

**Email No.1**

**From:** Sandra Fox [<mailto:fox95426@yahoo.com>]

**Sent:** Sunday, July 12, 2020 6:26 PM

**To:** Guenocvalleycomments - Email <[Guenocvalleycomments@lakecountyca.gov](mailto:Guenocvalleycomments@lakecountyca.gov)>

**Subject:** [EXTERNAL] Concerns about Park Avenue Development

July 12, 2020

Attn: Mr. Mark Roberts

I have several concerns about developing Park Avenue as an entrance to the proposed subdivision in Middletown. Park Avenue has always been a dirt road that acts as driveway to several homes in the Ozenberger Park section of Middletown. My sister and her husband, Terry Hoberg and Howell Karabel have property directly adjacent to Park Avenue at 21112 Highway 175, as well as adjoining properties at 21082 Highway 175 and 21096 Highway 175.

With the South Lake Fire Department directly across the street from Park Avenue, I have had some difficulty making the turn into my sister's driveway off of Highway 175. There is a lot of activity at the Fire Department on any regular day, and often it is confusing and dangerous when people are trying to turn left into Park Avenue, or right into the Fire Station.

Will there be a left turn lane installed on Highway 175? What about the families that have rebuilt and remodeled after the Valley Fire? Will their quiet properties now become a major entrance point into this new subdivision? What about the traffic and noise this will cause the current residents of Park Avenue? Will they lose portions of their properties so this roadway can be built? What about the drainage problems when pavement is added to a known flood area? What if this causes established homes and adjacent properties even more flooding?

Why aren't planners looking at entry from Santa Clara Road off of Highway 175 away from the Fire Station? Or even better, entry to the new subdivision from Barnes Road where highway traffic won't be affected? That way property owners on Santa Clara Road won't have to deal with large amounts of traffic on their quiet street.

It seems that Barnes Road would be the perfect entryway to this new development, as it can be made wide enough to accommodate large trucks and any traffic going in and out of the new subdivision.

Thank you for your consideration on this matter.

Sincerely,

**Sandra Hoberg Fox**

9234 Fox Drive

Cobb, CA 95426-0350

## **Email No. 2**

**From:** Dan Gluesenkamp [<mailto:dgluesenkamp@cnps.org>]  
**Sent:** Friday, July 10, 2020 12:19 PM  
**To:** Guenocvalleycomments - Email <[Guenocvalleycomments@lakecountyca.gov](mailto:Guenocvalleycomments@lakecountyca.gov)>  
**Cc:** 'Nick Jensen' <[njensen@cnps.org](mailto:njensen@cnps.org)>; [jenariddell@gmail.com](mailto:jenariddell@gmail.com)  
**Subject:** [EXTERNAL] RE: Guenoc comments

Hi Mark

I hope you are well.

We are checking to see that our comments were received.

It sounds like the Board of Supervisors decided to postpone considering approval of the project, to a future meeting? Unfortunately, all of the information the County is making available on the web is outdated and even wrong –for example, the project page erroneously states that Planning Commission will meet on June 18th and if necessary the 19th to review the Guenoc Valley Project. There is a Notice of Comment Period Extension, but it clearly states that written comments will now be accepted through 5:00 p.m. on Tuesday, April 21, 2020.

As you know, public noticing is key to ensuring the public can participate in the process. The noticing thus far is haphazard and misleading, and exposes the County to significant liability.

Will you please provide us with clear update on timeline, and also broadly publicize those updated timelines so the public can participate in this important decision?

Thank you in advance,

Dan

Dan Gluesenkamp, Ph.D.  
Executive Director he  
The California Native Plant Society  
2707 K Street, Suite 1  
Sacramento, CA 95816  
916.447.2677 x201  
<http://CNPS.org>

**Email No. 3**

**From:** Janina M. Hoskins [<mailto:jmelder7@aol.com>]

**Sent:** Monday, July 6, 2020 7:17 PM

**To:** Guenocvalleycomments - Email <[Guenocvalleycomments@lakecountyca.gov](mailto:Guenocvalleycomments@lakecountyca.gov)>

**Subject:** [EXTERNAL] Guenoc Valley

The applicant originally sought to use the Hwy 29 and Butts Canyon property to house workers and construct 400 sq. ft. units. The current report does not include usage of this location for any housing. The current report indicates that this site will be used for water/well rights. The residents of Middletown and Butts Canyon Road need verification and clarification as to the specific usage of the Butts Canyon and Hwy 29 site.

This 40 acre parcel should not be used for housing of the applicants' workforce. The Santa Clara site provides sufficient units to provide housing for the workforce. Traffic issues on Butts Canyon Road will result in congestion due to the construction of the main project and adding any additional traffic burden on Butts Canyon Road, by placing additional housing on the Butts Canyon and Hwy 29 site would disrupt the current property owners' ability to access Butts Canyon Road.

The applicant should be required to "beautify" the Hwy 29 and Butts Canyon site. This site currently contains a residence, a few outbuildings and pasture. The fencing along Hwy 29 and Butts Canyon is dilapidated and needs repair. I am concerned that the applicant may use this site to store equipment and construction supplies.

What limits will be in place for the applicants' "use" of water from the Butts Canyon and Hwy 29 site? Many residents in this area already have water issues (i.e., the Black Oaks' subdivision) and prior applications for use of water in this area have met with resistance and concern. There is also the existing water ski lake in this area which draws water from this area. What steps are in place to ensure that the existing wells of the current Butts Canyon Road area residents are protected, if the applicant intends to use that site to export water? Has a hydrology study been conducted?

We are excited about the opportunities that this project will bring to South Lake County, but want to ensure that the existing property owners' rights to enjoy their property and water rights are not negatively impacted.

Thank you

Janina and Michael Hoskins  
P. O. Box 158  
16687 Butts Canyon Road  
Middletown, CA 95461  
(707) 569-9508



CALIFORNIA  
NATIVE PLANT SOCIETY

2707 K Street, Suite 1, Sacramento, CA 95816-5130 (916) 447.2677 [www.cnps.org](http://www.cnps.org)

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July 7 2020

Transmitted via [guenocvalleycomments@lakecountyca.gov](mailto:guenocvalleycomments@lakecountyca.gov) email to:

Lake County Board of Supervisors  
255 N. Forbes Street  
Lakeport, CA 95453

Carol J. Huchingson, Clerk of the Board

Mark Roberts, Principal Planner

Re: Guenoc Valley Mixed Use Planned Development Project (AM 18-04; DA 18-01, GPAP 18-01;  
RZ 18-01 & RZ 20-01; GPD 18-01; SD 18-01, SD 20-01, UP 18-49 and UP 20-02)

Dear Members of the Board, Clerk of the Board, and Mr. Roberts:

These comments are submitted on behalf of the California Native Plant Society (CNPS) on the Final Environmental Impact Report for the proposed Guenoc Valley Mixed Use Planned Development Project.

CNPS is a non-profit environmental organization with more than 10,000 members in 35 Chapters across California and Baja California, Mexico. CNPS's mission is to protect California's native plant heritage and preserve it for future generations through the application of science, research, education, and conservation. CNPS works closely with decision-makers, scientists, and local planners to advocate for well-informed policies, regulations, and land management practices.

Given the scale of the project and the numerous significant impacts of the proposed actions, CNPS believes the project must be significantly scaled down and actions altered to ensure that even the most significant impacts to the environment are analyzed, mitigated, or avoided. In addition to major impacts identified and not fully addressed in the document, the planning has failed to fully recognize a number of impacts in a variety of categories. Finally, the process thus far has discouraged public involvement, and the product is unclear and not conducive to public understanding and evaluation.

For these reasons, we strongly request the the Board not approve the project at this time, and instead extend the public process. During this extended time, additional information can be

provided and more importantly the public can be made aware of the project and given reasonable opportunities to learn and engage.

Regardless, we recommend the following points be addressed to adequately avoid and mitigate for impacts to native plants and habitats. We have concerns that special-status plants and natural habitats currently on the project site have been insufficiently evaluated in the EIR and believe that the proposed mitigation measures are infeasible and would not reduce significant impacts to plants to less than significant.

### **The EIR Fails to Adequately Describe, Assess, Analyze, and Mitigate Impacts to Plants, Vegetation, Wildlife, and Habitat Connectivity**

Distribution and status of special habitats is poorly described. Riparian habitat, oak woodland, chaparral, serpentine habitat, volcanic edaphic communities are all inconsistently mapped, underreported, and not adequately evaluated for impacts.

Special status plants are not adequately mapped. While the EIR includes information on rare plant surveys, the information is contradictory and incomplete. For example, even the limited surveys performed found numerous special status plant populations while also detecting habitat and sites likely to contain others. However, additional survey work during other seasons is necessary to fully understand the abundance of rare plants and to evaluate project impacts on these plants. As is, the survey work is inadequate to understand the site and evaluate impacts. Moreover, the document deliberately minimizes the prevalence of rare species at this very special place and the great environmental impacts likely to occur if the project proceeds as planned.

Mitigation is incomplete and inadequate. Proposed mitigation actions are cursory and boilerplate and not appropriate for these special status species and communities. For example, there is a blanket proposal of 2:1 for all special status species. This should be significantly expanded to present specific mitigation criteria and actions for individual species based on their specific characteristics and rarity. In addition, some plants are so rare that mitigation is essentially impossible and so avoidance must be the priority. This expanded mitigation plan necessarily requires substantially improved survey information, as most of the rare plants that likely occur on the site have not yet been surveyed or mapped.

Proposed Mitigation is vaguely described, unenforceable, improperly deferred, and lacks clear metrics and monitoring. Much of the mitigation is not clearly focused on specific outcomes that clearly benefit the resources affected. In other cases, mitigation could be adequate but is presented in terms of “could” and “may” and not clearly enforceable. Metrics are generally weak and monitoring not adequate to capture changes, and there are few if any triggers or actions described in the event the actions fail to succeed. Much of the mitigation is improperly deferred, with no clear plan provided to help the public understand the environmental impacts.

**The EIR, Project Descriptions, and Public Process do not comply with CEQA, are confusing, and do not facilitate public understanding or involvement.**

The process thus far has been marred by the challenges of communication and public participation during a time the pandemic. One result is that our comments are less structured and detailed than would be the norm: this is entirely due to the fact that notice of meetings relevant to the opportunity for public comment has been spotty, sporadic, incomplete, and marred by mistaken dates and missing zoom information. Having just received notice just a very short time prior to the meeting, we have had to accelerate our review and provide comments on an abbreviated timeframe. We see this reflected in the other comments received, with very few comments from the public and many of the comments received complaining about lack of access to the basic information under evaluation.

This unfortunate exclusion of public from the review and comment process has been entirely due to the unique circumstances faced by staff working remotely, decisionmakers besieged by the public health emergency, public meeting dates shifted, public meetings and hearings cancelled and moved to zoom, with the call in information not provided or unavailable from public websites and meeting agendas. We must all be understanding and to some degree forgiving as we all work together to operate under these conditions. That said, the unusually fast pace of this process has made these logistic challenges greater, and significantly curtailed public engagement and opportunity for review.

The DEIR and FEIR are also not conducive to public engagement. The documents fail to provide clear synthesis of proposed actions and impacts. Information is presented in a confusing manner or is incomplete. Thus it is difficult or impossible for the public to understand the exact degree of agricultural conversion, the specific lands to be converted and the extent of vineyards, the timing of conversion, ownership/management of vineyards, and the degree to which agricultural conversion is already permitted, to be permitted by the current process, or to be permitted by future processes. Similarly, description of climate change impacts, surface and groundwater impacts, vehicle and transportation impacts are also confused and obfuscated. Given the enormous scale of this proposed landscape transformation, and the cumulative impacts to the region for decades to come, it is unacceptable for the document to fail to provide a clear picture for public review.

The EIR contains numerous descriptions that are cursory, incomplete, and not conforming with current scientific nomenclature. For example, description of “rock outcrops” appears taken from Wikipedia and does not provide sufficient information on distribution of this habitat at the project site, characteristics of this unique site, utility for wildlife and sensitive species, and likely direct, indirect, and cumulative impacts due to the project.

Nonstandard naming occurs throughout, not conforming with state policies and obscures public understanding. For example, “Muck Brush” is not a valid and likely combines and confuses multiple sensitive habitats. Additional details is needed to be able to understand the full impact of this inadequacy.

For these and other reasons, this project should not be receiving fast track review, during this exceptionally challenging time. Instead, the process should be extended and even pause the review and approval until they can be adequately addressed and the project significantly improved.

We look forward to working with you in the future to improve this project.

Most sincerely,

A handwritten signature in blue ink, appearing to read 'D. Gluesenkamp', with a stylized flourish at the end.

Dan Gluesenkamp  
Executive Director

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July 16, 2020

Board of Supervisors  
County of Lake  
Attn: Carol J. Huchingson, County Administrative Officer  
255 N. Forbes Street  
Lakeport, CA 95453

*Via email: Carol.huchingson@lakecountycal.gov*

RE: Final Environmental Impact Report (FEIR) for Guenoc Valley Mixed-Use Planned Development Project, SCH#2019049134

Dear Ms. Huchingson and the honorable Lake County Supervisors:

The California Oaks program of California Wildlife Foundation (CWF/CO) works to conserve oak ecosystems because of their critical role in sequestering carbon, maintaining healthy watersheds, providing wildlife habitat, and sustaining cultural values. This letter follows our April 21, 2020 comments on the Draft Environmental Impact Report for the Guenoc Valley Mixed-Use Planned Development Project, and addresses Section 3.2, Responses to Organization Comments, of *Volume 1 Response to Comments* of the FEIR. This letter also provides additional recommendations on how the project can better advance County of Lake oak protections and notes the inadequate public comment period.

The April 2020 CWF/CO letter stated that the DEIR has three deficiencies that do not align with California law. The first pertains to the definition of an oak woodland, the second pertains to the establishment time for oaks planted for mitigation purposes. The third deficiency is that the DEIR does not calculate the greenhouse gas impacts of the proposed tree removals. In the FEIR, the County took steps to address the second deficiency, although transplanted trees should be subject to a seven-year establishment period. The other two deficiencies remain unaddressed in the FEIR.

The April 2020 CWF/CO letter also questioned the adequacy of the proposed mitigation ratios for oak removals and questioned the proposed project's consistency with General Plan Policy 1.13. These concerns also remain unaddressed.

Lastly, the timeline for public comment on the project is troublesome. The legal notice, which was scheduled for publication on June 6, 2020 for the June 18 public hearing of the Planning Commission, noted: "If you challenge the action of the Planning Commission on any of the above stated items in court, it may be limited to only those issues raised at the public hearing described in this notice, or in written correspondence delivered to the Lake County Planning Commission at, or prior to, the public hearing." The FEIR for Guenoc Valley Mixed-Use Planned Development Project was not posted on the County of Lake website until June 16, providing an inadequate period of time for preparation of substantive comments for consideration by the Planning Commission.



#### DEFINITION OF OAK WOODLAND

The FEIR's response to Comment 08-3 states: ... "oak woodlands as defined within Section 3.4 of the Draft EIR is largely consistent with the definition of oak woodland as presented within the Oak Woodlands Conservation Act." *Largely consistent* is not sufficient. California Fish and Game Code defines oak woodlands: "*Oak woodlands* means an oak stand with a greater than 10 percent canopy cover or that may have historically supported greater than 10 percent canopy cover." The Board of Forestry and Fire Protection communicated to counties and cities that greater than 10 percent canopy cover is the appropriate measure to define oak woodlands for California Environmental Quality Act (CEQA) reviews after the enactment of Public Resources Code §21083.4, which applies to mitigation for the removal of oaks that are not commercial species and that are five inches or more in diameter as measured at a point 4.5 feet (breast height) above natural grade level. Registered Professional Foresters and arborists must conform to this canopy cover standard. The text from a July 9, 2006 letter from Erik K. Huff, Executive Officer, Foresters Licensing, Board of Forestry and Fire Protection to the County of Lake regarding the application of the Professional Foresters Law to oak woodlands is included as Attachment A to this letter. A summary memo by Leah Gardner of the Department of Conservation on the greater than ten percent metric for defining oak woodlands in the context of Public Resources Code §21083.4 is included as Attachment B to this letter.

Health and Safety Code §42801.1(g) provides the following definition: "*Forest* means lands that support, or can support, at least 10 percent tree canopy cover and that allow for management of one or more forest resources including timber, fish and wildlife, biodiversity, water quality, recreation, aesthetics, and other public benefits." Public Resources Code §4793(e) provides the following definition: "*Forest land* means land at least 10 percent occupied by trees of any size that are native to California, including native oaks, or formerly having had that tree cover and not currently zoned for uses incompatible with forest resource management." Public Resources Code §12220(g), which is cited in the project's environmental documentation (page 3.2-4 of the DEIR), utilizes a metric of ten percent.

The project's environmental analysis needs to be *wholly*, not *largely*, consistent with California's definition of oak woodlands. Until that point it is unclear if the EIR analysis of oak woodlands impacts is complete.

#### MITIGATION PLAN

As noted above, the entirety of the DEIR's analysis of oak woodlands needs to conform to the definition of oak woodlands in California Fish and Game Code.

The mitigation formula for valley oak impacts has been improved from what was included in the DEIR, as articulated below (RE: comment 08-08):

Due to the additional value and limited distribution of valley oaks, the ratio for this habitat type has been increased to 3:1. Therefore, the preservation ratios as presented within the Oak Mitigation Plan (Appendix OAK of the Draft EIR) and Mitigation Measure 3.4-16 as presented within Section 3.4.5 of the Draft EIR have been increased to 3:1 for valley

oaks...

It is also appropriate that a higher mitigation rate is utilized for trees greater than 15-inches in diameter at breast height. This standard should be applied to all impacted trees of this size, be they part of a converted woodland or individual trees.

**Transporting trees:** CWF/CO understands that the Oak Mitigation Plan is built on the assumption that no mitigation is necessary if oak trees are transported elsewhere—that the transport and survival of the transported trees is the mitigation and further, that the plan is built on the assumption that *moving* trees is not a mitigation action subject to the seven-year establishment period for the replacement or restoration of former oak woodlands. As stated in the April 2020 letter, the transport of oaks is ill-advised. The response to Comment 09-09 states: “Monitoring of transplanted trees has shown that this method can be very successful on the Guenoc Valley Site when done properly.” The response did not provide substantial evidence to back up this claim. CWF/CO suggests that the County of Lake review and make public the monitoring data and any other evidence of the viability of transplanted trees before approving the FEIR.

The FEIR’s mitigation is still not adequate to mitigate the Project’s impacts to oak woodlands to less than significant levels. Additional suggestions for improving project mitigation are presented in the “Consistency with Lake County oak provisions” section, below.

#### **GREENHOUSE GAS IMPACTS OF TREE REMOVALS**

California law requires the greenhouse gas (GHG) impacts of proposed oak removals to be assessed. The EIR’s section 3.7.4 lacks this analysis. The response to comment 08-10 does not address the comment identifying the need for the analysis and mitigation of greenhouse gas *emissions* associated with proposed oak woodland or forest conversions. Instead it addresses the environmental analysis of carbon sequestration impacts of the proposed project:

The air quality and GHG emissions estimates, provided in Appendix AIR of the Draft EIR, include estimates of the one-time change in carbon sequestration capacity due to vegetation land change from the Proposed Project. Consistent with the impacts to oak woodlands described in Section 3.4.4 of the Draft EIR, the GHG emissions estimates assumed that 477 acres of oak woodlands would be converted as a result of the Proposed Project, including 331 acres of dense oak woodlands and 146 acres of less dense oak woodlands referred to as oak savanna. To account for the sparse canopy in the 146 acres of oak savanna sub-type of oak woodlands, the total acreage of oak woodland conversion was input as 410 acres in the California Emissions Estimator Model Version 2013.2 (CalEEMod). As noted in Appendix AIR of the Draft EIR, the one-time loss of carbon sequestration resulting from this loss of habitat type would be 45,510 metric tons of carbon dioxide equivalents.

Regarding mitigation for the impact of tree removal on carbon sequestration, the EIR does not appear to have provided substantial evidence for the calculations in the quoted text above that utilize an oak woodland conversion figure that is lower than the acres

impacted. The EIR appears to improperly assume that the impacted understory vegetation has no sequestration value and failed to calculate it; this should be corrected.

#### **CONSISTENCY WITH LAKE COUNTY OAK PROVISIONS**

CWF/CO reviewed the Guenoc Water Rights Modification Project Final EIR subsequent to the submission of the April 2020 letter on the DEIR for the Guenoc Valley Mixed-Use Planned Development Project. The quote below, from the 10<sup>th</sup> page of a letter (included as Attachment C to this letter) from the agency then called Department of Fish and Game (the 75<sup>th</sup> page of the Water Rights Modification FEIR), references a Board of Supervisors Resolution for oaks:

DFG is concerned about the continuing loss of oak woodlands in Lake County by development activities through conversions to vineyards. In regards to this, the Lake County Board of Supervisors early on recognized this problem and passed Resolution #95-211 (October 3, 1995) "A Resolution Adopting a Management Policy for Oak Woodlands in Lake County" to foster the maintenance and improvement of oak woodlands. In Number 4, the Resolution recommends conservation easements.

...Our aerial photo records reveal extensive loss of wildlife habitat through conversion to vineyards at Guenoc without any feasible and permanent compensation for wildlife habitat loss. DFG does not consider grape row crops as wildlife habitat. We find the project's impacts are both wide-ranging and cumulative when the change in the environment results from incremental impact of the project when added to the other related past, present, and reasonable foreseeable probable future impacts (CEQA, Section 15355).

The DEIR fails to disclose sufficient mitigation for the DEIR's astonishing proposed permanent impact to wildlife habitat.

Response 1-38 from the Water Rights Modification FEIR stated: "The establishment of a conservation easement is a voluntary decision of the property owner. An Open Space Preservation Plan has been prepared and is discussed below." While it is correct that a conservation easement is a transaction that a property owner enters into, the Board of Supervisors is the governing body responsible for upholding the policies of the county when approving new projects. In considering the approval of the Guenoc Valley Mixed-Use Planned Development Project the Board could require off-site conservation easements to further mitigate the environmental impacts of the project and thereby uphold the county's environmental protections. Given the size and scope of the project, the requirement of an off-site conservation easement to further mitigate project impacts would ensure the integrity of an equivalent environment, especially given the expected additional environmental impacts within the project footprint if new phases of the project proceed.

Further, the aforementioned Management Policy for Oak Woodlands resolution designates:

... the Lake County Coordinating Resource Management Committee to

conduct monitoring of oak woodland resources. The committee shall monitor increases and decreases in canopy cover and report its findings to the Board of Supervisors every 5 years. Should any significant reduction of a forest segment occur, the committee shall notify and recommend action to the Board of Supervisors within 30 days.

Lake County appears not to have conducted a recent assessment of its oak canopy as part of its consideration of the Guenoc development. A recent analysis conducted by the *Los Angeles Times* found that more than 50% of the county's land has burned since 2012 (see: <https://www.latimes.com/local/lanow/la-me-lake-county-fire-epicenter-20180814-story.html>). The FEIR should evaluate the Guenoc development's contribution to the loss of oak canopy in the county using up-to-date information; otherwise it cannot adequately evaluate the project's cumulative impacts.

The FEIR response to comment 08-11, which questioned the alignment of the Guenoc development with County of Lake General Plan Open Space and Conservation Policy 1.13 (*The County shall support the conservation and management of oak woodland communities and their habitats*) is:

As stated in Appendix GPCT of the Draft EIR, the County has determined that the Proposed Project is consistent with General Plan Policy OSC-1.13. The Proposed Project maximizes avoidance of oaks through intentional design, incorporation into landscape, development restrictions, and cluster of development. The Oak Mitigation Plan (Appendix OAK) supports the conservation and management of oak woodland communities and their habitats consistent with Policy OSC-1.13.

As the Board of Supervisors weighs the proposed conversion of 477 acres of oak woodland (or perhaps a greater number of acres, if the more appropriate greater than ten percent standard is used to determine impacts to oak woodlands) and the other environmental impacts of the Guenoc development, CWF/CO offers that the project, as presented in the FEIR, runs counter to the conservation and management of Lake County's oak landscapes. This ill-conceived project should not be approved.

Thank you for your consideration of CWF/CO's comments. We assume that the receipt of the comments before the Board of Supervisor decision on the project and possible certification of the FEIR ensures that these comments will be entered into the record, despite the language in the aforementioned legal notice.

Sincerely,



Janet Cobb  
Executive Officer  
California Wildlife Foundation



Angela Moskowitz  
Manager  
California Oaks Coalition

Cc: [guenocvalleycomments@lakecountyca.gov](mailto:guenocvalleycomments@lakecountyca.gov)

### **Attachments**

1. Text from a July 9, 2006 letter from Erik K. Huff, Executive Officer, Foresters Licensing, Board of Forestry and Fire Protection to the County of Lake regarding the application of the Professional Foresters Law to oak woodlands
2. Memo by Leah Gardner, Department of Conservation, on the definition of oak woodlands in the context of Public Resources Code §21083.4
3. Department of Fish and Game Letter, Guenoc Water Rights Modification Project Final Environmental Impact Report

## Attachment A

### **BOARD OF FORESTRY AND FIRE PROTECTION PROFESSIONAL FORESTERS REGISTRATION**

P.O. Box 944246

SACRAMENTO, CA 94244-2460

January 9, 2006

Mr. Anthony Farrington, Chair  
County of Lake Board of Supervisors  
255 North Forbes Street  
Lakeport, California 95453

Dear Mr. Farrington,

This letter is in response to the growing misconception regarding the application of the Professional Foresters Law (PFL), within the context of the California Environmental Quality Act (CEQA). As you may be aware, the PFL became effective on January 1, 1973, one year prior to the effective date of the Z'berg-Nejedly Forest Practice Act. With the passage of the PFL, the Legislature declared the existence of a public interest in the management and treatment of California's forest resources, and regulates all persons who practice the profession of forestry. The intent of the Law is to provide the consuming public with a source of forest management experts--knowledgeable, trained, experienced and skilled in the scientific fields relating to forestry.

Though the PFL is often characterized as applicable only to activities related to the Forest Practice Act, i.e. preparation of Timber Harvest Plans (THP's, NTMP's, etc.) the PFL is in fact far broader in scope and no less applicable to oak woodlands or any other forest type. Public Resources Code (PRC) §750, *et seq.* states that only a Registered Professional Forester (RPF) may practice forestry on non-federal, forested landscapes.

*Forestry* is defined as,

...the science and practice of managing forested landscapes and the treatment of the forest cover in general, and includes, among other things, the application of scientific knowledge and forestry principles in the fields of fuels management and forest protection, timber growing and utilization, forest inventories, forest economics, forest valuation and finance, and the evaluation and mitigation of impacts from forestry activities on watershed and scenic values... (PRC §753)

*Forested Landscapes* are defined as,

...those tree dominated landscapes and their associated vegetation types on which there is growing a significant stand of tree species, or which are naturally capable of growing a significant stand of native trees in perpetuity, and is not otherwise devoted to non-forestry commercial, urban, or farming uses. (PRC §754)

The Board of Forestry and Fire Protection has generally interpreted the term *significant stand of tree species* to mean those stands with a canopy cover of 10% or greater.

While it has been argued that the preparation of tree inventories and forest cover characterizations in support of CEQA compliant documents does not constitute the practice of forestry, this perspective does not satisfy the Law. Regardless of context, be it a Timber Harvest Plan for a stand of ponderosa pine or an Environmental Impact Report (EIR) for development conversion of blue oak woodland, if the project occurs on a *forested landscape* an RPF must be involved. Certified arborists, vegetation ecologists, botanists, biologists or individuals from any other discipline may not serve as surrogates for a Registered Professional Forester.

The Board of Forestry and Fire Protection respectfully requests the assistance of your Board to ensure that CEQA projects under county control comply with the Professional Foresters Law. To that end, this office will provide whatever assistance it may to your Board and county departments. Further information on the Registration of Professional Foresters may be found at [www.bof.fire.ca.gov/licensing/licensing\\_main.asp](http://www.bof.fire.ca.gov/licensing/licensing_main.asp).

Thank you for your time and consideration in the review of this correspondence. Questions or concerns may be directed to me at (916) 653-8031.

Sincerely,

Eric K. Huff, RPF No. 2544  
Executive Officer, Foresters Licensing



## The New State Oak Woodlands Conservation Law, PRC 21083.4 by Leah Gardner

As of January 1, 2005, the state's first oak woodlands conservation and mitigation standards, PRC Section 21083.4, went into effect for all California Environmental Quality Act (CEQA) processes within a county's jurisdiction. Previously, oak woodland land-use practices were governed by individual county ordinances that varied widely across the state. The new law greatly strengthens broad legal defense of oak woodlands. Oak woodland is defined as a habitat with over 10 percent of the canopy cover comprised of native oak trees in the genus *Quercus* with a diameter at breast height (DBH) greater than 5 inches. Oaks below the 5-inch DBH size will remain under county ordinances or general plans.

Under the Public Resources Code, a Registered Professional Forester (RFP) must perform all CEQA oak woodland characterizations and participate in developing site-specific mitigation measures. Licensed by the California State Board of Forestry and Fire Protection, an RFP is required to describe site conditions and impacts for mitigated negative declarations and environmental impact reports. The number of acres of oak woodland habitat, the number of trees that will be removed, the diameters of individual trees, and any special habitat elements that will be impacted determine thresholds of significance. Impacts also include the project's cumulative contribution to the overall loss of oak woodlands. RFPs will supplement the work of biologists, ecologists and others involved in the CEQA compliance process. Due to the high biological diversity supported by oak habitats, endangered, threatened, or sensitive species are likely to occur, in which case the Department of Fish and Game and/or the U.S. Fish and Wildlife Service will also need to be involved.

According to the new CEQA standards, there are four alternatives available to mitigate significant impacts to oak woodlands. Counties are to require one or more of the measures for a project. Planting of oaks (Alternative 2) can be used to fulfill no more than 50 percent of the required mitigation, so that it must always be combined with at least one of the other alternatives. The four alternatives are:

- 1) Conserve oak woodlands through the use of conservation easements - preferably in close proximity to the project site.
- 2) Plant an appropriate number of trees - including maintaining plantings for seven years and replacing dead or diseased trees.
- 3) Contribute funds to the Oak Woodlands Conservation Fund as established under subdivision (a) of Section 1363 of the Fish and Game Code for the purchase of oak woodlands conservation easements.
- 4) Other mitigation measures developed by the county.

Oak woodlands are a characteristic feature of our California landscapes, covering 7.4 million acres and occurring in 52 of the state's 58 counties. Eighty percent of these lands are held under private ownership. Oak woodlands have the richest wildlife species abundance of any habitat in California, with over 330 species of birds, mammals, reptiles, and amphibians depending on them at some stage in their life cycles. They are also valuable for providing important ecosystem services and aesthetic values. However, over



30,000 acres of oak woodlands are lost every year in California, converted for agricultural, residential and commercial uses. CEQA compliance for impacts to oak woodlands under the new law may help to reduce this rate of loss and fragmentation.

One of the many land-uses that can occur within these special habitats is surface mining, governed by CEQA, SMARA, and the CCR. Oak mitigation measures developed to satisfy the new CEQA requirements will have to be included in all mine reclamation plans submitted to the Office of Mine Reclamation for review and approval. Revegetation with oaks and associated native plants can be designed to help fulfill both SMARA and CEQA requirements. Our botanists are here to assist you with your reclamation plans and answer your oak-related questions. Additional resources are listed below:

California Oak Foundation

<http://www.californiaoaks.org>

Integrated Hardwood Range Management Program

<http://danr.ucop.edu/ihrmp>

Books (which can be ordered from Cal. Oak Foundation or IHRMP):

*Regenerating Rangeland Oaks in California*, 2001. Douglas D. McCreary. University of California Agriculture and Natural Resources Publication 21601

*The Oak Woodland Bird Conservation Plan: A Strategy for Protecting and Managing Oak Woodland Habitats and Associated Birds in California*, Dr. Steven Zack.

*A Planner's Guide for Oak Woodlands*, 2<sup>nd</sup> edition, 2004. Giusti, McCreary, and Standiford (eds). IHRMP.

A quarry amid oak woodlands in El Dorado County



State of California

**M e m o r a n d u m**

To: Ms. Katherine Mrowka  
State Water Resources Control Board  
Division of Water Rights  
Post Office Box 2000  
Sacramento, CA 95812-2000  
FAX (916) 341-5400

Date: September 19, 2006

From: Robert W. Floerke, Regional Manager   
Department of Fish and Game - Central Coast Region, Post Office Box 47, Yountville, California 94599

Subject: Guenoc/Magoon Estate Limited Water Rights Modification Project, Draft Environmental Impact Report SCH# 2003042171, Lake County

The Department of Fish and Game (DFG) has reviewed the above-referenced Draft Environmental Impact Report (DEIR) that was received on August 9, 2006 from the State Water Resources Control Board (SWRCB). DFG provides pertinent comments on the fish and wildlife resources, and the habitat needed to support them, that may be affected by the project. DFG has jurisdiction over the conservation, protection and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (Fish and Game Code Section 1802). Also, DFG is a Trustee Agency under the California Environmental Quality Act (CEQA), Section 15386, responsible for ensuring that fish and wildlife resources of the State are addressed pursuant to CEQA. DFG previously provided comments on the Guenoc Water Rights Modification Project Notice of Preparation (NOP) in a June 13, 2003 letter. In addition, DFG has provided comments to the SWRCB with regard to this project on November 16, 2005 and in two Water Right Protest letters [SWRCB Water Application (WA) Protests] dated May 15, 2001 and April 14, 2006. All are incorporated by reference into the comments provided in this response and will confirm the long record of consistent comments by DFG on the impact and mitigation issues that should be addressed in this DEIR.

The DEIR proposed project is a 6,847-acre vineyard conversion, development of additional water diversions, and the 1,000 acre-foot expansion of an existing onstream storage reservoir. The project is located in southeastern Lake and northwestern Napa counties approximately five miles east of the town of Middletown. The proposed project site is bounded by Long Valley and Coyote Valley to the west, a U. S. Coast Guard military reservation borders the northwestern corner of the project site, the Cedars Mountains and a narrow valley formed by Putah Creek border the project site to the north, and mountainous areas border the project site to the south and east.

Many of our concerns, as expressed in our previous communications, were not addressed in this subsequent DEIR. DFG's opinion is that the DEIR analysis is inadequate because of a lack of necessary information to allow us to determine what significant impacts would occur to fish and wildlife resources.

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The Project Description

Compliance with CEQA is predicated on a complete and accurate project description, including reasonably foreseeable future phases of the proposed project. Based on a site visit by DFG personnel and review of information previously provided by the SWRCB, the DEIR falls far short of providing an accurate description of this project. An accurate description is necessary to allow a complete assessment of project-related environmental impacts. Some examples of the inaccuracies and omissions in the DEIR included, but are not limited to:

1-2

- The DEIR fails to identify all streams within the project area. This is an inaccurate description of the project and its potential impacts. DFG has commented previously that seasonal streams within the project area also support native aquatic resources, including sensitive species, and impacts to them must be disclosed in the CEQA document. The SWRCB also directed AES, the project consultants preparing the CEQA document, that seasonal streams must be included in the DEIR. Instead, the DEIR fails to appropriately disclose all watercourses impacted by the project and this leads the reviewer to an inaccurate conclusion that all streams will be avoided. This in turn provides an unsupported CEQA finding that there will be less than significant impacts to sensitive aquatic resources and their habitat because the project will avoid all watercourses.
- The DEIR does not provide appropriate resource map describing the location of wetlands, streams, and special status species as they relate to the proposed project area. A special-status species and wetlands map is referenced in the Kjeldsen Biological Report as being located in Appendix D. A search of that section of the DEIR yields only a paragraph stating that maps can be found in the SWRCB files. Two figures included in the DEIR appear to be intended to disclose this information, however, both figures fail to accurately do so.
  - Figure 4.8-2 in the DEIR does show special status species based on the AES surveys. However, these surveys were conducted out of season and not within all streams zones in the project area. Therefore the information is not complete and is not representative of the data that would have been collected if the surveys were done during the appropriate season and in all appropriate areas.
  - Figure 4.8-3 in the DEIR is intended to show the location of "waters of the U.S." However, it is based only on an informal delineation done by AES. The results include neither the extent of effort in time or area covered nor the qualification of the surveyors. Based on an interagency site visit on March 19, 2002, this figure clearly does not depict all watercourses in the project area or the extensive wetland areas viewed during that on-site meeting. Figure 4.8-3 provides an inadequate description of impacts.

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- Activities in the project area include rebuilding of pipelines and reservoirs as part of the proposed project construction. These activities certainly may impact sensitive habitat and species. However, while these activities are mentioned, including modifications to a 10 acre-foot stockpond and pipeline construction and modification, they are not described in a manner that allows adequate review. Additionally, the proposed enlargement of the Bohn Reservoir appears to be treated as a "future phase" of the project without developed plans that would adequately disclose the new "footprint" of the reservoir or the dam structure. Impacts associated with the activities related to the water transmission portion of this project will impact resources and sensitive habitat but are not disclosed. 1-6
- The Upper Bohn reservoir is described as an "offstream" reservoir when it impounds two streams. The impacts to these watercourses are completely ignored. 1-7
- The project description in the DEIR refers to the point of diversion (POD) on Putah Creek as the single site for providing the additional water to the Upper Bohn Reservoir. This is not consistent with the SWRCB March 2006 Water Right Notice (SWRCB 2006 Notice) that also describes two additional PODs on Routan Creek and an unnamed tributary to Putah Creek, the two creeks that feed this onstream reservoir. 1-8
- The SWRCB 2006 Notice also included, as part of its project description, a redistribution of 985 acre-feet (af) of water to storage in the Deter Reservoir because there currently were no existing rights for that storage. Unless there has been some change in the project since the SWRCB 2006 Notice was issued, this component of the project has not been appropriately described in the DEIR and the impacts associated with this have not been disclosed. 1-9
- The DEIR completely fails to describe and disclose impacts of the foreseeable future activities associated with this project although it suggests that continued agricultural operations will have additional impacts to resources, including elderberry shrubs supporting the Federally listed elderberry longhorn beetle. 1-10

#### The Environmental Setting (CEQA Baseline)

The description of the environmental setting provided in the DEIR is inadequate and this does not allow a complete analysis of project-related environmental impacts. The DEIR does not clearly distinguish the baseline conditions. For example, it appears to suggest that the water diversion for this project seeks only to redistribute an existing 1,660 af of water. However, this described water diversion has never been developed and put to beneficial use. This project represents a reauthorization of water diversion and the baseline should reflect that the diversion of 1,660 af of additional water from the surface flow in the project area is a new impact and it should be treated as such when analyzing impacts. 1-11

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The presentation of baseline information that is available in the DEIR makes analysis of impacts confusing.

- The existing storage in Upper Bohn Reservoir, which should represent the CEQA baseline, is defined both as 790 af (under the draft license) and 1,072 af (based on a 60-year average). There is no data supporting the larger quantity and it is impossible to distinguish which of the two storage amounts represent the appropriate baseline. 1-12
- The DEIR describes water currently available to support this project as storage of 9,675 af of water, but then goes on to state that 660 af of this amount is unauthorized (illegal) storage. This means that Guenoc currently has 9,015 af of authorized storage and the water development for this project will include at least 1,660 af of new diversion to storage under a pending time extension from the SWRCB. 1-13
- Information concerning 985 af of additional unauthorized storage associated with the Deter Reservoir was not provided in the DEIR. 1-14
- The DEIR also failed to address the quantity and/or season of diversion of any additional water taken under a riparian claim that would be needed to support the expanded place of use. That water and any other additional water taken under other claims to support the vineyard conversion described in this document must also be disclosed to allow adequate analysis of impacts caused by increased diversion to support this project. 1-15

Without clarification of baseline conditions in the DEIR, it is impossible for the reviewer to comment on the analyses of impacts. DFG has requested previously that the baseline be clearly provided in the CEQA document for this project.

#### Section 4.5, Hydrology and Water Quality

In general, the Hydrology and Water Quality section of the DEIR provides an inaccurate description of hydrology by focusing on only the perennial and intermittent streams within the project area. Seasonal drainages are not described and impacts to them are not addressed although these impacts may be significant. 1-16

The DEIR incorrectly describes a single point of diversion for this project, the point of diversion on Putah Creek, as the site that will provide the additional water to Upper Bohn Reservoir. This then limits analyses to impacts in the DEIR to this single diversion site on Putah Creek. This conflicts with the SWRCB 2006 Notice that lists three points of diversion: The one on Putah Creek, the one on an unnamed stream tributary to Putah Creek, and one on Routan Creek tributary to Butts Creek. The DEIR describes Upper Bohn Reservoir as "offstream storage." While this reservoir is indeed "offstream" from Putah Creek, this is an 1-17



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inaccurate description of the reservoir type since this onstream reservoir impounds water from both an unnamed tributary to Putah Creek and Routan Creek as described in the SWRCB 2006 Notice. Figure 3.5 incorrectly supports the errors in the text of the DEIR by incorrectly depicting Upper Bohn Reservoir as an offstream reservoir by failing to include the two source streams on the map provided. A review of a map supplied during the interagency site visit in March of 2002, but not included in the DEIR, clearly shows that two watercourses are inundated at this location and that this is an onstream reservoir. This inaccurate description of hydrology to be impacted is not only misleading to a reviewer but is so fundamentally inadequate making meaningful review of the DEIR impossible.

1-17  
Cont.

Additionally, this section of the DEIR:

- does not disclose the impacts of an additional diversion of 1,660 af of water at a rate of 20 cubic-feet per second (cfs) on the seasonal flows of Putah Creek. All analysis relies on the impacts to average annual flows, although impacts can be increasingly significant when diversions are made when natural flow is low. Mitigation relies on the 40 cfs bypass flows established historically without analyzing if these flows are appropriate for current conditions. These issues must be considered in an acceptable DEIR.
- The DEIR fails to identify the impacts to instream flows of the unnamed tributary to Putah Creek and Routan Creek tributary to Butts Creek that are impounded in Upper Bohn Reservoir. The quantities of water diverted, the season of the diversion, and protective bypass flows for these streams were not described. The impacts to resources related to the potential decrease in flows below Upper Bohn Reservoir due to its enlargement are not addressed. The DEIR list the drainage areas naturally tributary to Upper Bohn Reservoir but then ignores the issue of impounding these waters and reducing flows downstream when the reservoir is enlarged. All the analysis of impacts to hydrology from enlarging this reservoir are focused on impacts at Putah Creek without providing any disclosure of impacts to the other two streams associated with the reservoir. This failure to provide an adequate description precludes disclosure of impacts in the DEIR. Impacts to these two streams, due to impoundment of additional flows, is not discussed in the DEIR although the impacts of removing additional water from them is likely to be a significant adverse impact
- There is no disclosure or discussion of impacts to water quality due to construction to enlarge the dam. Water quality impacts can have a significant effect on downstream resources but these streams and aquatic resources were not identified or surveyed for inclusion in this DEIR. Any mitigation needed to address impacts in Section 4.5.2 is delegated to other agencies when permits are obtained at a later date. This is an unacceptable delegation of CEQA authority and the DEIR finding of less than significant impacts with mitigation in place cannot be supported without inclusion of the mitigation.

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Section 4.8 Biologic Resources

The Biological Resources Section 4.8 gives the habitats associated with the proposed project. The habitats are approximately: 1,819 acres of Agricultural/Developed Land, 1,226 acres of pastoral grassland, 1,061 acres of Oak Savanna, 1,984 acres of Chaparral/Gray Pine, and 1,089 acres of Oak Woodland.

DFG has previously requested appropriately timed aquatic resource assessments be done for all watercourses impacted by this project for inclusion in the DEIR. This would include assessments in Putah Creek, the unnamed stream and Routan Creek. This has not been done although consistent comments have been provided on this topic since an original DFG comment letter on the reservoir expansion project was provided to Lake County in July 1997. Resource surveys done in 2003 occurred at an inappropriate time of the year and surveys done in 2001 and 2002 (Appendix D) simply stated that wetlands, creeks and riparian corridors would be avoided and provided with setbacks. It was clear that no appropriate aquatic or riparian surveys were done in these target watersheds since two of the three were not even disclosed as existing in the documents biological or hydrological sections. In its review, DFG found:

- There is no description of impacts to the stream zones upstream or riparian habitat around the Upper Bohn Reservoir resulting from raising the level of the dam five feet. Again, there is the potential for significant impacts associated with inundation of these areas but the current DEIR fails to disclose them to allow adequate review. 1-21
- The potential loss of wetlands below the dam when construction occurs is disclosed as the fill of 0.1-acre of wetland. However, there is no description of impacts to the stream zone below the dam that also will be impacted during reservoir construction, possibly because the reservoir was inaccurately described as off stream in the DEIR. The lack of adequate information regarding the impacts of reconstruction of the dam does not allow DFG to adequately review and comment on the impacts to stream and riparian areas below the facility that would be modified by this activity. These impacts must be disclosed in an acceptable DEIR 1-23
- There is no description or disclosure of the impacts associated with dam construction itself. No information on roads, the location of borrow sites, or staging areas was provided. These activities also have to potential for significant impacts to resources and a description needs to be included in an adequate DEIR 1-24
- No stream setbacks are proposed below the reservoir since the DEIR inaccurately described this as an offstream reservoir. No protective bypass flows were proposed to be released to support resources in the unnamed stream tributary to Putah or Routan creeks downstream of the enlarge reservoir. The DEIR again inappropriately finds that the impacts are less than significant without any data to support that conclusion. 1-25

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The DFG Natural Diversity Data Base (NDDB) consulted for biological assessments and surveys is updated every six months. The NDDB used for this project is outdated. The applicant is advised to contact Ms. Karen Bates, DFG NDDB, at (916) 324-0563 for a current NDDB available copy which encompasses the Guenoc project site and adjacent areas.

1-26

The Biological Resources Report (Page 1) states that most biological surveys were conducted in 2001, one in 2002, and one in 2003. DFG generally considers biological surveys more than two years old outdated. New surveys will need to be done next year and submitted to us for our review and comment.

1-27

Please provide a special status plants and animals list and detailed maps disclosing where special status plants and animals are going to be impacted by this project. Also, provide a map showing the fencing off scheme to avoid impacts to special status plants.

1-28

DFG considers the serpentine plant habitat, associated with the proposed project, a unique floral system in California. Soils from serpentine are often lacking in essential plant nutrients and therefore support unusual endemic plants, and are covered with vegetation that is different from surrounding vegetation on nonserpentine soils. DFG is aware that a number of rare plants are associated with serpentine areas located within the project boundaries (Mr. Gene Cooley, DFG botanist, pers. comm.). Please provide a map that shows the serpentine areas and its associated plants and provide information on how these areas will be avoided or minimized in impacts with mitigation from project implementation.

1-29

The DEIR states that an informal wetland delineation was preformed and a total of 19.0 acres of wetland and streams (waters of the United States) occurred in the project area and that the vineyard blocks would be modified to avoid impacts. Based on a site visit by DFG staff in the spring of 2002, the identification of only 19.0 acres of waters of the U.S. significantly under estimation the extent of these impacts. The DEIR discloses that 0.1-acre of wetland will be filled during reconstruction of the Upper Bohn Reservoir and at that time a formal delineation will be prepared and submitted to the U. S. Army Corps of Engineer (Corps) for a Jurisdictional Determination. Based on the discrepancies in the description of waters of the United States, including the failure to include either streams flowing into Upper Bohn Reservoir in the informal delineation, the Corps Jurisdictional Determination should be incorporated into the DEIR to ensure adequate information is available to avoid all jurisdictional areas in the development of the project. Again this section inappropriately defers mitigation required by CEQA to future permitting while making findings of less than significant impacts based on these yet to be developed mitigation measures and erroneous information.

1-30

Vernal pools are documented on-site. As stated above, all discharges of dredged or fill material into "waters of the United States" require authorization by the Corps under Section 404 of the Clean Water Act (33U.S.C. Section 1344). "Waters of the United States"

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include wetlands and vernal pools. The applicant is advised to consult with the Corps. The applicant needs to submit a wetland delineation map of the project site for a Corps certification of jurisdictional waters.

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Cont.

The Appendix D, Biological Resources Report, Page-k, states under "Abundance Notes" that the Elderberry plant (*Sambucus* sp.) is noted "Occasional" during botanical surveys. Elderberry shrubs are the host plant to the Federally threatened elderberry longhorn beetle (*Desmocerus californicus dimorphus*). The beetle is addressed under CEQA, Section 15380. The U. S. Fish and Wildlife Service (USFWS) is requiring consultation and mitigation with Lake County project applicants impacting the host plant. The beetle is documented approximately eight miles east of the proposed project site. The applicant will need to conduct a focused Elderberry plant survey and provide documentation of the plant on a map(s). Impact to Elderberry plants should be avoided or a replanting mitigation presented to minimize impacts. Avoidance and replanting area would be protected by a conservation easement. DFG advises the applicant to consult with the USFWS at (916) 414-6600 and inform DFG of their concern. Mitigation currently proposed in the DEIR is insufficient to reduce impacts to less than significant and inappropriately delegates these mitigations to other agencies to be developed at a latter date.

1-32

The proposed project is in a Federally recognized designated Core Area of southern Lake County for the Federally threatened California red-legged frog (*Rana aurora draytonia*) (RLF). The frog is a DFG California Species of Concern and is addressed in CEQA, Section 15380. The DEIR contained only a partial record of correspondence with the USFWS. Please provide all the USFWS and applicant's RLF consultation documentation for our review. If a RLF presence/absence survey was conducted and submitted to USFWS, please provide this survey also to us for our review and comment.

1-33

There is potential nesting habitat for raptor species identified on the proposed project site. Nesting birds are protected under Fish and Game Code, sections 3503 and 3503.5. Bird breeding surveys shall be conducted next spring by a qualified biologist. Please provide these surveys to DFG for our review and comment.

1-34

Any proposed fencing of vineyard areas is not disclosed. If fencing is proposed for this project, DFG advises that only vineyard blocks be fenced and appropriate allowances for wildlife migration corridors be included. When reviewing this document under CEQA, a project will normally be considered to have a significant environmental effect if it substantially interferes with the movement of resident or migrating wildlife. A subsequent DEIR will need to provide this pertinent information. DFG is requesting that a map be provided for our review and comment if the project proposes a wildlife fencing scheme. For further coordination on wildlife fencing, you may contact Mr. Allan Buckmann, Associate Wildlife Biologist, at (707) 944-5537.

1-35

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Lack of Required Appropriate Mitigation Required under CEQA

In *Sundstrom v. County of Mendocino*, the courts determined that mitigation measures to be developed at a later date are an inappropriate delegation of CEQA duties. Not only are they inadequate mitigation, but they constitute a failure to comply with necessary CEQA disclosure requirements. Mitigation measures should be completed prior to the completion and circulation of the CEQA document to allow those mitigation measures to be fully disclosed for public review in order to comply with CEQA. The DEIR inappropriately delegates CEQA required mitigation to be developed later by other agencies; they include:

- The County of Napa when it issues a grading permit, a tree removal permit, approves an erosion control plan and stream setback plan.
- The County of Lake when it issues a grading permit.
- The Regional Water Quality Control Board when it issues a State Water Quality Certification and a General Construction NPDES Permit.
- DFG when it issues a Streambed Alteration Agreement (the need for a CESA permit is ignored).
- The Division of Safety of Dams when it issues its approval of plans not yet developed.
- The Corps through their permitting process that requires a formal delineation of waters of the United States.

Taking into consideration that this project has been in CEQA preparation in one form or another since 2001, this is unexpected and disappointing, especially when it is noted that not only are the mitigations delegated to other agencies for development at a future date but the plans that would accurately describe the activities are not included in the DEIR because they have not yet been developed. Additionally, the lead agency must also adopt a mitigation monitoring or reporting program pursuant to Section 21081.6 in adopting a EIR. The mitigation monitoring and reporting program is also lacking in the DEIR being circulated.

Be advised that a California Endangered Species Act (CESA) Permit must be obtained if the project has the potential to result in take of species of plants or animals listed under CESA, either during construction or over the life of the project. Issuance of a CESA Permit is subject to CEQA documentation; therefore, 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

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mitigation measures may be required in order to obtain a CESA Permit. Mitigation measures that are proposed in the DEIR for protection of sensitive plant species are temporary and will not reduce impacts to less than significant during the foreseeable future phases of the project which includes agriculture operation.

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Cont.

CEQA is intended as a public disclosure process, but this DEIR fails to provide adequate information for us to make a determination on the impacts to biological resources and any possible avoidance measures and/or appropriate mitigation.

### Conservation Easement

DFG is concerned about the continuing loss of oak woodlands in Lake County by development activities through conversions to vineyards. In regards to this, the Lake County Board of Supervisors early on recognized this problem and passed Resolution #95-211 (October 3, 1995) "A Resolution Adopting a Management Policy for Oak Woodlands in Lake County" to foster the maintenance and improvement of oak woodlands. In Number 4, the Resolution recommends conservation easements.

1-38

According to the Biological Resources, Section 4.8, (pages 4.8-1 – 4.8-3), the total of wildlife habitat proposed to be impacted of grassland, oak woodland, oak savanna, and chaparral/gray pine is about 5,360 acres. The existing acreage of the Guenoc Estate Vineyards and Winery is 1,819 acres. This is a total of past and proposed impacts to 7,179 acres within the 23,000-acre total Guenoc ranch acreage. The DEIR offers that these remaining acres will be retained as open space, however a significant portion of the remaining acres are subject to future vineyard conversions.

Our aerial photo records reveal extensive loss of wildlife habitat through conversion to vineyards at Guenoc without any feasible and permanent compensation for wildlife habitat loss. DFG does not consider grape row crops as wildlife habitat. We find the project's impacts are both wide-ranging and cumulative when the change in the environment results from incremental impact of the project when added to the other related past, present, and reasonable foreseeable probable future impacts (CEQA, Section 15355).

The DEIR fails to disclose sufficient mitigation for the DEIR's astonishing proposed permanent impact to wildlife habitat. In our June 13, 2003 NOP comment letter, we commented (Page 4) that the DEIR address conservation easements (CE) on the property. In regards to the DEIR proposal, DFG advises establishing a CE on a mitigated portion of the property to compensate the proposed vineyard conversion's significant loss of wildlife habitat. The CE land would also need a management plan and calculated management endowment. Specifically, the CE will need to ensure that a portion of the property be retained forever in a natural condition and will prevent any use of the CE property which would significantly impair or interfere with the conservation values still retained on the CE property. The project applicant would provide DFG a revised vineyard conversion map that reflects the CE. Given the extensive past and proposed Guenoc cumulative loss of wildlife habitat, the CE should reflect a greater than 1:1 ratio

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compensation. The project applicant should consult with the Lake County Land Trust at (707) 263-2221 and Land Trust of Napa County at (707) 252-3270 regarding a CE and an endowed management plan. Upon request, DFG can also provide an acceptable CE template for the applicant's referral.

1-38  
Cont.

### Alternative Analysis

The DEIR must include a reasonable range of project alternatives which would feasibly attain most of the basic objectives but would avoid or substantially lessen potentially significant project-related effects.

- Alternative 1: No Project Alternative A - The DEIR states that no land use changes would occur on the property outside of cattle grazing which would create impacts. Alternatively, DFG recognizes light to moderate cattle grazing as sometimes being advantageous to managing wildlife habitat.
- Alternative 2: No Project Alternative B - States that 1,452 acres of irrigated pasture and forage cropland in the existing 1,819 acre place of use would be developed into vineyard or some other crop.
- Alternative 3: Reduced Intensity Alternative A - States that 5,139 acres will be impacted for vineyard development. DFG regards this as a project proposal with impacts without adequate mitigation.
- Alternative 4: Reduced Intensity Alternative B - States that 2,880 acres will be impacted for vineyard development. DFG regards this as a project proposal with impacts without adequate mitigation.
- Alternative 5: Different locations for storing water to places of use are proposed. No information is provided on vineyard expansion

1-39

None of the alternatives address modifications that would likely be needed to reduce storage in either Deter or Upper Bohn reservoirs to comply with current water rights. These modifications would likely have additional impacts to resources.

DFG believes the draft DEIR does not include a reasonable range of alternatives in light of potentially significant impacts to biological resources. This is because a range of alternatives required in a DEIR is governed by the rule of reason that requires the EIR to set forth only those alternatives necessary to permit a reasoned choice. For example, there is unmitigated loss of a substantial amount of wildlife resources. Except the obvious Alternative 1, the no project alternative, none of the above alternatives would substantially lessen or avoid significant impacts on biological resources. DFG believes that the applicant needs to conserve thereby protect wildlife habitat in a CE and we stated this over three years ago in our initial NOP comment letter. Implementing this

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project will not begin to substantially lessen the potential significant impacts on biological resources associated with the proposed project until other land is conserved and protected in perpetuity nearby on site.

1-39  
Cont.

DFG is disappointed that recommendations made during previous informal consultation on this project have been chiefly ignored. Because mitigation has been inappropriately delegated there is no substantial evidence provided that future mitigation will reduce impacts to less than significant. The inaccuracies of the project description preclude DFG from providing potentially feasible mitigation measures at this time.

1-40

It is also surprising that the SWRCB has circulated this document in light of the comments it provided to AES in a letter dated January 16, 2003. In that letter the SWRCB very clearly points out that preparation of an adequate CEQA document in preparation must include, among other topics: 1) Detailed descriptions of impacts to resources and appropriate mitigations measures; and 2) inclusion of maps showing seasonal drainages, perennial streams, wetland habitats, oak woodland. Based on our review and aforementioned comments, the DEIR should be withdrawn, revised and recirculated. As prepared, it fails to clearly articulate either an accurate project description or threshold of significance for project-related impacts on biological resources. The revised DEIR must clearly and accurately describe both the project and environmental setting to allow adequate review and comment. The DEIR also must provide the mitigation measures and project changes that avoid or reduce potentially significant impacts to below a level of significance rather than delegate them to future actions of other agencies.

If you have questions or comments regarding this letter you may contact  
Mr. Liam Davis, Environmental Scientist for CEQA, at (707) 944-5529;  
Ms. Linda Hanson, Staff Environmental Scientist for Water Right Applications, at  
(707) 944-5562; or Mr. Scott Wilson, Habitat Conservation Supervisor, at (707) 944-5584.

cc: See next page

cc: William Guthrie, Chief, Delta Office  
Department of the Army  
U.S. Army Engineer District, Sacramento  
Corps of Engineers  
1325 J Street  
Sacramento, CA 95814-2922

Mr. Patrick Gillum  
California Regional Water Quality Control Board  
Central Valley Region  
Storm Water and Water Quality Certification Unit  
11020 Sun Center Drive #200  
Rancho Cordova, CA 95670-6114

Jan C. Knight, Chief, Endangered Species Division  
U.S. Fish and Wildlife Service  
Sacramento Fish and Wildlife Office  
2800 Cottage Way, Room W-2605  
Sacramento, CA 95825

County of Lake  
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Planning Division  
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Ms. Mary Doyle, Planner  
County of Napa  
Conservation and Development and Planning Department  
1195 Third Street, Room 210  
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Lower Lake, CA 95457-0711

Land Trust of Napa County  
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Napa, CA 94559-2605

Analytical Environmental Services  
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