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Public Comments Received After  
February 15, 2017



State of California – The Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Bay Delta Region  
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Napa, CA 94558  
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EDMUND G. BROWN JR., Governor  
CHARLTON H. BONHAM, Director



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Napa County Planning, Building  
& Environmental Services

February 13, 2017

Mr. Jason R. Hade  
Napa County Planning, Building and Environmental Services  
1195 Third Street, Suite 210  
Napa, CA 94559

Dear Mr. Hade:

Subject: Flynnville Wine Company, Use Permit #P12-00222 & Variance # P12-  
Mitigated Negative Declaration, SCH #2013082090, County of Napa

California Department of Fish and Wildlife (CDFW) personnel have reviewed the above Flynnville Wine Company (Project) draft Mitigated Negative Declaration (MND). CDFW is submitting comments on the draft MND as a means to inform Napa County (County) as the Lead Agency, of our concerns regarding potentially significant impacts to sensitive resources associated with the proposed Project.

CDFW is identified as a Trustee Agency pursuant to the California Environmental Quality Act (CEQA) Section 15386 and is responsible for the conservation, protection, and management of the State's biological resources. CDFW is also considered a Responsible Agency if a project would require discretionary approval, such as the California Endangered Species Act (CESA) Permit, the Native Plant Protection Act, the Lake and Streambed Alteration Agreement (LSAA) and other provisions of the Fish and Game Code that afford protection to the State's fish and wildlife trust resources. Pursuant to our jurisdiction, CDFW has the following concerns, comments, and recommendations regarding the Project.

## PROJECT LOCATION AND DESCRIPTION

The Project site is located at 1184 Maple Lane in Calistoga, Napa County, California. The site is on the east side of Highway 29, approximately 0.88 miles north of Larkmead Lane. The 10.09 acre site is bordered on the south by Maple Lane and on the north by Drew Lane; approximately 2.14 acres of the site is located immediately adjacent to Napa River. The Project proposes construction of a 60,000 gallon per year winery and two winery buildings, totaling 24,210 square feet in area, including removal of four mature native trees and demolition of five existing buildings. The Project has been revised since a larger version was denied by the County in 2013.

## IMPACT ANALYSIS AND MITIGATION MEASURES

The CEQA Guidelines (§15126.2) necessitate that the MND discuss all direct and indirect impacts (temporary and permanent) that may occur with implementation of the Project. This includes evaluating and describing impacts such as potential for "take" of special-status species and other aquatic and terrestrial species. Threatened or endangered, candidate, and other

special-status species that are known to occur, or have the potential to occur in or near the Project site, include, but are not limited to:

- pallid bat (*Antrozous pallidus*)
- western red bat (*Lasiurus blossevillii*)
- townsend's big-eared bat (*Corynorhinus townsendii*)
- swainson's hawk (*Buteo swainsoni*)
- western pond turtle (*Emys marmorata*)
- foothill yellow legged frog (*Rana boylei*)

#### *Nesting Bird Surveys and Avoidance*

The Biological Resources section of the MND does not analyze potential impacts to nesting birds. Fish and Game Code § 3503.5 states it is unlawful to take, possess, or destroy any birds in the orders of Falconiformes or Strigiformes (birds-of-prey or raptors) or take, possess, or destroy the nest or eggs of any such bird, additionally Fish and Game Code §3503 protects the nests or eggs of any bird. Activities such as staging, access, excavation, and other ground-disturbing activities may create substantial noise impacts which may cause nest abandonment or premature fledging of nesting birds. If Project activities are scheduled between February 1<sup>st</sup> and September 1<sup>st</sup>, CDFW typically recommends surveys and avoidance measures for nesting birds, including:

*Pre-construction nesting bird surveys shall be conducted, including if suitable habitat is within 500 feet of project activities. If a lapse in project-related work of 15 days or longer occurs, another focused survey shall be conducted. If active nests are found, the Permittee shall consult with appropriate resource agencies to ensure compliance with the Migratory Bird Treaty Act of 1918 and the Fish and Game Code of California, section 3503.*

#### *Swainson's hawk (Buteo swainsoni)*

The Biological Resources section of the MND does not analyze potential impacts to Swainson's hawk, a threatened species under CESA. Swainson's hawk breeds in the western United States and Canada, and this species is adapted to forage in open grasslands and agricultural fields. Swainson's hawk often nests peripheral to riparian systems. They will also use lone trees in agricultural fields or pastures and roadside trees when available and adjacent to suitable foraging habitat.

If suitable Swainson's hawk nesting habitat is present within or surrounding the proposed Project area, CDFW recommends the MND specify that protocol-level surveys will be conducted during the hawk nesting season which is generally from March 1<sup>st</sup> until September 15<sup>th</sup>. Swainson's hawk surveys should be conducted following the Swainson's hawk Technical Advisory Committee's *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley* (available at <https://www.wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds>).

If "take" or adverse impacts to Swainson's hawk or any other species listed under the California Endangered Species Act (CESA) cannot be avoided either during Project activities or over the life of the Project, please be advised that a CESA permit must be obtained (pursuant to Fish

and Game Code Section 2080 *et seq.*). Issuance of a CESA permit is subject to CEQA documentation; therefore, the CEQA document should specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the proposed Project will impact any CESA-listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain a CESA permit. More information on the CESA permitting process can be found on the CDFW website at: <https://www.wildlife.ca.gov/Conservation/CESA>.

#### *Special-Status bat species*

The Project proposes to remove four mature oak trees, and several existing structures that may provide suitable habitat for *Townsend's Big-eared Bat (Corynorhinus townsendii)*, *Pallid Bat (Antrozous pallidus)* and *Western Red Bat (Lasiurus blossevillii)*, where all three species are designated as species of special concern. Townsend's big-eared bat range includes much of western North America, including most of California. They are active at night and roost in colonies or individually in caves, mines, large old trees, large undisturbed spaces in buildings and other structures with large quiet spaces. Disturbance and loss of large colony roosts sites during the maternity and hibernation seasons are considered primary factors that may negatively impact the species in California, although disease, climate change, pesticide use and other factors may also negatively affect populations. The pallid bat occurs throughout a variety of habitats including all types of woodland, grassland, and riparian areas if appropriate roosting sites are available. This species may seek shelter inside crevices and cavities found in natural features such as trees, cliffs, caves and rocky outcrops, as well as, man-made features, such as barns or sheds. Cavities in trees and shrubs may provide suitable habitat for western red bats. Examples of threats to pallid bat and western red bats include mortality and/or loss of roosting habitat due to disturbance, exclusion, extermination, and pesticide use. Disturbance and loss of large colony roosts sites during the maternity and hibernation seasons are considered primary factors that may negatively impact the species in California.

The MND identified evidence of active roosting in six of the ten buildings on site. To reduce potentially significant impacts to bats, MM BIO-1 requires that a qualified biologist implement the recommendations identified on pages 3-6 in Bat Habitat Assessment, prepared by Wildlife Research Associates dated November 19, 2012. Methods discussed in MM BIO-1 include encouraging bats to voluntarily leave the roosts over a two day period of time by creating an environment uncondusive to bat habitat through creating noises and vibrations. Other methods such as avoidance measures for building demolition listed on pages 3-6 of the 2012 WRA report are not clearly stated in MM BIO-1. CDFW recommends that MM BIO-1 be revised to state the specific avoidance methods identified in the report including:

1. *Remove 6 – 4' x 8' sections of roofing materials to expose interior.*
2. *Open all doors and windows.*
3. *Leave the roof, doors and windows open 4-7 days before demolition.*
4. *Exclusion/eviction from buildings must be conducted only during seasonal periods of bat activity, and under supervision of a qualified biologist.*

The MND identified native trees within the Project site as potentially supporting roosting habitat for bats. CDFW recommends that MM BIO-1 be revised to state the specific avoidance methods identified in the report including:

*Incorporate a two-step tree removal method to be conducted over two consecutive days. On day one, creates noise and vibration by cutting non-habitat branches and limbs from habitat trees using chainsaws only (no excavators or other heavy machinery). The noise and vibration disturbance, together with the visible alteration of the tree, is very effective in causing bats that emerge nightly to feed, to not return to the roost that night. The remainder of the tree shall be removed on day two. Removal of trees containing suitable potential bat roosting habitat in the form of crevices, cavities, or exfoliating bark, as with exclusion/eviction from buildings, must be conducted only during seasonal periods of bat activity, and under supervision of a qualified biologist.*

On page 8 of the MND, MM BIO-1 requires the Permittee to submit to the County for review and approval plans which reflect the incorporation of the bat removal recommendations. CDFW recommends the following considerations be incorporated into MM BIO-1 and the plans to avoid impacts to sensitive bat species:

1. Bats should always be humanely evicted prior to construction, or work performed only when no bats are present.
2. Evaluate the length of time of disturbance, equipment noise, and type of habitat present within the Project footprint.
3. Timing of work activities should specifically exclude species inactivity periods and maternity season during the winter. Recommended work windows for building demolition, tree trimming, or tree removal in the Napa County area are typically August 31 through October 15, when young would be self-sufficiently volant and prior to hibernation, and between March 1 to April 15 to avoid hibernating or maternity colonies.
4. Identify an appropriate buffer area when working outside of appropriate work windows listed above.
5. Identify species appropriate habitat replacement to offset significant impacts to bat colonies on-site. Habitat replacement should consider the type of roost habitat, day or night, and be replaced in kind. Loss of building habitat cannot automatically be mitigated for by using bat houses, since relatively few species use them, and should be specific to the species previously inhabiting the structure.

#### *Stream Resources and Riparian Habitat*

The Project site is located immediately adjacent to the Napa River along the north-east side of the parcel. Riparian vegetation buffers are known to provide important ecosystem functions including habitat and cover for terrestrial wildlife, moderates temperature extremes, reduces soil erosion and sustains water quality. The MND Biological Resources section outlines a 45 foot County setback requirement, while the Project as proposed states a 100 foot setback from the Napa River corridor. CDFW recommends establishing maximum feasible riparian buffer areas; a 100-foot width is appropriate in this location to sufficiently support fish and wildlife that rely on riparian corridors for movement. For any activity that will change the bed, channel, or bank (which may include associated riparian resources) of a river, or use material from a streambed, CDFW may require a Lake and Streambed Alteration Agreement (LSAA), pursuant to Section 1600 et seq. of the Fish and Game Code, with the applicant. To obtain information about the LSAA notification process, please access our website at <http://www.dfg.ca.gov/habcon/1600/>; or to request a notification package, contact CDFW's Bay Delta Regional Office at (707) 944-5500.

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*Adequacy of Surveys*

Please note that the protocol level surveys conducted at the Project site are over 4 years old and may no longer be accurate. CDFW recommended survey and monitoring protocols are available on CDFW's website at: <https://www.wildlife.ca.gov/Conservation/Survey-Protocols>. Additional species specific guidance may be obtained through CDFW's Bay Delta Regional office.

**FILING FEES**

CDFW anticipates that the Project will have an impact on fish and/or wildlife, and assessment of filing fees is necessary (Fish and Game Code, § 711.4; Pub. Resources Code, § 21089). 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.

CDFW appreciates the opportunity to provide comments on the draft MND for the proposed Project and is available to meet with you to further discuss our concerns. If you have any questions, please contact Mr. Garrett Allen, Environmental Scientist, at (707) 944-5565; or Ms. Karen Weiss, Senior Environmental Scientist (Supervisory), at (707) 944-5525.

Sincerely,



Scott Wilson  
Regional Manager  
Bay Delta Region

cc: State Clearinghouse #2013082090