



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](http://www.wildlife.ca.gov)

**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



Governor's Office of Planning & Research

**May 27 2021**

May 27, 2021

## STATE CLEARINGHOUSE

Mr. Eric Wilberg  
Solano County Department of Resource Management  
675 Texas Street  
Fairfield, CA 94533  
[ejwilberg@solanocounty.com](mailto:ejwilberg@solanocounty.com)

Subject: Bally Keal Vineyards, LLC U-19-08, Mitigated Negative Declaration,  
SCH No. 2021050118, 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 the County of Solano (County) for the Bally Keal Vineyards, LLC U-19-08 Project (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

CDFW is submitting comments on the MND to inform the County, as the Lead Agency, of our concerns regarding potentially significant impacts to sensitive 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:** Bally Keal Vineyards, LLC

**Objective:** The Project would: 1) construct an approximately 5,000-square-foot expansion of an existing accessory building and convert the existing accessory building into a winery with distillery, tasting rooms, and outdoor patio, 2) convert an existing 12,000-square-foot storage building into a special events facility, 3) construct a new

---

<sup>1</sup> 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.

Mr. Eric Wilberg  
Solano County Department of Resource Management  
May 27, 2021  
Page 2

approximately 0.25-acre paved parking lot with approximately 73 parking spaces, 4) widen the driveway to the proposed winery and construct 60 parking spaces along the driveway, 5) construct 14 additional parking spaces adjacent to the proposed winery and event center. Primary Project activities include removing vineyard, grading, excavation, trenching, building construction, concrete pouring, paving, and landscaping.

**Location:** The Project is located at 4286 Suisun Valley Road, approximately one mile northwest of the City of Fairfield, in unincorporated Solano County. The Project site is approximately 0.6 miles northeast of the intersection of Suisun Valley Road and Rockville Road. Suisun Valley Road borders the western side of the Project and Suisun Creek borders the eastern side. The Project will occur on Assessor's Parcel Number 0027-030-010. The approximate Project centroid is Latitude 38.25124°N, Longitude 122.11618°W.

**Timeframe:** Project construction would take up to three years to complete.

## **ENVIRONMENTAL SETTING**

The Project site is located on part of a 79.29-acre parcel with approximately 16 acres of developed land consisting of a residence, storage structures, and associated infrastructure, and the remaining land composed of vineyards. Suisun Creek flows north-to-south on the eastern edge of the parcel, approximately 500 to 1,000 feet from the proposed Project site. Putah South Canal is located approximately 800 feet to the west of the parcel, west of Suisun Valley Road. Ornamental trees and other landscaping are present on the Project site and the MND identifies that trees have been used by nesting birds (MND Appendix C). Nearby land is dominated by agricultural use with some low-density housing, the community of Rockville to south, and open space to the west. Special-status species with the potential to occur on or near the Project site include, but are not limited to, Swainson's hawk (*Buteo swainsoni*), listed as threatened pursuant to CESA; burrowing owl (*Athene cunicularia*), a California Species of Special Concern (SSC); pallid bat (*Antrozous pallidus*), an SSC; and white-tailed kite (*Elanus leucurus*), a Fully Protected Species.

## **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, such as Swainson's hawk, either during construction or over the life of the Project. 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.

Mr. Eric Wilberg  
Solano County Department of Resource Management  
May 27, 2021  
Page 3

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 Agreement**

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 notification requirements. In those cases, CDFW will 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.

### **Raptors and Other Nesting Birds**

CDFW also 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, such as white-tailed kite, may not be taken or possessed at any time (Fish and Game Code, §§ 3511, 4700, 5050, & 5515).

### **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. Based on the Project's avoidance of significant impacts on biological resources, in part through implementation of CDFW's below recommendations, CDFW concludes that an MND is appropriate for the Project.

Mr. Eric Wilberg  
Solano County Department of Resource Management  
May 27, 2021  
Page 4

## **Environmental Setting and Related Impact Shortcoming**

### ***Swainson's Hawk***

The MND does not identify that Swainson's hawk, listed as threatened pursuant to CESA, may occur near the Project site. Potentially suitable nesting trees exist in the riparian habitat of Suisun Creek, approximately 500 feet to the east of the Project site. In addition, other trees in the vicinity of the Project site may provide suitable nesting habitat. The agricultural fields, rangeland, and open space near the Project provide potentially suitable foraging habitat. There are California Natural Diversity Database (CNDDDB) occurrences of nesting Swainson's hawk approximately 1.8 miles northeast of the Project site and approximately 2.9 miles to the south. In addition, two unprocessed CNDDDB records exist approximately 2.4 miles to the west. Swainson's hawks are present within the vicinity of the Project site and there is potentially suitable habitat for the species in the vicinity of the Project where the species could be impacted.

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). Swainson's hawks could be disturbed by Project activities, resulting in potentially significant impact to Swainson's hawk through nest abandonment or reduced health and vigor of young. To reduce impacts to less-than-significant, CDFW recommends including the following Mitigation Measures.

#### *Mitigation Measure BIO-1: Swainson's Hawk Surveys*

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 Valley*.<sup>2</sup> Survey methods should 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

---

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

Mr. Eric Wilberg  
Solano County Department of Resource Management  
May 27, 2021  
Page 5

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.

### ***Burrowing Owl***

The MND does not identify that burrowing owl, an SSC, may occur near the Project site where the species could be impacted. There are two documented occurrences of burrowing owl within 3.1 and 3.7 miles southeast of the Project site according to the CNDDDB. In accordance with CDFW's *Staff Report on Burrowing Owl Mitigation, Appendix C: Habitat Assessment and Reporting Details*<sup>3</sup> (CDFW 2012 Staff Report), owls may be disturbed up to 1,640 feet (500 meters) from a project. Burrowing owls are present within the vicinity of the Project site and there is potentially suitable habitat for the species in the vicinity of the Project where the species could be impacted.

The Project could result in burrowing owl nest abandonment, loss of young, reduced health and vigor of owlets, or injury or mortality of adults. Additionally, the Project may result in a permanent reduction of burrowing owl habitat in Solano County. Burrowing owls are an SSC due to population decline and breeding range retraction. Based on the above, the Project may potentially significantly impact burrowing owls. To reduce impacts to less-than-significant CDFW recommends the following Mitigation Measures.

#### *Mitigation Measure BIO-2A: Burrowing Owl Habitat Assessment, Surveys, and Avoidance*

Prior to Project activities, a habitat assessment shall be performed following *Appendix C: Habitat Assessment and Reporting Details* of the CDFW 2012 Staff Report. The habitat assessment shall extend at least 492 feet (150 meters) from the Project site boundary and include burrows and burrow surrogates. If the habitat assessment identifies potentially suitable burrowing owl habitat, then a qualified biologist shall conduct surveys following the CDFW 2012 Staff Report survey methodology. Surveys shall encompass the Project site and a sufficient buffer zone to detect owls nearby that may be impacted commensurate with the type of disturbance anticipated, as outlined in the CDFW 2012 Staff Report, and include burrow surrogates such as culverts, piles of concrete or rubble, and other non-natural features, in addition to burrows and mounds. Time lapses between surveys or Project activities shall trigger subsequent surveys, as determined by a qualified biologist, including but not limited to a final survey within 24 hours prior to ground disturbance. The qualified biologist shall have a minimum of two years of experience implementing the CDFW 2012 Staff Report survey methodology resulting in detections. Detected nesting burrowing owls shall be avoided pursuant to the buffer zone prescribed in the CDFW 2012 Staff Report and any passive relocation plan for non-nesting owls shall be subject to CDFW review.

---

<sup>3</sup> Department of Fish and Wildlife (then Fish and Game), 2012.  
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline>

Mr. Eric Wilberg  
Solano County Department of Resource Management  
May 27, 2021  
Page 6

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-2B outlined below 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.”

*Mitigation Measure BIO-2B: Burrowing Owl Habitat Mitigation*

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 above), the following habitat mitigation shall be implemented prior to Project construction:

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.

***Nesting Birds***

The MND states that the Project site provides potential habitat for nesting birds (page 25, Appendix C). During the January 7, 2021 biological site assessment, “several nest structures assumed to belong to passerine songbirds were observed”. Birds may nest in ornamental trees or landscaping present within and adjacent to the Project.

Bird species that may be considered common have still declined over the past 50 years. Human activity and removal of habitat has contributed to the loss of a significant proportion of the total number of birds in the United States and Canada since the 1970s (Rosenburg et al. 2019). Nesting birds may be disturbed by Project noise or human presence, which could lead to nest abandonment or reduced health and vigor of young, a potentially significant impact. To reduce impacts to less-than-significant, CDFW recommends including the following Mitigation Measure.

Mr. Eric Wilberg  
Solano County Department of Resource Management  
May 27, 2021  
Page 7

### *Mitigation Measure BIO-3: Nesting Bird Surveys*

If construction, grading, or other Project-related activities are scheduled during the nesting season, February 1 to September 1, a focused survey for active nests shall be conducted by a qualified biologist within 7 days prior to the beginning of Project-related activities. If an active nest is found, the qualified biologist shall delineate a no-work-zone buffer distance around the nest that is site and species specific using high visibility fencing or flagging. The buffer distance shall be specified to protect the bird's normal behavior and prevent nesting failure or abandonment. No work shall occur within the no-work-zone until the nest is no longer active as determined by a qualified biologist. Fencing or flagging material shall be removed and properly disposed after Project activities are complete or the nest is no longer active, as determined by a qualified biologist. If a lapse in Project-related work of 7 days or longer occurs, another focused survey shall occur before Project work is reinitiated.

### ***Pallid Bat***

The Project provides potentially suitable roost structures and foraging habitat for pallid bat, an SSC, and other bat species. The pallid bat ranges<sup>4</sup> throughout California and occupies a wide variety of habitat types (Zeiner et al. 1990). In addition, the California Bay Area Linkage Network identifies the habitat surrounding the Project area as a core area for pallid bats and notes that these bats can use vineyards for invertebrate foraging (Penrod et al. 2013). Pallid bats can roost in buildings or under porches and open structures (*ibid.*). The Project site contains potentially suitable roost buildings and foraging habitat and is in the vicinity of potentially suitable habitat.

Pallid bats are highly sensitive to human disturbance (Zeiner et al. 1990, Penrod et al. 2013). Project activities that convert and expand existing buildings could cause roost or young abandonment and injury or mortality of bats, a potentially significant impact. To reduce impacts to less-than-significant, CDFW recommends including the following Mitigation Measure.

### *Mitigation Measure BIO-4: Roosting Bat Surveys*

Prior to Project activities:

1. A qualified bat biologist shall conduct surveys for pallid bats prior to Project construction. The survey methodology shall include an initial habitat assessment and survey several months before project construction, to facilitate sufficient time

---

<sup>4</sup> CDFW maintains range maps and life history accounts for all terrestrial species in California. The pallid bat range map is available at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=2350&inline=1>

Mr. Eric Wilberg  
Solano County Department of Resource Management  
May 27, 2021  
Page 8

to implement the exclusion plan described below, and the types of equipment used for detection.

2. Biologist resumes and a survey methodology shall be submitted to the County for approval prior to implementing surveys. Biologist resumes shall reflect at least two years of experience conducting bat surveys that resulted in detections of pallid bat including the project name, dates, and person who can verify the experience. Ideally, the resume should also indicate that the biologist possesses a state-issued Scientific Collecting Permit for the relevant species.
3. An exclusion plan shall be submitted to the County for approval if bats are detected during the above survey. The plan shall: 1) recognize that both the maternity and winter roosting seasons are vulnerable times for bats and require exclusion outside of these times, 2) identify suitable areas for excluded bats to disperse or require installation of appropriate dispersal habitat for the bats, such as artificial bat houses, and an associated management and monitoring plan with necessary funding, and 3) be implemented prior to project construction and allow bats to leave the building unharmed.

CDFW staff may be available to assist the County with review of the above-referenced materials.

## GENERAL SUGGESTIONS

In addition to the above recommendations, CDFW encourages landscaping using native trees and shrubs to benefit native wildlife such as nesting birds and insect pollinators. The removal of habitat for birds from human activities has contributed to the loss of a significant proportion of birds in the United States and Canada since the 1970s (Rosenburg et al. 2019). Similarly, insect pollinators such as monarch butterflies and native bees have declined drastically relative to 1990 levels (Xerces Society Western Monarch Thanksgiving Count 2021, Xerces Society et al. 2018, Forister et al. 2011). Planting native trees, shrubs, and flowering species, is an opportunity to improve conditions for native birds and insects. It is unclear in the MND what plant species are proposed for the landscaping of the Project site (page 12, figure 5), and CDFW recommends native species such as valley oaks (*Quercus lobata*), western redbud (*Cercis occidentalis*), and narrow leaf milkweed (*Asclepias fascicularis*) where possible.<sup>5</sup>

---

<sup>5</sup> For further native species recommendations and planting tips, review the Willis L. Jepson Chapter of the California Native Plant Society document *Native Landscape Planting Guide*: [https://jepson.cnps.org/images/horticulture/plans/willis\\_jepson-planting\\_guide.pdf](https://jepson.cnps.org/images/horticulture/plans/willis_jepson-planting_guide.pdf) and the Xerces Society document *Pollinator Plants: California*: [https://xerces.org/sites/default/files/2018-05/17-045\\_02\\_XercesSoc\\_Pollinator-Plants\\_California\\_web-3page.pdf](https://xerces.org/sites/default/files/2018-05/17-045_02_XercesSoc_Pollinator-Plants_California_web-3page.pdf)



Mr. Eric Wilberg  
Solano County Department of Resource Management  
May 27, 2021  
Page 9

## 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, online field survey form, and contact information for CNDDDB staff can be found at the following link: <https://wildlife.ca.gov/data/CNDDDB/submitting-data>.

## 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 operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish and Game 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.

Questions regarding this letter or further coordination should be directed to Ms. Amanda Culpepper, Environmental Scientist, at [amanda.culpepper@wildlife.ca.gov](mailto:amanda.culpepper@wildlife.ca.gov); or Ms. Melanie Day, Senior Environmental Scientist (Supervisory), at [melanie.day@wildlife.ca.gov](mailto:melanie.day@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
BE74D4C93C604EA...  
Gregg Erickson  
Regional Manager  
Bay Delta Region

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2021040583)  
Jamielynn Harrison, Solano County – [jbharrison@solanocounty.com](mailto:jbharrison@solanocounty.com)

Mr. Eric Wilberg  
Solano County Department of Resource Management  
May 27, 2021  
Page 10

## REFERENCES

- Brehme, C.S., Hathaway, S.A.; Booth, R.; Smith, B.H.; and Fisher, R.N.. 2015. Research of American Badgers in Western San Diego County, 2014. Data Summary prepared for California Department of Fish and Wildlife and the San Diego Association of Governments. 24pp. (42pp. with Appendix).
- 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>
- Forister, M.L.; Jahner, J. P.; Casner, K. L.; Wilson, J.S.; and Shapiro, A. M. 2011. The race is not to the swift: Long-term data reveal pervasive declines in California's low-elevation butterfly fauna. *Ecology*: 92 (12): 2222-2235.
- Penrod, K., Garding, P.E.; Paulman, C.; Beier, P.; Weiss, S.; Schaefer, N.; Branciforte, R.; and Gaffney, K. 2013. Critical Linkages: Bay Area & Beyond. Produced by Science & Collaboration for Connected Wildlands, Fair Oaks, CA in collaboration with the Bay Area Open Space Council's Conservation Lands Network. Available at [http://www.scwildlands.org/reports/CriticalLinkages\\_BayAreaAndBeyond.pdf](http://www.scwildlands.org/reports/CriticalLinkages_BayAreaAndBeyond.pdf)
- Rosenburg, Kenneth V.; Dokter, Adriaan M.; Blancher, Peter J.; Sauer, John R.; Smith, Adam C.; Smith, Paul A.; Stanton, Jessica C.; Panjabi, Avrind; Helft, Laura; Parr, Michael; and Marra, Peter P. 2019. Decline of the North American Avifauna. *Science*: 120-124.
- Xerces Society, Defenders of Wildlife, and Center for Food Safety. 2018. A petition to the State of California Fish and Game Commission to list the Crotch bumble bee (*Bombus crotchii*), Franklin's bumble bee (*Bombus franklini*), Suckley cuckoo bumble bee (*Bombus suckleyi*), and western bumble bee (*Bombus occidentalis occidentalis*) as endangered under the California Endangered Species Act. Available at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=161902&inline>
- Xerces Society Western Monarch Thanksgiving County. 2021. Western Monarch Thanksgiving County Data, 1997-2020. Available at [www.westernmonarchcount.org](http://www.westernmonarchcount.org).
- Zeiner, D.C.; Laudenslayer, W.F., Jr.; Mayer, K.E.; and White, M. 1990. California's Wildlife. Vol. III. California Department of Fish and Game, Sacramento, CA.