



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](http://www.wildlife.ca.gov)

**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



April 20, 2022

Governor's Office of Planning & Research

**Apr 21 2022**

Curtis Sawyer, Planner II  
County of Napa  
1195 Third Street Suite 210  
Napa, CA 94559  
[curtis.sawyer@countyofnapa.org](mailto:curtis.sawyer@countyofnapa.org)

## STATE CLEARINGHOUSE

Subject: Kateley Grading Permit (ENG15-00086), Mitigated Negative Declaration, SCH No. 2022030688, Napa County

Dear Mr. Sawyer:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from the County of Napa (County) for the Kateley Grading Permit (ENG15-00086) (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.

CDFW is submitting comments on the MND to inform the County, as the Lead Agency, of our concerns regarding potentially significant impacts to sensitive resources associated with the proposed project.

### CDFW ROLE

CDFW is a Trustee Agency with responsibility under CEQA for commenting on projects that could impact fish, plant, and wildlife 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 permits issued under the California Endangered Species Act (CESA), Native Plant Protection Act, Lake and Streambed Alteration (LSA) Program, or 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

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 result in take of northern spotted owl (*Strix occidentalis caurina*), a CESA listed as threatened species, as further described below.** Issuance of an ITP is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures,

Curtis Sawyer  
County of Napa  
April 20, 2022  
Page 2

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

### **Lake and Streambed Alteration**

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et seq., for project activities affecting lakes or streams and associated riparian habitat. Notification is required for any activity that may 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. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to notification requirements. **It is unclear if the Project would impact any streams and; therefore, an LSA Notification may be warranted, as further described below.** CDFW will consider the CEQA document for the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement (or ITP) until it has complied with CEQA as a Responsible Agency.

### **PROJECT DESCRIPTION SUMMARY**

**Proponent:** Randy Bryant

**Objective:** The objective of the Project is the construction of a 3,346-square-foot single family home, and a 2,400-foot-long and 14-foot-wide driveway access road. The Project includes the removal of 41 trees, of which 12 are coast live oak trees (*Quercus agrifolia*), and storage of grading spoils.

**Location:** The Project is located east of Dry Creek Road in the County of Napa, California, on Assessor Parcel Numbers (APNs) 034-030-061 and 034-370-040, at approximate coordinates 38.394756°N, -122.417650°W.

### **COMMENTS AND RECOMMENDATIONS**

CDFW offers the comments and recommendations below to assist the County of Napa in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Based

Curtis Sawyer  
County of Napa  
April 20, 2022  
Page 3

on the Project's avoidance of significant impacts on biological resources, in part through implementation of CDFW's below recommendations, CDFW concludes that an MND is appropriate for the Project.

### **Project Description and Related Impact Shortcoming**

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

**Comment 1:** Section 10, Page 2; Biological & Botanical Report, Page 1; Northern Spotted Owl Report, Page 3

**Issue:** The Project would occur on APNs 034-030-061 and 034-370-040 which have a combined area of approximately 83 acres. According to the Biological & Botanical Report and the Northern Spotted Owl Report provided by the Project, the Project area would be 4 acres or 1 acre respectively; it is unclear why there is a discrepancy in acreage between these two reports. The parcels contain multiple intermittent tributaries to Dry Creek; however, no figure was provided identifying the Project boundary, location of construction activity, equipment and material storage areas, and grading spoils storage areas. Therefore, it is unclear if stream and riparian resources would be impacted.

**Specific impacts and why they may occur and be potentially significant:** If streams are present with the Project site, the Project could result in removal or degradation of stream and associated riparian habitat, which would be a potentially significant impact. To reduce impacts to less-than-significant and comply with Fish and Game Code section 1600 et seq., CDFW recommends the following mitigation measure.

**Mitigation Measure:** Provide a current aerial image-based figure clearly showing the Project location and boundaries, including but not limited to the location of the house, driveway, access roads, and spoils storage areas, and other temporary or permanently impacted areas. Define the Project area used for the Biological & Botanical Report and the Northern Spotted Owl report and explain the discrepancy in acreage. If the Project would impact a stream, prior to Project activities the Project shall submit an LSA Notification to CDFW and comply with the LSA Agreement, if issued.

Please be advised that any project impacts to streams including riparian habitat may result in impacts to special status-species utilizing stream habitats, such as foothill yellow legged frog Northwest/North Coast clade (*Rana boylei*), western pond turtle (*Emys marmorata*), and California red-legged frog (*Rana draytonii*). In this case, the MND should analyze any impacts to such species and include mitigation measures to reduce impacts to less-than-significant. CDFW would appreciate the opportunity to provide additional comments if impacts to stream habitat may occur.

Curtis Sawyer  
County of Napa  
April 20, 2022  
Page 4

## **Environmental Setting and Related Impact Shortcoming**

***MANDATORY FINDINGS OF SIGNIFICANCE Does the Project have potential to degrade quality of environment, substantially reduce habitat of a fish or wildlife species, cause fish or wildlife population to drop below self-sustaining levels?***

**Comment 2:** Section IV a-b, Page 9; Northern Spotted Owl Report, Page 4

**Issue:** The Project is within the range and potential nesting habitat of northern spotted owl (NSO), a CESA and federally listed as threatened species. NSO critical habitat occurs approximately 0.4 miles south of the Project, the closest NSO occurrence documented in the California Natural Diversity Database (CNDDDB) is less than 0.1 miles west of the Project, and there are additional documented NSO occurrences within the Project vicinity. Although typically associated with old-growth or mature forests, NSO can utilize a wide variety of habitat types, including oak woodlands. They exhibit flexibility in their use of different forested areas for nesting, roosting, and feeding requirements. Typical habitat characteristics include a multi-storied structure and high canopy cover. The Project may cause adverse impacts to NSO, such as disturbance from elevated sound levels or human presence near nest sites.

**Specific impacts and why they may occur and be potentially significant:** If NSO are nesting near the Project site during construction, the Project could result in take of the species and a substantial reduction in its population, which would be a mandatory finding of significant impact (CEQA Guidelines, § 15065). To reduce potential impacts less-than-significant and comply with CESA, CDFW recommends the following mitigation measure.

**Mitigation Measure:** No Project activities within 0.25 miles of NSO nesting habitat shall occur from March 15 to August 31, unless NSO surveys have been completed by a qualified biologist following the USFWS *Protocol for Surveying Proposed Management Activities That May Impact Northern Spotted Owls*, dated (revised) January 9, 2012 and the survey report is accepted by CDFW in writing. If breeding northern spotted owls are detected during surveys, a 0.25-mile no-disturbance buffer zone shall be implemented around the nest. NSO surveys shall be conducted for each year Project construction occurs. No Project activities shall occur within the buffer zone until the end of breeding season, or a qualified biologist determines that the nest is no longer active, unless otherwise approved in writing by CDFW. Alternate buffer zones may be proposed by a qualified biologist 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. Alternate buffers must be approved in writing by CDFW. Survey results shall be provided to the Spotted Owl Observations Database at <https://wildlife.ca.gov/Data/CNDDDB/Spotted-Owl-Info>). If NSO are detected, CDFW and

Curtis Sawyer  
County of Napa  
April 20, 2022  
Page 5

the USFWS shall be immediately notified. If Project activities may impact NSO, the Project shall apply for and obtain an ITP from CDFW, as well as authorization from the USFWS, before starting Project activities.

***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 3:** Section IV a-b, Page 9 and Biological & Botanical Report, Page 14

**Issue:** The Project occurs within potentially suitable habitat for western red bat (*Lasiurus blossevillii*) (WRB), a California Species of Special Concern (SSC), and according to the North American Bat Monitoring Program (NABat) Database an acoustic observation of WRB was recorded approximately 3.6 miles away from the Project in 2021 (Loeb et al., 2015). The Biological & Botanical Report does not discuss surveys for WRB. This species is known to roost in tree bark, crevices and foliage, and switch day roosts as frequently as every 2 days (Hutchinson & Lacki, 2000), making it difficult to identify their absence in advance of tree removal.

**Specific impacts and why they may occur and be potentially significant:** If WRB are roosting within the Project site, the Project could result in injury or mortality of the species during tree removal operations, which would be a potentially significant impact. To reduce potential impacts to less-than-significant, CDFW recommends the following mitigation measure.

**Mitigation Measures:** 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, exfoliating bark, and suitable canopy for foliage roosting species). If suitable habitat trees are found, they shall be flagged or otherwise clearly marked and tree trimming or removal shall not proceed unless the following occurs: a) in trees with suitable habitat, presence of bats is presumed, or documented during the surveys described below, and removal using the two-step removal process detailed below occurs only during seasonal periods of bat activity, from approximately March 1 through April 15 and September 1 through October 15, or b) after a qualified biologist conducts night emergence surveys or completes visual examination of roost features that establish absence of roosting bats. Two-step tree removal shall be conducted over two consecutive days, as follows: 1) the first day (in the afternoon), under the direct supervision and instruction by a qualified biologist with experience conducting two-step tree removal, limbs and branches shall be removed by a tree cutter using chainsaws only; limbs with cavities, crevices or deep bark fissures shall be avoided; and 2) the second day the entire tree shall be removed.

Curtis Sawyer  
County of Napa  
April 20, 2022  
Page 6

## **Mitigation Measure and Related Impact Shortcoming**

***Would the Project interfere substantially with movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede use of native wildlife nursery sites?***

**Comment 4:** Section IV a-b, Page 10

**Issue:** Mitigation measure MM BIO-1 suggests conducting “operations between March 1 and August 30 to minimize potential impacts to nesting birds.” As most nesting activity occurs in that date range, it is likely that conducting operations outside of the date range was intended. In addition, the mitigation measure states pre-construction surveys will be conducted 14 days to 72 hours prior to construction activities. The recommendations in the Biological & Botanical suggests pre-construction surveys should take place 7 days prior to initiation of work. The survey should be conducted within 7 days of starting Project activities so that nesting birds are less likely to begin nesting on the Project site between the time of the survey and the start of Project work, which may cause Project delays. To reduce potential impacts to less-than-significant, CDFW recommends the following revisions to the mitigation measure.

**Mitigation Measure:** Revise mitigation measure MM BIO-1 to state that: 1) Project construction shall be conducted prior to March 1 or after August 30 to minimize potential impacts to nesting birds, or nesting bird surveys shall be conducted., and 2) pre-construction surveys for active migratory birds and raptor nests shall be conducted no more than 7 days to 72 hours prior to construction. If there is a lapse in construction of 7 days or more during the nesting season, a qualified biologist shall conduct an additional survey prior to resuming work.

## **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 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

Curtis Sawyer  
County of Napa  
April 20, 2022  
Page 7

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. (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 MND to assist the County of Napa in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Ekaterina Morozova, Environmental Scientist at (916) 594-5209 or [Ekaterina.Morozova@wildlife.ca.gov](mailto:Ekaterina.Morozova@wildlife.ca.gov); or Melanie Day, Senior Environmental Scientist (Supervisory), at (707) 210-4415 or [Melanie.Day@wildlife.ca.gov](mailto:Melanie.Day@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
Erin Chappell  
Regional Manager  
Bay Delta Region

ec: Office of Planning and Research, State Clearinghouse, Sacramento

## REFERENCES

- Loeb, S.C.; Rodhouse, T.J.; Ellison, L.E.; Lausen, C.L. et al. (2015). *A plan for the North American Bat Monitoring Program (NABat)*. Gen. Tech. Rep. SRS-208. Asheville, NC: U.S. Department of Agriculture Forest Service, Southern Research Station. p. 100
- Hutchinson, J. T., & Lacki, M. J. (2000). *Selection of Day Roosts by Red Bats in Mixed Mesophytic Forests*. The Journal of Wildlife Management Vol. 64, Issue 1.