



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Bay Delta Region
2825 Cordelia Road, Suite 100
Fairfield, CA 94534
(707) 428-2002
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Governor's Office of Planning & Research

September 9, 2022

Sep 13 2022

STATE CLEARINGHOUSE

Eric Wilberg, Senior Planner
Solano County
675 Texas Street
Fairfield, CA 94533
ejwilberg@solanocounty.com

Subject: U-19-09 (E&C Winery), Mitigated Negative Declaration, SCH No. 2021020257,
Solano County

Dear Mr. Wilberg:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from Solano County (County) for the U-19-09 (E&C Winery) (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

CDFW is submitting comments on the MND to inform the County, as the Lead Agency, of potentially significant impacts to biological resources associated with the Project.

CDFW ROLE

CDFW is a **Trustee Agency** with responsibility under CEQA pursuant to CEQA Guidelines section 15386 for commenting on projects that could impact fish, plant, and wildlife resources. CDFW is also considered a **Responsible Agency** if a project would require discretionary approval, such as permits issued under the California Endangered Species Act (CESA) or Native Plant Protection Act, the Lake and Streambed Alteration (LSA) Program, or other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources.

PROJECT DESCRIPTION SUMMARY

Proponent: E&C Winery LLC

Objective: Develop a new winemaking, custom crush, and hospitality facility on two parcels totaling approximately 70 acres. Primary Project activities include the conversion of approximately 10 acres of the 49-acre parcel from active agriculture to the winery facility.

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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Location: Approximately 0.5 miles northwest of the City of Fairfield in Solano County, and 0.3 miles southwest of the intersection of Rockville Road and Russell Road, on Assessor's Parcel Number 027-251-290, and at an approximate centroid of 38.242629°N, -122.102190°W.

Timeframe: Construction will take place in two phases over approximately 10 years.

REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a CESA Incidental Take Permit (ITP) must be obtained if the Project has the potential to result in "take" of plants or animals listed under CESA either during construction or over the life of the Project. **The Project has the potential to impact Swainson's hawk (*Buteo swainsoni*), a CESA listed as threatened species, as further described below.** Issuance of an ITP is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain an ITP.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially restrict the range or reduce the population of a threatened or endangered species. (Pub. Resources Code, §§ 21001, subd. (c) & 21083; CEQA Guidelines, §§ 15380, 15064, & 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency's FOC does not eliminate the Project proponent's obligation to comply with CESA.

Lake and Streambed Alteration

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et seq., for project activities affecting lakes or streams and associated riparian habitat. Notification is required for any activity that may substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake, or stream. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to LSA Notification requirements. **The Project would impact a drainage feature that may constitute a stream under Fish and Game Code section 1600 et seq., as further described below.** CDFW would consider the CEQA document for the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement until it has complied with CEQA as a Responsible Agency.

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Raptors and Other Nesting Birds

CDFW has jurisdiction over actions that may result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections protecting birds, their eggs, and nests include sections 3503 (regarding unlawful take, possession or needless destruction of the nests 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). Migratory birds are also protected under the federal Migratory Bird Treaty Act.

Fully Protected Species

Fully Protected Species may not be taken or possessed at any time and no licenses or permits may be issued for their take except for collecting these species for necessary scientific research, relocation of the bird species for the protection of livestock, or if they are a covered species whose conservation and management is provided for in a Natural Community Conservation Plan (Fish & G. Code, §§ 3511, 4700, 5050, & 5515). **The Project has the potential to impact white-tailed kite (*Elanus leucurus*), a Fully Protected Species.**

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the County in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document. Based on the Project's avoidance of significant impacts on biological resources with implementation of mitigation measures, including those CDFW recommends, CDFW concludes that an MND is appropriate for the Project.

I. Environmental Setting and Related Impact Shortcomings

MANDATORY FINDING OF SIGNIFICANCE. Does the Project have potential to substantially reduce the number or restrict the range of an endangered, rare or threatened species?

COMMENT 1: Swainson's Hawk, Page 26

Issue: The MND states that there is no special-status species habitat on the Project site. However, the Project site consists of active farmland and road margins which could be used as foraging habitat by Swainson's hawk according to the provided biological evaluation prepared by LSA (Appendix A). The Project site is within the draft Solano Multispecies Habitat Conservation Plan (HCP) Irrigated Agriculture Conservation Area,

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and according to the draft Solano HCP Mitigation Measure SH 1 for Swainson's hawk, Irrigated Agriculture Foraging habitat should be mitigated at a ratio of 1:1 (see Section 6.4.8 and Figure 4-21 of the draft Solano HCP at: <https://www.scwa2.com/solano-multispecies-habitat-conservation-plan/>).

Additionally, based on aerial imagery it appears that potentially suitable Swainson's hawk nesting habitat occurs within a 0.5-mile radius of the Project site; however, the MND and biological evaluation do not discuss the potential for nesting Swainson's hawk to be affected by construction activity. There are five Swainson's hawk records in the California Natural Diversity Database (CNDDDB) within five miles of the Project.

Specific impacts, why they may occur and be potentially significant: The Project would result in the removal of potential foraging habitat for Swainson's hawk. The breeding population of Swainson's hawks in California has declined by an estimated 91% since 1900 and the species continues to be threatened by on-going and cumulative loss of foraging habitat (CDFW 2016). Therefore, reduction of Swainson's hawk foraging habitat would be a potentially significant impact.

If the Project occurs during nesting season, any nesting Swainson's hawks within 0.5 miles of the Project site could be disturbed by Project activities resulting in nest abandonment or reduced health and vigor of young, take of the species pursuant to CESA, and a substantial reduction in the species' population, which would be a mandatory finding of significant impact (CEQA Guidelines, § 15065).

Recommended Mitigation Measures: To reduce potential impacts to Swainson's hawk to less-than-significant, CDFW recommends including the below mitigation measures.

Mitigation Measure Bio-1: Impacts to Swainson's hawk foraging habitat shall be quantified by a qualified biologist based on the final Project design plans, and the Project shall obtain written acceptance of the acreage of habitat impacts from CDFW. Consistent with the draft Solano HCP, prior to Project construction, the Project shall provide Swainson's hawk foraging habitat mitigation at a 1:1 ratio which shall include: 1) permanent preservation of the species' foraging habitat through a conservation easement and implementing and funding a long-term management plan in perpetuity, or 2) purchasing Swainson's hawk foraging habitat credits at a CDFW-approved mitigation bank in Solano County.

Mitigation Measure Bio-2: If Project activities are scheduled during the nesting season for Swainson's hawks (March 1 to September 15), prior to beginning work on the Project, a qualified biologist shall conduct surveys according to the *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central*

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Valley.² Survey methods shall be closely followed by starting early in the nesting season (late March to early April) to maximize the likelihood of detecting an active nest (nests, adults, and chicks are more difficult to detect later in the growing season because trees become less transparent as vegetation increases). Surveys shall be conducted: 1) within a minimum 0.5-mile radius of the Project site or a larger area if needed to identify potentially impacted active nests, and 2) for at least the two survey periods immediately prior to initiating Project-related construction activities. Surveys shall occur annually for the duration of the Project. The qualified biologist shall have a minimum of two years of experience implementing the survey methodology resulting in detections. If active Swainson's hawk nests are detected, the Project shall implement a 0.5-mile construction avoidance buffer around the nest until the nest is no longer active as determined by a qualified biologist. If take of Swainson's hawk cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP. CDFW Bay Delta Region staff is available to provide guidance on the ITP application process.

Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by CDFW or U.S. Fish and Wildlife Service (USFWS)?

COMMENT 2: Burrowing owl, Page 26

Issue: The Project site could be used as foraging habitat by burrowing owl (*Athene cunicularia*) according to the provided biological evaluation. There are two occurrences of burrowing owl within 5 miles of the Project. According to the draft HCP Mitigation Measure BO 1 for burrowing owl, Irrigated Agriculture Foraging habitat should be mitigated at a ratio of 1:1 (see Section 6.4.9 and Figure 4-21 of the draft HCP).

Additionally, the biological evaluation does not discuss the potential for burrowing owl to winter or nest within a 500-meter (1,640 feet) radius surrounding the Project site and be affected by construction activity.

Specific impacts, why they may occur and be potentially significant: The Project could result in burrowing owl nest abandonment, loss of young, reduced health and vigor of owlets, injury or mortality of adults, and permanent wintering (i.e., non-nesting) or nesting habitat loss. Additionally, the Project may result in a permanent reduction of burrowing owl foraging habitat in Solano County. Burrowing owl is a special-status species because the species' population viability and survival are adversely affected by risk factors such as precipitous declines from habitat loss, fragmentation, and degradation; evictions from nesting sites without habitat mitigation; wind turbine

² Swainson's Hawk Technical Advisory Committee, 2000.
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83990&inline>

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mortality; human disturbance; and eradication of California ground squirrels (*Spermophilus beecheyi*) resulting in a loss of suitable burrows required by burrowing owls for nesting, protection from predators, and shelter (Shuford and Gardali 2008; *Department of Fish and Game Staff Report on Burrowing Owl Mitigation* (2012); personal communication, CDFW Statewide Burrowing Owl Coordinator Esther Burkett, May 13, 2022). Preliminary analyses of regional patterns for breeding populations of burrowing owls have detected declines both locally in their central and southern coastal breeding areas, and statewide where the species has experienced breeding range retraction (*Department of Fish and Game Staff Report on Burrowing Owl Mitigation* (2012); personal communication, Esther Burkett, May 13, 2022). Based on the foregoing, if burrowing owls are wintering or nesting on or within 500 meters of the Project site, or if burrowing owl foraging habitat is removed, Project impacts to burrowing owl would be potentially significant.

Recommended Mitigation Measures: To reduce potential impacts to burrowing owl to less-than-significant, CDFW recommends including the below mitigation measures.

Mitigation Measure Bio-3: Impacts to burrowing owl foraging habitat shall be quantified and habitat mitigation shall be provided as described in recommended *Mitigation Measure Bio-1* above, consistent with the draft Solano HCP.

Mitigation Measure Bio-4: A qualified biologist shall conduct a habitat assessment and surveys, if warranted based on the habitat assessment, following the *Department of Fish and Game Staff Report on Burrowing Owl Mitigation* (2012) methodology.³ The habitat assessment and surveys shall encompass the Project area and a sufficient buffer zone to detect owls nearby that may be impacted based on the distances described in the above methodology. Habitat assessments and surveys shall occur each year of Project construction, as conditions may change annually and suitable refugia for burrowing owl, such as small mammal burrows, can be created within a few hours or days. Time lapses between surveys or Project activities shall trigger subsequent surveys including but not limited to a final survey within 24 hours prior to ground disturbance. The qualified biologist should have a minimum of two years of experience implementing the above methodology.

Mitigation Measure Bio-5: If the Project would impact an unoccupied nesting burrowing owl burrow or burrow surrogate (i.e., a burrow known to have been used in the past three years for nesting), or an occupied burrow (where a non-nesting owl would be evicted as described below), the following habitat mitigation shall be implemented prior to Project construction:

³ CDFW, 2012. <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline>

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Impacts to each nesting site shall be mitigated by permanent preservation of two occupied nesting sites with appropriate foraging habitat within Solano County, unless otherwise approved by CDFW, through a conservation easement and implementing and funding a long-term management plan in perpetuity. The same requirements shall apply for impacts to non-nesting evicted owl sites.

The Project may implement alternative methods for preserving habitat with written acceptance from CDFW.

Please be advised that CDFW does not consider exclusion of burrowing owls (i.e., passive removal of an owl from its burrow or other shelter) as a “take” avoidance, minimization, or mitigation measure for the reasons outlined below. Therefore, to mitigate the impacts of potentially evicting burrowing owls to less than significant, Mitigation Measure Bio-5 outlined above should require habitat compensation with the acreage amount identified in any eviction plan. The long-term demographic consequences of exclusion techniques have not been thoroughly evaluated, and the survival rate of excluded owls is unknown. Burrowing owls are dependent on burrows at all times of the year for survival or reproduction, therefore eviction from nesting, roosting, overwintering, and satellite burrows or other sheltering features may lead to indirect impacts or “take” which is prohibited under Fish and Game Code section 3503.5. All possible avoidance and minimization measures should be considered before temporary or permanent exclusion and closure of burrows is implemented to avoid “take.”

COMMENT 3: White-tailed kite and other nesting birds, Page 26

Issue: The MND and provided biological evaluation do not discuss the potential for white-tailed kite and other bird species to nest within a 500-foot radius surrounding the Project site and be affected by construction activity.

Specific impacts, why they may occur and be potentially significant: If the Project occurs during nesting season, nesting white-tailed kites or other avian species could be disturbed by Project activities resulting in nest abandonment or reduced health and vigor of young (Dunk 1995). White-tailed kite are a Fully Protected Species under Fish and Game Code section 3511, subdivision (b)(6). A Fully Protected Species may not be taken at any time except as described above, and any impacts to nesting white-tailed kite or other nesting birds would be potentially significant.

Recommended Mitigation Measure: To reduce potential impacts to white-tailed kite and other nesting birds to less-than-significant, CDFW recommends including the below mitigation measure.

Mitigation Measure Bio-6: To the extent feasible, construction activities should be scheduled to avoid the general nesting bird season (February 1 – August 15). If it is not

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possible to schedule Project activities outside the nesting bird season, pre-construction surveys for nesting birds shall be conducted by a qualified biologist within seven days of the start of construction within a minimum of 500 feet from the Project site to ensure that no nests will be disturbed during Project implementation. If a lapse in construction of more than 7 days occurs another survey shall be conducted.

If an active raptor nest is found within 500 feet of active work areas or a non-raptor nest is found within 250 feet of active work areas, a minimum no-work buffer of 500 feet for raptors and 250 feet for other birds shall be established around the nest and maintained until the nest becomes inactive, as determined by a qualified biologist, unless otherwise approved in writing by CDFW. All protective buffer zones shall be maintained until the nest becomes inactive.

Would the Project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, or regulations, or by CDFW or USFWS?

COMMENT 4: Streambed alteration, Page 27

Issue: The MND indicates that impacts to an irrigation canal including culvert work would not be subject to Fish and Game Code section 1600 et seq. as the canal is a constructed channel with no riparian habitat. However, constructed channels may be subject to the above Fish and Game Code, and based on a review of the California Aquatic Resources Inventory it appears the canal provides flows to Suisun Creek.

Specific impacts, why they may occur and be potentially significant: Impacts to the irrigation canal could result in downstream impacts to Suisun Creek, which supports riparian habitat. Riparian habitat is of critical importance to protecting and conserving the biotic and abiotic integrity of an entire watershed. When riparian habitat is substantially altered, riparian functions become impaired, thereby likely substantially adversely impacting aquatic and terrestrial species. Therefore, if the Project results in downstream impacts, such as reduced flow or contamination, impacts to Suisun Creek and associated riparian habitat would be potentially significant.

Recommended Mitigation Measure: To reduce potential impacts to Suisun Creek to less-than-significant, CDFW recommends including the below mitigation measure.

Mitigation Measure Bio-7: For Project activities that may substantially alter the bed, bank, or channel of the onsite irrigation canal, the Project shall consult with CDFW to determine if an LSA Notification is warranted, including providing CDFW with an aerial based map of aquatic features on the Project site showing their connectivity to Suisun Creek. If CDFW determines that the impacted canal is subject to Fish and Game Code section 1600 et seq., the Project shall submit an LSA Notification to CDFW prior to

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Project construction. If CDFW determines that an LSA Agreement is warranted, the Project shall comply with all required measures in the LSA Agreement.

Please be advised that an LSA Agreement obtained for this Project would likely require the above recommended mitigation measures, as applicable.

Editorial Comments and/or Suggestions

CDFW recommends that a list or table of all special-status species with the potential to occur at the Project be included in the MND or publicly available biological report. This list or table should include the source of information about each potentially occurring special-status species (e.g., CNDDDB), and discussion of why or why not the species has potential to occur at the Project (e.g., will not occur due lack of salt marsh habitat at or near the Project) or adjacent to the Project where the species may be indirectly impacted by, for example, visual or auditory disturbances, or hydrological modifications.

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 filled out and submitted online at the following link:

<https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link:

<https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

ENVIRONMENTAL DOCUMENT FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the environmental document filing fee is required in order for the underlying Project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist the County in identifying and mitigating Project impacts on biological resources.

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Questions regarding this letter or further coordination should be directed to Alex Single, Environmental Scientist, at (707) 799-4210 or Alex.Single@wildlife.ca.gov; or Melanie Day, Senior Environmental Scientist (Supervisory), at Melanie.Day@wildlife.ca.gov or (707) 210-4415.

Sincerely,

DocuSigned by:

Erin Chappell
Regional Manager
Bay Delta Region

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2021020257)

REFERENCES

- CDFW. 2016. Status Review: Swainson's Hawk (*Buteo swainsoni*) in California, reported to the California Fish and Game Commission, five-year status report. State of California Natural Resources Agency, Sacramento, CA.
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=133622&inline>
- CDFW. 2012. Department of Fish and Game Staff Report on Burrowing Owl Mitigation. State of California Natural Resources Agency, Sacramento, CA.
- Dunk, J. 1995. White-tailed kite (*Elanus leucurus*), version 2.0. P. G. Rodewald, editor. The Birds of North America1. Cornell Lab of Ornithology, Ithaca, NY, USA.
- Shuford, W. D., and Gardali, T., editors. 2008. California Bird Species of Special Concern: A ranked assessment of species, subspecies, and distinct populations of birds of immediate conservation concern in California. Studies of Western Birds 1. Western Field Ornithologists, Camarillo, California, and California Department of Fish and Game, Sacramento.
- Solano County Water Agency. 2014. Draft Solano Multispecies Habitat Conservation Plan. <https://www.scwa2.com/solano-multispecies-habitat-conservation-plan/>