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April 4, 2016

Mr. Brian Bordona,  
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Sent via email to: [WaltRanch@countyofnapa.org](mailto:WaltRanch@countyofnapa.org)

RE: Walt Ranch Vineyard Conversion Project  
Walt Ranch Erosion Control Plan [P11-00205-ECPA]  
and related applications P07-00800  
Public Hearing: April 4, 2016

Dear Mr. Bordona:

Thank you for the opportunity to comment on the FEIR with regard to the Walt Ranch Erosion Control Plan [P11-00205-ECPA].

I have had an opportunity to review the Walt FEIR documents which were filed by various entities with regard to this pending project and these comments pertain to the issue of special species mammals, "bats" which were apparently not observed during biological surveys on the project site.

I believe that there are serious flaws in the findings within the Draft Biological Resources Management Plan (February 2016) prepared and submitted by Analytical Environmental Services (AES) in their report of February of 2016 (Appendix P). Due to the reporting party's failure to properly conduct an appropriate bat survey(s) of the project area, not a single living bat was found in the project area which is extremely unlikely. As a result of the lack of location and identification

of any species of bat, numerous potential bat species of special concern are at risk once project applicant begins the process of destroying the oak woodland habitat that these bats inhabit.

In support of my comments, please note the following:

I.

**Some of the Bats Indigenous to Project Area are Designated as Special Species Mammals**

As acknowledged by the AES Study, some of the bat species who habitat the project area are considered special species and are subject to protection under the California Endangered Species Act (CESA). However, as discussed in Section V., infra, the AES Study only discusses the potential of (5) species of bats indigenous to the project area, when up to (15) species of bats were discovered at an unrelated project site some 15-18 miles away. Accordingly, the Walt FEIR has only considered (5) bat species may exist at the project site, some of which may be entitled to special protection.

The project applicant is required under CEQA regulations to consider any mammals identified as a special species of concern. A special species of concern is defined at the California Department of Fish and Game website as follows:

Special Species of Concern (SSC) should be considered during the environmental review process. The California Environmental Quality Act (CEQA; California Public Resources Code §§ 21000-21177) requires State agencies, local governments, and special districts to evaluate and disclose impacts from "projects" in the State. Section 15380 of the CEQA Guidelines clearly indicates that species of special concern should be included in an analysis of project impacts if they can be shown to meet the criteria of sensitivity outlined therein.

Sections 15063 and 15065 of the CEQA Guidelines, which address how an impact is identified as significant, are particularly relevant to SSCs. Project-level impacts to listed (rare, threatened, or endangered species) species are generally considered significant thus requiring lead agencies to prepare an Environmental Impact Report to fully analyze and evaluate the impacts. In assigning "impact significance" to populations of non-listed species, analysts usually consider factors such as population-level effects, proportion of the taxon's range affected by a project, regional effects, and impacts to habitat features.

**Summary.** The Applicant is required under CEQA Guidelines to determine and designate the relevant impact upon Special Species of Concern, however, they claim to have found "no bats" during biological surveys. A review of the relevant documents does not reveal what types of biological surveys were conducted, by whom, nor was a reference to "when", other than stating that the biological survey occurred in March and September. The lack of information as to the

nature of the biological surveys renders their conclusions totally inadequate to meet the Applicant's responsibilities under CEQA.

**II.**

**Review of the Walt FEIR Findings pertaining to Bats**

1. Section 4.0 of the Environmental Setting, Impacts and Mitigation Measures, at pps. 4.2-66-67 acknowledges that there may be (5) species of bats with varying degrees of status for protection under the CESA, ranging from sensitive to a threatened species which were anticipated to be indigenous to the project site. All other species of bats which may be either special status or simply indigenous to the project area are by exclusion, rendered irrelevant to this environmental review.

2. Under Special-Status Mammals, AES has identified the following special status bat species which are indigenous to the project area:

- (a) Candidates for "threatened species" list, therefore, considered endangered:

**Townsend's Big-eared Bat**  
(*Corynorhinus townsendii*)  
at pg. 4.2-66



- (b) Candidates for "species of special concern", therefore, considered protected:

**Western Red Bat**  
(*Lasiurus blossevillii*)  
at pg. 4.2-67



**Long-eared myotis Bat**  
(*Myotis evotis*),  
at pg 4.2-67



**Fringed Myotis Bat**  
(*Myotis thysanodes*)  
at pg. 4.2-68



- (c) Candidates for “species of concern”, therefore also treated as a species of special concern:

**Pallid Bat**  
(*Antrozous pallidus*),  
at pg. 4.2-66



Only the Townsend’s big-eared bat is acknowledged as a candidate species in the Draft EIR (See Response to Comment A7-5.) A complete list of sensitive species and their status is located on <http://www.dfg.ca.gov/wildlife/nongame/>.

3. The report prepared and submitted for consideration in this matter by renowned bat expert, David Wyatt (Wildlife Biologist from Sacramento), dated November 21, 2014 unequivocally states that if a species is listed as candidate for being a threatened species, it must be treated as a “threatened species” under CESA.
4. On page 27 of the Draft Biological Resources Management Plan (BRMP) sets forth methodology utilized to conduct surveys as set forth in this document. Even though the BRMP, at page 27, suggests that the biological surveys and reports that have been conducted on the project site are listed in Table 4, there is no other data within this document providing the methodology utilized in support of the findings, other than the alleged biological survey was conducted in “March and September”.

Of serious concern is the result of the alleged “biological surveys” of the project area conducted by AES which did not confirm existence of a single bat in the 2,300 acre project site. Further, there is not mention within the draft BRMP (February 2016) of how the survey was conducted, the dates and time of the surveys, nor any other scientific data to support the findings set forth on Table 4.2-34-45.

5. The defined purpose of the BRMP is to analyze and address environmental impacts of the Walt Ranch proposed vineyard development project, with the desired result of outlining mitigation and management guidelines to achieve less-than-significant impacts to the Walt Ranch property. (See PPI Engineering Memorandum, dated December 29, 2015 to Brian Bordona.)

**Summary.** How can the above result as published in the Draft BRMP be relied upon by the County of Napa in reaching any conclusion that disruption of habitat of a protected species of Mammal will result in a less-than-significant environmental impact to the Townsend Big-eared Bat and the numerous other bat species of special concern which are known to inhabitant the oak woodlands at this project site?

### III.

#### **Bat Expert David Wyatt’s Report dated November 14, 2014**

The following highlights are excerpted from David Wyatt’s report to illuminate the flawed findings within the FEIR which is relying upon an improperly conducted bat habitat study:

1. The Townsend’s big-eared bat (*Corynorhinus townsendii*) is a species which is a candidate for listing as Threatened under the California Endangered Species Act and as a candidate must be treated as a species listed under “threatened species”.
2. In order to ascertain the presence or absence of this bat in the project area, a survey must be done to remain in compliance with CESA. There are additional “sensitive” bat species which might be expected to be detected in the project area, including the **Pallid Bat** (*Antrozous pallidus*), **Western Red Bat** (*Lasiurus blossevillii*), **Long-eared myotis Bat** (*Myotis evotis*) and **Fringed Myotis Bat** (*Myotis thysandodes*).
3. In addition to the aforementioned species, other bats that could also be present in the project area in that they are known to inhabitate California Oak Woodlands, include the Western mastiff Bat (*Eumops perotis*), the silver haired bat (*Lasiorycteris noctivagans*), hoary Bat (*Lasiurus cinereus*), long-eared myotis (*Myotis evotis*) and the small-footed myotis (*Myotis ciliolabrum*). The bats in this group are considered medium sensitivity species by Federal agencies.

4. Given that the project area is an established bat habitat, it would be necessary to rule out the existence of the Ringtail Bat (*Bassariscus astutus*) which is a bat commonly found in oak woodlands with presence of rock formations, which is a common natural feature in or near the project area. This species of bat is considered a California Fully Protected Mammal (See Fish and Game Code §4700 et seq).

5. Acoustic surveys to determine the presence of bats are a commonly used method to determine the presence of and types of bat species in the area. This type of survey consists of an acoustic sonogram which is then analyzed by a qualified bat Biologist to develop a list of species in a specific area. Acoustic surveys are not the only method used to reliably determine the existence, types and numbers of bats inhabiting a given location. Camera traps, track plates, locating and documenting 'scat' are just a few additional methods suggested by the author.

6. Even though acoustic surveys are commonly used to determine the presence of and type of bats, the Townsend's big-eared bat (*Corynorhinus townsendii*) is especially difficult to identify using this method due to their very low intensity echolocation calls.

7. The Responses to comments by David Wyatt (Comment letter i121) are supposedly resolved by the concession that there are bats of special concern present at the project site, and that the newly proposed mitigation measures, specifically 4.2-14, are completely responsive to Mr. Wyatt's comments.

As discussed infra, at Section VI., the proposed mitigation measures are inadequate.

#### IV.

##### **Bat Expert Joseph Szewczak, Ph.D. – Report dated November 13, 2014**

The following highlights are excerpted from renowned Bat Expert, Joseph Szewczak, Ph.D.'s report<sup>1</sup> to illuminate the flawed findings within the FEIR which is relying upon an improperly conducted bat habitat study:

1. He could find no indication or evidence of an adequate biological survey for bats that supported the conclusions and recommendations contained in the DEIR. He states as to the lack of sighting any bats at the project site, "That just simply could not happen on that landscape as a result of any adequate bat survey work by anyone with expertise in the methods used to survey for bats". (See Szewczak Report (11/13/2014), Exhibit 17 to Thomas Lippe letter, dated November 21, 2014.)

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<sup>1</sup> Dr. Joseph Szewczak Ph.D.'s report was attached to Mr. Thomas Lippe's comments of November 21, 2014, as exhibit 17.

2. “Most any biologists” would find it a matter of serious concern that no bats were observed onsite during the biological survey allegedly done by AES. He referred to this as a “red flag” that something was amiss with the study. Further there is “no indication of due diligence in performing any specialized survey methods necessary to assess bats in the project area”.
3. Surveying for bats required specialized methods to detect nocturnal bat activity and cites the “mist netting” as an appropriate methodology (note: “mist netting” was used in the Aetna Springs bat study discussed in the next section.)
4. He opines that merely relying upon finding evidence of bat roosting is inconclusive as the existence of a bat colony, their numbers or their species type because most bat roosts in natural settings are difficult to access. He cites that the best method to locate bat roosts is to trap foraging bats and install radio transmitters to track them to their roost.
5. Finally, Dr. Szewczak opines that “this report reached an indefensible conclusion of absence for any bat species in the project area, sensitive or non-sensitive”.
6. The Responses to comments by Joseph Szewczak, Ph.D (Response to Comment letter 022-123) point to newly proposed mitigation measures, specifically 4.2-14, as being responsive to the above comments.

As discussed infra, at Section VI., the proposed mitigation measures are inadequate.

## V.

### **Other Bat Surveys Conducted Near the Project Area**

In 2007, in connection with the Aetna Springs development project located in Pope Valley, approximately 15 miles from the project site<sup>2</sup>, a study was conducted as a part of that environmental review to determine the existence, types and numbers of bats at the project location. The purpose of the study was to determine how to replace the loss of bat roosting habitat resulting from proposed rehabilitation of structures that were active bat roosts.

The results of the 2007 study were stunning, in that it revealed the existence of potentially 15 species of bats, 12 of the species ranking in the medium to high range of probability of their

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<sup>2</sup> See Exhibit A, a map generated at [www.mapquest.com](http://www.mapquest.com) from my residence to Aetna Springs Golf Course reveals a road distance of 33.4 miles, however, a line of flight distance from Circle Oaks to the Aetna Springs Golf Course is about 18 miles. The northern edge of the Walt Ranch project is approximately 15 miles from Aetna Springs Golf Course.

physical presence at the project site based upon the variety of study methodologies used by The Central Coast Bat Group<sup>3</sup> on site to measure bat activity.

The Study conducted by the Central Coast Bat Research Group (attached as **Exhibit B**) is relevant for comment in the Walt Ranch FEIR due to both the proximity of the Aetna Springs project to the Walt Ranch Project as well as the oak woodland habitat suitable for bat habitation located at both project sites. The Final Report in the Bat Assessment Survey (at pg 1 of 36), indicated that “particular attention was given to the oak woodland habitat with an emphasis on the bat use of trees for roosting”. While the Aetna study was primarily for the purpose of determining how to relocate the bats from dilapidated buildings prior to onset of construction activities (rehabilitation of dilapidated buildings), it is particularly telling as to the results.

The results of the Bat Study conducted at Aetna Springs in 2007 confirmed the existence of the following species of bats on site, including the Townsend’s big-eared Bat which is a protected species under CESA:

Table 4 of the aforementioned bat survey is reproduced within these comments to draw attention to the species of bats conceded in the FEIR to exist at the current project site (**highlighted in yellow**), as compared to the actual types of species identified at the Pope Valley site.

**Table 4. Bat Species Detected in the project area<sup>4</sup>**

**Family : VESPERTILIONIDAE** (Plain-nosed or mouse-eared bats) Detection Noted \_\_\_\_\_ Khz

<i>Corynorhinus townsendi</i>	Townsend's big-eared bat	AC, MN, V, DR, NR, MR	
<i>Myotis lucifugus</i>	Little brown myotis	AC	40Khz ***
<i>Myotis yumanensis</i>	Yuma myotis	AC MN, V, DR, NR, MR	50Khz
<i>Myotis evotis</i>	Long-eared myotis	AC, V, DR, NR	
<i>Myotis thysanodes</i>	Fringed myotis	AC	
<i>Myotis volans</i>	Long-legged myotis	AC	40Khz ***

<sup>3</sup> The Bar Roost Compensation Plan for Aetna Springs Retreat Project in Pope Valley is attached as **Exhibit B**. It contains the results of an in depth bat survey at the project site to determine the feasibility of constructing alternative bat habitat in order to replace the loss of bat roosting habitat resulting from the proposed rehabilitation of historic buildings at the former Aetna Springs Resort in Pope Valley, Napa County, California. The project site is located along the northwest edge of the Pope Valley in Napa County, California.

<sup>4</sup> See Exhibit B, Central Coast Bat Research Group Study of Aetna Springs, at page 6 of 36

<i>Myotis californicus</i>	California myotis	AC , MN, V, DR, NR	50Khz
<i>Myotis ciliolabrum</i>	W. small footed myotis	AC	40Khz ***
<i>Lasionycteris noctivagans</i>	Silver-haired bat	AC Q	25 Khz
<i>Pipistrellus hesperus</i>	Western pipistrelle	AC	
<i>Eptesicus fuscus</i>	Big brown bat	AC, MN, V, DR, NR	
<i>Lasiurus blossevillii</i>	Western red bat	AC	
<i>Lasiurus cinereus</i>	Hoary bat	AC, MN	
<i>Antrozous pallidus</i>	Pallid bat	AC, MN, V, DR, NR, MR	

**Family** MOLOSSIDAE (Free-tailed bats) **Detection Noted** **Khz**

<i>Tadarida brasiliensis</i>	Mexican free-tailed bat	AC, V	
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**Table legend:**

- AC = Detected acoustically
- AC XXKhz = Possibly detected in a phonic group
- MN = Captured in mist nets
- V = Observed Visually during building surveys
- DR = Observed Day Roosting, NR= Observed Night Roosting, MR=Maternity Roost observed
- \*\*\* = Possible but not confirmed

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The types of habitat utilized by each of the above referenced bats as set forth in Table 4 are discussed in the attachment, **Exhibit C**, an excerpt from the Northern California Bats website, "About Bats"<sup>5</sup>. As documented in the Northern California Bats website, roosting habitat for these bats are widely diverse and have been identified as caves, buildings, under roof tiles and bridges, rock outcroppings & crevices, free hollows, hollow trees, under tree bark, caves, mines, leaves of

<sup>5</sup> See Northern California Bats website, "About Bats", at: <http://www.norcalbats.org/aboutbats.shtml>

trees and tree leaf litter, forests and agricultural areas. Most of all of these roosting habitats exist at the project site.

The bat species of most concern with regard to this matter is the Townsend's Long-eared bat which is identified as a Species of Special Concern in California and is known to live in forested habitat. Risks associated with habitat loss caused by disturbance in maternity and roost colonies have reduced the numbers of this gentle bat. When roost is disturbed, they may abandon it permanently. Disturbance during hibernation leads to burning energy in an attempt to escape and they may not have enough fat storage left to survive the winter. (For reference, see: <http://www.norcalbats.org/aboutbats.shtml#batsRare>)

Among the numerous techniques employed during the aforementioned bat survey was an acoustic survey which recorded more than 40,000 files, consisting of 9 species and 3 phonic groups<sup>6</sup>. The July period of the bat survey recorded three times as many call sequences as did the March survey period demonstrating that the bats were considerably more active during summer months which would also be the same time that height of construction activities is anticipated for the Walt Project, if approved.

**Summary.** The elevation, climate and topography of the project area and Aetna Springs where this bat survey was conducted are similar such as to not rule out any of the above species of bats located at Aetna Springs from also existing at the project site. Bats are known to fly hundreds of miles, when necessary to their survival. The distance between Aetna Springs and the project site are insignificant. Any bats found to exist at Aetna Springs are highly likely to also exist at the project area.

## V.

### **Response to Expert Analysis of Inadequacy of Study by AES**

Thomas Lippe, legal counsel representing Living Rivers Counsel, commented upon on the inadequacy of the biological surveys relied upon by the DEIR in reaching its analysis that there were no bats located during the biological surveys conducted by AES.

Mr. Lippe's comments in response to the DEIR, as excerpted from his November 21, 2014 comments were:

#### **"4. The DEIR Fails as an Informational Document with Respect to Bats.**

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<sup>6</sup> Reference to Exhibit C, Central Coast Bar Research Group report at page 12 of 36

The DEIR fails to recognize that the Townsend's Big-eared Bat became a "candidate" species under the California Endangered Species Act (CESA) in November of 2013, well before the July 2014 publication of the Draft EIR. (See Exhibit 18.) As a result, it is entitled to all the protections that CESA provides to species listed as threatened or endangered. With respect to the Townsend's Big-eared Bat and the other bats species described at DEIR pp. 4.2-66-4.2-68, the DEIR's evidentiary basis for reaching any conclusion about the Project's impacts on bats is unreliable, as explained by bat biologist Joe Szewczak. (See Exhibit 17.) Therefore, because the DEIR is uninformed regarding the presence, location and status of bats on the Project site, the adoption of Mitigation Measure 4.2-14 (DEIR p. 4.2-121) represents a shot in the dark for purposes of mitigating impacts on these species".

The FEIR response to Mr. Lippe's comments on the inadequacies of the DEIR and pertaining lack of evidentiary basis for reaching any conclusion as to the Project's impacts on bats as being unreliable in the FEIR, were as follows:

Targeted nocturnal surveys were not conducted for special status bat species, although general observations were made for more obvious potential roosting sites, such as caves, mine shafts, or abandoned buildings. The Draft EIR accurately states that no bats were observed within the project site, and then goes on to describe the potential roosting and foraging habitat for a number of special status bat species that occurs on the project site (Table 4.2-3 and pages 4.2-66 through 68 of the Draft EIR). Therefore, presence (roosting, foraging, or both) of all special bat species listed in Table 4.2-3 is assumed for the project site to provide a more conservative analysis. Impact 4.2-14 states that development of the Proposed Project would have the potential to affect special status bat species. Mitigation Measure 4.2-14 provides for preconstruction surveys for special status bat species that would reduce potential impacts to less than significant.  
(Response to Comment Letter 022-123, pg. 4-240)

**Summary.** Even though the FEIR attempts to back pedal the fact that an appropriate bat study was never conducted at the project site, the offer of mitigations at 4.2-14 falls short of discharging the Applicant's duties under CEQA. An appropriate bat survey should be conducted by qualified individuals to determine exactly what comprises the bat population at the project site to ensure that appropriate mitigation procedures are followed to achieve protection of the species of special concern identified at the project site.

## VI.

### Mitigations Offered in FEIR are Inadequate

Notwithstanding the concession that the AES biological survey was not properly conducted for special status bat species, the presence of “all” special bat species at the project site are conceded in the FEIR, and in response thereto, a blanket mitigation is offered at 4.2-14:

**4.2-14:** Implementation of the following mitigation measures would reduce the potential impact to a less-than-significant level.

- For earth-disturbing activities occurring during the breeding season (March 1 through August 31), a qualified wildlife biologist shall conduct preconstruction surveys of all potential bat-roosting habitat for special status bats within 200 feet of earthmoving activities. Roosting habitat surveys shall focus on a) trees slated for removal that have loose bark, or holes/crevices in the trunk and b) rock piles slated for removal that contain crevices.
- If active special status bat roosts are found during preconstruction surveys, the biologists shall submit an avoidance plan to CDFW for review and acceptance. A no-disturbance buffer (acceptable in size to CDFW) will be created around active bat roosts during the breeding season or until it is determined that all young have become sufficiently volant to change roosts. The avoidance plan shall evaluate the length of time of disturbance, equipment noise, and type of habitat present at the project site.
- If pre-construction surveys indicate that roosts are inactive or potential habitat is unoccupied during the construction period, no further mitigation is required. Trees that have been determined to be unoccupied by special status bats may be removed.
- If vegetation removal activities are delayed or suspended for more than two weeks after the preconstruction survey, the areas shall be resurveyed.

**Summary.**

The mitigations offered are not appropriate in that the biological survey referenced in the documents was flawed, nor is there any indication that the mitigations offered are appropriate. There is no bat survey identifying the bat species present at the job site, which could be as many as 15 species as documented by a properly conducted bat survey at the nearby Pope Valley site. There are no wildlife biology experts specializing in bats specifying that the “one size fits all” approach for mitigation as offered on Mitigation Measure 4.2-14 is appropriate to address the issues presented by the presence of any or all of these protected species of special concern. Further, there is no provision for replacement of or identification of other roosts beyond trees or

rock piles which are slated for removal. As discussed above, many of these species bats also roost in rock crevices, caves, or other natural roosts as discussed above.

Finally, given the results of the first flawed biological survey and its inherent unbelievability as to the finding of “no bats” in the project area, these questions must be answered:

1. Who will conduct the preconstruction surveys? The same biologists who could not find any bats at the project site, or qualified biologists experienced in conducting bat surveys?
2. Will the bat surveys be conducted by in accordance with recommendations of the Western Bat Working Group (WBWG)<sup>7</sup> utilizing proper survey techniques
3. Who will prepare and monitor the avoidance plans in order to ensure that the protected bats are not disturbed during periods of construction? The same biologists who could not find any bats at the project site, or qualified biologists experienced in preparing and monitoring avoidance plans to protect these special species mammals?
4. What mitigations are proposed, in that the “mitigation plan” states only: “The avoidance plan shall evaluate the length of time of disturbance, equipment noise, and type of habitat present at the project site”. It does not speak to what happens after these factors are evaluated.
5. Noise and acoustics expert, Eric Yee, provided estimates of noise within the community of Circle Oaks which is likely to be far less than on the actual construction site which will include noise emanating from heavy equipment and blasting. How will the bats habitating in the project area be protected by noise created by the construction activities (including heavy equipment operation, blasting, and similar activities)? With these activities be banned during roosting season? How was the 200 feet buffer zone determined?
6. Do the mitigation measures meet CEQA standards considering that numerous special species of mammals (bats) have not been specifically identified through an appropriate bat survey?

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<sup>7</sup> **Western Bat Working Group (WBWG):** The WBWG is comprised of agencies, organizations and individuals interested in bat research, management and conservation from the 13 western states and provinces. The goals are (1) to facilitate communication among interested parties and reduce risks of species decline or extinction; (2) to provide a mechanism by which current information on bat ecology, distribution and research techniques can be readily accessed; and (3) to develop a forum to discuss conservation strategies, provide technical assistance and encourage education programs. Species are ranked as High, Medium, or Low Priority in each of 10 regions in western North America. Because California includes multiple regions where a species may have different WBWG Priority ranks, the CNNDDB includes categories for Medium-High, and Low-Medium Priority. The CNDDDB tracks bat species that are at least Low-Medium Priority in California. More information is available at: <http://www.wbwg.org>.

Thank you for your consideration of my comments.

Sincerely,

*Sue Wagner*

**References:**

**For list of Special Animals, Endangered or threatened animals**

[http://www.dfg.ca.gov/biogeodata/cnddb/plants\\_and\\_animals.asp](http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp)

What are Species of Special Concern?

<http://www.dfg.ca.gov/wildlife/nongame/ssc/>

Mammal Species of Special Concern:

<http://www.dfg.ca.gov/wildlife/nongame/ssc/mammals.html>