



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Central Region  
1234 East Shaw Avenue  
Fresno, CA 93710  
www.wildlife.ca.gov

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



December 26, 2024

Tiffany Ho  
Merced County Department of Community and Economic Development  
2222 'M' Street  
Merced, California 95340  
(209) 385-7654  
[Planning@countyofmerced.com](mailto:Planning@countyofmerced.com)

Subject: **Antonio Azevedo Dairy #2 Expansion Project (Project)**  
**Draft Environmental Impact Report (DEIR)**  
**SCH: 2022070360**

Dear Tiffany Ho:

The California Department of Fish and Wildlife (CDFW) received a DEIR from Merced County for the 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 the 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

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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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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. 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.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

**Unlisted Species:** Species of plants and animals need not be officially listed as Endangered, Rare, or Threatened (E, R, or T) on any State or Federal list to be considered E, R, or T under CEQA. If a species can be shown to meet the criteria for E, R, or T, as specified in the CEQA Guidelines section 15380, CDFW recommends it be fully considered in the environmental analysis for the Project.

**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:** 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-mile south of East Sandy Mush Road in the El Nido area. The Assessor’s Parcel Number (APN) for the Project is 075-010-003.

## COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Merced County 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 DEIR prepared for the Project.

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CDFW submitted a Notice of Preparation (NOP) comment letter to Merced County for the Project on August 24, 2022, with recommended mitigation measures for several special-status species that could potentially be impacted by the Project. Currently, the DEIR acknowledges that the Project site is within the geographic range of several special-status animal species and proposes specific mitigation measures to reduce impacts for these species to a less than significant level. CDFW has concerns about the ability of some of the proposed mitigation measures to reduce impacts to less than significant and avoid unauthorized take for some special-status animal species. These species include, but are not limited to, the State and federally threatened California tiger salamander (*Ambystoma californiense*), and the State candidate western burrowing owl (*Athene cunicularia hypugaea*).

### **California Tiger Salamander**

The DEIR states that the Project could potentially impact California tiger salamander (CTS) and mitigation measure (MM) BIO-2b is provided to mitigate for potential impacts. The MM BIO-2b notes that a pre-construction survey for CTS and small mammal burrows would occur prior to implementation of Project activities and in the event small mammal burrows are detected, "...implementation of the project would be halted and the USFWS and CDFW would be consulted to discuss subsequent actions." CDFW concurs with MM BIO-2b and recommends the following:

#### **Recommended Mitigation Measure 1: CTS Avoidance Buffer**

CDFW advises that a minimum 50-foot no-disturbance buffer be delineated around all small mammal burrows in suitable upland refugia habitat within and/or adjacent to the Project site. Further, CDFW recommends potential or known breeding habitat within and/or adjacent to the Project site be delineated with a minimum 250-foot no disturbance buffer. Both upland burrow and wetland breeding no-disturbance buffers are intended to minimize impacts to CTS habitat and avoid take of individuals.

#### **Recommended Mitigation Measure 2: CTS Take Authorization**

If through surveys it is determined that CTS are occupying or have the potential to occupy the Project site, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA. As stated above, in the absence of protocol surveys, the applicant can assume presence of CTS within the Project site and obtain an ITP from CDFW.

### **Western Burrowing Owl**

The California Fish and Game Commission (FGC) approved western burrowing owl (BUOW) as a candidate for potential listing as a protected species under CESA on October 10, 2024, and published these findings in the California Regulatory Notice Register (Notice Register) on October 25, 2024. As such, BUOW is now a candidate

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under CESA and receives the same legal protection afforded to an endangered or threatened species (Fish & G. Code, §§ 2074.2 & 2085). CDFW concurs with MM BIO-3 to mitigate for potential significant impacts to BUOW and recommends the following if the no-disturbances buffers are not feasible:

**Recommended Mitigation Measure 3: BUOW Take Authorization**

If a BUOW or known BUOW den (active or inactive) is detected, and the no-disturbance buffers outlined in MM BIO-3 are 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 ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

**Editorial comments and/or suggestions**

**California Natural Diversity Database:** Please note that the California Natural Diversity Database (CNDDDB) is populated by voluntary submissions of species detections. As a result, species may be present in locations not depicted in the CNDDDB but where there is suitable habitat and features capable of supporting species. A lack of an occurrence record, or lack of recent occurrence records, in the CNDDDB does not mean that a species is not present. In order to adequately assess any potential Project-related impacts to biological resources, surveys conducted by a qualified biologist during the appropriate survey period(s) and using the appropriate protocol survey methodology are warranted in order to determine whether or not any special-status species are present.

**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”.

**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 filled out and submitted online at the following link:

<https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported

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to CNDDDB can be found at the following link:  
<https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

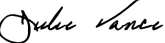
## FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document 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 CDFW. Payment of the environmental document filing fee is required in order 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 DEIR to assist Merced County in identifying and mitigating Project impacts on biological resources. Please see the Attached Mitigation Monitoring and Reporting Program (MMRP) table which corresponds with recommended mitigation measures in this comment letter. 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>). Questions regarding this letter or further coordination should be directed to John Riedel, Environmental Scientist, at (559) 807-1453, or [john.riedel@wildlife.ca.gov](mailto:john.riedel@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
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Julie A. Vance  
Regional Manager

ec: State Clearinghouse  
Governor's Office of Planning and Research  
[State.Clearinghouse@opr.ca.gov](mailto:State.Clearinghouse@opr.ca.gov)

Matt Nelson  
U.S. Fish & Wildlife Service  
[matthew\\_nelson@fws.gov](mailto:matthew_nelson@fws.gov)

Cameron Christie  
Merced County  
[Cameron.christie@countyofmerced.com](mailto:Cameron.christie@countyofmerced.com)

**Attachment 1**

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

**PROJECT: Antonio Azevedo Dairy #2 Expansion Project**

**SCH No.: 2022070360**

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
California Tiger Salamander (CTS)	
<b>Recommended Mitigation Measure 2:</b> CTS take authorization	
Burrowing Owl (BUOW)	
<b>Recommended Mitigation Measure 3:</b> BUOW take authorization	
<i>During Construction</i>	
California Tiger Salamander (CTS)	
<b>Recommended Mitigation Measure 1:</b> CTS avoidance buffers	