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**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



April 22, 2024

Governor's Office of Planning & Research

**Apr 29 2024**

**STATE CLEARING HOUSE**

Wendy Atkins, Planner II  
County of Napa  
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Subject: Spring Mountain Road Winery "dba Titanium Winery" Use Permit Minor Modification (P23-00198) and Viewshed application (P23-00263), Negative Declaration, SCH No.2024031117, Napa County

Dear Ms. Atkins:

The California Department of Fish and Wildlife (CDFW) received a Notification of Intent to adopt a Negative Declaration (ND) from the County of Napa (County) for the Spring Mountain Road Winery "dba Titanium Winery" Use Permit Minor Modification (P23-00198) and Viewshed application (P23-00263) (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

CDFW is submitting comments on the ND 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:** Titanium Winery

**Objective:** In the general footprint of the facility lost in the 2020 Glass Fire, 1) Construct a new 901-square foot (sq. ft.) winery building containing 166 sq. ft. of production space and 735 sq. ft. for accessory uses; (2) Construct a new 400 sq. ft. covered tasting

<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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terrace; (3) Construct a new 4,632 sq. ft. Type-3 cave, with two access portals; (4) Construct a new 758 sq. ft. covered crush pad; (5) Install 175 sq. ft of replacement landscaping; (6) Install a new firetruck turn around area; (7) Install one new parking space for a total of six parking spaces; (8) Install a waste water system for hold and haul; (9) Expand an existing and install a new access road to meet County Roads and Street Standards for commercial driveways; and, (10) Install one 50,000 gallon fire suppression water tank, located on the west side of the winery structure. The proposed total size of the modified winery will be 5,533 sq. ft., including 1,148 sq. ft. covered areas.

**Location:** The Project is located on approximately 15.9 acres within the Agricultural Watershed zoning district at 3505 Spring Mountain Road, St. Helena, CA, on Assessor Parcel Numbers (APNs) 022-260-004-000 and 022-260-005-000, and at approximately 38.517760°N, -122.522081°W. APN 022-260-005-000 is near two ephemeral streams; one of which is documented in the Biologist Report, prepared by Salix Consulting Inc.), dated June 9, 2003 (Biologist Report). The two streams run along the southern side of the APN and the northern side, respectively.

## 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. (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.

### Lake and Streambed Alteration

An LSA Notification, pursuant to Fish and Game Code section 1600 et. seq. is required for Project activities affecting lakes or streams and associated riparian habitat.

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Notification is required for any activity that will substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake or stream. **The Project has potential to impact an ephemeral stream and therefore an LSA Notification may be required, as further described below.** Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to LSA notification requirements. CDFW, as a Responsible Agency under CEQA, would consider the CEQA document for the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement until it has complied with CEQA as a Responsible Agency.

## **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 avoidance of significant impacts on biological resources with implementation of mitigation measures, including the below recommendations and those in the Draft Mitigation, Monitoring and Reporting Program (Attachment 1) CDFW concludes that a Mitigated Negative Declaration (MND) is appropriate for the Project.

- I. 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 Related Impact Shortcoming**

#### **COMMENT 1: Northern Spotted Owl**

**Issue:** The Biologist Report includes multiple survey methods for NSO as well as a figure showing the study area. This study area does not cover a 0.25-mile radius from the Project site. Nesting NSO can be impacted through visual or auditory disturbance up to 0.25 miles away. It is unclear if suitable NSO nesting habitat occurs within 0.25 miles from the Project site. Furthermore, the Biologist Report expresses that NSO has low potential to occur at the Project site due to incompatible habitat resulting from the Glass Fire of 2020, and "primarily because of the lack of trees or trees that are not suitable for nesting." However, the Biologist Report also states that "There have been 10 positive observations of NSO within 0.25-mile of the Project boundary according to California Natural Diversity Database (CNDDDB). These observations are presumed from an activity center six-tenths of a mile south of the parcel." These observations occurred in similar habitat as that which appears to border the Project parcel, referred to in the Biologist Report as "California interior." Although typically associated with old-growth or

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mature forests, NSO can utilize a wide variety of forested habitat types. 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). Although forested areas within 0.25-mile of the Project site were affected by the Glass Fire in 2020, Google Earth satellite imagery from 2023 suggests that potential habitat, including multi-storied structure and a high canopy, appears to remain in the less severely burned areas within 0.25 miles of the Project site. Therefore, reasonable potential exists for forested areas within 0.25-mile of the Project site to provide nesting habitat for NSO.

**Specific impacts and why they may occur and be significant:** If active NSO nests are not detected within the 0.25-mile range of potential disturbance, NSO could be impacted 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 is also listed under the federal Endangered Species Act (ESA), 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:** For an adequate environmental setting and to reduce impacts to NSO to less-than-significant and comply with CESA, CDFW recommends that the MND include an analysis of potential impacts to NSO and add the following mitigation measure:

**MM BR-1:** 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 July 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 July 31 each year.

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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 ESA.

**II. Would the Project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by CDFW or USFWS?**

**Environmental Setting and Related Impact Shortcoming**

**COMMENT 2: Ephemeral Stream**

**Issue:** The Project description in the Initial Study Checklist and the Biologist Report mention an ephemeral stream to be avoided along the southern side of APN 022-260-005-000. However, according to California Aquatic Resources Inventory, there is an additional ephemeral stream on the northern side of this APN, adjacent to the Project footprint, which may be impacted by Project activities including the construction of several new structures included in the Plan Set Spring Mountain document. These streams are tributaries of York Creek, which is known to support anadromous winter-run steelhead trout (*Oncorhynchus mykiss*), federally listed as threatened. Regarding the southern stream, the Biologist Report states that “The drainage appears to just carry storm water as it lacks riparian vegetation and was dry during our survey.” Please be advised that both streams are likely subject to Fish and Game Code section 1602 et. seq, notwithstanding seasonality of flows or the absence of a discernable riparian corridor. Furthermore, photos included in the Biologist Report show numerous stumps following the southern stream which may have been a component of a riparian community, which may also occur along the north stream according to 2023 Google Earth satellite imagery. The north stream was not included in the submitted materials for the Project.

**Specific impacts and why they may occur and be significant:** Construction activities pose numerous threats to streams and the habitats they support. Impacts include inputs of deleterious materials, removal of riparian vegetation, obstructions and diversions, and disturbances to riparian corridors, wildlife and their habitats, and nesting birds. Streams and riparian habitat are sensitive as they support a diversity of wildlife and are limited, and therefore impacts to the ephemeral streams would be potentially significant.

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**Recommended Mitigation Measure:** For an adequate environmental setting and to reduce impacts to stream habitat to less-than-significant and comply with Fish and Game Code section 162, the MND should include the following mitigation measure.

MM BR-2. Prior to the commencement of Project activities, the Project shall conduct a thorough assessment for potential impacts to the ephemeral stream occurring on the northern side of APN 022-260-005-000 including, but not limited to, the placement, construction, and operation of all structures and any sedimentation from runoff. If impacts to the bed, bank, channel, and riparian area of the stream cannot be avoided, the Project shall notify CDFW for Project impacts to the ephemeral stream. More information for the notification process is available at <https://wildlife.ca.gov/Conservation/Environmental-Review/LSA>. The Project shall comply with all measures of the LSA Agreement, if issued.

Please be advised that an LSA Agreement, if issued for the Project, would likely include the above recommended mitigation measures, as applicable, and may include additional measures to protect fish and wildlife resources.

## **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 ND to assist the County in identifying and mitigating Project impacts on biological resources.

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Questions regarding this letter or further coordination should be directed to Nicholas Magnuson, Environmental Scientist at (707) 815-4166 or [Nicholas.Magnuson@wildlife.ca.gov](mailto:Nicholas.Magnuson@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:

**Craig Weightman for 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. 2024031117)

## REFERENCE

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.

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## 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 (BR)			
Mitigation Measure (MM)	Description	Timing	Responsible Party
<b>MM BR-1</b>	<p><u>MM BR-1</u>: 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 July 31 unless a qualified biologist approved in writing by CDFW conducts NSO surveys following the USFWS <i>Protocol for Surveying Proposed Management Activities That May Impact Northern Spotted Owls</i>, 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 July 31 each year.</p> <p>Alternate buffer zones may be proposed to CDFW after conducting an auditory and visual disturbance analysis following the USFWS guidance, <i>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>	Prior to Ground Disturbance	Project Applicant



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<b>MM BR-2</b>	<p><u>MM BR-2</u>. Prior to the commencement of Project activities, the Project shall conduct a thorough assessment for potential impacts to the ephemeral stream occurring on the northern side of APN 022-260-005-000 including, but not limited to, the placement, construction, and operation of all structures and any sedimentation from runoff. If impacts to the bed, bank, channel, and riparian area of the stream cannot be avoided, the Project shall notify CDFW for Project impacts to the ephemeral stream. More information for the notification process is available at <a href="https://wildlife.ca.gov/Conservation/Environmental-Review/LSA">https://wildlife.ca.gov/Conservation/Environmental-Review/LSA</a>. The Project shall comply with all measures of the LSA Agreement, if issued.</p> <p>Please be advised that an LSA Agreement, if issued for the Project, would likely include the above recommended mitigation measures, as applicable, and may include additional measures to protect fish and wildlife resources.</p>	Prior to Ground Disturbance and continuing over the course of the Project	Project Applicant
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