



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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March 28, 2023

Donald Barrella, Planner III
Napa County
1195 Third Street, Suite 210
Napa, CA 94559
Donald.Barrella@countyofnapa.org

Subject: V. Sattui Winery Inc., Hibbard Ranch Vineyard Conversion #P19-00069-
ECPA, Mitigated Negative Declaration, SCH No. 2023030032, 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 Napa County (County) for the V. Sattui Winery Inc., Hibbard Ranch Vineyard Conversion #P19-00069-ECPA (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

CDFW is submitting comments on the MND to inform the 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), 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: V. Sattui Winery Inc.

Objective: Develop approximately 33.5-net-planted-acres of vineyard. Primary Project activities include clearing of vegetation, construction of 600 feet of access roads, stabilization of 1.5 acres of landslides and other unstable areas, repair an erosional gully feature, and install erosion and runoff control measures and other associated agricultural infrastructure. The Project would remove 1.35 acres of coast live oak

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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(*Quercus agrifolia*) woodland, including the removal of 15 valley oaks (*Quercus lobata*). The Project would also remove 51.26 acres of grassland, including 0.2 acres of purple needle-grass (PNG; *Nassella pulchra*) grassland.

Location: 1600 Henry Road, Napa County; 38.298667°N, 122.37477838°W; Assessor's Parcel Number 050-320-014.

Timeframe: Implementation of the Project is proposed from April to October, with annual vineyard operations taking place year-round.

REGULATORY REQUIREMENTS

Lake and Streambed Alteration

Notification, pursuant to Fish and Game Code sections 1600 et. seq. 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. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to notification requirements. **The Project has the potential to substantially divert the natural flow of streams and therefore, an LSA notification is warranted.** 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 a Responsible Agency.

California Endangered Species Act

Please be advised that a CESA Incidental Take Permit (ITP) must be obtained if the Project has the potential to result in "take" of plants or animals listed under CESA, either during construction or over the life of the Project. **The Project has the potential to impact Swainson's hawk (*Buteo swainsoni*), a CESA listed as threatened species, as further described below.** Issuance of an ITP is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain an ITP.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially restrict the range or reduce the population of a threatened or endangered species. (Pub. Resources Code, §§ 21001, subd. (c) & 21083; CEQA Guidelines, §§ 15380, 15064, & 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency's FOC does not eliminate the Project proponent's obligation to comply with CESA.

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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. Editorial comments or other suggestions are also included to improve the document. Based on the Project's avoidance of significant impacts on biological resources with implementation of mitigation measures, including those CDFW recommends below and in **Attachment A**, CDFW concludes that a MND is appropriate for the Project.

I. Stream Alteration

COMMENT 1: Lake and Streambed Alteration Notification

Issue: The vineyard is currently using approximately 18.7-acre feet per year (AF/yr) of surface water, diverted from unnamed streams that are tributaries to Carneros Creek, thence the Napa River. The Project will require approximately 12.9-AF/yr of additional surface water. While the MND indicates the property has a Water Right for this appropriation of water, CDFW has not received an LSA notification of this water diversion, as required under Fish and Game Code section 1600.

Recommendation: To comply with Fish and Game Code, CDFW recommends incorporating the following language into MM BR-1d:

The Project shall submit an LSA notification to CDFW for the ongoing diversion of surface water and comply with the LSA agreement in order to ensure best practices are implemented to avoid and minimize impacts to downstream fish and wildlife, such as Central California Coast steelhead (*Oncorhynchus mykiss irideus* pop. 8), which is federally listed as threatened and occurs in this watershed.

II. MANDATORY FINDINGS OF SIGNIFICANCE Does the Project have potential to degrade quality of environment, substantially reduce habitat of a fish or wildlife species, cause fish or wildlife population to drop below self-sustaining levels?

COMMENT 2: Swainson's Hawk – Environmental Setting Shortcoming

Issue: The Project may impact nesting and foraging Swainson's hawk, which occurs in Napa County. Exhibit B-1 states that Swainson's hawk in Napa County is restricted to the Napa Valley floor near the Napa River. The California Natural Diversity Database (CNDDDB) documents an occurrence of a Swainson's hawk breeding pair approximately 3.5 miles southeast of the Project site within Carneros Valley and a nest occurrence approximately 5.5 miles southwest of the Project site in Sonoma County. Carneros

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Valley provides suitable habitat connectivity for Swainson's hawk to the Project site from Sonoma County and the greater Napa area.

Specific impacts and why they may occur and be significant: There are many potentially suitable Swainson's hawk nest trees on and adjacent to the Project site, and open grassland areas potentially suitable for foraging. If active Swainson's hawk nests are not detected by surveys or appropriate buffer zones are not established, Swainson's hawk could be directly impacted by the removal of trees with active nests or experience indirect impacts from noise and visual disturbance from Project activities resulting in nest abandonment and loss of eggs or reduced health and vigor and loss of young, thereby substantially reducing the number of the species. If nesting Swainson's hawk utilize habitat in the vicinity of the Project, the Project may also result in loss of foraging habitat from the removal of 51.26 acres of grassland.

Swainson's hawk is CESA listed as a threatened species and therefore is considered to be a threatened species pursuant to CEQA Guidelines section 15380. The estimated historical population of Swainson's hawk was nearly 17,000 pairs; however, in the late 20th century, Bloom (1980) estimated a population of only 375 pairs. The decline was primarily a result of habitat loss from development (CDFW 2016). The most recent survey conducted in 2009 estimated the population at 941 breeding pairs. The species is currently threatened by loss of nesting and foraging habitat (e.g., from agricultural shifts to less crops that provide less suitable habitat), urban development, environmental contaminants (e.g., pesticides), and climate change (CDFW 2016).

In 2016, CDFW released a Status Review for Swainson's hawk in California and recommended the species retain its status as threatened under the CESA (CDFW 2016). The review cites the *primary threat to this species continues to be habitat loss*, especially the loss of suitable foraging habitat. One recent study done by CDFW scientists indicated Swainson's hawk populations have been increasing, but also cautioned using this data to inform conservation planning, stating this apparent stability remains largely unclear (Furnas et al. 2022). The study cites concerns regarding impacts to Swainson's hawk from urban development, *reduction in grasslands, and orchard and vineyard cultivation*, all of which are prominent impacts in Napa County, where the Project is proposed.

Therefore, if an active Swainson's hawk nest is disturbed by the Project, the Project may result in a substantial reduction in the number of a threatened species, which is considered a Mandatory Finding of Significance pursuant to CEQA Guidelines section 15065, subdivision (a)(1).

Recommended Mitigation Measure: For an accurate environmental setting, to reduce impacts to Swainson's hawk to less-than-significant, and to comply with CESA, CDFW recommends adding the following mitigation measure:

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Mitigation Measure (MM) BR-7 Swainson's Hawk Surveys and Avoidance: If Project activities are scheduled during the nesting season for Swainson's hawks (March 1 to August 31), prior to beginning work on this Project, Swainson's hawk surveys shall be conducted by a qualified biologist with experience surveying for and detecting the species pursuant to the *Recommended timing and methodology for Swainson's Hawk Nesting Surveys in California's Central Valley Swainson's Hawk* (2000)² survey protocol, within 0.5-mile of the Project site each year that Project activities occur. Pursuant to the above survey protocol, surveys shall be completed for at least the two survey periods immediately prior to a Project's initiation. The Project shall obtain CDFW's written acceptance of the qualified biologist and survey report prior to Project construction occurring between March 1 and August 31 each year. If the qualified biologist identifies nesting Swainson's hawks, the Project shall implement a 0.5-mile no-disturbance buffer zone around the nest, unless otherwise approved in writing by CDFW. Project activities shall be prohibited within the buffer zone between March 1 and August 31, unless otherwise approved in writing by CDFW. If take of Swainson's hawk cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP.

III. Would the Project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by CDFW or U.S. Fish and Wildlife Service?

COMMENT 3: Valley Oak Woodland – Environmental Setting and Mitigation Measure Shortcoming

Issue: The MND classified the woodland habitat on the Project site as coast live oak woodland, of which 1.35 acres will be removed. This would require the removal of 21 trees, including 15 valley oaks. Based on the large percentage of valley oaks, the habitat should potentially be classified as a Valley Oak Woodland and Forest Alliance, which is a CDFW-designated Sensitive Natural Community (<https://wildlife.ca.gov/Data/VegCAMP/Natural-Communities>) (CDFG 2010; Standiford et al. 1996; CIWTG). The VegCAMP Vegetation Classification and Mapping Program maps Valley Oak Woodland and California Bay - Madrone - Coast Live Oak Woodland (*Quercus agrifolia* – *Arbutus menziesii* – *Umbellularia californica*), also a designated Sensitive Natural Community, within and adjacent to the Project site (Thorne et al. 2004). Mitigation Measure BR-6 is insufficient to mitigate for the permanent loss of these rare oak woodlands.

Specific impacts and why they may occur and be significant: Sensitive Natural Communities have limited distribution and are often vulnerable to project impacts (CDFW 2009). Based on the foregoing, the Project would have a potentially substantial

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

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adverse effect on Valley Oak Woodland and California Bay - Madrone - Coast Live Oak Woodland, and impacts would be potentially significant.

Recommended Mitigation Measure: To reduce impacts to Valley Oak Woodland and California Bay - Madrone - Coast Live Oak woodland to less-than-significant, CDFW recommends the following mitigation measure:

MM BR-8 Oak Woodland Sensitive Natural Community Restoration and Preservation: A qualified biologist shall further evaluate the types of oak woodland impacted and quantify the areas in acres that are considered a Sensitive Natural Community, such as Valley Oak Woodland and California Bay - Madrone - Coast Live Oak Woodland. Permanently impacted oak woodlands that are considered a Sensitive Natural Community shall be mitigated at a 3:1 mitigation to impact ratio for acreage impacted. Oak woodland preservation and restoration shall occur on-site to the extent feasible. If off-site preservation or restoration is necessary, it shall be as close to the Project site as possible and within the same watershed. Restoration shall occur in the preserved area in the same year as the impacts. The preservation area shall be protected in a conservation easement prior to Project implementation. The Project shall also prepare and implement and fund in perpetuity a long-term management plan for the protected area for the benefit of Sensitive Natural Community oak woodland habitat. The restoration area shall be monitored for a minimum of 5 years until success criteria are met. Trees within the rare oak woodland shall be replaced at the following mitigation to impact ratios:

Oak (*Quercus* sp.) trees:

- 1:1 replacement for trees up to 3 inches diameter at breast height (DBH);
- 4:1 replacement for trees greater than 3 inches to 7 inches DBH;
- 5:1 replacement for trees greater than 7 inches and up to 15 inches DBH; and
- 10:1 replacement for trees greater than 15 inches DBH, which are considered old-growth oaks.

Non-oak trees:

- 1:1 replacement for non-native trees (with native trees);
- 1:1 replacement for native trees up to 3 inches DBH;
- 3:1 replacement for trees greater than 3 inches DBH and up to 6 inches DBH; and
- 6:1 replacement for trees greater than 6 inches DBH.

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COMMENT 4: Purple Needle-Grass Grassland Habitat – Mitigation Measure Shortcoming

Issue: Page 14 of the MND discusses the permanent preservation of a minimum of one acre of PNG grassland to mitigate for the permanent loss of 0.2 acres of PNG. However, Mitigation Measure BR-1 does not require the Project to permanently preserve PNG habitat through a conservation easement. The measure also does not indicate preservation in the amount of one acre and requires three years of monitoring of the PNG restoration area, which may be an insufficient amount of time to ensure the revegetation is a success.

Specific impacts and why they may occur and be significant: PNG is considered a Sensitive Natural Community, which are endemic communities that have limited distribution and are often vulnerable to Project impacts, and therefore the loss of any sensitive natural community is a potentially significant impact.

Recommend Mitigation Measure: To reduce impacts to PNG to less-than-significant, CDFW recommends incorporating the following language into MM BR-1d.

The Project shall permanently preserve one acre of PNG through a conservation easement that shall be recorded prior to Project implementation. The Project shall also prepare and implement and fund in perpetuity a long-term management plan for the protected area for the benefit of PNG habitat. The restoration area shall be monitored for a minimum of 5 years until success criteria are met.

IV. Editorial Comments and/or Suggestions

COMMENT 5: On Page 18 of the MND, the first sentence of the paragraph before Mitigation Measure BR-4 appears to have a typo. It states, “While significant direct impacts to aquatic resources are anticipated...”. Should this state “While significant direct impacts to aquatic resources are *not* anticipated...,”?

COMMENT 6: On Page 47, the Water Rights Permit number is incorrectly listed as #20079, whereas elsewhere in the MND it is listed as #20779.

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 CNDDDB. The CNDDDB field survey form can be filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting->

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[Data](https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals). The types of information reported to CNDDDB can be found at the following link:
<https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

ENVIRONMENTAL DOCUMENT FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document 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 environmental document filing 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

CDFW appreciates the opportunity to comment on the MND to assist Napa County in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Alicia Bird, Environmental Scientist, at (707) 980-5154 or Alicia.Bird@wildlife.ca.gov; or Melanie Day, Senior Environmental Scientist (Supervisory), at (707) 210-4415 or Melanie.Day@wildlife.ca.gov.

Sincerely,

DocuSigned by:

Erin Chappell

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Erin Chappell
Regional Manager
Bay Delta Region

Attachment A: Draft Mitigation Monitoring and Reporting Program

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2023030032)

REFERENCES

Bloom, P. H. 1980. The status of the Swainson's hawk in California, 1979. Bureau of Land Management, Sacramento, CA, USA.

California Department of Fish and Game (CDFG). 2010. List of Vegetation Alliances and Associations. Vegetation Classification and Mapping Program, Sacramento, CA.

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California Department of Fish and Wildlife (CDFW), 2016. 5-year Status Review: Swainson's hawk (*Buteo swainsoni*). Prepared for the California Fish and Game Commission. Nongame Bird and Mammal Program 1416 Ninth Street, Sacramento, CA.

California Interagency Wildlife Task Group (CIWTG). California Wildlife Habitat Relationship System. California Department of Fish and Game. Valley Oak Woodland.

Furnas, B.J., Wright, D.H., Tennant, E.N., O'Leary, R.M., Kuehn, M.J., Bloom, P.H. and Battistone, C.L., 2022. Rapid growth of the Swainson's Hawk population in California since 2005. *Ornithological Applications*, 124(2), p.duac006.

Standiford, R.B et al. 1996. Sustainability of Sierra Nevada hardwood rangelands. In: Status of the Sierra Nevada: Volume III Sierra Nevada Ecosystem Project Report, UC Div. of Ag. and Nat. Res. Wildland Resources Center Report 38:637-680.

Thorne, J.H., Kennedy, J.A., Quinn, J.F., McCoy, M., Keeler-Wolf, T. and Menke, J., 2004. A vegetation map of Napa County using the manual of California vegetation classification and its comparison to other digital vegetation maps. *Madroño*, pp.343-363.

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ATTACHMENT A

Draft Mitigation Monitoring and Reporting Program (MMRP)

CDFW provides the following language to be incorporated into the MMRP for the Project.

Biological Resources (BIO)			
Mitigation Measure (MM)	Description	Timing	Responsible Party
MM BR-4	<p><i>The following text is recommended for incorporation into MM BR-4:</i></p> <p>To comply with Fish and Game Code, the Project shall submit an LSA notification to CDFW for the ongoing diversion of surface water and comply with the LSA agreement in order to ensure best practices are implemented to avoid and minimize impacts to downstream fish and wildlife, such as Central California Coast steelhead (<i>Oncorhynchus mykiss irideus</i> pop. 8), which is federally listed as threatened and occurs in this watershed.</p>	<p>Prior to Ground Disturbance and continuing over the course of the Project</p>	<p>Project Applicant</p>
MM BR-7	<p>Mitigation Measure (MM) BR-7 Swainson's Hawk Surveys and Avoidance: If Project activities are scheduled during the nesting season for Swainson's hawks (March 1 to August 31), prior to beginning work on this Project, Swainson's hawk surveys shall be conducted by a qualified biologist with experience surveying for and detecting the species pursuant to the <i>Recommended timing and methodology for Swainson's Hawk Nesting Surveys in California's Central Valley Swainson's Hawk</i> (2000) survey protocol, within 0.5 mile of the Project site each year that Project activities occur (see https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83990&inline). Pursuant to the above survey protocol, surveys shall be completed for at least the two survey periods immediately prior to a Project's initiation. The Project shall obtain CDFW's written acceptance of the qualified biologist and survey report prior to Project construction occurring between March 1 and</p>	<p>Prior to Ground Disturbance and continuing over the course of the Project</p>	<p>Project Applicant</p>

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	<p>August 31 each year. If the qualified biologist identifies nesting Swainson’s hawks, the Project shall implement a 0.5-mile no-disturbance buffer zone around the nest, unless otherwise approved in writing by CDFW. Project activities shall be prohibited within the buffer zone between March 1 and August 31, unless otherwise approved in writing by CDFW. If take of Swainson’s hawk cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP.</p>		
<p>MM BR-8</p>	<p>MM BR-8 Oak Woodland Sensitive Natural Community Restoration and Preservation: A qualified biologist shall further evaluate the types of oak woodland impacted and quantify the areas in acres that are considered a Sensitive Natural Community, such as Valley Oak Woodland and California Bay - Madrone - Coast Live Oak Woodland. Permanently impacted oak woodlands that are considered a Sensitive Natural Community shall be mitigated at a 3:1 mitigation to impact ratio for acreage impacted. Oak woodland preservation and restoration shall occur on-site to the extent feasible. If off-site preservation or restoration is necessary, it shall be as close to the Project site as possible and within the same watershed. Restoration shall occur in the preserved area in the same year as the impacts. The preservation area shall be protected in a conservation easement prior to Project implementation. The Project shall also prepare and implement and fund in perpetuity a long-term management plan for the protected area for the benefit of Sensitive Natural Community oak woodland habitat. The restoration area shall be monitored for a minimum of 5 years until success criteria are met. Trees within the rare oak woodland shall be replaced at the following mitigation to impact ratios:</p> <p>Oak (<i>Quercus</i> sp.) trees:</p> <ul style="list-style-type: none"> • 1:1 replacement for trees up to 3 inches diameter at breast height (DBH); • 4:1 replacement for trees greater than 3 inches to 7 inches DBH; 	<p>Prior to Ground Disturbance</p>	<p>Project Applicant</p>

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	<ul style="list-style-type: none"> • 5:1 replacement for trees greater than 7 inches and up to 15 inches DBH; and • 10:1 replacement for trees greater than 15 inches DBH, which are considered old-growth oaks. <p>Non-oak trees:</p> <ul style="list-style-type: none"> • 1:1 replacement for non-native trees (with native trees); • 1:1 replacement for native trees up to 3 inches DBH; • 3:1 replacement for trees greater than 3 inches DBH and up to 6 inches DBH; and • 6:1 replacement for trees greater than 6 inches DBH. 		
<p>MM BR-1d</p>	<p><i>The following text is recommended for incorporation into MM BR-1d:</i></p> <p>The Project shall permanently preserve one acre of PNG through a conservation easement that shall be recorded prior to Project implementation. The Project shall also prepare and implement and fund in perpetuity a long-term management plan for the protected area for the benefit of PNG habitat. The restoration area shall be monitored for a minimum of 5 years until success criteria are met.</p>	<p>Prior to Ground Disturbance and continuing over the course of the Project</p>	<p>Project Applicant</p>