the vicinity, which is otherwise urban or intensively managed for agriculture. Therefore, subsequent ground-disturbing activities associated with the Project have the potential to significantly impact local BUOW populations. In addition, and as described in CDFW's "*Staff Report on Burrowing Owl Mitigation*" (CDFG 2012), excluding and/or evicting BUOW from their burrows is considered a potentially significant impact under CEQA.

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

To evaluate potential impacts to BUOW, CDFW recommends conducting the following evaluation of the Project area and implementing the following mitigation measures.

Recommended Mitigation Measure 9: BUOW Surveys

If small mammal burrows are present within the Project site, 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). Specifically, if suitable habitat is present at an individual Project site, CBOC and CDFW's Staff Report suggest three or more surveillance surveys conducted during daylight with each visit occurring at least three weeks apart during the peak breeding season (April 15 to July 15), when BUOW are most detectable.

Recommended Mitigation Measure 10: 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. 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

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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 11: BUOW Passive Relocation and Mitigation

If BUOW are found within these recommended buffers and avoidance is not possible, it is important to note that according to the Staff Report (CDFG 2012), exclusion is not a take avoidance, 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, at a rate that is sufficient to detect BUOW if they return.

II. Editorial Comments and/or Suggestions

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).

CDFW encourages Project implementation to occur during the bird non-nesting season; however, if Project activities must occur during the breeding season (i.e., February through mid-September), the Project 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, CDFW recommends that a qualified wildlife biologist conduct pre-activity surveys for active nests no more than

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10 days prior to the start of ground disturbance to maximize the probability that nests that could potentially be impacted by the Project 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 a 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 that a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once construction begins, CDFW recommends that a qualified biologist continuously monitor nests to detect behavioral changes resulting from the project. If behavioral changes occur, CDFW recommends that the work causing that change cease and CDFW be 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.

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

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

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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).

CONCLUSION

CDFW appreciates the opportunity to comment on the NOP to assist the Kings County Community Development Agency in identifying and mitigating Project impacts on biological resources.

If you have any questions, please contact Jaime Marquez, Environmental Scientist, at the address provided on this letterhead, or by electronic mail at Jaime.Marquez@wildlife.ca.gov.

Sincerely,

DocuSigned by:

FA83F09FE08945A...

Julie A. Vance
Regional Manager

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REFERENCES

- Beedy, E. C., W. J. Hamilton III, R. J. Meese, D. A. Airola, and P. Pyle. 2017. Tricolored Blackbird (*Agelaius tricolor*), version 3.0. in *The birds of North America*. P. G.
- California Burrowing Owl Consortium (CBOC). 1993. Burrowing owl survey protocol and mitigation guidelines. April 1993.
- California Department of Fish and Game (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.
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83992&inline>
- CDFG. 2012. Staff Report on Burrowing Owl Mitigation. California Department of Fish and Game.
- California Department of Fish and Wildlife (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 August 16, 2021.
- Gervais, J.A., D.D. Rosenberg, and L.A. Comrack. Burrowing Owl (*Athene cunicularia*) in Shuford, W.D. and T. Gardali, editors. 2008. *California Bird Species of Special Concern*.
- 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., E.C. Beedy, and W.J. Hamilton, III. 2014. Tricolored blackbird (*Agelaius tricolor*), *The Birds of North America* (P. G. Rodewald, Ed.). Ithaca: Cornell Lab of Ornithology; Retrieved from the Birds of North America: <https://birdsna-org.bnaproxy.birds.cornell.edu/Species-Account/bna/species/tribla>. Accessed April 20, 2021.
- Orians, G.H. 1961. The ecology of blackbird (*Agelaius*) social systems. *Ecol. Monogr.* 31:285-312.

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Swainson's Hawk Technical Advisory Committee (SWHA TAC), 2000. Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in the Central Valley of California. Swainson's Hawk Technical Advisory Committee. May 31, 2000.

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

**MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)
FOR CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
RECOMMENDED MITIGATION MEASURES**

**PROJECT: High Roller Dairy NOP
SCH No.: 2021070369**

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Mitigation Measure 1: Focused SWHA Surveys	
Mitigation Measure 3: SWHA Foraging Habitat	
Mitigation Measure 4: SWHA Take Authorization	
Mitigation Measure 5: TRBL Habitat Assessment	
Mitigation Measure 6: TRBL Surveys	
Mitigation Measure 8: TRBL Take Authorization	
Mitigation Measure 9: BUOW Surveys	
Mitigation Measure 11: BUOW Passive Relocation and Mitigation	
<i>During Construction</i>	
Mitigation Measure 2: SWHA Avoidance	
Mitigation Measure 7: TRBL Avoidance	
Mitigation Measure 10: BUOW Avoidance	