



State of California – Natural Resources Agency
 DEPARTMENT OF FISH AND WILDLIFE
 Habitat Conservation Planning Branch
 P.O. Box 944209
 Sacramento, CA 94244-2090
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



August 11, 2023

Governor's Office of Planning & Research

Aug 11 2023

STATE CLEARINGHOUSE

Ms. Brenna Sullivan
 Engineer Geologist
 North Coast Regional Water Quality Control Board
 5550 Skylane Blvd., Suite A
 Santa Rosa, CA 95403
NorthCoast@waterboards.ca.gov

Subject: General Waste Discharge Requirements for Commercial Vineyards in the North Coast Region (Project), Draft Environmental Impact Report (DEIR), SCH# 2022080129

Dear Ms. Brenna Sullivan:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a DEIR from Regional Water Quality Control Board, North Coast Region 1 (NC RWQCB) for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

Proponent: NC RWQCB

Objective: The objective of the Project is to regulate non-point waste discharge from commercial vineyards producing marketable crops and from appurtenant agricultural roads. The proposed Project would require the 1) enrollment of fees, 2) implementation and adaptation of management practices, and 3) monitoring and reporting of associated activities. The Project activities do not include development activities associated with new vineyards. The Project would allow dischargers to comply with requirements by utilizing a set of management practices identified in the DEIR to protect and restore surface water and ground water quality.

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

Ms. Brenna Sullivan, Engineer Geologist
NC RWQCB
August 11, 2023
Page 2

Location: Del Norte, Glenn, Humboldt, Lake, Marin, Mendocino, Modoc, Siskiyou, Sonoma, and Trinity Counties.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist NC RWQCB in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document. Based on the potential for the Project to have a significant impact on biological resources, CDFW concludes that an Environmental Impact Report (EIR) is appropriate for the Project.

COMMENT 1:

Section 6 Special Status Species, XII Biological Resources, subsection B Environmental Setting, Page 72 and Attachment D: Special Status Species

Issue: Lack of evaluation of the presence of and impacts to Clear Lake Hitch (*Lavinia exilicauda chi*; *CLH*), a species listed as *threatened* under CESA.

Specific impact: Potential direct and cumulative impacts to CLH may include but are not limited to the loss of habitat, incidental take resulting from project activities, reduction of flow and water capacity, changes in temperature, and increased discharge of sediment, pesticide, and nitrate into Clear Lake and tributaries.

Why impact would occur: The DEIR does not include any evaluation or discussion of potential impacts to CLH. Therefore, general orders issued by the Regional Water Board did not consider potential impacts to CLH and consequently may authorize activities that result in significant impacts to the species. The State-listed CLH is found only in Clear Lake and the tributaries to the lake are critical spawning and rearing habitat for the fish. Several of the most important tributaries used by the CLH, including but not limited to Kelsey Creek, Adobe Creek, Cole Creek, McGaugh Slough, Hill Creek, and Thompson Creek, exist in the southwest area of the lake; an area dominated by agriculture, including many vineyards which could be affected by the proposed project.

Recommendation: CDFW recommends the DEIR includes an analysis of the potential presence of CLH within the North Coast Region and any potential significant impacts from the proposed General Waste Discharge Requirements.

COMMENT 2:

Section 4 Aquatic, XII Biological Resources, subsection B Environmental Setting, Page 72

Issue: Lack of CLH within the list of special status species with the potential to occur in streams and drainages in the North Coast Region paragraph: "Special-status species with the potential to occur in streams and drainages in the North Coast Region include California red-legged frog, foothill yellow-legged frog, western pond turtle (*Actinemys marmorata*), and steelhead (*Oncorhynchus mykiss*) (Southern California, South- Central California Coast, and Central California Coast Distinct Population Segments)."

Recommendation: Include CLH in the list of species with the potential to occur in streams and drainages in the North Coast Region.

COMMENT 3:

Riparian Habitat, Wetlands, and Lake and Streambed Alteration Notification compliance, Pages 28, 30, 76 and 78.

Issue: The DEIR does not include a mitigation measure requiring a Lake and Streambed Alteration Agreement and other permits for impacts to waters and wetlands. The DEIR

Ms. Brenna Sullivan, Engineer Geologist
 NC RWQCB
 August 11, 2023
 Page 3

identifies reasonably foreseeable management practices including runoff management features and sediment basins (page 30). While not listed as a reasonably foreseeable management practice in the DEIR, culvert upgrades and replacement may be a management practice used to achieve the objective of Storm-Proofing Appurtenant Agricultural Roads for Surface Water Protection (page 30).

Specific impact: Despite the overall effect of the proposed Project on riparian habitats and sensitive natural communities being largely beneficial, the DEIR identifies that construction of reasonably foreseeable management practices has the potential to cause adverse effects to biological resources (page 78). In addition, the construction of management practices not identified in the DEIR may also cause adverse effects to biological resources.

Impacts associated with construction of management practices listed in the DEIR include “erosion and sedimentation caused by operation of heavy construction equipment and/or accidental releases or improper management of hazardous materials used during construction” (page 78) and direct impacts to species such as “mortality or injury of individuals by being crushed by vehicles and/or heavy equipment or loss of an active nest or burrow” (page 76). Impacts may also include temporary and permanent loss of riparian habitat, changes in composition of channel materials, colonization by exotic plant species brought to a site during construction, and temporary impediments to migration.

Why impact would occur and be potentially significant: Physical projects described in the DEIR such as runoff management features and sediment basins, as well as projects that may occur as a result of adoption of the Vineyard Order such as culvert repair and replacement, often occur in riparian habitat and wetlands. The DEIR states that “construction activities for certain types of management practices would have potential to cause adverse impacts on riparian habitat and sensitive natural communities, but *compliance with existing laws and regulations* and/or implementation of mitigation measures HWQ1, HAZ-1, and BIO-1 would reduce these potential impacts.” However as stated above, the DEIR does not require as a mitigation measure *compliance with existing laws and regulations*, such as Fish and Game Code section 1600 et seq. for lake and streambed alteration authorization and the federal Clean Water Act.

Riparian habitat is of critical importance to protecting and conserving the biotic and abiotic integrity of an entire watershed. When riparian habitat is substantially altered, riparian functions become impaired, thereby likely substantially adversely impacting aquatic and terrestrial species. More than 90 percent of California’s historic wetlands have been lost to development and other human activity. Wetlands are a critical natural resource that protect and improve water quality and provide habitat for fish and wildlife. Absent applicable permits which include measures to avoid and minimize impacts to streams, hydrologically connected habitat, wetlands, and associated species, impacts to riparian habitat and wetlands would be potentially significant.

Recommended Mitigation Measure: If impacts to riparian habitat or other sensitive natural communities may occur during Project management practices, to reduce potential impacts to less than significant, CDFW recommends including the below mitigation measure.

Mitigation Measure BIO-2 (Applicable Permits): The Project shall notify CDFW pursuant to Fish and Game Code section 1600 et seq. for Project activities affecting lakes or streams and associated riparian habitat, and shall comply with the Lake and Streambed Alteration Agreement, if issued. Projects shall also obtain permits from the Regional Water Quality Control Board and Army Corps of Engineers pursuant to the Clean Water Act, if applicable.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected

Ms. Brenna Sullivan, Engineer Geologist
NC RWQCB
August 11, 2023
Page 4

during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

ENVIRONMENTAL DOCUMENT FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. 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. Payment of the environmental document filing fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

CONCLUSION

CDFW appreciates the opportunity to comment on the DEIR to assist NC RWQCB in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Karen Carpio at CEQA@wildlife.ca.gov.

Sincerely,

DocuSigned by:

37E732799B3C452...

Jeff Drongesen, Chief
Habitat Conservation Planning Branch

cc: Office of Planning and Research, State Clearinghouse

ec: Erika Iacona
Senior Environmental Scientist (Specialist)
Northern Region
R1CEQARedding@wildlife.ca.gov

Briana Seapy
Senior Environmental Scientist (Supervisor)
North Central Region
R2CEQA@wildlife.ca.gov

Melanie Day
Senior Environmental Scientist (Supervisor)
Bay Delta Region
askbdr@wildlife.ca.gov