



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



November 15, 2024

Sean Trippi, Supervising Planner
Napa County Planning, Building, and Environmental Services
1195 Third Street, Suite 210
Napa, CA 94559
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Subject: E&P Technology Way - Building A & B Use Permit #'s P22-00307-UP and P22-00308-UP (APN's: 057-250-030, -031, -032), Initial Study/Mitigated Negative Declaration, SCH No. 2024100855, Napa County

Dear Mr. Trippi:

The California Department of Fish and Wildlife (CDFW) received an Initial Study/Mitigated Negative Declaration (IS/MND) from Napa County (County) for the E&P Technology Way - Building A & B Use Permit #'s P22-00307-UP and P22-00308-UP (APN's: 057-250-030, -031, -032) (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), 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: Mike Kelly

Objective: The Project is limited to the development of a 143,312 square-foot wine production facility (Building A) and a 66,915 square-foot warehouse (Building B). The winery uses will include grape crushing, bulk wine processing and storage, stainless steel tank and barrel storage, bottling, and office space. In addition, approximately 13,000 square feet of covered outdoor work area will be located on the north side of the

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building. The Project also includes 129 parking spaces and 8 spaces for semi-trailers. Access will be provided by three new driveways: one on Technology Way and two on Morris Court.

Building B is limited to warehouse uses within the proposed 66,915 square-foot building. All vehicles will enter from a new access driveway on Technology Way that runs along the eastern property line. Trucks will be able to circulate around the building in a one-way loop, exiting at a second driveway on Technology Way on the west side of the building. The entrance driveway will be wide enough to accommodate two-way traffic.

Location: The Project is located on three parcels comprising two sites: Building A is proposed on a 13.2-acre parcel on the north side of Technology Way and Morris Court (APN 057-250-030), at approximately 38.22753°N and -122.26939°W; and Building B is proposed on a 6.87-acre site on the north side of Technology Way, opposite Gateway Road West (APN's 057-250-031, -032, to be combined), at approximately 38.22677°N, -122.26638°W. A conservation easement runs along the north and northeast boundary of the Project site which includes a meandering path along the south side of Sheehy Creek.

REGULATORY REQUIREMENT

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 or candidate species under CESA either during construction or over the life of the Project. **The Project has the potential to impact Swainson's hawk (*Buteo swainsoni*), CESA listed as threatened species. Thank you for including mitigation measures for Swainson's hawk. Please be advised that the California Natural Diversity Database (CNDDB) documents a nesting Swainson's hawk record in year 2021 approximately 300 feet north of the Project site. Swainson's hawks often utilize the same nests sites from year to year, therefore there is a high potential for nesting Swainson's hawk to be impacted by the Project during nesting season, warranting an ITP. The Project also has the potential to impact burrowing owl (*Athene cunicularia*), a CESA candidate 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.

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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.

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.

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 and 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?

COMMENT 1: Burrowing Owl

Issue: Thank you for including in the IS/MND mitigation measures for burrowing owl (BUOW). However, the language in the IS/MND and the Biological Resources Analysis does not reflect the recent status change of BUOW to a CESA candidate species, and Mitigation Measure (MM) BIO-6 does not stipulate whether the Project would obtain a CESA ITP if take of BUOW may occur. Take of CESA candidate species is prohibited without a CESA take authorization from CDFW, typically an ITP. CNDDDB documents a wintering BUOW record approximately 1,100 feet northeast of the Project site, within the area of potential Project disturbance.

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Recommended mitigation measure: To reduce potential impacts to BUOW to less-than-significant and comply with CESA, CDFW recommends adding the following requirements to MM BIO-6.

Mitigation Measure BIO-6 (Burrowing Owl Habitat Assessment and Surveys): If take of burrowing owl (BUOW) cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP before Project activities commence. Take is likely to occur and the Project shall obtain an ITP if: 1) BUOW surveys of the Project site detect BUOW occupancy of burrows or burrow surrogates, or 2) there is sign of BUOW occupancy on the Project site within the past three years and habitat has not had any substantial change that would make it no longer suitable within the past three years. Occupancy means a site that is assumed occupied if at least one BUOW has been observed occupying a burrow or burrow surrogate within the last three years. Occupancy of suitable BUOW habitat may also be indicated by BUOW sign including its molted feathers, cast pellets, prey remains, eggshell fragments, or excrement at or near a burrow entrance or perch site. If BUOW, or their burrows or burrow surrogates, are detected within 500 meters (1,640 feet) of the Project site during BUOW surveys, but not on the Project site, the Project shall consult with CDFW to determine if avoidance is feasible, or an ITP is warranted and shall obtain an ITP if deemed necessary by CDFW.

II. Editorial Comment

COMMENT 2: California Endangered Species Act Incidental Take Permit

Issue: The IS/MND Page 2, Section 10 states: “The proposed project does not involve the “take” of listed endangered or threatened species, and thus does not require a “take permit” from the Department of Fish and Wildlife...” As discussed above, the Project has the potential to result in take of BUOW and Swainson’s hawk. Furthermore, the IS/MND MM BIO-4 states: “If take of Swainson’s hawk cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP before Project activities may commence. Therefore, the Project may require a “take permit” (i.e., ITP) from CDFW.

Recommendation: CDFW recommends revising the above language on IS/MND Page 2, Section 10 to: “The proposed project has the potential to result in “take” of listed endangered or threatened species, or candidate species for listing, and thus may require a “take permit” from the Department of Fish and Wildlife, the U.S. Fish and Wildlife Service, or the National Marine Fisheries Service.

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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. (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
Regional Manager
Bay Delta Region

Attachment 1: Draft Mitigation Monitoring and Reporting Program

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2024100855)
Sean Kennings, LAK Associates, LLC - Sean@lakassociates.com

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ATTACHMENT

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-6	<p><u>ADD THE BELOW LANGUAGE TO THE EXISTING MM BIO-6.</u></p> <p><u>Burrowing Owl Habitat Assessment and Surveys:</u> If take of BUOW cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP before Project activities commence. Take is likely to occur, and the Project shall obtain an ITP if: 1) BUOW surveys of the Project site detect BUOW occupancy of burrows or burrow surrogates, or 2) there is sign of BUOW occupancy on the Project site within the past three years and habitat has not had any substantial change that would make it no longer suitable within the past three years. Occupancy means a site that is assumed occupied if at least one BUOW has been observed occupying a burrow or burrow surrogate within the last three years. Occupancy of suitable BUOW habitat may also be indicated by BUOW sign including its molted feathers, cast pellets, prey remains, eggshell fragments, or excrement at or near a burrow entrance or perch site. If BUOW, or their burrows or burrow surrogates, are detected within 500 meters (1,640 feet) of the Project site during BUOW surveys, but not on the Project site, the Project shall consult with CDFW to determine if avoidance is feasible, or an ITP is warranted and shall obtain an ITP if deemed necessary by CDFW.</p>	Prior to Ground Disturbance and During Project Construction	Project Applicant
Editorial Comment	CDFW recommends revising the language on IS/MND Page 2, Section 10 to: "The proposed project has the potential to result in "take" of listed endangered or threatened species, or candidate species for listing, and thus may require a "take permit" from the Department of Fish and Wildlife, the U.S. Fish and Wildlife Service, or the National Marine Fisheries Service.	Prior to Finalizing IS/MND	Lead Agency