



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



July 11, 2024

Daniel Zador, Planner II
Napa County
1195 Third Street
Napa, CA 94559
Daniel.Zador@countyofnapa.org

Subject: Wallis Family Estate Vineyard, Initial Study/ Negative Declaration,
SCH No. 2024061250, Napa County

Dear Mr. Zador:

The California Department of Fish and Wildlife (CDFW) received an Initial Study/Negative Declaration (IS/ND) from Napa County (County) for the Wallis Family Estate Vineyard (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.

CDFW is submitting comments on the IS/ND to inform the County, as the Lead Agency, of potentially significant impacts to biological resources associated with the Project. According to the Office of Planning and Research State Clearing House (SCH) website, comments for this Project are due July 17, 2024, providing a review period of 20 days. This is shorter than the 30-day review period required for trustee agency review of CEQA projects pursuant to California Code of Regulations, title 14, sections 15073 et seq. and 15105, subdivision (b). **CDFW requests that the review period be modified to 30 days as required by CEQA.**

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) Agreement, 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: Edward and Marilyn Wallis

Objective: The Project involves the clearing of vegetation, earthmoving and land contouring, and installation and maintenance of erosion control measures associated

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with the development of approximately 2.9 gross acres with approximately 2.5 net planted acres in three proposed vineyard blocks. Slopes within the proposed development area range from 4 percent to 19 percent, with 0.2 acre on slopes greater than 30 percent. There would be no transport of spoils off-site. Rock blasting, if required, would be performed in isolated areas of the proposed development area and would occur between the hours of 10 a.m. and 2 p.m. Rock removed during vineyard development would be used within the proposed development area. Short-term stockpiles of rock and dirt, if needed, would be located within the proposed development area; no long-term stockpiles would occur. No trees would be removed as part of the Project.

Location: The Project is located at 1670 Diamond Mountain Road, Calistoga, CA 94515; APN 020-450-020; and at approximately 38.56392°N and -122.57919°W.

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*, NSO), CESA listed as threatened species.** 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.

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. Based on the Project's avoidance of significant impacts on biological resources with implementation of mitigation measures, including those CDFW recommends below and

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included in Attachment 1 Draft Mitigation Monitoring and Reporting Program, CDFW concludes that a **Mitigated Negative Declaration** is appropriate for the Project.

I. Environmental Setting Related Impact Shortcoming

Mandatory Findings of Significance: Does the project have the potential to substantially reduce the number or restrict the range of a rare or endangered plant or animal?

COMMENT 1: Northern Spotted Owl

Issue: The IS/ND states “The proposed project would not have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species; no impact would occur.” 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 0.75 miles away within the same habitat type adjacent to the Project site; containing Coast redwood, Douglas-fir, and California bay according to the 2016 Napa County Vegetation Map. 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). The habitat surrounding the Project site appears suitable for NSO and was not considered in the potential impacts resulting from the Project.

Specific impacts and why they may occur and be significant: If active NSO nests are not detected within 0.25 miles, the distance at which nesting NSO could be disturbed, nesting NSO could be impacted 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 comply with CESA and reduce impacts to NSO to less-than-significant, CDFW recommends that the Initial Study include an analysis of potential impacts to NSO and add the following mitigation measure.

MM BIO-1 Northern Spotted Owl Avoidance. 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

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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 July 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, CDFW shall be immediately notified and 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 July 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 (ESA).

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 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

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required in order for the underlying project approval to be operative, vested, and final. (See 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 IS/ND to assist the County in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Nicholas Magnuson, Environmental Scientist, at (707) 815-4166 or Nicholas.Magnuson@wildlife.ca.gov; or Melanie Day, Senior Environmental Scientist (Supervisory), at (707) 210-4415 or Melanie.Day@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Erin Chappell
B77E9A6211EF486
Erin Chappell
Regional Manager
Bay Delta Region

Attachment 1: Draft Mitigation Monitoring and Reporting Program

ec: Office of Planning and Research, State Clearinghouse No. 2024061250

REFERENCES

Press, D., D. Adams, H. Jensen, K. Fehring, W. Merkle, M. Koenen, and L. A. Starcevich. 2010. San Francisco Bay Area Network northern spotted owl monitoring protocol: Version 6.4. Natural Resource Report NPS/SFAN/NRR—2010/245. National Park Service, Fort Collins, Colorado.

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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 (BIO)			
Mitigation Measure (MM)	Description	Timing	Responsible Party
BIO-1	<p><i>MM BIO-1 Northern Spotted Owl Avoidance.</i> 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 July 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, CDFW shall be immediately notified and 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</p>	<p>Prior to Ground Disturbance</p>	<p>Project Applicant</p>

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	<p>CDFW's written acceptance of the qualified biologist and survey report prior to Project construction occurring between March 15 and July 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> <p>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 ESA.</p>		
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