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Public Comment

Amici Cellars Minor Modification and Variance
P19-00390 & P21-00049
July 28, 2021 Zoning Administrator Hearing



July 20, 2021

Ms. Melanie Jackson

County of Napa

1195 Third Street

Napa, CA 94559

melanie.jackson-couch@countyofnapa.org

Subject: Amici Cellars Use Permit Minor Modification and Variance, Mitigated Negative Declaration, SCH No. 2021060607, Napa County

Dear Ms. Jackson:

California Department of Fish and Wildlife (CDFW) personnel reviewed the Mitigated Negative Declaration (MND) for the Amici Cellars Use Permit Minor Modification and Variance (Project). CDFW is submitting comments on the MND to inform the County of Napa, as 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) and is responsible for the conservation, protection, and management of the State's biological resources (Pub. Resources Code, § 21000 et seq.; Cal. Code Regs., tit. 14, § 15386). CDFW is also considered a Responsible Agency if a project would require discretionary approval, such as a California Endangered Species Act (CESA) Permit, a Native Plant Protection Act Permit, or a Lake and Streambed Alteration (LSA) Agreement, and other provisions of the Fish and Game Code that afford protection to the State's fish and wildlife trust resources.

PROJECT LOCATION AND ENVIRONMENTAL SETTING

The Project would occur on a 12-acre parcel located at 3130 Old Lawley Toll Road, in an unincorporated area of Napa County, just north of the City of Calistoga and immediately east of State Route 29; Latitude 38.61173°N, Longitude 122.59483°W. The Project parcel is partially developed with a 2,558-square-foot winery (Amici Cellars), parking areas, and associated infrastructure; a 2,200-square-foot single-family residence, and a 552-square-foot detached garage. Approximately 160 feet from the existing winery is a pond that overflows into an unnamed ephemeral stream drainage that is a tributary to Jericho Creek. Vegetation communities on the property consists primarily of Douglas-fir (*Pseudotsuga menziesii*), ponderosa pine (*Pinus ponderosa*), black oak (*Quercus kelloggii*), coast live oak (*Quercus agrifolia*), Pacific madrone (*Arbutus menziesii*), manzanita (*Arctostaphylos* spp.), and California bay laurel

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(*Umbellularia californica*, as well as wild grasses. Surrounding land uses include rural residences and open space (mixed oak woodland).

PROJECT DESCRIPTION

The Project would increase wine production to 30,000 gallons per year and construct the following: 1) a 10,000-square-foot cave for wine production and storage, 2) a 1,667-square-foot structure to accommodate expansion of winery operations, 3) a 790-square-foot cover over a portion of the existing outdoor crush area, and 4) a 180-square-foot pumphouse within 50 feet of the on-site pond. The Project would also install a public water system, expand and improve the existing parking area to allow for a total of 9 parking stalls, expand the existing waste disposal system, and improve and re-align the existing driveway. The Project would remove 31 trees, including 17 Douglas-fir, two California bay laurel, two black oak, six coast live oak, three madrone, and one conifer. Project grading would result in 3,117 cubic yards of cut and 230 cubic yards of fill. The remaining soil, in addition to cave spoils, would total 8,360 cubic yards and would be stored on an adjacent parcel.

COMMENTS AND CONCERNS

Rare Plants

Mitigation Measure BIO-4 requires that a qualified biologist conduct a survey for special-status plant species during the blooming period for all species that have the potential to occur on the Project site, prior to starting Project activities. CDFW recommends the following revisions to Mitigation Measure BIO-4:

- The measure should specify that surveys shall be conducted by a qualified botanist (not biologist) during the appropriate blooming period for all special-status plant species with a potential to occur on the property, and that surveys be conducted in accordance with CDFW's *Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Natural Communities* (2018), which can be found here: <https://wildlife.ca.gov/Conservation/Survey-Protocols#377281280-plants>.
- If special-status plant species are discovered during surveys and cannot be avoided during Project construction, a qualified botanist shall prepare a mitigation and monitoring plan for CDFW review and approval prior to starting Project construction. A botanist approved by CDFW may approve the plan if CDFW provides written documentation that we do not have the resources to provide review. The mitigation and monitoring plan shall include, but not be limited to, an on-site habitat enhancement and planting plan, and off-site planting if there is not suitable habitat on the property to support a 3:1 individual plants planted to

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individual plants removed ratio; success criteria, a minimum of 5 years of monitoring, and control of invasive species and any other practice to ensure plantings achieve success criteria. A long-term management plan shall be prepared and implemented, funding shall be provided for management of the protected lands in perpetuity pursuant to the long-term management plan, and a land manager shall be designated prior to Project construction. Alternatively, a financial security for implementing the habitat protection described above, and the below mitigation and monitoring plan, such as a letter of credit, shall be provided to the County prior to Project construction. If a security is provided, the conservation easement shall be recorded within 18 months of the initiation of Project construction. The County shall hold the security for all uncompleted obligations described above, including achieving success criteria outlined in the mitigation and monitoring plan. Alternatively, the mitigation and monitoring plan can include preservation of habitat of equal or greater habitat value than the Project area for the rare plant species impacted by the Project, as determined by a qualified botanist. The preservation area must be protected under a conservation easement prior to construction with the same requirements for long-term management as outlined above.

California red-legged frog (*Rana draytonii*)

The *Amici Cellars Special Status Habitat and Species Analysis* (Biological Analysis), prepared by Zentner Planning & Ecology, dated August 2020, states that suitable habitat exists on the property for the California red-legged frog, a Threatened species under the Federal Endangered Species Act (ESA) and a California Species of Special Concern, but that the species is unlikely to occur on the property due to presence of predatory species in the pond [e.g., smallmouth bass (*Micropterus dolomieu*), largemouth bass (*Micropterus salmoides*), mosquito fish (*Gambusia affinis*)].

Predatory species presence in the pond does not preclude California red-legged frog presence, as evidenced by the presence of western pond turtle (*Emys marmorata*), a California Species of Special Concern, which was found within the pond and is vulnerable to predation from the abovementioned species (i.e., it is reasonable to assume that California red-legged frog could occur within the pond due to the presence of other sensitive species). Since there is suitable aquatic and upland habitat for California red-legged frog on the Project site, the Project could result in significant impacts to the species.

To reduce impacts to less-than-significant, CDFW recommends that a qualified biologist conduct surveys in accordance with the U.S. Fish and Wildlife Service's (USFWS) *Revised Guidance on Site Assessments and Field Surveys for the California Red-Legged Frog* prior to starting Project activities. Results of the surveys shall be sent to the USFWS, and to CDFW for review and written acceptance prior to starting the Project.

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If California red-legged frog is discovered during surveys, CDFW shall be consulted with regarding measures to avoid impacts to the species prior to starting Project construction. In this event, CDFW may recommend that a qualified biologist be on-site daily during Project construction to ensure that wildlife exclusion fencing (Mitigation Measure BIO-3) remains intact and that no California red-legged frogs are harmed during work. The qualified biologist shall have the authority to stop work at any time to avoid impacts to California red-legged frog and any other special-status species. Additionally, the USFWS may require other measures be implemented during Project construction to avoid impacts to the species.

Oak Tree Removal

The Project would remove six coast live oak and two black oak trees. Due to the rapid and extensive land conversions in oak woodlands, savannas, and riparian habitat within Napa County, coupled with an apparent lack of regeneration of several species, CDFW is concerned about the long-term survival of native oaks. Fragmentation of oak habitats reduces their ability to provide the full range of ecological benefits, including maintenance of species diversity, as well as soil and watershed protection. Coast live oak and any old growth oak trees (native oak tree that is greater than 15 inches in diameter) are of particular importance due to increased biological values and increased temporal loss. Therefore, CDFW considers the loss of oak woodland habitat to be a potentially significant impact.

To reduce impacts to less-than-significant, CDFW recommends that the MND include a mitigation measure requiring that the loss of oak trees be mitigated by planting oak trees at the following ratios: 4:1 for the removal of oaks between 5 and 10 inches in diameter at breast height (DBH), 5:1 for the removal of oak trees between 10 and 15 inches DBH, and 10:1 for the removal of old-growth oak trees (i.e., trees with a DBH greater than 15 inches). Trees shall be sourced using locally procured trees of the same species; and they shall be planted as close to the Project site as possible and maintained and monitored for a minimum of five years. Planted oak trees shall achieve an 80 percent survival rate after five years and annual monitoring reports shall be provided to the lead agency. If tree plantings have not achieved at least 80 percent survival after 5 years, new trees shall be planted and monitored for an additional 5 years to achieve 80 percent survival. Planted trees shall be able to survive the last two years of the minimum 5-year monitoring period without supplemental irrigation. CDFW recommends that cages be placed around planted oak trees if deer browse is a concern, and that weeding occur within and around caged oak trees until the trees become well-established. Once the oaks become a sufficient size to withstand deer browse, the cages shall be removed.

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Roosting bats

The Biological Analysis states that pallid bat (*Antrozous pallidus*), a California Species of Special Concern, has moderate potential to utilize structures and trees on the property for roosting. Removal of trees and buildings on the Project site could significantly impact special-status bat species. CDFW recommends that Mitigation Measure BIO-5 be revised to require that a qualified biologist conduct a bat habitat assessment of all trees and buildings to be removed by the Project at least 30 days prior to such activities. If the qualified biologist discovers any trees or buildings containing suitable bat roosting habitat (e.g., cavities, crevices in wood and bark, exfoliating bark for colonial species, suitable canopy cover for foliage-roosting species), presence of bats shall be presumed. In this event, trees shall be removed using the two-step process outlined in Mitigation Measure BIO-5, with the exception that activities on day 1 be supervised by a qualified biologist with experience overseeing tree removal using this method, and that tree removal occur only during seasonal periods of bat activity (i.e., from March 1 through April 15 or from September 1 through October 15). If any buildings contain suitable bat roosting habitat, a qualified biologist shall prepare a Project-specific avoidance and minimization plan for CDFW review and approval, prior to starting Project activities, that includes specific instructions for how each building should be demolished to avoid and minimize impacts to roosting bats.

Nesting Birds

Mitigation Measure BIO-1 requires that a nesting bird survey be conducted within 7 days of starting Project construction, for any Project construction that must occur within the nesting season (i.e., February through September 15). While CDFW generally agrees with the measure, it requests that the word “should” be replaced with “shall” throughout.

Training Program for Project Personnel

Mitigation Measure BIO-2 requires that a qualified biologist conduct a training program for all Project personnel. CDFW agrees with this measure but requests that the measure be revised to state that the program shall consist of information pertaining to all potential special-status species that could be encountered during Project construction, and specific measures to be implemented if any special-status species are encountered during work.

ENVIRONMENTAL DATA

CEQA requires that information developed in Environmental Impact Reports and Negative Declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. [Pub. Resources Code, § 21003, subd. (e)]. Accordingly, please report any special-status species and natural

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communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB online field survey form and other methods for submitting data can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

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 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 Garrett.Allen@wildlife.ca.gov; or Ms. Melanie Day, Senior Environmental Scientist (Supervisory), at Melanie.Day@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Stacy Sherman
Acting Regional Manager
Bay Delta Region

cc: State Clearinghouse # 2021060607