



**California Regional Water Quality Control Board**  
**North Coast Region**  
**John W. Corbett, Chairman**



**Linda S. Adams**  
*Secretary for Environmental  
Protection*

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**Arnold  
Schwarzenegger**  
*Governor*

September 17, 2007

Mr. Lynn Fritz  
Lynmar Winery  
3909 Frei Road  
Sebastopol, CA 95472-23171

Dear Mr. Fritz:

**Subject:** Issuance of Clean Water Act Section 401 Certification (Water Quality Certification) for the Lynmar Winery Expansion and Restoration Project

**File:** Lynmar Winery Expansion, Sonoma County, WDID No. 1B04151WNSO

This Order by the California Regional Water Quality Control Board, North Coast Region (Regional Water Board), is being issued pursuant to Section 401 of the Clean Water Act (33 USC 1341). On November 9, 2004, the Regional Water Board received an application from Mr. Larry Moraes, on behalf of Lynmar Winery (Applicant), requesting a Water Quality Certification and/or Waste Discharge Requirements (Dredge/Fill Projects) for the Lynmar Winery Expansion and Restoration project (Project).

A processing fee in the amount of \$1,182 has been received. Numerous submissions of necessary information were submitted by the Applicant. On September 17, 2007, the Regional Water Board received all required information and the Project application was deemed complete. Information describing the proposed Project was noticed for public comment for a 21-day period on the Regional Water Board's website beginning on October 20, 2006. No comments were received. The Project will disturb Waters of the State and Waters of the United States (seasonal freshwater wetlands and drainages) associated with the Laguna de Santa Rosa Hydrologic Sub Area No. 114.21, within the Russian River Hydrologic Unit No. 114.00.

**Project Description:** The Project is located in Sonoma County, on an unnamed tributary to the Laguna de Santa Rosa, southeast of 3909 Frei Road (APN 130-190-076). The latitude of the Project is 38° 26'30" north, and longitude is -122° 50'33.5" west. The purpose of the Project is to conduct compensatory mitigation

**California Environmental Protection Agency**

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for the permanent filling of approximately 135 feet of ephemeral drainage for the construction of additional winery structures, as well as filling and disturbing jurisdictional seasonal wetlands. The original filling of the ephemeral drainage and wetlands was done without the proper permits and violated California Water Code.

The Project includes construction of a mitigation area, consisting of a replacement drainage swale, approximately 445 feet in length, to act as a biofiltration and high-frequency flow attenuation basin between the vineyard and the Laguna de Santa Rosa (Laguna). The Project will also create approximately 4,000 square feet of wetlands, to mitigate the loss of wetlands caused by the construction of the drainage swale, and disturbance of adjacent wetlands. The increase in area of wetlands is at a ratio of approximately 1.8:1. Additionally, an existing rock lined swale will be converted to a vegetated swale by removal of rocks, addition of erosion control fabrics, topsoil, and native grasses and rushes. The mitigation area will be protected in perpetuity by means of a deed restriction. Mitigation monitoring and reporting will occur yearly for at least five years.

Additional elements of the compensatory mitigation plan for the permanent loss of the channel and wetlands include:

1. Conducting water quality educational seminars for grape growers.
2. Developing and implementing vineyard management practices for protection of water quality.
3. The addition of post-construction storm water treatment controls in the Project.
4. Monetary contributions to be made to the Laguna de Santa Rosa Foundation to fund future restoration projects within the Laguna.

Construction erosion control Best Management Practices (BMPs) outlined in a Storm Water Pollution Prevention Plan (Prunuske Chatham, Inc., *Lynmar Winery 401 Mitigation Plan*, Sheets 1-6, 09/07/05) (SWPPP) will be incorporated into the Project.

The Project will mitigate for the permanent filling of approximately 135 feet of ephemeral drainage and the filling of approximately 0.06 acres of seasonal freshwater wetland.

No special status plant or animal species were observed or

are expected to occur as determined by biological assessments and surveys (Albion Environmental, Inc., September 2005). The site is not within the potential range of the California tiger salamander as mapped by the United States Fish and Wildlife Service and California Department of Fish and Game.

Receiving Water: The Project will disturb Waters of the State and Waters of the United States (seasonal freshwater wetlands and drainages) associated with the Laguna de Santa Rosa Hydrologic Sub Area No. 114.21, within the Russian River Hydrologic Unit No. 114.00.

State and Local Approvals: During an on-site visit on April 2, 2004, Mr. Bill Cox of the California Department of Fish and Game (DFG) declared that the Project may be completed without a DFG agreement.

A grading permit has been issued by Sonoma County Permit and Resource Management Department.

Federal Permit: U.S. Army Corps of Engineers Nationwide Permit 39, issued January 28, 2005. (File Number 288250N).

Filled or Excavated Area: Total Area Impacted: 0.05 acres of seasonal freshwater wetland habitat  
Area Temporarily Impacted: 0.00 acres  
Area Permanently Impacted: 0.05 acres

Total Linear Impacts: 135.0 linear feet impacted  
Length Permanently Impacted (Not Restored): 135.0 linear feet ephemeral stream.

Compensatory Mitigation Overview: Total Mitigation Area: 0.35 acres  
Wetland Created/Restored: 0.09 acres  
Wetland Enhanced: 0.26 acre

Total Linear Mitigation: 445 linear feet  
Linear Ephemeral Stream Created: 445 linear feet

Compensatory Mitigation: The Project includes construction of a mitigation area, consisting of a replacement drainage swale, and seasonal wetland area, approximately 445 feet in length and 0.26

acres in area, to act as a biofiltration and high-frequency flow attenuation basin between the vineyard and the Laguna de Santa Rosa (Laguna). The Project will also create approximately 4,000 square feet of wetlands, to mitigate the loss of wetlands caused by the construction of the drainage swale, and disturbance of adjacent wetlands. The increase in area of wetlands is at a ratio of approximately 1.8:1. The mitigation area will be protected in perpetuity by means of a deed restriction.

Additional elements of the compensatory mitigation plan for the permanent loss of the channel and wetlands include:

1. Conducting an educational water quality seminar for grape growers that would be 2-4 hours long, conducted yearly, for five years, and will follow an approved syllabus (*Lynmar Winery, Syllabus for Vineyard Grower's Seminars*, by Prunuske Chatham, Inc.). The seminar would cover farming techniques for vineyards that would be more ecological, contribute less sediment, pesticides/herbicides and chemicals to storm water runoff. Sustainable vineyard practices will also be presented.
2. Developing and implementing vineyard management practices (*Lynmar Winery, Vineyard Cultural Practices for Erosion Control*, by Prunuske Chatham, Inc. September 1, 2006) within the impacted swale's watershed that employ perennial cover crop and mowing, and exclude disking, spading, tilling, or other similar cultivation methods except during vineyard replacement which occurs once every 20 to 50 years.
3. Post-construction storm water treatment controls will be incorporated into the Project in order to decrease potential detrimental impacts associated with storm water runoff from the developed site.
4. Monetary contributions to be made to the Laguna de Santa Rosa Foundation shall include two annual fund raising and awareness building events. The first gathering is expected to cost \$15,000. A similar event will be held in 2008. Lynmar Winery agrees to

host, at Lynmar expense, these events as agreed in the letter to the Regional Water Board, dated August 28, 2007.

Non-compensatory  
Mitigation:

Non-compensatory mitigation measures include the use of standard erosion control BMPs, as well as construction schedules that avoid wet periods. Temporary silt fencing, straw wattles, hay bales and seeding, and other appropriate BMPs, shall be incorporated to minimize the risk of soil mobilization and sediment transport during construction.

Post-construction  
Storm Water  
Pollution Prevention:

Not applicable.

CEQA Compliance:

The North Coast Regional Water Quality Control Board, as the lead California Environmental Quality Act (CEQA) agency, has determined that the Project qualifies for a Categorical Exemption, 15333 – Small Habitat Restoration Projects, pursuant to CEQA guidelines.

Standard Conditions:

Pursuant to Title 23, California Code of Regulations, Section 3860 (23 CCR 3860), the following three standard conditions shall apply to this Project:

1. This certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Section 13330 of the California Water Code and article 6 (commencing with section 3867) of Chapter 28, Title 23 of the California Code of Regulations (CCR 23) 23 CCR 3867.
2. This certification action is not intended and shall not be construed to apply to any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to subsection 3855(b) of Chapter 28, CCR 23 and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.

3. This certification is conditioned upon total payment of any fee required under Chapter 28, CCR 23 and owed by the applicant.

Additional Conditions:

Pursuant to 23 CCR 3859(a), the Applicant shall comply with the following additional conditions:

1. The Regional Water Board shall be notified in writing at least five working days (working days are Monday – Friday) prior to the commencement of grading work, with details regarding the construction schedule, in order to allow staff to be present on-site during construction, and to answer any public inquiries that may arise regarding the Project.
2. No debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete washings, oil or petroleum products, or other organic or earthen material from any construction or associated activity of whatever nature, other than that authorized by this Order, shall be allowed to enter into or be placed where it may be washed by rainfall into Waters of the State. When operations are completed, any excess material or debris shall be removed from the work area. No rubbish shall be deposited within 150 feet of the high water mark of any stream, or within Waters of the State or Waters of the United States.
3. BMPs for erosion, sediment and turbidity control shall be implemented and in place prior to, during, and after construction in order to ensure that no silt or sediment enters surface waters and in accordance with the November 9, 2004, application.
4. All fill material used on the site shall be clean and free of contaminants. A characterization report for all imported fill materials shall be provided to the Regional Water Board prior to the commencement of grading work.
5. A copy of this Order shall be provided to the contractor and all subcontractors conducting the work, and shall be in their possession at the work site.
6. If, at any time, a discharge to surface waters occurs, or any water quality problem arises, the Project shall cease immediately and the Regional Water Board shall be notified promptly.

7. All Project work shall be conducted as described in this Order and in the application submitted by the Applicant. If the Regional Water Board is not notified of a significant alteration to the Project, it will be considered a violation of this Order, and the Applicant may be subject to Regional Water Board enforcement actions.
8. Prior to implementing any change to the project that may have a significant or material effect on the findings, conclusions, or conditions of this Order, the Applicant shall obtain the written approval of the Regional Water Board Executive Officer.
9. Mitigation activities will be implemented as proposed in the application and the following monitoring shall occur:
  - A. Wetland Mitigation: Yearly monitoring reports for the required compensatory mitigation shall be submitted to the Regional Water Board no later than December 31<sup>st</sup> during each calendar year for a total of five years. Monitoring of wetland and riparian vegetation success will continue for at least five years and include a minimum set of performance criteria. Success of the created wetlands shall be measured against the values of the filled wetlands. Reports shall include photo documentation of the mitigation area. After five years have passed, the mitigation will be evaluated for successful attainment of the final wetland criteria as outlined in the U.S. Army Corps of Engineers 1987 Delineation Manual, and a decision will be made whether additional mitigation measures are necessary to insure that no net loss of wetland habitat occurs. Reports shall be prepared by a professional consultant with in-depth experience in wetland ecosystem creation and function, as well as wetland mitigation monitoring techniques. Reports shall be submitted to the attention of staff member Stephen Bargsten.
  - B. The applicant will monitor the revegetation site on a semi-annual basis and prepare an annual report including photo documentation as to the success of the revegetation. It is expected that at the end of the monitoring period, in this case

five years, there will be at least an 80 percent survival rate.

10. A deed restriction shall be recorded on the mitigation area, in order to protect it in perpetuity. The area to be protected by the deed restriction is shown on the map entitled "Deed Restriction Area," revision dated September 7, 2006". The deed restriction file number is 2007064190.
11. The Russian River watershed and the Laguna de Santa Rosa (tributary to the Russian River) are identified on the State of California Clean Water Act Section 303(d) list. The Russian River is listed as impaired for sediment and temperature. The Laguna de Santa Rosa is listed as impaired for sediment, temperature, nitrogen, phosphorus, dissolved oxygen, and mercury. Activities that impact the riparian zone and riparian vegetation are identified as sources contributing to increased stream temperatures in both watersheds. Agricultural activities are identified as sources of sediment, nitrogen and phosphorus. At present, there are no watershed-specific implementation plans for these TMDLs. If TMDL implementation plans are adopted for these watersheds prior to the expiration date of this Order, the Regional Water Board may revise the provisions of this Order to address actions identified in such action plans.
12. The Regional Water Board may add to or modify the conditions of this Order, as appropriate, to implement any new or revised water quality standards and implementation plans adopted and approved pursuant to the Porter-Cologne Water Quality Control Act or Section 303 of the Clean Water Act.
13. This Order is not transferable. In the event of any change in control of ownership of land presently owned or controlled by the Applicant, the Applicant shall notify the successor-in-interest of the existence of this Order by letter and shall forward a copy of the letter to the Regional Water Board at the above address.

To discharge dredged or fill material under this Order, the successor-in-interest must send to the Regional Water Board Executive Officer a written request for transfer of the Order. The request must contain the requesting entity's full legal name, the state of incorporation if a

corporation, address and telephone number of the person(s) responsible for contact with the Regional Water Board. The request shall also describe any changes to the Project proposed by the successor-in-interest or confirm that the successor-in-interest intends to implement the Project as described in this Order.

14. The Applicant shall provide photos of the completed work to the appropriate Regional Water Board staff person, in order to document compliance. The Applicant shall also provide photos of the completed work areas after the first significant rainfall event in order to ensure that erosion control has been successful.

Water Quality  
Certification:

I hereby issue an order [23 CCR Subsection 3831(e)] certifying that the authorized discharge from the Lynmar Winery Expansion and Restoration Project (WDID No. 1B04151WNSO), will comply with the applicable provisions of sections 301 ("Effluent Limitations"), 302 ("Water Quality Related Effluent Limitations"), 303 ("Water Quality Standards and Implementation Plans"), 306 ("National Standards of Performance"), and 307 ("Toxic and Pretreatment Effluent Standards") of the Clean Water Act [33 USC Subsection 1341 (a)(1)], and with other applicable requirements of State law. This discharge is also regulated under State Water Resources Control Board Order No. 2003-0017-DWQ, "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification" which requires compliance with all conditions of this Water Quality Certification (Enclosed).

Except insofar as may be modified by any preceding conditions, all certification actions are contingent on: a) the discharge being limited and all proposed mitigation being completed in strict compliance with the Applicant's project description, and b) compliance with all applicable requirements of the Regional Water Board's Water Quality Control Plan for the North Coast Region (Basin Plan).

This Order may be terminated or modified for cause, including, but not limited to: (a) violation of any condition contained herein; (b) misrepresentation or failure to disclose fully all relevant facts; and (c) change in any condition that requires either a temporary or permanent reduction or elimination of the certified discharge.

Any violation or threatened violation of the conditions in this Order shall be subject to any remedies, penalties, process or sanctions under state law, including civil liability under Water Code section 13385.

Expiration: The authorization of this Order for any dredge and fill activities expire on December 31, 2008. Conditions and monitoring requirements outlined in this Order are not subject to the expiration date outlined above, and remain in full effect and are enforceable.

Please notify Stephen Bargsten of our staff at (707) 576-2653 prior to construction (pursuant to Additional Condition No. 1 above) so that we can answer any public inquiries about the work.

Sincerely,

Robert R. Klamt  
Interim Executive Officer

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Enclosure:  
State Water Resources Control Board Order No. 2003-0017-DWQ, General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification

cc: Ms. Nancy Dagle, SWRCB, 401 Program Manager (acting)

Mr. Bill Cox, California Department of Fish and Game, P.O. Box 47,  
Yountville, CA 94599

Mr. Peter Straub, U.S. Army Corps of Engineers, Regulatory Branch,  
333 Market Street, San Francisco, CA 94105

Aimee Crawford, Prunuske Chatham, Inc., P.O. Box 828, Occidental, CA 95465