



State of California - Natural Resources Agency  
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*GAVIN NEWSOM, Governor*  
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Governor's Office of Planning & Research

November 23, 2020

**Nov 23 2020**

## STATE CLEARINGHOUSE

Jesse Davis, Senior Planner  
County of Mendocino  
Planning and Building Services  
860 North Bush Street  
Ukiah, CA 95482

**Subject: Brutacao Vineyards' Gateway House, State Clearinghouse Number 2020040111**

Dear Jesse Davis:

On October 26, 2020, the California Department of Fish and Wildlife (CDFW) received a Notice of a Revised Initial Study and Mitigated Negative Declaration (IS/MND) from the County of Mendocino (Lead Agency) for the Brutacao Vineyards' Gateway House (Project), Mendocino County, California. CDFW understands that the Lead Agency will accept comments on the Project through November 23, 2020. CDFW staff conducted a site visit on November 11, 2019 and provided comments to the Lead Agency on the draft IS on May 7, 2020. As a Trustee for the State's fish and wildlife resources, CDFW has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants and the habitat necessary to sustain their populations. As a Responsible Agency, CDFW administers the California Endangered Species Act (CESA) and other provisions of the Fish and Game Code that conserve the State's fish and wildlife public trust resources. CDFW offers the following comments and recommendations in our role as a Trustee and Responsible Agency under the California Environmental Quality Act (CEQA), California Public Resource Code section 21000 et seq.

In a May 7, 2020 letter, CDFW commented on the initial IS/MND. In that comment letter, CDFW had two concerns and recommendations that remain unaddressed in this revised IS/MND, both of which are reflected in Recommendation #3 of that letter:

- 1) The MND should quantify the loss, degradation, and fragmentation of oak woodlands.
- 2) The MND should propose effective mitigation for loss of oak woodlands, including development of an Oak Mitigation and Monitoring Plan.

### Project Description

The Project site is located approximately 3.1 miles east of Hopland south of Highway 175 and east of Old Toll Road in Mendocino County. The Project site is undeveloped rangeland dominated by grasslands and oak woodlands and is boarded by agricultural land, including vineyards. The Project proposes development of a recreational facility with a two-story

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lodge and up to 45 semi-permanent micro-cabins placed on the ridges across 90.87-acre site (APNs 048-270-24, 048-270-23, and a portion of 048-270-22). The cabins will sit on pads that include an outdoor picnic area and fire pit; most will have adjacent parking areas, but some will be designated as 'walk-in' with parking located away from the cabin. Each cabin will have water, wastewater disposal, and electric provided by underground utilities. Development will include installation of a well, septic system, and underground utilities, in addition to construction of walking trails, access roads to the cabins, a lodge parking area with secondary site ingress/egress, and widening of an existing road to access the site from Old Toll Road. The yearly average occupancy rate is expected to be 85 percent with the maximum capacity of 110 guests.

### **Conservation Value of Oaks and Oak Woodlands**

As stated in CDFW's May 7, 2020 comment letter, oak woodlands are extremely valuable wildlife habitat. In California, oak woodlands have the greatest wildlife species richness of any other habitat in the state with over 330 species of amphibians, birds, and mammals relying upon these habitats at some point during their lives (CalPIF 2002). Oak woodlands have experienced ongoing declines due to conversion for agricultural uses, and oak woodlands are also impacted by low recruitment, novel pathogens, competition from invasive species, and fire suppression (Whipple et al. 2011). California has lost approximately 1/3 of its of historic oak woodland habitat statewide (CalPIF 2002). Because oaks are slow-growing trees, the substantial habitat and ecosystem value that mature trees provide is difficult to replace.

### **Impacts to Oaks and Oak Woodlands**

According to Table 1 in the Biological Report, over 80 percent of the Project site is oak woodland. The Biological Report describes the Project site as forested with blue oak woodlands dominated by mature blue oak (*Quercus douglasii*) and mixed oak woodlands dominated by interior live oak (*Q. wislizeni*), white oak (*Q. garryana*), and California black oak (*Q. kelloggii*). The Biological Report's Mitigation Measure 3 states "the Project engineers and surveyors should map any trees within the oak woodlands that will be removed during construction." The revised IS/MND states tree and vegetation removal will be restricted to "the footprints of the micro-cabin RV pads, access roads/trails, lodge facility and parking area, and as required by CalFire for fire suppression." Based upon the size and scope of the Project and the prevalence of oak woodlands on the Project site, even with restricted trimming and removal, a substantial removal of oak woodlands will likely result in a significant impact.

However, despite the recommendation in CDFW's May 7, 2020 comment letter, the revised IS/MND does not quantify or describe the number of individual oak trees removed or the area of oak woodland cleared by this Project. Consequently, neither CDFW, the Lead Agency, or the public can assess the significance of the loss of oak woodlands from this Project if that loss is not adequately described and analyzed by this IS/MND. Instead, the revised IS/MND defers the impact analysis to oaks and oak woodlands to Mitigation Measure BIO-4 through the drafting of the Oak Mitigation and Monitoring Plan (Oak MMP). Pursuant to CEQA section 21083.4(b), "...a county shall determine whether a project with its jurisdiction may

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result in the conversion of oak woodlands that will have a significant effect on the environment.”

An inventory of oaks should be included in the revised IS/MND to disclose the number, species, and size of oak trees that will be removed. The inventory should include all oak trees with a diameter breast height (DBH) of 5-inch or greater within 50-feet of areas of proposed disturbance or current fire-safe buffer area. The inventory should inform a quantified analysis of the loss, degradation, and fragmentation of oak woodlands; this analysis should presume that vegetation will be substantially cleared, and trees removed, pursuant to current fire-safe buffer standards. The IS/MND should propose effective mitigations for impacts identified in this analysis. A map showing location of the inventoried trees overlain by the site plans should be included (**Recommendation 1**).

#### **Mitigation Measure BIO-4: Oak Mitigation and Monitoring Plan (Oak MMP)**

CEQA Sec. 15126.4 states: “Formulation of mitigation measures should not be deferred until some future time. However, measures may specify performance standards, which would mitigate the significant effect of the project...” CEQA Sec. 15126.4(a)(2) states “Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments.”

Several of the oak woodland mitigations included in the Oak MMP are vague and speculative and lack critical implementation details to adequately assess their feasibility or effectiveness in reducing impacts to a less than significant level. Of the suite of oak woodland mitigations listed in Mitigation Measure BIO-4, only the 3:1 mitigation ratio (discussed below) includes a performance standard; the remaining mitigation measures are sufficiently lacking in detail to make them enforceable pursuant to CEQA Sec.15126.4(a)(2).

Importantly, a meaningful evaluation of the adequacy and effectiveness of a project’s mitigations is predicated in large part on fully understanding a Projects’ impacts on a given resource. Thus, as mentioned above, without the MND’s analysis of impacts to oak woodlands, CDFW can likewise have little confidence in, or understanding of, how the proposed mitigations will be sufficient or effective to reduce those impacts to a less than significant level. Some examples:

#### 12-Inch Diameter at Breast Height (DBH) Mitigation Threshold

The revised IS/MND Mitigation BIO-4 states that only removed oak trees with a DBH of 12-inches or more will receive mitigation. However, as stated above, the IS/MND does not quantify how many oak trees will be removed, list their DBH, or provide any other quantification of the relative size of the oak trees being removed. Consequently, a large percentage of the oak trees potentially removed by the project may likely receive no mitigation whatsoever, but the revised IS/MND is silent on this issue.

The revised IS/MND provides no biological justification or rationale for this 12-inch DBH mitigation exemption threshold, or why the removal of potentially many oak trees less than 12-inch DBH has no environmental significance. Oak trees are notoriously slow growing, thus even trees with a small DBH can be quite old. While diameter-age correlation data are

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scarce, blue oak trees in California with a 10-inch DBH have been shown to have an age range of 80-120 years, and those with a 14-inch DBH, with age range of 85-135 years (McDonald undated).

Furthermore, Mitigation BIO-4, states that oak trees 12-inches or more in DBH that “have poor health or poor structure,” as determined by a qualified arborist, are exempt from compensatory mitigation requirements. This mitigation exemption appears without biological merit or justification. Both Oregon white oaks and blue oaks can live over 500 years, thus, “poor health” if construed as fire and storm damage, disease, dead limbs, or general senescence are a natural part of oak life history and rather than diminish, can in many ways enhance their value as wildlife habitat.

The mitigation exemption for an arborists’ determination of oaks with “poor structure” is likewise without biological merit or justification. “Poor structure” appears to be an entirely aesthetic and subjective term. Trees having deformed structures or limbs, broken top, burn scars, or basal hollows typically have enhanced wildlife value. Thus this “poor structure” exemption substantially diminishes the value of oak tree replacement mitigation, increasing, rather than decreasing the Project’s impacts to oak woodland wildlife values.

#### Replanting and Maintaining Oak Trees

The IS/MND Mitigation BIO-4 states that removed oak trees will be replaced at a 3:1 ratio, on-site, if feasible, and if not feasible, the Project applicant will propose and receive approval from the County of Mendocino for an off-site mitigation location. Table 1 in the Biological Report shows the Project property is approximately 85 percent oak woodland, 13 percent wild oat grassland, and 2 percent ruderal (disturbed areas). Given that 85 percent of the Project site is already oak woodland, that oak woodlands do not already occur in the wild oat grassland and ruderal disturbed areas, are also an unlikely location to attempt oak woodland mitigations, it appears highly likely that this replanting mitigation will occur off-site. The revised IS/MND provides no information on where the off-site mitigation will occur; its distance from the Project site; who will own or manage this mitigation site; whether, how, or by whom the off-site location is deemed an appropriate site to establish an oak woodland; or by what timeframe this mitigation will occur.

This 3:1 replanting mitigation measure also does not specify a performance standard for the replanting stock. In other words, will mature oak trees be replaced by acorns or by oak saplings? If replaced by saplings, what size or age class will the saplings be, what will be the replanted species composition, and will the replacement oaks be of local genetic stock? Importantly, while the mature oak trees at the Project site may be 100 years old or much older, the revised IS/MND only requires that proposed mitigation replacement trees be maintained and survive for three years, which substantially diminishes this mitigation’s effectiveness.

#### Establishing Conservation Easements

Conservation easements held by third parties can be a highly effective means to protect and restore many habitat types, including oak woodlands. However, Mitigation BIO-4 simply states: “Conservation easements or funds for off-site oak woodlands conservation shall be

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proposed to and approved by the Director of PBS or his/her designee.”

This proposed mitigation measure, while feasible, is absent any details on the amount of funds to be contributed for the purpose of oak woodland conservation, what entity might receive the funds, where this oak woodland conservation might occur, how the funds would be utilized, and what legal and financial means would assure this mitigation measure is both feasible and effective. Absent this information, CDFW finds this proposed mitigation to be speculative and infeasible.

#### Contributing funds for off-site oak woodlands conservation

This mitigation appears to reference CEQA Sec. 21083.4(b)(3), but merely lists this above header without any detail or discussion. For the same reasons listed in the above proposed conservation easement mitigation, CDFW finds this mitigation, as proposed and absent any details or specific monetary contribution, to be unenforceable and speculative.

#### Designation and Protection of Natural Recruitment Areas.

Mitigation BIO-4 states “The Oak MMP shall identify natural areas, if any, to be established in areas where no development is proposed.” The biological purpose of this proposed mitigation is unclear, and the clause “if any” renders it unenforceable. The mitigation proposes using split rail fences to discourage people from entering oak woodlands on the Project site where natural oak regeneration may be taking place. Given that 85 percent of the Project site is already oak woodland, oak woodlands would be the most probable place for oak woodland recruitment. The revised IS/MND provides no data or analysis that people walking in an oak woodland is a significant threat to natural oak woodland recruitment, or that excluding passive oak woodland foot traffic use substantially increases natural oak woodland recruitment or seedling/sapling survival. For this reason, CDFW finds this proposed mitigation will have little effect in mitigating for this Project’s loss of oak trees.

Based upon the above analysis, CDFW recommends the IS/MND include more detailed, effective, and enforceable oak woodland mitigation measures **(Recommendation 2)**.

#### **Summary**

As outlined above, based upon the Project description, the Biological Report, the revised IS/MND and CDFW site visit in November 2019, it appears the Project is highly likely to remove a significant number of mature oak trees. The revised IS/MND has determined this impact to oak woodlands to be “less than significant with mitigations incorporated,” but does not describe or quantify this loss of oak woodland habitat.

The revised IS/MND’s proposed mitigations lack performance standards and are primarily deferred to a future MMP, which will be developed after the Project is approved, thus denying CDFW and the public the meaningful ability to review and comment on the mitigations or assess their effectiveness and feasibility.

The mitigations outlined in the revised IS/MND, as discussed above, are either 1) concepts lacking in detail or description, 2) vague and absent performance standards, which renders

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them highly unlikely to be feasible or enforceable, or 3) have little or no biological justification or merit, making them ineffective in mitigating Project impacts to a less than significant level.

Additionally, the revised IS/MND does not meet the minimum requirements of CEQA Section 21083.4. The IS/MND and the Oak MMP should incorporate CDFW recommended replacement mitigation ratios and follow the criteria to meet CEQA Section 21083.4 requirements that help ensure success of oak mitigations:

- Mitigation plantings should be maintained for a minimum of seven years (CEQA 21083.4 2(a)) or until it can be demonstrated trees are established.
- Performance standards and protection in perpetuity.
- Planting of oaks should not fulfill more than 50 percent of the required mitigation (Section 21083.4 2(c)).
- To reduce the significance of impact to oak woodlands, CDFW recommends the following mitigation oak tree replacement ratios:
  - 5 -11" diameter at breast height (DBH) replaced at a minimum 6:1 mitigation ratio
  - 12 -18" DBH replaced at a minimum 8:1 mitigation ratio
  - 18" DBH replaced at a minimum 10:1 mitigation ratio

These ratios help address the temporal loss of oak woodland habitat values to wildlife due to replacing mature oak trees with acorns or saplings, which will take decades to mature. These ratios are consistent with prior CDFW recommendations for projects with oak woodland impacts and may be modified upon further consultation with CDFW.

**(Recommendation 3).**

Pursuant to CEQA Sec.15074(b), a decision-making body of a lead agency shall adopt a proposed MND only if it finds that on the whole of the record before it, that there is no substantial evidence that the project will have a significant effect on the environment. Given the revised IS/MND's inadequate analysis of impacts to oak woodlands and deferred mitigations, which lack biological justification, essential implementation components, performance standards, and enforceability, CDFW is providing the Lead Agency substantial evidence that this Project, if approved as proposed, will have a significant effect on the environment.

**Summary of Recommendations**

- 1) The revised IS/MND should be further revised to include an analysis of the oak trees that will be potentially removed by the Project. This analysis should include the number of trees to be removed by species and DBH and include a map. All oak trees with a DBH of 5-inches or greater within 50-feet of areas of proposed development or in current fire-safe buffer areas should be included in this analysis.

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- 2) The IS/MND should include clear and effective mitigation measures for impacts to oaks and oak woodlands. Oak woodland mitigation measures can be explicitly described in an Oak MMP. However, requisite mitigation measures, explicit performance standards, enforceability measures, and a biological justification for how mitigations will avoid, minimize, rectify, reduce, or compensate for Project impacts should be included in the IS/MND and not deferred to the Oak MMP.
- 3) The IS/MND should use the oak tree replacement mitigation ratios recommended above and follow the criteria in CEQA Section 21083.4.

Thank you for the opportunity to comment on this revised IS/MND. CDFW staff are available to meet with you to consult with or address the contents of this letter in greater depth. If you have questions on this matter or would like to discuss these recommendations, please contact Environmental Scientist Rhiannon Korhummel at (707) 799-7106 or by email at [Rhiannon.Korhummel@wildlife.ca.gov](mailto:Rhiannon.Korhummel@wildlife.ca.gov).

Sincerely,

DocuSigned by:

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