



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



Governor's Office of Planning & Research

November 20, 2023

November 21 2023

STATE CLEARINGHOUSE

Matt Ringel, Planner II
Napa County
1195 Third Street
Napa, CA 94559
Matthew.Ringel@countyofnapa.org

Subject: Vida Valiente Winery Use Permit #P20-00079, Mitigated Negative Declaration, SCH No.2023110065, Napa County

Dear Mr. Ringel:

The California Department of Fish and Wildlife (CDFW) received a Mitigated Negative Declaration (MND) from Napa County (County) for the Vida Valiente Winery Use Permit #P20-00079 (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

CDFW is submitting comments on the MND to inform the County, as the Lead Agency, of potentially significant impacts to 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: Vida Valiente Winery, represented by Hayes Drumwright

Objective: The Project involves clearing of vegetation, earthmoving, and installation and maintenance of erosion control measures associated with the development of a 17,722 sq. ft. winery facility and a 13,675 sq. ft. wine cave resulting in approximately 19,400 cubic yards of spoils. The Project also includes removal of approximately 0.15

¹ 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.

Matt Ringel
Napa County
November 20, 2023
Page 2

acres of vineyard for improved site access, and expansion of the existing driveway. Approximately 0.72 acres of recently burned Douglas-fir forest and 0.13 of mixed-oak woodland would be permanently modified. As a result of the Glass Fire of 2020, approximately 82 burned trees of several age classes and species, including Douglas-fir (*Pseudotsuga menziesii* var. *menziesii*), California black oak (*Quercus kelloggii*), and coast live oak (*Quercus agrifolia*) were removed from the Project site for safety reasons. No additional trees will be removed within the Project boundary. Included in the Project is the planting and preservation of 2.4 acres of woodland canopy on Project and neighboring parcels under common ownership.

Location: The Project area is at 407 Crystal Springs Road, St. Helena, CA 94574; Assessor Parcel Numbers 021-410-013 and 021-372-001; at approximately Latitude: 38.550465°, Longitude: -122.485.

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 (*Strix occidentalis caurina*, NSO), 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. I & 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.

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

Matt Ringel
Napa County
November 20, 2023
Page 3

implementation of mitigation measures, including those CDFW recommends below and in **Attachment 1**, 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?

Comment 1: Northern Spotted Owl – Mitigation Measure Shortcoming

Issue: The MND Mitigation Measure BIO-1 may be inadequate to reduce impacts to NSO to less-than-significant because it only requires nesting bird surveys be conducted within a 500-foot radius around the Project site, however NSO may be disturbed up to 0.25 miles away from the Project site. The MND concludes that suitable NSO habitat occurs within 0.25 miles of the Project site. Additionally, the nearest recorded occurrence according to the California Natural Diversity Database (CNDBB) is located approximately 1.20 miles east of the Project site, indicating NSO occurs in the Project vicinity.

Specific impacts and why they may occur and be significant: If suitable NSO nesting habitat occurs within a 0.25-mile radius of the Project site and active NSO nests are not detected during a survey extending only up to 500 feet from the Project site, the Project may result in audio or visual disturbances to nesting NSO, which may cause 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 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).

Recommended Mitigation Measure: To reduce impacts to NSO to less-than-significant and comply with CESA, CDFW recommends including the following mitigation measure.

MM BIO-4. Northern Spotted Owl Surveys: Project activities shall not occur between March 15 and July 31 unless a qualified biologist conducts NSO surveys within a 0.25-mile radius around the Project site 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, and no nesting NSO are detected. Surveys shall be conducted in accordance with Section 9 of the survey protocol, *Surveys for Disturbance-Only Projects*. If nesting NSO are detected during surveys, the Project shall immediately notify CDFW and implement a 0.25-mile no-disturbance buffer

Matt Ringel
Napa County
November 20, 2023
Page 4

zone 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 July 31 for each year, unless otherwise approved in writing by CDFW.

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 (ESA).

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 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>

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.

Matt Ringel
Napa County
November 20, 2023
Page 5

Questions regarding this letter or further coordination should be directed to
Melanie Day, Senior Environmental Scientist (Supervisory), at (707) 210-4415 or
Melanie.Day@wildlife.ca.gov.

Sincerely,

DocuSigned by:

Erin Chappell

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Erin Chappell
Regional Manager
Bay Delta Region

Attachment 1: Draft Mitigation Monitoring and Reporting Program

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2023110065)

Matt Ringel
 Napa County
 November 20, 2023
 Page 6

ATTACHMENT 1

Draft Mitigation Monitoring and Reporting Program (MMRP)

CDFW provides the following language to be incorporated into the MMRP for the Project.

| Biological Resources (BIO) | | | |
|----------------------------|--|--|--------------------------|
| Mitigation Measure (MM) | Description | Timing | Responsible Party |
| BIO-4 | <p>MM BIO-4. Northern Spotted Owl Surveys: Project activities shall not occur between March 15 and July 31 unless a qualified biologist conducts NSO surveys within a 0.25-mile radius around the Project site following the <i>U.S. Fish and Wildlife Service (USFWS) Protocol for Surveying Proposed Management Activities That May Impact Northern Spotted Owls</i>, dated (revised) January 9, 2012 and no nesting NSO are detected. Surveys shall be conducted in accordance with Section 9 of the survey protocol, <i>Surveys for Disturbance-Only Projects</i>. If nesting NSO are detected during surveys, the Project shall immediately notify CDFW and implement a 0.25-mile no-disturbance buffer zone 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 July 31 for each year, unless otherwise approved in writing by CDFW.</p> <p>Alternate buffer zones may be proposed to CDFW after conducting an auditory and visual disturbance analysis following the <i>USFWS guidance, Estimating the Effects of Auditory and Visual Disturbance to Northern Spotted Owls and Marbled Murrelets in Northwestern California</i>, dated October 1, 2020. Alternative buffers must be approved in writing by CDFW.</p> <p>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 ESA.</p> | <p>Prior to Ground Disturbance and Continuing over the Course of the Project</p> | <p>Project Applicant</p> |