



State of California – Natural Resources Agency

DEPARTMENT OF FISH AND WILDLIFE

Bay Delta Region

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September 3, 2024

Donald Barrella

Napa County

1195 Third Street

Napa, CA 94559

Donald.Barrella@countyofnapa.org

Subject: Acierno Vineyard Conversion ECPA, Initial Study/Mitigated Negative Declaration, SCH No. 2024080231, Napa County

Dear Mr. Barrella:

The California Department of Fish and Wildlife (CDFW) received an Initial Study/Mitigated Negative Declaration (IS/MND) from Napa County (County) for the Acierno Vineyard, Agricultural Erosion Control Plan Application (ECPA) File No. P23-00348-ECPA (Project) pursuant to 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), the Lake or 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: Michael A. Acierno

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 0.73 gross acre of vineyard (approximately 0.63 net planted acres) on an approximate 40.3-acre property. The Project also includes the removal and restoration/revegetation of an existing vineyard block (Block F, ±0.9 acre), that was developed without an approved ECPA and portions of which are located within

Donald Barrella
Napa County
September 3, 2024
Page 2

stream setbacks and on slopes above 30 percent, and the revegetation of a portion of this area and other areas totaling 0.63-acres that includes the planting of 52 oak (*Quercus* sp.) trees. Fifteen oak trees greater than six-inch diameter at breast height (DBH) were previously removed within the proposed vineyard blocks. Revegetation areas are located near two unnamed tributaries to the Napa River that run along the east and west sides of the Project area, 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

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. **The Project may impact two unnamed tributaries to the Napa River, 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.

California Fully Protected Species

California Fully Protected species may not be taken or possessed at any time and no licenses or permits may be issued for their take except as follows:

- Take is for necessary scientific research,
- Efforts to recover a fully protected, endangered, or threatened species, live capture and relocation of a bird species for the protection of livestock, or
- They are a covered species whose conservation and management is provided for in a Natural Community Conservation Plan (Fish & G. Code, §§ 3511, 4700, 5050, & 5515).

Specified types of infrastructure projects may be eligible for an incidental take permit for unavoidable impacts to fully protected species if certain conditions are met (Fish & G. Code, § 2081.15). Project proponents should consult with CDFW early in the Project

Donald Barrella
Napa County
September 3, 2024
Page 3

planning process. **The Project has the potential to impact nesting white-tailed kite (*Elanus leucurus*), California Fully Protected species.**

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 (MBTA).

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 IS/MND is appropriate for the Project.

- I. 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 Related Impact Shortcoming

COMMENT 1: Nesting Bird Surveys

Issue: The IS/MND does not evaluate the potential for nesting birds such as white-tailed kite, a California Fully Protected species, to occur and be impacted by the Project.

Specific impacts and why they may occur and be significant: 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). Nesting birds such as white-tailed kite, a California Fully Protected species, may be disturbed by Project noise, visual changes, and human presence, which could lead to nest abandonment or reduced health and vigor of young, a potentially significant impact.

Donald Barrella
Napa County
September 3, 2024
Page 4

Recommended Mitigation Measure To reduce impacts to less-than-significant and comply with Fish and Game Code sections 3500 et seq. and the federal MBTA, CDFW recommends including the below mitigation measure.

MM BIO-3: Nesting Bird Surveys. If construction, grading, vegetation removal, or other Project-related activities are scheduled during the avian nesting season, February 1 to August 31, a qualified biologist shall conduct a survey for active bird nests within 7 days prior to the beginning of Project-related activities. The survey shall cover the entire Project site and a minimum 500-foot buffer around the Project site. If a lapse in Project-related work of seven days or longer occurs, another survey shall be conducted before Project work can be reinitiated. If an active nest is found during surveys, the qualified biologist shall immediately notify the CDFW contact below, or if unavailable another CDFW representative, and establish site- and species-specific no-work buffers to ensure the nest is not disturbed. The buffer distances shall be specified to protect the bird's normal behavior to prevent nesting failure or abandonment and comply with Fish and Game Code section 3500 et seq. and the federal MBTA. Abnormal nesting behaviors which may cause reproductive harm include, but are not limited to, defensive flights/vocalizations directed towards Project personnel, standing up from a brooding position, and flying away from the nest. The qualified biologist shall have authority to order the cessation of all nearby Project activities if the nesting birds exhibit abnormal behavior which may cause reproductive failure (nest abandonment and loss of eggs and/or young) until an appropriate buffer is established.

The qualified biologist shall monitor the behavior of the birds (adults and young, when present) at the nest site to ensure that they are not disturbed by Project work. Nest monitoring shall continue during Project work until the young have fully fledged (have completely left the nest site and are no longer being fed by the parents), as determined by the qualified biologist, unless otherwise approved in writing by CDFW.

II. 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?

Environmental Setting and Related Impact Shortcoming

COMMENT 2: Stream Alteration

Issue: Page 26 of the IS/MND states that "The nearest blueline stream is Conn Creek, which is approximately 0.8 mile to the southwest. Therefore, no waterways have the potential to be significantly impacted by the proposed Project." However, the IS/MND also states that "An ephemeral drainage occurs to the west of the

Donald Barrella
Napa County
September 3, 2024
Page 5

proposed development area that would be considered a water of the State.” Based on aerial imagery and the California Aquatic Resources Inventory (CARI), it appears there are two streams on the east and west side of the Project area (respectively) The streams are also represented in Plates II and III of the *Native Oak Replanting Plan* (Exhibit B-2). It’s not clear that the Project has considered impacts to the stream and riparian habitat resulting from the Project activities such as the replanting areas. Furthermore, it’s not clear if the removal of the fifteen oak trees on the Project site (IS/MND page 1) resulted in impacts to the stream and riparian habitat. Please be advised that streams and adjoining riparian habitat are subject to Fish and Game Code 1602 et. seq, including ephemeral, intermittent, and perennial streams.

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-4: Impacts to Streams and Riparian Areas. Prior to the commencement of Project, activities, the Project shall conduct a thorough assessment for potential impacts to the stream 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, if issued, and shall not commence activities with potential to impact the stream until the LSA 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.

Please be advised that an LSA, if issued for the Project, would likely include the above recommended mitigation measures, as applicable, and may include additional measures to protect fish and wildlife resources.

Donald Barrella
Napa County
September 3, 2024
Page 6

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 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

Attachment 1: Draft Mitigation Monitoring and Reporting Program

ec: Office of Planning and Research, State Clearinghouse No. 2024080231

Donald Barrella
Napa County
September 3, 2024
Page 7

REFERENCES

Rosenburg, Kenneth V.; Dokter, Adriaan M.; Blancher, Peter J.; Sauer, John R.; Smith, Adam C.; Smith, Paul A.; Stanton, Jessica C.; Panjabi, Avrind; Helft, Laura; Parr, Michael; and Marra, Peter P. 2019. Decline of the North American Avifauna. *Science*: 120-124.

Donald Barrella
 Napa County
 September 3, 2024
 Page 8

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
MM BIO-3	<p><u>MM BIO-3: Nesting Bird Surveys</u>. If construction, grading, vegetation removal, or other Project-related activities are scheduled during the avian nesting season, February 1 to August 31, a qualified biologist shall conduct a survey for active bird nests within 7 days prior to the beginning of Project-related activities. The survey shall cover the entire Project site and a minimum 500-foot buffer around the Project site. If a lapse in Project-related work of seven days or longer occurs, another survey shall be conducted before Project work can be reinitiated. If an active nest is found during surveys, the qualified biologist shall immediately notify the CDFW contact below, or if unavailable another CDFW representative, and establish site- and species-specific no-work buffers to ensure the nest is not disturbed. The buffer distances shall be specified to protect the bird's normal behavior to prevent nesting failure or abandonment and comply with Fish and Game Code section 3500 et seq. and the federal MBTA. Abnormal nesting behaviors which may cause reproductive harm include, but are not limited to, defensive flights/vocalizations directed towards Project personnel, standing up from a brooding position, and flying away from the nest. The qualified biologist shall have authority to order the cessation of all nearby Project activities if the nesting birds exhibit abnormal behavior which may cause reproductive failure (nest abandonment and loss of eggs and/or young) until an appropriate buffer is established.</p> <p>The qualified biologist shall monitor the behavior of the birds (adults and young, when present) at the nest site to ensure that they are not disturbed by Project work. Nest monitoring shall continue during Project work until the young have fully fledged (have completely left the nest site and are no longer</p>	Prior to Ground Disturbance	Project Applicant

Donald Barrella
 Napa County
 September 3, 2024
 Page 9

	<p>being fed by the parents), as determined by the qualified biologist, unless otherwise approved in writing by CDFW.</p>		
<p>MM BIO-4</p>	<p><u>MM BIO-4: 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 the stream 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, if issued, and shall not commence activities with potential to impact the stream until the LSA 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, and all temporary impact areas shall be restored, and trees will be replaced to offset the removal of oaks, unless otherwise approved in writing by CDFW.</p> <p>Please be advised that an LSA Agreement, if issued for the Project, would likely include the above recommended mitigation measures, as applicable, and may include additional measures to protect fish and wildlife resources.</p>	<p>Prior to Ground Disturbance and over the course of the Project</p>	<p>Project Applicant</p>