



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



March 24, 2021

Governor's Office of Planning & Research

**Mar 25 2021**

## STATE CLEARINGHOUSE

Ms. Pamela Arifian  
Napa County  
1195 Third Street, Second Floor  
Napa, CA 94559  
[pamela.arifian@countyofnapa.org](mailto:pamela.arifian@countyofnapa.org)

Subject: Teachworth Winery Track I Agricultural Erosion Control Plan, Mitigated Negative Declaration, SCH No. 2021020517, Napa County

Dear Ms. Arifian:

California Department of Fish and Wildlife (CDFW) personnel reviewed the Mitigated Negative Declaration (MND) for the Teachworth Winery Track I Agricultural Erosion Control Plan (Project). CDFW is submitting comments on the MND to inform Napa County, as 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) and is responsible for the conservation, protection, and management of the State's biological resources (Pub. Resources Code, § 21000 et seq.; Cal. Code Regs., tit. 14, § 15386). CDFW is also considered a Responsible Agency if a project would require discretionary approval, such as a California Endangered Species Act (CESA) Permit, a Native Plant Protection Act Permit, or a 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.

### PROJECT LOCATION AND ENVIRONMENTAL SETTING

The Project is located on a 40.1-acre parcel at 4451 North Saint Helena Highway, Calistoga, Napa County. Specifically, the Project site is located at the end of a private drive on the southwest side of Highway 29 approximately 2,000 feet south of its intersection with Diamond Mountain Road and approximately two miles southwest of the City of Calistoga. Topography of the Project area ranges from moderate to steep slopes with elevations ranging from 742 to 910 feet above mean sea level. The Project parcel is located within the Kellet Mine Creek watershed, a tributary to the Napa River. There are three primary stream drainages on the Project property with ephemeral portions in the upper reaches and intermittent flows in the lower reaches. Within the Project area, there is approximately 4.9 acres of Douglas-fir forest, 0.32 acres of Mixed Forest/Chaparral, and 0.52 acres of developed area. The Project area is within 0.8 miles of a known northern spotted owl (*Strix occidentalis caurina*) activity center.

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Northern spotted owl is listed as threatened under CESA and the federal Endangered Species Act. The Project area also potentially supports special-status bats, such as the pallid bat (*Antrozous pallidus*). Surrounding areas consist of rural residences, vineyards, and undeveloped land.

## PROJECT DESCRIPTION

The Project would develop 5.8 acres of vineyard, and install associated wildlife exclusion fencing and temporary and permanent erosion control measures on slopes ranging from 15 percent to greater than 30-percent.

## COMMENTS AND RECOMMENDATIONS

### Northern Spotted Owl and Other Nesting Birds

Mitigation Measure BR-3 does not reduce impacts to northern spotted owl to a level of less-than-significant because it does not include specific avoidance, minimization, and mitigation measures to: 1) ensure the species is detected, or 2) be implemented in the event the species is discovered during Project construction. CDFW recommends the following revisions to Mitigation Measure BR-3 (added language in ***bold italics***, deleted language in ~~strikethrough~~):

*The Permittee shall include in #P20-00063-ECPA the following measures to minimize impacts associated with the loss and disturbance of nesting birds and raptors, including northern spotted owl, consistent with and pursuant to ~~California Department of Fish and Wildlife (CDFW)~~ **Game Code Sections 3503 and 3503.5 and the California Endangered Species Act found in Fish and Game Code section 2050 et seq.***

- a. ***A qualified biologist shall perform pre-construction spot check surveys for northern spotted owl in accordance with the U.S. Fish and Wildlife Service's (USFWS) Protocol For Surveying Proposed Management Activities That May Impact Northern Spotted Owls (Revised January 9, 2021). If northern spotted owls are detected during pre-construction spot check surveys, CDFW and the USFWS shall be consulted with regarding avoidance and minimization measures prior to beginning project activities. If take of northern spotted owl may occur, the Permittee shall obtain a CESA Incidental Take Permit prior to starting project construction. If northern spotted owl are observed during construction activities, all construction shall cease immediately and CDFW and the USFWS shall be consulted. In this event, construction activities shall not resume without CDFW's written permission.***

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- b. *For earth-disturbing activities occurring between February 1 and August 31, (which coincides with the grading season of April 1 through October 15 – NCC Section 18.108.070.L, and bird breeding and nesting seasons), a qualified biologist (defined as knowledgeable and experienced in the biology and natural history of local avian resources with potential to occur at the project site) shall conduct preconstruction surveys for nesting birds **and**, raptors, ~~and the Northern Spotted Owl~~, within all suitable habitat ~~in~~ on the project ~~are~~site, and **within a minimum 500 feet of all** ~~where there is potential for impacts adjacent to the project areas. The preconstruction survey shall be conducted no earlier than 147~~ days prior to vegetation removal and ground disturbing activities are to commence. Should ground disturbance commence later than ~~714~~ days from the survey date, surveys ~~shall~~**should** be repeated. A copy of the survey ~~results~~ **shall**~~will~~ be provided to the Napa County Conservation Division and the CDFW prior to commencement of work.*
- c. *After commencement of work, if there is a period of no work activity of 5 days or longer during the bird breeding season, surveys shall be repeated to ensure birds have not established nests during inactivity.*
- d. *In the event that nesting birds are found, **a qualified biologist** ~~the Permittee~~ shall identify appropriate avoidance methods and exclusion buffers in consultation with the County Conservation Division and the U.S. Fish and Wildlife Service (USFWS) and/or CDFW prior to initiation of project activities. Exclusion buffers may vary in size, depending on habitat characteristics, project activities/disturbance levels, and species as determined by a qualified biologist in consultation with County Conservation Division and the USFWS and/or CDFW.*
- e. *Exclusion buffers shall be fenced with temporary construction fencing (or the like), the installation of which shall be verified by Napa County prior to the commencement of any earthmoving and/or development activities. Exclusion buffers shall remain in effect until the young have fledged or nest(s) are otherwise determined inactive by a qualified biologist. **Additionally, a qualified biologist shall monitor all active nests each day during construction for the first week, and weekly thereafter, to ensure that the exclusion buffers are adequate and that construction activities are not causing nest-disturbance. If the qualified biologist observes birds displaying potential nest-disturbance behavior, the qualified biologist shall cease all work in the vicinity of the nest and CDFW shall be consulted about appropriate avoidance and minimization measures for nesting birds prior to construction activities resuming. In this event, construction activities shall not resume without CDFW's written approval.***

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- f. ~~Alternative methods aimed at flushing out nesting birds prior to pre-construction surveys, whether physical (i.e., removing or disturbing nests by physically disturbing trees with construction equipment), audible (i.e., utilizing sirens or bird cannons), or chemical (i.e., spraying nesting birds or their habitats) would be considered an impact to nesting birds and are~~ **shall be prohibited.**

### Roosting Bats and Tree Removal

CDFW recommends the following revisions to Mitigation Measure BR-2 to reduce potential impacts to bats to less-than-significant (added language in **bold italics**, deleted language in ~~strikethrough~~):

*A Qualified Biologist (defined as having demonstrable qualifications and experience with the particular species for which they are surveying) shall conduct a habitat assessment in order to identify suitable bat habitat trees within the project area(s), no more than 6 months and no less than 14 days in advance of the planned tree removal. If the habitat assessment determines that trees proposed for removal contain suitable bat habitat, the following shall apply to potential bat habitat trees:*

- i. *Tree trimming and/or tree removal **shall** only be conducted during seasonal periods of bat activity (August 31 through October 15, when young would be self-sufficiently volant and prior to hibernation, and March 1 to April 15 to avoid hibernating bats and prior to formation of maternity colonies), under supervision of a qualified biologist, **unless the Measure ii below is implemented.** Note that these windows may shift with atypical temperatures or rainfall **if a qualified biologist determines that bats are likely to still be active based on seasonal conditions.** Trees ~~should~~**shall** be trimmed and/or removed in a two-phased removal system conducted over two consecutive days. The first day (in the afternoon), limbs and branches ~~would~~**shall** be removed by a tree cutter using chainsaws only, **under the supervision of a qualified biologist who has demonstrable experience with supervising tree removal for bats using this technique.** Limbs with cavities, crevices and deep bark fissures **will** be avoided, and only branches or limbs without those features ~~would~~**shall** be removed. On the second day, the entire tree ~~would~~**shall** be removed.*
- ii. ***If removal of bat habitat trees must occur*** ~~For removal of bat habitat trees outside the seasonal activities identified above (i.e., between October 16 and February 28/29 of the following year or between April 16 and August 30), a qualified biologist shall conduct a pre-construction survey~~ ***of all potential bat habitat trees*** within 14 days of project initiation and/or ***tree*** removal to determine absence/presence of special-status bat species. Survey methods, timing, duration, and species shall be provided for review and approval by Napa County

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*prior to conducting pre-construction surveys. A copy of the survey **results** shall be provided to the County Planning Division and CDFW for **review and written acceptance** prior to commencement of work. If bats are not present, removal can proceed **without using the two-phased removal method**. If bats are found to be present, **the qualified biologist shall determine if a maternity colony or winter torpor bats are present. If roosting bats are present but there are no maternity colonies or winter torpor bats, the tree shall be removed using the two-phased removal method outlined in Measure i above. If the qualified biologist determines that maternity colonies or winter torpor bats are present, or they cannot confidently determine absence of maternity colonies or winter torpor bats, then tree removal shall be delayed until during the seasonal periods of bat activity outlined in Measure i.** ~~a plan for removal or exclusion will be developed by a qualified biologist and reviewed and approved the County Planning Division in consultation with CDFW. The removal or exclusion plan shall be implemented upon approval of the plan by the County Planning Division and CDFW.~~*

## **Erosion Control Measures**

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., straw wattles wrapped in black plastic mesh). CDFW recommends that all temporary and permanent erosion control measures be free of plastic monofilament netting.

## **ENVIRONMENTAL DATA**

CEQA requires that information developed in EIRs 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 the California Natural Diversity Database (CNDDDB). The CNDDDB online field survey form and other methods for submitting data can be found 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://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

## **FILING FEES**

CDFW anticipates that the Project will have an impact on fish and/or wildlife, and assessment of filing fees is necessary (Fish and Game Code, § 711.4; Pub. Resources

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Code, § 21089). 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.

CDFW appreciates the opportunity to provide comments on the 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 [Garrett.Allen@wildlife.ca.gov](mailto:Garrett.Allen@wildlife.ca.gov); or Ms. Melanie Day, Acting Senior Environmental Scientist (Supervisory), at [Melanie.Day@wildlife.ca.gov](mailto:Melanie.Day@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
BE74D4C93C604EA  
Gregg Erickson  
Regional Manager  
Bay Delta Region

cc: State Clearinghouse No. 2021020517