



State of California – Natural Resources Agency
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GAVIN NEWSOM, Governor
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January 6, 2022

Mr. Donald Barrella
County of Napa
1195 Third Street, Suite 210
Napa, CA 94559
donald.barrella@countyofnapa.org

Subject: Atlas View II Vineyard, Mitigated Negative Declaration, SCH No. 2021110284,
Napa County

Dear Mr. Barrella:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from the County of Napa for the Atlas View II Vineyard (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

CDFW is submitting comments on the MND to inform the County of Napa (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: Atlas View, LLC

Objective: The Project would convert 20.2 acres of a 115.75-acre undeveloped parcel into vineyard with associated infrastructure, including irrigation lines and a 100,000-gallon water tank. Primary Project activities include clearing vegetation, earth-moving,

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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grading, excavation, trenching, installing irrigation lines, installing vineyard trellis, pouring concrete, and planting cultivated grape rootstock.

Location: The Project is located at 4300 Atlas Peak Road, in the census designated place of Atlas, in unincorporated Napa County. The approximate centroid of the Project is Latitude 38.43532°N, Longitude 122.23838°W and the Assessor's Parcel Number is 032-120-015-000.

Timeframe: The Project would take approximately two years.

ENVIRONMENTAL SETTING

The Project covers approximately 20.2 acres of undeveloped land consisting of non-native annual grassland and native purple needle grass (*Nassella pulchra*) grassland, coast live oak (*Quercus agrifolia*) woodland, California black oak (*Q. kelloggii*) forest and woodland, and mixed oak forest and woodland. The Project is surrounded predominantly by rural residences, agriculture, and undeveloped land. Fourteen unnamed streams are present on the Project parcel, but all will be completely avoided by the Project. Special-status species with the potential to occur in or near the Project area include, but are not limited to, California red-legged frog (*Rana draytonii*), federally listed as threatened and a California Species of Special Concern (SSC); Northwest/North Coast clade foothill yellow-legged frog (*Rana boylei*), SSC; pallid bat (*Antrozous pallidus*), SSC; western red bat (*Lasiurus blossevillii*), SSC; western pond turtle (*Emys marmorata*), SSC; American badger (*Taxidea taxus*), SSC; Jepson's navarretia (*Navarretia jepsonii*), California Rare Plant Rank (CRPR) 4.3²; loggerhead shrike (*Lanius ludovicianus*), SSC; and white-tailed kite (*Elanus leucurus*), a Fully Protected species.

REGULATORY REQUIREMENTS

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

² CRPR 4 plants are considered watch list plants that have a limited distribution in California. Further information on CRPR is available in CDFW's *Special Vascular Plants, Bryophytes, and Lichens List* available at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=109383&inline> and on the California Native Plant Society webpage <https://www.cnps.org/rare-plants/cnps-rare-plant-ranks>.

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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 & G. Code, §§ 3511, 4700, 5050, & 5515).

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 will 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. **The MND indicates that 14 streams on the Project parcel would be avoided, however if the Project is modified and impacts a stream, LSA Notification may be required.** Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to notification requirements. CDFW, as a Responsible Agency under CEQA, will consider the CEQA document for the Project. CDFW may not execute the final LSA Agreement until it has complied with CEQA as the responsible agency.

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.

Environmental Setting and Related Impact Shortcoming

Sensitive Natural Community Removal

The MND identifies that the Project is located within mixed oak woodland and grassland, including California black oak associations and purple needle grass (MND pages 2, 14, and 18). There are multiple California black oak associations that CDFW identifies as sensitive natural communities³, including the California black oak-madrone (*Arbutus menziesii*)-coast live oak association, the coast live oak-California black oak association, and the coast live oak-Oregon white oak (*Q. garryanna*)-California black oak association (CDFW 2021). CDFW also considers purple needle grass associations to be sensitive natural communities (ibid.). The MND identifies the oak woodland at the alliance level,

³ Additional references and information about sensitive natural communities is available at <https://wildlife.ca.gov/Data/VegCAMP/Natural-Communities>

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but does not specify which associations are present, making it difficult to understand which sensitive natural communities would be impacted by the Project. In addition, the MND states that purple needle grass communities would be avoided but then indicates that additional purple needle grass locations could be found during pre-construction botanical surveys (MND page 14). It is therefore unclear whether the Project would impact purple needle grass communities. The MND identifies that mitigation for tree removal and loss of oak woodland will be accomplished on the Project parcel through permanent protection of oak woodland at a 2:1 mitigation to impact ratio (MND pages 19 and 20), and that individual purple needle grass plants impacted during the Project would be mitigated on a per-plant basis at a 2:1 ratio (MND page 14).

The Project would remove approximately 254 trees from the Project area, some which may be from a sensitive natural community (MND page 18) and may remove purple needle grass communities. CDFW recommends that the MND clarify how many trees and how much acreage would be removed from any sensitive natural community. Sensitive natural communities are endemic communities that have limited distribution and are often vulnerable to project impacts (CDFW 2018a). Mature tree removal removes important food resources such as acorns from the area and removes habitat for a variety of tree nesting birds and tree roosting bats. 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). Based on the above, the loss of any sensitive natural community is a potentially significant impact. If any sensitive natural community would be impacted, to reduce impacts to less-than-significant, CDFW recommends including the following mitigation measure in the MND.

Mitigation Measure BR-3: Sensitive Natural Community Habitat Mitigation

Loss of sensitive natural communities, including oak woodland associations and purple needle grass associations identified as sensitive, shall be mitigated through permanent habitat protection at a 3:1 mitigation to impact ratio. Compensatory habitat shall be of equal or greater quality than the impacted habitat as determined by a qualified biologist, or a habitat enhancement plan shall be prepared and implemented by a qualified biologist to achieve at least equal habitat quality prior to Project construction. For any habitat enhancement, to ensure a successful planting effort, all plantings shall be monitored and maintained as necessary for a minimum of five years. Oak trees, other trees, and all other plantings shall each have a minimum of 80% survival at the end of the minimum monitoring period. If the planting survival is not meeting this goal, then the Project shall implement replacement planting, additional watering, invasive exotic eradication, or any other practice, to achieve these requirements. Replacement plants shall be monitored with the same survival requirements for five years after planting. Oak plantings shall come from nursery stock grown from locally sourced acorns, or from acorns gathered locally, preferably from the same watershed in which they are planted.

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The trees should be able to survive the last two years of a minimum five-year monitoring period without irrigation.

American Badger

The Project is within the range⁴ of the American badger, an SSC. The Project is located within grassland habitat and oak woodland habitat that may be suitable for American badger. Badgers range throughout most of California and can dig burrows in a single day; therefore, the species may occupy the Project site and adjacent habitat prior to Project construction (Ministry of Environment Ecosystems 2007 as cited in Brehme et al. 2015). Additionally, the California Wildlife Habitat Relationships Predicted Habitat Suitability for the grassland portions of the site is High Suitability. Lastly, the Critical Linkages: Bay Area and Beyond project identifies the Project area as within a core area capable of supporting at least 50 American badgers (Penrod et al. 2013).

The Project may result in injury or mortality to adult or young badgers, or burrow abandonment. Therefore, project impacts to American badger would be potentially significant.

To reduce impacts to less-than-significant, CDFW recommends that the MND: (1) further analyze the potential for American badger to occur on and adjacent to the Project site, and (2) include mitigation measures to ensure impacts are reduced to less-than-significant. These measures may include a qualified biologist surveying for the species including adjacent habitat prior to construction, avoiding occupied burrows including a sufficient buffer approved by CDFW, and preparing and implementing a CDFW-approved relocation plan if badgers are found on or adjacent to the Project site and cannot be avoided.

Special-Status Herpetofauna

The MND states that foothill yellow-legged frog, California red-legged frog, and western pond turtle, collectively special-status herpetofauna, have the potential to occur on or near the Project (MND page 14 and Exhibit B-1). In addition, the California Natural Diversity Database (CNDDDB) identifies occurrences of all three species within three miles of the Project. While the Project would not impact the streams on the parcel, it may result in impacts within 500 feet of the streams. Foothill yellow-legged frogs have been documented moving up to 500 feet from the wetted channel of a stream across upland habitat (CDFW 2018b). California red-legged frogs can use upland habitat one to two miles away from breeding ponds, including habitat such as rocks, small mammal burrows, logs, densely vegetated areas, and even man-made structures (i.e., culverts, livestock troughs, spring-boxes, and abandoned sheds) (USFWS 2017). Western pond

⁴ The American badger range map is available at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=2598&inline=1>

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turtles can move more than four miles up or down stream; therefore, the Project area is within the mobility range of western pond turtle observations (Holland 1994). The species may also survive outside of aquatic habitat for several months in uplands up to several hundred feet from aquatic habitat (Purcell et al. 2017; Zaragoza et al. 2015). The Project could impact upland dispersal habitat or upland refugia for special-status herpetofauna through vegetation removal and grading activities, potentially injuring or killing them. Based on the above, the Project may substantially adversely impact special-status herpetofauna. To reduce potential impacts to less-than-significant, CDFW recommends including the following mitigation measure in the MND.

Mitigation Measure BR-4: Special-Status Herpetofauna Survey

For all Project activities that occur within 500 feet of stream or wetland habitat, prior to ground-disturbing activities, a qualified biologist shall conduct a pre-construction survey within 48 hours prior to the start of Project activities, focusing on the presence of foothill yellow-legged frog, California red-legged frog, and western pond turtle and their nests. If any of these special-status species are discovered during the survey, Project activities shall not begin until CDFW has been consulted and approved in writing measures to avoid and minimize impacts to special-status species, and the measures have been implemented. If California red-legged frog is encountered, the Project shall consult with the U.S. Fish and Wildlife Service pursuant to the federal Endangered Species Act and obtain any required authorization for impacts.

EDITORIAL SUGGESTION

In addition to the above recommendations, CDFW notes that the MND includes a combination of Mitigation Measures, Environmental Commitments, and Conditions of Approvals. All three of these are requirements for the Project, and all act as mitigation as defined in the CEQA Guidelines, by avoiding, minimizing, and compensating for Project impacts (Cal. Code Regs., tit. 14, § 15370). CDFW recommends identifying Environmental Commitments and Conditions of Approvals as Mitigation Measures for the purposes of CEQA to provide clarity and avoid any confusion about Project requirements associated with the MND.

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>.

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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 & 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.

Questions regarding this letter or further coordination should be directed to Ms. Amanda Culpepper, Environmental Scientist, at (707) 428-2075 or Amanda.Culpepper@wildlife.ca.gov, or Ms. Melanie Day, Senior Environmental Scientist (Supervisory), at Melanie.Day@wildlife.ca.gov or (707) 210-4415.

Sincerely,

DocuSigned by:

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Stephanie Fong
Acting Regional Manager
Bay Delta Region

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2021110284)

REFERENCES

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