



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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August 27, 2024

Evan Ditmars, Planner II
Santa Cruz County
701 Ocean Street, 4th Floor
Santa Cruz, CA 95060
Evan.Ditmars@santacruzcountyca.gov

Subject: Twelve Stones Winery, 17300 Laurel Road, Initial Study/Mitigated Negative Declaration, SCH No. 2024070934, Santa Cruz County

Dear Evan Ditmars:

The California Department of Fish and Wildlife (CDFW) has reviewed the Initial Study/Mitigated Negative Declaration (IS/MND) from the Santa Cruz County Planning Department (County) for the Twelve Stones Winery, 17300 Laurel Road (Project) pursuant to the California Environmental Quality Act (CEQA).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 these comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority over the Project pursuant to the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's Lake

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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and Streambed Alteration (LSA) regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent the Project 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.), related authorization as provided by the Fish and Game Code will be required.

SPECIES POTENTIAL

Threatened, endangered, and other special-status species that are known to occur, or have the potential to occur in or near the Project site, include, but are not limited to the species listed below:

- Santa Cruz wallflower (*Ersimum teretifolium*; FE, SE, CRPR 1B.1);
- Ben Lomond spineflower (*Chorizanthe pungens var. hartwegiana*; FE, CRPR 1B.1);
- Bonny Doon manzanita (*Arctostaphylos silvicola*; CRPR 1B.2); and
- Nesting birds.

FE = Federally Endangered; SE = State Endangered; California Rare Plant Rank = CRPR

COMMENTS AND RECOMMENDATIONS

CDFW offers the below comments and recommendations 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.

COMMENT 1: Special-status plants

Issue: The IS/MND states, “the project site was evaluated by County Environmental staff and the determination was made that the site lacks suitable habitat for the species listed.” However, supporting information is not provided how County Environmental staff made this determination. Additional information is needed to support a determination if the Project may cause impacts to Santa Cruz wallflower, Ben Lomond spineflower, and Bonny Doon manzanita or their habitat either directly or indirectly. This information will be needed before CDFW can determine if take authorization is needed for the Project.

Recommendations: To meaningfully evaluate potential presence of suitable special-status plant habitat, the IS/MND should include results of survey(s) by a qualified professional botanist using an appropriate methodology that considers species biology with respect to life history timing. If potential habitat is determined to be present,

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protocol-level special-status plant surveys during the appropriate bloom times should be conducted and additional avoidance, minimization and/or mitigation measures determined in consultation with CDFW.

Recommended Mitigation Measure: To determine presence a qualified botanist shall conduct surveys during the appropriate blooming period for Santa Cruz wallflower, Ben Lomond spineflower, and Bonny Doon manzanita, and all special-status plants that have the potential to occur on or adjacent to the Project area prior to the start of ground-disturbing activities and prepare a report documenting survey findings to be included in the Mitigation Monitoring and Reporting Program (MMRP). The qualified botanist shall be knowledgeable about plant taxonomy, familiar with plants of Santa Cruz County, and have experience conducting botanical field surveys according to vetted protocols. Habitat adjacent to the Project area should be surveyed if the Project may have indirect impacts off-site as a result of changes to hydrological conditions or other indirect impacts. More than one year of surveys may be necessary. Surveys and reporting shall be conducted following CDFW's *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities* (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>). Surveys shall be submitted to CDFW for review and written acceptance. If state or federally listed species such as Santa Cruz wallflower, Ben Lomond spineflower, and Bonny Doon manzanita are observed, the Project shall fully avoid direct and indirect impacts to all individuals. If full avoidance is not possible, Project activities may not commence until the Permittee has consulted with CDFW and obtained a CESA ITP. Additional approval from the U.S. Fish and Wildlife Service (USFWS) may be necessary pursuant to the federal Endangered Species Act (ESA).

COMMENT 2: Nesting Birds

Issue: The IS/MND does not include minimization or avoidance measures addressing impacts to nesting birds from Project construction related disturbances.

Recommended MM BIO-4 Nesting Bird Surveys: If Project-related work is scheduled during the nesting season (typically February 15 to August 30 for small bird species such as passerines; January 15 to September 15 for owls; and February 15 to September 15 for other raptors), a qualified biologist shall conduct two surveys for active nests of such birds within 14 days prior to the beginning of Project construction, with a final survey conducted within 48 hours prior to construction. Appropriate minimum survey radii surrounding the work area are typically the following: i) 250 feet for passerines; ii) 500 feet for small raptors such as accipiters; and iii) 1,000 feet for larger raptors such as buteos. Surveys shall be conducted at the appropriate times of day and during appropriate nesting times.

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Recommended MM BIO-5 Nesting Bird Surveys: If the qualified biologist documents active nests within the Project area or in nearby surrounding areas, a species appropriate buffer between the nest and active construction shall be established. The buffer shall be clearly marked and maintained until the young have fledged and are foraging independently. Prior to construction, the qualified biologist shall conduct baseline monitoring of the nest to characterize “normal” bird behavior and establish a buffer distance which allows the birds to exhibit normal behavior. The qualified biologist shall monitor the nesting birds daily during construction activities and increase the buffer if the birds show signs of unusual or distressed behavior (e.g. defensive flights and vocalizations, standing up from a brooding position, and/or flying away from the nest). If buffer establishment is not possible, the qualified biologist shall have the authority to cease all construction work in the area until the young have fledged, and the nest is no longer active.

REGULATORY REQUIREMENTS

Lake and Streambed Alteration Agreement

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et seq., for Project activities affecting river, lakes or streams and associated riparian habitat. Notification is required for any activity that may substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank (including associated riparian or wetland resources); or deposit or dispose of material where it may pass into a river, lake, or stream. Work within ephemeral streams, drainage ditches, washes, watercourses with a subsurface flow, and floodplains is generally subject to notification requirements. In addition, infrastructure installed beneath such aquatic features, such as through hydraulic directional drilling, is also generally subject to notification requirements. Therefore, any impact to the mainstems, tributaries, or floodplains or associated riparian habitat caused by the proposed Project will likely require an LSA Notification. CDFW may not execute a final LSA Agreement until it has considered the final IS/MND and complied with its responsibilities as a responsible agency under CEQA.

California Endangered Species Act

A CESA Incidental Take Permit (ITP) must be obtained from CDFW 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. Under CESA, “take” means “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.” (Fish & G. Code, § 86.) CDFW’s issuance of an ITP is subject to CEQA and to facilitate permit issuance, any project modifications and mitigation measures must be incorporated into the CEQA document analysis, discussion, and MMRP. If the Project will impact CESA

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listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain a CESA permit.

CEQA requires a mandatory finding of significance if a project is likely to substantially impact threatened or endangered species. (Pub. Resources Code, §§ 21001, subd. (c) & 21083; CEQA Guidelines, §§ 15380, 15064 & 15065.) In addition, pursuant to CEQA, the Lead Agency cannot approve a project unless all impacts to the environment are avoided or mitigated to less-than-significant levels, or the Lead Agency makes and supports Findings of Overriding Consideration (FOC) for impacts that remain significant despite the implementation of all feasible mitigation. FOC under CEQA, however, do not eliminate the Project proponent's obligation to comply with the Fish and Game Code.

Migratory Birds and Raptors

CDFW has authority over actions that may result in the disturbance or destruction of active bird nest sites or the unauthorized take of birds. Fish and Game Code sections protecting birds, their eggs, and nests include section 3503 (regarding unlawful take, possession, or needless destruction of the nests or eggs of any bird), section 3503.5 (regarding the take, possession, or destruction of any birds-of-prey or their nests or eggs), and section 3513 (regarding unlawful take of any migratory nongame bird). Migratory birds are also protected under the federal Migratory Bird Treaty Act.

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 CNDDDB. The CNDDDB field survey form can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data#44524420-pdf-field-survey-form>. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

FILING FEES

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

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CONCLUSION

CDFW appreciates the opportunity to comment on the IS/MND to assist the County in identifying and mitigating Project impacts on biological resources.

Questions and coordination pertaining to this letter should be directed to Alexis Harrison, Environmental Scientist, at (707) 815-2779 or Alexis.Harrison@wildlife.ca.gov; or Wes Stokes, Senior Environmental Scientist (Supervisory), at (707) 339-6066 or Wesley.Stokes@wildlife.ca.gov.

Sincerely,

Signed by:

7E1D27B5645E452
Erin Chappell
Regional Manager
Bay Delta Region

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2024070934)
Craig Weightman; CDFW Bay Delta Region - Craig.Weightman@wildlife.ca.gov