



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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October 14, 2019

Governor's Office of Planning & Research

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STATE CLEARINGHOUSE

Ms. Charlene Gallina, Supervising Planner
Napa County
1195 Third Street, Suite 210
Napa, CA 94559

Subject: Kitoko Winery Use Permit, File# P17-00373-UP, Draft Mitigated Negative Declaration, SCH #2019099038, Napa County

Dear Ms. Gallina:

California Department of Fish and Wildlife (CDFW) personnel have reviewed the draft Mitigated Negative Declaration (MND) for the Kitoko Winery (Project). CDFW is submitting comments on the draft MND to inform Napa County, as the 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) Section 15386 and is responsible for the conservation, protection, and management of the State's biological resources. CDFW is also considered a Responsible Agency if a project would require discretionary approval, such as the California Endangered Species Act (CESA) Permit, the Native Plant Protection Act, the 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.

Regulatory Requirements

California Endangered Species Act

CESA prohibits unauthorized take of candidate, threatened, and endangered species. Therefore, if take¹ of any listed species listed under CESA cannot be avoided either during Project activities or over the life of the Project, a CESA Incidental Take Permit (ITP) must be obtained (pursuant to Fish and Game Code Section 2080 *et seq.*). Issuance of a CESA ITP is subject to CEQA documentation; therefore, the CEQA document should specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the proposed Project will impact any CESA-listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required to obtain a CESA ITP. More information on the CESA permitting process can be found on the CDFW website at <https://www.wildlife.ca.gov/Conservation/CESA>.

¹ Fish and Game Code §86: "Take" means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.

Lake and Streambed Alteration Agreement

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 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 an LSA Agreement with the applicant, pursuant to Section 1600 et seq. of the Fish and Game Code.

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 the stream or riparian resources and provide adequate avoidance, mitigation, monitoring, and reporting commitments for completion of the agreement. To obtain information about the LSA notification process, please access our website at <https://www.wildlife.ca.gov/conservation/lisa> or to request a notification package, contact CDFW's Bay Delta Regional Office at (707) 428-2002.

Migratory Birds and Raptors

CDFW also has jurisdiction over actions that may result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code Sections protecting birds, their eggs, and nests include 3503 (regarding unlawful take, possession or needless destruction of the nests or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird). Fully protected species may not be taken or possessed at any time (Fish and Game Code Section 3511). Migratory raptors are also protected under the federal Migratory Bird Treaty Act.

Project Description and Environmental Setting

The 20-acre Project site is located at 3201 Atlas Peak Road in rural Napa County, approximately four miles north of the intersection of State Route 121 and Atlas Peak Road and approximately nine miles northeast of downtown Napa. The Project site lies within the Milliken Creek watershed above the Milliken Reservoir. The Project site is predominantly undeveloped and comprised of native grassland and chaparral habitat. An unnamed tributary to Milliken Creek is approximately 500 feet to the southwest of the proposed winery site. Kitoko Vineyards is located directly to the west of the Project site, which contains an on-stream pond that flows into the unnamed tributary to Milliken Creek. Elevation of the property ranges from 1,340 feet at the driveway entrance to 1,395 feet in the western portion of the property; and slopes vary from 5-15 percent.

The proposed Project is to construct a new 40,000-gallon winery and associated structures, totaling approximately 7,448 square feet, and an approximately 13,662-square-foot wine cave. A new property access driveway will be constructed from Atlas Peak Road to the proposed winery location. Additionally, the Project proposes to dispose of approximately 13,000 cubic yards of rock and spoils from the wine cave construction on-site, as shown in the *Kitoko Vineyards Winery – Use Permit Conceptual Site Plans* (Conceptual Site Plans), prepared by Applied, Inc., dated February 23, 2018.

Comments and Concerns

Special-Status Plants

According to the *Biological Resources Assessment for the +/-6.2-acre Kitoko Vineyard Study Area*, prepared by Salix Consulting, Inc., dated December 2017, two surveys for special-status plants were conducted on June 2 and August 5, 2017, and one special-status species was detected: Napa bluecurls (*Trichostema ruygtii*), a California Native Plant Society (CNPS) Rare Plant Rank 1B.2 species, meaning the species is rare, threatened, or endangered in California and elsewhere. Mitigation Measure BIO-1 of the draft MND will require that the Project be re-designed to avoid all special-status plants to the greatest extent feasible; and if any special-status plants have to be removed, a qualified biologist will prepare a Mitigation Plan in consultation with CDFW. CDFW agrees with this measure; however, CDFW recommends that a qualified botanist (instead of a qualified biologist) prepare a Mitigation Plan in consultation with CDFW, if necessary. Additionally, CDFW is concerned that some special-status plants may not have been detected during surveys because the surveys were performed outside of the appropriate blooming period for several special-status species that have the potential to occur in the area. For example, holly-leaved ceanothus (*Ceanothus purpureus*), and Mead's owl's-clover (*Castilleja ambigua* var. *meadii*), which are both CNPS Rare Plant Rank 1B species, typically bloom in April and May. CDFW recommends that additional special-status plant surveys be conducted prior to the start of Project activities during the appropriate blooming periods for all special-status plants that could occur on the Project site. Surveys should follow the updated CDFW protocol titled, *Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Sensitive Natural Communities*, prepared by CDFW, dated March 20, 2018. The protocol can be found here:

<https://www.wildlife.ca.gov/Conservation/Survey-Protocols#377281280-plants>

Soil Disposal Area

Construction of the approximately 13,226-square-foot wine cave will generate approximately 13,000 cubic yards of soil and rock, which the Project proposes to dispose of on-site. The Conceptual Site Plans show a proposed soil disposal area between the winery and new driveway, and the unnamed stream to the southwest. A compacted fill slope will extend several hundred feet at a 2:1-25:1 slope and it will be stabilized with straw mulch erosion control seed mix and straw wattles. CDFW is concerned that the soils disposal area will be a long-term source of fine sediment into the unnamed stream. Fish and Game Code §1602 requires that an entity notify CDFW prior to depositing or disposing of debris where it may pass into any river, stream, or lake (paraphrased). CDFW is also unclear as to what the intended purpose or need for the soil disposal area is. CDFW recommends that the draft MND discuss the purpose and need for the soils disposal area. Otherwise, it should be removed from the Conceptual Site Plans in order to minimize impacts to habitat as much as possible.

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/trapped in erosion control devices containing plastic monofilament (e.g. typical straw wattles). The Project should only use erosion control materials that do not contain plastic monofilament. CDFW prefers that biodegradable materials (e.g. coir logs, jute netting, coconut

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fiber blanket) be used to the greatest extent feasible. All bare slopes should be seeded with native grass seed and/or planted with native plants that are appropriate for the area.

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 (707) 428-2076 or at garrett.allen@wildlife.ca.gov; or Ms. Karen Weiss, Senior Environmental Scientist (Supervisory), at karen.weiss@wildlife.ca.gov.

Sincerely,



Gregg Erickson
Regional Manager
Bay Delta Region

cc: State Clearinghouse