



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

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



October 10, 2019

Governor's Office of Planning & Research

OCT 11 2019

STATE CLEARINGHOUSE

Mr. Jason R. Hade
Napa County
1195 Third Street, Suite 210
Napa, CA 94559

Subject: Hard Six Cellars Winery Use Permit #P16-00333-UP & Exception to Conservation Regulations P19-00315, Draft Mitigated Negative Declaration, SCH #2019099034, Napa County

Dear Mr. Hade:

California Department of Fish and Wildlife (CDFW) personnel have reviewed the draft Mitigated Negative Declaration (MND) for the Hard Six Cellars Winery project (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" or adverse impacts to northern spotted owl (*Strix occidentalis caurina*) or any other 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 lake, river, or stream or use material from a streambed. Ephemeral and/or intermittent streams and drainages (that are dry for periods of time or only flow during

Mr. Jason R. Hade
Napa County
October 10, 2019
Page 2

periods of rainfall) are also subject to Fish and Game Code section 1602; and CDFW may require an LSA Agreement with the applicant, pursuant to Section 1600 et seq. of the Fish and Game Code. The Project includes the restoration of an on-site “pond”, which could be within CDFW’s permitting authority. CDFW recommends that the Project applicant notify CDFW to see whether or not an LSA Agreement is needed, prior to the start of Project activities.

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 lake, 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.

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 53.04-acre Project site is located at 1755 South Fork Diamond Mountain Road in rural Calistoga, Napa County. The Project site is approximately 2 miles west from State Route 29 and approximately 0.75 miles south of the City of Calistoga. Diamond Mountain lies directly to the south of the Project site. At least two tributaries to the Napa River, including Nash Creek, are within 0.5 miles of the Project site. Surrounding land consists of natural habitats including coniferous forest, oak woodland, chaparral, and open grassland. Vineyard development is also scattered throughout the landscape surrounding the Project site. Natural habitats within the Project site boundary include freshwater emergent wetland (i.e. on-site “pond”), montane hardwood conifer, annual grassland/ruderal, mixed chaparral, and redwood. Precipitation on the Project site drains eastward (toward the Napa River) via two non-wetland swales. Site topography ranges from slopes of less than 5 percent to greater than 30 percent.

The Project proposes to construct 1) an approximately 3,969-square-foot two-story winery structure, 2) an approximately 7,135-square-foot cave, 3) an approximately 5,486-square-foot uncovered work area, 4) an approximately 1,185-square-foot outdoor hospitality area, 5) an approximately 168-square-foot pump house; and (6) a new wastewater system and associated infrastructure will be constructed, as well as two water tanks, a 5,000-gallon and 50,000-gallon tank. On-site improvements include: improving the existing Project site access driveway, restoring an on-site “pond,” and removing an existing dilapidated barn.

Comments and Concerns

Northern spotted owl (Strix occidentalis caurina; NSO)

An assessment for NSO was performed by Forest Ecosystem Management, dated September 22, 2016, and included a desktop review of the Project site and surrounding habitats, as well as a search of the California Natural Diversity Database (CNDDDB) for known NSO activity centers. The assessment states that the closest known activity center is within 1.3 miles of the Project site. A recent search of the CNDDDB by CDFW revealed multiple observances of NSO within 0.25 miles of the Project site. NSO are a threatened species under CESA, meaning the Project must avoid take¹ of the species, or the Project applicant must get a CESA ITP from CDFW prior to starting Project activities.

While the Project will not substantially modify NSO habitat, Project activities can have short-term adverse impacts on NSO, such as disturbance from elevated sound levels or human presence near nest sites. Disturbance may reach the level of take when at least one of the following conditions is met: Project-generated sound exceeds ambient nesting conditions by 20 to 25 decibels (dB); Project-generated sound, when added to existing ambient conditions, exceeds 90dB; human activities occur within a visual line-of-site distance of 40 meters or less from a nest. The draft MND does not include a discussion on the Project's potential impacts to NSO; and no mitigation measures or pre-construction surveys are proposed.

In order for the Project to avoid significant impacts to NSO during nesting season, CDFW recommends that a measure be included for Project activities to not occur during NSO breeding season (February 1 to July 31). If avoiding breeding season is not possible, CDFW recommends that at least 6 complete-visit surveys be conducted by a qualified biologist the year prior to beginning Project activities, using the U.S. Fish and Wildlife Service's *Protocol for Surveying Proposed Management Activities That May Impact Northern Spotted Owls (2012)* for any work within 0.25 miles of potential habitat. If NSO are found breeding within 0.25 miles and work must be done during NSO breeding season, the Project applicant should obtain a CESA ITP from CDFW before starting Project activities. CDFW recommends applying for a CESA ITP at least six months prior to when Project activities are proposed to start.

Roosting bats

Bats can roost in a variety of structures (e.g. barns) and in trees containing suitable bat roosting habitat (e.g. cavities, crevices, exfoliating bark). The Project proposes to remove an existing barn and nine trees. The Biological Habitat Evaluation Report (BHER), prepared by Pacific Biology, dated October 2016, states that the barn does not provide suitable day, maternity, or hibernation roosting for bats because of the large openings that allow sunlight to enter the structure. The BHER does not mention the potential for the barn to support night roosting bats. Additionally, mature trees with cavities, crevices, and/or exfoliating bark could provide suitable bat roosting habitat. Overall the draft MND does not include any discussion on or mitigation measures for avoiding impacts to bats. Removing trees and structures when bats are roosting inside would likely cause take of individuals. This is a significant impact and a violation of Fish

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

and Game Code (see below). CDFW recommends a mitigation measure be added to the draft MND requiring a qualified bat biologist to perform a bat habitat assessment of all trees proposed for removal, and a bat habitat survey of the barn to determine if bats are using the structure at least 30 days prior to the start of Project activities. If evidence of bat use is discovered during the survey, the qualified biologist should prepare a Bat Avoidance and Minimization Plan to be reviewed and approved by CDFW prior to the start of Project activities. Additionally, if any trees proposed for removal contain suitable bat roosting habitat, they should be removed using a two-day phased removal method as follows:

*On day 1, under the supervision of a qualified bat biologist who has documented experience overseeing tree removal using the two-day phased removal method, branches and small limbs **not** containing potential bat roost habitat (e.g. cavities, crevices, exfoliating bark) shall be removed using chainsaws only. On day 2, the next day, the rest of the tree shall be removed.*

All trees shall be removed during seasonal periods of bat activity: Prior to maternity season – from approximately March 1 (or when night temperatures are above 45°F and when rains have ceased) through April 15 (when females begin to give birth to young); and prior to winter torpor – from September 1 (when young bats are self-sufficiently volant) until about October 15 (before night temperatures fall below 45°F and rains begin).

Please also note that Fish and Game Code affords protection to all bats via code sections 2000, 3007, and 4150. Bats are considered non-game mammals and therefore a project cannot cause take of any bats without a permit.

Invasive Species Management

The BHER states that bullfrogs (*Lithobates catesbeiana*) were observed in the “pond” during the site survey on August 25, 2016. Bullfrogs are a non-native, invasive species that are a huge threat to native aquatic species. The “pond” could support California red-legged frog (*Rana boylei*), a listed species under the federal Endangered Species Act and a State Species of Special Concern (SSC), and western pond turtle (*Emys marmorata*), which is also an SSC. Bullfrogs are predators of both species, and they can disperse great distances invading other aquatic habitats (e.g. rivers, lakes, streams). CDFW recommends that the draft MND include a mitigation measure requiring that an Invasive Species Management Plan be prepared for CDFW review and approval at least 30 days prior to the start of Project activities. CDFW may make this a requirement in the LSA Agreement for the Project, if one is needed.

Erosion Control Devices

Erosion control devices can have a direct impact on wildlife, particularly reptiles and amphibians. CDFW has documented several cases where reptiles and amphibians have become tangled/trapped in erosion control devices containing plastic monofilament (e.g. typical straw wattles). CDFW recommends that all erosion control materials used throughout the duration of construction be comprised of biodegradable materials (e.g. coir logs, coconut fiber blanket, jute netting).

Mr. Jason R. Hade
Napa County
October 10, 2019
Page 5

Conclusion

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. If you have any questions, please contact Mr. Garrett Allen, Environmental Scientist, at (707) 428-2076 or at garrett.allen@wildlife.ca.gov; or Ms. Karen Weiss, Senior Environmental Scientist (Supervisory), at (707) 428-2090 or at karen.weiss@wildlife.ca.gov.

Sincerely,

A handwritten signature in blue ink that reads "Gregg Erickson". The signature is fluid and cursive, with the first name "Gregg" and last name "Erickson" clearly legible.

Gregg Erickson
Regional Manager
Bay Delta Region

cc: State Clearinghouse