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DEPARTMENT OF FISH AND WILDLIFE
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January 23, 2020

Governor's Office of Planning & Research

JAN 23 2020

STATE CLEARINGHOUSE

Ms. Joan E. Gargiulo, Planner II
Napa County
1195 Third Street, Suite 210
Napa, CA 94559

Subject: Soscol Creek Investors Residential Viewshed, #P19-00019, Draft Mitigated Negative Declaration, SCH #2019129094, Napa County

Dear Ms. Gargiulo:

California Department of Fish and Wildlife (CDFW) personnel have reviewed the draft Mitigated Negative Declaration (MND) for the Soscol Creek Investors Residential Viewshed (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 has authority to comment 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 Native Plant Protection Act, the Lake and Streambed Alteration (LSA) Program, 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 18.64-acre Project site is located on Soscol Creek Road, approximately 1.5 miles east from Highway 29, at approximately latitude 38.24177, longitude -122.2498. The property is composed predominantly of coast oak woodland and annual grassland. A 2-acre vineyard also exists on the property immediately to the south of the proposed Project. Site topography ranges from slopes of less than 5% to slopes over 20%. Soscol Creek lies approximately 800 feet to the north of the Project site, and an unnamed ephemeral stream and seasonal wetland occur on the property. Land use surrounding the property is predominantly vineyard development interspersed with oak woodland and annual grassland habitats.

The Project proposes to develop an approximately 6,180-square-foot single-family residence; a detached 1,199-square-foot accessory dwelling unit; a detached 884-square-foot garage; and a 641-square-foot detached pool pavilion. The Project also includes the construction of a residential wastewater system and improvements to the driveway to comply with County Roads and Street Standards.

Comments and Concerns

Swainson's hawk (Buteo swainsoni)

The draft MND states that the large trees within the oak woodland forest on the property provide suitable breeding habitat for several special-status wildlife species, including Swainson's hawk

(SWHA), a threatened species under CESA. There are seven marked occurrences of SWHA in the California Natural Diversity Database within two miles of the Project site, with the closest occurrence being less than a mile to the west. Mitigation Measure BIO-5 (MM BIO-5) in the draft MND requires that a qualified biologist conduct one pre-construction nesting bird survey with 14 days of starting construction activities (e.g. tree removal).

As written, MM BIO-5 could result in significant impacts to the species because a single pre-construction survey is not sufficient to provide the minimum level of protection. The Swainson's Hawk Technical Advisory Committee's *Recommended Timing and Methodology for Swainson's Hawk Nesting in California's Central Valley*, states that surveys should be completed for at least the two survey periods immediately prior to starting a project in order to meet the minimum level of protection for the species.

To reduce impacts to a level of less-than-significant, CDFW recommends that a qualified biologist conduct surveys in accordance with the abovementioned survey methodology. If nesting SWHA, or evidence thereof, is discovered during surveys, Project construction activities should avoid all active nests by a minimum of 0.5 miles. If construction activities cannot avoid active nests by a minimum of 0.5 miles, construction activities should be delayed until the end of the breeding season (typically September 1), or until a qualified biologist determines that the nest is no longer active. If the Project will occur over multiple years, construction seasons should be limited to the period of September 1 to January 31 each year to avoid impacts to SWHA. Alternatively, the Project proponent can apply for a CESA Incidental Take Permit (ITP) from CDFW prior to starting construction. If the Project proponent wishes to obtain a CESA ITP from CDFW, CDFW recommends that the Project proponent apply at least six months prior to the start of construction. Before CDFW can issue a CESA ITP, the applicant must have completed the necessary steps under CEQA. CESA ITP's require that a project fully mitigate for its impacts to the listed species, and such mitigation must be discussed in the project's CEQA document. Further information regarding CESA ITPs can be found on our website: <https://wildlife.ca.gov/Conservation/CESA/Permitting/Incidental-Take-Permits>.

Pallid bat (Antrozous pallidus) – Oak Tree Removal

The proposed Project will permanently impact 0.88 acres of coast live oak woodland, including the removal of up to 23 oak trees. The draft MND states that the coast live oak woodland on the property is comprised primarily of large trees, with many of the trees containing large cavities. *The Biological Resources Reconnaissance Survey Report*, prepared by WRA, dated March 2019, states that the trees within the Project area, including some of the trees scheduled for removal, contain cavities or snags suitable for roosting by pallid bats, which are a California State Species of Special Concern (SSC). CDFW designates certain vertebrate species as SSC because declining population levels, limited ranges, and/or continuing threats have made them vulnerable to extinction or extirpation in California. Though not listed pursuant to the federal Endangered Species Act (ESA) or CESA, the goal of designating taxa as SSC is to halt or reverse the decline of these species by addressing issues of conservation concern early enough to help secure their long-term viability. Because of this, Mitigation Measure BIO-1 (MM BIO-1), as written, does not reduce impacts to a level of less-than-significant because its implementation does not result in a net loss of the species habitat. To reduce impacts to a level of less-than-significant, CDFW recommends that MM BIO-1 be revised as follows:

For each tree that contains suitable bat roosting habitat and is removed as a result of the Project, native oak trees that are the same species of trees removed shall be replanted either on the property or off-site at a suitable location identified by a qualified biologist, at the following ratios:

- *4:1 replacement for impacted oaks 5-10 inches in diameter*
- *5:1 replacement for impacted oaks 10-15 inches in diameter*
- *Trees greater than 15 inches in diameter are considered old-growth oaks and should be mitigated at a ratio of 15:1*

Planted oak trees shall be sourced from local, certified Phytophthora free, plant nurseries; or locally sourced acorns shall be used. All planted oak trees shall be monitored and maintained as necessary for a minimum of five years to ensure at least 80% survival of all planted oak trees at the end of 5 years. If planted oaks have not achieved 80% survival at the end of 5 years, additional oaks shall be planted and monitored and maintained as necessary for an additional 5 years to ensure at least 80% survival. Monitoring requirements shall not be considered fulfilled until Napa County has determined that the abovementioned success criteria have been achieved. Additionally, the entire area of planted oak trees shall be preserved in perpetuity under the form of a conservation easement, deed restriction, or similar means of permanent protection as deemed appropriate by Napa County.

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. 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