



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Bay Delta Region  
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**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



September 7, 2022

Pam Arifian, Planner III  
County of Napa  
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Subject: Silver Oak Cellars: Carmelite Vineyard Agricultural Erosion Control  
Plan #P21-0006 ECPA, Mitigated Negative Declaration,  
SCH No. 2022080189, Napa County

Dear Ms. Arifian:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from the County of Napa (County) for the Silver Oak Cellars: Carmelite Vineyard Agricultural Erosion Control Plan #P21-0006 ECPA (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

CDFW is submitting comments on the MND to inform the County, as the Lead Agency, of our concerns regarding potentially significant impacts to sensitive biological resources associated with the project.

## CDFW ROLE

CDFW is a **Trustee Agency** with responsibility under CEQA pursuant to CEQA Guidelines section 15386 for commenting on projects that could impact fish, plant, and wildlife resources. CDFW is also considered a **Responsible Agency** if a project would require discretionary approval, such as permits issued under the California Endangered Species Act (CESA), the Lake and Streambed Alteration (LSA) Program, or other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources.

## PROJECT DESCRIPTION SUMMARY

**Proponent:** Silver Oaks Cellars

**Objective:** Develop approximately 4.3 acres of vineyard with approximately 3.0 net planted acres, within two vineyard blocks located on an approximately 28.17-acre

<sup>1</sup> CEQA is codified in the California Public Resources Code in Section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with Section 15000.

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property. Project activities include clearing of vegetation, earthmoving and grading, and installation and maintenance of erosion control measures. Other activities include installation of vineyard trellises and drip irrigation systems, planting rootstock, and ongoing operation and maintenance of the vineyard (i.e., vine management, weed control, cover crop mowing, fruit harvesting, etc.). A total of 1.63 acres of wooded canopy would be removed as part the Project, including approximately 0.05-acre of blue oak woodland (5% of the 1.03 acres of blue oak woodland on-site), 1.58 acres of ornamental grove, and 0.27-acre of blue gum grove. The vineyard will be irrigated with groundwater from an existing well, and irrigation pipelines will be located in vineyard areas and/or within the proposed clearing limits. Wildlife exclusion fencing would be installed around individual proposed vineyard blocks.

**Location:** The project is located at 20 Mount Carmel Drive in the City of Oakville, County of Napa, State of California on Assessor's Parcel Number 027-280-006, centered at approximately Latitude 38.42539°N, Longitude 122.41673°W.

**Timeframe:** Project implementation is proposed to take place April 1 – October 15. The Project implementation year is not provided. Vineyard operations will occur year-round.

## **REGULATORY REQUIREMENTS**

### **California Endangered Species Act**

Please be advised that a CESA Incidental Take Permit (ITP) must be obtained if the Project has the potential to result in "take" of plants or animals listed under CESA, either during construction or over the life of the Project. **The Project has the potential to impact northern spotted owl (NSO, *Strix occidentalis caurina*), a CESA listed as threatened species, as further described below.** Issuance of an ITP is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain an ITP.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially restrict the range or reduce the population of a threatened or endangered species. (Pub. Resources Code, §§ 21001, subd. (c) & 21083; CEQA Guidelines, §§ 15380, 15064, & 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency's FOC does not eliminate the Project proponent's obligation to comply with CESA.

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## COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the County in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Based on the Project's avoidance of significant impacts on biological resources with implementation of mitigation measures including those recommended below, CDFW concludes that an MND is appropriate for the Project.

**Mandatory Findings of Significance: Does the Project have the potential to substantially reduce the number or restrict the range of an endangered, rare, or threatened species?**

### Environmental Setting and Mitigation Measures

#### Comment 1: Northern Spotted Owl, MND pages 11-14 and Exhibit B page C-35

**Issue:** The Biological Resources Reconnaissance Survey Report (Exhibit B of the MND) states NSO, which is state and federally listed as threatened, is not present and has no potential to occur at the Project site because the "Study Area does not contain conifer or mixed broadleaf-conifer forest nor is any present in the immediate vicinity" (page C-35). However, there are California Natural Diversity Database (CNDDDB) documented NSO occurrences directly within the Project site as well as several other documented occurrences less than 1.5 miles from the Project site. Although typically associated with old-growth or mature forests, NSO can utilize a wide variety of forested habitat types including mixed hardwood forest. They exhibit flexibility in their use of different forested areas for nesting, roosting, and feeding requirements. Typical habitat characteristics include a multi-storied structure and high canopy cover (Press et al. 2010).

Given the potential for NSO to nest within the Project site and a quarter-mile radius, Mitigation Measure (MM) BR-1a (Page 14) would likely be insufficient to detect NSO presence.

**Specific impacts and why they may occur and be significant:** If active NSO nests are not detected by the proposed surveys in Mitigation Measure (MM) BR-1, NSO could be disturbed by Project activities resulting in nest abandonment and loss of eggs or reduced health and vigor and loss of young, thereby substantially reducing the number of the species. NSO is CESA listed as a threatened species and therefore is considered to be a threatened species pursuant to CEQA Guidelines section 15380. Therefore, if an active NSO nest is disturbed by the Project, the Project may result in a substantial reduction in the number of a threatened species, which is considered a Mandatory Finding of Significance pursuant to CEQA Guidelines section 15065, subdivision (a)(1).

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**Recommendation:** For an adequate environmental setting and to reduce impacts to NSO to less-than-significant, CDFW recommends that the MND add the following mitigation measure.

A qualified biologist shall provide an assessment of potential NSO nesting habitat within the Project area and a 0.25-mile radius and obtain CDFW's written acceptance of the assessment. Alternatively, if the assessment is not completed, or if it concludes that NSO nesting habitat is present, then no Project activities within 0.25 miles of potential NSO nesting habitat shall occur between March 15 and August 31 unless a qualified biologist approved in writing by CDFW conducts NSO surveys following the U.S. Fish and Wildlife Service (USFWS) *Protocol for Surveying Proposed Management Activities That May Impact Northern Spotted Owls*, dated (revised) January 9, 2012. Surveys shall be conducted in accordance with Section 9 of the survey protocol, *Surveys for Disturbance-Only Projects*. If breeding NSO are detected during surveys, a **0.25 mile no-disturbance buffer zone** shall be implemented around the nest until the end of the breeding season, or a qualified biologist determines that the nest is no longer active, unless otherwise approved in writing by CDFW. The Project shall obtain CDFW's written acceptance of the qualified biologist and survey report prior to Project construction occurring between **March 15 and August 31** each year.

Alternate buffer zones may be proposed to CDFW after conducting an auditory and visual disturbance analysis following the USFWS guidance, *Estimating the Effects of Auditory and Visual Disturbance to Northern Spotted Owls and Marbled Murrelets in Northwestern California*, dated October 1, 2020. Alternative buffers must be approved in writing by CDFW.

If take of NSO cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP, and also consult with USFWS pursuant to the federal Endangered Species Act.

## **ENVIRONMENTAL DATA**

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to the CNDDDB. The CNDDDB field survey form can be filled out and submitted online at the following link:

<https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link:

<https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

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## ENVIRONMENTAL DOCUMENT FILING FEES

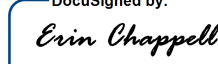
The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the environmental document filing fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

## CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist the County in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Alicia Bird, Environmental Scientist, at (707) 980-5154 or [Alicia.Bird@wildlife.ca.gov](mailto:Alicia.Bird@wildlife.ca.gov); or Melanie Day, Senior Environmental Scientist (Supervisory), at (707) 210-4415 or [Melanie.Day@wildlife.ca.gov](mailto:Melanie.Day@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
Erin Chappell  
Regional Manager  
Bay Delta Region

ec: Office of Planning and Research, State Clearinghouse, SCH No. 2022080189

## REFERENCES

Press, D., D. Adams, H. Jensen, K. Fehring, W. Merkle, M. Koenen, and L. A. Starceвич. 2010. San Francisco Bay Area Network northern spotted owl monitoring protocol: Version 6.4. Natural Resource Report NPS/SFAN/NRR—2010/245. National Park Service, Fort Collins, Colorado.