



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



October 28, 2022

Pamela Arifian, Planner III  
County of Napa  
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Napa, CA 94559  
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Subject: Veeder Ridge LLC Vineyard Agricultural Erosion Control Plan  
#P21-00131-ECPA, Mitigated Negative Declaration, SCH No. 2022090548,  
Napa County

Dear Ms. Arifian:

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 Veeder Ridge LLC Vineyard Agricultural Erosion Control Plan #P21-00131-ECPA (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

CDFW is submitting comments on the MND to inform the County, as the Lead Agency, of potentially significant impacts to biological resources associated with the Project.

## CDFW ROLE

CDFW is a **Trustee Agency** with responsibility under CEQA pursuant to CEQA Guidelines section 15386 for commenting on projects that could impact fish, plant, and wildlife resources. 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), the 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.

## PROJECT DESCRIPTION SUMMARY

**Proponent:** Veeder Ridge LLC

**Objective:** Develop approximately 3.1 acres of vineyard, including approximately 2.7 net planted acres in two vineyard blocks located on a 45.5-acre property. The Project involves the clearing of vegetation, earthmoving, and installation and maintenance of

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<sup>1</sup> CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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erosion control measures. No trees would be removed by the Project, but approximately 0.06 acres of tree canopy would be removed from trimming.

**Location:** The Project is located at 3665 Redwood Road, Napa, CA, 94558, on Assessor's Parcel Number 035-080-027.

**Timeframe:** The Project is proposed for implementation April 1 and development would take place over two years in two phases.

## **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 impact 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, 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 will require an LSA Notification, pursuant to Fish and Game Code sections 1600 et. seq. for Project activities affecting lakes or streams and associated riparian habitat. Notification is required for **any activity that will 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. **The Project would impact an ephemeral tributary and Redwood Creek through the diversion of surface water and therefore an LSA Notification would be required, as further described below.** Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to notification requirements. CDFW, as a Responsible Agency under CEQA, will consider

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the CEQA document for the Project. CDFW may not execute the final LSA Agreement until it has complied with CEQA as a Responsible Agency.

### **Fully Protected Species**

Fully Protected species, such as white-tailed kite (*Elanus leucurus*), may not be taken or possessed at any time (Fish & G. Code, §§ 3511, 4700, 5050, & 5515) except for collecting these species for necessary scientific research, relocation of the bird species for the protection of livestock, or if they are a covered species whose conservation and management is provided for in a Natural Community Conservation Plan.

### **COMMENTS AND RECOMMENDATIONS**

CDFW offers the comments and recommendations below to assist the County in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document. Based on the Project's avoidance of significant impacts on biological resources with implementation of mitigation measures, including the below recommendations and those in the Draft Mitigation, Monitoring and Reporting Program (Attachment), CDFW concludes that a Mitigated Negative Declaration is appropriate for the Project.

- I. Mandatory Findings of Significance: Does the Project have the potential to substantially reduce the number or restrict the range of an endangered, rare, or threatened species?**

### **Environmental Setting and Mitigation Measures**

#### **Comment 1: Northern Spotted Owl**

**Issue:** The Biological Resources Reconnaissance Survey Report (Exhibit B of the MND) states northern spotted owl (NSO), which is state and federally listed as threatened, is not present and has no potential to occur at the Project site because the "Study Area does not contain conifer or mixed broadleaf-conifer forest nor is any present in the immediate vicinity" (page C-29). However, there are California Natural Diversity Database (CNDDDB) documented **NSO occurrences less than 0.5 miles from the Project site, with an activity center approximately 0.8 miles away, within the same habitat type identified within and adjacent to the Project site.** Although typically associated with old-growth or mature forests, NSO can utilize a wide variety of forested habitat types including mixed hardwood forest. 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 (Press et al. 2010).

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Given the potential for NSO to nest within the Project site and a quarter mile radius, Mitigation Measure (MM) BR-2 (Pages 14-15 of the MND) would likely be insufficient to detect NSO presence.

**Specific impacts and why they may occur and be significant:** If active NSO nests are not detected by the proposed surveys in MM BR-2, NSO could be disturbed by Project activities resulting in nest abandonment and loss of eggs or reduced health and vigor and loss of young, thereby substantially reducing the number of the species. NSO is CESA listed as a threatened species and therefore is considered to be a threatened species pursuant to CEQA Guidelines section 15380. Therefore, if an active NSO nest is disturbed by the Project, the Project may result in a substantial reduction in the number of a threatened species, which is considered a Mandatory Finding of Significance pursuant to CEQA Guidelines section 15065, subdivision (a)(1).

**Recommended Mitigation Measure:** For an adequate environmental setting and to reduce impacts to NSO to less-than-significant, CDFW recommends that the MND include an analysis of potential impacts to NSO and add the following mitigation measure.

**MM BR-3:** A qualified biologist shall provide an assessment of potential NSO nesting habitat within the Project area and a 0.25-mile radius and obtain CDFW's written acceptance of the assessment. Alternatively, if the assessment is not completed, or if it concludes that NSO nesting habitat is present, then no Project activities within 0.25 miles of potential NSO nesting habitat shall occur between March 15 and August 31 unless a qualified biologist approved in writing by CDFW conducts NSO surveys following the U.S. Fish and Wildlife Service (USFWS) *Protocol for Surveying Proposed Management Activities That May Impact Northern Spotted Owls*, dated (revised) January 9, 2012. Surveys shall be conducted in accordance with Section 9 of the survey protocol, *Surveys for Disturbance-Only Projects*. If breeding NSO are detected during surveys, a 0.25 mile no-disturbance buffer zone shall be implemented around the nest until the end of the breeding season, or a qualified biologist determines that the nest is no longer active, unless otherwise approved in writing by CDFW. The Project shall obtain CDFW's written acceptance of the qualified biologist and survey report prior to Project construction occurring between March 15 and August 31 each year.

Alternate buffer zones may be proposed to CDFW 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. Alternative buffers must be approved in writing by CDFW.

If take of NSO cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP, and also consult with USFWS pursuant to the federal Endangered Species Act.

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**II. 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?**

**Environmental Setting**

**COMMENT 2: American Badger**

**Issue:** The Project site is within or adjacent to grassland habitat and woodland habitat that may be suitable for American badger (*Taxidea taxus*). While the Project did conduct targeted surveys during 2020, badgers can dig burrows in a single day; therefore, the species may occupy the Project site or adjacent habitat prior to Project construction (Ministry of Environment Ecosystems 2007 as cited in Brehme et al. 2015). Additionally, the California Wildlife Habitat Relationships Predicted Habitat Suitability documents medium and high-quality suitability habitat within and adjacent to the Project site.

**Specific impacts and why they may occur and be significant:** American badger is a California Species of Special Concern (SSC). An SSC is a species, subspecies, or distinct population of an animal native to California that currently satisfies one or more of the following (not necessarily mutually exclusive) criteria: is extirpated from the State or, in the case of birds, is extirpated in its primary season or breeding role; is listed as Federally-, but not State-, threatened or endangered; meets the State definition of threatened or endangered but has not formally been listed; is experiencing, or formerly experienced, serious (noncyclical) population declines or range retractions (not reversed) that, if continued or resumed, could qualify it for State threatened or endangered status; has naturally small populations exhibiting high susceptibility to risk from any factor(s), that if realized, could lead to declines that would qualify it for State threatened or endangered status. The Project may result in injury or mortality to adult or young badgers, or burrow abandonment. Therefore, if American badgers are present on or adjacent to the Project area, Project impacts to American badger would be potentially significant.

**Recommended Mitigation Measure:** For an adequate environmental setting and to reduce impacts to American Badger to less-than-significant, CDFW recommends that the MND include the following mitigation measure.

**MM BR-4.** A qualified biologist shall survey for American badger where suitable habitat is present within the Project site and adjacent habitat within a minimum of 50 feet. If any occupied burrows are discovered the Project shall implement an appropriate buffer from the burrow, as determined by a qualified biologist and approved in writing by CDFW. If the Project cannot avoid impacts to the occupied burrow the Project shall consult with CDFW regarding next steps before proceeding and implement CDFW recommendations such as preparing and implementing an American badger relocation plan.

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**III. 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 USFWS?**

**Project Description**

**COMMENT 3: Water Diversion from a Stream**

**Issue:** While the MND states the Project property has a Water Right License from the State Water Resources Control Board to divert surface water from an ephemeral tributary and Redwood Creek, the property does not appear to have an LSA Agreement from CDFW for the diversion. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that substantially diverts or obstructs the natural flow of any river, stream, or lake.

**Specific impacts and why they may occur and be significant:** Water diversions can impact flow regimes, decreasing the frequency of high flows. Prolonged low flows can cause streams to become degraded and cause channels to become disconnected from floodplains (Poff et al. 1997). This process decreases available habitat for aquatic species including fish that utilize floodplains for nursery grounds. Prolonged low flows can also increase mortality for species that rely on specific flow regimes, such as endangered salmonids (Moyle 2002). Reduced flows can also lead to stagnant water conditions, a situation that allows the growth of harmful cyanobacteria resulting in mortality of aquatic animals (Power et al. 2015).

Amphibians can also be sensitive to decreased flows; plethodontid salamanders are intolerant to desiccation and thus vulnerable to headwater stream diversions (Ray 1958). Kupferberg et al. (2012) reported that low flows were strongly correlated with early life stage mortality and decreased adult densities of foothill yellow-legged frogs (*Rana boylei*) and California red-legged frogs (*Rana draytonii*), both SSC. California red-legged frog is also federally listed as threatened. Plant cover and diversity can also be decreased by reduced flows (Busch and Smith 1995, Stromberg et al. 1996), likely as a result of physiological stress leading to reduced growth rates and recruitment, morphological changes, and mortality (Reily and Johnson 1982, Perkins et al. 1984, Fenner et al. 1985, Kondolf and Curry 1986, Rood and Mahoney 1990).

Water diversions can also alter water properties including temperature, pH, dissolved oxygen levels, and nutrient contents (O'Hare et al. 2013). As flow rates are reduced by diversion, water temperature increases, which, for salmonids, can reduce growth rates, increase predation risk, and increase susceptibility to disease (Moore and Townsend 1998, Marine and Cech, Jr. 2004). When water temperatures increase they hold less dissolved oxygen and increase in pH; reduction in dissolved oxygen can decrease

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survival of juvenile salmonids (Selong et al. 2001, Martins et al. 2011). Diversions can also be barriers to fish passage if they are not properly designed.

**Recommended Mitigation Measure:** To reduce impacts to stream and riparian habitat and associated species to less-than-significant and to comply with Fish and Game Code section 1600 et seq., CDFW recommends that the MND include the following mitigation measure.

MM BR-5. Prior to commencement of construction, the Project shall notify CDFW for the active diversion and impoundment of surface water from streams and comply with the LSA Agreement, if issued. The notification should be submitted online via the Environmental Permit Information Management System (EPIMS) at <https://wildlife.ca.gov/Conservation/Environmental-Review/EPIMS>.

#### **IV. Editorial Suggestions**

**COMMENT 4:** CDFW recommends updating the “Description of Project” on page 1 of the MND to accurately state the habitat type that will be impacted within the development area. Currently, it states “The project would result in removal of approximately 3.1 acres of non-native grassland.” However, Table 4 on page 12 of the MND states that 3.1 acres in the development area are categorized as “Developed/Disturbed Areas” and that zero acres of non-native annual grassland is in the development area, which seems to accurately reflect what is shown in Figures A-5 and A-6 of the Biological Resources Reconnaissance Survey (Exhibit B of the MND).

#### **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 the 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 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.

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(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 in identifying and mitigating Project impacts on biological resources. Questions regarding this letter or further coordination should be directed to Alicia Bird, Environmental Scientist at (707) 980-5154 or [alicia.bird@wildlife.ca.gov](mailto:alicia.bird@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*  
Erin Chappell  
Regional Manager  
Bay Delta Region

Attachment: Draft Mitigation Monitoring and Reporting Program

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2022090548)

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## Attachment 1

### Draft Mitigation Monitoring and Reporting Program (MMRP)

CDFW provides the following language to be incorporated into the MMRP for the Project.

| Biological Resources (BR) |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                           |                   |
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| Mitigation Measure (MM)   | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Timing                                                                    | Responsible Party |
| MM BR-3                   | <p><u>MM BR-3: Northern Spotted Owl Avoidance.</u> A qualified biologist shall provide an assessment of potential NSO nesting habitat within the Project area and a 0.25-mile radius and obtain CDFW's written acceptance of the assessment. Alternatively, if the assessment is not completed, or if it concludes that NSO nesting habitat is present, then no Project activities within 0.25 miles of potential NSO nesting habitat shall occur between March 15 and August 31 unless a qualified biologist approved in writing by CDFW conducts NSO surveys following the U.S. Fish and Wildlife Service (USFWS) Protocol for Surveying Proposed Management Activities That May Impact Northern Spotted Owls, dated (revised) January 9, 2012. Surveys shall be conducted in accordance with Section 9 of the survey protocol, Surveys for Disturbance-Only Projects. If breeding NSO are detected during surveys, a 0.25 mile no-disturbance buffer zone shall be implemented around the nest until the end of the breeding season, or a qualified biologist determines that the nest is no longer active, unless otherwise approved in writing by CDFW. The Project shall obtain CDFW's written acceptance of the qualified biologist and survey report prior to Project construction occurring between March 15 and August 31 each year.</p> <p>Alternate buffer zones may be proposed to CDFW 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. Alternative buffers must be approved in writing by CDFW.</p> | Prior to Ground Disturbance and continuing over the course of the Project | Project Applicant |

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|                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                           |                   |
|----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------|-------------------|
|                | If take of NSO cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP, and also consult with USFWS pursuant to the federal Endangered Species Act.                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                           |                   |
| <b>MM BR-4</b> | <u>MM BR-4: American Badger Protection.</u> A qualified biologist shall survey for American badger where suitable habitat is present within the Project site and adjacent habitat within a minimum of 50 feet. If any occupied burrows are discovered the Project shall implement an appropriate buffer from the burrow, as determined by a qualified biologist and approved in writing by CDFW. If the Project cannot avoid impacts to the occupied burrow the Project shall consult with CDFW regarding next steps before proceeding and implement CDFW recommendations such as preparing and implementing an American badger relocation plan. | Prior to Ground Disturbance                                               | Project Applicant |
| <b>MM BR-5</b> | <u>MM BR-5: Streambed Alteration Agreement for Diversion.</u> Prior to commencement of construction, the Project shall notify CDFW for the active diversion and impoundment of surface water from streams and comply with the Streambed Alteration Agreement, if issued. The notification should be submitted online via the Environmental Permit Information Management System (EPIMS) at <a href="https://wildlife.ca.gov/Conservation/Environmental-Review/EPIMS">https://wildlife.ca.gov/Conservation/Environmental-Review/EPIMS</a> .                                                                                                       | Prior to Ground Disturbance and continuing over the course of the Project | Project Applicant |