



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Bay Delta Region
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



July 24, 2023

Jen Chard, Project Planner
Sonoma County
2550 Ventura Avenue
Santa Rosa, CA 95403
Jen.Chard@sonoma-county.org

Subject: Nunes Farm Tasting Room and Saralee's Vineyard Winery and Tasting Room, Mitigated Negative Declaration, SCH No. 2023060782, Sonoma County

Dear Ms. Chard:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from the County of Sonoma (County) for the Nunes Farm Tasting Room and Saralee's Vineyard Winery and Tasting Room (project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

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 (Pub. Resources Code, § 21000 et seq.) 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: Tony Korman and Jackson Family Investments III LLC

Objective: The project would include: 1) a Lot Line Adjustment between a 24.28-acre parcel and a 108.82-acre parcel resulting in a 24.08-acre parcel and a 109.01-acre parcel; 2) a Use Permit and Design Review for a new 4,530-square-foot tasting room

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.

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(Nunes Farm) with up to 20 events per year with a maximum of 200 attendees on the resulting 24.08-acre parcel; and 3) a Use Permit and Design Review for a new winery (Saralee's Vineyard) including a tasting room, a winery building used for production, storage, and administration with an annual production of 95,000 cases and up to 20 events per year with a maximum of 200 attendees and marketing accommodations within an existing building on the resulting 109.01-acre parcel. The site is currently partially developed with former dairy buildings, and contains annual grasslands, ephemeral drainages and the riparian corridor associated with Mark West Creek.

Location: The project is located at 3400 Sussler Road in unincorporated Sonoma County. The project site is on Assessor's Parcel Numbers 057-070-047, 057-070-049, and 057-070-050 in the Sebastopol, California, United States Geographical Survey 7.5-minute Topographic Quadrangle Map, Township 7 North, Range 9 West, Section 2 (Latitude 38.483917° North; Longitude 122.831344° West).

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 result in take of Sonoma sunshine (*Blennosperma bakeri*), Sebastopol meadowfoam (*Limanthus vinculans*), Burke's goldfields (*Lasthenia burkei*), and many-flowered navarretia (*Navarretia leucocephala* ssp. *plieantha*), which are listed as endangered species, as further described below.** Issuance of a CESA 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 a CESA 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.

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. Based on the

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project's avoidance of significant impacts on biological resources with implementation of mitigation measures, including those CDFW recommends below CDFW concludes that an MND is appropriate for the project. **Attachment 1** includes a Draft Mitigation Monitoring and Reporting Program for CDFW's recommended mitigation measures.

Mandatory Findings of Significance: Does the project have the potential to substantially reduce the number or restrict the range of a rare or endangered plant or animal?

Environmental Setting and Mitigation Measure Related Impact Shortcoming

COMMENT 1: Page 29-32

Issue: Aerial imagery indicates that wetland signatures occur within the grasslands on the southern edge of the project site. In addition, aerial imagery suggests the ditch north of the existing farm structures may contain wetlands. The California Aquatic Resources Inventory documents wetlands on-site. These features may support four CESA and federally listed as endangered plants: Sonoma sunshine, Burke's goldfields, many-flowered navarretia, and Sebastopol meadowfoam. In addition, Burke's goldfields has been documented 1.6 miles northeast of the project site (California Natural Diversity Database [CNDDDB] Occurrence Number 7). The MND is unclear if suitable habitat for CESA-listed plants will be impacted.

The MND also requires pre-construction surveys for CESA-listed plants as Mitigation Measure BIO-1, which is inconsistent with the assertion that the project site does not provide habitat for CESA-listed plants. The Santa Rosa Plain Conservation Strategy, Appendix D: *Guidelines for Conducting and Reporting Botanical Inventories for Federally Listed Plants on the Santa Rosa Plain* (available here: <https://www.fws.gov/library/collections/santa-rosa-plain-conservation-strategy>) and CDFW's 2018 *Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Sensitive Natural Communities* (<https://wildlife.ca.gov/Conservation/Survey-Protocols#377281280-plants>) provide guidelines for acceptable survey documentation for protocol-level surveys for CESA and federally listed plants on the Santa Rosa Plain. According to the Santa Rosa Plain Conservation Strategy and the CDFW 2018 protocols, one year of surveys may not provide accurate results for the presence or absence of CESA-listed plants and the MND is unclear if surveys were previously conducted according to the Santa Rosa Plain Conservation Strategy and CDFW 2018 protocols.

Specific impacts and why they may occur and be significant: If CESA and federally listed plants that may be impacted by the project go undetected, the project may result in mortality of individuals from direct impacts or degradation of habitat adjacent to ground disturbance. CESA and federally listed plant mentioned above

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are considered endangered under CEQA pursuant to CEQA Guidelines section 15380. Therefore, if CESA and federally listed plants are present on or adjacent to the project site where they may be directly or indirectly impacted, the project may substantially reduce the number or restrict the range of these species, which would be a mandatory finding of significance pursuant to CEQA Guidelines section 15065, subdivision (a)(1).

Recommended Mitigation Measure: For an adequate environmental setting and to reduce impacts to Sonoma sunshine, Sebastopol meadowfoam, Burke's goldfields, and many-flowered navarretia to less-than-significant, CDFW recommends including the following mitigation measure in the MND.

MM-BIO-1. A qualified biologist shall conduct a habitat assessment for CESA-listed plants covering the project site and adjacent habitat. If suitable habitat for CESA-listed plants is present within the project site and would be directly or indirectly impacted, the project shall submit to CDFW two years of completed botanical survey results and obtain CDFW's written approval of the results or may assume presence of Sonoma sunshine, Burke's goldfields, many-flowered navarretia, and Sebastopol meadowfoam. The botanical survey results shall follow CDFW's 2018 *Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Sensitive Natural Communities* and the Santa Rosa Plain Conservation Strategy, Appendix D: *Guidelines for Conducting and Reporting Botanical Inventories for Federally Listed Plants on the Santa Rosa Plain*. If CDFW is unable to accept the survey results, a qualified biologist shall conduct additional surveys prior to initiation of project activities or the project may assume presence of Sonoma sunshine, Burke's goldfields, many-flowered navarretia, and Sebastopol meadowfoam. Please be advised that for CDFW to accept the results, they should be completed in conformance with CDFW's 2018 *Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Sensitive Natural Communities* and the Santa Rosa Plain Conservation Strategy, Appendix D: *Guidelines for Conducting and Reporting Botanical Inventories for Federally Listed Plants on the Santa Rosa Plain*, including but not limited to, conducting surveys during appropriate conditions, utilizing appropriate reference sites, and evaluating all direct and indirect impacts such as altering off-site hydrological conditions where the above species may be present. Surveys conducted during drought conditions may not be acceptable. If the botanical surveys result in the detection of the above CESA listed plants that would be impacted by the project, or the presence of these species is assumed, the project shall obtain a CESA ITP from CDFW prior to construction and comply with all requirements of the ITP and shall also obtain authorization from U.S. Fish and Wildlife Service (USFWS).

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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?

Environmental Setting Related Impact Shortcoming

COMMENT 2: Page 31

Issue: The project is within the wintering range of burrowing owl (*Athene cunicularia*) and contains and is adjacent to grasslands that may be suitable wintering habitat for the species (Klute et al. 2003). Burrowing owls have been documented overwintering in the project vicinity (CNDDDB Occurrence Number 2023). The MND indicates that burrowing owl would not be impacted by the project because no suitably sized burrows or evidence of potential burrows for nesting are present on or immediately adjacent to the project site. However, suitable burrows may be excavated within a single day by, for example, American badger (*Taxidea taxus*) (Ministry of Environment Ecosystems 2007 as cited in Brehme et al. 2015). Additionally, burrowing owls can be impacted up to 500 meters or 1,640 feet away from a project from auditory and visual disturbances and may utilize burrow surrogates, such as culverts, piles of concrete rubble, piles of soil, burrows created along soft banks of ditches and canals, pipes, and similar structures (CDFW 2012). Therefore, the absence of natural burrows does not necessarily exclude burrowing owls.

Specific impacts and why they may occur and be significant: If burrowing owls that may be impacted by the project are not detected, the project may result in reduced health and vigor, or mortality, of owls from direct impacts to occupied wintering habitat or from wintering burrow abandonment caused by auditory and visual disturbances. Burrowing owl is a California Species of Special Concern and protected under Fish and Game Code sections 3503 and 3503.5 and the federal Migratory Bird Treaty Act. Therefore, if wintering burrowing owls are present on or within 1,640 feet of the project site, project impacts to burrowing owl would be *potentially significant*.

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

MM-BIO-2. If the project occurs during the burrowing owl wintering season from September 1 to January 31, prior to project activities a qualified biologist shall conduct a burrowing owl habitat assessment within 1,640 feet of the project area pursuant to the California Department of Fish and Game (now CDFW) 2012 Staff Report on Burrowing Owl Mitigation (CDFW 2012 Staff Report, available here:

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<https://wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds>), unless otherwise approved in writing by CDFW. The Qualified Biologist shall have a minimum of two years of experience implementing the CDFW 2012 Staff Report survey methodology resulting in detections. The habitat assessment shall focus on searching the CNDDDB and potentially other sources for any burrowing owl records on or within one mile of the project area, vegetation type and height, suitable burrows (with an opening greater than 11 centimeters (cm) in diameter and a depth greater than 150 cm), burrow surrogates (culverts, piles of concrete rubble, piles of soil, burrows created along soft banks of ditches and canals, pipes, and similar structures), and presence of burrowing owl sign (tracks, molted feathers, cast pellets, prey remains, egg shell fragments, owl white wash, and nest burrow decoration material), and the presence of burrowing owl individuals or pairs. If the habitat assessment does not identify suitable habitat and surveys are not conducted as described below, an additional habitat assessment shall be conducted within 14 days prior to construction and if new potentially suitable burrowing owl refugia are present surveys shall be conducted as described below, unless otherwise approved in writing by CDFW.

If suitable burrowing owl habitat is observed, four surveys shall be conducted to detect the presence of burrowing owl pursuant to the CDFW 2012 Staff Report. The site visits shall be spread evenly throughout the non-breeding season. If burrowing owl is detected, the project shall immediately notify CDFW. The project shall avoid impacts to the burrowing owl and implement a 1,640-foot buffer area around the owl site in which no project activities shall occur, unless otherwise approved in writing by CDFW. A qualified biologist shall monitor any detected owl to ensure it is not disturbed.

In addition, a take avoidance survey shall be completed within 14 days prior to the start of construction, as described in the CDFW 2012 Staff Report.

If impacts to burrowing owl cannot be avoided, the project shall provide off-site habitat compensation including a conservation easement and funding and implementing a long-term management plan prepared by a qualified biologist prior to project construction and shall obtain CDFW's written approval of the habitat compensation area and acreage, unless otherwise approved in writing by CDFW.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a data base 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

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during project surveys to 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 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 Nick Wagner, Senior Environmental Scientist (Specialist), at (707) 428-2075 or Nicholas.Wagner@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: State Clearinghouse (SCH No. 2023060782)

REFERENCES

Brehme, C.S., S.A. Hathaway, R. Booth, B.H. Smith and R.N. Fisher. 2015. Research of American Badgers in Western San Diego County, 2014. Data Summary prepared

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

California Department of Fish and Wildlife (formerly California Department of Fish and Game). 2012. Staff Report on Burrowing Owl Mitigation. Available online at:
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline>

Klute, D. S., L. W. Ayers, M. T. Green, W. H. Howe, S. L. Jones, J. A. Shaffer, S. R. Sheffield, and T. S. Zimmerman. 2003. Status Assessment and Conservation Plan for the Western Burrowing Owl in the United States. U.S. Department of Interior, Fish and Wildlife Service, Biological Technical Publication FWS/BTPR6001-2003, Washington, D.C.

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ATTACHMENT 1

Draft Mitigation Monitoring and Reporting Program

Biological Resources (BIO)		
Mitigation Measure (MM) Description	Implementation Schedule	Responsible Party
<p>MM-BIO-1. A qualified biologist shall conduct a habitat assessment for CESA-listed plants covering the project site and adjacent habitat. If suitable habitat for CESA-listed plants is present within the project site and would be directly or indirectly impacted, the project shall submit to CDFW two years of completed botanical survey results and obtain CDFW's written approval of the results or may assume presence of Sonoma sunshine, Burke's goldfields, many-flowered navarretia, and Sebastopol meadowfoam. The botanical survey results shall follow CDFW's 2018 <i>Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Sensitive Natural Communities</i> and the Santa Rosa Plain Conservation Strategy, Appendix D: <i>Guidelines for Conducting and Reporting Botanical Inventories for Federally Listed Plants on the Santa Rosa Plain</i>. If CDFW is unable to accept the survey results, a qualified biologist shall conduct additional surveys prior to initiation of project activities or the project may assume presence of Sonoma sunshine, Burke's goldfields, many-flowered navarretia, and Sebastopol meadowfoam. Please be advised that for CDFW to accept the results, they should be completed in conformance with CDFW's 2018 <i>Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Sensitive Natural Communities</i> and the Santa Rosa Plain Conservation Strategy, Appendix D: <i>Guidelines for Conducting and Reporting Botanical Inventories for Federally Listed Plants on the Santa Rosa Plain</i>, including but not limited to, conducting surveys during appropriate conditions, utilizing appropriate reference sites, and evaluating all direct and indirect impacts such as altering off-site hydrological conditions where the above species may be present. Surveys conducted during drought conditions may not be acceptable. If the botanical surveys result in the detection of the above CESA listed plants that would be impacted by the project, or the presence of these species is assumed, the project shall obtain a CESA ITP from CDFW prior to construction and comply with all requirements of the ITP, and shall also obtain authorization from USFWS.</p>	Prior to ground disturbance	Project Applicant
<p>MM-BIO-2. If the project occurs during the burrowing owl wintering season from September 1 to January 31, prior to</p>	Prior to ground disturbance	Project Applicant

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<p>project activities a qualified biologist shall conduct a burrowing owl habitat assessment within 1,640 feet of the project area pursuant to the California Department of Fish and Game (now CDFW) 2012 Staff Report on Burrowing Owl Mitigation (CDFW 2012 Staff Report, available here: https://wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds), unless otherwise approved in writing by CDFW. The Qualified Biologist shall have a minimum of two years of experience implementing the CDFW 2012 Staff Report survey methodology resulting in detections. The habitat assessment shall focus on searching the CNDDDB and potentially other sources for any burrowing owl records on or within one mile of the project area, vegetation type and height, suitable burrows (with an opening greater than 11 cm in diameter and a depth greater than 150 cm), burrow surrogates (culverts, piles of concrete rubble, piles of soil, burrows created along soft banks of ditches and canals, pipes, and similar structures), and presence of burrowing owl sign (tracks, molted feathers, cast pellets, prey remains, egg shell fragments, owl white wash, and nest burrow decoration material), and the presence of burrowing owl individuals or pairs. If the habitat assessment does not identify suitable habitat and surveys are not conducted as described below, an additional habitat assessment shall be conducted within 14 days prior to construction and if new potentially suitable burrowing owl refugia are present surveys shall be conducted as described below, unless otherwise approved in writing by CDFW.</p> <p>If suitable burrowing owl habitat is observed, four surveys shall be conducted to detect the presence of burrowing owl pursuant to the CDFW 2012 Staff Report. The site visits shall be spread evenly throughout the non-breeding season. If burrowing owl is detected, the project shall immediately notify CDFW. The project shall avoid impacts to the burrowing owl and implement a 1,640-foot buffer area around the owl site in which no project activities shall occur, unless otherwise approved in writing by CDFW. A qualified biologist shall monitor any detected owl to ensure it is not disturbed.</p> <p>In addition, a take avoidance survey shall be completed within 14 days prior to the start of construction, as described in the CDFW 2012 Staff Report.</p> <p>If impacts to burrowing owl cannot be avoided, the project shall provide off-site habitat compensation including a conservation easement and funding and implementing a long-term management plan prepared by a qualified biologist prior to project construction and shall obtain CDFW's written approval of the habitat compensation area and acreage, unless otherwise approved in writing by CDFW.</p>		
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