



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Bay Delta Region  
2825 Cordelia Road, Suite 100  
Fairfield, CA 94534  
(707) 428-2002  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

GAVIN NEWSOM, Governor  
CHARLTON H. BONHAM, Director



November 1, 2019

**Planning Commission Mtg.  
NOVEMBER 06 2019  
Agenda Item # 8A**

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 take<sup>1</sup> 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

<sup>1</sup> 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/lisa> 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](mailto:garrett.allen@wildlife.ca.gov); or Ms. Karen Weiss, Senior Environmental Scientist (Supervisory), at (707) 428-2090 or [karen.weiss@wildlife.ca.gov](mailto:karen.weiss@wildlife.ca.gov).

Sincerely,



FOR Gregg Erickson  
Regional Manager  
Bay Delta Region

cc: State Clearinghouse



Environmental Consulting,  
Regulatory Compliance and  
Aerial Photographic Services

5214 El Cemente Avenue  
Davis, CA 95618-4418  
Tel/Fax: 530.758.9235  
Cell: 530.902.9670

bdbarnet@sbcglobal.net  
bruce@barnettenvironmental.com  
barnettenvironmental.com  
flickr.com/photos/bioflyer

November 5, 2019

Planning, Building & Environmental Services  
County of Napa  
1195 Third Street Street, Suite 210  
Napa, CA 94559

**ATTN: Sean Trippi, Principal Planner**  
[sean.trippi@countyofnapa.org](mailto:sean.trippi@countyofnapa.org)  
(707) 299-1353

**RE: COMMENTS ON NOV 1, 2019 CDFW RESPONSE TO PROJECT MND:**  
*Gateway East Winery, Use Permit #P1 8-00389-UP, Draft Mitigated Negative Declaration,  
SCH #2019109019, City and County of Napa*

**VIA EMAIL:**

Mr. Trippi:

I am writing to respond to CDFW's comments on the County's recent (11/1/19) draft Mitigated Negative Declaration (MND) for the Gateway East Winery (Project).

### **Swainson's Hawks**

In the last paragraph on page 3 of the Department's letter, "*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.*"

CDFW's 1994 *Staff Report regarding Mitigation for Impacts to Swainson's Hawks (*Buteo swainsoni*) in the Central Valley of California* recognized the importance of primarily agricultural habitats such as alfalfa, fallow fields, beet, tomato, and other low-growing row or field crops, dry-land and irrigated pasture, rice land (during the non-flooded period), and cereal grain crops (including corn after harvest) in Swainson's hawk foraging. The Department, however, also acknowledged in this Staff Report the important exception of small disjunct parcels of habitat, which seldom provide foraging habitat needed to sustain the reproductive effort of a Swainson's hawk pair, and therefore did not recommend requiring mitigation pursuant to CEQA nor a Management Authorization by the Department for infill projects in already urbanized areas that have less than five (5) acres of foraging habitat surrounded by existing urban development.

In a more expanded refinement of this initial approach in cooperation with Sacramento County in their 2006 "*Swainson's Hawk: Environmental Impacts and Issues – A Guide for the Unincorporated Areas of Sacramento County*," CDFW built on this idea that Swainson's hawk foraging habitat value is greater in large expansive open spaces and agricultural areas than in areas that have been fragmented by agricultural-residential or urban development and conceded that foraging habitat impacts occur as

properties develop to increasingly more intensive uses on smaller minimum parcel sizes and that such impacts should be assessed when agricultural and agricultural-residential parcels are first rezoned to smaller minimum parcel sizes and not incrementally as these parcels are further subdivided into smaller and smaller parcels.

The 1986 Napa Valley Business Park Specific Plan and EIR attempted to do just this in acknowledging that project area “*grasslands play an important role as a hunting and feeding ground for animals that live in other habitats. Most of the raptors in the area fall into this category...*” and addressing, on page 251, potential impacts of business park development on wildlife by creating “... *mitigation measures from the Airport Area MEA (that) have been combined in the specific plan with additional measures tailored to the specific development pattern recommended in the plan to form a set of development guidelines with will protect and enhance the biotic resources in the planning area. These development guidelines have been incorporated into the Land Use Element under the section on natural resource protection (see Section V.D.3.).*”

It therefore does not seem appropriate to require the subsequent, incremental development of < 4 acres of the current parcel to once again mitigate for past business park subdivision impacts.

Additionally, the CDFW claim of active Swainson’s hawk nests occurring within ¼ mile of the project site do not appear to be accurate, at least based upon accessible public (California Natural Diversity Database; CNDDDB) records. While there are six (6) Swainson’s hawk nest records within one (1) mile of the project site, four (4) of these are over a decade old (circa 2008), while two others within  $\geq 0.44$  mile away are six (6) years old. Most Swainson’s hawks do not survive beyond 10 years in the wild, so that these older observations may no longer be valid and at least one of the (6-yr old) nest trees across Hwy 29 SE of the project no longer exists. At best, these records merely suggest that Swainson’s hawks could nest in the area.

Consequently, I would propose a simple mitigation measure to conduct preconstruction surveys for nesting Swainson’s hawks with appropriate nest avoidance should any active nests be identified within ¼ mile of the project area. The incremental loss of foraging habitat appears to have been acknowledged and mitigated for in the initial Business Park Specific Plan and EIR.

### **Rare Plants**

CDFW recommends “*a special-status plant 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.*”

Five special-status plant species – Tiburon paintbrush (*Castilleja affinis* var. *neglecta*), soft salty bird’s-beak (*Chloropyron molle* ssp. *molle*), Contra Costa goldfields (*Lasthenia conjugens*), Mason’s lilaopsis (*Lilaeopsis masonii*), and two-forked clover (*Trifolium amoenum*) – could potentially occur in the vicinity of the Study Area. Barnett Environmental has performed botanical surveys of this particular parcel since 2014 and of neighboring parcels along Gateway Road East since 2012 and has found no special status plants on any of these parcels. In addition, the CNDDDB contains no observation records of any of these plants within two (2) miles of the project site. As these parcels have been periodically disked and routinely mowed since initial development of the business park in the late 1980s, it is very unlikely that any rare plants occur outside the relatively undisturbed Sheehy Creek riparian corridor (at least since its relocation in the 1990s), which would not be adversely affected by project development due to required setbacks. Consequently, any potential impacts to rare plants at this location are small to nil.

If a mitigation measure to require rare plant surveys is added to the MND, it should specify two (2) such surveys to capture the blooming period of all of the rare plants that could potentially occur here – one in April/May to encounter Tiburon paintbrush, Contra Costa goldfields and two-forked clover and another in July/August to capture any blooming lilaepsis or bird's beak.

I appreciate the opportunity to present my professional opinion on the CDFW letter and look forward to any questions or comments you may have.

Sincerely,

A handwritten signature in cursive script that reads "Bruce D. Barnett". The signature is written in black ink and includes a horizontal line at the end.

Bruce D. Barnett, Ph.D.