



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Bay Delta Region
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GAVIN NEWSOM, Governor
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November 1, 2019

Governor's Office of Planning & Research

NOV 01 2019

STATE CLEARINGHOUSE

Mr. Sean Trippi, Principal Planner
Napa County
1195 Third Street
Napa, CA 94559

Subject: Gateway East Winery, Use Permit #P18-00389-UP, Draft Mitigated Negative Declaration, SCH #2019109019, City and County of Napa

Dear Mr. Trippi:

California Department of Fish and Wildlife (CDFW) personnel have reviewed the draft Mitigated Negative Declaration (MND) for the Gateway East Winery (Project). CDFW is submitting comments on the draft MND to inform Napa County, as the Lead Agency, of our concerns regarding potentially significant impacts to sensitive resources associated with the proposed Project.

CDFW is a Trustee Agency pursuant to the California Environmental Quality Act (CEQA) Section 15386 and is responsible for the conservation, protection, and management of the State's biological resources. CDFW is also considered a Responsible Agency if a project would require discretionary approval, such as the California Endangered Species Act (CESA) Permit, the Native Plant Protection Act, the Lake and Streambed Alteration (LSA) Agreement and other provisions of the Fish and Game Code that afford protection to the State's fish and wildlife trust resources.

Regulatory Requirements

CESA prohibits unauthorized take of candidate, threatened, and endangered species. Therefore, if take¹ of Swainson's hawk (*Buteo swainsoni*) or any listed species listed under CESA cannot be avoided either during Project activities or over the life of the Project, a CESA Incidental Take Permit (ITP) must be obtained (pursuant to Fish and Game Code Section 2080 *et seq.*). Issuance of a CESA ITP is subject to CEQA documentation; therefore, the CEQA document should specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the proposed Project will impact any CESA-listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required to obtain a CESA ITP. More information on the CESA permitting process can be found on the CDFW website at <https://www.wildlife.ca.gov/Conservation/CESA>.

Lake and Streambed Alteration Agreement

CDFW requires an entity to notify CDFW before commencing any activity that will divert or obstruct the natural flow, or change the bed, channel, or bank (which may include associated riparian resources) of a river or stream or use material from a streambed. Ephemeral and/or

¹ Fish and Game Code §86: "Take" means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.

intermittent streams and drainages (that are dry for periods of time or only flow during periods of rainfall) are also subject to Fish and Game Code section 1602. The Project proposes to construct a storm water outfall pipe and associated rock riprap into Sheehy Creek. An LSA Notification was submitted to CDFW describing this work on December 18, 2018. CDFW submitted an Incomplete Notification letter to the applicant on January 16, 2019, and again on June 13, 2019. In order to address the Incomplete Notification letter, the Project should be designed so that the storm drain pipe is adequately sized to convey the estimated 100-year, 24-hour storm event. The least amount of rock riprap necessary shall be used to prevent bank erosion and to not confine the stream. Rock should be adequately sized to withstand washout during the 100-year, 24-hour event in Sheehy Creek.

Issuance of an LSA Agreement is subject to CEQA. CDFW, as a Responsible Agency under CEQA, will consider the CEQA document for the Project. The CEQA document should identify the potential impacts to the stream or riparian resources and provide adequate avoidance, mitigation, monitoring, and reporting commitments for completion of the agreement. To obtain information about the LSA notification process, please access our website at <https://www.wildlife.ca.gov/conservation/lsa> or to request a notification package, contact CDFW's Bay Delta Regional Office at (707) 428-2002.

Migratory Birds and Raptors

CDFW also 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 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). Fully protected species may not be taken or possessed at any time (Fish and Game Code Section 3511). Migratory raptors are also protected under the federal Migratory Bird Treaty Act.

Project Description and Environmental Setting

The 5.52-acre Project site is located on the west side of Gateway Road East, and the south side of Sheehy Creek, a tributary to the Napa River, in the City and County of Napa. The Project site is in south Napa within the industrial/business park area near the Napa Airport, and is predominantly comprised of ruderal grassland habitat. Small season wetlands are also present within the Project footprint. The site is relatively flat with elevations ranging from 42 to 53 feet above sea level. North of the Project site, across Sheehy Creek is an approved and currently under construction 105,099-square-foot multi-building self-storage facility on a 7.39-acre property. To the south is the recently constructed Portocork facility on a 2.49-acre property. East of the Project site is an approved but not yet built 67,930-square-foot three-story office building; and west of the site is an approved 42,700-square-foot light industrial building on a 2.74-acre site. Southwest of the site is an office complex with four multi-tenant buildings and southeast of the site is two recently approved light industrial buildings totaling 63,875 square feet.

The proposed Project is to construct a 230,000-gallon per year winery, totaling approximately 86,393 square feet. Additionally, a series of storm water detention basins will be constructed

between the winery building and Sheehy Creek; and a stormwater outfall and associated rock riprap will be constructed within the south bank of Sheehy Creek.

Comments and Concerns

Swainson's hawk

As mentioned in the *Biological & Wetland Resources Assessment* (BA), prepared by Barnett Environmental, dated January 22, 2019, there are multiple occurrences of Swainson's hawk (SWHA) documented within 2 miles of the Project site, including multiple occurrences within 0.5 miles of the Project site. According to the Napa Valley Business Park Environmental Impact Report (EIR), prepared by Napa County, adopted on July 29, 1986 and amended through October 22, 2013, the planning area encompasses approximately 2,945 acres of land, of which approximately 2,800 acres are planned to be developed (i.e. approximately 95% of all of the land in the Napa Valley Business Park area will be developed). Furthermore, the EIR states that in 1984, approximately 1,780 acres of agriculture and open space existed within the area, and planned development in the area will remove 1,744 acres, leaving only 36 acres of agriculture and open space land (i.e. development will result in a reduction in approximately 98% of all agriculture and open space land). This presents a major concern to the future viability of SWHA populations in Napa County. According to the *Airport Area Master Environmental Assessment*, prepared for the abovementioned EIR:

"The grassland and pasture areas found within the study area serve as an important raptor feeding area. Conversion of these areas from their present agricultural uses to urban development would significantly reduce their value to the various predatory bird species found in the area. Complete development of these areas would eliminate their value to all species while incremental development would slowly reduce their habitat values."

Furthermore, it states:

"Small animals and birds that use the grassland habitat type would be displaced when development occurred. These species would experience a decline in their local populations proportional to the loss of habitat."

The remaining habitat in the Napa Valley Business Park area is some of the last remaining suitable nesting and foraging habitat for SWHA in Napa County. All development occurring in and planned for in this area presents a significant impact to local SWHA populations; and therefore, CDFW recommends that the Project mitigate for impacts to SWHA foraging habitat. CDFW recommends the MND update Mitigation Measure (MM) Bio-1 to include that a qualified biologist prepare a Mitigation Plan for CDFW review and approval that includes preserving suitable foraging habitat in perpetuity under the form of a conservation easement, or similar means of permanent protection. Any permanent loss of SWHA foraging habitat should be appropriately mitigated due to ongoing and cumulative loss of this habitat type in the South Napa Valley area. To mitigate for the loss of Swainson's hawk foraging habitat in a method consistent with the *Staff Report Regarding Mitigation for Impacts to Swainson's Hawks (Buteo swainsoni) in the Central Valley of California*, CDFW 1994, (SWHA Staff Report), CDFW recommends the MND update Mitigation Measure (MM) Bio-1 to incorporate the following language:

Mr. Sean Trippi
Napa County
November 1, 2019
Page 4

- For projects within one-mile of an active nest tree (the SWHA Staff Report defines an active nest as used during one or more of the last five years), provide one-acre of land for each acre of development authorized (1:1 ratio).
- For projects within five miles of an active nest tree, but greater than one-mile from the nest tree, provide 0.75 acres of land for each acre of development authorized (0.75:1 ratio).
- For projects within 10 miles of an active nest tree, but greater than 5 miles from an active nest tree, provide 0.5 acres of land for each acre of development authorized (0.5:1 ratio).

CDFW believes there are multiple active SWHA nests within 0.5 miles of the Project site and therefore recommends that the Mitigation Plan include preservation of SWHA foraging habitat at a 1:1 impacts to mitigation ratio.

Special-Status Plants

According to the BA, a special-status plant survey was conducted on September 21, 2018. Prior to that survey, the most recent survey was conducted on August 25, 1988, according to the draft MND. Special-status plants were not found during any of the surveys. However, because the surveys were conducted outside of the appropriate blooming period for many special-status plants that have the potential to occur on-site, CDFW recommends that a qualified biologist conduct a survey during the appropriate blooming period for all special-status plants that have the potential to occur on the Project site prior to the start of construction. Surveys should be conducted following *Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Sensitive Natural Communities*, prepared by CDFW, dated March 20, 2018. The protocol can be found here: <https://www.wildlife.ca.gov/Conservation/Survey-Protocols#377281280-plants>. If special-status plants are found during surveys, the Project should be re-designed to avoid impacts to special-status plants to the greatest extent feasible. If impacts to special-status plants cannot be avoided completely during construction, a qualified botanist should prepare a Mitigation and Monitoring Plan in consultation with CDFW.

CDFW appreciates the opportunity to provide comments on the draft MND for the proposed Project and is available to meet with you to further discuss our concerns. Additionally, CDFW is available to work with the Project applicant in order to complete their LSA Notification. If you have any questions, please contact Mr. Garrett Allen, Environmental Scientist, at (707) 428-2076 or garrett.allen@wildlife.ca.gov; or Ms. Karen Weiss, Senior Environmental Scientist (Supervisory), at (707) 428-2090 or karen.weiss@wildlife.ca.gov.

Sincerely,



for Gregg Erickson
Regional Manager
Bay Delta Region

cc: State Clearinghouse