
North Coast Regional Water Quality Control Board

September 9, 2013

In the Matter of
Water Quality Certification
for

**Windy Gap Vineyards Gravel Roadway
WDID No. 1B12199WNSO**

APPLICANT: Mr. Robert Mauritson, Swallowfork, LLC
RECEIVING WATER: Barnes Creek
HYDROLOGIC UNIT: Russian River Hydrologic Unit,
COUNTY: Sonoma
FILE NAME: Windy Gap Vineyards Gravel Roadway

BY THE EXECUTIVE OFFICER:

1. On December 19, 2012, Mr. Robert Mauritson, Swallowfork, LLC (Applicant) filed an application for water quality certification (certification) under section 401 of the Clean Water Act (33 U.S.C. § 1341) with the California Regional Water Quality Control Board, North Coast Region (Regional Water Board) for activities associated with the Windy Gap Vineyards Gravel Roadway (Project). Information describing the project was noticed for public comment on the Regional Water Board's website on September 9, 2013. Under Title 23, California Code of Regulations, Section 3858(a): "The executive director or the executive officer with whom an application for certification is filed shall provide public notice of an application at least twenty-one (21) days before taking certification action on the application, unless the public notice requirement has been adequately satisfied by the applicant or federal agency. If the

applicant or federal agency provides public notice, it shall be in a manner and to an extent fully equivalent to that normally provided by the certifying agency. If an emergency requires that certification be issued in less than 21 days, public notice shall be provided as much in advance of issuance as possible, but no later than simultaneously with issuance of certification." Due to the nature of water quality impact issues associated with the existing roadway's sediment delivery during the wet season, 401 Water Quality Certification will be issued during the 21-day public comment period. Public comments will still be accepted and reviewed during the entire 21-day comment period. . The Project is located at approximately 11300 Chalk Hill Road, Healdsburg, CA 95448 at latitude 38.57275°N, and longitude 122.759828°W. The Project will cause disturbances to waters of the United States (U.S.) and the State associated with Barnes Creek, a linear water course within the Russian River Hydrologic Unit. Permanent impact to waters of the U.S. would be approximately 26 linear feet, approximately 581 square feet. Permanent impact to waters of the State would be approximately 26 linear feet, approximately 884 square feet.

2. The primary purpose of the Project is to grade a gravel roadway to provide access to a currently proposed vineyard development project. The Project crosses an existing drainage and would install a total of three 24" culverts each with a length of 26' in parallel at one crossing site. Rock rip rap will be installed at the culvert inlets and outfalls to serve as energy dissipaters to reduce erosion of the existing drainages. The roadway improvements and new grading are designed to minimize the risk of post-construction storm water pollution.
3. The project is planned for summer-fall 2013. Work is planned to last 6.5 months
4. Mitigation for the impact of the project on waters of the U.S. and State consists of revegetation of impacted areas with native vegetation and five years of maintenance, monitoring, and reporting, to ensure success criteria are met. The revegetation plan requires planting 35 Live Oak trees preferably from locally-sourced acorns, irrigation to establish trees and must achieve a minimum of 85% survival rate at the end of five years. The mitigation plan shall be implemented as described in *Mitigation Plan submitted on June 21, 2013 by Atterbury and Associates, Inc.* Additionally, the improvements to the existing roadway will decrease sediment delivery to watercourses.
5. The Applicant has applied for authorization from the United States Army Corps of Engineers for a Clean Water Act, section 404 permit and the County of Sonoma for a grading permit under GRD 12-0117. The Applicant has obtained a Streambed Alteration Agreement from the California Department of Fish and Wildlife on July 12, 2013 (Notification No. 1600-2012-0443-R-3).

6. The North Coast Regional Water Quality Control Board, as lead California Environmental Quality Act (CEQA) agency, had determined that the project qualifies for a Categorical Exemption, 15303(d)-New Construction, and will file a Notice of Determination with the State Clearinghouse concurrent with issuance of the 401 Water Quality Certification, pursuant to CEQA guidelines.
7. This discharge is also regulated under State Water Resources Control Board Order No. 2003-0017-DWQ, "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification," which requires compliance with all conditions of this water quality certification.
http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0017.pdf

Receiving Water: Barnes Creek
Russian River Hydrologic Unit

Filled or Excavated Area: Permanent impact to waters of the U.S.:
26 linear feet / 581 Square feet
Permanent impact to waters of the State:
26 linear feet / 884 Square feet

Latitude/Longitude: 38.57275°N / 122.759828°W

Expiration: September 9, 2018

Accordingly, based on its independent review of the record, the Regional Water Board certifies that the Windy Gap Vineyards Gravel Roadway Project (WDID No. 1B12199WNSO), as described in the application, will comply with sections 301, 302, 303, 306 and 307 of the Clean Water Act, and with applicable provisions of state law, provided that the Applicant complies with the following terms and conditions:

All conditions of this order apply to the Applicant (and all their employees) and all contractors (and their employees), sub-contractors (and their employees), and any other entity or agency that performs activities or work on the project as related to this Water Quality Certification.

1. This certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Water Code section 13330 and title 23, California Code of Regulations, section 3867.
2. This certification action is not intended and shall not be construed to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license

unless the pertinent certification application was filed pursuant to title 23, California Code of Regulations, section 3855, subdivision (b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.

3. The validity this certification is conditioned upon total payment of any fee required under title 23, California Code of Regulations, section 3833, and owed by the Applicant.
4. The Regional Water Board shall be notified annually and in writing at least five working days (working days are Monday – Friday) prior to the commencement of ground disturbing activities, with details regarding the construction schedule, in order to allow staff to be present onsite during construction, and to answer any public inquiries that may arise regarding the Project.
5. The mitigation and reporting plan shall be implemented as described in *Mitigation Plan submitted on June 21, 2013 by Atterbury and Associates, Inc.*, as well as associated subsequent submittals to the application. Mitigation for the impact of the Project consists of revegetation of impacted areas with native vegetation and five years of maintenance, monitoring, and reporting, to ensure success criteria are met. The revegetation plan requires planting 35 Live Oak trees preferably from locally-sourced acorns, irrigation to establish trees and must achieve a minimum of 85% survival rate at the end of five years
6. The Regional Water Board is responsible to assess water quality impacts or threats to water quality for submitted projects and closely associated projects. This road project will provide the sole access to a related project site. The related project site has been reported to consist of six parcels, each of which may have a house built on it, or be used for other types of development or uses. Currently, these six separate parcels are planned to be converted from undeveloped land/woodland to a vineyard project. The Regional Water Board currently has a 401 Water Quality Certification application for this related vineyard project, from the same applicant, the “Windy Gap Vineyards, Vineyard Development Project”, WDID No. 1B12200WNSO. Regional Water Board Staff is currently working with the applicant to reduce water quality impacts of this related project by requesting that the vineyard plans incorporated appropriate avoidance, minimization, mitigation and best management practices for waters of the state. Staff will continue to work with the applicant on the current vineyard project, or other development of the related area, to assure that waters of the state are protected.
7. The Russian River is identified as impaired for sediment and temperature under Clean Water Act Section 303(d). At present, total maximum daily loads (TMDLs) have not been established for this water body. If TMDLs are established and implementation

plans are adopted for this watershed prior to the expiration date of the requested Certification, the Regional Water Board may revise the provisions of that Certification to address actions identified in such action plans. Bank erosion is identified as a source contributing to the sediment impairment. Removal of riparian vegetation is identified as a source contributing to temperature impairment. Activities that will be authorized by this Order are designed to reduce removal of riparian vegetation and reduce sediment discharges from bank erosion. Accordingly, this Order is consistent with, and implements, BMPs that would attenuate sediment and temperature adverse impacts.

8. Pursuant to Regional Water Board Resolution R1-2004-0087, Total Maximum Daily Load Implementation Policy Statement for Sediment-Impaired Receiving Waters within the North Coast Region (Sediment TMDL Implementation Policy), the Executive Officer is directed to “rely on the use of all available authorities, including existing regulatory standards, and permitting and enforcement tools to more effectively and efficaciously pursue compliance with sediment-related standards by all dischargers of sediment waste.”
9. The federal antidegradation policy requires that state water quality standards include an antidegradation policy consistent with the federal policy. The State Water Board established California’s antidegradation policy in State Water Board Resolution No. 68-16. Resolution No. 68-16 incorporates the federal antidegradation policy where the federal policy applies under federal law. Resolution No. 68-16 requires that existing quality of waters be maintained unless degradation is justified based on specific findings. The Regional Water Board’s Basin Plan implements, and incorporates by reference, both the State and federal antidegradation policies. This Order is consistent with applicable federal and State antidegradation policies, as it does not authorize the discharge of increased concentrations of pollutants or increased volumes of treated wastewater.
10. Any water pumped from the work area shall not be discharged back to the creek; it shall be pumped to a tank or other conveyance and disposed of at a legal point of disposal.
11. Applicant shall prioritize the use of wildlife-friendly 100% biodegradable erosion control products/BMPs whenever feasible. For purposes of this Order, photodegradable synthetic products are not considered biodegradable. Applicant shall not use or allow the use of erosion control products that contain synthetic (e.g., plastic or nylon) netting or materials for permanent erosion control (i.e., erosion control materials to be left in place for two years or after the completion date of the Project). If the Applicant finds that erosion control netting or products have entrapped or harmed wildlife, the Applicant shall remove the netting or product and

replace it with wildlife-friendly biodegradable products. Applicant shall remove any remaining synthetic netting or materials remaining at the end of two years, or sooner.

12. BMPs shall be implemented as proposed in the application materials. BMPs for erosion, sediment and turbidity control shall be implemented and in place at commencement of, during and after any ground clearing activities or any other Project activities that could result in erosion or sediment discharges to surface water. Severe and unseasonal rain events are becoming more frequent due to the effects of climate change. Therefore, BMPs shall be immediately available for deployment at all times to prevent discharges to waters of the state.
13. No debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete washings, oil or petroleum products, or other organic or earthen material from any construction or associated activity of whatever nature, other than that authorized by this Order, shall be allowed to enter into or be placed where it may be washed by rainfall into waters of the State. When operations are completed, any excess material or debris shall be removed from the work area.
14. The Applicant shall provide Regional Water Board staff access to the Project site to document compliance with this certification.
15. If, at any time, an unauthorized discharge to surface water (including wetlands, lakes, rivers or streams) occurs, or any water quality problem arises, the associated Project activities shall cease immediately until adequate BMPs are implemented including stopping work. The Regional Water Board shall be notified promptly and in no case more than 24 hours after the unauthorized discharge or water quality problem arises.
16. Prior to implementing any change to the Project that may have a significant or material effect on the findings, conclusions, or conditions of this Order, the Applicant shall obtain the written approval of the Regional Water Board Executive Officer. If the Regional Water Board is not notified of a significant alteration to the Project, it will be considered a violation of this Order, and the Applicant may be subject to Regional Water Board enforcement action(s).
17. All Project work shall be conducted as described in this Order and in the application submitted by the Applicant, and shall comply with all applicable water quality standards as detailed in the Basin Plan. If the Regional Water Board is not notified of a significant alteration to the Project, it will be considered a violation of this Order, and the Applicant may be subject to Regional Water Board enforcement actions.
18. The Applicant shall provide a copy of this Order and State Water Resources Control Board (SWRCB) Order No. 2003-0017-DWQ to any contractor(s), subcontractor(s), and utility company(ies) conducting work on the Project, and shall require that copies

remain in their possession at the work site. The Applicant shall be responsible for ensuring that all work conducted by its contractor(s), subcontractor(s), and utility companies is performed in accordance with the information provided by the Applicant to the Regional Water Board.

19. Disturbance or removal of existing vegetation shall not exceed the minimum necessary to complete the Project.
20. Fueling, lubrication, maintenance, storage, and staging of vehicles and equipment shall not result in a discharge or threatened discharge to any waters of the State including dry portions of the shoreline. At no time shall the Applicant or its contractors allow use of any vehicle or equipment, which leaks any substance that may impact water quality.
21. The Regional Water Board may add to or modify the conditions of this Order, as appropriate, to implement any new or revised water quality standards and implementation plans adopted and approved pursuant to the Porter-Cologne Water Quality Control Act or section 303 of the Clean Water Act.
22. In the event of any violation or threatened violation of the conditions of this Order, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions as provided for under applicable state or federal law. For the purposes of section 401(d) of the Clean Water Act, the applicability of any state law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this Order. In response to a suspected violation of any condition of this certification, the State Water Board may require the holder of any federal permit or license subject to this Order to furnish, under penalty of perjury, any technical or monitoring reports the State Water Board deems appropriate, provided that the burden, including costs, of the reports shall bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports. In response to any violation of the conditions of this Order, the Regional Water Board may add to or modify the conditions of this Order as appropriate to ensure compliance.
23. In the event of any change in control of ownership of land presently owned or controlled by the Applicant, the Applicant shall notify the successor-in-interest of the existence of this Order by letter and shall forward a copy of the letter to the Regional Water Board at the above address.

To discharge dredged or fill material under this Order, the successor-in-interest must send to the Regional Water Board Executive Officer a written request for transfer of the Order. The request must contain the requesting entity's full legal name, the state

of incorporation if a corporation, and the address and telephone number of the person(s) responsible for contact with the Regional Water Board.

The request must also describe any changes to the Project proposed by the successor-in-interest or confirm that the successor-in-interest intends to implement the Project as described in this Order. Except as may be modified by any preceding conditions, all certification actions are contingent on: a) the discharge being limited to and all proposed mitigation being completed in strict compliance with the Applicant's Project description, and b) compliance with all applicable requirements of the Water Quality Control Plan for the North Coast Region (Basin Plan).

24. The authorization of this certification for any dredge and fill activities expires on September 9, 2018. Conditions and monitoring requirements outlined in this Order are not subject to the expiration date outlined above, and remain in full effect and are enforceable.

If you have any questions or comments, please call Stephen Bargsten at (707) 576-2653 or Gil Falcone at (707) 576-2830.

Original signed by David Leland for

Matthias St. John
Executive Officer

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- Weblink: State Water Resources Control Board Order No. 2003-0017 -DWQ, General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification can be found at:
http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0017.pdf
- Original to: Mr. Robert Mauritson, Swallowfork, LLC, 2305 Lytton Springs Road, Healdsburg, CA 95448
- Copy to: Mr. Tom Atterbury RCE, Atterbury & Associates, 16109 Healdsburg Avenue, Suite D, Healdsburg, CA 95448