

Wetlands.

The DEIR's discussion of the Project's impacts on wetlands and "waters of the U.S." is so confusing it is unintelligible. The DEIR states:

The Proposed Project was designed to avoid all wetlands, with the exception of one isolated wetland approximately 0.02 acres in size that is proposed to be filled in Block 31. The Proposed Project was designed to avoid all waters of the U.S., except for short stretches in 24 locations as shown in Table 4.2-6. Vineyard blocks were designed to facilitate as few stream crossings as possible, and stream crossings are only proposed when necessary for vineyard block access. A total of approximately 0.02 acres of wetlands and 0.25 acres of jurisdictional "other waters" were identified and mapped within the clearing areas of the project site.

Activities associated with roads and stream crossings would result in direct impacts to waters of the U.S. and will require permits from the USACE and CDFW. Figure 3-11 illustrates the network of roads and stream crossings.

There are two sensitive locations, one in Block 5A3 and the other in Block 8, that should receive additional protection beyond that proposed in the ECP. This is discussed in Mitigation Measure 4.2-4 below. With the incorporation of the mitigation measures listed below and standard BMPs, direct impacts to wetlands and waters of the U.S. would be considered less than significant.

Mitigation Measure 4.2-4: Project site plans will avoid or mitigate for direct impacts to jurisdictional waters of the U.S., as described below.

A Department of the Army nationwide permit (Section 404 permit) shall be obtained from the USACE prior to the discharge of any dredged or fill material within jurisdictional wetlands and other waters of the U.S. If needed, a Streambed Alteration Agreement (SAA) shall be obtained from CDFW prior to construction activities that impact riparian zones. Unavoidable impacts to waters of the U.S. shall be mitigated by creating or restoring waters of the U.S. onsite. Compensatory mitigation shall occur at a minimum of 1:1 ratio and shall be approved by the USACE prior to any discharge into jurisdictional features.

(DEIR pp. 4.2-92 - 4.2-94 [pdf pp. 217-219].)

The first problem is that the DEIR is unclear as to which locations will suffer impacts that are "significant." The twenty-three (23) locations listed in Table 4.2-6 include the twenty-one (21) stream crossing mapped in Figure 3-11 and listed in Table 3-4. In addition, Table 4.2-6 includes two additional locations: Blocks 31 and 52. The above quoted text adds two more locations that require protection: Blocks 5A3 and 8.

One could read the above quoted text as saying that only the locations in Block 5A3 and Block 8 will suffer significant impacts, or alternatively, that all of these locations will suffer significant impacts. The former interpretation is suggested because the above quoted text indicates

that only Blocks 5A3 Block 8 require “additional protection” and this ““additional protection” is implied to be creation or restoration of wetlands on-site at a 1:1 ratio.

But Table 2-1 supports the latter interpretation because it states “Development of the Proposed Project could result in impacts to wetlands or waters of the U.S.”; it characterizes this impact as “potentially significant” before mitigation and “less than significant” after mitigation; and it lists a host of mitigation measures, not just creation or restoration of wetlands on-site at a 1:1 ratio, that are required to reduce these impacts to less than significant. (DEIR pp. 2-13 - 2-15 [pdf pp. 37-39].)

In short, the reader must spend an inordinate amount of time just to understand that the DEIR’s assessment of the significance of impacts to wetlands is incoherent.

The second problem is the DEIR’s discussion of the mitigation measures stating “Unavoidable impacts to waters of the U.S. shall be mitigated by creating or restoring waters of the U.S. onsite” is fatally vague and ambiguous.

First, it is not clear where it applies. The text at DEIR pp. 4.2-92 - 4.2-94 suggests that this measure only applies to Blocks 5A3 and 8, but the text can also be interpreted to mean that this measure applies to all of the locations listed in table 4.2-6. But Table 2-1 suggests a third possibility, that it only applies to Block 31.

Second, the DEIR’s use of the word “unavoidable” makes it impossible to know where this measure will be required, for several reasons. As discussed above, the locations where impacts are considered significant, and therefore subject to mitigation, is unknown. Also, even if all of these impacts are “significant” before mitigation, the DEIR does not inform the reader which impacts are “unavoidable.” In addition, under CEQA, the term “unavoidable” describes impacts that remain significant even after the adoption of all feasible mitigation measures that would substantially reduce the impact. (CEQA Guidelines 15092(b)(2); *City of Marina v. Board of Trustees of the California State University* (2006) 39 Cal.4th 341, 349, 364). But this finding occurs when the County decides whether to approve the Project, after it certifies the EIR. In short, the DEIR fails to inform the reader which impacts on waters of the U.S. will be subject to this mitigation measure.

Third, this mitigation measure is also fatally vague because the DEIR does not: (1) identify any locations on the site where functional wetlands or waters of the U.S. can feasibly be “created or restored,” (2) present any information suggesting that there are suitable locations where functional wetlands or waters of the U.S. can feasibly be “created or restored,” or (3) identify the means that will be used to create or restore wetlands or waters of the U.S. The absence of this information precludes the County and the public from judging or commenting on the likely success of this mitigation measure, and therefore, on whether these impacts will remain significant or not.