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DEPARTMENT OF FISH AND WILDLIFE
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November 25, 2019

Governor's Office of Planning & Research

NOV 26 2019

STATE CLEARINGHOUSE

Mr. Donald Barrella, Planner III
Napa County
1195 Third Street, Suite 210
Napa, CA 94559

Subject: Laird Family Jamieson Vineyard, Agricultural Erosion Control Plan (ECPA),
#P17-00276-ECPA, Draft Mitigated Negative Declaration, SCH #2019109099,
Napa County

Dear Mr. Barrella:

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

Project Description and Environmental Setting

The Project is on five parcels totaling approximately 300.35 acres, located at 200 Kirkland Ranch Road, approximately 2.5 miles southeast of the City of Napa; and within the Sheehy Creek and Fagan Creek watersheds. The Project area is located at the base of the northern slope of Jameson Canyon, east of State Route 12. The dominant vegetation community is annual grassland habitat, occupying approximately 155 acres; and approximately 127 acres of the Project site is developed with existing vineyard. Oak and riparian woodland occurs on approximately 9 acres, predominantly along stream corridors. Adjacent land uses consist predominantly of undeveloped lands, including Napa County Regional Park & Open Space District lands to the north/northeast. Vineyard development exists to the north/northwest and to the east and south.

The Project proposes to develop approximately 100.7 acres of vineyard (i.e. earthmoving, installation and maintenance of erosion control measures, planting of vines) within 15 vineyard blocks on slopes ranging from 2 to 31 percent. The vineyard will be irrigated with drip irrigation using reclaimed water from the Napa Sanitation District. New wildlife exclusion fencing is proposed around the Project parcels, primarily to keep out feral pigs. The Project also proposes

to construct/reconstruct four rocked water crossings across streams on the Project site, as well as install a new 48-inch culvert.

Comments and Concerns

Tricolored blackbird (Agelaius tricolor)

According to the draft MND, tricolored blackbird was observed directly adjacent to the Project site near an existing reservoir on the property during a biological survey performed in 2017. The California Fish and Game Commission voted to list the tricolored blackbird as a State threatened species in April 2018, and therefore, the Project must either avoid take of the species or obtain a CESA Incidental Take Permit (ITP) from CDFW prior to starting construction. CDFW recommends that if tricolored blackbird is observed nesting on the Project site or directly adjacent to the Project site during pre-construction surveys, that a minimum 300-foot no construction buffer be demarcated in the field in order to minimize visual and noise disturbance to a level that will not cause nest abandonment and/or take of the species. Additionally, if nesting tricolored blackbirds are discovered during pre-construction surveys, a qualified biologist should be on-site for the first couple days of construction to observe the nest and to determine if the 300-foot buffer is sufficient to avoid disturbing the nesting individual(s). Furthermore, the Project proposes to remove approximately 100 acres of annual grassland habitat, which is suitable foraging habitat for tricolored blackbird. One of the primary threats to tricolored blackbird is habitat loss, especially, loss of foraging habitat. If pre-construction surveys find evidence of tricolored blackbirds nesting on the Project site, or in lands directly adjacent to the Project site, the removal of 100 acres of suitable foraging habitat would be a significant impact, and therefore, CDFW recommends that the Project mitigate for those impacts by preserving like habitat (i.e. grassland) in perpetuity under the form of a conservation easement or similar means of permanent protection at a minimum 1:1 ratio. A Mitigation Plan should be prepared by a qualified biologist who is familiar with the species habitat needs; and the Mitigation Plan should be reviewed and approved by CDFW prior to construction.

California red-legged frog (Rana draytonii)

The draft MND states that a portion of the Project occurs within Critical Habitat for the California red-legged frog (CRLF). CRLF is a threatened species under the federal Endangered Species Act, as well as a State Species of Special Concern. The Project site contains suitable breeding and upland habitat, much of which will be impacted by Project construction. In order to avoid adverse impacts to the species, CDFW recommends that a qualified biologist with documented experience performing surveys for CRLF conduct pre-construction daytime and nighttime surveys to determine if the species is present on the Project site. According to the U.S. Fish and Wildlife Service's (USFWS) *Revised Guidance on Site Assessments and Field Surveys for the California Red-Legged Frog*, dated August 2005, there is an increased likelihood of detecting CRLF adults during nighttime surveys between January 1 and June 30, however, the best time for surveys is between January 1 and February 28 for this region. The above-referenced guidance document recommends a total of up to 8 surveys to determine presence of CRLF at or near a Project site. Two daytime and four nighttime surveys are recommended during the breeding season; and one night and one day survey is recommended during the non-breeding season (typically July 1 through September 30). If CRLF is present within or directly adjacent to the Project site, CDFW recommends that the Project proponent consult with USFWS to see if take coverage is needed. Additionally, the Project should mitigate for any impacts to Final

Critical Habitat for the CRLF by preserving in-kind habitat in perpetuity under the form of a Conservation Easement or similar form of permanent protection.

Swainson's hawk (Buteo swainsoni)

The draft MND discusses that the Project will remove foraging habitat for Swainson's hawk and proposes to mitigate for such impacts by preserving like habitat on-site at a 0.75:1 ratio, in accordance with CDFW recommendations. CDFW agrees with this requirement; the draft MND should be revised to state that implementation of Mitigation Measure BR-2 will reduce impacts to a less-than-significant impact.

As noted, two active raptor nests (of unknown species) were discovered during surveys directly adjacent to proposed vineyard blocks 17 and 19, CDFW recommends that Mitigation Measure BR-1 be revised to include that pre-construction surveys for Swainson's hawk will be performed by a qualified biologist in accordance with the Swainson's Hawk Technical Advisory Committee's *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley*, dated May 31, 2000.

Wildlife Exclusion Fencing

The Project proposes to replace and install new wildlife exclusion fencing around property parcels with the primary purpose to prevent feral pigs from accessing and damaging the vineyard. According to the ECPA titled, *Laird Family Vineyards – Jamieson Vineyard*, prepared by Napa Valley Vineyard Engineering, Inc., dated July 18, 2017, 4-foot tall 6-inch by 6-inch mesh wire fencing will be installed around the perimeter of property parcels that are part of the Project, including fencing running through streams on the Project site. CDFW discourages the construction of fencing in stream channels, especially fencing that is perpendicular to the flow. Instead, CDFW recommends that the ECPA be revised to limit fencing to the perimeter of each individual vineyard block. CDFW recommends that the fencing be at least 6 feet tall in order to also prevent deer from accessing vineyard blocks and browsing vines. All wildlife exclusion fencing surrounding vineyard blocks should contain exit gates at corners of the vineyard block to allow trapped wildlife (e.g. deer) to escape from vineyard blocks.

Regulatory Requirements

California Endangered Species Act

CESA prohibits unauthorized take of candidate, threatened, and endangered species. Therefore, if take¹ of tricolored blackbird, Swainson's hawk, or any other species listed under CESA cannot be avoided either during Project activities or over the life of the Project, a CESA ITP must be obtained (pursuant to Fish and Game Code Section 2080 *et seq.*). Issuance of a CESA ITP is subject to CEQA documentation; therefore, the CEQA document should specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the proposed Project will impact any CESA-listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required to obtain a CESA ITP. More information on the CESA permitting process can be found on the CDFW website at <https://www.wildlife.ca.gov/Conservation/CESA>.

¹ Fish and Game Code §86: "Take" means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.

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Lake and Streambed Alteration Agreement

CDFW requires an entity to notify CDFW before commencing any activity that will divert or obstruct the natural flow, or change the bed, channel, or bank (which may include associated riparian resources) of a river or stream or use material from a streambed. Ephemeral and/or intermittent streams and drainages (that are dry for periods of time or only flow during periods of rainfall) are also subject to Fish and Game Code section 1602. The Project proposes to construct four rocked water crossings, install a new 48-inch diameter culvert, and revegetate a portion of Sheehy Creek that was cleared in 2012/2013 without the proper permits. CDFW prefers and recommends the use of clear span bridges where feasible, as opposed to rocked water crossings, in order to reduce impacts to streams. Additionally, the Project should provide on-site mitigation at a minimum 2:1 mitigation to impacts ratio for the installation of the proposed 48-inch diameter culvert. Acceptable forms of mitigation include but are not limited to restoration, enhancement, and bank stabilization using soil bioengineering in areas where sediment is entering the channel. The abovementioned Project activities require Notification to CDFW prior to construction to see if a LSAA is needed.

Issuance of an LSAA is subject to CEQA. CDFW, as a Responsible Agency under CEQA, will consider the CEQA document for the Project. The CEQA document should identify the potential impacts to the stream or riparian resources and provide adequate avoidance, mitigation, monitoring, and reporting commitments for completion of the agreement. To obtain information about the LSAA notification process, please access our website at <https://www.wildlife.ca.gov/conservation/lssa> or to request a notification package, contact CDFW's Bay Delta Regional Office at (707) 428-2002.

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 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 draft MND for the proposed Project and is available to meet with you to further discuss our concerns. Additionally, CDFW is available to work with the Project applicant in order to complete their Notification for an LSAA. If you have any questions, please contact Mr. Garrett Allen, Environmental Scientist, at (707) 428-2076 or at garrett.allen@wildlife.ca.gov; or Ms. Karen Weiss, Senior Environmental Scientist (Supervisory), at (707) 428-2090 or at karen.weiss@wildlife.ca.gov.

Sincerely,



Gregg Erickson
Regional Manager
Bay Delta Region

cc: State Clearinghouse