



STATE OF CALIFORNIA
DEPARTMENT OF FISH AND WILDLIFE

GAVIN NEWSOM, Governor
MEGHAN HERTEL, Director

Bay Delta Region
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September 3, 2026

Michael Meza, Water Resource Control Engineer
State Water Resources Control Board, Division of Water Rights
1001 I Street
Sacramento, CA 95814
Michael.Meza@waterboards.ca.gov

Subject: Infinite Leisure Water Right Petition for Change of License 7328, Initial Study/Mitigated Negative Declaration, SCH No. 2026080124, Napa County

Dear Michael Meza:

The California Department of Fish and Wildlife (CDFW) received an Initial Study/Mitigated Negative Declaration (IS/MND) from State Water Resources Control Board, Division of Water Rights (Division) for the Infinite Leisure Water Right Petition for Change of License 7328 (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

CDFW is submitting comments on the IS/MND to inform the Division, 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), a 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: Josh Hannah, Infinite Leisure, LLC

Objective: The Project involves developing approximately 9 acres of new vineyard to expand an existing vineyard operation, specifically converting approximately 4.3 acres of

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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previously developed habitat and 4.7 acres of non-native grassland to vineyard use. Construction activities include preparing and planting the new vineyard blocks and installing drip-irrigation distribution lines to individual vines, with no need for new irrigation mainlines because the existing system already serves the expanded area. The requested modification to the Place of Use would remove irrigation authorization from land the petitioner no longer owns and apply that authorization to the area where the vineyard expansion would occur, ensuring that water rights properly match the lands that would be irrigated under the Project.

Location: The Project would occur east of the City of Napa in unincorporated Napa County, State of California, at approximately 38.272077° Latitude, -122.312770° Longitude.

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 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, 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, & 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 may 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 notification requirements. **The Project includes stream diversions, therefore an LSA Notification is warranted, as further described below.** CDFW will consider the

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CEQA document for the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement (or ITP) until it has complied with CEQA as a Responsible Agency.

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 Division 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. 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: Swainson's Hawk, Mitigation Measure Related Impact Shortcoming

Issue, specific impacts, why they may occur and be potentially significant: Thank you for including Mitigation Measure (MM) BIO-3 to protect Swainson's Hawk in the IS/MND, however, it does not adequately evaluate and mitigate potential impacts to Swainson's Hawk. According to the IS/MND, there is a potential to start work within the Swainson's Hawk nesting season (March 1 to September 15). Although protocol level surveys following the Swainson's Hawk Technical Advisory Committee Recommended Timing and Methodology for Swainson's Hawk Nesting in California's Central Valley (2000) are cited in MM BIO-3, the

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measure describes deviations from the protocol which can be misleading, including that the survey will include a "minimum of three individual surveys, spaced at least one week apart", however the protocol requires a more rigorous survey, specifically "to meet the minimum level of protection for the species, surveys should be completed for at least the two survey periods immediately prior to a project's initiation. For example, if a project is scheduled to begin on June 20, you should complete 3 surveys in Period III and 3 surveys in Period V." Swainson's Hawk have been known to nest and forage in the vicinity of the Project area. Based on aerial review and California Natural Diversity Database (CNDDB) records, the nearest Swainson's Hawk records are located 1.7 miles southwest and 2.2 miles southeast of the Project area. As work may impact nesting Swainson's hawk, protocol surveys are warranted to ensure detection and avoidance of the species. The Project has the potential to impact nesting Swainson's hawk through auditory or visual disturbances above ambient levels within 0.5 miles of Project activities. Indirect 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.

If a Swainson's hawk nest is disturbed by the Project, the Project may have a substantial adverse effect on a special-status species and 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 potential impacts to Swainson's hawk to less-than-significant and comply with CESA and Fish and Game Code section 3503.5, CDFW recommends replacing MM BIO-3 with the below measure.

Mitigation Measure BIO-3 (Swainson's Hawk Surveys and Avoidance Buffer): If Project activities are scheduled during the nesting season for Swainson's hawks (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 (<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.** The qualified biologist

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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 by CDFW in writing. 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.

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?

COMMENT 2: Riparian Habitat and LSA Notification, Environmental Setting and Related Impact Shortcomings

Issue, specific impacts, why they may occur and be potentially significant: The Project proposes diversions up to the full licensed amount under Water License 7328 from three unnamed streams, which would be an increase over historical diversion volumes, according to IS/MND pages 10 and 15. As the license predates CEQA (issued in 1965), relying solely on its authorized maximum to conclude impacts are less-than-significant overlooks how increased diversion frequency may substantially alter downstream hydrology. These changes may substantially divert the natural flow of a stream, which can adversely affect fish and wildlife resources and therefore likely warrants notification under Fish and Game Code section 1602. Stream habitat is of critical importance to protecting and conserving the biotic and abiotic integrity of an entire watershed. When stream habitat is substantially altered, riparian functions become impaired, thereby potentially substantially adversely impacting aquatic and terrestrial species. Therefore, if the above impacts to stream habitat occur, Project impacts to such habitats would be potentially significant.

Recommended Mitigation Measure: To reduce impacts to stream and associated riparian habitat to less-than-significant and comply with Fish and Game Code section 1602 et seq., CDFW recommends that the IS/MND include the below mitigation measure.

Mitigation Measure BIO-4 (Stream and Riparian Habitat and LSA Notification):

The Project shall notify CDFW for potential Project impacts to the streams, including but not limited to stream diversions, pursuant to Fish and Game Code section 1602 et seq. and shall comply with the LSA Agreement, if issued. More information for the Notification process is available at <https://wildlife.ca.gov/Conservation/Environmental-Review/LSA>. An LSA Agreement, if issued, may include additional avoidance and minimize measures to protect fish and wildlife resources.

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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 the 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 Swainson's Hawk y to comment on the IS/MND to assist the Division in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Jessa Ehlinger, Environmental Scientist, at (707) 428-2002 or Jessa.Ehlinger@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
B77E9A6211EF486...
Erin Chappell
Regional Manager
Bay Delta Region

Attachment 1: Draft Mitigation Monitoring and Reporting Program

cc: Office of Land Use and Climate Innovation, State Clearinghouse No. 2026080124
Craig Weightman, CDFW Bay Delta Region – Craig.Weightman@wildlife.ca.gov

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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	Description	Timing	Responsible Party
BIO-3	<u>Swainson's Hawk Surveys and Avoidance Buffer.</u> If Project activities are scheduled during the nesting season for Swainson's hawks (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 (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. 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 by CDFW in writing. 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.	Prior to Ground Disturbance or Vegetation Removal and for the Duration of the Project	Project Applicant

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BIO-4	<u>Stream and Riparian Habitat and LSA Notification</u> : The Project shall notify CDFW for potential Project impacts to the streams, including but not limited to stream diversions, pursuant to Fish and Game Code section 1602 et seq. and shall comply with the LSA Agreement, if issued. More information for the Notification process is available at https://wildlife.ca.gov/Conservation/Environmental-Review/LSA . An LSA Agreement, if issued, may include additional avoidance and minimize measures to protect fish and wildlife resources.	Prior to Ground Disturbance and for the Duration of the Project	Project Applicant
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