



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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January 19, 2023

Pamela Arifian, Planner III
County of Napa
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Subject: Real Thorevilos LLC Vineyard Conversion Agricultural Erosion Control Plan #P21-00170-ECPA, Mitigated Negative Declaration, SCH No. 2022120187, Napa County

Dear Ms. Arifian:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from Napa County (County) for the Real Thorevilos LLC Vineyard Conversion Agricultural Erosion Control Plan #P21-00170-ECPA (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.

CDFW is submitting comments on the MND to inform the County, as the Lead Agency, of our concerns regarding potentially significant impacts to biological resources associated with the Project.

CDFW ROLE

CDFW is a **Trustee Agency** with responsibility under CEQA pursuant to CEQA Guidelines section 15386 for commenting on projects that could impact fish, plant, and wildlife resources. CDFW is also considered a **Responsible Agency** if a project would require discretionary approval, such as permits issued under the California Endangered Species Act (CESA), the Lake and Streambed Alteration Program, or other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources.

PROJECT DESCRIPTION SUMMARY

Proponent: Real Thorevilos LLC

Objective: The Project would develop approximately 23.2 gross acres of new vineyard. Project activities include the clearing of vegetation, earthmoving, and installation and maintenance of erosion control measures. The Project would convert 10.9 acres of oak (*Quercus* sp.) woodland and 2.9 acres of Douglas-fir (*Pseudotsuga menziesii*) forest and remove approximately 265 trees.

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Location: The Project is located at 320 and 322 Mund Road in Napa County, on Assessor Parcel Numbers: 021-320-026, 021-320-027, 021-320-031, and 021-320-032.

Timeframe: Project implementation is proposed to take place April 1 to October 15. The Project implementation year is not provided. Vineyard operations will occur year-round.

REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a CESA Incidental Take Permit (ITP) must be obtained if the Project has the potential to result in “take” of plants or animals listed under CESA, either during construction or over the life of the Project. **The Project has the potential to impact Northern spotted owl (*Strix occidentalis caurina*, NSO), a CESA listed as threatened species, as further described below.** Issuance of an ITP is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain an ITP.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially restrict the range or reduce the population of a threatened or endangered species. (Pub. Resources Code, §§ 21001, subd. (c) & 21083; CEQA Guidelines, §§ 15380, 15064, & 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency’s FOC does not eliminate the Project proponent’s obligation to comply with CESA.

Fully Protected Species

Fully Protected species may not be taken or possessed at any time (Fish & G. Code, §§ 3511, 4700, 5050, & 5515) except for collecting these species for necessary scientific research, relocation of the bird species for the protection of livestock, or if they are a covered species whose conservation and management is provided for in a Natural Community Conservation Plan.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the County 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 Project’s avoidance of significant impacts on biological resources with implementation of

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mitigation measures, including those CDFW recommends below and in Attachment 1, CDFW concludes that an MND is appropriate for the Project.

I. Mandatory Findings of Significance: Does the Project have the potential to substantially reduce the number or restrict the range of an endangered, rare, or threatened species?

Environmental Setting Shortcoming

COMMENT 1: Northern Spotted Owl

Issue: The MND concludes that NSO is absent from the Project site given negative survey results in 2020 and because of “recent fire impacts that had substantial adverse impacts to on-site habitat.” However, the Biological Resources Reconnaissance Survey Report (Exhibit B of the MND) did not include a post-fire habitat assessment to determine whether there is suitable nesting or foraging habitat on-site or within 0.25 miles of the Project site and page 23 of the report states that “presumably” recent fires had an adverse impact on *on-site* habitat. Google Earth imagery appears to show some patches of forest that remain intact in the vicinity of the Project which may provide suitable nesting habitat for NSO, and therefore NSO may be significantly impacted by the Project. Additionally, negative survey results from 2020 do not preclude the need to repeat surveys in the same year as Project implementation, as new nesting pairs may establish in the area after the original surveys were completed. Additionally, the general nesting bird survey in Mitigation Measure BR-3 may not detect nesting NSO.

Specific impacts and why they may occur and be significant: If suitable NSO nesting habitat occurs on the Project site or within a 0.25-mile radius and active NSO nests are not detected by the proposed surveys in Mitigation Measure BR-3, NSO could be disturbed by Project activities resulting in nest abandonment and loss of eggs or reduced health and vigor and loss of young, thereby substantially reducing the number of the species. The Project may result in audio or visual disturbances to nesting NSO within 0.25 miles of the Project site. NSO is CESA listed as a threatened species and therefore is considered to be a threatened species pursuant to CEQA Guidelines section 15380. Therefore, if an active NSO nest is disturbed by the Project, the Project may result in a substantial reduction in the number of a threatened species, which is considered a Mandatory Finding of Significance pursuant to CEQA Guidelines section 15065, subdivision (a)(1).

Recommended Mitigation Measure: For an accurate environmental setting and to reduce impacts to less-than-significant, CDFW recommends including the following mitigation measure:

Mitigation Measure BR-5: Northern Spotted Owl Avoidance. A qualified biologist shall provide an assessment of potential NSO nesting habitat within the Project area and a

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0.25-mile radius and obtain CDFW's written acceptance of the assessment. Alternatively, if the assessment is not completed, or if it concludes that NSO nesting habitat is present, then no Project activities within 0.25 miles of potential NSO nesting habitat shall occur between March 15 and August 31 unless a qualified biologist approved in writing by CDFW conducts NSO surveys following the U.S. Fish and Wildlife Service (USFWS) *Protocol for Surveying Proposed Management Activities That May Impact Northern Spotted Owls*, dated (revised) January 9, 2012. Surveys shall be conducted in accordance with Section 9 of the survey protocol, *Surveys for Disturbance-Only Projects*. If breeding NSO are detected during surveys, a 0.25-mile no-disturbance buffer zone shall be implemented around the nest until the end of the breeding season, or a qualified biologist determines that the nest is no longer active, unless otherwise approved in writing by CDFW. The Project shall obtain CDFW's written acceptance of the qualified biologist and survey report prior to Project construction occurring between March 15 and August 31 each year.

Alternate buffer zones may be proposed to CDFW after conducting an auditory and visual disturbance analysis following the USFWS guidance, *Estimating the Effects of Auditory and Visual Disturbance to Northern Spotted Owls and Marbled Murrelets in Northwestern California*, dated October 1, 2020. Alternative buffers must be approved in writing by CDFW.

If take of NSO cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP, and also consult with USFWS pursuant to the federal Endangered Species Act.

II. Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by CDFW or USFWS?

Mitigation Measure Shortcoming

COMMENT 2: Narrow-Anthered Brodiaea

Issue: The Project will remove approximately 605 narrow-anthered brodiaea (*Grodiaea leptandra*, California Rare Plant Rank¹ 1B.1) plants and associated habitat. To reduce impacts to less-than-significant, Mitigation Measure BR-1 proposes preservation of 1,353 narrow-anthered brodiaea plants and associated habitat through development of a Special-Status Species Preservation Area, and performance standards of 80% survival after three years. CDFW considers this mitigation insufficient to reduce impacts

¹ CRPR 1B plants are considered rare, threatened, or endangered in California and elsewhere. Further information on CRPR ranks is available in CDFW's *Special Vascular Plants, Bryophytes, and Lichens List*.

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from the permanent removal of this special-status plant to less-than-significant because it may result in a significant net loss of the species.

Recommended Mitigation Measure: To reduce impacts to less-than-significant, CDFW recommends revising Mitigation Measure BR-1 to require a minimum 3:1 preservation to impact ratio for narrow-anthered brodiaea (i.e., preservation of approximately 1,815 plants and associated habitat). This may be achieved by preserving occupied narrow-anthered brodiaea habitat and implementing habitat enhancements on the preserved land to increase the population of narrow-anthered brodiaea. The Project shall also evaluate whether relocation of plants in the impact area is possible and implement relocation to the extent possible. Mitigation Measure BR-1 shall require 80% survival after five years. The Special-Status Species Preservation Area and an associated development and monitoring plan shall be submitted to CDFW, in addition to the County, for review and written approval prior to Project construction and entering the land into a conservation easement or deed restriction, unless otherwise approved in writing by CDFW.

Environmental Setting Shortcoming

COMMENT 3: American Badger

Issue: The Project site includes grassland habitat and oak woodland habitat that may be suitable for American badger (*Taxidea taxus*). Badgers range throughout most of California and can dig burrows in a single day; therefore, the species may occupy the Project site and adjacent habitat prior to Project construction (Ministry of Environment Ecosystems 2007 as cited in Brehme et al. 2015). Additionally, the California Wildlife Habitat Relationships Predicted Habitat Suitability for the grassland portions of the site is medium-quality suitability.

Specific impacts and why they may occur and be significant: American badger is a California Species of Special Concern. The Project may result in injury or mortality to adult or young badgers, or burrow abandonment. Therefore, if American badgers are present on or adjacent to the Project area, Project impacts to American badger would be potentially significant.

Recommended Mitigation Measure: For an adequate environmental setting and to reduce impacts to less-than-significant, CDFW recommends including the following mitigation measure:

Mitigation Measure BR-6: American Badger Avoidance. A qualified biologist shall conduct a habitat assessment to determine if the Project site or nearby vicinity has suitable habitat for American badger. If suitable habitat is present at the Project site, a qualified biologist shall survey for American badger within the Project site and a 50-foot buffer zone prior to construction. If any occupied burrows are discovered the Project

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shall implement an appropriate buffer from the burrow, as determined by a qualified biologist and approved in writing by CDFW. If the Project cannot avoid impacts to the occupied burrow the Project shall confer with CDFW regarding next steps before proceeding. This make require the Project to prepare and implement a relocation plan, unless otherwise approved in writing by CDFW.

III. Editorial Comments and/or Suggestions

COMMENT 4: The MND is inconsistent when referring to the acreage of impacts. In some instances, it states that the Project will develop 23.2 acres of new vineyard, removing 10.9 acres of oak woodland. Elsewhere it states that the total Project area is 22.7 acres, and 10.8 acres of oak woodland will be removed. For clarity, the Project description should reflect the actual impacts of the Project as proposed, not what the impacts could be without any mitigation implemented.

COMMENT 5: Page 13 of the MND identifies “No Impact” for the Biological Resources Appendix G question regarding impacts to riparian habitat, but Page 19 states “less-than-significant impacts are anticipated” and proposes stream protection as a condition of approval. CDFW recommends selecting “Less-than-Significant” on Page 13 for this Appendix G question.

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 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>. **As of January 2023, positive survey results from 2020 and 2022 for narrow-anthered brodiaea and Napa false indigo have not been submitted to CNDDDB, please submit this information to CNDDDB.**

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.

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(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 MND to assist the County in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Alicia Bird, Environmental Scientist, at (707) 980-5154 or alicia.bird@wildlife.ca.gov; or Melanie Day, Senior Environmental Scientist (Supervisory), at (707) 210-4415 or melanie.day@wildlife.ca.gov.

Sincerely,

DocuSigned by:

Erin Chappell
Regional Manager
Bay Delta Region

Attachment 1: Draft Mitigation Monitoring and Reporting Program

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2022120187)

REFERENCES

Brehme, C.S.; Hathaway, S.A.; Booth, R.; Smith, B.H.; and Fisher, R.N. 2015. Research of American Badgers in Western San Diego County,

2014. Data Summary prepared for California Department of Fish and Wildlife and the San Diego Association of Governments. 24pp. (42pp. with Appendix).

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ATTACHMENT 1

Draft Mitigation Monitoring and Reporting Program (MMRP)

CDFW provides the following language to be incorporated into the MMRP for the Project.

Biological Resources (BIO)			
Mitigation Measure (MM)	Description	Timing	Responsible Party
MM BR-1	<p><i>The following includes recommendations for adjusting the language of MM BR-1 to address impacts to narrow-anthered brodiaea (also described above in Comment 2 above). Bold Italics indicate suggested addition of text and strikethrough indicates suggested removal of text.</i></p> <p>“The Project Special-Status Preservation Areas, as depicted, shall encompass a minimum of 3:1 preservation to impact ratio for approximately 1,352 impacts to narrow-anthered brodiaea (i.e., preservation of approximately 1,815 plants and associated habitat)...”</p> <p>“The Project Special-Status Species Preservation Areas shall be designated for preservation in a deed restriction or conservation mitigation easement or Special-Status-Plant Habitat Preservation other means of permanent protection acceptable to the County and approved in writing by CDFW.”</p> <p>“...any narrow-anthered brodiaea plants/populations inadvertently removed as a result of vineyard development authorized under #P21-00170-ECPA shall be replaced on-site at a ratio of 2:1 3:1 at locations within similar habitat.”</p> <p>“...a replacement plan shall be prepared by a qualified botanist or ecologist for review and approval by the Director and CDFW prior to vineyard planting.”</p> <p>“...the replacement plan shall include... an evaluation of whether relocation of plants in the impact area is possible and require relocation to the extent possible”</p> <p>“...monitoring schedule for a period of at least three five years to ensure success criteria are met. If success criteria are not met, additional plantings will be required in order to meet success criteria”</p>	Prior to Ground Disturbance	Project Applicant
MM BR-5	Northern Spotted Owl Avoidance. A qualified biologist shall provide an assessment of potential NSO nesting habitat within the Project area and a 0.25-mile radius and obtain CDFW’s written acceptance of the assessment.	Prior to Ground Disturbance and continuing	Project Applicant

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	<p>Alternatively, if the assessment is not completed, or if it concludes that NSO nesting habitat is present, then no Project activities within 0.25 miles of potential NSO nesting habitat shall occur between March 15 and August 31 unless a qualified biologist approved in writing by CDFW conducts NSO surveys following the USFWS <i>Protocol for Surveying Proposed Management Activities That May Impact Northern Spotted Owls</i>, dated (revised) January 9, 2012. Surveys shall be conducted in accordance with Section 9 of the survey protocol, <i>Surveys for Disturbance-Only Projects</i>. If breeding NSO are detected during surveys, a 0.25-mile no-disturbance buffer zone shall be implemented around the nest until the end of the breeding season, or a qualified biologist determines that the nest is no longer active, unless otherwise approved in writing by CDFW. The Project shall obtain CDFW's written acceptance of the qualified biologist and survey report prior to Project construction occurring between March 15 and August 31 each year.</p> <p>Alternate buffer zones may be proposed to CDFW after conducting an auditory and visual disturbance analysis following the USFWS guidance, <i>Estimating the Effects of Auditory and Visual Disturbance to Northern Spotted Owls and Marbled Murrelets in Northwestern California</i>, dated October 1, 2020. Alternative buffers must be approved in writing by CDFW.</p> <p>If take of NSO cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP, and consult with USFWS pursuant to the federal Endangered Species Act.</p>	<p>over the course of the Project</p>	
<p>MM BR-6</p>	<p>American Badger Avoidance. A qualified biologist shall conduct a habitat assessment to determine if the Project site or nearby vicinity has suitable habitat for American badger. If suitable habitat is present at the Project site, a qualified biologist shall survey for American badger within the Project site and a 50-foot buffer zone prior to construction. If any occupied burrows are discovered the Project shall implement an appropriate buffer from the burrow, as determined by a qualified biologist and approved in writing by CDFW. If the Project cannot avoid impacts to the occupied burrow the Project shall confer with CDFW regarding next steps before proceeding. This make require the Project to prepare and implement a relocation plan, unless otherwise approved in writing by CDFW.</p>	<p>Prior to Ground Disturbance</p>	<p>Project Applicant</p>