



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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March 7, 2022

Ms. Pamela Arifian
County of Napa
1195 Third Street Second Floor
Napa, CA 94559
Pamela.Arifian@countyofnapa.org



Subject: Project Pioneer Vineyard Agricultural Erosion Control Plan Application
#P30-00304-ECPA, Mitigated Negative Declaration, SCH No. 2022020126,
Napa County

Dear Ms. Arifian:

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 (County) for the Project Pioneer Vineyard Agricultural Erosion Control Plan Application #P30-00304-ECPA (project) pursuant the California Environmental Quality Act (CEQA).

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 proposed project.

CDFW ROLE

CDFW is a Trustee Agency with responsibility under CEQA for commenting on projects that could impact fish, plant, and wildlife resources. (Pub. Resources Code, § 21000 et seq.; Cal. Code Regs., tit. 14, § 15386). 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), Native Plant Protection Act, 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.

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. Work within ephemeral streams, washes, watercourses with a

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subsurface flow, and floodplains are subject to notification requirements. **Activities conducted within or adjacent to the ephemeral stream within the project site may be subject to LSA Notification requirements as further described below.** CDFW will consider the CEQA document for the project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement (or Incidental Take Permit) until it has complied with CEQA as a Responsible Agency.

PROJECT DESCRIPTION SUMMARY

Proponent: Pacific Union College

Objective: Develop approximately 42.2 acres of vineyard with approximately 35.9 planted acres within three vineyard blocks. The project would include clearing of existing hay fields and associated vegetation, earthmoving, and installation and maintenance of erosion control measures. No trees will be removed.

Location: The project is located at 1 Angwin Avenue in Angwin, a census-designated place in Napa County, California. It is located on Assessor's Parcel Numbers 024-080-040, 024-080-044, 024-080-048, and 024-080-049, and centered at approximate coordinates 38.58231°, -122.43676°.

COMMENTS AND RECOMMENDATIONS

CDFW offers the below comments and recommendations 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.

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

Environmental Setting and Mitigation Measures

Comment 1: MND (page 12) and Exhibit B, Biological Resource Survey (page 31)

Issue: Exhibit B identifies that California red-legged frog (CRLF; *Rana draytonii*) may occur in permanent aquatic features, but it does not identify whether the pond adjacent to Stump Field or other ponds within the species' dispersal distance may be suitable aquatic habitat, which may also include seasonal ponds. The MND indicates that there is no habitat on the project site for CRLF; however, CRLF may use upland habitat within

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dispersal distance of aquatic habitat, and it is unclear why the project site would not be suitable upland habitat.

Specific impacts and why they may occur and be potentially significant: The project may result in injury or mortality to dispersing CRLF, which is a California Species of Special Concern (SSC) and is listed as threatened under the federal Endangered Species Act. Therefore, if CRLF occur on the project site, project impacts to CRLF would be potentially significant.

Recommendation: For an adequate environmental setting and impact analysis, and to reduce impacts to less-than-significant, CDFW recommends that the MND: (1) further analyze the potential for CRLF to occur within uplands on the project site based on the presence of the above-described ponds adjacent to and within dispersal distance, and (2) require consultation with USFWS for potential impacts to CRLF if the species may occur on-site based on the above analysis. If it is unlikely CRLF would remain on the site based on lack of suitable refugia such as small mammal burrows or other factors, mitigation measures may include a qualified biologist surveying for the species onsite and within adjacent habitat prior to construction to ensure no CRLF are on the site or likely to move onto it; installing temporary exclusionary fencing around the project site, once it determined no CRLF may be present, to ensure CRLF do not disperse onto it; and implementing avoidance buffers around the pond adjacent to Stump Field. The exclusionary fence should be installed under the guidance of a qualified biologist and regularly inspected and maintained.

Comment 2: MND (page 12) and Exhibit B, Biological Resource Survey (page 31)

Issue: Exhibit B identifies that western pond turtle (*Emys marmorata*) may occur in the pond adjacent to Stump Field and be vulnerable to project activities conducted in Stump Field. The proposed 35-foot setback from the pond is identified in Exhibit B as sufficient to avoid impacts to western pond turtles; however, western pond turtles typically nest within 100 meters of aquatic habitat and can travel up to 500 meters to find suitable sites for egg-laying (Thompson et al. 2016).

Specific impacts and why they may occur and be potentially significant: The project may result in injury or mortality to adult or young western pond turtles or impacts to western pond turtle nests. Western pond turtle is an SSC. Therefore, if western pond turtles or their nests occur on the project site, project impacts to western pond turtle would be potentially significant.

Recommendation: For an adequate environmental setting and impact analysis, and to reduce impacts to less-than-significant, CDFW recommends that the MND: (1) further analyze the potential for western pond turtle to occur on and adjacent to the project site, and (2) require a qualified biologist to survey for western pond turtle on-site and within

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adjacent habitat prior to project construction, avoiding impacts to western pond turtles or their nests by allowing turtles to move off the site under their own volition, and implementing avoidance buffers around any nests and the pond adjacent to Stump Field.

Comment 3: MND (pages 11-12) and Exhibit B, Biological Resource Survey (pages 18-20, 23)

Issue: According to the MND, the project is located within agricultural cropland adjacent to chaparral/scrub habitat that may support California Rare Plant Rank species including Napa false indigo (*Amorpha californica* var. *napensis*) and green jewelflower (*Streptanthus hesperidis*), which are both Rank 1B.2 (for Rank descriptions see: https://map.dfg.ca.gov/rarefind/view/RF_FieldDescriptions.htm#CA_RARE_PLANT_RANK). Floristic surveys were conducted between April and June 2019 by walking transects within each field of the project site, as well as intermittent transects within 500 feet of each field. The Biological Resource Survey notes that no special-status plant species were identified; however, it is unclear from the MND and Biological Resource Survey if reference sites were visited and if surveys were conducted during the appropriate bloom periods for each species with potential to occur on-site. CDFW's 2018 *Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Sensitive Natural Communities* specifies that reference sites should be observed "to determine whether those special-status plants are identifiable at the times of year the botanical field surveys take place and to obtain a visual image of the special-status plants, associated habitat, and associated natural communities."

Recommendation: To adequately describe the environmental setting and reduce impacts to less-than-significant, CDFW recommends that the MND be revised to identify if reference sites were visited and include all reporting information identified by CDFW's 2018 *Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Sensitive Natural Communities* (Protocols; see: <https://wildlife.ca.gov/Conservation/Survey-Protocols#377281280-plants>).

If any information required by the Protocols was not collected during the 2019 field efforts, CDFW recommends the MND require: (1) an additional year of floristic surveys at the project site and adjacent habitats that may be indirectly impacted by project activities in conformance with the above Protocols, and obtaining CDFW's written acceptance of the survey report; and (2) for any impacts to California Rare Plant Rank species, off-site compensatory mitigation at a 3:1 mitigation to impact ratio, unless an alternative mitigation plan is approved in writing by CDFW. Mitigation lands shall be occupied by the impacted species, protected in perpetuity under a conservation easement prior to project commencement, and managed in perpetuity through an endowment with an appointed land manager.

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Please be advised that for CDFW to accept the results of the botanical surveys, they must be completed in conformance with the above Protocols, including but not limited to conducting surveys during appropriate conditions, utilizing appropriate reference sites, and evaluating all direct and indirect impacts. Surveys conducted during drought conditions may not be acceptable.

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

Environmental Setting and Mitigation Measures

Comment 4: MND Page 13

Issue: The MND identifies an ephemeral stream immediately adjacent to Block 2, but notes that impacts will be avoided through implementation of a minimum 35-foot setback. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to LSA Notification requirements. Depending on site-specific characteristics—such as slope of bank and adjacent lands, location and extent of riparian vegetation, and hydrological profile—a 35-foot setback may not be sufficient to prevent permanent or temporary impacts to the stream and its associated ecological communities. The characteristics of the stream, extent of project activities adjacent to it, and thresholds for determining setbacks should be explicitly described in the MND. If permanent or temporary impacts to ephemeral drainages may be substantial the impacts would be subject to an LSA Notification.

Recommendation: To reduce impacts to less-than-significant, CDFW recommends that the MND further characterize the stream, activities proposed to occur adjacent to the stream, and thresholds for determining stream setbacks. If substantial impacts to bed, bank, channel, riparian vegetation, or floodplain are anticipated, CDFW recommends that the MND require the project to submit an LSA Notification and comply with the LSA Agreement if issued, prior to the initiation of project activities. Additionally, CDFW recommends including the following mitigation measure.

Permanent impacts to stream and riparian habitat shall be mitigated at the below minimum mitigation to impact ratios.

- 1:1 restoration based on area and linear feet for temporary impacts
- 3:1 restoration based on area and linear feet for permanent impacts

Habitat restoration shall occur on-site or as close to the site as possible within the same stream or watershed and may consist of restoration or enhancement of riparian habitat. If mitigation is not possible within the same stream or watershed,

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mitigation ratios may increase at the discretion of CDFW. Temporary impacts to stream and riparian habitat shall be restored on-site.

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 California Natural Diversity Database (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 in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs., tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

CONCLUSION

To ensure significant impacts are adequately mitigated to a level less-than-significant, CDFW recommends the feasible mitigation measures described above be incorporated as enforceable conditions into the final CEQA document for the project. 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. Jennifer Rippert, Senior Environmental Scientist (Specialist), at Jennifer.Rippert@wildlife.ca.gov or (707) 799-4210; or Ms. Melanie Day, Senior Environmental Scientist (Supervisory), at Melanie.Day@wildlife.ca.gov or (707) 210-4415.

Sincerely,

DocuSigned by:
Erin Chappell
Erin Chappell
Regional Manager
Bay Delta Region

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ec: State Clearinghouse (SCH No. 2022020126)

REFERENCES

Thomson, R. C., Wright, A. N., and Shaffer, H. B. (2016). *California amphibian and reptile species of special concern*. University of California Press.
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=190377&inline>