



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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February 12, 2026

Kelli Cahill, Planner III
Napa County
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Subject: Miller Vineyard Conversion P24-00314-ECPA Project, Negative Declaration,
SCH No. 2026010771, Napa County

Dear Kelli Cahill:

The California Department of Fish and Wildlife (CDFW) received a Negative Declaration (ND) from Napa County (County) for the Miller Vineyard Conversion P24-00314-ECPA Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines¹.

CDFW is submitting comments on the ND 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) or Native Plant Protection Act, the Lake and 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: Jeffrey and Teri Miller

Objective: The Project includes the clearing of vegetation, earthmoving, and installation and maintenance of erosion control measures associated with the development of approximately 5.51 gross acres of new vineyard within two vineyard blocks, in an area currently used as horse pastures, on an approximately 10.47-acre parcel. Earthmoving and grading activities associated with the installation of erosion control measures and

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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subsequent vineyard operation include, but are not limited to vegetation removal, soil ripping, rock removal, and disking. No trees are proposed for removal.

Location: The Project site is located at 30 Lupine Hill Road in unincorporated Napa County approximately 0.7 miles east of the City of Napa; 38.312224°N and 122.253322°W; and Assessor's Parcel Number 052-170-054.

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 listed or candidate species under CESA, either during construction or over the life of the Project. **The Project has potential Swainson's hawk (*Buteo swainsoni*), a state threatened 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. 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.

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).

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

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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 streams and riparian areas are subject to LSA notification requirements. **The Project site is approximately bisected by a stream, however the Project would avoid the stream and a 35-foot buffer around it according to the ND. Thank you for ensuring stream and riparian habitat avoidance, and please be advised that if plans change and stream impacts would occur, LSA Notification may be required.** 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 CDFW recommends below and includes in **Attachment 1** Draft Mitigation Monitoring and Reporting Program, CDFW concludes that a mitigated negative declaration is appropriate for the Project.

Mandatory Findings of Significance: Does the Project have the potential to substantially reduce the number or restrict the range of an endangered, rare, or threatened species?

COMMENT 1: Swainson's hawk, Environmental Setting and Related Impact Shortcoming

Issue: The ND concludes that Swainson's hawk has the potential to fly over the Project site, there is no suitable nesting habitat on-site, and foraging habitat is lacking due to historic management of the site and recent grazing. However, based on ND Figure 2 and Google Earth aerial imagery, the Project site appears to support grassland habitat potentially suitable for Swainson's hawk foraging, and there are numerous potentially suitable Swainson's hawk nesting trees adjacent to and within 0.5 miles of the Project site, the distance at which nesting Swainson's hawk could be impacted by visual or auditory disturbances. Additionally, the Napa County Update 2016 Vegetation layer maps most of the Project site as Annual Grasses and Forbs and a significant portion of the surrounding area as Interior Mixed Hardwood and Blue Oak Woodland. The California Natural Diversity Database (CNDDDB) documents nesting Swainson's hawk approximately four miles southwest of the Project site and several additional nesting records approximately five to six miles to the southwest.

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Specific impacts and why they may occur and be significant: The Project has the potential to impact nesting Swainson's hawk through auditory or visual disturbances above ambient levels resulting from construction activities, if appropriate surveys are not conducted to detect nesting Swainson's hawk to ensure avoidance. Disturbances from Project activities may result in Swainson's hawk nest abandonment and loss of eggs or reduced health and vigor and loss of young.

The Project may also result in the removal of Swainson's hawk foraging habitat in the form of grassland habitat. In 2016, CDFW released a Status Review for Swainson's hawk in California and recommended the species retain its status as threatened under CESA (CDFW 2016). The review states there is no indication the species has reoccupied its historical range and the distribution of Swainson's hawk remains largely unchanged and restricted. Additionally, the review cites that the primary threat to Swainson's hawk continues to be habitat loss, especially the loss of suitable foraging habitat. Swainson's hawk is CESA listed as a threatened species and therefore is considered to be a threatened species pursuant to CEQA Guidelines section 15380.

Therefore, if an active Swainson's hawk nest is disturbed by the Project or its foraging habitat is removed, the Project may result in a substantial reduction in the number or restriction in the range 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 potential impacts to Swainson's hawk to less-than-significant and comply with CESA, Fish and Game Code 3500 et seq., and the MBTA, CDFW recommends including the mitigation measures below.

Mitigation Measure BIO-1: Swainson's Hawk Surveys and Avoidance. If Project activities are scheduled during the nesting season for Swainson's hawk (March 1 to September 15), prior to beginning work on the Project, a qualified biologist shall conduct surveys according to the *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley*, dated May 31, 2022 (see: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83990&inline>) and prepare a report documenting the survey results. The Project shall obtain CDFW's written approval of the qualified biologist and survey report prior to starting construction activities between March 1 and September 15. Survey methods shall be closely followed by starting early in the nesting season (late March to early April) to maximize the likelihood of detecting an active nest (nests, adults, and chicks are more difficult to detect later in the growing season because trees become less transparent as vegetation increases). Surveys shall be conducted: 1) within a minimum 0.5-mile radius of the Project site or a larger area if needed to identify potentially impacted active nests, unless otherwise approved by CDFW in writing, and 2) for at least the two survey periods immediately prior to initiating Project-related construction activities. **Surveys shall occur annually for the duration of the Project, unless otherwise approved in**

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writing by CDFW. The qualified biologist shall have a minimum of two years of experience implementing the survey methodology. If active Swainson's hawk nests are detected, the Project shall immediately notify CDFW and implement a 0.5-mile construction avoidance buffer around the nest until the nest is no longer active as determined by a qualified biologist, unless otherwise approved in writing by CDFW. Any detected nesting Swainson's hawk shall be monitored by the qualified biologist to ensure it is not disturbed during construction activities, unless otherwise approved in writing by CDFW. 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 commence and shall comply with the ITP.

Mitigation Measure BIO-2: Swainson's Hawk Foraging Habitat Mitigation: If, prior to Project construction activities, nesting Swainson's hawk are detected within 0.5 miles of the Project site, impacts to Swainson's hawk foraging habitat shall be quantified by a qualified biologist based on the final Project design plans, and the Project shall obtain written acceptance of the acreage of foraging habitat impacts from CDFW. Prior to Project construction, the Project shall provide Swainson's hawk foraging habitat mitigation at a minimum 1:1 ratio, which shall include: 1) permanent preservation of the species' foraging habitat through a conservation easement and implementing and funding a long-term management plan in perpetuity, or 2) purchase of Swainson's hawk foraging habitat credits at a CDFW-approved mitigation bank, 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 CNDDDB. The CNDDDB online field survey form and other methods for submitting data can be found 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://wildlife.ca.gov/Data/CNDDDB/Plantsand-Animals>.

FILING FEES

CDFW anticipates that the Project will have an impact on fish and/or wildlife, and assessment of filing fees is necessary (Fish & G. Code, § 711.4; Pub. Resources Code, § 21089). 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.

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CONCLUSION

CDFW appreciates the opportunity to comment on the ND to assist the County in identifying and mitigating Project impacts on biological resources.

If you have any questions, please contact Melanie Day, Senior Environmental Scientist (Supervisory), at (707) 210-4415 or at 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 and Monitoring Reporting Plan

ec: Office of Land Use and Climate Innovation SCH No. 2026010771
Craig Weightman, CDFW Bay Delta Region – Craig.Weightman@wildlife.ca.gov

REFERENCES

California Department of Fish and Wildlife. 2016. Status Review: Swainson's Hawk (*Buteo swainsoni*) in California, reported to the California Fish and Game Commission, five-year status report. State of California Natural Resources Agency, Sacramento, CA.
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=133622&inline>

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ATTACHMENT 1

Draft Mitigation and Monitoring Reporting Plan

CDFW provides the following language to be incorporated into the Mitigation and Monitoring Program for the Project.

Biological Resources (BIO)			
Mitigation Measures	Description	Timing	Responsible Party
BIO-1	<p><u>Swainson's Hawk Surveys and Avoidance.</u> If Project activities are scheduled during the nesting season for Swainson's hawk (March 1 to September 15), prior to beginning work on the Project, a qualified biologist shall conduct surveys according to the Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley, dated May 31, 2022 (see: https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83990&inline) and prepare a report documenting the survey results. The Project shall obtain CDFW's written approval of the qualified biologist and survey report prior to starting construction activities between March 1 and September 15. Survey methods shall be closely followed by starting early in the nesting season (late March to early April) to maximize the likelihood of detecting an active nest (nests, adults, and chicks are more difficult to detect later in the growing season because trees become less transparent as vegetation increases). Surveys shall be conducted: 1) within a minimum 0.5-mile radius of the Project site or a larger area if needed to identify potentially impacted active nests, unless otherwise approved by CDFW in writing, and 2) for at least the two survey periods immediately prior to initiating Project-related construction activities. Surveys shall occur annually for the duration of the Project, unless otherwise approved in writing by CDFW. The qualified biologist shall have a minimum of two years of experience implementing the survey methodology. If active Swainson's hawk nests are detected, the Project shall immediately notify CDFW and implement a 0.5-mile construction</p>	<p>Prior to the Lead Agency issuing construction related permits and ground disturbance, and during construction</p>	<p>Project Applicant</p>

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	<p>avoidance buffer around the nest until the nest is no longer active as determined by a qualified biologist, unless otherwise approved in writing by CDFW. Any detected nesting Swainson's hawk shall be monitored by the qualified biologist to ensure it is not disturbed during construction activities, unless otherwise approved in writing by CDFW. 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 commence and shall comply with the ITP.</p>		
<p>BIO-2</p>	<p><u>Swainson's Hawk Foraging Habitat Mitigation:</u> If, prior to Project construction activities, nesting Swainson's hawk are detected within 0.5 miles of the Project site, impacts to Swainson's hawk foraging habitat shall be quantified by a qualified biologist based on the final Project design plans, and the Project shall obtain written acceptance of the acreage of foraging habitat impacts from CDFW. Prior to Project construction, the Project shall provide Swainson's hawk foraging habitat mitigation at a minimum 1:1 ratio, which shall include: 1) permanent preservation of the species' foraging habitat through a conservation easement and implementing and funding a long-term management plan in perpetuity, or 2) purchase of Swainson's hawk foraging habitat credits at a CDFW-approved mitigation bank, unless otherwise approved in writing by CDFW.</p>	<p>Prior to the Lead Agency issuing construction related permits and ground disturbance, and during construction</p>	<p>Project Applicant</p>