

Haggerty, Nicole@Wildlife

From: Capehart, Griffin@Wildlife
Sent: Wednesday, June 24, 2026 12:46 PM
To: sstowers@sjgov.org
Cc: Wildlife R2 CEQA; Wood, Dylan@Wildlife; Sheya, Tanya@Wildlife; Kilgour, Morgan@Wildlife
Subject: CDFW Comments on the MND for the Orland Power Solutions Borges Dairy Digester Project (SCH# 2026060079)

Dear Stephanie Stowers:

The California Department of Fish and Wildlife (CDFW) received and reviewed the Notice of Intent to Adopt an MND from San Joaquin Community Development Department for the PA-2500075 Orland Power Solutions Borges Dairy Digester Project (Project) in San Joaquin County pursuant the California Environmental Quality Act (CEQA) statute and guidelines. CDFW has previously submitted comments for the Project during the initial request for comments period.

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, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may need to exercise 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 provides, 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.

PROJECT DESCRIPTION SUMMARY

The Project site is located at 8350 E. Brady Road in Manteca, CA 95337; Latitude 37.72697°, Longitude - 121.20204°; APN 257-22-005 and 257-22-004.

The Project consists of the construction of a commercial proof of concept anaerobic digestion facility (2.9 acres) that will consist of two manure digesters that will capture and contain methane from dairy cow manure stored on-site. The resultant biomethane will be shipped offsite for end users.

The Project description should include the whole action as defined in the CEQA Guidelines section 15070 and should include appropriate detailed exhibits disclosing the Project area including temporary impacted areas such as equipment staging area, spoils areas, adjacent infrastructure development, and access and haul roads if applicable.

IMPACT ANALYSIS AND MITIGATION MEASURES

Comment 1 Swainson's Hawk (*Buteo swainson*), page 35

Issue: Swainson's Hawk is listed as a threatened species under CESA and has additional protection under the Migratory Bird Treaty Act (MBTA) and Fish and Game Code sections 3503 and 3503.5. There are twenty (20) mapped occurrences within five miles of the proposed Project for Swainson's Hawk (CDFW 2018; California Natural Diversity Database (CNDDDB) layer in Biogeographic Observation and Information System (BIOS)). The mature trees adjacent to the proposed Project may provide suitable nesting habitat while the non-orchard agriculture fields in the surrounding area may provide suitable foraging habitat for Swainson's Hawk. CDFW recommends the project proponent (or contractor thereof) conduct a pre-construction Swainson's Hawk survey to identify any nests within the vicinity of the Project that may be disturbed by Project activities. Nest abandonment or otherwise nest failure due to Project activities could be considered a significant impact under CEQA.

Recommendation or Recommended Mitigation Measure: CDFW recommends the Project incorporate an avoidance and minimization measure that specifies a survey protocol for Swainson's Hawk to be completed prior to the initiation of the proposed Project, and annually thereafter, until the Project is completed. An example measure is outlined below.

BIO-1 – Swainson's Hawk Protocol Survey

Swainson's Hawk Survey. If Project construction work is scheduled during the Swainson's hawk nesting season, a qualified Biologist shall conduct a focused survey for active Swainson's Hawk nests prior to beginning construction. The biologist shall follow the *Swainson's Hawk Technical Advisory Committee's Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley* (Swainson's Hawk Tech. Advis. Comm., 5/2000). The survey protocol timing is outlined below:

- January to March 20- One (1) Survey, All Day
- March 20 to April 5- Three (3) Surveys, Sunrise to 1000 / 1600 to Sunset
- April 5 to April 20- Three (3) Surveys, Sunrise to 1200 / 1630 to Sunset
- April 21 to June 10- Monitoring
- June 10 to July 30- Three (3) Surveys, Sunrise to 1200 / 1600 to Sunset

If Swainson's hawk breeding activity is identified during any of the surveys or during construction activities, the Qualified Biologist may propose site specific revisions and/or additional measures to CDFW for review and written approval and will ensure compliance with the San Joaquin Multi-Species Habitat Conservation and Open Space Plan (SJMSCP)

Swainson's Hawk Nest Avoidance. During the nesting season (approximately March 1 to September 1), Project activities within 1,320 feet of occupied nests or nests under construction shall be prohibited to minimize the potential for nest abandonment. While the nest is occupied or under construction, project activities outside the buffer can take place provided that they do not stress the breeding pair. If project activities are to occur within 0.5 mile of an active nest, the area should be monitored by a qualified biologist prior to and during project activities. If the nesting pair's behavior suggests agitation or disturbance by project activities, all activities in the area shall cease pending consultation with the San Joaquin Council of Governments (SJCOC) if seeking coverage under the SJMSCP for project activities.

Otherwise, consult CDFW and demonstrate compliance with CESA. Following review of the breeding pair's behavior, the qualified biologist, in coordination with CDFW/SJCOG will determine whether the project activities in the area may continue to comply with CESA. The qualified biologist shall monitor project activities to ensure that activities do not occur within the buffer. Any modifications to this buffer shall be implemented in coordination with the SJCOG or CDFW as appropriate. The qualified biologist will be required to monitor the nest and determine that the reduced buffer does not cause nest abandonment.

Comment 2 Migratory Birds and Birds of Prey

Issue: Migratory nongame native bird species are protected by international treaty under the Federal Migratory Bird Treaty Act (MBTA) (16 U.S.C., §§ 703-712). CDFW implemented the MBTA by adopting the Fish & G. Code section 3513. Fish & G. Code sections 3503, 3503.5 and 3800 provide additional protection to nongame birds, birds of prey, their nests and eggs. Potential habitat for nesting birds and birds of prey is present within the Project area. The proposed Project should disclose all potential activities that may incur a direct or indirect take to nongame nesting birds within the Project footprint and its close vicinity. Appropriate avoidance, minimization, and/or mitigation measures to avoid take must be included in the environmental document. Measures to avoid the impacts should include species-specific work windows, biological monitoring, installation of noise attenuation barriers, etc.

The gravel lot within the proposed Project area may provide suitable nesting habitat for ground-nesting birds such as Killdeer (*Charadrius vociferus*) and Mourning Dove (*Zenaida macroura*). Ground disturbance and other construction-related activities may result in take of these species. This potentially significant impact was not considered in the Initial Study. Impacts to bird species protected under the MBTA and Fish & G. Code as a result of Project activities may be considered significant under CEQA.

Recommendation or Recommended Mitigation Measure: CDFW recommends the project incorporate a pre-construction survey measure for nesting birds to identify any active nests within or adjacent to the Project to avoid or minimize impacts to nesting bird species. An example measure is outlined below.

BIO-2 – Nesting Bird Surveys

Nesting Bird Survey. If project-related activities are scheduled between February 1 to August 31 (the typical nesting season), a focused survey for nests shall be conducted by a qualified biologist within no greater than fifteen (15) calendar days prior to the beginning of Project-related activities. A qualified biologist shall survey a minimum radius of 500-feet for migratory birds and 1/2-mile for raptors around the Project area that can be accessed by the project proponent. The results of the survey shall be provided to San Joaquin Community Development Department upon completion. If no active nests are found, project activities may proceed as scheduled.

Active Nests. If an active nest is found, active nests should be avoided, and a no disturbance buffer shall be determined and established by a qualified biologist. The buffer shall be kept in place until after the nesting season or the qualified biologist confirms the young have fledged, are foraging independently, and the nest is no longer active for the season. The extent of these buffers shall be determined by the qualified biologist and will depend on the species present, the level of noise or construction disturbance, line of sight between the nest and the disturbance, ambient levels of noise and other disturbances, and other topographical or artificial barriers.

Project Delay. If a lapse in project-related work of fourteen (14) calendar days or longer occurs, the qualified biologist shall complete another focused survey before Project work can be reinitiated.

Permittee Responsibility. It is the project proponent's responsibility to comply with Fish and Game Code Sections 3503, 3503.5, and 3513, regardless of the time of year.

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 California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link <https://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://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

FILING FEES

The Project, as proposed, may 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 in order for the underlying Project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

CONCLUSION

Pursuant to Public Resources Code §21092 and §21092.2, CDFW requests written notification of proposed actions and pending decisions regarding the proposed project. Written notifications shall be directed to: California Department of Fish and Wildlife North Central Region, 1701 Nimbus Road, Rancho Cordova, CA 95670 or emailed to R2CEQA@wildlife.ca.gov.

CDFW appreciates the opportunity to provide early comments on the Project and to assist in identifying and mitigating Project impacts on biological resources. CDFW personnel are available for consultation regarding biological resources and strategies to minimize impacts. Questions regarding this letter of further coordination should be directed to Griffin Capehart, Environmental Scientist at (916) 767-9766 or Griffin.Capehart@wildlife.ca.gov.

Sincerely,

Griffin Capehart

Environmental Scientist, Habitat Conservation – Region 2

Griffin.Capehart@wildlife.ca.gov

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