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DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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November 16, 2020

Governor's Office of Planning & Research

Ms. Pamela Arifian
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Nov 17 2020

STATE CLEARINGHOUSE

Subject: Three Twins Vineyard Conversion, Agricultural Erosion Control Plan
#P18-00435-ECPA, Mitigated Negative Declaration, SCH No. 2020100477,
Napa County

Dear Ms. Arifian:

California Department of Fish and Wildlife (CDFW) personnel reviewed the Mitigated Negative Declaration (MND) for the Three Twins Vineyard Conversion (Project). CDFW is submitting comments on the MND to inform Napa County, as 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, Native Plant Protection Act Permit, or a Lake and Streambed Alteration Agreement (LSA) Agreement, and other provisions of the Fish and Game Code that afford protection to the State's fish and wildlife trust resources.

ENVIRONMENTAL SETTING

The proposed Project would occur on a single parcel, approximately 22.96 acres in size, located at 704 Greenfield Road approximately 4.4 miles east of the City of St. Helena and within the Lake Hennessey watershed. An ephemeral stream runs from northwest to southeast along the eastern edge of the Project boundary. Vegetation communities on the Project parcel consist of 8.41 acres of blue oak woodland, 2.3 acres of coast live oak woodland, 4.96 acres of wild oat grassland, and 0.05 acres of seasonal wetland (perennial rye grass). The Project site contains 1.1 acres of annual grassland and 1.37 acres of blue oak woodland habitat. Surrounding land uses consist predominantly of mixed oak woodland and annual grassland habitat, interspersed with rural residences. General topography of the Project site consists of rolling southeastern facing hill sides. Elevations within the Project site range from 500 to 650 feet above mean sea level.

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PROJECT DESCRIPTION

The proposed Project includes the development of 1.7 acres of vineyard and the installation and maintenance of erosion control measures. The Project would include the removal of 1.37 acres of blue oak woodland habitat, including 39 blue oaks (*Quercus douglasii*) and 21 coast live oaks (*Quercus agrifolia*) greater than 6 inches in diameter at breast height.

COMMENTS AND CONCERNS

Loss of Oak Woodlands

The MND states that implementation of Mitigation Measure BR-1 (MM BR-1) will reduce impacts to oak woodlands to a level of less-than-significant, as it would reduce the amount of oak woodland removal from 1.37 acres to 0.97 acres, and would reduce the number of oak trees that need to be removed, from 60 to 24. MM BR-1 also would require the Project proponent to permanently preserve remaining oak woodland habitat on the property at a 2:1 mitigation to impacts ratio. While CDFW generally agrees with MM BR-1, CDFW also recommends that the measure be revised as follows to ensure that the Preservation Area contains habitat that is in-kind to what will be removed and is of equal to or greater habitat quality than the habitat that will be impacted (added language shown as ***bold italics***, deleted language shown as ~~strikethrough~~):

The owner/Permittee shall revise #P18-00435-ECPA prior to County approval to implement the following measures to reduce potential cumulative and indirect impacts to oak woodland and valley oak trees as a result of the project:

- a. Revise the proposed boundaries of #P18-00435-ECPA prior to County approval to eliminate to the maximum extent feasible removal of trees on steep slopes (defined as slopes over 30%) and near the ephemeral stream to reduce potential impacts on slope stability and wildlife habitat. The revised boundaries shall result in the retention of 36 trees with DBH over 6", as shown in Figure 4 (Mitigated Project Boundary, Three Twins LLC Vineyard Conversion), and includes the following trees: #2505 through #2508, #2510 through #2518, #2549 through #2559, and #2563 through #2578.*
- b. Vineyard avenues may encroach up to 15 feet into driplines on the in-board side of vineyard block as shown in Figure 4. Where vineyard avenues and turnaround areas encroach into driplines, land preparation (i.e. grading and land ripping) shall be limited to planted areas of the vineyard, and no grading or land ripping shall occur within driplines to facilitate avenue construction: vineyard avenues may be disked to establish the specified vineyard cover crop. Prior to the commencement of any vegetation removal and earthmoving activities, the limits of land ripping shall*

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be demarcated in the field, the precise locations of said demarcations shall be inspected and approved by the Planning Division: no grading shall occur within driplines to facilitate avenue construction.

- c. *To protect trees and woodland during construction, temporary fencing shall be placed at the edge of the dripline of trees to be retained that are located within 50-feet of the project area prior to any vegetation ~~removal~~ removal or earthmoving activities. The precise locations of protective fencing shall be inspected and approved by the Planning Division prior to the commencement of any vegetation removal or earthmoving activities. No disturbance, including grading, planting, placement of fill material, storage of equipment, etc. shall occur within the designated areas for the duration of erosion control plan installation and vineyard installation and maintenance.*
- d. *The Permittee shall refrain from ~~severely~~ trimming **more than 1/3rd of the canopy of the** trees and vegetation to be retained adjacent to the vineyard conversion areas.*
- e. *In accordance with County Code Section 18.108.100 (Erosion hazard areas - Vegetation preservation and replacement) trees that are inadvertently removed that are not within the boundary of the project and/or not identified for removal as part of #P18-00435-ECPA shall be replaced on-site with fifteen-gallon **native** trees at the following ratios: **3:1 for non-oak natives, 1:1 for non-natives, 4:1 for removal of oak trees between 5 and 10 inches DBH, 5:1 for removal of oak trees between 10 and 15 inches DBH, and 10:1 for removal of oak trees greater than 15 inches DBH** ~~a ratio of 2:1 at locations approved by the planning director.~~ Replacement trees shall be installed and documented that they are in good health prior to completion and finalization of the erosion control plan. **Replacement trees shall be monitored and maintained as necessary for a minimum of 5 years to ensure they achieve at least 80% survival. If oak plantings are not achieving this success criteria during any monitoring year, Permittee shall be responsible for replacement oak plantings and monitoring them for an additional five years to ensure they achieve at least 80% survival.***
- f. *A Preservation Area containing 2.0 acres of ~~the remaining~~ oak woodland (2:1 retention) **habitat** on the parcel that is located outside the boundaries of P18-00435-ECPA **and that is of equal or greater habitat quality than the oak woodland habitat to be impacted by the Project, as determined by a qualified biologist**, shall be designated for preservation in a ~~mitigatory~~ or conservation easement, **prior to implementation of the Project. The Conservation Easement shall be entered into** with an organization such as the Land Trust of Napa County as the grantee, or other means of permanent protection acceptable to the County. Land placed in protection shall be restricted from development and other uses that would degrade the quality of the woodland (including, but not*

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limited to conversion to other land uses such as agriculture or urban development, and excessive off-road vehicle use that increases erosion) and should be otherwise restricted by the existing goals and policies of Napa County. The owner/permittee shall record the ~~mitigatory~~ or conservation easement within 60 days of approval of #P18-00435-ECPA by the County: in no case shall the ECPA be initiated until said ~~mitigatory~~ or conservation easement is recorded.

Rare Plants

The *Biological Resources Reconnaissance Survey Report*, prepared by WRA, dated August 2018, states that surveys for rare plants were conducted in 2017. The *Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Natural Communities* (CDFW, 2018) recommends that yearly surveys be conducted in habitats such as grasslands that have annual and short-lived perennial plants as major floristic components. These annual surveys are important to accurately document baseline conditions for purposes of impact assessment. CDFW recommends that an additional rare plant survey be performed by a qualified botanist according to the protocol mentioned above, the year prior to Project construction. If rare plants are found during surveys, they shall be avoided to the greatest extent feasible. If impacts to rare plants cannot be avoided, a qualified botanist shall develop a Mitigation and Monitoring Plan for CDFW review and approval.

Roosting bats

The MND identifies that roosting bats, including those that are special-status, have the potential to occur on the Project site. While CDFW generally agrees with implementation of the Bat Protection Condition in the MND, CDFW is also concerned about specific language in the measure. Therefore, CDFW recommends the following revisions (added language in ***bold italics***, deleted language in ~~strikethrough~~):

A Qualified Biologist (defined as having demonstrable qualifications and experience with the particular species for which they are surveying) shall conduct a habitat assessment in order to identify suitable bat habitat trees within the project area(s), no more than 6 months and no less than 14 days in advance of the planned tree removal. If the habitat assessment determines that trees proposed for removal contain suitable bat habitat, the following shall apply to potential bat habitat trees:

- a. *Tree trimming and/or tree removal should only be conducted during seasonal periods of bat activity (August 31 through October 15, when young would be self-sufficiently volant and prior to hibernation, and March 1 to April 15 to avoid hibernating bats and prior to formation of maternity colonies), under supervision of a qualified biologist. Note that these windows may shift with atypical temperatures or rainfall. Trees should be trimmed and/or removed in a two-phased removal*

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system conducted over two consecutive days. The first day (in the afternoon), limbs and branches would be removed by a tree cutter using chainsaws only. Limbs with cavities, crevices and deep bark fissures would be avoided, and only branches or limbs without those features would be removed. On the second day, the entire tree would be removed.

- b. *For removal of bat habitat trees outside the seasonal activities identified above (between October 16 and February 28/29 of the following year or between April 16 and August 30), a qualified biologist shall conduct pre-construction survey within 14 days of project initiation and/or removal to determine absence/presence of special-status bat species. Survey methods, timing, duration, and species shall be provided for review and approval by Napa County prior to conducting pre-construction surveys. A copy of the survey shall be provided to the County Planning Division and CDFW prior to commencement of work. ~~If special-status bats species are not present, removal can proceed. If bats are found to be present, a plan for removal or exclusion will be developed by a qualified biologist and reviewed and approved by CDFW and in conjunction with the County Planning Division and CDFW.~~ The removal or exclusion plan shall be implemented upon approval of the plan by the County Planning Division **and CDFW.***

Please note that Fish and Game Code section 4150 affords protection to all bats, regardless if they are special-status species.

Nesting Birds and Raptors

While CDFW generally agrees with the Bird Protection Condition in the MND, CDFW is also concerned with specific language in the measure and recommends the following revisions (added language in **bold italics**, deleted language in ~~strike through~~):

The Permittee shall include in #P18-00435-ECPA the following measures to minimize impacts associated with the loss and disturbance of nesting birds and raptors consistent with and pursuant to California Department of Fish and Wildlife (CDFW) Code Sections 3503 and 3503.5:

- a. *For earth-disturbing activities occurring between February 1 and August 31, (which coincides with the grading season of April 1 through September 1 -NCC Section 18.108.027C, and bird breeding and nesting seasons), a qualified biologist (defined as knowledgeable and experienced in the biology and natural history of local avian resources with potential to occur at the project site) shall conduct preconstruction surveys for nesting birds, **and** raptors, ~~and the Northern Spotted Owl,~~ within all suitable habitat on the project site, and **within 500 feet of all where there is potential for impacts adjacent to the project areas.** The preconstruction survey shall be conducted no **later than 7** ~~earlier than 14~~ days prior to vegetation*

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removal and ground disturbing activities are to commence. Should ground disturbance commence later than 14 days from the survey date, surveys should be repeated. A copy of the survey will be provided to the Napa County Conservation Division and the CDFW prior to commencement of work.

- b. After commencement of work, if there is a period of no work activity of 5 days or longer during the bird breeding season, surveys shall be repeated to ensure birds have not established nests during inactivity.*
- c. In the event that nesting birds are found, the Permittee shall identify appropriate avoidance methods and exclusion buffers in consultation with the County Conservation Division and the U.S. Fish and Wildlife Service (USFWS) and/or CDFW prior to initiation of project activities. Exclusion buffers may vary in size, depending on habitat characteristics, project activities/disturbance levels, and species as determined by a qualified biologist in consultation with County Conservation Division and the USFWS and/or CDFW.*
- d. Exclusion buffers shall be fenced with temporary construction fencing {or the like}, the installation of which shall be verified by Napa County prior to the commencement of any earthmoving and/or development activities. Exclusion buffers shall remain in effect until the young have fledged or nest(s) are otherwise determined inactive by a qualified biologist.*
- e. Alternative methods aimed at flushing out nesting birds prior to pre-construction surveys; ~~whether physical (i.e., removing or disturbing nests by physically disturbing trees with construction equipment), audible (i.e., utilizing sirens or bird cannons), or chemical (i.e., spraying nesting birds or their habitats) would be considered an impact to nesting birds and is prohibited. Any act associated with flushing birds from project areas should undergo consultation with the USFWS/CDFW prior to any activity that could disturb nesting birds.~~*

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 gotten tangled in erosion control devices containing plastic monofilament (e.g. typical straw wattles wrapped in black plastic mesh). CDFW recommends that all temporary and permanent erosion control measures be free of plastic monofilament netting.

FILING FEES

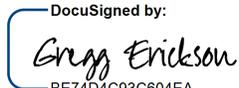
CDFW anticipates that the Project will have an impact on fish and/or wildlife, and assessment of filing fees is necessary (Fish and Game Code, § 711.4; Pub. Resources

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Code, § 21089). 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.

CDFW appreciates the opportunity to provide comments on the 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 garrett.allen@wildlife.ca.gov; or Mr. Craig Weightman, Environmental Program Manager, at craig.weightman@wildlife.ca.gov.

Sincerely,

DocuSigned by:

BE74D4C93C604EA...
Gregg Erickson
Regional Manager
Bay Delta Region

cc: State Clearinghouse