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Planning Commission Mtg.  
December 2 2020  
Agenda Item # 7B

Planning, Building & Environmental Services

1195 Third Street, Suite 210  
Napa, CA 94559  
www.countyofnapa.org

David Morrison  
Director

## MEMORANDUM

To: Planning Commission	From: Trevor Hawkes, Planner III
Date: December 1, 2020	Re: Kenzo Estate Winery #P19-00396-MOD Suggested Language for Revised and Supplemental Conditions

In response to California Department of Fish and Wildlife’s letter dated November 25, 2020 and received December 1, 2020, Staff recommends that the project’s mitigation measures, contained in agenda packet Attachment B, Recommended Conditions of Approval and Final Agency Memos, be revised and supplemented as follows:

### Revise COA 6.12.a & 7.4.a – MM BIO-1; Special-Status Plants to read as follows:

A qualified botanist shall complete surveys covering all Project areas, including equipment entry and exit points, for all special-status (rare) plants that have the potential to occur on the Project site, during each species blooming period and prior to the start of Project activities. These surveys shall be in compliance with all CDFW (2018), USFWS (1996), and CNPS (2001) published survey guidelines. If the surveys find that there are no special-status plants on the property that would be impacted or within the proposed project site, then there would be no further mitigation and the project may proceed, provided all other applicable permits and authorizations are obtained for the project. If special-status plant species are found, populations shall be mapped and enumerated. If any populations are found within the proposed work area, they shall be flagged and avoided to the maximum extent feasible. If avoidance is not feasible as determined by the County of Napa Planning Division, then other suitable measures shall be implemented as detailed below.

A qualified botanist shall complete an inventory and analysis of the on-site population(s) of the species within and outside of the work area to determine the extent and significance of the potential impacts that will occur as a result of the project. This analysis shall be presented to the County’s Planning Division as part of their review of the project. If special-status plant species are found within the project area and the project cannot be revised to avoid their removal, then a qualified botanist shall develop a mitigation plan to be reviewed and approved by the County and CDFW for implementation of the following measures prior to site disturbance. If sufficient populations of the special-status plants species exist on site and outside of the project area, permanent protection of those populations and their habitat may serve in lieu of the requirement to replant special status plant species required to be removed, consistent with the requirements of Napa County General Plan Policy CON-17(e)<sup>1</sup>. If

<sup>1</sup> Require no net loss of sensitive biotic communities and habitats of limited distribution through avoidance, restoration, or replacement where feasible. Where avoidance, restoration, or replacement is not feasible, preserve like habitat at a 2:1 ratio or greater within Napa County to avoid significant cumulative loss of valuable habitats.

mitigation is unable to be achieved through avoidance and the permanent protection of remaining special-status species in accordance, a mitigation restoration plan shall include, at a minimum, the following elements:

1. a site plan showing the locations where replacement plants will be planted;
2. a plant pallet composed of the special-status plant specie(s) being removed including sizes and/or application rates: seed mixes shall not contain species known to be noxious weeds and any non-native grasses should be sterile varieties;
3. planting notes and details including any recommended plant protection measures;
4. invasive species removal and management specifications;
5. an implementation schedule;
6. performance standards with a minimum success rate of 80%; and
7. a monitoring schedule for a period of at least five years to ensure success criteria are met.

A CNDDDB form shall be filled out and submitted to CDFW for any special-status plant species identified within or surrounding the Project site.

Method of Monitoring: Special-status plant survey reports following the abovementioned guidelines shall be prepared by the qualified botanist who performed the surveys and submitted to Planning Division staff prior to issuance of the grading/building permit.

Responsible Agency: PBES

**Revise COA 6.12.c & 7.4.c – MM BIO-3; Nesting Birds and Raptors to read as follows:**

For earth-disturbing activities occurring between February 1 and August 31, (which coincides with the grading season of April 1 through October 15 – NCC Section 18.108.070.L, and bird breeding and nesting seasons), a qualified biologist (defined as knowledgeable and experienced in the biology and natural history of local avian resources with potential to occur at the project site and experienced with conducting pre-construction nesting bird and raptor surveys) shall conduct pre-construction surveys for nesting birds and raptors, within all suitable habitat on the project site, and all suitable nesting habitat within 500 feet of the Project site. The preconstruction survey shall be conducted no earlier than seven (7) days prior to vegetation removal and ground disturbing activities are to commence. Should ground disturbance commence later than seven (7) days from the survey date, or if there is a lapse in Project activities of 7 days or later during the nesting season surveys should be repeated. A copy of the survey report shall be provided to the Napa County Planning Division and the CDFW prior to commencement of work.

In the event that nesting birds are found, the qualified biologist shall determine adequate no-disturbance buffer distances from all active nests based on the species and in consultation with the County Planning Division and the U.S. Fish and Wildlife Service (USFWS) and/or CDFW prior to initiation of project activities.

All active nests shall be monitored by a qualified biologist for the first week during Project activities to ensure the established buffer distances are adequate to avoid disturbances to the nest. If the qualified biologist observes bird behavior that may indicate nest disturbance, the qualified biologist shall have the authority to immediately cease Project activities. In this event, the qualified biologist shall consult with CDFW regarding larger buffer distances, and buffer zones shall be re-fenced accordingly, prior to resuming Project activities. If larger buffer distances cannot be established, Project activities shall be delayed until the nest is no longer active (i.e. the young have fledged the nest and can feed independently, or the nest fails due to natural causes), as determined by a qualified biologist.

Exclusion buffers shall be fenced with temporary construction fencing (or the like), the installation of which shall be verified by Napa County Planning Division prior to the commencement of any earthmoving and/or development activities. Exclusion buffers shall remain in effect until the young have fledged or nest(s) are otherwise determined inactive by a qualified biologist.

Alternative methods aimed at flushing out nesting birds prior to pre-construction surveys or while the nest is active shall be prohibited.

Method of Monitoring: If construction/earthmoving activity is to occur between February 1 and August 31 the survey report prepared by the qualified biologist who conducted the survey(s) shall be submitted to Planning Division staff prior to issuance of the grading/building permit.

Responsible Agency: PBES

**Add COA 6.12.d & 7.4.d – MM BIO-4; Invasive Plants to read as follows:**

At the conclusion of spoils disposal at the spoils stockpile identified in the plans, the Permittee shall have a qualified botanist conduct two (2) blooming season (considered to be between late May to early June) invasive plant surveys, on an annual interval for two (2) years, to determine if any invasive plants or weeds have grown within the stockpile. If identified the qualified botanist will recommend an appropriate method for removing the invasive species and treating the area to prevent future growth. If invasive plants or weeds are identified during the second survey the permittee shall continue to have a qualified botanist survey the spoils stockpile on an annual basis until a survey is recorded that does not identify any invasive plants or weed originating from the spoils stockpile.

Method of Monitoring: Blooming season surveys for invasive plants or weeds originating from the spoils stockpile shall be prepared by a qualified botanist and be submitted to Planning Division staff at the conclusion of each survey.

Responsible Agency: PBES

**Attachment**

California Department of Fish and Wildlife Comment Letter for P19-00396-  
MOD, Kenzo Estate Winery Major Modification



November 25, 2020

Mr. Trevor Hawkes

County of Napa

1195 Third Street, Suite 210

Napa, CA 94559

[Trevor.Hawkes@countyofnapa.org](mailto:Trevor.Hawkes@countyofnapa.org)

Subject: Kenzo Winery, Use Permit Major Modification #P19-00396,  
SCH No. 2020100530, Napa County

Dear Mr. Hawkes:

California Department of Fish and Wildlife (CDFW) personnel reviewed the Mitigated Negative Declaration (MND) for the Kenzo Winery, Use Permit Major Modification (Project). CDFW is submitting comments on the MND to inform the County of Napa, as the Lead Agency, of our concerns regarding potentially significant impacts to sensitive resources associated with the proposed Project.

CDFW is providing comments as 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, § 21070, Cal. Code Regs., tit. 14, § 15386). CDFW is also considered a Responsible Agency if a project would require discretionary approval, such as the California Endangered Species Act (CESA) Incidental Take Permit or Native Plant Protection Act Permit, a Lake and Streambed Alteration (LSA) Agreement, or approval under other provisions of the Fish and Game Code that afford protection to the State's fish and wildlife trust resources.

## **ENVIRONMENTAL SETTING**

The 36.13-acre Project parcel is located approximately five miles east of the City of Napa on the west side of a private road approximately 3,500 feet south of its intersection with State Route 121/Monticello Road. Mount George lies directly to the west of the Project site. Majority of the Project site is developed with winery buildings, a wine cave, associated infrastructure, and vineyards. Vegetation communities and habitat types found within and surrounding the Project area include annual grassland, oak woodland, and chaparral habitat. A number of State rare plants have been observed in close proximity to the Project area, including dwarf downingia (*Downingia pusilla*), holly-leaved ceanothus (*Ceanothus purpureus*), narrow-anthered brodiaea (*Brodiaea leptandra*), and Napa checkerbloom (*Sidalcea hickmanii* spp. *napensis*). An unnamed blue-line stream located approximately 435 feet south of the Project site runs through the existing oak woodland habitat on site and parallel to Wild Horse Valley Road. The stream is a tributary to White Creek, thence Wooden Valley Creek, thence Suisun Creek and ultimately Suisun Bay. Two on-stream reservoirs are also located on

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the property and could provide habitat for special-status species, such as the western pond turtle (*Emys marmorata*). The Project site lies on a northeast facing slope with slopes ranging from 5 to 23 percent.

## **PROJECT DESCRIPTION**

The Project proposes to a) increase wine production from 102,000 gallons to 150,000 gallons annually, b) expand the existing 22,470-square-foot cave to 68,415 square feet, c) deposit approximately 20,300 cubic yards of cave spoils on a spoils stockpile approximately 0.9 miles to the southeast of Project area, d) construct 3,350 square feet of covered crush pad, e) construct 820 square feet of an uncovered mechanical yard, f) pave an existing dirt road, g) widen sections of Wild Horse Valley Road, and h) expand the existing wastewater treatment and disposal systems to handle the increase in winery process wastewater.

## **COMMENTS AND RECOMMENDATIONS**

### **Oak Woodland Removal**

The MND states “*Buildout of the project would result in marginal loss of annual grassland, oak woodland, and chaparral habitats...*”; however, the MND does not discuss the extent of impacts or whether any oak trees will be removed as a result of the Project. Because of the rapid and extensive land conversions in oak woodlands, savannas, and riparian areas 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 (*Quercus agrifolia*) and 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. Due to these issues, CDFW considers the loss of oak woodland habitat a significant impact. If the Project is going to result in the removal of oak woodland habitat, mitigation is necessary to reduce the Project’s impacts to a level of less-than-significant. The MND does not clearly state how much habitat and how many oak trees will be lost as a result of the Project. If oak woodland habitat will be lost as a result of the Project, CDFW recommends that the MND:

- 1) Evaluate whether the trees to be removed are part of a sensitive natural community. See CDFW’s Natural Communities List available on CDFW’s webpage at: <https://wildlife.ca.gov/Data/VegCAMP/Natural-Communities#sensitive%20natural%20communities>.
- 2) Clearly describe the applicable local Tree Preservation and Protection policies and regulations, including associated tree replacement, monitoring, maintenance, and annual reporting, and include compliance with those policies as a mitigation measure.

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- 3) Require that trees part of a sensitive natural community be replaced at a 10:1 mitigation to impact ratio where they are less than 15 inches diameter at breast height (DBH) and at a 15:1 ratio where larger. Trees shall be sourced using locally procured trees of the same species, planted as close to the Project site as possible, and maintained and monitored for a minimum of five years with an 85 percent survival rate at the end of five years. Annual monitoring reports shall be provided to the lead agency. If tree plantings have not achieved at least an 85 percent survival rate after 5 years, new trees shall be planted and monitored for an additional 5 years to achieve the survival rate. Planted trees shall be able to survive the last two years of the minimum five-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 the cages should be removed.
- 4) Require that trees not part of a sensitive natural community be: 1) replaced at the ratios outlined below; and 2) monitored and maintained in the same manner described above and achieve an 80 percent survival rate.
  - Non-oak native trees - 3:1
  - Non-native trees – 1:1
  - Oak trees provide a diversity of ecological benefits and because oak trees have slow growth rates, it would take several decades for planted oaks to grow to a size that could provide the same ecological benefits that old-growth oaks provide. Therefore, the below higher ratios are required for oak trees that are not part of a sensitive natural community.
    - Native oaks 5 to 10 inches DBH – 4:1
    - Native oaks 10 to 15 inches DBH – 5:1
    - Native oaks greater than 15 inches DBH – 15:1

### Rare Plants

*The Kenzo Estates Special-Status Species Analysis*, prepared by Zentner Planning & Ecology and dated March 2020, states that nine special-status (i.e., rare) plants have the potential to occur on the Project site. Mitigation Measure (MM) BIO-1 requires that another pre-Project survey be completed prior to the start of Project activities. While CDFW agrees with the intent of MM BIO-1, the following revisions are recommended to reduce potential impacts to rare plants to a level of less-than-significant (added language in ***bold italics***, deleted language in ~~strikethrough~~):

*A qualified ~~biologist~~**botanist** shall complete **surveys covering all Project areas, including equipment entry and exit points, for all special-status (rare) plants that***

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**have the potential to occur on the Project site, during each species blooming period and prior to the start of Project activities.** ~~a late May-early June survey for special-status plant species prior to initiation of project activities. The survey shall be completed during the appropriate blooming period for the species likely to occur on site. These surveys shall be in compliance with all CDFW (201809), USFWS (1996), and CNPS (2001) published survey guidelines. If the surveys finds that there are no special-status plants on the property that would be impacted or within the proposed project site, then there would be no further mitigation and the project may proceed, provided all other applicable permits and authorizations are obtained for the project. If special-status plant species are found, populations shall be mapped and enumerated. If any populations are found within the proposed work area, they shall be flagged and project development plans shall be avoided to the maximum extent feasible. If avoidance is not feasible as determined by the County of Napa Planning Division, then other suitable measures shall be implemented as detailed below.~~

A qualified ~~biologist~~**botanist** shall complete an inventory and analysis of the on-site population(s) of the species within and outside of the work area to determine the extent and significance of the potential impacts that will occur as a result of the project. This analysis shall be presented to the County's Planning Division as part of their review of the project. If special-status plant species are found within the project area and the project cannot be revised to avoid their removal, then **a qualified botanist shall develop** a mitigation plan ~~shall be developed and~~ **to be reviewed and** approved by the County **and CDFW** for implementation of the following measures prior to site disturbance. If sufficient populations of the special-status plants species exist on site and outside of the project area, permanent protection of those populations and their habitat may serve in lieu of the requirement to replant special status plant species required to be removed, consistent with the requirements of Napa County General Plan Policy CON-17(e)2. If mitigation is unable to be achieved through avoidance and the permanent protection of remaining special-status species in accordance, a mitigation restoration plan shall include, at a minimum, the following elements:

1. a site plan showing the locations where replacement plants will be planted;
2. a plant pallet composed **of** the special-status plants specie(s) being removed including sizes and/or application rates: seed mixes shall not contain species known to be noxious weeds and any non-native grasses should be sterile varieties;
3. planting notes and details including any recommended plant protection measures;
4. invasive species removal and management specifications;
5. an implementation schedule;
6. performance standards with a minimum success rate of 80%; and
7. a monitoring schedule for a period of at least **five** ~~three~~ years to ensure success criteria are met.

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*A CNDDDB form shall be filled out and submitted to CDFW for any special-status plant species identified within **or surrounding** the Project site.*

*Monitoring: **Special-status plant survey reports following the abovementioned guidelines shall be prepared by the qualified botanist who performed the surveys and submitted to** ~~A late May-early June survey for special-status plant species shall be prepared by a qualified biologist and be submitted to Planning Division staff prior to issuance of the grading/building permit.~~*

### **Nesting Birds and Raptors**

The MND identifies the Project's potential impacts to nesting birds and raptors if nesting within the Project area at the time of Project activities and proposes that a qualified biologist perform a pre-construction survey (i.e., Mitigation Measure BIO-3). While CDFW generally agrees with Mitigation Measure BIO-3, CDFW also recommends the following revisions (added language in **bold italics**, deleted language in ~~strikethrough~~):

*For earth-disturbing activities occurring between February 1 and August 31, (which coincides with the grading season of April 1 through October 15 – NCC Section 18.108.070.L, and bird breeding and nesting seasons), a qualified biologist (defined as knowledgeable and experienced in the biology and natural history of local avian resources with potential to occur at the project site **and experienced with conducting pre-construction nesting bird and raptor surveys**) shall conduct pre-construction surveys for nesting birds and raptors, within all suitable habitat on the project site, **and all suitable nesting habitat within 500 feet of the Project site.** ~~and where there is potential for impacts adjacent to the project areas.~~ The pre-construction survey shall be conducted no earlier than seven (7) days prior to vegetation removal and ground disturbing activities are to commence. Should ground disturbance commence later than seven (7) days from the survey date, **or if there is a lapse in Project activities of 7 days or later during the nesting season**, surveys should be repeated. A copy of the survey **report shall** ~~will~~ be provided to the Napa County Planning Division and the CDFW prior to commencement of work. ~~After commencement of work, if there is a period of no work activity of 5 days or longer during the bird breeding season, surveys shall be repeated to ensure birds have not established nests during inactivity.~~*

*In the event that nesting birds are found, the **qualified biologist** Permittee shall **determine adequate no-disturbance buffer distances from all active nests based on the species and** ~~identify appropriate avoidance methods and exclusion buffers in consultation with the County Planning Division and the U.S. Fish and Wildlife Service (USFWS) and/or CDFW prior to initiation of project activities. Exclusion buffers may vary in size, depending on habitat characteristics, project activities/disturbance levels, and species as determined by a qualified biologist in consultation with County Planning Division and the USFWS and/or CDFW.~~*

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***All active nests shall be monitored by a qualified biologist for the first week during Project activities to ensure the established buffer distances are adequate to avoid disturbances to the nest. If the qualified biologist observes bird behavior that may indicate nest disturbance, the qualified biologist shall have the authority to immediately cease Project activities. In this event, the qualified biologist shall consult with CDFW regarding larger buffer distances, and buffer zones shall be re-fenced accordingly, prior to resuming Project activities. If larger buffer distances cannot be established, Project activities shall be delayed until the nest is no longer active (i.e. the young have fledged the nest and can feed independently, or the nest fails due to natural causes), as determined by a qualified biologist.***

*Exclusion buffers shall be fenced with temporary construction fencing (or the like), the installation of which shall be verified by Napa County Planning Division prior to the commencement of any earthmoving and/or development activities. Exclusion buffers shall remain in effect until the young have fledged or nest(s) are otherwise determined inactive by a qualified biologist.*

*Alternative methods aimed at flushing out nesting birds prior to pre-construction surveys **or while the nest is active shall be prohibited.** ~~; whether physical (i.e., removing or disturbing nests by physically disturbing trees with construction equipment), audible (i.e., utilizing sirens or bird cannons), or chemical (i.e., spraying nesting birds or their habitats) would be considered an impact to nesting birds and is prohibited. Any act associated with flushing birds from project areas should undergo consultation with the Napa County Planning Division, USFWS and/or CDFW prior to any activity that could disturb nesting birds.~~*

*Monitoring: If construction/earthmoving activity is to occur between February 1 and August 31 the survey **report** prepared by **thea** qualified biologist **who conducted the survey(s)** shall be submitted to Planning Division staff prior to issuance of the grading/building permit.*

### **Lake or Streambed Alteration Agreement**

The Project includes the widening of Wild Horse Valley Road adjacent to an unnamed stream and on-stream reservoirs identified as "Leoma Lakes" in the MND. CDFW requires an entity to notify CDFW before commencing any activity that will divert or obstruct the natural flow, or change the bed, channel, or bank (which may include associated riparian resources) of a lake, river, or stream or use material from a streambed. Ephemeral and/or intermittent streams and drainages (that are dry for periods of time or only flow during periods of rainfall) are also subject to Fish and Game Code section 1602; and CDFW may require a LSA Agreement with the applicant, pursuant to Section 1600 et seq. of the Fish and Game Code. Due to the topography of the site, the widening of the road may encroach onto the bank of the unnamed stream. CDFW recommends that the Permittee notify CDFW of this project to see whether a LSA Agreement is necessary.

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Issuance of an LSA Agreement is subject to CEQA. CDFW, as a Responsible Agency under CEQA, will consider the CEQA document for the Project. The CEQA document should identify the potential impacts to lake, stream, or riparian resources and provide adequate avoidance, mitigation, monitoring, and reporting commitments for completion of the agreement. To obtain information about the LSA Agreement notification process, please access our website at <https://www.wildlife.ca.gov/conservation/lsa>.

### **Spoils Stockpile Area – Invasive Plants**

CDFW recommends that the MND include a mitigation measure requiring that the Permittee monitor the spoils stockpile area for a minimum of two years after spoils disposal to ensure that any invasive plants/weeds growing within the spoils area are removed/treated such that they do not spread into adjacent habitat.

### **Erosion Control Devices**

Erosion control devices can have a direct impact on wildlife, particularly reptiles and amphibians. CDFW has documented several cases where reptiles and amphibians have become tangled in erosion control devices containing plastic monofilament (e.g. straw wattles wrapped in black plastic mesh). CDFW recommends that all temporary and permanent erosion control measures be free of plastic monofilament netting.

### **FILING FEES**

CDFW anticipates that the Project will have an impact on fish and/or wildlife, and assessment of filing fees is necessary (Fish and Game Code, § 711.4; Pub. Resources Code, § 21089). Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW.

CDFW appreciates the opportunity to provide comments on the draft MND for the proposed Project and is available to meet with you to further discuss our concerns. If you have any questions, please contact Mr. Garrett Allen, Environmental Scientist, at [garrett.allen@wildlife.ca.gov](mailto:garrett.allen@wildlife.ca.gov), or Mr. Craig Weightman, Environmental Program Manager, at [craig.weightman@wildlife.ca.gov](mailto:craig.weightman@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
BE74D4C93C604EA  
Gregg Erickson  
Regional Manager  
Bay Delta Region

cc: State Clearinghouse