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***VIA CERTIFIED MAIL -
RETURN RECEIPT REQUESTED***

January 30, 2015

Robert Weinstock
Senior Manager – Ranch Operations
Gallo Vineyards, Inc.
3387 Dry Creek Road
Healdsburg, CA95448

Sally Jewell, Secretary
U.S. Department of the Interior
1849 C Street, N. W.
Washington, DC 20240

Re: Notice of Violations and Intent to File Suit under the Endangered Species Act

Dear Mr. Weinstock and Secretary Jewell:

NOTICE

The Endangered Species Act (“ESA”) Section 11(g), 16 U.S.C. § 1540(g), requires that sixty (60) days prior to the initiation of a civil action under the ESA, an entity must give notice of its intent to sue to the alleged violator.

This letter provides notice on behalf of California River Watch (“River Watch”) to Robert Weinstock and Gallo Vineyards, Inc., (“Developers”) as owners and vineyard developers of real property located at 2888 Stony Point Road, Sonoma County, California, associated with Assessor’s Parcel Numbers 113-210-156, 046-182-003, 046-182-001, 046-216-004, 024-050-012, of the alleged harm to, and unauthorized take of, Sonoma California tiger salamander in the Santa Rosa Plain Conservation area, in violation of Section 9 of the ESA, 16 U.S.C. § 1538. Notice is also provided to the Secretary of the Department of the Interior.

Following the expiration of the 60-day notice period, River Watch will have cause to file suit in federal court against Developers to enforce the ESA, unless the Secretary has commenced an action to impose a penalty pursuant to 16 U.S.C. § 1540(a); or, the United States has commenced and is diligently prosecuting a criminal action in a court of the United States or a State to redress the violations of the ESA alleged in this Notice.

STATUTORY FRAMEWORK

Under ESA § 9, 16 U.S.C. § 1538(a)(1)(B), it is unlawful for any person to take an endangered species. ESA § 4(19), 16 U.S.C. § 1532(19) defines the term “take” as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct.” A “take” includes direct as well as indirect harm and need not be purposeful or intentional. Cumulative acts resulting in a “take” are also actionable.

A “take” is defined in the ESA in the broadest possible manner so as to include every conceivable way in which a person or entity can “take” or attempt to “take” any fish or wildlife listed as endangered or threatened, pursuant to the ESA. ESA § 10 permits the “take” of threatened and endangered species with the granting by the United States Fish and Wildlife Service (“FWS”) of an incidental take permit.

The ESA includes a broad citizen suit provision allowing any person to commence a civil suit on his/her own behalf to enjoin any person alleged to be in violation of any provision of the ESA or a regulation issued under the authority thereof. A plaintiff can seek to enjoin both present activities which constitute an ongoing “take”, and future activities reasonably likely to result in a “take”, ESA §11(g), 16 U.S.C. §1540(g).

BACKGROUND

California Tiger Salamander

The California tiger salamander (*Ambystoma californiense*) is a rare species of amphibian protected under ESA § 4, 16 U.S.C § 1533(a). It is a large, stocky, terrestrial salamander with a broad, rounded snout. The primary decline of the species is the loss and fragmentation of habitat from human activities and predation from non-native predators. California tiger salamander survive in California in vernal pools and seasonal ponds, including many constructed stock ponds, in grassland and oak savannah plant communities from sea level to 2,000 feet.

The ESA provides for the listing of distinct populations segments (“DPS”) of vertebrate species. *See* 61 Fed. Reg. 4725 (February 7, 1996) (“Policy Regarding the Recognition of Distinct Vertebrate Segments Under the Endangered Species Act”). Three distinct populations of California tiger salamander are protected under the ESA: Santa Barbara, Sonoma, and Central California (not including Santa Barbara DPS and Sonoma DPS).

California tiger salamander are highly vulnerable to urban development, road construction, traffic, and agricultural practices which eliminate vernal pools, wetlands, and burrows essential to the survival and recovery of this low moving amphibian. In 2002, the FWS made an emergency listing of the Sonoma population of the California tiger salamander (“Sonoma CTS”) as an endangered DPS. 67 Fed. Reg. 47726 (July 22, 2002); *see* 68 Fed. Reg. 13498 (March 19, 2003) (final ruling listing the DPS upon expiration of emergency rule; reaffirmed in 2005).

In 2005, the FWS released a proposal to designate critical Sonoma CTS habitat to cover 74,223 acres. (August 2, 2005, 70 FR 44301). In 2011, the FWS released its Final Designation of Critical Habitat for the Sonoma County Distinct Population Segment of California Tiger Salamander. 76 FR 54346 (August 31, 2011). The FWS designated 47,484 acres of Sonoma County as critical habitat for the species. 76 FR at 54356. This habitat was chosen based on its vernal pools, seasonal wetlands, and associated grassland habitat. *Id.*

In 2014, the FWS released the “Draft Recovery Plan for the Sonoma County California Tiger Salamander and Three Listed Plants,” (December 11, 2014) focusing on preserving remaining habitat and reducing fragmentation and buffering against encroaching development and agricultural conversion.

Actions that would significantly compromise upland habitat function and value that provide food, cover or dispersal opportunities for the Sonoma CTS include, but are not limited to, use of rodenticides or insecticides, discing, deep ripping, and grading. For instance, breaking the hard pan by deep ripping and grading can result in draining of pools which harms habitat. *See* Draft Recovery Plan for the Sonoma County California Tiger Salamander, pg. 44. These activities could eliminate or reduce the availability of subsurface refugia, or could reduce or eliminate the prey species required for the survival of adult and juvenile Sonoma CTS. 76 FR at 54358. *See also* 68 Fed. Reg. at 13508; 70 Fed. Reg. 44301, at 44310 (August 2, 2005). Activities that reduce small mammal populations or their burrows to the point that there are insufficient underground refugia used by Sonoma CTS for

foraging, protection from predators, and shelter from the elements include: discing, deep ripping, land conversion to vineyards, rodent control in existing vineyards. 76 FR at 54355. *See also* 68 Fed. Reg. at 13515; 70 Fed. Reg. at 44314.

DEVELOPERS' CONVERSION OF HABITAT TO VINEYARD

In 2014, Developers developed 43.68 acres of Sonoma CTS critical habitat by deep ripping, amending, discing and smoothing the land to prepare for the planting of vineyards. Developers' land, located within 1.3 miles of a Sonoma CTS breeding area, is designated Sonoma CTS critical habitat. Vineyard development required clearing and stripping all vegetation from the land and ripping the soils with tractors and digging tongs up to 6-feet in length to remove all root systems. The land is then contoured, staked out with thousands of metal rods pounded into the ground, and tightly spaced wire racks are installed. In addition, harmful insecticides and pesticides are applied. These activities pose significant risks to Sonoma CTS through both physical harm and reduction of critical habitat.

In addition, harmful insecticides and pesticides were applied. (*See* Sonoma County Agricultural Commissioner Permit Use Reports for 2888 Stony Point Road, 2010-2014.) River Watch contends that these actions by Developers have compromised upland habitat function and value that provides food, cover or dispersal opportunities for the Sonoma CTS, and have altered habitat so as to eliminate or reduce the prey species required for the survival of adult and juvenile Sonoma CTS. Further, that these actions by Developers reduced small mammal populations or their burrows to the point that there are insufficient underground refugia used by Sonoma CTS for foraging, protection from predators, and shelter from the elements.

Sonoma CTS breed in vernal pools and seasonal ponds after the first substantial rains. After breeding, they migrate up to 1.3 miles to upland oak savanna habitat and estivate (hibernation during the summer months) in underground burrows made by small rodents. During estivation and hot months, Sonoma CTS are especially vulnerable to destruction of upland habitat, as exposure to the sun can lead to dessication. It is highly likely that Sonoma CTS were present on Developers' land during the above-described activities due to prior surveys which have shown the proximity of Developers' land to known breeding sites.

River Watch contends that Developers were advised by the County of Sonoma Agricultural Commissioner's Office that consultation with the FWS or the California Department of Fish and Wildlife ("DFW") would be required prior to the land conversion.

(Sonoma County Agricultural Commissioner Attachment to Gallo Permit, “Range of California Tiger Salamander Habitat.”) Further, that Developers were also informed by Kjeldsen Environmental Consulting that the land proposed for ripping and discing was within critical habitat and used as a corridor by California tiger salamander. (Biological Review, VESCO Vineyard Replanting, Two Rock Vineyard, Cotati, May 2014.) Under the Interim Mitigation Guidelines adopted by the FWS and DFW, any land developed within 1.3 miles of a known Sonoma CTS breeding area would need to be mitigated because of the loss of critical habitat. *See* Santa Rosa Plain Conservation Strategy.

River Watch contends Developers developed vineyards on land owned by them without consulting with FWS or DFW, and did not mitigate for the damage to critical habitat of Sonoma CTS. Wetlands and vernal pools may have been plowed, and the deep ripping of the soil destroyed the underground burrows where Sonoma CTS estivate.

HARM AND/OR HARASSMENT OF PROTECTED SPECIES

River Watch alleges that endangered Sonoma CTS present during the deep ripping, discing and grading of the land, and removal of vegetation for vineyard development, were directly harmed and/or harassed by those activities carried out by and/or conducted under the direction of Developers. The high likelihood that Sonoma CTS were present on Developers’ land during the above-described activities is based on the proximity of Developers’ land to the known breeding sites of Sonoma CTS. Thus, the actions of Developers have harmed and harassed the Sonoma CTS by modifying its critical habitat and interfering with the species’ breeding, feeding and shelter.

VIOLATIONS OF THE ESA

The ESA prohibits any person, agency, or entity from committing a “take” by harming or harassing a species listed as endangered or threatened under ESA § 4. 16 U.S.C. § 1533. ESA § 9 (a)(1)(B), 16 U.S.C. § 1538(a)(1)(B). As clarified by FWS in 1999, habitat modification or degradation that harms a listed species constitutes a “take” under the ESA. 64 Fed. Reg. 60727.

River Watch alleges that Developers, as owners and operators of the property which is the subject of this Notice, converted Sonoma CTS critical habitat on said property into a vineyard, which conversion destroyed the critical habitat of Sonoma CTS and resulted in the harm and/or harassment of Sonoma CTS due to interference with the species’ feeding,

breeding and sheltering. As a result, Developers are liable for a “take” under both the definitions of “harm” and “harassment”. ESA §9 (a)(1)(B), 16 U.S.C. § 1538(a)(1)(B). This harm and harassment is continuing as the vineyard conversion permanently destroyed critical habitat essential to the survival of Sonoma CTS.

ESA § 10 (a)(1)(B), 16 U.S.C. § 1539 (a)(1)(B), *et seq.* authorizes any “take” otherwise prohibited by ESA § 9, 16 U.S.C. §1538 (a)(1)(B), under an incidental take permit upon submission by the applicant of a habitat conservation plan approved by the Secretary. (16 U.S.C. §1538 (a)(2)). River Watch alleges that no such habitat conservation plan was submitted or approved by Developers; and, that Developers failed to apply for an incidental take permit for the vineyard developed described in this Notice, in violation of ESA § 10 (a)(1)(B), 16 U.S.C. § 1539 (a)(1)(B).

IDENTIFICATION OF ENTITY BRINGING NOTICE

The entity providing this Notice is California River Watch, referred to herein as “River Watch.” River Watch is a 501(c)(3) non-profit, public benefit corporation organized under the laws of the State of California, with headquarters located in Sebastopol, California and offices in Los Angeles, California. The mailing address of River Watch’s northern California office is 290 S. Main Street, #817, Sebastopol, CA 95472.

River Watch is dedicated to protect, enhance, and help restore surface and ground waters of California including rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna. And to educate the public concerning environmental issues associated with these environs.

River Watch has retained legal counsel with respect to the issues set forth in this Notice as follows:

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All communications regarding this Notice should be addressed to Attorney Yates.

CONCLUSION

The activities of Developers alleged herein violate the ESA. The destruction of Sonoma CTS critical habitat significantly hinders the prospects for this species' recovery.

At the close of the 60-day notice period, River Watch has cause to pursue a citizens' suit against Developers for the violations of the ESA described herein. If prior to expiration of the notice period Developers correct these violations, River Watch will not proceed to suit.

River Watch is willing to discuss effective remedies for the violations described. However, if Developers wish to pursue such discussions in the absence of litigation, it is suggested those discussions be initiated within the next 20 days so that they may be completed before the end of the notice period.

Sincerely,



Edward E. Yates

EEY:lmh

cc: CSC - Lawyers Incorporating Service, Registered Agent
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