



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



September 10, 2024

Dana Morrison, Supervising Planner
Napa County
1195 Third Street
Napa, CA 94559
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Subject: Miller Vineyard Track I Erosion Control Plan Application (ECP) #P22-00153-ECP, Initial Study/Mitigated Negative Declaration, SCH No. 2024080411, 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 Miller Vineyard Track I Erosion Control Plan Application (ECP) #P22-00153-ECP (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.

After being granted a one-week extension of the commenting period, 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), the 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: Henry Miller Trust

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 7.0-gross-acre of vineyard (approximately 4.6 new net planted acres) on an approximate 28.77-acre parcel. Trees within the proposed vineyards block were severely impacted by the 2020 Glass fire and a Notice of

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Emergency Timber Operations was granted in 2021. A Timber Harvest Permit is underway for the harvesting of 4.5 acres of timberland and 1.5 acres of oak woodland. In total the applicant has identified 16.2 acres of Douglas-fir forest and coast live oak woodland that will be permanently preserved, which includes 3.4 acres of land to be planted with a mix of Douglas-fir and native oaks as detailed in the Tree Planting Plan. The vineyard area was situated to avoid sensitive natural communities [White Oak Alliance (*Quercus garryana*), and Valley Oak Alliance (*Quercus lobata*)] as well as two ephemeral streams skirting the east and west sides of the Project parcel, respectively.

Location: The Project is located at 7070 Silverado Trail, Napa, CA 94558, Napa County; APN 032-070-024; and at approximately 38.43121°N and -122.34436°W.

REGULATORY REQUIREMENTS

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 that are listed or candidate species under CESA, either during construction or over the life of the Project. **The Project has the potential to impact northern spotted owl (*Strix occidentalis caurina*), CESA listed as threatened species, as further described below.** Issuance of a CESA 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 a CESA 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, and 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.

Lake and Streambed Alteration

An LSA Notification, pursuant to Fish and Game Code section 1600 et. seq., is required 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. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to LSA notification requirements. **Although**

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the IS/MND indicates the Project was designed to avoid impacts to streams, it appears that it may impact two unnamed streams including one tributary to Biter Creek, flowing along the west and east sides of the Project site, respectively; therefore, an LSA Notification may be required as further described below. CDFW, as a Responsible Agency under CEQA, 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.

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 Shortcoming

MANDATORY FINDING OF SIGNIFICANCE. Does the Project have potential to substantially reduce the number or restrict the range of an endangered, rare, or threatened species?

AND

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: Northern Spotted Owl

Issue: Mitigation Measure BIO-1a calls for pre-construction spot check surveys for northern spotted owl following USFWS's *Protocol for Surveying Proposed Management Activities That May Impact Northern Spotted Owls, 2012* (IS/MND incorrectly stated as 2021). The Project conducted two years of surveys for northern spotted owl, with the last survey in June 2022 [Biological Resource Reconnaissance Survey (BRRS) pages 134 and 135]. Pursuant to the above protocol spot checks should be conducted in years 3 and year 4 (after 2 years of full survey protocol), which would have been years 2023 and 2024. Thus, the proposed spot check surveys are inconsistent with the protocol as there has been a two-year lapse in northern spotted owl surveying. While the IS/MND states that the Project area seemed to be maintained in a "park-like condition" as of 2022, northern spotted owl

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may be utilizing habitat within 0.25 miles of the Project area, and northern spotted owl habitat use may have changed since 2022.

Specific impacts and why they may occur and be significant: If active northern spotted owl nests are not detected within the 0.25-mile range of potential disturbance, northern spotted owl could be impacted by 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. Northern spotted owl is CESA listed as a threatened species and is also listed under the federal Endangered Species Act, and therefore is considered to be a threatened species pursuant to CEQA Guidelines section 15380. Therefore, if an active northern spotted owl 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: To reduce impacts to northern spotted owl to less-than-significant and comply with CESA, CDFW recommends that Mitigation Measure BIO-1a be revised to the following (strikethroughs for deletion and bold for substitution):

Mitigation Measure Bio-1a Northern Spotted Owl Surveys: A qualified biologist shall perform ~~pre-construction spot check~~ **at least one year of six-visit** surveys for **nesting** northern spotted owl in accordance with **Section 5.5** of the U.S. Fish and Wildlife Service's (USFWS) Protocol for ~~Surveying~~ **Surveying** Proposed Management Activities That May Impact Northern Spotted Owls (Revised ~~January 9, 2024~~ **January 9, 2012**). If **nesting** northern spotted owls are detected during ~~pre-construction spot check survey~~ **surveys**, CDFW and the USFWS shall be consulted with regarding avoidance and minimization measures prior to beginning project activities. If take of northern spotted owl may occur, the Permittee shall obtain a CESA ITP prior to starting project construction. If northern spotted owl are observed during construction activities, all construction shall cease immediately and CDFW and the USFWS shall be consulted. In this event, construction activities shall not resume without CDFW's written permission. **Past and current results (including negative results) for northern spotted owl surveys shall be submitted to the Spotted Owl Database by contacting owlobs@wildlife.ca.gov.**

II. Environmental Setting 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 USFWS?

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COMMENT 2: Special-Status Plants

Issue: Thank you for confirming in the IS/MND that a protocol-level rare plant survey identified no special-status plants and for providing survey results. However, according to Table 1 of the BRRS, the last protocol-level botanical survey was conducted in March 2021. This is a lapse of at least three years if the Project plans to commence activities soon.

Specific impacts and why they may occur and be significant: Project activities including earthwork, vegetation removal, and vineyard installation could impact special-status plants that became established at the Project area since 2021. The “park-like condition” of the site with a “little to no ground vegetation” could be amenable to nearby dispersal of seed and propagules, and plants with fire adaptive root structures may have reappeared in earnest since 2021 surveys. Specifically, the BRRS points to four species with a moderate to high potential to occur onsite: Holly-leaved ceanothus (*Ceanothus purpureus*), Calistoga ceanothus (*Ceanothus divergens*), Narrow-anthered brodiaea (*Brodiaea leptandra*), and Jepson’s leptosiphon (*Leptosiphon jepsoni*); all with a California rare plant ranking (CRPR) of 1B.2. These species could be impacted by Project activities if outdated survey results from 2021 are used to inform their presence. These plant species are geographically limited in range and endemic to California, as well as rare throughout their range based on the 1B.2 ranking, and therefore are likely considered threatened or rare species pursuant to CEQA Guidelines section 15380 criteria. Therefore, the Project may result in a substantial reduction in the number or range of threatened or rare species, which is considered a *mandatory finding of significance* pursuant to CEQA Guidelines section 15065, subdivision (a)(1).

Recommended Mitigation Measure: For an adequate environmental setting and to reduce impacts to special-status plants listed above to less-than-significant, CDFW recommends incorporating the below mitigation measure.

Mitigation Measure BIO-5 Pre-Project Special-Status Plant Surveys: Prior to the start of Project activities, a qualified biologist shall conduct a habitat assessment and, if habitat is present, botanical surveys during the appropriate blooming period and conditions for all special-status plants that have the potential to occur within or near the Project, for example from regrowth after fire or dispersal from nearby habitat, where their occurrence may be directly or indirectly impacted. Surveys and associated reporting shall be conducted according to CDFW’s *2018 Protocol for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities* (see: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>), including visiting reference sites, unless otherwise approved in writing by CDFW. The habitat assessment and survey reports shall be submitted to CDFW prior to the start of

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construction with current photographic documentation of the survey area. Project activities shall not proceed until CDFW has provided written approval of the habitat assessment and survey reports. If any special-status plant species are observed, the Project shall fully avoid direct and indirect impacts to all individuals and prepare and implement a CDFW-approved avoidance plan prior to Project activities. If impacts to special-status plants cannot be avoided, the Project shall provide habitat compensation at a 3:1 mitigation to impact ratio including permanent protection of habitat through a conservation easement and funding and implementing a long-term management plan, prior to Project activities, unless otherwise approved in writing by CDFW.

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 USFWS?

COMMENT 3: Stream Alteration

Issue: The IS/MND states that “No riparian habitat or wetlands were identified within the project site (Exhibit B). There is one unnamed blue-line stream located on the northeastern of the subject parcel, the ephemeral runs east to west and the proposed project areas is located more than 100’ from the existing drainage (see Exhibit A).” However, the BRRS states that “During heavy winter/spring rainfall events, evidence of ephemeral directional flow is evident in the form of two ephemeral-intermittent streams, one on the eastern boundary of the property and one on the western boundary (Map #10).” Furthermore, it appears the extent of the replanting effort shown on page 8 of the Tree Replanting Plan could extend into the streambank or riparian area and impacts to the stream or riparian area may require an LSA Notification to CDFW.

Specific impacts and why they may occur and be significant: Project activities including earthwork, vineyard planting, and native tree replanting can result in impacts to streams and the habitats they support. Impacts could include inputs of deleterious materials, obstructions and diversions, equipment staging and operation, and disturbances to riparian corridors, special-status wildlife and their habitats, and nesting birds. Due to the ecological importance and sensitivity of stream habitat, the above impacts would be *potentially significant*.

Recommended Mitigation Measure: To reduce impacts to streams to less-than significant and comply with Fish and Game Code section 1600 et seq., CDFW recommends including the below mitigation measure.

MM BIO-6: Impacts to Streams and Riparian Areas. Prior to the commencement of Project, activities, the Project shall conduct a thorough assessment for potential

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impacts to streams and riparian habitat including, but not limited to, impacts resulting from tree removal, vineyard development and native vegetation replanting. If impacts to the bed, bank, channel, or riparian area of the streams cannot be avoided, the Project shall notify CDFW for potential Project impacts to the streams. More information for the notification process is available at <https://wildlife.ca.gov/Conservation/Environmental-Review/LSA>. The Project shall comply with all measures of the LSA Agreement, if issued, and shall not commence activities with potential to impact the stream until the LSA Agreement process has been completed. Impacts to the streams and riparian habitat shall be mitigated by restoring a minimum 3:1 ratio in area and linear feet for permanent impacts, all temporary impact areas shall be restored, and trees shall be replaced at an appropriate ratio based on size and species, unless otherwise approved in writing by CDFW.

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 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

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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
Erin Chappell
Regional Manager
Bay Delta Region

ATTACHMENT 1: Draft Mitigation Monitoring and Reporting Program

ec: Office of Planning and Research, State Clearinghouse No. 2024080411
Julie Coombs, CDFW Bay Delta Region - Julie.Coombes@wildlife.ca.gov

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ATTCHMENT 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 |
| MM BIO-1a | <p><u>Mitigation Measure Bio-1a Northern Spotted Owl Surveys</u>: A qualified biologist shall perform pre-construction spot check at least one year of six-visit surveys for nesting northern spotted owl in accordance with Section 5.5 of the U.S. Fish and Wildlife Service's (USFWS) Protocol for Surveying Surveying Proposed Management Activities That May Impact Northern Spotted Owls (Revised January 9, 2024 January 9, 2012). If nesting northern spotted owls are detected during pre-construction spot check surveys surveys, CDFW and the USFWS shall be consulted with regarding avoidance and minimization measures prior to beginning project activities. If take of northern spotted owl may occur, the Permittee shall obtain a CESA ITP prior to starting project construction. If northern spotted owl are observed during construction activities, all construction shall cease immediately and CDFW and the USFWS shall be consulted. In this event, construction activities shall not resume without CDFW's written permission. Past and current results (including negative results) for northern spotted owl surveys shall be submitted to the Spotted Owl Database by contacting owlobs@wildlife.ca.gov.</p> | Prior to Ground Disturbance | Project Applicant |
| MM BIO-5 | <p><u>Mitigation Measure BIO-5 Pre-Project Special-Status Plant Surveys</u>: Prior to the start of Project activities, a qualified biologist shall conduct a habitat assessment and, if habitat is present, botanical surveys during the appropriate blooming period and conditions for all special-status plants that have the potential to occur within or near the Project, for example from regrowth after fire or dispersal from nearby habitat, where their occurrence may be directly or indirectly impacted. Surveys and associated reporting shall be conducted according to CDFW's <i>2018 Protocol for Surveying and Evaluating Impacts to Special Status Native Plant</i></p> | Prior to Ground Disturbance | Project Applicant |

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|------------------------|---|------------------------------------|--------------------------|
| | <p><i>Populations and Sensitive Natural Communities</i> (see: https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline), including visiting reference sites, unless otherwise approved in writing by CDFW. The habitat assessment and survey reports shall be submitted to CDFW prior to the start of construction with current photographic documentation of the survey area. Project activities shall not proceed until CDFW has provided written approval of the habitat assessment and survey reports. If any special-status plant species are observed, the Project shall fully avoid direct and indirect impacts to all individuals and prepare and implement a CDFW-approved avoidance plan prior to Project activities. If impacts to special-status plants cannot be avoided, the Project shall provide habitat compensation at a 3:1 mitigation to impact ratio including permanent protection of habitat through a conservation easement and funding and implementing a long-term management plan, prior to Project activities, unless otherwise approved in writing by CDFW.</p> | | |
| <p>MM BIO-6</p> | <p><u>MM BIO-6: Impacts to Streams and Riparian Areas.</u> Prior to the commencement of Project, activities, the Project shall conduct a thorough assessment for potential impacts to streams and riparian habitat including, but not limited to, impacts resulting from tree removal, vineyard development and native vegetation replanting. If impacts to the bed, bank, channel, or riparian area of the streams cannot be avoided, the Project shall notify CDFW for potential Project impacts to the streams. More information for the notification process is available at https://wildlife.ca.gov/Conservation/Environmental-Review/LSA. The Project shall comply with all measures of the LSA Agreement, if issued, and shall not commence activities with potential to impact the stream until the LSA Agreement process has been completed. Impacts to the streams and riparian habitat shall be mitigated by restoring a minimum 3:1 ratio in area and linear feet for permanent impacts, all temporary impact areas shall be restored, and trees shall be replaced at an appropriate ratio based on size and species, unless otherwise approved in writing by CDFW.</p> | <p>Prior to Ground Disturbance</p> | <p>Project Applicant</p> |