



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**



Governor's Office of Planning & Research

**Sep 25 2023**

September 22, 2023

## STATE CLEARINGHOUSE

Pamela Arifian, Planner III  
 Napa County  
 1195 Third Street Second Floor  
 Napa, CA 94559  
[Pamela.Arifian@countyofnapa.org](mailto:Pamela.Arifian@countyofnapa.org)

Subject: Winrod Vineyard Conversion Agricultural Erosion Control Plan #P20-00247-ECPA, Mitigated Negative Declaration, SCH No. 2023080485, Napa County

Dear Ms. Arifian,

The California Department of Fish and Wildlife (CDFW) received a Mitigated Negative Declaration (MND) from Napa County (County) for the Winrod Vineyard Conversion Agricultural Erosion Control Plan # P20-00247-ECPA (Project) pursuant to 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 would like to thank Napa County for including in the MND Mitigation Measure BR-5 limiting impacts to Madrone Forest, a CDFW-designated Sensitive Natural Community, and requiring preservation of Madrone Forest at a 3:1 preservation to impact ratio under a perpetual deed restriction or conservation easement or other means of permanent protection.

### 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:** Winrod Family Trust, represented by Michael A. Winrod

<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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**Objective:** The Project involves clearing of vegetation, earthmoving, and installation and maintenance of erosion control measures associated with the development of approximately 16.5 gross acres of vineyard with approximately 13.0 net planted acres in three vineyard blocks located on a 104.8-acre property (i.e., Project site). This includes approximately 6.0 gross acres (4.6 net acres) of existing vineyard that was installed without benefit of an approved Erosion Control Plan (Blocks 1 and 2). Portions of Block 2 would be removed from the stream setback and the area revegetated with a native seed blend. Proposed Block 1 would include 2.0 gross acres (1.4 net acres), proposed Block 2 would include 6.3 gross acres (5 net acres), and proposed Block 3 would include 8.2 gross acres (6.6 net acres) of new vineyard. An estimated 692 trees with a diameter-at-breast-height (dbh) greater than six (6) inches are proposed for removal with development of the Project, including blue oak (*Quercus douglasii*), California black oak (*Quercus kelloggii*), coast live oak (*Quercus agrifolia*), Oregon white oak (*Quercus garryanna* var. *garryanna*), and Pacific madrone (*Arbutus menziesii*), resulting in removal of a total of approximately 8.83 acres, which includes approximately 6.07 acres of mixed oak woodland, 2.76 acres of blue oak woodland, and 1.05 acres of Pacific madrone forest. Rock removed during the clearing and development of the land would be used as part of the erosion control measures, including the graveled vineyard avenue and rock outfalls. There would be no transport of spoils off-site. The vineyard would be irrigated with approximately 6.2 acre-feet per year (AF/year) of groundwater. New wildlife exclusion fencing would connect with existing fencing in the Project site to enclose the proposed vineyard blocks. The Project includes relocation of the existing driveway and revegetation of approximately 0.46-acre within the stream setback using a native seed blend.

**Location:** The Project area is at 3465 State Highway 128, Calistoga, CA 94515; approximately Latitude: 38.592574°, Longitude: -122.631332°

## 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 (NSO) (*Strix occidentalis caurina*), 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.

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Resources Code, §§ 21001, subd. I & 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 in **Attachment 1**, CDFW concludes that an MND is appropriate for the Project.

**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?**

### **Comment 1: Northern Spotted Owl – Environmental Setting Shortcoming**

**Issue:** The MND discusses that the severely burned forest in the Project site is now an open xeric habitat not suitable for NSO. However, NSO often have a strong site fidelity and will return to a previous nesting site multiple seasons even after a burn and recent Google Earth aerial imagery dated May 13, 2023, appears to show intact forest within the Project site and vicinity. Additionally, it was determined that the nearest recorded occurrence according to the California Natural Diversity Database (CNDBB) is located 1.75 miles to the southwest of the site. According to the parcel mapped in Figure 1 from the Biological Assessment report, the Project site is within a habitat patch large enough to support a breeding pair according to the California Bay Area Linkage Network connectivity modeling for NSO. It is also mapped as mostly medium suitability NSO habitat according to the California Wildlife Habitat Relationships model. Therefore, it appears that nesting NSO could be present at or within 0.25 miles of the Project site, which is the distance at which nesting NSO may be impacted.

**Specific impacts and why they may occur and be significant:** If suitable NSO nesting habitat occurs within a 0.25-mile radius of the Project site and active NSO nests are present but not detected because surveys did not occur, the Project may result in audio or visual disturbances to nesting NSO, which may cause 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 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

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considered a Mandatory Finding of Significance pursuant to CEQA Guidelines section 15065, subdivision (a)(1).

**Recommended Mitigation Measure:** To reduce impacts to NSO to less-than-significant and comply with CESA, CDFW recommends including the following mitigation measure.

MM BR-7. Northern Spotted Owl Habitat Assessment and Surveys: A qualified biologist shall provide an assessment of potential NSO nesting habitat within the Project site 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 shall occur between March 15 and July 31 unless a qualified biologist conducts NSO surveys within a 0.25-mile radius around the Project site 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 and no nesting NSO are detected. Surveys shall be conducted in accordance with Section 9 of the survey protocol, Surveys for Disturbance-Only Projects. If nesting 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 July 31 for each year, unless otherwise approved in writing by CDFW.

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

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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. (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 Nikolas Storm, Environmental Scientist, at [Nikolas.Storm@wildlife.ca.gov](mailto:Nikolas.Storm@wildlife.ca.gov) or (707) 980-5172; 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  
B77E9A6211EF486  
Regional Manager  
Bay Delta Region

## **Attachment 1: Draft Mitigation Monitoring and Reporting Program**

cc: Office of Planning and Research, State Clearinghouse (SCH No. 2023080485)

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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 BR-7	<p>Northern Spotted Owl Habitat Assessment and Surveys. A qualified biologist shall provide an assessment of potential NSO nesting habitat within the Project site 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 shall occur between March 15 and July 31 unless a qualified biologist conducts NSO surveys within a 0.25-mile radius around the Project site following the USFWS Protocol for Surveying Proposed Management Activities That May Impact Northern Spotted Owls, dated (revised) January 9, 2012 and no nesting NSO are detected. Surveys shall be conducted in accordance with Section 9 of the survey protocol, Surveys for Disturbance-Only Projects. If nesting 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 July 31 for each year, unless otherwise approved in writing by CDFW.</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.</p>	Prior to Ground Disturbance	Project Applicant

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	<p>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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