



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**



June 2, 2025

Pamela Arifian, Planner III  
Napa County  
1195 Third Street  
Napa, CA 94559  
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Subject: 1510 Acquisition LLC Vineyard Development Agricultural Erosion Control Plan #P24-00015-ECPA, Initial Study/Mitigated Negative Declaration, SCH No. 2025040851, Napa County

Dear Ms. Arifian:

The California Department of Fish and Wildlife (CDFW) received an Initial Study/Mitigated Negative Declaration (IS/MND) from Napa County (County) for the 1510 Acquisition LLC Agricultural Erosion Control Plan #P24-00015-ECPA (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

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:** Daniel Sedlmayer (Co-Owner)

**Objective:** The Project involves the clearing of vegetation, earthmoving and land contouring associated with the development of approximately 2.4 gross acres of vineyard with approximately 1.9 net planted acres in two proposed vineyard blocks,

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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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located on an approximately 35.8-acre property. The Project would result in the conversion to vineyard of approximately 2.3 acres of Douglas fir forest and 0.1-acre of coast live oak woodland (192 trees greater than 6-inch diameter at breast height (DBH)). The Project proposes a 2.9-acre tree canopy preservation area on land with slopes less than 30 percent and outside of stream setbacks, including approximately 1.5 acres of Douglas fir forest, 0.7-acre of coast live oak woodland and 0.7-acre of Oregon white oak woodland. No new wildlife exclusion fencing is proposed around the proposed vineyard blocks; however, existing fencing would be relocated to the property line.

**Location:** The Project is located at 1510 Diamond Mountain Road, Calistoga, CA 94515; Assessor's Parcel Number 020-400-013-000; at approximately 38.56854 °N, - 122.57497 °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*, NSO), 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 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.

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## 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 Surveys and Habitat Mitigation

**Issue:** Thank you for including Mitigation Measure (MM) BIO-3 with the IS/MND which requires protocol surveys for NSO in accordance with the USFWS *Protocol for Surveying Proposed Management Activities That May Impact Northern Spotted Owls*, dated (revised) January 9, 2012. However, MM BIO-3 may not mitigate impacts to NSO to less-than-significant for the reasons outlined below.

- 1) Nesting NSO surveys are not required following timber harvest operations, however; impacts to nesting NSO could occur from Project activities following timber harvest operations, such as vineyard installation, as a result of audio disturbances above ambient levels.
- 2) No seasonal restrictions are proposed to ensure nesting NSO avoidance, although NSO could be detected during year 2025 and subsequent years' surveys.
- 3) The radius of spot check surveys is unclear.

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- 4) The loss of NSO habitat is not quantified and habitat mitigation is not proposed. The IS/MND Exhibit B *Biological Resource Reconnaissance Survey* states that “The Project will impact Northern Spotted Owl Habitat” (page 34).

**Specific impacts and why they may occur and be significant:** Incomplete NSO survey methods could cause false negative survey results, resulting in inadvertent Project audio disturbances to nesting NSO on or within 0.25 miles of the Project, nest abandonment, and loss of eggs; or reduced health and vigor and loss of young. The Project would result in the removal of NSO habitat, which is a primary threat to continued existence of NSO in California (CDFW 2016). NSO is CESA listed as a threatened species and is also listed under the federal Endangered Species Act and therefore is considered to be a threatened species pursuant to CEQA Guidelines section 15380. Therefore, if an active NSO nest is disturbed or nesting habitat is removed by the Project, the Project may substantially reduce the number or restrict the range of a threatened species which is considered a Mandatory Finding of Significance pursuant to CEQA Guidelines section 15065, subdivision (a)(1). Additionally, the Project may have a substantial adverse effect, either directly or through habitat modifications, on NSO which is a species identified as a special-status species by CDFW and USFWS.

**Recommended Mitigation Measure:** To reduce impacts to NSO to less-than-significant and comply with CESA and Fish and Game Code section 3500 et seq., CDFW recommends revising MM BIO-3 with the following deletions in ~~strike through~~ and additions in **bold** to reduce impacts to NSO to less-than-significant.

MM BIO-3:

- A) **Northern Spotted Owl Surveys**. The owner/permittee shall follow the ***Protocol for Surveying Proposed Management Activities That May Impact Northern Spotted Owls (USFWS 2012) as applicable*** in all years that timber harvest operations are anticipated. This includes having a minimum 2-year survey history prior to timber harvest operations, ~~including six spot check surveys in 2025.~~ **Once timber harvest operations are complete, northern spotted owl surveys are no longer necessary. Following the 2 years of surveys, a qualified biologist shall conduct Spot Check Surveys for northern spotted owl on the Project site and within a 0.25-mile radius around the Project site during northern spotted owl nesting season (March 15 to July 31) each year until Project construction is completed, pursuant to the above survey protocol, unless otherwise approved in writing by CDFW. Survey results shall be submitted each year to CDFW and the owner/permittee shall obtain CDFW’s approval of the survey results in writing prior to any Project timber harvest activities or construction activities increasing auditory distances above ambient levels.**

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Northern spotted owl surveys are valid until the beginning of the next breeding season (February 1). ~~Timber harvest operations~~ Project activities after this February 1 date require a current years' survey effort.

**If nesting Northern spotted owl 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. 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 northern spotted owl cannot be avoided, the Project shall consult with: 1) CDFW pursuant to CESA and obtain an ITP, and 2) USFWS pursuant to the federal Endangered Species Act.**

~~As there are no known northern spotted owls within 0.25 mile of the proposed development area, there are no seasonal restrictions proposed at this time. If a new northern spotted owl territory is identified within 1.3 miles of the proposed development area or the known northern spotted owl territory (NAP007) moves closer to the proposed development area, a reassessment shall occur.~~

The owner/permittee shall provide documentation of any updated northern spotted owl survey results to **CDFW and** Napa County Conservation Division before commencement of vegetation removal and earthmoving activities pursuant to #P24-00015-ECPA.

- B) Northern Spotted Owl Habitat Mitigation: If the Project will remove northern spotted owl nesting or roosting habitat, then the Project shall prepare an northern spotted owl mitigation plan including mitigating northern spotted owl habitat removal at a 3:1 mitigation to impact ratio. Habitat mitigation shall include permanent preservation of high quality nesting/roosting habitat through a conservation easement and implementing and funding a long-term management plan in perpetuity, to be finalized before Project construction, unless otherwise approved in writing by CDFW. The northern spotted owl northern spotted owl mitigation plan shall be submitted to CDFW for approval before Project construction and include a review of suitability of mitigation lands for northern spotted owl as confirmed by a qualified biologist. The Project shall obtain CDFW's written approval of the northern spotted owl mitigation plan.**

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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](mailto:Nicholas.Magnuson@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*

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Erin Chappell  
Regional Manager  
Bay Delta Region

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

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ec: Office of Planning and Research, State Clearinghouse No. 2025040851  
Julie Coombes, CDFW Bay Delta Region - [Julie.Coombes@wildlife.ca.gov](mailto:Julie.Coombes@wildlife.ca.gov)  
Kristin Garrison, CDFW Bay Delta Region - [Kristin.Garrison@wildlife.ca.gov](mailto:Kristin.Garrison@wildlife.ca.gov)

## REFERENCES

CDFW. 2016. Report to the Fish And Game Commission. Status Review Of The Northern Spotted Owl (*Strix occidentalis caurina*) In California. Available at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=116307&inline>

USFWS. 2012. Protocol for Surveying Proposed Management Activities That May Impact Northern Spotted Owls. Available at <https://www.fws.gov/sites/default/files/documents/survey-protocol-for-northern-spotted-owl.pdf>

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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.

<b>Biological Resources (BIO)</b>			
<b>Mitigation Measure(MM)</b>	<b>Description</b>	<b>Timing</b>	<b>Responsible Party</b>
<b>MM BIO-3A</b>	<p><b>Northern Spotted Owl Surveys.</b> The owner/permittee shall follow the <i>Protocol for Surveying Proposed Management Activities That May Impact Northern Spotted Owls</i> (USFWS 2012) as applicable in all years that timber harvest operations are anticipated. This includes having a minimum 2-year survey history prior to timber harvest operations, including six spot check surveys in 2025. <del>Once timber harvest operations are complete, northern spotted owl surveys are no longer necessary.</del> Following the 2 years of surveys, a qualified biologist shall conduct Spot Check Surveys for northern spotted owl on the Project site and within a 0.25-mile radius around the Project site during northern spotted owl nesting season (March 15 to July 31) each year until Project construction is completed, pursuant to the above survey protocol, unless otherwise approved in writing by CDFW. Survey results shall be submitted each year to CDFW and the owner/permittee shall obtain CDFW's approval of the survey results in writing prior to any Project timber harvest activities or construction activities increasing auditory distances above ambient levels.</p> <p>Northern spotted owl surveys are valid until the beginning of the next breeding season (February 1). <del>Timber harvest operations</del> Project activities after this February 1 date require a current years' survey effort.</p> <p><b>If nesting northern spotted owl 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</b></p>	<p>Prior to Ground Disturbance</p>	<p>Project Applicant</p>

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	<p>biologist determines that the nest is no longer active, 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, <i>Estimating the Effects of Auditory and Visual Disturbance to Northern Spotted Owls and Marbled Murrelets in Northwestern California</i>, dated October 1, 2020. Alternative buffers must be approved in writing by CDFW.</p> <p>If take of northern spotted owl cannot be avoided, the Project shall consult with: 1) CDFW pursuant to CESA and obtain an ITP, and 2) USFWS pursuant to the federal Endangered Species Act.</p> <p><del>As there are no known northern spotted owls within 0.25 mile of the proposed development area, there are no seasonal restrictions proposed at this time. If a new northern spotted owl territory is identified within 1.3 miles of the proposed development area or the known northern spotted owl territory (NAP007) moves closer to the proposed development area, a reassessment shall occur.</del></p> <p>The owner/permittee shall provide documentation of any updated northern spotted owl survey results to CDFW and Napa County Conservation Division before commencement of vegetation removal and earthmoving activities pursuant to #P24-00015-ECPA.</p>		
<p>MM BIO-3B</p>	<p><b><u>Northern Spotted Owl Habitat Mitigation:</u></b>                  If the Project will remove northern spotted owl nesting or roosting habitat, then the Project shall prepare a northern spotted owl mitigation plan including mitigating northern spotted owl habitat removal at a 3:1 mitigation to impact ratio. Habitat mitigation shall include permanent preservation of high quality nesting/roosting habitat through a conservation easement and implementing and funding a long-term management plan in perpetuity, to be finalized before Project construction, unless otherwise</p>	<p>Prior to Ground Disturbance</p>	<p>Project Applicant</p>

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	<p><b>approved in writing by CDFW. The northern spotted owl mitigation plan shall be submitted to CDFW for approval before Project construction and include a review of suitability of mitigation lands for northern spotted owl as confirmed by a qualified biologist. The Project shall obtain CDFW's written approval of the northern spotted owl mitigation plan.</b></p>		
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