



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
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Fresno, California 93710
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www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Governor's Office of Planning & Research

Jun 20 2022

June 20, 2022

STATE CLEARINGHOUSE

Cameron Christie, Planner I
Merced County Community and Economic Development Department
2222 M Street, 2nd Floor
Merced, California 95340
Cameron.Christie@countyofmerced.com

Subject: Borba Dairy Farms Expansion Project (Project)
Notice of Preparation (NOP)
SCH No.: 2022050451

Dear Mr. Christie:

The California Department of Fish and Wildlife (CDFW) received a NOP from the Merced County Community and Economic Development Department 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.

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,

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.

Cameron Christie, Planner I
Merced County Community and Economic Development Department
June 20, 2022
Page 2

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 will be required.

PROJECT DESCRIPTION SUMMARY

Proponent: Mike Borba

Objective: The Project proposes to modify and expand the existing dairy to house 2,000 milk cows, 350 dry cows, and 2,100 support stock. The Project would include construction of support buildings and features at the dairy facility, including four new freestall barns, a new milking parlor and replacement dairy well, two new wastewater storage ponds, and an agricultural storage barn. With construction of the proposed facilities, an existing shade barn, shop, hospital milking parlor, and freestall barn would be removed. Cropped acreage associated with the expanded dairy operations would include approximately 887 acres, including the addition of 404 acres. Conversion of the proposed facilities would result in the conversion of approximately 24.2 acres of cropland.

Location: The Project site is located in unincorporated Merced County at 5297 Kelley Road, in Hilmar.

Timeframe: Approximately 10 years.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the Merced County Community and Economic Development Department 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 environmental document for this Project.

Special-Status Species: Based on aerial imagery, and species occurrence records from the California Natural Diversity Database (CNDDDB), the Project site is known to and/or has high potential to support numerous special-status species, including CESA-listed species (CDFW 2022). Specifically, CDFW is concerned about potential impacts to the State threatened Swainson's hawk (*Buteo swainsoni*), the State threatened tricolored blackbird (*Agelaius tricolor*), and the State species of special concern burrowing owl (*Athene*

Cameron Christie, Planner I
Merced County Community and Economic Development Department
June 20, 2022
Page 3

cunicularia), and western pond turtle (*Actinemys marmorata*). Therefore, CDFW recommends the subsequent Environmental Impact Report address potential impacts to these species and provide measurable mitigation measures that, as needed, will reduce impacts to less than significant levels. Information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>).

Lake and Stream Alteration: The Project site is bordered by the San Joaquin River to the west and a tributary of the Merced River to the south. Therefore, the Project may be subject to notification under Fish and Game Code section 1602. Fish and Game Code Section 1602 requires the Project proponent to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake; or (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral or intermittent as well as those that are perennial in nature. If a Lake or Streambed Alteration Agreement (LSAA) is needed, CDFW is required to comply with CEQA in the issuance of an LSAA. For additional information on notification requirements, please contact our staff in the LSA Program at (559) 243-4593, or by electronic mail at R4LSA@wildlife.gov.

Riparian Habitat and Wetlands: Riparian habitat and wetlands are of extreme importance to a wide variety of plant and wildlife species. CDFW considers projects that impact these resources as significant if they result in a net loss of acreage or habitat value. CDFW has a no-net-loss policy regarding impacts to wetlands. Considering potential impacts to special status resources posed by wetland creation is advised. Wetlands that have been inadvertently created by leaks, dams or other structures, or failures in man-made water systems are not exempt from this policy. An adequate buffer implemented to protect wetlands, riparian vegetation, and associated wildlife, including State- and Federally listed species is recommended. CDFW recommends delineating wetlands, vernal pools, and swales with an appropriate no-disturbance buffer. In addition, CDFW recommends delineation from the high-water mark of surface water channels and other blue-lined waterways that have no riparian vegetation to avoid impacts. Further, a wetland delineation may need to be conducted and submitted to the United States Army Corps of Engineers (ACOE) for verification.

Water Pollution: Pursuant to Fish and Game Code Section 5650, it is unlawful to deposit in, permit to pass into, or place where it can pass into "Waters of the State" any substance or material deleterious to fish, plant life, or bird life, including non-native species. It is possible that without mitigation measures this Project could result in pollution of a "Waters of the State" from increased sediment, salts, nitrates, and pathogens in storm water runoff; discharge of other constituents of concern such as endocrine disruptors; or construction related erosion. This could impact the fish and wildlife resources by causing increased sediment input and other Project-related activities. The Regional Water Quality Control Board and U.S. Army Corps of Engineers also has jurisdiction regarding discharge and pollution to "Waters of the State."

Cameron Christie, Planner I
Merced County Community and Economic Development Department
June 20, 2022
Page 4

Cumulative Impacts: CDFW recommends that a cumulative impact analysis be conducted for all biological resources that will either be significantly or potentially significantly impacted by implementation of the Project, including those whose impacts are determined to be less than significant with mitigation incorporated or for those resources that are rare or in poor or declining health and will be impacted by the project, even if those impacts are relatively small (i.e. less than significant). CDFW recommends cumulative impacts be analyzed using an acceptable methodology to evaluate the impacts of past, present, and reasonably foreseeable future projects on resources and be focused specifically on the resource, not the project. An appropriate resource study area identified and utilized for this analysis is advised. CDFW staff is available for consultation in support of cumulative impacts analyses as a trustee and responsible agency under CEQA.

CDFW is available to meet with you ahead of draft EIR preparation to discuss potential impacts and possible mitigation measures for some or all of the resources that may be analyzed in the final EIR. If you have any questions, please contact Jim Vang, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 580-3203, or by electronic mail at Jim.Vang@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Valerie Cook
Acting Regional Manager

cc: United States Corps of Engineers
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Cameron Christie, Planner I
Merced County Community and Economic Development Department
June 20, 2022
Page 5

LITERATURE CITED

CDFW. 2022. Biogeographic Information and Observation System (BIOS).
<https://www.wildlife.ca.gov/Data/BIOS>.