



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
1234 East Shaw Avenue
Fresno, California 93710
(559) 243-4005
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Governor's Office of Planning & Research

January 26, 2024

Jan 29 2024

STATE CLEARINGHOUSE

Tiffany Ho, Deputy Director of Planning
County of Merced, Community and Economic Development Department
2222 'M' Street
Merced, California 93540
Tiffany.Ho@countyofmerced.com

**Subject: Correia Family Dairy Farms Expansion Project (Project) CUP 21-009
Notice of Preparation (NOP)
State Clearinghouse No. (SCH): 2024010339**

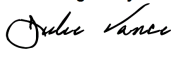
Dear Tiffany Ho:

Thank you for updating California Department of Fish and Wildlife (CDFW) with the SCH number for the Correia Family Dairy Expansion Project NOP.

CDFW appreciates that the Project is undergoing environmental review. Please refer to our letter dated January 3, 2024 (attached).

If you have any questions, please contact Kelley Nelson, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 580-3194, or by electronic mail at Kelley.Nelson@wildlife.ca.gov.

Sincerely,

DocuSigned by:

FA83F09FE08945A...

Julie A. Vance
Regional Manager

Attachment

ec: State Clearinghouse
Governor's Office of Planning and Research
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Kelley Nelson
California Department of Fish and Wildlife



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January 03, 2024

Tiffany Ho, Deputy Director of Planning
County of Merced, Community and Economic Development Department
2222 'M' Street
Merced, California 93540

**Subject: Correia Family Dairy Farms Expansion Project (Project) CUP 21-009
Notice of Preparation (NOP)**

Dear Tiffany Ho:

The California Department of Fish and Wildlife (CDFW) received a NOP for an Environmental Impact Report (EIR) from the County of Merced Community and Economic Development Department, 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.

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 projects and related activities that have the potential to adversely affect fish and wildlife resources.

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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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, §§ 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).

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.

PROJECT DESCRIPTION SUMMARY

Proponent: Correia Family Dairy Farms Expansion

Objective: The Project includes the construction and operation of an expansion of an existing dairy facility located in rural Merced County. The Project sponsor has applied for a new Conditional Use Permit (CUP #21-009) from Merced County to modify and expand the existing dairy from the existing 2,130 animals (milk cows, dry cows, bred heifers, and calves) to house a total of 3,945 animals.

The proposed Project would include the construction of 474,831 square feet of supporting buildings and structures at the existing dairy, including: five new freestall barns (totaling 310,931 square feet), two new loafing barns (totaling 127,200 square feet), a new milking parlor (36,700 square feet), a new domestic well at the dairy to replace an old existing domestic well on the dairy parcel, a new impervious manure drying area, a new feed storage areas, and two new solid manure weeping walls.

Location: The dairy expansion Project site is located on the north and south sides of W. Fahey Road, approximately one mile west of S. Ingomar Grade, and approximately 2.6-miles east of Interstate 5, in the city of Gustine.

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Per Project information, the proposed Project site includes seven parcels labeled “Project Areas”, and two parcels labeled “Existing and Proposed Facilities” per Figure 2 in the NOP. San Luis Creek is an intermittent waterway located west of the Project site; the creek channel appears intermittently, and in some stretches is modified as concrete ditches. The Central California Irrigation District (CCID) Main Canal is located approximately 0.4 miles west of the dairy site, and the San Luis Wasteway is located 1.4 miles to the south.

The active dairy facilities on the north side of W. Fahey Road are located at Assessor’s Parcel Number (APN) 070-270-008 and the associated heifer facilities on the south side of W. Fahey Road are located on portions of APNs 070-270-011, -019, and -020. The Project site is located in Section 27, Township 9 South, Range 9 East, Mount Diablo Base and Meridian; 37° 7’21.68”N, 120° 58’5.10”W.

The existing active dairy facilities include approximately 185,354 square feet of roofed structures located on approximately 60 acres of an existing farm. The remaining Project acres consist of field roads and ancillary farm uses. The existing Project cropland application area consists of approximately 398 acres located on portions of 12 parcels. Additional parcels in the vicinity are used as cropland and for wastewater and manure application.

Timeframe: Unspecified

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the County of Merced 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 Draft EIR.

The Project location and surrounding areas appear to have a high likelihood for suitable habitat for several special status species. Based on a review of the Project description, a review of California Natural Diversity Database (CNDDDB) records, and a review of the surrounding habitat, special status species could potentially be impacted by Project activities, if present. The Project is in the geographic range of special status species including but not limited to the State threatened (ST) Swainson’s hawk (*Buteo swainsoni*) and the ST tricolored blackbird (*Agelaius tricolor*).

To evaluate Project-related impacts to listed species, SSC species, and unlisted biological species, CDFW recommends that a general habitat assessment be conducted as part of the biological technical studies conducted in support of the Draft EIR. CDFW recommends that this general habitat assessment be followed with specific

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protocol surveys for listed species including the Swainson's hawk and tricolored blackbird.

Swainson's Hawk

The State threatened Swainson's hawk (SWHA) has been previously observed within and in the vicinity of the proposed Project site (California Department of Fish and Wildlife 2023). CDFW has jurisdiction over this species under the California Endangered Species Act (CESA). SWHA are known to breed within the Central Valley of California and prefer to nest and forage in alfalfa, fallow fields, field crops, and grassland habitats with a sufficient source of small mammals (California Department of Fish and Game 1994). Additionally, SWHA exhibit high nest-site fidelity year after year in the San Joaquin Valley (California Department of Fish and Wildlife 2016). Based on aerial imagery and the information provided in the NOP, the Project location and adjacent areas appear to contain suitable habitat for SWHA foraging. In addition, there are trees and structures located within and in the vicinity of the Project site that may provide suitable nesting habitat.

The dairy expansion Project as proposed may involve noise, groundwork, and movement of workers that could affect nests and has the potential to result in nest abandonment, significantly impacting local nesting SWHA. CDFW recommends that a qualified wildlife biologist conduct surveys for nesting SWHA following the entire survey methodology developed by the SWHA Technical Advisory Committee (Swainson's Hawk Technical Advisory Committee 2000) as part of the biological technical studies conducted in support of the Draft EIR.

In addition to conducting SWHA surveys, CDFW recommends the Project mitigate for loss of SWHA foraging habitat as described in Recommended Mitigation Measure 4 below. CDFW also recommends the Draft EIR include the following measures:

Recommended Mitigation Measure 1: SWHA Surveys Prior to Construction

Depending on the time between the initial survey efforts conducted in support of the Draft EIR and Project construction, CDFW recommends that additional surveys, following the survey methodology developed by the SWHA Technical Advisory Committee (Swainson's Hawk Technical Advisory Committee 2000), be repeated the survey season immediately prior to construction. The survey protocol includes early season surveys to assist the Project proponent in implementing necessary avoidance and minimization measures, and in identifying active nest sites prior to initiating ground-disturbing activities.

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Recommended Mitigation Measure 2: SWHA Avoidance Buffer

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, CDFW recommends a minimum ½-mile no-disturbance buffer be delineated and maintained around each nest, regardless of whether it was detected by surveys or observed incidentally. These buffers would 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, to prevent nest abandonment and other take of SWHA as a result of Project activities.

Recommended Mitigation Measure 3: SWHA Take Authorization

CDFW also recommends that in the event an active SWHA nest is detected, and a ½-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 ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

Recommended Mitigation Measure 4: SWHA Foraging Habitat Mitigation

CDFW recommends compensation for the loss of SWHA foraging habitat as described in CDFW's "Staff Report Regarding Mitigation for Impacts to Swainson's Hawks" (California Department of Fish and Game 1994) to reduce impacts to foraging habitat to less than significant. The Staff Report recommends that mitigation for habitat loss occur within a minimum distance of 10 miles from known nest sites. CDFW has the following recommendations based on the Staff Report:

- For projects within 1 mile of an active nest tree, a minimum of 1 acre of habitat management (HM) land for each acre of development is advised.
- For projects within 5 miles of an active nest but greater than 1 mile, a minimum of ¾ acre of HM land for each acre of development is advised.
- For projects within 10 miles of an active nest tree but greater than 5 miles from an active nest tree, a minimum of ½ acre of HM land for each acre of development is advised.

Tricolored Blackbird

The Project site is within the known geographic range of the tricolored blackbird (TRBL) and occurrences have been recorded approximately 1.74-miles northwest, and approximately 1.76-miles south of the Project area in 2015 (California Department of Fish and Wildlife 2023). TRBL breed within the vicinity of fresh water, primarily in

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marshy areas. Important sites for nesting colonies include heavy growths of cattails, tules, thistles, willows, blackberries, mustard, nettles, and salt cedar (Grinnel and Miller 1944). TRBL are also known to breed in alfalfa, wheat, and other low agricultural crop fields, and these fields are becoming an increasingly important nesting habitat type, particularly in the San Joaquin Valley (Beedy et al. 2023). Based on aerial imagery and the information provided, there are agricultural fields within, and in the vicinity of the Project site that may contain habitat suitable for TRBL nesting and foraging. In addition, there are several basins in the Project vicinity.

CDFW recommends that a qualified biologist conduct a habitat assessment as part of the biological technical studies conducted in support of the Draft EIR. If potentially suitable habitat is identified, consultation with CDFW is recommended for guidance on focused survey methods and mitigation measures such as avoidance, take authorization, and mitigation.

As TRBL have the potential to use the Project site and have been documented within the Project vicinity, CDFW recommends that the Project address potential impacts to TRBL by including the following avoidance and minimization measures.

Recommended Mitigation Measure 5: TRBL Surveys

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 construction to evaluate presence/absence of TRBL nesting colonies in proximity to Project activities and to evaluate potential Project-related impacts.

Recommended Mitigation Measure 6: 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" (California Department of Fish and Wildlife 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 of Project construction.

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Recommended Mitigation Measure 7: TRBL Take Authorization

In the event that 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 § 2081(b), prior to any ground-disturbing activities.

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 construction to occur during the bird non-nesting season; however, if Project construction 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 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

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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.

Lake and Streambed Alteration: Based on aerial imagery and information in the NOP, the Project site contains San Luis Creek and the Main Canal. Per Figure 2, "Project Location" in the NOP, one of the Project Areas contains San Luis Creek and another Project Area is adjacent to the Main Canal.

Since features including streams and drainages appear to be present onsite and within the adjacent areas, Project activities will be subject to CDFW's regulatory authority pursuant to Fish and Game Code section 1600 et seq. Fish and Game Code section 1602 requires an entity 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 (including the removal of riparian vegetation); (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, intermittent, or episodic, as well as those that are perennial. CDFW is required to comply with CEQA in the issuance of a Lake or Streambed Alteration Agreement; therefore, if the Draft EIR approved for the Project does not adequately describe the Project and its impacts to lakes or streams, a subsequent CEQA analysis may be necessary for LSA Agreement issuance. For information on notification requirements, please refer to CDFW's website (<https://wildlife.ca.gov/Conservation/LSA>) or contact CDFW staff in the Central Region Lake and Streambed Alteration Program at (559) 243-4593 or R4LSA@wildlife.ca.gov.

Artificial Lighting: Per Project information, the proposed dairy expansion would include new building-mounted, dusk to dawn lighting on the proposed structures. Installation of outdoor artificial night lighting can disrupt the circadian rhythms of many wildlife species. Many species use photoperiod cues for communication, determining when to begin foraging, thermoregulation behavior, and migration (Longcore and Rich 2004, Miller 2006, Nightingale et al. 2006, Perry et al. 2008, Stone et al. 2009). Phototaxis, a phenomenon which results in attraction and movement towards light, can disorient, entrap, and temporarily blind wildlife species that experience it (Longcore and Rich 2004). Project activities could result in disruption of wildlife behavior, inadvertent injury, or mortality.

CDFW recommends that the Draft EIR for the Project include an analysis of the impacts of artificial lighting on biological resources and incorporate enforceable mitigation measures to decrease the impacts of artificial outdoor lighting on wildlife species. Potentially feasible mitigation measures include motion sensitive lighting; mounting light

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fixtures as low as possible to minimize light trespass; use of light fittings that direct and confine the spread of light downward; and use of long-wavelength light sources. In addition, CDFW recommends that lighting is not installed in ecologically sensitive areas (e.g., streams, wetlands, and habitat used by special status species, such as nesting/roosting sites and riparian corridors) and the use of the white/blue wavelengths of the light spectrum be avoided.

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). Cumulative impacts are recommended to 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 should also be identified and mapped for each resource being analyzed and utilized for this analysis. CDFW recommends closely evaluating the need for a cumulative impacts analysis for the SWHA and the TRBL as part of the Draft EIR.

CDFW staff is available for consultation in support of cumulative impacts analyses as a trustee and responsible agency under CEQA.

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 CDFW. Payment of the fee is required for the underlying project approval to be

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County of Merced Community and Economic Development Department
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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 County of Merced Community and Economic Development Department in identifying and mitigating Project impacts on biological resources.

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

Sincerely,

DocuSigned by:

37BF80A1646F41C...

Gerald Hatler for Julie A. Vance
Regional Manager

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County of Merced Community and Economic Development Department
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REFERENCES

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Swainson's Hawk Technical Advisory Committee. 2000. Recommended timing and methodology for Swainson's hawk nesting surveys in California's Central Valley. Swainson's Hawk Technical Advisory Committee.

Attachment 1

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

PROJECT: Correia Family Dairy Farms Expansion Project

SCH No.: None listed

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
SWHA	
Recommended Mitigation Measure 1: SWHA surveys prior to construction	
Recommended Mitigation Measure 3: SWHA take authorization	
Recommended Mitigation Measure 4: SWHA foraging habitat mitigation	
TRBL	
Recommended Mitigation Measure 5: TRBL surveys	
<i>During Construction</i>	
SWHA	
Recommended Mitigation Measure 2: SWHA avoidance buffer	
TRBL	
Recommended Mitigation Measure 6: TRBL avoidance	
Recommended Mitigation Measure 7: TRBL take authorization	