



State of California – Natural Resources Agency
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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: Shafer Blodgett Vineyards, Mitigated Negative Declaration,
SCH No. 2021110286, 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 Shafer Blodgett Vineyards (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, a Lake and Streambed Alteration (LSA) Agreement, 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: Shafer Vineyards and Shafer Family, LLC

Objective: The Project would convert 28.3 acres of 215.44 acres of partially undeveloped parcels into vineyard with associated infrastructure, including irrigation lines. Primary Project activities include clearing vegetation, earth-moving, grading,

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

Location: The Project is located at 5096 Silverado Trail, in unincorporated Napa County. The approximate centroid of the Project is Latitude 38.37841°N, Longitude 122.30135°W and the Assessor's Parcel Numbers are 039-051-019-000, 039-051-021-000, 039-051-023-000, and 039-051-033-000.

Timeframe: The Project would take approximately seven months.

ENVIRONMENTAL SETTING

The Project covers approximately 28.3 acres of undeveloped land consisting of non-native annual and perennial grassland, coast live oak (*Quercus agrifolia*) woodland, blue oak (*Q. douglasii*) woodland, and chamise chaparral (*Adenostoma fasciculatum*). The Project parcels include previously developed vineyard, a residential structure, groundwater wells, roads, and associated infrastructure. The Project is surrounded predominantly by rural residences, agriculture, wineries, and undeveloped land. Five unnamed streams are present on the Project parcel. Special-status species with the potential to occur in or near the Project area include, but are not limited to, Northwest/North Coast clade foothill yellow-legged frog (*Rana boylei*), California Species of Special Concern (SSC); pallid bat (*Antrozous pallidus*), SSC; western red bat (*Lasiurus blossevillii*), SSC; western pond turtle (*Emys marmorata*), SSC; American badger (*Taxidea taxus*), SSC; Greene's narrow-leaved daisy (*Erigeron greenei*), California Rare Plant Rank (CRPR) 1B.2²; nodding harmonia (*Harmonia nutans*), CRPR 4.3; green monardella (*Monardella viridis*), CRPR 4.3; loggerhead shrike (*Lanius ludovicianus*), SSC; and white-tailed kite (*Elanus leucurus*), a Fully Protected species.

REGULATORY REQUIREMENTS

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. **The MND identifies that the Project would install a rocked**

² CRPR 1B plants are considered rare, threatened, or endangered in California and elsewhere while 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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crossing over an existing roadside drainage (MND page 1), which may constitute a stream, as further describe below. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to notification requirements. In this case, 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.

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, such as white-tailed kite, may not be taken or possessed at any time (Fish & G. 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.

Lake and Streambed Alteration

As noted above, the Project would install a rocked crossing over a roadside drainage (MND page 1), which may constitute a stream. It is unclear where the drainage is located. The MND should evaluate if the drainage constitutes a stream, such as if it is connected to other streams, supports stream habitat or features, or is mapped as a stream in the California Aquatic Resources Inventory database. To comply with California Fish and Game Code section 1600 et seq. and reduce impacts to less than significant, CDFW recommends the following mitigation measure if the drainage is subject to LSA Notification requirements.

Mitigation Measure BR-5: Notification of Lake and Streambed Alteration

For Project activities that may substantially alter the bed, bank, or channel of the drainage, including installation of a rocked crossing, an LSA Notification shall be submitted to CDFW pursuant to Fish and Game Code section 1602 prior to Project

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construction. If CDFW determines that an LSA Agreement is warranted, the Project shall comply with all required measures in the LSA Agreement. Permanent impacts to the stream and associated riparian habitat shall be mitigated by restoration of riparian habitat at a 3:1 mitigation to impact ratio based on acreage and linear distance as close to the project site as possible and within the same watershed and year as the impact. Temporary impacts shall be restored onsite in the same year as the impact.

Environmental Setting and Related Impact Shortcoming

Sensitive Natural Community and Tree Removal

The MND identifies that the Project is located within oak woodland, including blue oak and coast live oak associations (MND pages 2 and 18). There are multiple blue oak and coast live oak associations that CDFW identifies as sensitive natural communities³, including the coast live oak-California bay (*Umbellularia californica*) association and the blue oak-buck brush (*Ceanothus cuneatus*) association (CDFW 2021). The MND identifies the oak woodland at the alliance level, but does not specify which associations are present, making it difficult to understand which sensitive natural communities would be impacted by the Project. The MND identifies that mitigation for tree removal and loss of oak woodland will be accomplished on the Project parcels through permanent protection of oak woodland at a 2:1 mitigation to impact ratio (MND page 21).

The Project would remove approximately 1,708 trees from the Project area, some which may be from a sensitive natural community (MND page 1). 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 2018). 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-6: Sensitive Natural Community Habitat Mitigation

Loss of sensitive natural communities 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 or a habitat enhancement plan shall be

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

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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. 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 of the American badger, an SSC, and is located within grassland habitat and oak woodland habitat that may be suitable for American badger (MND Exhibit B-1). 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 are Medium and 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.

Roosting Bats

The MND identifies that the Project area may provide habitat for sensitive bats, such as pallid bat (MND page 16 and Exhibit B-1). The trees in the Project area, some of which

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are proposed for removal, may provide suitable roosting habitat for bats. The MND identifies that all 1,708 trees proposed for removal were assessed during a daytime roost survey and no suitable bat roosting habitat was observed (MND page 17 and Exhibit B-2). The bat roost survey methodology provided in Exhibit B-2 is broad and does not identify whether the survey was conducted by a qualified bat biologist. No data sheets or specific examples of non-suitable roost trees were provided. Based on the report provided, it is unclear that potential bat roost trees are absent from the Project area.

Tree removal associated with the Project could lead to injury or death of bats, including pallid bat, a potentially significant impact. To adequately evaluate potential impacts to bats and reduce impacts to less-than-significant, CDFW recommends: 1) the bat daytime roost survey described in Exhibit B-2 is further detailed, including identifying whether the surveyor was a qualified bat biologist with experience detecting bat roosts, the date(s) and time(s) of the roost survey, and detailed survey information; and 2) including the following mitigation measure if potential bat roost habitat would be impacted.

Mitigation Measure BR-7: Bat Tree Habitat Assessment and Surveys

Prior to any tree removal, a qualified biologist shall conduct a habitat assessment for bats. The habitat assessment shall be conducted a minimum of 30 to 90 days prior to tree removal and shall include a visual inspection of potential roosting features (e.g., cavities, crevices in wood and bark, exfoliating bark, and suitable canopy for foliage roosting species). If suitable habitat trees are found, they shall be flagged or otherwise clearly marked and tree trimming or removal shall not proceed unless the following occurs: a) in trees with suitable habitat, presence of bats is presumed, or documented during the surveys described below, and removal using the two-step removal process detailed below occurs only during seasonal periods of bat activity, from approximately March 1 through April 15 and September 1 through October 15, or b) after a qualified biologist conducts night emergence surveys or completes a visual examination of roost features that establish absence of roosting bats.

Two-step tree removal shall be conducted over two consecutive days, as follows: 1) the first day (in the afternoon), under the direct supervision and instruction by a qualified biologist with experience conducting two-step tree removal, limbs and branches shall be removed by a tree cutter using chainsaws only; limbs with cavities, crevices or deep bark fissures shall be avoided; and 2) the second day the entire tree shall be removed.

Western Pond Turtle

The MND states that the Project is within the range of western pond turtle but identifies that western pond turtle is unlikely to occur on or near the Project (MND Exhibit B-1). The California Natural Diversity Database (CNDDDB) identifies occurrences of western pond turtle within five miles north and south of the Project, with the closest occurrence

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approximately 2.5 miles south. In addition, the California Wildlife Habitat Relationships Predicted Habitat Suitability for the Project is High Suitability. Western pond 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). While the Project may not impact streams on the parcel, it may result in impacts within 500 feet of streams. The Project could impact upland dispersal habitat, upland refugia, or nesting habitat for western pond turtle through vegetation removal and grading activities, potentially injuring or killing western pond turtles. Based on the above, the Project may substantially adversely impact western pond turtle. To reduce potential impacts to less-than-significant, CDFW recommends including the following mitigation measure in the MND.

Mitigation Measure BR-8: Western Pond Turtle 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 western pond turtle and their nests. If western pond turtles 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 western pond turtle, and the measures have been implemented.

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

EDITORIAL SUGGESTION

In addition to the above recommendations, CDFW notes that the MND includes a combination of Mitigation Measures and Conditions of Approvals. Both are requirements for the Project, and 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 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. **This includes the observed foothill yellow-legged frog and special-status plants reported in the**

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MND. The CNNDDB 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 & 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:
Stephanie Fong

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Stephanie Fong
Acting Regional Manager
Bay Delta Region

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2021110286)

REFERENCES

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