
APPENDIX B

Comments on the Notice of Preparation

NOTICE OF PREPARATION COMMENT LETTERS

Appendix B includes comment letters received during the Notice of Preparation (NOP) of an Environmental Impact Report (EIR) comment period. Comment letters are organized chronologically.

Letters were received from the following agencies and individuals:

- Native American Heritage Commission (NAHC); September 27, 2021.
- Leadership Counsel for Justice & Accountability; October 12, 2021.
- California Department of Fish and Wildlife (CDFW); October 19, 2021.
- David Rodriguez; October 19, 2021.



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STATE OF CALIFORNIA

Gavin Newsom, Governor

NATIVE AMERICAN HERITAGE COMMISSION

September 27, 2021

Diana Lowrance
Merced County
2222 M Street
Merced, CA 95340

Re: 2021090490, Hillcrest Dairy Expansion Project, Merced County

Dear Ms. Lowrance:

The Native American Heritage Commission (NAHC) has received the Notice of Preparation (NOP), Draft Environmental Impact Report (DEIR) or Early Consultation for the project referenced above. The California Environmental Quality Act (CEQA) (Pub. Resources Code §21000 et seq.), specifically Public Resources Code §21084.1, states that a project that may cause a substantial adverse change in the significance of a historical resource, is a project that may have a significant effect on the environment. (Pub. Resources Code § 21084.1; Cal. Code Regs., tit. 14, § 15064.5 (b) (CEQA Guidelines § 15064.5 (b)). If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, an Environmental Impact Report (EIR) shall be prepared. (Pub. Resources Code §21080 (d); Cal. Code Regs., tit. 14, § 5064 subd.(a)(1) (CEQA Guidelines § 15064 (a)(1)). In order to determine whether a project will cause a substantial adverse change in the significance of a historical resource, a lead agency will need to determine whether there are historical resources within the area of potential effect (APE).

CEQA was amended significantly in 2014. Assembly Bill 52 (Gatto, Chapter 532, Statutes of 2014) (AB 52) amended CEQA to create a separate category of cultural resources, "tribal cultural resources" (Pub. Resources Code §21074) and provides that a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment. (Pub. Resources Code §21084.2). Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource. (Pub. Resources Code §21084.3 (a)). **AB 52 applies to any project for which a notice of preparation, a notice of negative declaration, or a mitigated negative declaration is filed on or after July 1, 2015.** If your project involves the adoption of or amendment to a general plan or a specific plan, or the designation or proposed designation of open space, on or after March 1, 2005, it may also be subject to Senate Bill 18 (Burton, Chapter 905, Statutes of 2004) (SB 18). **Both SB 18 and AB 52 have tribal consultation requirements.** If your project is also subject to the federal National Environmental Policy Act (42 U.S.C. § 4321 et seq.) (NEPA), the tribal consultation requirements of Section 106 of the National Historic Preservation Act of 1966 (154 U.S.C. 300101, 36 C.F.R. §800 et seq.) may also apply.

The NAHC recommends consultation with California Native American tribes that are traditionally and culturally affiliated with the geographic area of your proposed project as early as possible in order to avoid inadvertent discoveries of Native American human remains and best protect tribal cultural resources. Below is a brief summary of portions of AB 52 and SB 18 as well as the NAHC's recommendations for conducting cultural resources assessments.

Consult your legal counsel about compliance with AB 52 and SB 18 as well as compliance with any other applicable laws.



AB 52

AB 52 has added to CEQA the additional requirements listed below, along with many other requirements:

1. Fourteen Day Period to Provide Notice of Completion of an Application/Decision to Undertake a Project: Within fourteen (14) days of determining that an application for a project is complete or of a decision by a public agency to undertake a project, a lead agency shall provide formal notification to a designated contact of, or tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice, to be accomplished by at least one written notice that includes:
 - a. A brief description of the project.
 - b. The lead agency contact information.
 - c. Notification that the California Native American tribe has 30 days to request consultation. (Pub. Resources Code §21080.3.1 (d)).
 - d. A "California Native American tribe" is defined as a Native American tribe located in California that is on the contact list maintained by the NAHC for the purposes of Chapter 905 of Statutes of 2004 (SB 18). (Pub. Resources Code §21073).
2. Begin Consultation Within 30 Days of Receiving a Tribe's Request for Consultation and Before Releasing a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report: A lead agency shall begin the consultation process within 30 days of receiving a request for consultation from a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project. (Pub. Resources Code §21080.3.1, subds. (d) and (e)) and prior to the release of a negative declaration, mitigated negative declaration or Environmental Impact Report. (Pub. Resources Code §21080.3.1 (b)).
 - a. For purposes of AB 52, "consultation shall have the same meaning as provided in Gov. Code §65352.4 (SB 18). (Pub. Resources Code §21080.3.1 (b)).
3. Mandatory Topics of Consultation If Requested by a Tribe: The following topics of consultation, if a tribe requests to discuss them, are mandatory topics of consultation:
 - a. Alternatives to the project.
 - b. Recommended mitigation measures.
 - c. Significant effects. (Pub. Resources Code §21080.3.2 (a)).
4. Discretionary Topics of Consultation: The following topics are discretionary topics of consultation:
 - a. Type of environmental review necessary.
 - b. Significance of the tribal cultural resources.
 - c. Significance of the project's impacts on tribal cultural resources.
 - d. If necessary, project alternatives or appropriate measures for preservation or mitigation that the tribe may recommend to the lead agency. (Pub. Resources Code §21080.3.2 (a)).
5. Confidentiality of Information Submitted by a Tribe During the Environmental Review Process: With some exceptions, any information, including but not limited to, the location, description, and use of tribal cultural resources submitted by a California Native American tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, consistent with Government Code §6254 (r) and §6254.10. Any information submitted by a California Native American tribe during the consultation or environmental review process shall be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public. (Pub. Resources Code §21082.3 (c)(1)).
6. Discussion of Impacts to Tribal Cultural Resources in the Environmental Document: If a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document shall discuss both of the following:
 - a. Whether the proposed project has a significant impact on an identified tribal cultural resource.
 - b. Whether feasible alternatives or mitigation measures, including those measures that may be agreed to pursuant to Public Resources Code §21082.3, subdivision (a), avoid or substantially lessen the impact on the identified tribal cultural resource. (Pub. Resources Code §21082.3 (b)).

7. Conclusion of Consultation: Consultation with a tribe shall be considered concluded when either of the following occurs:

- a. The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource; or
- b. A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. (Pub. Resources Code §21080.3.2 (b)).

8. Recommending Mitigation Measures Agreed Upon in Consultation in the Environmental Document: Any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code §21080.3.2 shall be recommended for inclusion in the environmental document and in an adopted mitigation monitoring and reporting program, if determined to avoid or lessen the impact pursuant to Public Resources Code §21082.3, subdivision (b), paragraph 2, and shall be fully enforceable. (Pub. Resources Code §21082.3 (a)).

9. Required Consideration of Feasible Mitigation: If mitigation measures recommended by the staff of the lead agency as a result of the consultation process are not included in the environmental document or if there are no agreed upon mitigation measures at the conclusion of consultation, or if consultation does not occur, and if substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource, the lead agency shall consider feasible mitigation pursuant to Public Resources Code §21084.3 (b). (Pub. Resources Code §21082.3 (e)).

10. Examples of Mitigation Measures That, If Feasible, May Be Considered to Avoid or Minimize Significant Adverse Impacts to Tribal Cultural Resources:

- a. Avoidance and preservation of the resources in place, including, but not limited to:
 - i. Planning and construction to avoid the resources and protect the cultural and natural context.
 - ii. Planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.
- b. Treating the resource with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:
 - i. Protecting the cultural character and integrity of the resource.
 - ii. Protecting the traditional use of the resource.
 - iii. Protecting the confidentiality of the resource.
- c. Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.
- d. Protecting the resource. (Pub. Resource Code §21084.3 (b)).
- e. Please note that a federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the NAHC to protect a California prehistoric, archaeological, cultural, spiritual, or ceremonial place may acquire and hold conservation easements if the conservation easement is voluntarily conveyed. (Civ. Code §815.3 (c)).
- f. Please note that it is the policy of the state that Native American remains and associated grave artifacts shall be repatriated. (Pub. Resources Code §5097.991).

11. Prerequisites for Certifying an Environmental Impact Report or Adopting a Mitigated Negative Declaration or Negative Declaration with a Significant Impact on an Identified Tribal Cultural Resource: An Environmental Impact Report may not be certified, nor may a mitigated negative declaration or a negative declaration be adopted unless one of the following occurs:

- a. The consultation process between the tribes and the lead agency has occurred as provided in Public Resources Code §21080.3.1 and §21080.3.2 and concluded pursuant to Public Resources Code §21080.3.2.
- b. The tribe that requested consultation failed to provide comments to the lead agency or otherwise failed to engage in the consultation process.
- c. The lead agency provided notice of the project to the tribe in compliance with Public Resources Code §21080.3.1 (d) and the tribe failed to request consultation within 30 days. (Pub. Resources Code §21082.3 (d)).

The NAHC's PowerPoint presentation titled, "Tribal Consultation Under AB 52: Requirements and Best Practices" may be found online at: http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation_CalEPAPDF.pdf

SB 18

SB 18 applies to local governments and requires local governments to contact, provide notice to, refer plans to, and consult with tribes prior to the adoption or amendment of a general plan or a specific plan, or the designation of open space. (Gov. Code §65352.3). Local governments should consult the Governor's Office of Planning and Research's "Tribal Consultation Guidelines," which can be found online at: https://www.opr.ca.gov/docs/09_14_05_Updated_Guidelines_922.pdf.

Some of SB 18's provisions include:

1. **Tribal Consultation:** If a local government considers a proposal to adopt or amend a general plan or a specific plan, or to designate open space it is required to contact the appropriate tribes identified by the NAHC by requesting a "Tribal Consultation List." If a tribe, once contacted, requests consultation the local government must consult with the tribe on the plan proposal. **A tribe has 90 days from the date of receipt of notification to request consultation unless a shorter timeframe has been agreed to by the tribe.** (Gov. Code §65352.3 (a)(2)).
2. **No Statutory Time Limit on SB 18 Tribal Consultation.** There is no statutory time limit on SB 18 tribal consultation.
3. **Confidentiality:** Consistent with the guidelines developed and adopted by the Office of Planning and Research pursuant to Gov. Code §65040.2, the city or county shall protect the confidentiality of the information concerning the specific identity, location, character, and use of places, features and objects described in Public Resources Code §5097.9 and §5097.993 that are within the city's or county's jurisdiction. (Gov. Code §65352.3 (b)).
4. **Conclusion of SB 18 Tribal Consultation:** Consultation should be concluded at the point in which:
 - a. The parties to the consultation come to a mutual agreement concerning the appropriate measures for preservation or mitigation; or
 - b. Either the local government or the tribe, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached concerning the appropriate measures of preservation or mitigation. (Tribal Consultation Guidelines, Governor's Office of Planning and Research (2005) at p. 18).

Agencies should be aware that neither AB 52 nor SB 18 precludes agencies from initiating tribal consultation with tribes that are traditionally and culturally affiliated with their jurisdictions before the timeframes provided in AB 52 and SB 18. For that reason, we urge you to continue to request Native American Tribal Contact Lists and "Sacred Lands File" searches from the NAHC. The request forms can be found online at: <http://nahc.ca.gov/resources/forms/>.

NAHC Recommendations for Cultural Resources Assessments

To adequately assess the existence and significance of tribal cultural resources and plan for avoidance, preservation in place, or barring both, mitigation of project-related impacts to tribal cultural resources, the NAHC recommends the following actions:

1. Contact the appropriate regional California Historical Research Information System (CHRIS) Center (http://ohp.parks.ca.gov/?page_id=1068) for an archaeological records search. The records search will determine:
 - a. If part or all of the APE has been previously surveyed for cultural resources.
 - b. If any known cultural resources have already been recorded on or adjacent to the APE.
 - c. If the probability is low, moderate, or high that cultural resources are located in the APE.
 - d. If a survey is required to determine whether previously unrecorded cultural resources are present.
2. If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.
 - a. The final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum and not be made available for public disclosure.
 - b. The final written report should be submitted within 3 months after work has been completed to the appropriate regional CHRIS center.

3. Contact the NAHC for:
 - a. A Sacred Lands File search. Remember that tribes do not always record their sacred sites in the Sacred Lands File, nor are they required to do so. A Sacred Lands File search is not a substitute for consultation with tribes that are traditionally and culturally affiliated with the geographic area of the project's APE.
 - b. A Native American Tribal Consultation List of appropriate tribes for consultation concerning the project site and to assist in planning for avoidance, preservation in place, or, failing both, mitigation measures.
4. Remember that the lack of surface evidence of archaeological resources (including tribal cultural resources) does not preclude their subsurface existence.
 - a. Lead agencies should include in their mitigation and monitoring reporting program plan provisions for the identification and evaluation of inadvertently discovered archaeological resources per Cal. Code Regs., tit. 14, § 15064.5(f) (CEQA Guidelines § 15064.5(f)). In areas of identified archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American with knowledge of cultural resources should monitor all ground-disturbing activities.
 - b. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the disposition of recovered cultural items that are not burial associated in consultation with culturally affiliated Native Americans.
 - c. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the treatment and disposition of inadvertently discovered Native American human remains. Health and Safety Code § 7050.5, Public Resources Code § 5097.98, and Cal. Code Regs., tit. 14, § 15064.5, subdivisions (d) and (e) (CEQA Guidelines § 15064.5, subds. (d) and (e)) address the processes to be followed in the event of an inadvertent discovery of any Native American human remains and associated grave goods in a location other than a dedicated cemetery.

If you have any questions or need additional information, please contact me at my email address:
Katy.Sanchez@nahc.ca.gov.

Sincerely,

Katy Sanchez

Katy Sanchez
Associate Environmental Planner

cc: State Clearinghouse

Native American Heritage Commission (NAHC)
September 27, 2021

This letter in response to the Notice of Preparation states that the effects of the proposed project on historic and cultural resources, including tribal cultural resources, must be evaluated. The letter also outlines the regulatory environment surrounding impacts to cultural resources. An evaluation of potential effects on cultural resources and tribal cultural resources associated with the proposed Hillcrest Dairy Expansion project is included in Chapter 7, *Cultural Resources and Tribal Cultural Resources*, of this Draft EIR.



Oct 12, 2021

Diana Lowrance
County of Merced
Department of Community and Economic Development
2222 'M' Street, Merced, CA 95340
(209) 385-7654

Comments re: Notice of Preparation of a Draft Environmental Impact Report for the Hillcrest Dairy Expansion Project (Conditional Use Permit No. CUP20-013)

Dear Diana Lowrance:

We are writing to provide comments drafted in collaboration with Planada community residents on the Notice of Preparation of a Draft Environmental Impact Report for the Hillcrest Dairy Expansion Project. Our organization, Leadership Counsel for Justice & Accountability, works closely with residents of Planada who are impacted by the Hillcrest Dairy and who oppose dairy expansions in their community. Leadership Counsel for Justice & Accountability works alongside and supports the most impacted communities to advocate for sound policy and eradicate injustice to secure equal access to opportunity regardless of wealth, race, income and place. In Merced County, we partner with residents in Planada, Delhi, Dos Palos, Gustine, and the City of Merced towards advocating for residents' community priorities, which include addressing air pollution, groundwater contamination and overdraft, and environmental racism. We are providing comments regarding the proposed Hillcrest Dairy Expansion project because this proposed expansion would worsen the existing threats to clean air and water which residents are seeking to resolve and it would continue Merced County's unconscionable legacy of disproportionately impacting communities of color to environmentally harmful projects like this one.

Conditional Use Permit CUP20-013 proposes to expand the existing dairy so that the modified dairy would house 4,000 milk cows, 750 dry cows, and 3,300 support stock, for a proposed herd size of 8,050. Since this proposed expansion would increase the dairy's herd size by 1,700 cows less than a mile away from a Disadvantaged Community & two farmworker housing developments, this project would disproportionately harm protected classes by creating air quality, groundwater, & other severe environmental impacts that would threaten the health of residents who are predominantly Latinx and many of whom immigrants¹. The proposal is also inconsistent with the County's duties under fair housing and civil rights laws which prohibit the County from

¹See Government Code section 11135 subsection (a)



engaging in discriminatory land use practices and from actions which are inconsistent with its duty to affirmatively further fair housing. See e.g., Gov. Code §§12900, et seq., 8899.50(a)&(b).

According to CalEnviroScreen, Planada is demographically made up of 88.5% Hispanic residents. Planada is in the 79 percentiles in Groundwater Threats and 83 in sensitive populations with asthma. The current health impacts residents face in Planada are significant and expansions of any size directly threaten residents further. Residents in Planada are primarily concerned with the following environmental impacts and urge the county to reject this proposed expansion:

I. Air Quality and Odors

The baseline set of environmental conditions with the dairy's existing herd size create significant environmental impacts to the community's air quality, as well as nuisance odors.

Residents we work with have shared that the air pollution from the dairy's methane emissions and odors make it impossible to enjoy outdoor activities. Additionally, residents have complained that they cannot open their windows in order to prevent the foul odors from the dairy's manure lagoons from penetrating their homes. Planada residents have also noted that the odor from the dairy worsens in the evening, and residents often avoid outdoor activities during the day because of heat restrictions in our region. The only time they are able to comfortably be outdoors for walks and exercise is during the evening. However, when the odor worsens in the evening, residents are forced to remain indoors. This ultimately impacts the mental and physical health of the community.

In addition to the impacts of the nuisance odors on community health, Planada residents experience direct health impacts from air pollution. Planada residents understand how agricultural industries such as dairies contribute to the health disparities in their communities, and have shared that a high number of children develop asthma in Planada. Approving this dairy expansion would further exacerbate existing impacts and continue to deny Planada residents of their right to a nuisance-free, healthy community with breathable air. The community therefore urges the County to consider the impacts dairies have on their health and reject this proposed expansion.

II. Greenhouse Gas Emissions

In addition to the direct, significant impacts to human health caused by methane emissions from Hillcrest Dairy, the project would worsen the already significant and unmitigated baseline Greenhouse Gas Emissions.

The IPCC report presents a sobering warning about the future habitability of the planet for humans and many other species if greenhouse gas emissions persist any longer, and methane emissions have a faster, more intense Global Warming Potential (GWP) than CO₂ emissions, meaning that



one ton of methane emissions has the GWP equivalent of between 28 to 32 tons of CO₂ emissions². In other words, methane emissions cause extremely significant and quick impacts to the planet and the future of humanity.

Correctly, the NOP states that the proposed dairy expansion would have significant impacts on greenhouse gas emissions including methane. Aside from the increase in emissions from the manure lagoons, enteric methane emissions would also increase significantly with a herd size expansion, and there is currently no way to mitigate for enteric emissions. Therefore, the proposed expansion would create greenhouse gas emissions that cannot be mitigated for and the CUP must be rejected outright.

III. Hazards and Nuisance Insects

Planada residents are concerned with the increased insects that an expansion would draw to their homes. In conducting door-to-door outreach on June 12, 2021 in Planada, our organization heard from many residents that flies from the Hillcrest Dairy create a significant nuisance in their community. Upon hearing that the Dairy is seeking a Conditional Use Permit for expansion of herd size, they were astounded that the County would consider such a decision given that the existing nuisance and other impacts are already so significant and unmitigated.

IV. Hydrology and Water Quality

Planada residents have also raised concerns about the impacts of this expansion on water quality. The increase in manure that the herd size expansion would cause would only further exacerbate the threat of nitrates seeping into the groundwater that Planada community residents rely on for drinking water.

In addition to their concerns about groundwater contamination, residents know that an increase in herd size would mean an increase in groundwater over pumping on the dairy, posing a significant threat to the Human Right to Water in their community.

In addition to threatening the Human Right to Water, the project could directly conflict with the goals of the Merced Subbasin under the Sustainable Groundwater Management Act (SGMA). The Merced Subbasin, where Hillcrest Dairy is located, is considered a critically over drafted Subbasin. SGMA requires local Groundwater Sustainability Agencies (GSAs) to bring water use into sustainability by 2040, which should include robust water use limitations. Therefore, the increased pumping from the proposed dairy expansion is likely to conflict with the goals and policies of the local GSAs since the project would significantly increase pumping.

²<https://www.epa.gov/gmi/importance-methane>



Due to the significant groundwater impacts this project would create and the ways in which it would directly conflict with existing plans and legal requirements, the Planning Commission must reject the CUP outright.

V. Conclusion:

As mentioned above, a herd size expansion would exacerbate severe impacts to air quality, groundwater, global warming, and residents' quality of life in Planada, and it would constitute an egregious act of continued environmental racism in Merced County. As a result, our organization and residents we partner with in Planada urge Merced County to reject the CUP outright for the proposed expansion of Hillcrest Dairy.

Leadership Counsel for Justice & Accountability
October 12, 2021

This letter in response to the Notice of Preparation states that the effects of the proposed project on air quality, groundwater, global warming, and residents' quality of life in Planada must be evaluated. Evaluations of potential effects on the environmental topics raised with respect to the proposed Hillcrest Dairy Expansion project are included in Chapter 5, *Air Quality and Odors*, Chapter 8, *Greenhouse Gas Emissions and Energy Use*, Chapter 10, *Hydrology and Water Quality*, and Chapter 11, *Land Use Compatibility* of this Draft EIR. Additionally, Appendix J includes a discussion of Environmental Justice.

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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director

October 19, 2021

Diana Lowrance, Planner III
County of Merced, Department of Community and Economic Development
2222 M Street
Merced, California 93540
DLowrance@co.merced.ca.us

**Subject: Hillcrest Dairy Expansion Project (Project)
Conditional Use Permit No. CUP20-013
Notice of Preparation (NOP)
State Clearinghouse No. 2021090490**

Dear Ms. Lowrance:

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

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.

Conserving California's Wildlife Since 1870

Diana Lowrance, Planner III
Merced County Department of Community and Economic Development
October 19, 2021
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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.

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: Hillcrest Dairy

Objective: The Project consists of the expansion of an existing dairy facility. The existing Hillcrest Dairy and the site of the proposed expansion are located on approximately 200 acres of a 2,290-acre site. Approximately 1,611 acres of the Project site are currently used for the production of crops and application of manure process water.

Conditional Use Permit CUP20-013 proposes to expand the existing dairy so that the modified dairy would house 4,000 milk cows, 750 dry cows, and 3,300 support stock. This would represent an increase of 1,700 animals from existing numbers. The proposed Project would include construction of one new freestall barn, one special needs barn, and three dry cow shade barns. Modification of the proposed facilities would occur within the existing footprint of the dairy, and there would be no change in cropped acreage associated with the farm.

Location: The Project site is located approximately 0.73 miles north of the community of Planada in unincorporated Merced County.

Diana Lowrance, Planner III
Merced County Department of Community and Economic Development
October 19, 2021
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Timeframe: Unspecified.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the Merced County Department of Community and Economic Development 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 document.

The EIR that will be prepared will determine the likely environmental impacts associated with the Project. CDFW is concerned regarding potential impacts to special-status species from the ground disturbance development activities, including but not limited to, the State threatened Swainson's hawk (*Buteo swainsoni*), the State threatened tricolored blackbird (*Agelaius tricolor*), and other nesting birds.

Swainson's Hawk (SWHA)

Based on aerial photography, trees that may provide potential nest sites for SWHA occur in the Project area. SWHA exhibit high nest-site fidelity year after year in the San Joaquin Valley (CDFW 2016). The Project as proposed will 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. Without appropriate avoidance and minimization measures for SWHA, potential significant impacts that may result from Project activities include nest abandonment and reduced nesting success (loss or reduced health or vigor of eggs or young).

CDFW recommends surveys conducted by qualified wildlife biologist that identify potential nest trees within 0.5 mile of the boundary of the Project site. If potential nest trees are confirmed, CDFW recommends surveys following the survey methods developed by the Swainson's Hawk Technical Advisory Committee (SWHA TAC 2000) be conducted by a qualified wildlife biologist prior to project implementation. CDFW recommends a minimum no-disturbance buffer of 0.5-mile be delineated around active nests 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. If an active SWHA nest is detected during surveys and a 0.5-mile 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 issuance of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

Diana Lowrance, Planner III
Merced County Department of Community and Economic Development
October 19, 2021
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Tricolored Blackbird (TRBL)

TRBL are known to nest in alfalfa, wheat, and other low agricultural crop fields. TRBL aggregate and nest colonially, forming colonies of up to 100,000 nests (Meese et al. 2014). Approximately 86% of the global population is found in the San Joaquin Valley (Kelsey 2008, Weintraub et al. 2016). Increasingly, TRBL are forming larger colonies that contain progressively larger proportions of the species' total population (Kelsey 2008). In 2008, for example, 55% of the species' global population nested in only two colonies, which were located in silage fields (Kelsey 2008). In 2017, approximately 30,000 TRBL were distributed among only 16 colonies in Merced County (Meese 2017). Nesting can occur synchronously, with all eggs laid within one week (Orians 1961). For these reasons, depending on timing, disturbance to nesting colonies can cause abandonment, significantly impacting TRBL populations (Meese et al. 2014).

Table 1 in the Initial Study and Environmental Evaluation state that some of the croplands are planted with wheat. Therefore, TRBL have the potential to nest adjacent to the Project site. Without appropriate avoidance and minimization measures for TRBL, potential significant impacts include nest and/or colony abandonment, reduced reproductive success, and reduced health and vigor of eggs and/or young.

CDFW recommends that construction be timed to avoid the normal bird breeding season (February 1 through September 15). However, if construction must take place during that time, CDFW recommends that a qualified wildlife biologist determine if suitable habitat is present on or adjacent to the Project site. If suitable habitat is present, CDFW recommends a qualified wildlife biologist conduct surveys for nesting TRBL no more than 10 days prior to the start of ground-disturbing activities. If an active TRBL nesting colony is found during pre-activity surveys, CDFW recommends implementation of a minimum 300-foot no-disturbance buffer around the colony in accordance with CDFW's "*Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agricultural 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. For this reason, CDFW recommends conducting additional pre-activity surveys within 10 days prior of Project initiation to reassess the colony's areal extent. 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.

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Nesting birds

CDFW encourages that Project implementation occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the breeding season (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 or vegetation disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the Project site to identify nests and determine their status. A sufficient area means any area potentially affected by the 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 having a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends halting the work causing that change and consulting with CDFW 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 on-site 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 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

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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

If it is determined that the Project has the potential to impact biological resources, an assessment of filing fees will be 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 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).

CDFW appreciates the opportunity to comment on the Project to assist the Merced County Department of Community and Economic Development in identifying and mitigating the Project's impacts on biological resources.

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>). 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:

FA83F09FE08945A...
Julie A. Vance
Regional Manager

Attachment 1

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October 19, 2021
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California Department of Fish and Wildlife
March 10, 2021

(CDFW)

Attachment 1

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

PROJECT: Hillcrest Dairy Expansion Project

SCH No.: 2021090490

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Mitigation Measure: SWHA	
SWHA Surveys	
SWHA Take Authorization	
Mitigation Measure: TRBL	
TRBL Surveys	
TRBL Take Authorization	
<i>During Construction</i>	
Mitigation Measure: SWHA	
SWHA Avoidance	
Mitigation Measure: TRBL	
TRBL Avoidance	

California Department of Fish and Wildlife (CDFW)
October 19, 2021

This letter in response to the Notice of Preparation states CDFW's role as Trustee Agency for fish and wildlife resources in the state of California. The letter also submits comments as a Responsible Agency under CEQA regarding impacts to special-status species from ground disturbance development activities. An evaluation of potential effects on biological resources associated with the proposed Hillcrest Dairy Expansion project is included in Chapter 6, *Biological Resources*, of this Draft EIR.

From: David Rodriguez <pesddr@gmail.com>
Sent: Tuesday, October 19, 2021 11:29 PM
To: Lowrance, Diana <Diana.Lowrance@countyofmerced.com>
Subject: Expansion of Hillcrest Dairy

Hello Diane Lowrance. It is with deep concern that I write to you in reference of Hillcrest Dairy in Planada , Ca which is in Merced County. Since the dairy arrival , there has been several issues that pertain directly to the dairy . One issue has been a foul odor of cow manure from time to time. The other is highly probable nitrate in the drinking water. Nitrate is the most common ground water contaminate in Calif. Nitrates can seep into the ground water and expansive to extract . Planada is a rural , low income farming community with a population of over four thousand residents. We must be our own advocate to ensure we have a safe community , so we do not have to endure these type of pollutants . In 2012 the Hillcrest Dairy was out of compliance with Merced County with over 8000 cows . An administrative application allowed for 3000 . I , as well as other members of the Planada community strongly oppose the expansion of the Hillcrest Dairy. It is extremely difficult when we have three current board of supervisors deeply invested in the dairy business . Scott Silvera is a dairy owner . Lloyd Pareira , is a retired dairy owner , who is also a member of the San Joaquin Valley Air Pollution Control . Josh Pedrozo , who's father , John Pedrozo , is a dairy owner . John Pedrozo was once a Board of Supervisor for district one , which represents Planada . John was also a member of the San Joaquin Valley Air Pollution Control , which at that time granted a PTO permit to operate with over 8000 cows. It is extremely difficult for a small Latino community to fight money and power . Mr. Pereira , Mr. Silviera , and Mr . Pedrozo , are more concerned with the dairy business than the residents of Merced County . David Rodriguez PO Box 888 , Planada California.

David Rodriguez
October 19, 2021

This letter in response to the Notice of Preparation states concerns with odors, water quality, and environmental justice issues. Evaluations of potential effects on the environmental topics associated with the proposed Hillcrest Dairy Expansion project are included in Chapter 5, *Air Quality and Odors*, Chapter 10, *Hydrology and Water Quality*, and Chapter 11, *Land Use Compatibility* of this Draft EIR.

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