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Forest Practices
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**COMMENTS – Timber Conversion 1-04-055 SON Roessler, Negative Declaration/CEQA,
Sonoma County)**

August 9, 2004

To the California Department of Forestry:

Please consider the following comments on Timber Harvest/Conversion Plan 1-04-055 SON Roessler, Negative Declaration/CEQA, Sonoma County. My comments address primarily CEQA treatment of cumulative impact issues and alternatives analyses associated with the current TCP in the context of multiple individual Timber Conversion Permits and Timber Harvest Plans in the Annapolis, Sonoma County area. These include specific and general comments.

I am a professional plant ecologist and botanist, specializing in coastal plant communities and species for over 25 years. My professional experience and qualification includes over 12 years experience in preparation, management, and review of joint NEPA/CEQA documents (EIR/EIS, environmental assessment/initial study) for U.S. Army Corps of Engineers (San Francisco District), and as a private consultant for the California Coastal Conservancy. I also have over 12 years experience in coordination and preparation of Endangered Species Act Section 7 consultations for the Corps and U.S. Fish and Wildlife Service, and over 5 years of experience preparing endangered species recovery plans for the Service. Much of my regulatory and environmental planning work has emphasized critical review or preparation of mitigation/monitoring and restoration plans for endangered species and wetlands.

I have reviewed the Timber Conversion Permit/Timber Harvest Plan (TCP/THP) the proposed vineyard conversion. A summary of my comments is presented below, followed by more detailed explanation.

1. Cumulative impact assessment and mitigation, and the need for a Programmatic EIR.

The Negative Declaration and TCP *fail to identify, or grossly underestimate, significant cumulative impacts of escalating agricultural conversion on wildlife habitat (including endangered species), plant communities, biological diversity, and water quality of the assessment area.* They similarly fail to include necessary, appropriate, and feasible mitigation measures to address potentially significant cumulative, indirect, and direct impacts of the proposed action, as required by CEQA.

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The Roessler TCP/negative declaration is particularly problematic in terms of cumulative impact assessment because the project itself is effectively piecemealed from THP 1-99-426 SON. This antecedent action removed much of the forest cover, destroyed or degraded the ground layer vegetation and wildlife habitat. Instead of evaluating the current TCP's impacts as *incremental and additive* to the antecedent timber harvest, as *required by CEQA cumulative impact assessment*, the TCP simply uses the degraded post-THP condition as the environmental baseline to trivialize further forest habitat destruction. The letter and intent of CEQA is not to reward actual environmental degradation by discounting environmental baselines and cumulative impacts: applicants and agencies cannot degrade the environment so that further degradation is treated as a less-than-significant impact.

No single vineyard conversion project in the Annapolis area is responsible for the many foreseeable significant cumulative impacts of expansive and accelerating vineyard development in the Annapolis area. The adequate assessment of significant cumulative impacts of vineyard conversion concentrated in the area require analysis at a landscape level, using contemporary data and analytic tools, such as aerial photography and GIS mapping and modeling techniques. These analyses would apply equally to multiple timber conversion permit applicants, including TCP 1-00-055. It is inequitable for individual project proponents to bear the full burden of regional cumulative analysis requirements in order to complete CEQA process. It is also inequitable to subject individual landowners to the inevitable regulatory uncertainty and exposure to risk of project delays (including risk of CEQA litigation, as CDF has in recent memory) that occurs when lead CEQA agencies attempt to abuse the Negative Declaration process to circumvent the preparation of a necessary programmatic EIR. It is also inequitable for the public to lose public trust resources to the piecemealing of both individual projects (through sequential application of exemptions, discretionary non-enforcement of unpermitted activities, and permits) and area-wide, indiscriminate authorization of TCPs without valid CEQA-equivalent review.

CDF must prepare a programmatic EIR for vineyard conversions in the Annapolis area. The escalation of both Annapolis TCP requests to CDF, and the evident expansion of Annapolis vineyards in non-timber lands that CDF does not regulate, clearly indicate the potential for significant cumulative impacts resulting from landscape-level changes in land use in the extensive areas including and surrounding Goldridge soils (Ohlson Ranch formation marine sandstone deposits), the initial focus of vineyard conversions in Annapolis. A fair Initial Study prepared according to current professional and regulatory standards for CEQA documents would have already identified potential significant cumulative impacts to stream baseflows, nutrient enrichment of baseflows and groundwater, hillslope erosion and stream sedimentation, degradation of steelhead habitat, steelhead habitat recovery, recovery of northern spotted owl populations and habitat, and biological diversity of many non-listed species and their communities (see discussion below).

CEQA requires an assessment of the incremental, collective, or combined effect of both the project at issue, past projects, contemporary projects, and reasonably foreseeable actions, within a scope of analysis relevant to the project's impact. *Citizens to Preserve the Ojai v. Board of Supervisors* (2nd Dist. 1985) 176 Cal.App.3d 421, 431-432 [222 Cal.Rptr. 247] ruled that it is

...vitaly important that an EIR avoid minimizing the cumulative impacts. Rather it must reflect a conscientious effort to provide public agencies and the general public with adequate and relevant detailed information about them...A cumulative impact analysis

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which understates information concerning the severity and significance of cumulative impacts impedes meaningful public discussion and skews the decisionmakers perspective concerning the enviromental consequences of a project, the necessity for mitigation measures, and the appropriateness of project approval.

CDF is, in effect, piecemealing an area-wide program of progressive forest-to-vineyard conversion of an entire soil series in northwestern Sonoma County – just as it is piecemealing the sequential THP 1-99-426 SON and TCP 1-04-055. CDF has currently more regulatory jurisdiction in this significant cumulative land use change than any other state agency, and thus has CEQA responsibility for identifying significant cumulative impacts of its actions. Feasible mitigation for area-wide cumulative impacts cannot be attached to individual TCPs; it will require advance identification of sensitive resources, a landscape ecology approach to habitat conservation, and programmatic guidelines for site selection, protection, and mitigation. The appropriate and necessary CEQA tool for this purpose is a programmatic EIR. CDF should temporarily suspend processing all individual TCPs in the Annapolis area, and rectify inadequate cumulative impact assessment and (omitted) mitigation measures by preparing a programmatic EIR for timberland conversion to vineyard in Annapolis. This procedure is fundamentally no different from the preparation of a Specific Plan by local jurisdictions in incorporated areas of Sonoma County. For unincorporated areas like Annapolis, this responsibility must fall to CDF because: (a) it has greater jurisdiction and responsibility in forest/vineyard conversions than any other CEQA lead agency; and (b) CDF continues to authorize further vineyard conversions with unmitigated significant cumulative impacts.

No individual TCP/Negative Declaration can provide adequate mitigation for area-wide cumulative impacts due to timber conversion. Adequate mitigation for area-wide significant impacts must be planned, implemented, and monitored at a landscape or watershed level. Again, this is feasible only for a programmatic EIR.

The Negative Declaration for the proposed forest-to-vineyard conversion provides essentially no analysis at all of cumulative impacts. The THP/TCP itself provides no cumulative impact assessment specific to the project, but instead discusses general background information (apparently copied boilerplate from other documents). The assessment is essentially about individual project impacts, not cumulative impacts, and even these consist only of vague or dismissive statements such as “no [wildlife species] were observed during THP field work within the THP or the assessment area”. Assessment of impacts is not the same as a presence/absence survey, and incidental, haphazard observations are not the same as surveys. The CEQA requirement for cumulative impact assessment is not even minimally met by the perfunctory text included in the TCP’s “Cumulative Impact Assessment Checklist”. The cumulative impacts assessment also needs urgently to be updated, because many other TCP applications have been submitted (or recommended for approval by CDF) since **1-00-055** was initially processed; cumulative impact stakes have been raised by CDF’s other premature TCP approvals.

Neither the TCP, Negative Declaration, nor CDF have developed any criteria by which these documents may objectively evaluate a threshold for “significant” or “less than significant” impacts, leaving only arbitrary, *ad hoc* assertions to justify arguments that all impacts are less than significant.

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The California Department of Fish and Game, in a memo dated June 26, 2000, stated that unless all its recommended mitigation measures were included as permit conditions, the TCP would require an EIR (have significant impacts). The conditions included proportional conservation easements on forested, non-converted portions of the property, to ensure that remaining habitat would continue to provide important wildlife habitat and other ecological functions, as the RFP argued.

2. Inadequate CEQA alternatives analysis. The cursory discussion of alternatives does not satisfy even minimal requirements of CEQA. The project purpose and geographic scope of alternatives are neither stated nor justified. The critical deficiency of the alternatives analysis (p.191) is its omission of off-site alternatives that meet the stated project purpose, “to achieve an economic return from the property for the applicant while [producing agricultural products] of high quality as possible”. Alternatives which involve fair market-value sale of the existing site, and acquisition and agricultural production (equal or superior to the proposed site) located in areas of previous agricultural activity and no forest habitat, are within a reasonable range of CEQA alternatives. The only justification given for eliminating this range of off-site alternatives is the unsupported assertion (not argument) on p. 194 that “alternative sites are not available for the applicant”. This is certainly untrue, given the demonstrated high real estate demand for forested rural residential/vacation properties in Annapolis. The spurious argument that “the environmental conditions created by zoning...are ideal for the proposed land use” is vitiated by the recent court decision that upheld the Brush Ridge Loop (Masonite rural residential development) Codes, Covenants, and Restrictions against “commercial activities”, including commercial viticulture. The analysis provides no objective evidence for the assertion that the project site is “unique vineyard land” compared with alternative sites with similar topography, soils, and climate in the region.

Because the project site occurs within a much larger forested parcel, a programmatic EIR would be well-suited to address off-site alternatives involving exchanges of land uses to minimize regional cumulative impacts. For example, vineyard leases on previously developed agricultural areas could be exchanged for timber leases on the parcel owned by the TCP applicant, to minimize overall conversion impacts, maximize conservation of productive timber lands, and satisfy the project purpose. Note that this type of alternative would not only satisfy CEQA and the project purpose, it would also be consistent with CDF’s mandate to conserve potential for productive timberland. Agricultural conversion defeats that mandate.

2. Specific physical and biological impacts and deficiencies in mitigation.

The botanical report provides evidence of wetlands associated with seeps or spring on the site. The botanical survey (Kjeldsen, 10 Feb 2003) refers to “the seasonal wetland (seep) adjacent to Unit 1...[has potential for sensitive wetland plant species *Campanula californica*...” (p. 103). Direct vegetation indicators of wetlands are given in the plant survey, which includes the obligate wetland species *Juncus effusus* and *Salix laevigata*, as well as strong wetland indicators *Woodwardia fimbriata*, *Rhododendron occidentale*, *Carex tumulicola*, describing their habitats as “palustrine” (marsh). The TCP assessment prepared by NRCM (p. 97) arbitrarily contradicts evidence of wetlands in the botanical report: though admitting “...area in question is inundated with water for some period of time ...and though indicator species are present...I do not believe the area meets the USACE definition of wetland”. NRCM incorrectly focuses only on overstory forest components, ignoring the ground layer, as the reason for doubting wetland status in spite of

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sufficient indicators. Wetland delineation procedures (Corps wetland manual) and all state definitions of wetlands are based on stratum-specific indicators as sufficient. Professional standards and CEQA demand that if there is a “fair argument” that wetlands are present (as indicated by the botanical report), and there is expert disagreement, the issue must be treated as “significant”. At the very least, the consultants should have recommended a formal wetland determination and delineation. As a former Corps of Engineers wetland delineator, and a professional botanist with knowledge of the vegetation and soils in Annapolis, I am certain that the prevalence of evidence in the botanical reports indicates a very high probability that wetlands are present.

The proposed vineyard will cultivate soil and plant vines on slopes up to 50% in steepness (p. 63), which indicates a high potential for significant gullying, erosion, and transport of sandy soils during extreme storm events. The TCP/Negative Declaration rely wholly on programmatic erosion control measures, such as preparation of a vineyard development plan and erosion control plan by qualified professionals. They assume unconditionally that these will be effective; no criteria or “caps” for sediment yield or post-harvest erosion are set; no monitoring or reporting of monitoring data are proposed or required. There are no corrective or contingency measures proposed or required for greater-than-expected erosion and sediment transport to affected tributaries of the listed sediment-impaired and temperature-impaired Gualala River. Gullying of unconsolidated, disturbed, fine sandy sediments of the Ohlson Ranch formation has been evident on nearby new vineyards on similar slopes during the vulnerable first several years after ripping and tillage. During extreme winter storms, local failure of erosion control measures on erodible, sandy soils with incomplete vegetation cover and minimal root consolidation could result in significant impacts on sedimentation of steelhead streams downslope.

The TCP/Negative Declaration identifies significant fertilizer applications to highly transmissive sandy soils, notwithstanding its “intent” to use organic farming methods and “evaluate soil for added fertilizer (p. 6-3, Appendix A, Geo-2). The high permeability of the sandy soils is indicated by the TCP file (RFP letter response) estimate that an unlined reservoir would leak about 20% of its volume. The fertilizer rates stated (2-3 lbs superphosphate per vine, 5 lbs potassium sulfate per vine; nitrogen not stated), in the context of ripped, tilled sandy soils with reduced forest cover around (to minimize shade of vineyard edges) indicates a significant potential for nutrient leaching to groundwater and eutrophication (algal overproduction, decay, anoxia) of warm, degraded stream pools downslope. This process may cause long-term impacts to stream pools that provide habitat for juvenile steelhead. It may also interact (cumulatively) with sedimentation impacts to further degrade, or thwart recovery of, local stream steelhead habitat. Nutrient enrichment of baseflows to adjacent waterways may also be exacerbated by potential significant net reduction in groundwater discharges, due to overdrafting of groundwater for irrigation or irrigation pond storage.

The TCP/Negative Declaration provides no analysis or data on the effect of either groundwater (well) pumping or drafting creek water on summer low-flow conditions of adjacent creeks. The TCP/Negative Declaration does acknowledge that groundwater pumping from irrigation [at 16 acre-feet/year] could have an adverse effect on neighboring wells (p. 3-27). The significant water demand for establishment of new vines (assuming minimum 5 gallons/vine/week, 88 acres planted on 5 x 8 ft pattern) requires analysis by a qualified hydrologist with expertise in groundwater dynamics to assess the potential for significant impacts on creek flows in normal and below-normal rainfall years, and associated summer survivorship of steelhead. Given the number

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of vineyard conversions in the assessment area, all establishing vines at the same time, there is a reasonable potential for significant cumulative impacts on survivorship of juvenile steelhead in summer channel bed pools of Gualala River tributaries in Annapolis. This potential requires rigorous analysis in a region-wide programmatic EIR, not cursory dismissal in an individual Negative Declaration.

The post-conversion northern spotted owl (NSO) habitat condition ensures that NSO habitat will remain on the plan area following project activities, resulting in a permanent loss of 63 acres of functional NSO foraging, roosting and nesting habitats. Pursuant to CEQA Section 15065, the proposed conversion will result in the restriction of the range of NSO and, thus, should be considered a significant impact to this Federally threatened species.

The expansion of patches of agricultural open habitats in maturing second-growth coastal redwood/douglas fir/hardwood forest has indirect and cumulative effects on the distribution and abundance of predators of the federally listed Northern Spotted Owl (NSO), particularly great horned (and possibly barred) owls. Agriculturally conversion and proposed cut forest edges are likely to favor habitat conditions for NSO predators (great horned owl) or competitors (barred owls). This highly significant, landscape-level, cumulative and indirect impact of forest conversion is nowhere indicated or addressed, or mitigated, in the TCP/Negative Declaration. The primary importance of great horned owl predation in the assessment of NSO habitat suitability and population viability is well-established in the scientific literature (Zabel, Cynthia J, J.R. Dunk, H.B. Stauffer, L.M. Roberts, B.S. Mulder, and A. Wright. 2003. Northern spotted owl habitat models for research and management application in California (USA). Ecological Applications 13: 1027-1040).

The definition of “take” includes “harm, harrassment...”, which includes substantial injury or interference with essential behaviors such as predator evasion and foraging. Avoiding direct mortality of individual adult NSO does not avoid “take” within the meaning of the Endangered Species Act regulations and case law. “Technical assistance” from the U.S. Fish and Wildlife Service does not provide authorization of incidental take, nor does it function as a misnomer “no take letter”. A “low effect” Habitat Conservation Plan (HCP) is the only instrument for authorization of incidental take available for non-federal entities, outside the formal consultation process among federal agencies (used for federal permits, lacking in this case). A low-effect HCP may involve a conservation easement on retained, maturing forest outside the TCP area.

Conclusion

In conclusion, the TCP/Negative Declaration for **1-00-055** fails to meet basic CEQA standards for alternatives analysis, establishment of an environmental baseline for alternatives and impact assessment, cumulative impact assessment, and mitigation. There is substantial evidence that the proposed TCP is likely to cause or contribute to significant cumulative impacts to wetlands, streams, and forest habitats, including endangered species, in the project vicinity and on-site. The necessary and appropriate CEQA remedy for these basic deficiencies would be to prepare a programmatic EIR for vineyard conversions in the general area, to address criteria for alternatives analyses, develop comprehensive landscape-scale site alternative configurations to minimize agricultural conversion impacts, develop appropriate mitigation and monitoring, and conduct adequate cumulative impact assessments. To do otherwise would be piecemealing of obvious

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progressive forestland conversion in a confined geographic area, which would constitute an abuse of CDF's discretion over its CEQA-equivalent THP program.

Respectfully submitted,

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Copies furnished:
Friends of the Gualala River
California Department of Fish and Game
Interested parties