



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



April 7, 2025

Dana Morrison, Supervising Planner
Napa County
1195 Third Street
Napa, CA 94559
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Subject: Tesson Vineyards Winery, Use Permit #P22-00309-UP, Initial Study/Mitigated Negative Declaration, SCH No. 2025030568, Napa County

Dear Ms. Morrison:

The California Department of Fish and Wildlife (CDFW) received an Initial Study/Mitigated Negative Declaration (IS/MND) from Napa County (County) for the Tesson Vineyards Winery, Use Permit #P22-00309-UP (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.

CDFW is submitting comments on the IS/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) Agreement, 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: Alfred Tesson, Tesson Vineyards

Objective: The Project involves the construction of a new winery facility with a 14,729 square-foot cut and cover Type I cave with a 2,750-square-foot (sf) covered crush pad and a 348-sf covered mechanical equipment area with an enclosed trash/recycling area, parking facilities; as well as use changes, new water tank, and driveway improvements to meet standards. Approximately 20,000 cubic yards of spoils associated with the cave and construction of structure pads will be excavated on-site, and all of the spoils will be distributed within the subject parcel or neighboring parcels under the same ownership.

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Removal of 15 native trees will occur, with replanting and permanent preservation of 45 trees on-site.

Location: The Project is located on Assessor's Parcel Numbers 051-200-016, 027-060-020 and 027-060-022; the winery facility will be located at approximately 38.43401°N, -122.48875°W, at 1000 Wall Road, St. Helena, CA 94574, with Project activities occurring in both Napa and Sonoma Counties.

REGULATORY REQUIREMENTS

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. 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 would impact unnamed ephemeral streams, as further described below, and an LSA Notification is likely required. 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

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 Clara Hunt's milk-vetch (*Astragalus claranus*), State listed as endangered; as well as Swainson's hawk (*Buteo swainsoni*) and northern spotted owl (*Strix occidentalis caurina*), both State listed as threatened; and Crotch's bumblebee (*Bombus crotchii*) which is State listed as candidate endangered. The Project should notify CDFW immediately if take of a CESA listed species cannot be avoided and should consult with CDFW to obtain an ITP.** 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).

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The CEQA Lead Agency's FOC does not eliminate the Project proponent's obligation to comply with CESA.

Raptors and Other Nesting Birds

CDFW 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 sections 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). Migratory birds are also protected under the federal Migratory Bird Treaty Act.

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 CDFW recommends below and included in **Attachment 1** Draft Mitigation Monitoring and Reporting Program, CDFW concludes that an MND is appropriate for the Project.

Environmental Setting Related Impact Shortcomings

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 U.S. Fish and Wildlife Service (USFWS)?

COMMENT 1: Stream Alteration

Issue: Page 3 of the IS/MND states that "There are no County designated Significant Streams located on the main project parcel (027-060-022-000) on which the future winery is proposed, however, there are a number of ephemeral drainages located on the parcel and there is an identified blue line stream, as well as ephemeral, on the adjacent parcels under the same ownership (027-060-020 and -023). The County GIS layers show an ephemeral stream as running through the proposed location of the new winery; however, staff was able to confirm during the November 2022 site visit that there was no channelization or riparian vegetation associated with this "identified" ephemeral and therefore did not meet the definition." It's unclear if the County-designated Significant Streams determination made on-site would prevent impacts to a stream pursuant to Fish and Game Code section 1600 et seq.

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Specific impacts and why they may occur and be significant: The installation of the winery facility could directly impact the ephemeral stream and the streams receiving its flows. Impacts could include inputs of deleterious materials; removal and trampling of vegetation; obstructions and diversions of stream; and indirect impacts to neighboring streams. Project impacts to sensitive stream and associated riparian habitat would be potentially significant.

Recommendation: To comply with Fish and Game Code section 1600 et seq. and reduce impacts to riparian habitat to less-than-significant, CDFW recommends that the IS/MND incorporate the following mitigation measure.

Impacts to the Stream. Prior to the commencement of Project activities, a qualified biologist shall conduct a thorough assessment of potential impacts to the stream and riparian habitat resulting from Project activities including construction of the winery facility. If impacts to the bed, bank, channel, or riparian area of the stream cannot be avoided, the Project shall notify CDFW for Project impacts to the 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 Streambed Alteration Agreement (SAA), if issued, and shall not commence activities with potential to impact the stream until the SAA process has been completed. Restoration shall include a qualified biologist preparing and implementing a restoration plan, success criteria, a minimum of five years of monitoring and maintenance, and achieving success criteria.

Please be advised that a SAA, 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.

Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by CDFW or USFWS?

COMMENT 2: Clara Hunt's Milk-vetch

Issue: The IS/MND does not provide a suitable survey design to address the potential for Clara Hunt's milk-vetch to occur on the Project site. Table 2 of the Biological Resources Assessment (page 16) states that "Annual grasslands within the Study Area provide suitable habitat for this species but is outside the documented elevation range for this species. This species was not observed during the October 2023 reconnaissance survey; however, the survey was conducted outside the typical blooming season for this species." Furthermore, the IS/MND includes targeted special-

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status plants surveys to detect five special-status plant species: (1) bendflowered fiddleneck, (2) narrow-anthered brodiaea, (3) congested-head tarweed, (4) Jepson's leptosiphon, and (5) Cobb Mountain lupine.

Specific impacts and why they may occur and be significant: Surveys targeted at the blooming periods of the above five species could potentially overlook or miss Clara Hunt's milk-vetch during its blooming period which could lead to the Project causing substantial reduction in the number of an endangered 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 Clara Hunt's milk-vetch to less-than-significant, CDFW recommends that the MND incorporate the following mitigation measure.

Special-Status Plant Surveys. A Qualified Biologist shall conduct botanical surveys during the appropriate blooming period and conditions for all special-status plants that have the potential to occur at the Project site, including but not limited to Clara Hunt's milk-vetch (*Astragalus claranus*), and adjacent to it where plants could be indirectly impacted, prior to the start of construction, unless otherwise approved in writing by CDFW. More than one year of surveys may be necessary. Surveys shall be conducted following CDFW's Protocol for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (<https://wildlife.ca.gov/Conservation/Survey-Protocols#377281280-plants>) and include checking reference sites for target special-status plant species, unless otherwise approved in writing by CDFW. Survey reports shall be submitted to CDFW for written approval prior to the start of construction. If full avoidance of a State listed species is not possible, the Project shall consult with CDFW and seek to obtain an ITP prior to Project commencement.

Mitigation Measure Related Impact Shortcomings

COMMENT 3: Swainson's Hawk

Issue: Mitigation Measure BIO-4 of the IS/MND specifies the nesting season for Swainson's hawk from March 31 to August 31. This is inconsistent with the commonly accepted nesting season of March 31 to September 15.

Specific impacts and why they may occur and be significant: If the full nesting period of Swainson's hawk is not utilized in the avoidance measure of the IS/MND, the Project could have the potential to impact nesting Swainson's hawk through auditory or visual disturbances above ambient levels. Disturbances from Project activities may result in Swainson's hawk nest abandonment and loss of eggs or reduced health and

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vigor and loss of young. Therefore, if an active Swainson's hawk 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 potential impacts to Swainson's hawk to less-than-significant and comply with CESA, CDFW recommends substituting Mitigation Measure BIO-4 with the following:

Mitigation Measure BIO-4: Swainson's Hawk Surveys and Avoidance Buffer: If Project activities are scheduled during the nesting season for Swainson's hawks (March 1 to September 15), prior to beginning work on the Project, a qualified biologist shall conduct surveys according to the Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83990&inline>) and prepare a report documenting the survey results. The Project shall obtain CDFW's written approval of the qualified biologist and survey report prior to starting construction activities between March 1 and September 15. Survey methods shall be closely followed by starting early in the nesting season (late March to early April) to maximize the likelihood of detecting an active nest (nests, adults, and chicks are more difficult to detect later in the growing season because trees become less transparent as vegetation increases). Surveys shall be conducted: 1) within a minimum 0.5-mile radius of the Project site or a larger area if needed to identify potentially impacted active nests, unless otherwise approved by CDFW in writing, and 2) for at least the two survey periods immediately prior to initiating Project-related construction activities. Surveys shall occur annually for the duration of the Project. The qualified biologist shall have a minimum of two years of experience implementing the survey methodology resulting in detections. If active Swainson's hawk nests are detected, the Project shall immediately notify CDFW and implement a 0.5-mile construction avoidance buffer around the nest until the nest is no longer active as determined by a qualified biologist, unless otherwise approved by CDFW in writing. Any detected nesting Swainson's hawk shall be monitored by the qualified biologist to ensure it is not disturbed during construction activities, unless otherwise approved in writing by CDFW. If take of Swainson's hawk cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP before Project activities may commence.

COMMENT 4: Northern Spotted Owl

Issue: Section 1 and Section 2 of Mitigation Measure BIO-7 of the IS/MND (page 20) include dates that are not consistent with the guidance provided by CDFW to the County during early coordination efforts for this Project. Section 1 states that "If project

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implementation occurs between February 1 and July 9 then no mitigation is required.” This time window is not appropriate for avoiding northern spotted owl.

Specific impacts and why they may occur and be significant: If Project activities commence during the northern spotted owl nesting season, northern spotted owl could be impacted, 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. Northern spotted owl 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 northern spotted owl 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).

Recommendation: To reduce impacts to northern spotted owl to less-than-significant and comply with CESA, CDFW recommends that Mitigation Measure BIO-7 be substituted with the following:

MM BIO-7 Northern Spotted Owl Surveys: A qualified biologist shall provide an assessment of potential northern spotted owl 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 northern spotted owl nesting habitat is present, then no Project activities within 0.25 miles of potential northern spotted owl nesting habitat shall occur between March 15 and July 31 unless a qualified biologist approved in writing by CDFW conducts northern spotted owl 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 northern spotted owl 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.

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.

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If take of northern spotted owl 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.

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 California Natural Diversity Database (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. (See 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 IS/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 Nicholas Magnuson, Environmental Scientist, at (707) 815-4166 or Nicholas.Magnuson@wildlife.ca.gov; or Melanie Day, Senior Environmental Scientist (Supervisory), at (707) 210-4415 or Melanie.Day@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Erin Chappell
B77E9A6211EF486
Erin Chappell
Regional Manager
Bay Delta Region

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Attachment 1: Draft Mitigation Monitoring and Reporting Program

ec: Office of Planning and Research, State Clearinghouse No. 2025030568

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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 (BIO)			
Mitigation Measure (MM)	Description	Timing	Responsible Party
<p>Measure number to be determined by Lead Agency</p>	<p><u>Impacts to the Stream.</u> Prior to the commencement of Project activities, a qualified biologist shall conduct a thorough assessment of potential impacts to the stream and riparian habitat resulting from Project activities including construction of the winery facility. If impacts to the bed, bank, channel, or riparian area of the stream cannot be avoided, the Project shall notify CDFW for Project impacts to the 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 SAA, if issued, and shall not commence activities with potential to impact the stream until the SAA process has been completed.. Restoration shall include a qualified biologist preparing and implementing a restoration plan, success criteria, a minimum of five years of monitoring and maintenance, and achieving success criteria.</p> <p>Please be advised that a SAA, 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>	<p>Prior to Ground Disturbance</p>	<p>Project Applicant</p>
<p>Measure number to be determined by Lead Agency</p>	<p><u>Special-Status Plant Surveys.</u> A Qualified Biologist shall conduct botanical surveys during the appropriate blooming period and conditions for all special-status plants that have the potential to occur at the Project site, and adjacent to it where plants could be indirectly impacted, prior to the start of construction, including but not limited to Clara Hunt’s milk-vetch (<i>Astragalus claranus</i>), unless otherwise approved in writing by CDFW. More than one year of surveys may be necessary. Surveys shall be conducted following CDFW’s Protocol for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities</p>	<p>Prior to Ground Disturbance</p>	<p>Project Applicant</p>

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	<p>(https://wildlife.ca.gov/Conservation/Survey-Protocols#377281280-plants) and include checking reference sites for target special-status plant species, unless otherwise approved in writing by CDFW. Survey reports shall be submitted to CDFW for written approval prior to the start of construction. If full avoidance of a State listed species is not possible, the Project shall consult with CDFW and seek to obtain an ITP prior to Project commencement.</p>		
<p>MM BIO-4</p>	<p><u>Mitigation Measure BIO-4: Swainson’s Hawk Surveys and Avoidance Buffer:</u> If Project activities are scheduled during the nesting season for Swainson’s hawks (March 1 to September 15), prior to beginning work on the Project, a qualified biologist shall conduct surveys according to the Recommended Timing and Methodology for Swainson’s Hawk Nesting Surveys in California’s Central Valley (https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83990&inline) and prepare a report documenting the survey results. The Project shall obtain CDFW’s written approval of the qualified biologist and survey report prior to starting construction activities between March 1 and September 15. Survey methods shall be closely followed by starting early in the nesting season (late March to early April) to maximize the likelihood of detecting an active nest (nests, adults, and chicks are more difficult to detect later in the growing season because trees become less transparent as vegetation increases). Surveys shall be conducted: 1) within a minimum 0.5-mile radius of the Project site or a larger area if needed to identify potentially impacted active nests, unless otherwise approved by CDFW in writing, and 2) for at least the two survey periods immediately prior to initiating Project-related construction activities. Surveys shall occur annually for the duration of the Project. The qualified biologist shall have a minimum of two years of experience implementing the survey methodology resulting in detections. If active Swainson’s hawk nests are detected, the Project shall immediately notify CDFW and implement a 0.5-mile construction avoidance buffer around the nest until the nest is no longer active as determined by a qualified biologist, unless otherwise approved by CDFW in writing. Any detected nesting Swainson’s hawk shall be monitored by the qualified biologist to ensure it is not disturbed during construction activities, unless otherwise approved in writing by CDFW. If take of Swainson’s hawk cannot be avoided, the Project shall</p>	<p>Prior to Ground Disturbance</p>	<p>Project Applicant</p>

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	<p>consult with CDFW pursuant to CESA and obtain an ITP before Project activities may commence.</p>		
<p>MM BIO-7</p>	<p><u>MM BIO-7 Northern Spotted Owl Surveys</u>: A qualified biologist shall provide an assessment of potential northern spotted owl 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 northern spotted owl nesting habitat is present, then no Project activities within 0.25 miles of potential northern spotted owl nesting habitat shall occur between March 15 and July 31 unless a qualified biologist approved in writing by CDFW conducts northern spotted owl surveys following the U.S. Fish and Wildlife Service (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, <i>Surveys for Disturbance-Only Projects</i>. If breeding northern spotted owl 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 northern spotted owl 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</p>	<p>Project Applicant</p>