



DEPARTMENT OF FISH AND WILDLIFE

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Governor's Office of Planning & Research

July 27, 2021

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STATE CLEARINGHOUSE

Ms. Melanie Jackson
County of Napa
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Subject: Kallweit Residence Viewshed Permit No. P20-00100, Mitigated Negative Declaration, SCH No. 2021070018, Napa County

Dear Ms. Jackson:

California Department of Fish and Wildlife (CDFW) personnel reviewed the Mitigated Negative Declaration (MND) for the Kallweit Residence Viewshed Permit (Project). CDFW is submitting comments on the MND to inform the County of 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 would occur along Oakville Ridge Road, accessed via Oakville Grade, in an unincorporated area of Napa County, California. The Project parcel consists of approximately 46 acres of hilly terrain with elevation changes from approximately 750 to 1,500 feet above mean sea level. Approximately 44 acres are protected from development by a conservation easement (as described in recorded document 2018-0006881) that preserves the trees within the easement and limits the developable area of the property to 2 acres. The conservation easement is held by the Napa County Land Trust for the purposes of protecting the scenic viewshed, conservation values, and forested character of Napa Valley. Vegetation communities within the Project area include Douglas-fir (*Pseudotsuga menziesii* var. *menziesii*), California broadleaf forest and woodland, which includes the coast live oak (*Quercus agrifolia*) forest and woodland community, Pacific madrone (*Arbutus menziesii*), pine (*Pinus* sp.), and California bay laurel (*Umbellularia californica*). Additionally, the Project area supports

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chaparral habitat, dominated by hoary manzanita (*Arctostaphylos canescens* subsp. *canescens*) and interspersed with California yerba santa (*Eriodictyon californicum*), chia (*Salvia columbariae*), coyote brush (*Baccharis pilularis*), and orange bush monkeyflower (*Diplacus aurantiacus*). The Project area contains habitat that could support several special-status species, including northern spotted owl (*Strix occidentalis caurina*), CESA and federal Endangered Species Act (ESA) listed as Threatened species; pallid bat (*Antrozous pallidus*), a California Species of Special Concern (SSC); and purple martin (*Progne subis*), an SSC.

PROJECT DESCRIPTION

The Project would construct an approximately 3,000-square-foot single-family residence, an approximately 1,132-square-foot detached four-car garage, and approximately 620-square-foot residential accessory structure, a garden shed, infinity pool, hot tub, and associated infrastructure. Two water tanks approximately 5,000 gallons each, would be installed for fire prevention and irrigation, as well as for domestic use. The Project would also include construction of an access driveway and approximately two miles of improvements to Oak Ridge Road, beginning at the Oak Ridge Road access onto Oak Ridge Grade and ending at the proposed Kallweit Residence. Twenty-three trees, including two Pacific madrone, eight Douglas-fir, and 13 pine trees, would be removed by the Project.

COMMENTS AND CONCERNS

Northern Spotted Owl

The Project area contains habitat for the northern spotted owl (NSO); and multiple occurrences of the species are documented in the Spotted Owl Observations Database near the Project area, including one occurrence approximately 120 feet from where Project activities would occur. Additionally, the Project would remove 23 trees, thus modifying NSO habitat.

The Project could potentially significantly impact NSO. Mitigation Measure (MM) BIO-4 requires that a qualified biologist conduct a single survey one week prior to commencement of noise emanating and ground disturbing activities, if such activities would occur during the nesting season of NSO and generate sound that exceeds ambient nesting conditions by 20-25 decibels (dB) or when Project-generated sound, when added to existing ambient conditions, exceeds 90 dB. MM BIO-4 does not reduce impacts to a level of less-than-significant because it only requires a single survey one week prior to Project construction, which has a low probability of detecting northern spotted owls and is unlikely to identify nesting status. In addition, this does not meet the minimum level of protection and survey rigor required per the U.S. Fish and Wildlife Service's (USFWS) *Protocol for Surveying Proposed Management Activities that May Impact Northern Spotted Owls* (Protocol) (revised 2012). The Protocol requires a

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minimum of two years of surveys, six complete survey visits per year, prior to beginning projects that will modify NSO habitat. In large part, the two-visit, six-survey protocol is necessary due to the expanding presence of barred owls (*S. varia*) in California. Barred owls are non-native, larger, more aggressive owls that out-compete spotted owls for preferred nesting habitat and reduce spotted owl calling during the nesting season¹. Unfortunately, barred owls have been recorded within approximately 1.5 miles of the Project as early as 2006. Without active intervention, barred owls are likely to establish and spread, contributing to reduction of northern spotted owl populations. Due to the likely presence of barred owls in the area, the two-year, six-visit survey protocol is essential to adequately identify presence or absence of northern spotted owls. In addition, the Project will modify NSO habitat via tree removal, and therefore, CDFW recommends that MM BIO-4 be replaced with the following measure to reduce impacts to a level of less-than-significant:

To the greatest extent feasible, Project activities shall avoid the nesting season of NSO (i.e., March 15 to August 31). If any Project activities cannot be delayed until after the NSO nesting season, a qualified biologist must complete two years of surveys, six complete survey visits per year, using the USFWS Protocol, unless an alternative survey methodology is otherwise approved in writing by CDFW, prior to beginning Project activities. Survey results, including detection of barred owls, shall be submitted to the Spotted Owl Observations Database and CDFW regional staff for review and written acceptance. If NSO are detected during surveys, CDFW shall be consulted regarding appropriate avoidance and minimization measures within 72 hours of discovery. If NSO are detected and Project activities cannot avoid the nesting season, the qualified biologist, in consultation with CDFW, shall establish a suitable no-disturbance buffer around all active nests of at least 0.25 miles. If Project activities must occur within 0.25 miles of an active nest during the NSO nesting season, the Project proponent shall apply for and obtain a CESA Incidental Take Permit (ITP) prior to starting Project activities.

The Project shall mitigate for the permanent loss of northern spotted owl habitat at a minimum 3:1 mitigation to impact ratio prior to Project construction, and accepted in writing by CDFW. Habitat mitigation shall include permanent preservation of similar or higher quality habitat through a conservation easement and implementing and funding a long-term management plan in perpetuity, unless otherwise approved in writing by CDFW and the USFWS.

Issuance of a CESA 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

¹ For more information about barred owls and to review an extensive list of scientific literature, visit CDFW's website: <https://wildlife.ca.gov/Conservation/Birds/Barred-Owl-Threat>

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encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain a CESA 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, and 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings and a Statement of Overriding Consideration (SOC). The CEQA Lead Agency's SOC does not eliminate the project proponent's obligation to comply with CESA.

Roosting bats

The Project area contains habitat for the pallid bat, an SSC, which could roost within trees on the property. The Project would remove 23 trees, and therefore could potentially significantly impact special-status bats. MM BIO-1 requires that felled trees remain on the ground overnight prior to chipping.

MM BIO-1 would not reduce impacts to a level of less-than-significant because it does not adequately protect special-status bats that could be roosting in trees on the property; and that would be removed by the Project. CDFW recommends that MM BIO-1 be replaced with the following measure to reduce impacts to a level of less-than-significant:

*Prior to any tree removal, a Qualified Biologist shall conduct a habitat assessment for bats. The habitat assessment shall be conducted a minimum of 30 to 90 days prior to tree removal and shall include a visual inspection of potential roosting features (e.g., cavities, crevices in wood and bark, or exfoliating bark for colonial species, and suitable canopy for foliage-roosting species). If suitable habitat trees are found, they shall be flagged or otherwise clearly marked, and shall be removed only during seasonal periods of bat activity (i.e., from approximately March 1 through April 15 (prior to the maternity season) or September 1 through October 15 (prior to winter torpor)). Bat habitat trees shall be removed using the following two-step removal process: On day 1, in the afternoon and under the supervision of a qualified biologist, all tree limbs **not** containing suitable bat roosting habitat (e.g., cavities, crevices, deep bark fissures) shall be removed using chainsaws only. The next day, the rest of the tree shall be removed. If tree removal must occur outside of the above seasonal periods, a qualified biologist shall submit a survey methodology to CDFW for review and written approval, and upon receiving CDFW's approval, shall conduct night emergence surveys or a complete examination of roost features to establish absence of roosting bats. If bats are discovered roosting in trees during the surveys, CDFW shall be consulted with prior to beginning tree removal; and tree removal shall not begin without CDFW's written permission.*

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Nesting Birds

The Project area potentially supports purple martin, an SSC, and other migratory birds. The Project could potentially significantly impact special-status birds if Project activities are conducted during the nesting season (i.e., February 1 to August 31). MM BIO-3 requires that a qualified biologist conduct a nesting survey prior to any Project activities occurring during the nesting season; and that a no-disturbance buffer, determined by the qualified biologist, be placed around all active nest sites. While CDFW agrees with the intent of MM BIO-3, we recommend that MM BIO-3 be revised to include the following, to reduce impacts to a level of less-than-significant:

- If Project activities must occur during the nesting season, a qualified biologist shall conduct enough surveys to adequately cover the Project area within 7 days of beginning Project activities. Surveys shall include a thorough inspection for ground nesters, canopy nesters, and cavity nesters. Additionally, if there are any delays in Project work of 7 days or greater, another survey shall be conducted by a qualified biologist prior to starting/resuming Project work. If nesting birds are discovered during surveys, the qualified biologist shall determine species-specific no-disturbance buffers, and such buffers shall be clearly demarcated in the field using high visibility fencing. The qualified biologist shall conduct weekly visits to determine the status of the nests. No-disturbance buffers shall be in place until the qualified biologist determines the nest is no longer active.

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 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 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

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any questions, please contact Mr. Garrett Allen, Environmental Scientist, at Garrett.Allen@wildlife.ca.gov; or Ms. Melanie Day, Senior Environmental Scientist (Supervisory), at Melanie.Day@wildlife.ca.gov.

Since

DocuSigned by:

Stacy Sherman

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Stacy Sherman

Acting Regional Manager
Bay Delta Region

cc: State Clearinghouse # 2021070018