



State of California – Natural Resources Agency

DEPARTMENT OF FISH AND WILDLIFE

Bay Delta Region

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GAVIN NEWSOM, Governor

CHARLTON H. BONHAM, Director



July 31, 2024

Dana Morrison, Supervising Planner

Napa County

1195 Third Street

Napa, CA 94559

Dana.Morrison@countyofnapa.org

Subject: Marineau Vineyard Conversion Agricultural Erosion Control Plan Section 17 Exemption P22-00212-ECPX, Initial Study/ Mitigated Negative Declaration SCH No. 2024070324, Napa County

Dear Ms. Morrison:

The California Department of Fish and Wildlife (CDFW) received an Initial Study/ Mitigated Negative Declaration (IS/MND) from Napa County (County) for the Marineau Vineyard Conversion Agricultural Erosion Control Plan Section 17 Exemption P22-00212-ECPX (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.

CDFW is submitting comments on the IS/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), a Lake or 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.

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 3513 (regarding unlawful take of any migratory nongame bird). Migratory birds are also protected under the federal Migratory Bird Treaty Act.

Conserving California's Wildlife Since 1870

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PROJECT DESCRIPTION SUMMARY

Proponent: Sebastien Marineau-Mes

Objective: The Project involves the clearing of vegetation, earthmoving and land contouring, and installation and maintenance of erosion control measures associated with the development of approximately 1.24 gross acres of vineyard. Approximately 45 trees, impacted by fire, would be removed as part of the proposed Project. The applicant has identified 2.34 acres of mapped oak woodland forest to be designated as a permanent preserve.

Location: The Project is located at 4000 Silverado Trail North, Calistoga, CA 94515, Napa County; APN 021-010-077; and at approximately 38.56573 °N and -122.51284 °W.

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. Based on the Project's avoidance of significant impacts on biological resources with implementation of mitigation measures, including those CDFW recommends below and included in Attachment 1 Draft Mitigation Monitoring and Reporting Program, CDFW concludes that an MND is appropriate for the Project.

I. Mitigation Measure Related Impact Shortcomings

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)?

COMMENT 1: Roosting Bats

Issue: Thank you for including measures for avoiding impacts to roosting bats. Page 15 of the IS/MND states that "Special-status bat species may be present within tree cavities or snags within the proposed development area or may be roosting in exfoliating bark. Special-status bat species have the potential to be impacted during removal of the approximately 45 trees during Project construction." Detailed methodology was not provided for roosting bat detection surveys beyond determining "absence or presence of special-status bat species."

Specific impacts and why they may occur and be significant: If impacts to special-status bats are not detected and mitigated, Project activities could result in substantial reduction of the number of a special-status species .

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Recommended Mitigation Measure: To reduce impacts to special-status bats to less-than-significant, CDFW recommends that the IS/MND incorporate the following into Mitigation Measure BIO-2.

Bat Tree Habitat Assessment and Surveys. Prior to any tree trimming or removal, a qualified biologist shall conduct a habitat assessment for bats, unless otherwise approved in writing by CDFW. The habitat assessment shall be conducted a minimum of 30 to 90 days prior to tree trimming or removal and shall include a visual inspection of potential roosting features of trees to be removed (e.g., cavities, crevices in wood and bark, exfoliating bark for colonial species, suitable canopy for foliage roosting species). If suitable habitat trees are found, they shall be flagged or otherwise clearly marked, CDFW shall be notified immediately, and tree trimming or removal shall not proceed without approval in writing from CDFW. If the presence of bats is presumed or documented, trees may be removed only: a) using the two-step removal process detailed below 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, under prior written approval of the proposed survey methods by CDFW, conducts night emergence surveys or completes visual examination of roost features that establish absence of roosting bats. In either case, 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.

COMMENT 2: Nesting Bird Surveys

The IS/MND identifies Mitigation Measure BIO-3 to avoid potentially significant impacts to nesting birds, including special-status birds (pages 15 and 16). CDFW recommends making the following deletions in strikethrough and additions in **bold** to reduce impacts to less-than-significant.

Mitigation Measure BIO-3a.

For earth-disturbing activities occurring between February 1 and August 31 (which coincides with the grading season of April 1 through October 15 – NCC Section 18.108.070.L, and bird breeding and nesting seasons), a qualified biologist (defined as knowledgeable and experienced in the biology and natural history of local avian resources with the potential to occur at the Project site) shall conduct pre-construction surveys for nesting birds within **500 feet** ~~all suitable habitat in~~ **of** the Project site, and where there is potential for impacts adjacent to the Project areas, **unless otherwise approved by CDFW and other resource agencies** ~~(typically within 500 feet of project activities)~~. The pre-construction survey shall be conducted no earlier than seven days

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prior to when vegetation removal and ground disturbing activities are to commence. Should ground disturbance commence later than seven days from the survey date, surveys shall be repeated. A copy of the survey shall be provided to the Napa County Conservation Division and CDFW prior to commencement of work.

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-Data>. 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. (See: 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 IS/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 Nicholas Magnuson, Environmental Scientist, at (707) 815-4166 or Nicholas.Magnuson@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

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Attachment 1: Draft Mitigation Monitoring and Reporting Program

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2024070324)

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ATTACHMENT 1

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
For Incorporation into MM BIO-2	Bat Tree Habitat Assessment and Surveys. Prior to any tree trimming or removal, a qualified biologist shall conduct a habitat assessment for bats, unless otherwise approved in writing by CDFW. The habitat assessment shall be conducted a minimum of 30 to 90 days prior to tree trimming or removal and shall include a visual inspection of potential roosting features of trees to be removed (e.g., cavities, crevices in wood and bark, exfoliating bark for colonial species, suitable canopy for foliage roosting species). If suitable habitat trees are found, they shall be flagged or otherwise clearly marked, CDFW shall be notified immediately, and tree trimming or removal shall not proceed without approval in writing from CDFW. If the presence of bats is presumed or documented, trees may be removed only: a) using the two-step removal process detailed below 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, under prior written approval of the proposed survey methods by CDFW, conducts night emergence surveys or completes visual examination of roost features that establish absence of roosting bats. In either case, 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.	Prior to Ground Disturbance	Project Applicant
MM BIO-3a	For earth-disturbing activities occurring between February 1 and August 31 (which coincides with the grading season of April 1 through October 15 – NCC Section 18.108.070.L, and bird breeding and nesting	Prior to Ground Disturbance and over the	Project Applicant

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	<p>seasons), a qualified biologist (defined as knowledgeable and experienced in the biology and natural history of local avian resources with the potential to occur at the Project site) shall conduct preconstruction surveys for nesting birds within 500 feet of the Project site, and where there is potential for impacts adjacent to the project areas, unless otherwise approved by CDFW and other resource agencies. The pre-construction survey shall be conducted no earlier than seven days prior to when vegetation removal and ground disturbing activities are to commence. Should ground disturbance commence later than seven days from the survey date, surveys shall be repeated. A copy of the survey shall be provided to the Napa County Conservation Division and the CDFW prior to commencement of work.</p>	<p>course of the Project</p>	
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