

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:

- California Department of Fish and Wildlife (CDFW); January 23, 2024.
- Central Valley Regional Water Quality Control Board (CVRWQCB); January 12, 2024.
- San Joaquin Valley Air Pollution Control District (SJVAPCD); January 3, 2024.
- Leadership Counsel for Justice & Accountability; January 16, 2024.

DocuSign Envelope ID: FCAAAF4C-A85B-4177-91D1-CA2A2C046633



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



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.

Conserving California's Wildlife Since 1870

DocuSign Envelope ID: FCAAAF4C-A85B-4177-91D1-CA2A2C046633

Tiffany Ho
County of Merced Community and Economic Development Department
January 03, 2024
Page 2

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.

DocuSign Envelope ID: FCAAAF4C-A85B-4177-91D1-CA2A2C046633

Tiffany Ho
County of Merced Community and Economic Development Department
January 03, 2024
Page 3

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 (CNDDB) 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

DocuSign Envelope ID: FCAAAF4C-A85B-4177-91D1-CA2A2C046633

Tiffany Ho
County of Merced Community and Economic Development Department
January 03, 2024
Page 4

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.

DocuSign Envelope ID: FCAAAF4C-A85B-4177-91D1-CA2A2C046633

Tiffany Ho
County of Merced Community and Economic Development Department
January 03, 2024
Page 5

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

DocuSign Envelope ID: FCAAAF4C-A85B-4177-91D1-CA2A2C046633

Tiffany Ho
County of Merced Community and Economic Development Department
January 03, 2024
Page 6

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.

DocuSign Envelope ID: FCAAAF4C-A85B-4177-91D1-CA2A2C046633

Tiffany Ho
County of Merced Community and Economic Development Department
January 03, 2024
Page 7

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

DocuSign Envelope ID: FCAAAF4C-A85B-4177-91D1-CA2A2C046633

Tiffany Ho
County of Merced Community and Economic Development Department
January 03, 2024
Page 8

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

DocuSign Envelope ID: FCAA4F4C-A85B-4177-91D1-CA2A2C046633

Tiffany Ho
County of Merced Community and Economic Development Department
January 03, 2024
Page 9

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

DocuSign Envelope ID: FCAAAF4C-A85B-4177-91D1-CA2A2C046633

Tiffany Ho
County of Merced Community and Economic Development Department
January 03, 2024
Page 10

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

DocuSign Envelope ID: FCAAAF4C-A85B-4177-91D1-CA2A2C046633

Tiffany Ho
County of Merced Community and Economic Development Department
January 03, 2024
Page 11

REFERENCES

- Beedy, E. C., W. J. Hamilton III, R. J. Meese, D. A. Airola, W. S. Schackwitz, and P. Pyle. 2023. Tricolored Blackbird (*Agelaius tricolor*), version 2.0. Birds of the World. P. G. Rodewald and B. K. Keeney, editors. Cornell Lab of Ornithology, Ithaca, NY, USA.
- California Department of Fish and Game. 1994. Staff report regarding mitigation for impacts to Swainson's hawks (*Buteo Swainsoni*) in the Central Valley of California. California, California, USA.
- California Department of Fish and Wildlife. 2015. Staff guidance regarding avoidance of impacts to tricolored blackbird breeding colonies on agricultural fields in 2015. Sacramento, California, USA.
- California Department of Fish and Wildlife. 2016. Five-year status review: Swainson's hawk (*Buteo swainsoni*). Sacramento, California, USA.
- California Department of Fish and Wildlife [CDFW]. 2023. Biogeographic Information and Observation System. California Natural Diversity Database. <<https://www.wildlife.ca.gov/Data/BIOS>>. Accessed 28 Dec. 2023.
- Grinnell, J. and A. H. Miller. 1944. The Birds of California. Cooper Ornithological Club, Berkeley, California. 608 pp.
- Longcore, T., and C. Rich. 2004. Ecological light pollution - Review. *Frontiers in Ecology and the Environment* 2:191–198.
- Miller, M. 2006. Apparent effects of light pollution on singing behavior of American robins. *The Condor* 108:130–139.
- Nightingale, B., T. Longcore, and C. Simenstad. 2006. Artificial night lighting and fishes. Pages 257–276 in C. Rich and T. Longcore, editors. *Ecological consequences of artificial light at night*. Island Press, Washington, D.C., USA.
- Perry, G., B. Buchanan, R. Fisher, M. Salmon, and S. Wise. 2008. Effects of night lighting on urban reptiles and amphibians. Chapter 16 in: *Urban Herpetology: Ecology, Conservation and Management of Amphibians and Reptiles in Urban and Suburban Environments*. J. C. Mitchell, R. E. Jung Brown and B. Bartholomew (ed.). *Herpetological Conservation* 3:211–228
- Stone, E., G. Jones, and S. Harris. 2009. Street lighting disturbs commuting bats. *Current Biology* 19:1123–1127.

DocuSign Envelope ID: FCAAAF4C-A85B-4177-91D1-CA2A2C046633

Tiffany Ho
County of Merced Community and Economic Development Department
January 03, 2024
Page 12

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.

DocuSign Envelope ID: FCAAAF4C-A85B-4177-91D1-CA2A2C046633

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	

California Department of Fish and Wildlife (CDFW)
August 24, 2022

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 State special-status species (Swainson's hawk and tricolored blackbird), lake and streambed alteration, artificial lighting, and cumulative impacts. An evaluation of potential effects on biological resources associated with the proposed Correia Family Dairy Farms Expansion project is included in Chapter 6, *Biological Resources*, of this Draft EIR.



Central Valley Regional Water Quality Control Board

12 January 2024

Tiffany Ho, Deputy Director of Planning
County of Merced
Department of Community and Economic Development
2222 'M' Street, Merced, CA 95340

CERTIFIED MAIL NUMBER
9589 0710 5270 0591 2601 87

COMMENTS ON NOTICE OF PREPARATION AND INITIAL STUDY (NOP/IS) FOR THE CORREIA FAMILY DAIRY FARMS, 26380 W. FAHEY RD., GUSTINE, MERCED COUNTY, EXPANSION PROJECT (CONDITIONAL USE PERMIT NO. CUP21-099)

The Central Valley Regional Water Quality Control Board (Central Valley Water Board) is a state agency with the statutory responsibility to protect water quality in California's Central Valley. (See Wat. Code, § 13000 et seq.) In support of this mission, the Central Valley Water Board regulates discharges of waste, including from dairies, that have the potential to affect surface and ground water quality. The Central Valley Water Board has established a regulatory program that regulates discharges of waste from dairy facilities throughout the Central Valley.

The Central Valley Water Board, in its role as responsible agency, has reviewed the Notice of Preparation and Initial Study (NOP/IS) prepared for the Correia Family Dairy Farms (Dairy) Expansion Project (Project). Consistent with the Central Valley Water Board's obligations as a responsible agency, this comment letter reviews the scope and content of the environmental information germane to the Board's statutory responsibilities that should be included in the environmental impact report for the expansion project.

Project Description/Summary

As described in the NOP/IS, the Dairy Farms is located on 60± acres of an existing farm totaling approximately 502 acres in unincorporated Merced County. The Project site and associated heifer facilities are located on the north and south sides of W. Fahey Road, respectively, in the Gustine area of the County. The Project cropland application area consists of 398± acres located on portions of 12 parcels.

Merced County Conditional Use Permit CUP21-009 proposes to authorize the Dairy's proposal to modify and expand the existing dairy to house an increased herd from 1,050 to 3,000 milk cows, 120 to 390 dry cows, and 2,685 support stock for a total of 6,075 animals (an overall increase of 3,945 animals). The proposed project would include construction of supporting buildings and features at the dairy facility, including five new freestall barns, two new loafing barns, and a new milking parlor and replacement dairy well. There would be approximately 11.4 acres of cropland converted to new facilities.

MARK BRADFORD, CHAIR | PATRICK PULUPA, ESQ., EXECUTIVE OFFICER

11020 Sun Center Drive #200, Rancho Cordova, CA 95670 | www.waterboards.ca.gov/centralvalley

Tiffany Ho
County of Merced
Department of Community and
Economic Development

- 2 -

12 January 2024

Crops grown on site would continue to be used for dairy feed crops and supplement imported grain and hay.

Central Valley Water Board Comments

The Dairy is currently regulated under Central Valley Water Board *Order R5-2013-0122, Reissued Waste Discharge Requirements General Order for Existing Milk Cow Dairies* (Dairy General Order). The NOP/IS correctly indicates that the Dairy would need to obtain individual Waste Discharge Requirements (WDRs) to authorize and regulate the expanded discharge of waste that would result from the proposed expansion, since the Dairy General Order prohibits enrolled dischargers from expanding their herd sizes. The NOP/IS also notes the Dairy is a member of the Central Valley Dairy Representative Monitoring Program (CVDRMP).

The NOP/IS Environmental Checklist, *Section X, Hydrology and Water Quality*, correctly states that dairy facilities pose several potential risks to water quality, primarily related to the amount of manure and process water that they generate. It further states:

“While the existing and proposed waste management systems would act to prevent groundwater contamination, the operation of the Correia Family Dairy Farms Expansion project may result in degradation of groundwater resources and potential adverse effects to surface water quality. In addition, increased solid manure exports to off-site fields associated with the proposed dairy expansion could result in off-site impacts to water quality. These potentially significant impacts will be evaluated further in the EIR for the proposed project. The EIR will include a water quality characterization and impacts analysis based on water quality data available from both on-site and nearby wells, and nearby water wells.”

The Central Valley Water Board concurs with the lead agency’s determination that water quality concerns related to the operation of dairy facilities and mitigation measures to mitigate adverse impacts will need to be discussed extensively in the EIR. Information provided to the Central Valley Water Board pursuant to the CVDRMP Summary Representative Monitoring Report (Revised*) (2019) indicates that the types of management practices required by the Dairy General Order and, thus, described in the NOP/IS (i.e., implementation of Waste Management Plans [WMP] and Nutrient Management Plans [NMP]) have not been adequate to prevent groundwater pollution in groundwater underlying dairy facilities and lands receiving dairy wastes. The proposed increases in herd size, reduction of land application area, and substantial increase in manure applied to off-site lands may be expected to exacerbate these adverse impacts. The EIR should evaluate mitigation measures beyond those required by the Dairy General Order.

Waste Discharge Requirements (WDRs)

Tiffany Ho
County of Merced
Department of Community and
Economic Development

- 3 -

12 January 2024

As noted above, the Dairy General Order prohibits enrolled dairies from expanding their herd sizes, so the proposed expansion would require authorization and regulation through either individual WDRs or an applicable WDRs general order.

The State Water Resources Control Board (State Water Board) is currently conducting a review of the Dairy General Order and has signaled that its review is likely to result in an order that will direct the Central Valley Water Board to reconsider significant aspects of its confined animal facilities program. Anticipating these changes, the Central Valley Water Board is deferring the issuance of new individual WDRs while its regulatory program is under review. It will therefore be some time before the proposed expanded discharges could be regulated under individual WDRs.

Water Quality Characterization

The NOP/IS indicates that the project proponent will conduct a water quality characterization and an impacts analysis based on water quality data available from both on-site and nearby wells. The Central Valley Water Board cautions that data from existing wells may not be sufficient to adequately characterize existing conditions and whether the proposed discharge will degrade or pollute groundwater quality. Any characterization and analysis of potential groundwater impacts should quantify anticipated degradation and/or pollution of groundwater in the aquifers underlying lands receiving dairy wastes as well as the facilities themselves, not simply wells in the vicinity.

Salt and Nitrate Control Programs

In 2018, the Central Valley Water Board adopted, and in 2020, revised, Basin Plan amendments establishing valley-wide Salt and Nitrate Control Programs. (See [Resolutions R5-2018-0034 & R5-2020-0057](#).) For more information about the Salt and Nitrate Control Programs, visit the [Central Valley Water Board's website](#) and the [Central Valley Salinity Coalition's website](#) at:

https://www.waterboards.ca.gov/centralvalley/water_issues/salinity/

<https://www.cvsalinity.org/public-info>

The Nitrate Control Program is a prioritized program that will require facilities that discharge nitrates at levels that are causing exceedances of drinking water standards (including most dairies) to upgrade their facilities and/or waste management practices over a timeframe that may extend as long as 35 years. While upgrades are being developed and implemented, facilities responsible for adverse nitrate impacts are required to supply impacted communities with replacement drinking water. Facilities such as dairies may comply with the Nitrate Control Program individually or may elect to participate in Management Zones, which are collectives of permittees that collaborate on enhancing water quality management practices while providing affected communities replacement drinking water. Regulatory requirements under the Nitrate Control Program

Tiffany Ho
County of Merced
Department of Community and
Economic Development

- 4 -

12 January 2024

are triggered by the issuance of a Notice to Comply and/or upon application to the Central Valley Water Board for a new or expanded discharge of nitrate. For the purposes of compliance with the Nitrate Control Program, the project is in a Priority Area 2 basin (Delta-Mendota). Priority Area 2 basins received Notices to Comply in December of 2023.

The 2018 and 2020 Basin Plan Amendments also established a Salt Control Program to address ongoing accumulation of salts in the soils and groundwater of the Central Valley. The Salt Control Program is a phased program, and the first phase requires nearly all permitted facilities (including all dairies) to participate in an extensive, collaborative study of salinity management practices throughout the basins that form the Central Valley. Currently, the dairy complies with Salt Control Program by maintaining membership in CVDRMP. The Central Valley Water Board would expect that compliance would be maintained during the lifetime of the dairy.

The proposed EIR should describe measures that the dairy will take to comply with the regulatory requirements established by both the Nitrate and Salt Control Programs.

Construction Storm Water General Permit

A National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (NPDES General Permit No. CAS000002) is required when a project includes, but is not limited to, demolition, clearing, grading, grubbing, excavation, or any other similar land disturbance taking place on one or more acres, or less than an acre where the activity is part of a larger common plan of development or sale of one or more acres.

If construction/land disturbance associated with the subject Project will disturb one acre or more, Silva Dairy Farms will need to obtain permit coverage under the Construction Storm Water General Permit. Before construction begins, the proponent must submit a Notice of Intent (NOI) to comply with the permit to the State Water Resources Control Board and a Storm Water Pollution Prevention Plan (SWPPP) must be prepared. For [more information on the Construction Storm Water General Permit](#), please visit the State Water Resources Control Board website at:

https://www.waterboards.ca.gov/water_issues/programs/stormwater/construction.html

Report of Waste Discharge Status

Page 25 of the NOP/IS states the Project applicant submitted a Report of Waste Discharge Form 200 (ROWD) for the proposed dairy expansion and it was received by the Central Valley Water Board on 27 April 2021. However, upon review, the referenced ROWD was not found in Central Valley Water Board records. Please submit the most recent version of the ROWD, to include a revised WMP and NMP, either by email to Dan Gamon at daniel.gamon@waterboards.ca.gov or by mail to:

Regional Water Quality Control Board, Central Valley Region

Tiffany Ho
County of Merced
Department of Community and
Economic Development

- 5 -

12 January 2024

c/o Dan Gamon, Confined Animal Facilities Regulatory Unit
11020 Sun Center Drive, Ste. 200
Rancho Cordova, CA 95670

Thank you for the opportunity to comment on the NOP/IS. If you have questions about these comments, please contact me at (916) 464-4724 or by email at Daniel.Gamon@waterboards.ca.gov.

Daniel Gamon, PG, CHg
Senior Engineering Geologist

cc: State Clearinghouse, state.clearinghouse@opr.ca.gov

Central Valley Regional Water Quality Control Board (CVRWQCB)
January 12, 2024

This letter in response to the Notice of Preparation states CRWQCB's role as responsible agency, and discusses its regulatory program, *Order R5-2013-0122, Reissued Waste Discharge Requirements General Order for Existing Milk Cow Dairies* (Dairy General Order). The Dairy General Order regulates discharges of waste from dairy facilities throughout the Central Valley. Comments include concerns regarding potential impacts to water quality, degradation of groundwater resources, surface water quality, and off-site impacts to water quality. The letter also discusses Waste Discharge Requirements, Water Quality Characterization, the agency's Salt and Nitrate Control Programs, and the Construction Storm Water General Permit. An evaluation of potential effects on water quality and hydrology resources associated with the proposed Correia Family Dairy Farms Expansion project is included in Chapter 10, *Hydrology and Water Quality*, of this Draft EIR.



January 3, 2024

Tiffany Ho
County of Merced
Community and Economic Development Department
2222 "M" Street
Merced, CA 95340

Project: Notice of Preparation for Conditional Use Permit No. 21-009

District CEQA Reference No: 20231234

Dear Ms. Ho:

The San Joaquin Valley Air Pollution Control District (District) has reviewed the Notice of Preparation (NOP) for a Draft Environmental Impact Report (DEIR) from the County of Merced (County) for the Conditional Use Permit (CUP) 21-009 project. Per the NOP, the project consists of the expansion of an existing dairy to house 3,000 milk cows, 390 dry cows, and 2,685 support stock for an increase of 3,945 animals as well as the construction of approximately 474,831 square feet of supporting buildings (Project). The Project is located on W. Fahey Road one mile west of S. Ingomar Grade in the Gustine area of Merced County, CA.

The District offers the following comments at this time regarding the Project:

1) Project Related Emissions

At the federal level under the National Ambient Air Quality Standards (NAAQS), the District is designated as extreme nonattainment for the 8-hour ozone standards and serious nonattainment for the particulate matter less than 2.5 microns in size (PM_{2.5}) standards. At the state level under California Ambient Air Quality Standards (CAAQS), the District is designated as nonattainment for the 8-hour ozone, PM₁₀, and PM_{2.5} standards.

The District's initial review of the Project concludes that emissions resulting from construction and/or operation of the Project may exceed any of the following significance thresholds as identified in the District's Guidance for Assessing and Mitigating Air Quality Impacts: <https://ww2.valleyair.org/media/g4nl3p0g/gamaqi.pdf>.

Samir Sheikh
Executive Director/Air Pollution Control Officer

Northern Region
4800 Enterprise Way
Modesto, CA 95356-8718
Tel: (209) 557-6400 FAX: (209) 557-6475

Central Region (Main Office)
1990 E. Gettysburg Avenue
Fresno, CA 93726-0244
Tel: (559) 230-6000 FAX: (559) 230-6061
www.valleyair.org www.healthyliving.com

Southern Region
34946 Flyover Court
Bakersfield, CA 93308-9725
Tel: (661) 392-5500 FAX: (661) 392-5585

Printed on recycled paper.

The District recommends that a more detailed preliminary review of the Project be conducted for the Project's construction and operational emissions.

1a) Construction Emissions

The District recommends, to reduce impacts from construction-related diesel exhaust emissions, the Project should utilize the cleanest available off-road construction equipment.

1b) Operational Emissions

Operational (ongoing) air emissions from mobile sources and stationary sources should be analyzed separately. For reference, the District's significance thresholds are identified in the District's Guidance for Assessing and Mitigating Air Quality Impacts:
<https://ww2.valleyair.org/media/g4nl3p0g/gamaqi.pdf>.

1c) Recommended Model for Quantifying Air Emissions

Project-related criteria pollutant emissions from construction and operational sources should be identified and quantified. Emissions analysis should be performed using the California Emission Estimator Model (CalEEMod), which uses the most recent CARB-approved version of relevant emissions models and emission factors. CalEEMod is available to the public and can be downloaded from the CalEEMod website at: www.caleemod.com.

2) Health Risk Screening/Assessment

The County should evaluate the risk associated with the Project for sensitive receptors (residences, businesses, hospitals, day-care facilities, health care facilities, etc.) in the area and mitigate any potentially significant risk to help limit exposure of sensitive receptors to emissions.

To determine potential health impacts on surrounding receptors (residences, businesses, hospitals, day-care facilities, health care facilities, etc.) a Prioritization and/or a Health Risk Assessment (HRA) should be performed for the Project. These health risk determinations should quantify and characterize potential Toxic Air Contaminants (TACs) identified by the Office of Environmental Health Hazard Assessment/California Air Resources Board (OEHHA/CARB) that pose a present or potential hazard to human health.

Health risk analyses should include all potential air emissions from the project, which include emissions from construction of the project, including multi-year construction, as well as ongoing operational activities of the project. Note, two common sources of TACs can be attributed to diesel exhaust emitted from heavy-duty off-road earth

moving equipment during construction, and from ongoing operation of heavy-duty on-road trucks.

Prioritization (Screening Health Risk Assessment):

A “Prioritization” is the recommended method for a conservative screening-level health risk assessment. The Prioritization should be performed using the California Air Pollution Control Officers Association’s (CAPCOA) methodology. Please contact the District for assistance with performing a Prioritization analysis.

The District recommends that a more refined analysis, in the form of an HRA, be performed for any project resulting in a Prioritization score of 10 or greater. This is because the prioritization results are a conservative health risk representation, while the detailed HRA provides a more accurate health risk evaluation.

Health Risk Assessment:

Prior to performing an HRA, it is strongly recommended that land use agencies/ project proponents develop and submit for District review a health risk modeling protocol that outlines the sources and methodologies that will be used to perform the HRA.

A development project would be considered to have a potentially significant health risk if the HRA demonstrates that the health impacts would exceed the District’s established risk thresholds, which can be found here:

<https://ww2.valleyair.org/permitting/ceqa/>.

A project with a significant health risk would trigger all feasible mitigation measures. The District strongly recommends that development projects that result in a significant health risk not be approved by the land use agency.

The District is available to review HRA protocols and analyses. For HRA submittals please provide the following information electronically to the District for review:

- HRA (AERMOD) modeling files
- HARP2 files
- Summary of emissions source locations, emissions rates, and emission factor calculations and methodologies.

For assistance, please contact the District’s Technical Services Department by:

- E-Mailing inquiries to: hramodeler@valleyair.org
- Calling (559) 230-5900

Recommended Measure: Development projects resulting in TAC emissions should be located an adequate distance from residential areas and other sensitive receptors

to prevent the creation of a significant health risk in accordance to CARB's Air Quality and Land Use Handbook: A Community Health Perspective located at <https://ww2.arb.ca.gov/our-work/programs/resource-center/strategy-development/land-use-resources>.

3) Ambient Air Quality Analysis

An Ambient Air Quality Analysis (AAQA) uses air dispersion modeling to determine if emissions increases from a project will cause or contribute to a violation of State or National Ambient Air Quality Standards. The District recommends an AAQA be performed for the Project if emissions exceed 100 pounds per day of any pollutant.

An AAQA uses air dispersion modeling to determine if emission increase from a project will cause or contribute to a violation of State or National Ambient Air Quality Standards. An acceptable analysis would include emissions from both project-specific permitted and non-permitted equipment and activities. The District recommends consultation with District staff to determine the appropriate model and input data to use in the analysis.

Specific information for assessing significance, including screening tools and modeling guidance, is available online at the District's website: <https://ww2.valleyair.org/permitting/ceqa/>.

4) Voluntary Emission Reduction Agreement

Criteria pollutant emissions may result in emissions exceeding the District's significance thresholds, potentially resulting in a significant impact on air quality. When a project is expected to have a significant impact, the District recommends the DEIR also include a discussion on the feasibility of implementing a Voluntary Emission Reduction Agreement (VERA) for this Project.

A VERA is a mitigation measure by which the project proponent provides pound-for-pound mitigation of emissions increases through a process that develops, funds, and implements emission reduction projects, with the District serving a role of administrator of the emissions reduction projects and verifier of the successful mitigation effort. To implement a VERA, the project proponent and the District enter into a contractual agreement in which the project proponent agrees to mitigate project specific emissions by providing funds for the District's incentives programs. The funds are disbursed by the District in the form of grants for projects that achieve emission reductions. Thus, project-related impacts on air quality can be mitigated. Types of emission reduction projects that have been funded in the past include electrification of stationary internal combustion engines (such as agricultural irrigation pumps), replacing old heavy-duty trucks with new, cleaner, more efficient heavy-duty trucks, and replacement of agricultural equipment with the latest generation technologies.

In implementing a VERA, the District verifies the actual emission reductions that have been achieved as a result of completed grant contracts, monitors the emission reduction projects, and ensures the enforceability of achieved reductions. After the project is mitigated, the District certifies to the Lead Agency that the mitigation is completed, providing the Lead Agency with an enforceable mitigation measure demonstrating that project-related emissions have been mitigated. To assist the Lead Agency and project proponent in ensuring that the environmental document is compliant with CEQA, the District recommends the environmental document includes an assessment of the feasibility of implementing a VERA.

5) Truck Routing

Truck routing involves the assessment of which roads Heavy Heavy-Duty (HHD) trucks take to and from their destination, and the emissions impact that the HHD trucks may have on residential communities and sensitive receptors. Since the Project consists of an expansion to a dairy facility, there is potential for an increase in truck trips in the area.

The District recommends the County evaluate HHD truck routing patterns for the Project, with the aim of limiting exposure of residential communities and sensitive receptors to emissions. This evaluation would consider the current truck routes, the quantity and type of each truck (e.g., Medium Heavy-Duty, HHD, etc.), the destination and origin of each trip, traffic volume correlation with the time of day or the day of the week, overall Vehicle Miles Traveled (VMT), and associated exhaust emissions. The truck routing evaluation would also identify alternative truck routes and their impacts on VMT and air quality.

6) Cleanest Available Heavy-Duty Trucks

The San Joaquin Valley will not be able to attain stringent health-based federal air quality standards without significant reductions in emissions from HHD trucks, the single largest source of NO_x emissions in the San Joaquin Valley. Accordingly, to meet federal air quality attainment standards, the District's ozone and particulate matter attainment plans rely on a significant and rapid transition of HHD fleets to zero or near-zero emissions technologies.

The Project consists of an expansion to a dairy facility and as there is potential for an increase in truck trips in the area. Since the Project may exceed the District significance thresholds, the District recommends that the following measures be considered by the County to reduce Project-related operational emissions:

- *Recommended Measure:* Fleets associated with operational activities utilize the cleanest available HHD trucks, including zero and near-zero technologies.

- **Recommended Measure:** All on-site service equipment (cargo handling, yard hostlers, forklifts, pallet jacks, etc.) utilize zero-emissions technologies.

7) Reduce Idling of Heavy-Duty Trucks

The goal of this strategy is to limit the potential for localized PM_{2.5} and toxic air contaminant impacts associated with the idling of Heavy-Duty trucks. The diesel exhaust from idling has the potential to impose significant adverse health and environmental impacts.

Since the Project is expected to result in HHD truck trips, the District recommends the DEIR include measures to ensure compliance of the state anti-idling regulation (13 CCR § 2485 and 13 CCR § 2480) and discuss the importance of limiting the amount of idling, especially near sensitive receptors.

8) Electric On-Site Off-Road and On-Road Equipment

Since the development project consists of an expansion to a dairy facility, the Project may have the potential to result in increased use of off-road equipment (e.g., forklifts) and on-road equipment (e.g., mobile yard trucks with the ability to move materials). The District recommends that the DEIR include requirements for project proponents to utilize electric or zero emission off-road and on-road equipment.

9) On-Site Solar Deployment

It is the policy of the State of California that renewable energy resources and zero-carbon resources supply 100% of retail sales of electricity to California end-use customers by December 31, 2045. While various emission control techniques and programs exist to reduce air quality emissions from mobile and stationary sources, the production of solar energy is contributing to improving air quality and public health. The District suggests that the County consider incorporating solar power systems as an emission reduction strategy for the Project.

10) Nuisance Odors

While offensive odors rarely cause any physical harm, they can be unpleasant, leading to considerable distress among the public and often resulting in citizen complaints.

The County should consider all available pertinent information to determine if the Project could have a significant impact related to nuisance odors. Nuisance odors may be assessed qualitatively taking into consideration the proposed business or industry type and its potential to create odors, as well as proximity to off-site receptors that potentially would be exposed to objectionable odors. The intensity of an odor source's operations and its proximity to receptors influences the potential

significance of malodorous emissions. Any project with the potential to frequently expose members of the public to objectionable odors should be deemed to have a significant impact.

According to the District Guidance for Assessing and Mitigating air Quality Impacts (GAMAQI), a significant odor impact is defined as more than one confirmed complaint per year averaged over a three-year period, or three unconfirmed complaints per year averaged over a three-year period. An unconfirmed complaint means that either the odor or air contaminant release could not be detected, or the source of the odor could not be determined.

The District is available to assist the County with information regarding specific facilities and categories of facilities, and associated odor complaint records.

11) District Rules and Regulations

The District issues permits for many types of air pollution sources, and regulates some activities that do not require permits. A project subject to District rules and regulations would reduce its impacts on air quality through compliance with the District's regulatory framework. In general, a regulation is a collection of individual rules, each of which deals with a specific topic. As an example, Regulation II (Permits) includes District Rule 2010 (Permits Required), Rule 2201 (New and Modified Stationary Source Review), Rule 2520 (Federally Mandated Operating Permits), and several other rules pertaining to District permitting requirements and processes.

The list of rules below is neither exhaustive nor exclusive. Current District rules can be found online at: www.valleyair.org/rules/1ruleslist.htm. To identify other District rules or regulations that apply to future projects, or to obtain information about District permit requirements, the project proponents are strongly encouraged to contact the District's Small Business Assistance (SBA) Office at (209) 557-6446.

11a) District Rules 2010 and 2201 - Air Quality Permitting for Stationary Sources

Stationary Source emissions include any building, structure, facility, or installation which emits or may emit any affected pollutant directly or as a fugitive emission. District Rule 2010 (Permits Required) requires operators of emission sources to obtain an Authority to Construct (ATC) and Permit to Operate (PTO) from the District. District Rule 2201 (New and Modified Stationary Source Review) requires that new and modified stationary sources of emissions mitigate their emissions using Best Available Control Technology (BACT).

This Project will be subject to District Rule 2010 (Permits Required) and Rule 2201 (New and Modified Stationary Source Review) and will require District permits. Prior to construction, the Project proponent should submit to the District an application for an ATC. For further information or assistance, the project proponent may contact the District's SBA Office at (209) 557-6446.

11b) District Rule 9510 - Indirect Source Review (ISR)

Per District Rule 9510 section 4.4.3, a development project on a facility whose primary functions are subject to District Rule 2201 or District Rule 2010 are exempt from the requirements of the rule. The District has reviewed the information provided and has determined that the primary functions of this Project are subject to District Rule 2201 (New and Modified Stationary Source Review Rule) or District Rule 2010 (Permits Required). As a result, District Rule 9510 requirements and related fees do not apply to the Project referenced above.

11c) District Rule 4002 (National Emissions Standards for Hazardous Air Pollutants)

The Project will be subject to District Rule 4002 since the Project will include demolition, renovation, and removal of existing structures. To protect the public from uncontrolled emissions of asbestos, this rule requires a thorough inspection for asbestos to be conducted before any regulated facility is demolished or renovated. Any asbestos present must be handled in accordance with established work practice standards and disposal requirements.

Information on how to comply with District Rule 4002 can be found online at: <https://ww2.valleyair.org/compliance/demolition-renovation/>.

11d) District Rule 4601 (Architectural Coatings)

The Project may be subject to District Rule 4601 since it may utilize architectural coatings. Architectural coatings are paints, varnishes, sealers, or stains that are applied to structures, portable buildings, pavements or curbs. The purpose of this rule is to limit VOC emissions from architectural coatings. In addition, this rule specifies architectural coatings storage, cleanup and labeling requirements. Additional information on how to comply with District Rule 4601 requirements can be found online at: <https://ww2.valleyair.org/media/tkgjeusd/rule-4601.pdf>

11e) District Regulation VIII (Fugitive PM₁₀ Prohibitions)

The project proponent may be required to submit a Construction Notification Form or submit and receive approval of a Dust Control Plan prior to commencing any earthmoving activities as described in Regulation VIII, specifically Rule 8021 – *Construction, Demolition, Excavation, Extraction, and Other Earthmoving Activities*.

Should the project result in at least 1-acre in size, the project proponent shall provide written notification to the District at least 48 hours prior to the project proponents intent to commence any earthmoving activities pursuant to District Rule 8021 (Construction, Demolition, Excavation, Extraction, and Other Earthmoving Activities). Also, should the project result in the disturbance of 5-acres or more, or will include moving, depositing, or relocating more than 2,500 cubic yards per day of bulk materials, the project proponent shall submit to the District a Dust Control Plan pursuant to District Rule 8021 (Construction, Demolition, Excavation, Extraction, and Other Earthmoving Activities). For additional information regarding the written notification or Dust Control Plan requirements, please contact District Compliance staff at (559) 230-5950.

The application for both the Construction Notification and Dust Control Plan can be found online at: <https://ww2.valleyair.org/media/fm3jrbsq/dcp-form.docx>

Information about District Regulation VIII can be found online at:
<https://ww2.valleyair.org/dustcontrol>

11f) Other District Rules and Regulations

The Project may also be subject to the following District rules: Rule 4102 (Nuisance) and Rule 4641 (Cutback, Slow Cure, and Emulsified Asphalt, Paving and Maintenance Operations).

The following rules are specific to confined animal operations:

- Rule 4102 (Nuisance) – This rule applies to any source operation that emits or may emit air contaminants or other materials. In the event that the Project or construction of the Project creates a public nuisance, it could be in violation and be subject to District enforcement action.

San Joaquin Valley Air Pollution Control District
District Reference No: 20231234
January 3, 2024

Page 10 of 10

- Rule 4550 (Conservation Management Practices) – The purpose of this rule is to limit fugitive dust emissions from agricultural operation sites. These sites include areas of crop production, animal feeding operations and unpaved roads/equipment areas. The District's CMP handbook can be found online at the District's website at: http://www.valleyair.org/farmpermits/updates/cmp_handbook.pdf.
- Rule 4570 (Confined Animal Facilities) – District Rule 4570 was adopted by the District's Governing Board on June 15, 2006. Dairies with greater than or equal to 500 milk cows are subject to the requirements of District Rule 4570. Therefore, a Rule 4570 application shall also be submitted to the District.

12) District Comment Letter

The District recommends that a copy of the District's comments be provided to the Project proponent.

If you have any questions or require further information, please contact Matt Crow by e-mail at Matt.Crow@valleyair.org or by phone at (559) 230-5931.

Sincerely,

Brian Clements
Director of Permit Services



For: Mark Montelongo
Program Manager

San Joaquin Valley Air Pollution Control District (SJVAPCD)
January 3, 2024

This letter in response to the Notice of Preparation states that the effects of the proposed project on air quality must be evaluated. The letter also outlines the regulatory environment surrounding impacts to air quality. An evaluation of potential effects on air quality and nuisance odors associated with the proposed Correia Family Dairy Farms Expansion project is included in Chapter 5, *Air Quality and Odors*, of this Draft EIR.



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

*Submitted electronically via email to: publiccomments@countyofmerced.com,
tiffany.ho@countyofmerced.com*

Jan 16, 2024

**Comments re: Notice of Preparation of a Draft Environmental Impact Report for the
Correia Dairy Expansion Project (Conditional Use Permit No. CUP21-009)**

Dear Ms. Ho:

We are writing to provide comments on the Notice of Preparation of a Draft Environmental Impact Report for the Correia Dairy Expansion Project. Our organization, Leadership Counsel for Justice & Accountability, works closely with residents of Merced County who are impacted by the dairy operations and who are concerned about expanded and increased dairy operations and associated impacts. In Merced County, we partner with residents to further for residents' priorities, which include addressing air pollution, groundwater contamination, and groundwater depletion; improving quality of life; and furthering environmental justice. We are providing comments regarding the proposed Correia Dairy Expansion project because this proposed expansion would worsen the existing threats to clean air and water which residents are seeking to resolve, increase other negative environmental impacts, and continue Merced County's unconscionable legacy of disproportionately impacting communities of color to environmentally harmful projects like this one.

We are currently tracking a trend of dairy expansion proposals in Merced County. Correia Dairy is one of eleven dairies that have applied in recent years for a CUP for massive herd size expansions. In order for California to meet its climate goals, and for the San Joaquin Valley to come into attainment pursuant to the Clean Air Act, and for Merced County to comply with California fair housing law, this pattern cannot continue. The Environmental Impact Report should address the cumulative impacts of all of the proposed dairy expansions would have on the entire region. An EIR without an adequate analysis of the cumulative impacts would not be adequate and therefore we urge the County to include this in their study.



Conditional Use Permit CUP21-009 proposes to expand the existing dairy so that the modified dairy would house 3,000 milk cows, 390 dry cows, and 2,685 support stock, for a proposed herd size of 6,075. Since this proposed expansion would increase the dairy's herd size by 3,945 cows around four miles away from the Disadvantaged Community of Santa Nella, this project would disproportionately harm protected classes by creating air quality, groundwater, & other severe environmental impacts that would threaten the health of residents in the census tracts surrounding the dairy who are predominantly Latinx and many of whom are immigrants.¹ The proposal is also inconsistent with the County's duties under fair housing and civil rights laws which prohibit the County from 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, the census tract where the project is proposed ranks in the 93rd percentile for asthma, and the 97th percentile for groundwater threats. The current health impacts residents face in this region are significant and expansions of any size will directly threaten residents further, both in the communities surrounding the dairy and regionally across Merced County.

The Correia Dairy expansion project would bring significant environmental impacts that the Draft Environmental Impact Report (DEIR) must adequately analyze and identify mitigation measures for, such as:

I. Air Quality and Odors

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

Residents of several Merced County communities experience air pollution and odor from dairy operations such that enjoying outdoor activities is often impossible. Additionally, many residents cannot open their windows in order to prevent the foul odors from the dairy's operations from penetrating their homes. Air pollution, including air pollution from dairy operations, results in a variety of health impacts including heightened rates of asthma.² Residents surrounding the Correia Dairy and in nearby communities are at particular risk of increased air quality and odor impacts from the proposed expansion from both dairy operations and increased truck and vehicular traffic. Accordingly, the DEIR must fully assess the potential air quality impacts from the proposed expansion, fully assess potential odor impacts from the proposed

¹See Government Code section 11135 subsection (a)

² The Merced County Department of Public Health's 2016 [Community Health Assessment](#) indicated that, at the time of the study, over 26% of Merced County children had been diagnosed with asthma, a rate much higher than the overall statewide child asthma rate of 15.2%.



expansion, and fully assess the impacts of all construction and dairy operation impacts including impacts from manure, enteric emissions, dust, feed, and vehicular traffic. Additionally, and especially in light of recent and planned dairy expansions in Merced County, the DEIR should fully assess cumulative air and odor impacts in the context of various expansions and increased impacts. Approving this dairy expansion would further exacerbate existing impacts and continue to deny residents of their right to a nuisance-free, healthy community with breathable air.

II. Greenhouse Gas Emissions

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

The 2021 Intergovernmental Panel on Climate Change 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 emissions.³ In other words, methane emissions cause extremely significant and quick impacts to the planet and the future of humanity.⁴

Correctly, the NOP states that the proposed dairy expansion would have significant impacts on greenhouse gas emissions including methane. Several components of dairy operations contribute to greenhouse gas emissions, including methane emissions from both enteric emissions and manure. The EIR must fully assess greenhouse gas emissions from construction and operations, including from enteric emissions, manure, feed, cropland, pesticide use, vehicular travel, machine operations, water extraction and other energy usage. Additionally, as noted earlier, the EIR must include a robust cumulative impacts analysis that assesses greenhouse gas emissions in the context of several past and pending proposed dairy expansions.

III. Hazards and Nuisance - Insects

Residents across Merced County are concerned with the increased insects that an expansion would draw to their homes. Our organization heard from many residents that flies from the various dairies in the county create a significant nuisance in their community. Upon hearing of the significant number of applicants in Merced County seeking a Conditional Use Permit for expansion of herd size, many residents were astounded that the County would consider these

³ https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_Full_Report.pdf

⁴ <https://www.epa.gov/gmi/importance-methane>



expansions given that the existing nuisance and other impacts are already so significant and unmitigated.

IV. Hydrology and Water Quality

Residents have also raised concerns about the impacts of this expansion on water quality. The increase in manure associated with the proposed herd size expansion will further exacerbate the threat of nitrates seeping into the groundwater that nearby communities rely on for drinking water. The DEIR must assess the water quality impacts associated with all relevant construction activities and dairy operations including but not limited to wastewater storage in lagoons, land application of manure, transport of manure offsite, and groundwater pumping. Additionally, the DEIR should assess the cumulative impacts of Correia Dairy's proposed expansion in light of several past and pending proposed dairy expansions.

In addition to their concerns about groundwater contamination, residents know that an increase in herd size would mean an increase in groundwater usage on the dairy, posing a significant threat to drinking water access in their community as groundwater levels continue to drop.

In addition to threatening the Human Right to Water, the project could directly conflict with the goals of the Subbasin under the Sustainable Groundwater Management Act (SGMA). In critically overdrafted Subbasins, 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.

V. Conclusion:

As mentioned above, a herd size expansion would exacerbate severe impacts to air quality, groundwater, global warming, and quality of life. As a result, we urge Merced County to thoroughly evaluate these impacts in the pending study and identify mitigation measures for these impacts all while conducting a full analysis of how cumulative impacts will come into effect from all other ongoing dairy expansions taking place in Merced County. .

Leadership Counsel for Justice & Accountability
January 16, 2024

This letter in response to the Notice of Preparation states that the effects of the proposed project on air quality, odors, impacts to groundwater, global warming, increased insects, residents' quality of life, and environmental justice in the area surrounding the Correia Family Dairy Farms must be evaluated. Evaluations of potential effects on the environmental topics raised with respect to the proposed Correia Family Dairy Farms Expansion project are included in Chapter 5, *Air Quality and Odors*, Chapter 8, *Greenhouse Gas Emissions and Energy Use*, Chapter 9, *Nuisance Conditions from Insects*, Chapter 10, *Hydrology and Water Quality*, and Chapter 11, *Land Use Compatibility* of this Draft EIR. Cumulative impacts as a result of the proposed project are discussed in Chapter 12, *Required CEQA Analyses*.

This page intentionally
left blank.