



A Tradition of Stewardship
A Commitment to Service

David Morrison
Director

MEMORANDUM

To: Planning Commissioners	From: Charlene Gallina Supervising Planner
Date: October 16, 2019	Re: Kitoko Winery – Agenda Item 7C Use Permit P17-00373-UP

On October 14, 2019, staff received the attached letter from the California Department of Fish & Wildlife (CDFW) in response to the Draft Initial Study – Mitigated Negative Declaration prepared for the proposed Kitoko Winery Project. The attached letter focused on the following three comments and concerns associated with staff’s analysis:

Special Status Plants

1. Mitigation Measure BIO-1 – Agrees with this measure; however recommends that a qualified bontanist (instead of a qualified biologist prepare a Mitigation Plan in consultation with CDFW, if necessary.
2. Recommended 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.

Staff Response:

Staff has modified the following condition of approval/mitigation measure to address this concern:

6.12(a) MM BIO-1: Development of the proposed project would have the potential to affect populations of Napa bluecurls (CNPS List 1B.2) and potentially other special-status plants within the project area, including the spoils disposal area, in conflict with General Plan Goal CON-3 (and related Policies) that require the protection of special status species. Impacts to Napa County Locally Rare species would conflict with Goal CON-2 that requires the maintenance and enhancement of existing levels of biodiversity. Policy CON-13 requires that all discretionary agricultural projects consider and address impacts to wildlife habitat and avoid impacts to fisheries and habitat supporting special-status species to the extent feasible.

The plan shall be modified to include the following combination of mitigation measures to avoid and replace populations of Napa bluecurls within the project parcel:

Avoidance

Populations of Napa bluecurls within the study area shall be avoided to the extent feasible through project redesign at the building permit phase. Minimum 25-foot buffers shall be established and maintained between all development areas (including but not limited to landscaping and infrastructure) of remaining populations of Napa bluecurls.

Replacement/Restoration

All populations of Napa bluecurls removed shall be replaced at a minimum 2:1 ratio (population areas replaced: population areas removed) or greater as determined by and in consultation with the California Department of Fish and Wildlife (CDFW) and Napa County. Mitigation replanting shall be designated in a Mitigation Plan, which would include replanting procedures, monitoring requirements, and success criteria goals. Replanting areas shall be determined by a qualified ~~biologist-botanist~~ in consultation with CDFW. Planting densities would be determined by a qualified ~~biologist-botanist~~ during preconstruction surveys and shall be similar to existing densities found onsite.

Preservation

Areas containing Napa bluecurls that remain undeveloped shall be preserved and managed to maintain a relatively open canopy as determined by and in consultation with the California Department of Fish and Wildlife. A qualified ~~biologist-botanist~~ shall verify that markers and visible fencing protect these areas and are positioned correctly and adequately for each phase of the project. These areas may be inspected for compliance before, during, and after each construction phase.

The areas selected for preservation shall include those areas required to be avoided as mitigation and provide potential habitat for Napa bluecurls. Areas designated for preservation shall be identified as such in a deed restriction or mitigation easement with an organization such as the Land Trust of Napa County as the grantee, or other means of permanent protection. Land placed in protection shall be restricted from development and other uses that would potentially degrade the quality of the habitat (including, but not limited to, conversion to other land uses such as agriculture or urban development, and excessive off-road vehicle use that increases erosion), and should otherwise be restricted by the existing goals and policies of Napa County. The areas to be covered by the deed restriction shall be determined by and in consultation with the California Department of Fish and Wildlife, and submitted to Napa County for review and approval. Areas to be preserved shall be selected in a manner that minimizes fragmentation of habitat areas; and the preservation areas shall first prioritize portions of the project that are not already subject to development restrictions (i.e. within stream setbacks and on slopes greater than 30%). The deed restriction or mitigation easement shall be entered into and recorded with the Napa County Recorder's office prior to commencement of the project or within 90 days of project approval, whichever occurs first, and in a form acceptable to County Counsel.

Method of Monitoring: Prior to issuance of a grading permit, the Napa bluecurl Mitigation Plan shall be reviewed and approved by the Planning Division in consultation with CDFW and implemented for any removal and/or replanting of Napa bluecurls.

Responsible Agency(ies): Planning Division

Soils Disposal Area

CDFW has expressed concern that the soils disposal area will be a long-term source of fine sediment into the unnamed stream. 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.

Staff Response:

A small unnamed blue-line stream, approximately 500 southwest of the development area flows southeast towards Milliken Creek and Milliken Reservoir. The project has been designed to avoid impacts to the unnamed blue-line stream in the southwest corner of the subject property. Proposed site improvements are located in the north/north-central portion of the subject property and would be over 500 feet from the top of stream bank and well outside any required setback per the Napa County Conservation Regulations which required a 55-foot setback for intermittent and seasonal streams on slopes of 5% to 15%. As proposed by the applicant, the purpose for disposal of the cave and site grading spoils on-site is to avoid transporting off-site to a predesignated location. Project plans identify 13,000 cubic yards of soil will be cut from the project and placed in an area located directly in front of the winery building and project parking/driveway area to achieve an onsite balance. Removal of soil would result in approximately 1300 off-haul truck loads.

The County has a Storm Water Control Ordinance that sets forth construction and post-construction stormwater pollution prevention protocols as part of the issuance of grading permit for project grading/construction and any on-site disposal of spoils to prevent any illicit discharges and manage construction and post construction activity. Staff is of the belief at this time that appropriate measures and protocols are in place through the County's Grading Permit process to address CDFW concerns and therefore, does not recommend any changes to the Initial Study/Negative Declaration and/or add any recommended measures/conditions of approval to minimize any impacts to habitat.

Erosion Control Devices

CDFW prefers that biodegradable materials (e.g. coir logs, jute netting, and coconut fiber blanket) be used to the greatest extent feasible to avoid a direct impact on wildlife, particularly reptiles and amphibians. All bare slopes should be seeded with native grass seed and/or planted with native plants that are appropriate for the area.

Staff Response:

Staff has added the following condition of approval to address this concern:

7.4(a) As recommended by the California Department of Fish & Wildlife, erosion control measures/materials, such as but not limited to straw wattles that contain plastic monofilament, shall be composed of biodegradable materials to the greatest extent feasible so that animals do not become entangled within them.



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Bay Delta Region
2825 Cordelia Road, Suite 100
Fairfield, CA 94534
(707) 428-2002
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



October 14, 2019

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

Ms. Charlene Gallina
Napa County
October 14, 2019
Page 4

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

From: [Hultman, Debbie@Wildlife](mailto:Hultman,Debbie@Wildlife)
To: [Gallina, Charlene](mailto:Gallina,Charlene)
Cc: state.clearinghouse@opr.ca.gov; Allen.Garrett@Wildlife; [Weiss, Karen@Wildlife](mailto:Weiss.Karen@Wildlife); [Weightman, Craig@Wildlife](mailto:Weightman.Craig@Wildlife)
Subject: Kitoko Winery Use Permit-SCH2019099038
Date: Monday, October 14, 2019 4:19:19 PM
Attachments: [Kitoko Winery Use Permit-SCH2019099038-Gallina-ALLEN101419.pdf](#)

Ms. Gallina,

Please see the attached letter. Original to follow. If you have any questions, please contact Mr. Garrett Allen, cc'd above.

Thank you,

Debbie Hultman | Assistant to the Regional Manager
California Department of Fish and Wildlife – Bay Delta Region
2825 Cordelia Road, Ste. 100, Fairfield, CA 94534
707.428.2037 | debbie.hultman@wildlife.ca.gov