



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



April 28, 2025

Matt Ringel, Planner III
Napa County
1195 Third Street
Napa, CA 94559
Matthew.Ringel@countyofnapa.org

Subject: Harcross Winery and Vineyard, Use Permit #P23-00105-UP, Initial Study/Mitigated Negative Declaration, SCH No. 2025040340, Napa County

Dear Mr. Ringel:

The California Department of Fish and Wildlife (CDFW) received an Initial Study/Mitigated Negative Declaration (IS/MND) from Napa County (County) for the Harcross Winery and Vineyard, Use Permit #P23-00105-UP (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.

CDFW is submitting comments on the IS/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: Basil & Robin Enan (Property Owners)

Objective: The Project involves the construction of a new winery with an annual production capacity of 5,000 gallons per year and will include the following:

- Construction of a new 8,496-square foot (sq. ft.) winery facility;
- Removal of 0.5 acres of woodland habitat, and the planting and preservation of 1.5 acres of woodland canopy on the Project parcel;

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- Excavation of approximately 5,780 cubic yards of spoils associated with the construction of structural pads;
- Driveway expansion and construction to meet commercial standards, landscaping, and other improvements associated with wineries;
- Earthmoving and grading activities that include vegetation and tree removal, soil ripping (maximum depth of 48 inches), grading of approximately 500 cubic yards of cut and fill for land contouring, rock removal, disking, and the development or erosion control measures; and
- Temporary erosion control measures that include cover crop, straw wattles, erosion control blankets, and application of straw mulch.

Location: The Project is located at 6476 Dry Creek Road, Napa, CA 94558; Assessor's Parcel Number 027-530-006-000; at approximately 38.41015°N, -122.45941°W; Napa County.

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*), State listed as threatened, 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.

Raptors and Other Nesting Birds

CDFW has jurisdiction over actions that may result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections

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protecting birds, their eggs, and nests include sections 3503 (regarding unlawful take, possession or needless destruction of the nests or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird). Migratory birds are also protected under the federal Migratory Bird Treaty Act.

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 included in **Attachment 1** Draft Mitigation Monitoring and Reporting Program, CDFW concludes that an MND is appropriate for the Project.

MANDATORY FINDING OF SIGNIFICANCE. Does the Project have potential to substantially reduce the number or restrict the range of an endangered, rare, or threatened species?

And,

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

Mitigation Measure Related Impact Shortcoming

COMMENT 1: Northern Spotted Owl

Issue: The IS/MND concludes that nesting northern spotted owl habitat occurs within 0.25 miles of the Project area, and Part A of Mitigation Measure BIO-1 includes a preconstruction survey for nesting northern spotted owl in accordance with *U.S. Fish and Wildlife Service (USFWS) Protocol for Surveying Proposed Management Activities That May Impact Northern Spotted Owls*, dated (revised) January 9, 2012, in accordance with Section 9 (*Surveys for Disturbance-Only Projects*). However, Section B of BIO-1 states that "The preconstruction survey shall be conducted no earlier than 14 days prior to when vegetation removal and ground disturbing activities are to commence..." This is inconsistent with Section 9 of the protocol survey above, which states that "Therefore, a one-year six visit survey can apply to smoke or noise-disturbance only actions" (Section 9, page 17). This includes six visits which should be spaced at least seven days apart (page 13), generally should be spaced evenly throughout the nesting season, and should have at least three visits prior to June 30 (also page 13). Therefore, implementing Part B

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of Mitigation Measure BIO-1 with surveys being done no earlier than 14 days in advance of Project activities would not satisfy the requirements of Section 9 of the above protocol and may not detect nesting northern spotted owl.

Specific impacts and why they may occur and be significant: Incomplete northern spotted owl survey methods could cause false negative survey results, resulting in inadvertent Project audio or visual disturbances to nesting northern spotted owl, nest abandonment, and loss of eggs; or reduced health and vigor and loss of young, thereby substantially reducing the number of the species. Northern spotted owl is CESA listed as a threatened species and is also listed under the federal Endangered Species Act (ESA), 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: To reduce impacts to northern spotted owl to less-than-significant and comply with Fish and Game Code section 3500 et seq. and CESA; CDFW recommends revising Mitigation Measure BIO-1 with following deletions in strikethrough and additions in **bold** to reduce impacts to less-than-significant.

- A) ~~Prior to the commencement of vegetation removal and earth-moving activities associated with the project~~ **Prior to the commencement of Project construction activities occurring between March 15 and July 31 each year,** the owner/permittee shall conduct a pre-construction survey for Northern Spotted Owls (**NSO**). The survey shall be prepared by a qualified biologist (defined as knowledgeable and experienced in the biology and natural history of local avian resources with the potential to occur in the vicinity of the Project site) within suitable habitat located within 0.25-miles of Project activities. The preconstruction survey shall follow 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, in accordance with Section 9 (Surveys for Disturbance-Only Projects) of the survey protocol.
- B) The preconstruction survey shall **include a one-year, six visit survey that covers all NSO habitat within 0.25 mile from the Project area, unless otherwise approved by CDFW in writing,** ~~be conducted no earlier than 14 days prior to when vegetation removal and ground disturbing activities are to commence~~ and shall be provided to the Napa County Planning, Building, and Environmental Services (PBES) Department's Planning Division and the CDFW for review prior to commencement of work. Any recommendations provided by CDFW, including but not limited to establishment of no disturbance buffers, seasonal restrictions on heavy equipment use and operations, or subsequent surveys shall be implemented in accordance with CDFW recommendations.

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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 shall also consult with USFWS pursuant to the federal ESA.

Environmental Setting Related Impact Shortcoming

COMMENT 2: Roosting Bats

Issue: The IS/MND does not address potential impacts to roosting bats including pallid bat (*Antrozous pallidus*), California Species of Special Concern (SSC), resulting from the removal of 0.5 acres of woodland including 20 oak trees, three manzanita/madrone, one fir, one bay, and one pine (IS/MND page 7).

Specific impacts and why they may occur and be significant: If potential impacts to special-status bats are not assessed and mitigated, Project activities could result in substantial reduction of the number of an SSC (for more information about SSC, see: <https://wildlife.ca.gov/Conservation/SSC>).

Recommended Mitigation Measure: To reduce impacts to special-status bats to less-than-significant, CDFW recommends that the MND incorporates the following mitigation measure.

Bat Tree Habitat Assessment and Surveys. Prior to any tree trimming or removal, a qualified biologist shall conduct a habitat assessment for bats, unless otherwise approved in writing by CDFW. The habitat assessment shall be conducted a minimum of 30 to 90 days prior to tree trimming or removal and shall include a visual inspection of potential roosting features of trees to be removed (e.g., cavities, crevices in wood and bark, exfoliating bark for colonial species, suitable canopy for foliage roosting species). If suitable habitat trees are found, they shall be flagged or otherwise clearly marked, CDFW shall be notified immediately, and tree trimming or removal shall not proceed without approval in writing from CDFW. If the presence of bats is presumed or documented, trees may be removed only: a) using the two-step removal process detailed below 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, under prior written approval of the proposed survey methods by CDFW, 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.

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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 California Natural Diversity Database (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. (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/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 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:

 Stacy Sherman for Erin Chappell

692D021D81CA4F7
Erin Chappell

Regional Manager
Bay Delta Region

Attachment 1: Draft Mitigation Monitoring and Reporting Program

ec: Office of Planning and Research, State Clearinghouse No. 2025040340

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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
MM BIO-1	<p>Mitigation measure BIO-1: Minimize potential indirect impacts to Northern Spotted Owl</p> <p>Prior to the commencement of vegetation removal and earth-moving activities associated with the project Prior to the commencement of Project construction activities occurring between March 15 and July 31 each year, the owner/permittee shall conduct a pre-construction survey for Northern Spotted Owls (NSO). The survey shall be prepared by a qualified biologist (defined as knowledgeable and experienced in the biology and natural history of local avian resources with the potential to occur in the vicinity of the Project site) within suitable habitat located within 0.25-miles of Project activities. The preconstruction survey shall follow the U.S. Fish and Wildlife Service (USFWS) <i>Protocol for Surveying Proposed Management Activities That May Impact Northern Spotted Owls</i>, dated (revised) January 9, 2012, in accordance with Section 9 (Surveys for Disturbance-Only Projects) of the survey protocol.</p> <p>The preconstruction survey shall include a one-year, six visit survey that covers all NSO habitat within 0.25 mile from the Project area, unless otherwise approved by CDFW in writing, be conducted no earlier than 14 days prior to when vegetation removal and ground-disturbing activities are to commence and shall be provided to the Napa County Planning, Building, and Environmental Services (PBES) Department's Planning Division and the CDFW for review prior to commencement of work. Any recommendations provided by CDFW, including but not limited to establishment of no disturbance buffers, seasonal restrictions on heavy equipment use and operations, or subsequent surveys shall be implemented in accordance with CDFW recommendations.</p>	Prior to Ground Disturbance	Project Applicant

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	<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>		
<p>MM BIO-3</p>	<p><u>Bat Tree Habitat Assessment and Surveys.</u> Prior to any tree trimming or removal, a qualified biologist shall conduct a habitat assessment for bats, unless otherwise approved in writing by CDFW. The habitat assessment shall be conducted a minimum of 30 to 90 days prior to tree trimming or removal and shall include a visual inspection of potential roosting features of trees to be removed (e.g., cavities, crevices in wood and bark, exfoliating bark for colonial species, suitable canopy for foliage roosting species). If suitable habitat trees are found, they shall be flagged or otherwise clearly marked, CDFW shall be notified immediately, and tree trimming or removal shall not proceed without approval in writing from CDFW. If the presence of bats is presumed or documented, trees may be removed only: a) using the two-step removal process detailed below 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, under prior written approval of the proposed survey methods by CDFW, 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.</p>	<p>Prior to Ground Disturbance</p>	<p>Project Applicant</p>