



A Tradition of Stewardship  
A Commitment to Service

**Planning, Building & Environmental Services**

1195 Third Street, Suite 210  
Napa, CA 94559  
[www.countyofnapa.org](http://www.countyofnapa.org)

**David Morrison**  
Director

To: Laverne Bill, Yocha Dehe Wintun Nation P.O. Box 18, Brooks CA 95606 (ID# 02062019-05)  
John Schwartz, 4400 Atlas Peak Road, Napa CA, 94558  
Stephanie Fong, CDFW, 2825 Cordelia Road, Suite 100, Fairfield CA 94534  
Michael D. Setty, 4398 Atlas Peak Road, Napa CA 94558  
Manuel Pires, Atlas View LLC., 1535 Sage Canyon Road, St. Helena CA 94574  
Napa Valley Vineyard Engineering, 176 Main Street, Suite B St. Helena CA 94574

From: Donald Barrella

Subject: Response to Comments – Atlas View II Vineyard Conversion  
Agricultural Erosion Control Plan (ECPA) File #P19-00171-ECPA  
Assessor's Parcel Number 032-120-015  
4300 Atlas Peak Road, Napa, CA  
SCH #2021110284

Date: March 4, 2022

Attached is a copy of the Response to Comments for the subject project. The report contains our responses to comments provided on the Initial Study/Mitigated Negative Declaration dated November 19, 2021.

The County could approve the Project on or after **Friday March 4, 2022**.

Should you have any questions, please call Donald Barrella at 707-299-1338 or via e-mail to [donald.barrella@countyofnapa.org](mailto:donald.barrella@countyofnapa.org)

Respectfully,

A handwritten signature in blue ink, appearing to read "Donald Barrella".

Donald Barrella  
Planner III

cc: Brian Bordona, Assistant Director PBES (via email)  
Patrick Ryan, Deputy Director PBES (via email)  
Daniel Hornet, Assistant Engineer, Engineering Division (via email)  
Laura Anderson, Deputy County Counsel (via email)



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**David Morrison**  
Director

TO: Application File #P19-00171-ECPA

FROM: Donald Barrella, Planner III

DATE: March 4, 2022

RE: Response to Comments – Atlas View II Vineyard Conversion  
Agricultural Erosion Control Plan (ECPA) File #P19-00171-ECPA  
Assessor’s Parcel Number 032-120-015  
4300 Atlas Peak Road, Napa, CA  
SCH #2021110284

**INTRODUCTION**

This memorandum has been prepared by the County Conservation Division to respond to comments received by the Napa County Department of Planning, Building and Environmental Services (Napa County) on the Proposed Initial Study/Mitigated Negative Declaration (Proposed IS/MND) for the Atlas View II Vineyard Conversion #P19-00171-ECPA (proposed project). An IS/MND is an informational document prepared by a Lead Agency, in this case, Napa County, that provides environmental analysis for public review. The agency decision-maker considers it before taking discretionary actions related to any proposed project that may have a significant effect on the environment. The Proposed IS/MND analyzed the impacts resulting from the proposed project and where applicable, identified mitigation measures to minimize the impacts to less-than-significant levels.

This memorandum for the Atlas View II Vineyard Conversion ECPA Proposed IS/MND, presents the name of the persons and organizations commenting on the Proposed IS/MND and responses to the received comments. This memorandum, in combination with the Proposed IS/MND, completes the Final IS/MND.

**CEQA PROCESS**

In accordance with Section 15073 of the CEQA Guidelines, Napa County submitted the Proposed IS/MND to the State Clearinghouse for a 30-day public review period starting November 22, 2021. In addition, Napa County circulated a Notice of Intent to Adopt the Proposed IS/MND to interested agencies and individuals.

On November 30, 2021, the County extended the 30 day public comment period an additional 17 days from its original closure date of December 21, 2021. The County notified the State Clearinghouse on November 30, 2021 of this extension in accordance with Section 15073 of the CEQA Guidelines, and recirculated and republished the notice of intent on December 2, 2021. The public review period ended on January 7, 2022. During the public review period, Napa County received four comment letters on the Proposed IS/MND.

Table 1 below lists the entities that submitted comments on the Proposed IS/MND during the public review and comment period. The comment letters are attached as identified in Table 1.

**TABLE 1  
COMMENTS RECEIVED ON THE PROPOSED IS/MND**

| Comment N <sup>o</sup> /<br>Attachment | Comments Received from                            | Date Received     |
|--|---|-------------------|
| 1                                      | Yocha Dehe Wintun Nation                          | December 22, 2021 |
| 2                                      | John Schwartz, 4400 Atlas Peak Road, Napa CA      | December 3, 2021  |
| 3                                      | California Department of Fish and Wildlife (CDFW) | January 6, 2022   |
| 4                                      | Michael D. Setty, 4398 Atlas Peak Road, Napa CA.  | January 7, 2022   |

In accordance with CEQA Guidelines Section 15074(b), Napa County considers the Proposed IS/MND together with comments received, both during the public review process and before action on the project, prior to adopting the Proposed IS/MND and rendering a decision on the project. The CEQA Guidelines do not require the preparation of a response to comments for negative declarations; however, this memorandum responds to comments received. Based on review of the comments received, no new potentially significant impacts beyond those identified in the Proposed IS/MND would occur, no new or additional mitigation measures, or project revisions, must be added to reduce impacts to a less than significant level, and none of the grounds for recirculation of the Proposed IS/MND as specified in State CEQA Guidelines Section 15073.5 have been identified. All potential impacts identified in the Proposed IS/MND were determined to be less-than-significant or less-than-significant with mitigation incorporated.

This Response to Comments Memorandum will also be provided to the owner/Permittee as **notice** of potential Local, State and Federal permits, agreements or plans necessary to implement and/or operate this project as identified within the attached agency comment letter. Furthermore, project approval if granted shall be subject to conditions of approval requiring any and all such permits or agreements be obtained prior to the commencement of vegetation removal and earth-disturbing activities associated with #P19-00171-ECPA, and that #P19-00171-ECPA shall be subject to any conditions and/or specifications of such permits, agreements or plans.

### RESPONSE TO COMMENTS

#### *Comment #1 Yocha Dehe Wintun Nation (Attachment 1)*

**Response to Comment 1.1:** The comment is noted and entered into the record for this application, no further response necessary.

#### *Comment #2 John Schwartz, 4400 Atlas Peak Road (Attachment 2)*

**Response to Comment 2.1:** The comments have been noted and entered into the record. No new or additional evidence has been provided that demonstrates the potential level of impacts analyzed as a result of the proposed project would occur beyond what is disclosed in the Proposed IS/MND. The comments contain personal opinion and commentary that do not provide evidence of a fair argument that the project may have a significant effect on the environment. No further response necessary.

*Comment #3 California Department of Fish and Wildlife (CDFW) (Attachment 3)*

**Response to Comment 3.1:** As disclosed in Section IV(a) (**Biological Resources**) of the proposed IS/MND, the owner/applicant has included protection measures (or Environmental Commitments) as part of the project so that special-status bird species would not be harmed, harassed or taken, including the destruction or abandonment of nests, as a result of the project. To ensure the Environmental Commitments are implemented consistent with, and in accordance with, CDFW and County protocol and practice, approval will be subject to the project specific Bird Protection Condition of Approval specified in the Proposed IS/MND (Page 16). Also see *Response to Comment #3.2*, incorporated herein by reference.

**Response to Comment 3.2:** As stated in the CEQA Process Section above, this Response to Comments Memorandum will also be provided to the owner/Permittee as **notice** of potential Local, State and Federal permits, agreements or plans necessary to implement and/or operate this project as identified within the attached agency comment letter. And that that project approval, if granted, shall be subject to conditions of approval requiring any and all such permits or agreements be obtained prior to the commencement of vegetation removal and earth-disturbing activities associated with #P19-00171-ECPA, in addition to being subject to any conditions and/or specifications of such permits, agreements or plans. Also see *Response to Comment #3.3 through #3.5*, incorporated herein by reference.

**Response to Comment 3.3:** Regarding oak woodland, as disclosed in Section IV(e) (**Biological Resources**: Pages 18-19) of the Proposed IS/MND, the project site contains mixed oak woodland, coast live oak woodland and blue oak woodland. While California black oaks (*Quercus kelloggii*) were identified within these woodlands the project biologist did not identify any California black oak associations or other sensitive natural woodland communities within the parcel or project site. Therefore, no potentially significant impacts to sensitive natural woodland communities requiring mitigation were identified. Furthermore, the Proposed IS/MND (page 19) identified the potential for significant indirect and cumulative impacts to oak woodlands through the loss or removal of trees as a result of grading or ripping in vineyard avenues and turnaround areas within the dripline of adjacent trees, that could also result in the preservation of on-site oak woodland falling below the 2:1 ratio pursuant to General Plan Policy CON-24. Therefore **Mitigation Measure BR-2** will be implemented to eliminate grading or ripping in avenues and turnaround areas within the dripline of adjacent trees, and to permanently preserve 4.48-acres oak woodland, reducing potential indirect impacts to oak woodlands to a less than significant level.

Regarding purple needle-grass (*Stipa pulchra*), the proposed IS/MND disclosed while purple needle-grass is not considered sensitive as an individual plant, when it occurs in a community the County and the CDFW considers purple needle-grass grassland (PNG Grassland) as a Sensitive Biotic Community: the County also considers PNG Grassland a Biotic Community of Limited Distribution because it encompasses less than 500 acres of cover within the County (Napa County Baseline Data Report 2005). While the project as designed would avoid the identified PNG Grassland and provide it with a minimum 50 foot buffer, the inadvertent removal of individuals or small patches of Purple needlegrass during project implementation was considered a potentially significant impact to a Sensitive Biotic Community and Biotic Community of Limited Distribution. Implementation of **Mitigation Measure BR-1** will require pre-construction surveys for PNG and replacement of individuals at a 2:1 ratio within the retained grassland onsite. Therefore, with mitigation incorporated, the Proposed IS/MND appropriately assessed and disclosed that there would be a less than significant impact on native grasslands, sensitive biotic communities and habitats of limited distribution.

Furthermore, with respect to Purple Needlegrass, it was disclosed on page 12 of the Proposed IS/MND, that the location of this mapped population was inspected by the project biologist on July 21, 2021, and that no purple needle grass was found at the site which is now dominated by slender wild oat, barbed goat grass, perennial rye, and yellow star thistle. The project biologist also opined that this population may recover with suitable rainfall and microclimate conditions; however, the biologist also noted that the invasion of yellow star thistle may be an added obstacle to its recovery: also see **Exhibit B-4** of the Proposed IS/MND (Northwest Biosurvey, July 2021).

Therefore, with implementation of **Mitigation Measures BR-1** and **BR-2**, which includes provisions compatible with CDFW recommendations, reduces impacts to Sensitive Biotic Communities, Biotic Communities of Limited Distribution, and to oak woodlands to a less than significant level, and the recommended mitigation is not warranted.

**Response to Comment 3.4:** Based on the property's Biological Resources Report and subsequent site inspection (**Exhibits B-1** and **B-4** of the Proposed IS/MND: Northwest Biosurvey September 2018 and July 2021, respectively) the Proposed IS/MND appropriately did not identify this animal species or its habitat, or impacts thereto, as a result of the project.

However, to ensure that American badgers are not injured or taken, and that any burrows are avoided, the condition below will be included in any approving action by the County. Also see [Response to Comment #3.6](#) (incorporated herein by reference).

**Preconstruction Survey – American badger (*Taxidea taxus*):** Prior to the commencement of any vegetation removal or earth-disturbing activities associated with the project, a qualified biologist (defined as knowledgeable and experienced in the biology and natural history of local mammal species and habitat) shall conduct a preconstruction surveys for the American badger and their burrows within all potentially suitable habitat within the project area: the preconstruction survey/study area shall also include all potentially suitable habitat area occurring within 500 feet of project area. The preconstruction survey shall be conducted no earlier than seven (7) days prior to when vegetation removal and ground disturbing activities are to commence. Should ground disturbance commence later than seven (7) days from the survey date, surveys shall be repeated.

If badgers or their burrows are identified as a result of preconstruction surveys, they shall be avoided and burrows shall be provided with sufficient buffers as recommended by CDFW, and preparing and implementing a CDFW-approved relocation plan if badgers or their burrows are found on or adjacent to the Project site and cannot be avoided.

As stated in the CEQA Process Section above, this Response to Comments Memorandum will also be provided to the owner/Permittee as **notice** of potential Local, State and Federal permits, agreements, or plans necessary to implement and/or operate this project.

**Response to Comment 3.5:** The Proposed IS/MND appropriately did not identify any impacts to the foothill yellow-legged frog (*Rana boylei*), California red-legged frog (*Rana draytonii*), and western pond turtle (*Emys marmorata*) or their habitat, because neither the parcel nor the project area provides suitable habitat due to the limited duration of ephemeral stream flows and lack of surface water for these species (Northwest Biosurvey September 2018 – **Exhibit B-1** of the Proposed IS/MND).

However, to ensure that foothill yellow-legged frog, California red-legged frog, and western pond turtle (collectively known as special-status herpetofauna) are not injured or taken as a result of project implementation, the following condition will be included in any approving action by the County. Also see [Response to Comment #3.6](#) (incorporated herein by reference).

**Preconstruction Survey – Special-Status Herpetofauna:** Prior to the commencement of any vegetation removal or earth-disturbing activities associated with the project a qualified biologist (defined as having demonstrable qualifications and experience with the particular species for which they are surveying) shall conduct a pre-construction survey for the presence of foothill yellow-legged frog (*Rana boylei*), California red-legged frog (*Rana draytonii*), and western pond turtle (*Emys marmorata*) and their nests, for all project activities that occur within 500 feet of stream or wetland habitats. The preconstruction survey shall be conducted no earlier than seven (7) days prior to when vegetation removal and earth-disturbing activities are to commence.

If any of these special-status herpetofauna species are discovered during the preconstruction survey, Project activities shall not begin until CDFW has been consulted and approved in writing measures to avoid and minimize impacts to these special-status species, and it has been demonstrated that the measures have been implemented. If California red-legged frog is encountered/observed, the U.S. Fish and Wildlife Service shall be consulted pursuant to the federal Endangered Species Act, and the Project shall obtain any required approvals.

As stated in the CEQA Process Section above, this Response to Comments Memorandum will also be provided to the owner/Permittee as **notice** of potential Local, State and Federal permits, agreements, or plans necessary to implement and/or operate this project.

**Response to Comment 3.6:** As a matter of practice the County adopts all Mitigation Measures as project specific conditions of approval consistent with the Government Code Section 21081.6<sup>1</sup> that specifies adopting mitigation measures as conditions of approval. Furthermore, it is also the County's practice to include any Environmental Commitments proposed by the owner/applicant as part of the project in the adopted conditions of approval of the project so that all the requirements of the project are specified in the County's entitlement and fully enforceable.

**Response to Comment 3.7:** The County will direct the project biologist to report any special-status species and/or sensitive natural communities observed or identified during project preconstruction surveys to the CNDDDB. Additionally, as previously indicated this Response to Comments Memorandum will be provided to the owner/Permittee as **notice** of this requirement.

**Response to Comment 3.8:** The CDFW Environmental Filing Fee for a Mitigated Negative Declaration will be paid upon filing of the CEQA Notice of Determination for this project, if approved.

**Response to Comment 3.9:** Comment noted, no further response necessary.

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<sup>1</sup> [Mitigated Negative Declarations \(ca.gov\) https://opr.ca.gov/docs/MND\\_Publication\\_2004.pdf](https://opr.ca.gov/docs/MND_Publication_2004.pdf)

*Comment #4 Michael D. Setty, 4398 Atlas Peak Road, Napa CA (Attachment 4)*

**Response to Comment 4.1:** The site inspection conducted by Napa County Planning Division staff on May 3, 2019 during initial review and processing of this application verified the findings and accuracy of the site's Biological Resource Assessment (Northwest Biosurvey, September 2018 – **Exhibit B-1** of the Proposed IS/MND). If any inaccuracies or oversights were identified at that time they would have been addressed as part of the County's customary application review and completeness determination process.

On February 8, 2022, Planning Division staff (Donald Barrella, Planner III) re-inspected Vineyard Block C2 and found the conditions in the field and as shown on the plans were still valid: no drainage course or stream was identified or observed running through Vineyard Block C2.

Additionally, as disclosed in **Section IV (Biological Resources** – page 12) of the Proposed IS/MND, because of the date of the original Biological Resource Assessment, and that the Hennessey fire affected the project site in 2020, the County had Northwest Biosurvey conduct a subsequent site inspection on July 21, 2021 to again assess current site conditions: also see **Exhibit B-4** of the Proposed IS/MND. The Project Biologist opined that the 2018 biological resource assessment for this property remains a valid depiction of the biological resources on the property.

**List of Attachments**

Attachment 1 – Yocha Dehe Wintun Nation letter dated December 2, 2021

Attachment 2 – John Schwartz email dated December 3, 2021 7, 2022

Attachment 3 - California Department of Fish and Wildlife letter dated January 6, 2022

Attachment 4 - Michael D. Setty email dated January 7, 2022

# Attachment 1



YOCHA DEHE  
CULTURAL RESOURCES

December 2, 2021

Napa County - Planning, Building, & Environmental  
Attn: Donald Barrella  
1195 Third Street, Suite 210  
Napa, CA 94559

RE: Pires AVII Property Project YD-02062019-05

Dear Mr. Barrella:

Thank you for your project notification letter dated, November 19, 2021, regarding cultural information on or near the proposed Pires AVII Property Project. We appreciate your effort to contact us.

The Cultural Resources Department has reviewed the project and concluded that it is not within the aboriginal territories of the Yocha Dehe Wintun Nation. Therefore, we respectfully decline any comment on this project. However, based on the information provided, please defer correspondence to the following:

Middletown Rancheria  
Attn: Michael Riviera  
PO Box 1035  
Middletown, CA 95461

Please refer to identification number YD - 02062019-05 in any future correspondence with Yocha Dehe Wintun Nation concerning this project.

Thank you for providing us with this notice and the opportunity to comment.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Laverne Bill', with a stylized flourish at the end.

Laverne Bill  
Director of Cultural Resources

cc: Middletown Rancheria



## Attachment 2

**From:** [John Schwartz](#)  
**To:** [Barrella, Donald](#)  
**Subject:** 4300 Atlas Peak Rd  
**Date:** Friday, December 3, 2021 9:56:59 AM

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[External Email - Use Caution]

Dear Donald:

All of the residents from 4100-4500 Atlas Peak Rd are shocked to have received your letter about the proposed development of 4300 Atlas Peak Rd (Manuel Pires).

I am not sure how this project can even be remotely considered? We have had two massive fires on Atlas Peak over the past 4 years (2017/2020) and are in the middle of the worst drought in state history. The eco-system on Atlas Peak is very fragile and will be compromised even further with more disruption to the remaining land. The mere thought of allowing someone to plant 20 acres of vineyard and install a 100,000 gallon water tank is beyond comprehension.

This should be a non-starter and I would hope that your office and the County is more in tune with the realities we are all facing.

Thank you  
John Schwartz  
(4400 Atlas Peak Rd)





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)

Attachment 3

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



January 6, 2022

Mr. Donald Barrella  
County of Napa  
1195 Third Street, Suite 210  
Napa, CA 94559  
[donald.barrella@countyofnapa.org](mailto: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.<sup>1</sup>

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,

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<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. Donald Barrella  
County of Napa  
January 6, 2022  
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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) 4.3<sup>2</sup>; loggerhead shrike (*Lanius ludovicianus*), SSC; and white-tailed kite (*Elanus leucurus*), a Fully Protected species.

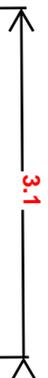
## REGULATORY REQUIREMENTS

### 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

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<sup>2</sup> 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 communities<sup>3</sup>, 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,

<sup>3</sup> 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 range<sup>4</sup> 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

<sup>4</sup> 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*

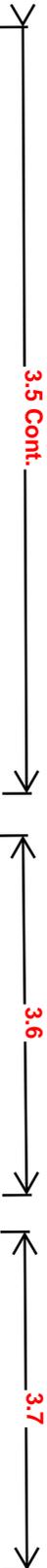
For all Project activities that occur within 500 feet of stream or wetland habitat, prior to ground-disturbing activities, a qualified biologist shall conduct a pre-construction survey within 48 hours prior to the start of Project activities, focusing on the presence of foothill yellow-legged frog, California 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](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) or (707) 210-4415.

Sincerely,

DocuSigned by:  
  
CF047D7F8D234E1...  
Stephanie Fong  
Acting Regional Manager  
Bay Delta Region

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

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# Attachment 4

**From:** [Michael D. Setty](#)  
**To:** [Barrella, Donald](#)  
**Cc:** [Ssetty](#)  
**Subject:** Atlas View II Vineyard, Additional Comments  
**Date:** Friday, January 7, 2022 4:17:23 PM

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[External Email - Use Caution]

Mr. Barrella,

We suggest that someone from the County come up and look at the stream through proposed Block C2. Another thing to note is that grasses that grow near shallow groundwater are well established along the watercourse.

It also is unclear to us why this stream was not shown on the map; further east, the stream shows up on the maps from the eastern side of proposed Block C2, under the north south road, and then east down the hill. We believe the consultants reviewing the streams on the property made an error.

--

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Transit planning & advocacy since 1978

All businesses are profitable in Excel.

--Unknown

“First they ignore you, then they laugh at you, then they fight you, then you win.”

--Mahatama Gandhi

