



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Central Region  
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[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



Governor's Office of Planning & Research

**Aug 25 2022**

**STATE CLEARINGHOUSE**

August 24, 2022

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

**Subject: Azevedo Dairy #2 Expansion Project (Project)**  
**Notice of Preparation (NOP) of a Draft Environmental Impact Report**  
**SCH No.: 2022070360**

Dear Cameron 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.<sup>1</sup>

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 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,

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<sup>1</sup> 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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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 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:** Antonio Azevedo

**Objective:** The Project proposes to modify and expand an existing dairy to house 4,000 animals, an increase of 1,265 over existing numbers. The Project would include construction of a new concrete manure storage area and a new mechanical separator; no new buildings are included. Construction activities would convert approximately two acres of cropland to dairy facilities.

**Location:** The Project site is located on the east side of State Route 59, 0.6 miles south of East Sandy Mush Road in the El Nido area.

**Timeframe:** n/a

## **COMMENTS AND RECOMMENDATIONS**

**Special-Status Species:** Based on aerial imagery, the Project site is directly adjacent to undisturbed grassland habitat and row-crop agriculture land properties. Records from the California Natural Diversity Database (CNDDDB) show that there is a high potential for the adjacent properties to support numerous special-status species, including CESA-listed species (CDFW 2022). Specifically, CDFW is concerned about potential impacts to the State and federally threatened California tiger salamander (*Ambystoma californiense*; CTS), the State threatened Swainson's hawk (*Buteo swainsoni*; SWHA), the State threatened tricolored blackbird (*Agelaius tricolor*; TRBL),

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and the State species of special concern burrowing owl (*Athene cunicularia*). CDFW recommends that survey-level protocols be conducted for these species as part of the biological technical studies prepared in support of the DEIR, with conclusions of those studies summarized therein and, repeated as necessary prior to Project ground-disturbing activities. CDFW recommends survey protocols follow the survey methods developed by the Swainson's Hawk Technical Advisory Committee (SWHA TAC 2000) for SWHA. For CTS, CDFW recommend survey protocols follow the United States Fish and Wildlife Service's "Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander" (2003). For BUOW, CDFW recommends following survey methods described in the Staff Report on Burrowing Owl Mitigation (CDFG 2012). If surveys indicate the presence or potential presence of State-listed species, consultation with CDFW is advised in order to develop avoidance and minimization measures. If take could occur as a result of Project implementation, acquisition of a State ITP would be warranted.

**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."

**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.


**Federally Listed Species:** CDFW recommends consulting with the USFWS on potential impacts to federally listed species including, but not limited to, CTS. Take under the Federal Endangered Species Act (FESA) is more broadly defined than CESA;

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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.

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 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](mailto:Jim.Vang@wildlife.ca.gov).

Sincerely,

DocuSigned by:  


FA83F09FE08945A...  
Julie A. Vance  
Regional Manager

cc: United States Corps of Engineers  
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## **LITERATURE CITED**

California Department of Fish and Game. 2012. Staff Report on Burrowing Owl Mitigation. California Department of Fish and Game.

California Department of Fish and Wildlife. 2022. Biogeographic Information and Observation System (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>.

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, May 31, 2000.

U.S. Fish and Wildlife Service (USFWS). 2003. Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander, October 2003.