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Recommended Conditions of Approval and Final Agency Approval Memos

Hillwalker Vineyards Winery Use Permit P23-00101-UP and Exception
to the Conservation Regulations P23-00239-UP
Planning Commission Hearing Date (August 7, 2024)

**PLANNING COMMISSION HEARING – AUGUST 7, 2024
RECOMMENDED CONDITIONS OF APPROVAL**

**HILLWALKER VINEYARDS USE PERMIT EXCEPTION TO THE CONSERVATION
REGULATIONS (P23-00239), EXCEPTION TO THE NAPA COUNTY ROAD AND STREET
STANDARDS, AND USE PERMIT APPLICATION (P23-00101)
1871 Mount Veeder Road, Napa, CA 94558
APNS 034-110-047, 034-100-020, 034-100-043, 034-110-059**

This permit encompasses and shall be limited to the project commonly known as Hillwalker Vineyards Winery Use Permit Exception to the Conservation Regulations P23-00101, Exception to the Napa County Road and Street Standards, and Use Permit Application, located at 1871 Mount Veeder Road. Part I encompasses the Project Scope and general conditions pertaining to statutory and local code references, project monitoring, and the process for any future changes or activities. Part II encompasses the ongoing conditions relevant to the operation of the project. Part III encompasses the conditions relevant to construction and the prerequisites for a Final Certificate of Occupancy. It is the responsibility of the permittee to communicate the requirements of these conditions and mitigations (if any) to all designers, contractors, employees, and guests of the winery to ensure compliance is achieved.

Where conditions are not applicable or relevant to this project, they shall be noted as “Reserved” and therefore have been removed.

When modifying a legally established entitlement related to this project, these conditions are not intended to be retroactive or to have any effect on existing vested rights except where specifically indicated.

PART I

1.0 PROJECT SCOPE

The permit encompasses and shall be limited to:

- 1.1 Approval of an Exception to the Napa County Roads and Street Standards to allow for selective widening to three road sections (Stations STA 0+ 00 to STA 2+50, STA 25+ 50 to STA 28+00, and STA36+00 to end of driveway) pursuant to the plans dated March 14, 2024, prepared by Still water Civil Design.
- 1.2 Approval of a Use Permit to the Conservation Regulations to allow proposed driveway widening (Station STA 0+00 to STA 2+50) and turnouts that will encroach into the stream setback of an unnamed blue line creek at five (5) locations (STA 8+00, STA 12+00, STA 14+00, STA 17+50, and STA 19+50) pursuant to the plans dated March 14, 2024, prepared by Still water Civil Design.
- 1.3 Approval of a Use Permit for a 7,000 gallon per year winery to allow the following:
 - a. Convert a 1,500 sq. ft. residential cave to a commercial cave for wine production and storage only;

- b. Conduct visitation activities within an existing 298 sq. ft. covered patio area adjacent to the existing residence;
- c. Visitation, tours and tastings, and a marketing plan as set forth in Conditions of Approval (COAs) Nos. 4.1 through 4.3 below;
- d. On-premises consumption of wines as set forth in Condition of Approval No. 4.4 below;
- e. Two (2) fulltime and three (3) part-time employees during harvest and non-harvest seasons;
- f. Production and visitation hours between 10 a.m. and 6 p.m. Monday through Sunday;
- g. Convert the existing pool house restroom (80 sq. ft.) to an accessible restroom;
- h. Installation of a parking area with seven (7) parking stalls, including one (1) accessible stall and an electric vehicle charging station; and,
- i. Installation of a 2,500-gallon hold and haul tank for winery production wastewater.

The winery shall be designed in substantial conformance with the submitted site plan, elevation drawings, and other submittal materials and shall comply with all requirements of the Napa County Code (the County Code). It is the responsibility of the permittee to communicate the requirements of these conditions and mitigations (if any) to all designers, contractors, employees, and guests of the winery to ensure compliance is achieved. Any expansion or change in winery use or alternative locations for fire suppression or other types of water tanks shall be approved in accordance with the County Code and may be subject to the permit modification process.

2.0 STATUTORY AND CODE SECTION REFERENCES

All references to statutes and code sections shall refer to their successor as those sections or statutes may be subsequently amended from time to time.

3.0 MONITORING COSTS

All staff costs associated with monitoring compliance with these conditions, previous permit conditions, and project revisions shall be borne by the permittee and/or property owner. Costs associated with conditions of approval and mitigation measures that require monitoring, including investigation of complaints, other than those costs related to investigation of complaints of non-compliance that are determined to be unfounded, shall be charged to the property owner or permittee. Costs shall be as established by resolution of the Board of Supervisors in accordance with the hourly consulting rate established at the time of the monitoring and shall include maintenance of a \$500 deposit for construction compliance monitoring that shall be retained until issuance of a Final Certificate of Occupancy. Violations of conditions of approval or mitigation measures caused by the permittee's contractors, employees, and/or guests are the responsibility of the permittee.

The Planning Commission may implement an audit program if compliance deficiencies are noted. If evidence of a compliance deficiency is found to exist by the Planning Commission at some time in the future, the Planning Commission may institute the program at the applicant's expense (including requiring a deposit of funds in an amount determined by the Commission) as needed

until compliance assurance is achieved. The Planning Commission may also use the data, if so warranted, to commence revocation proceedings in accordance with the County Code.

PART II

4.0 OPERATIONAL CHARACTERISTICS OF THE PROJECT

Permittee shall comply with the following during operation of the winery:

4.1 GENERAL PROVISIONS

Consistent with the County Code, tours and tastings and marketing may occur at a winery only where such activities are accessory and “clearly incidental, related, and subordinate to the primary operation of the winery as a production facility.”

Tours and tastings (defined below) may include food and wine pairings, where all such food service is provided without charge except to the extent of cost recovery and is incidental to the tasting of wine. Food service may not involve menu options and meal service such that the winery functions as a café or restaurant.

Retail sales of wine shall be permitted as set forth in the County Code.

4.2 TOURS AND TASTINGS/VISITATION

Tours and tastings by appointment only as follows, with a weekly maximum of 113 visitors:

- a. Seven days per week, Monday through Sunday
- b. Frequency: 47 days of tours and tastings with up to 35 visitors maximum.
- c. Frequency: 306 days of tours and tastings with up to 19 visitors maximum.
- d. Frequency: 25 or more people will be allowed at the winery for a maximum of 59 days per year.
- e. Hours of visitation: 10:00 am to 6:00 pm

“Tours and tastings” means tours of the winery and/or tastings of wine, where such tours and tastings are limited to persons who have made unsolicited prior appointments for tours or tastings. To the maximum extent feasible, scheduling of reoccurring vehicle trips to and from the site for employees and deliveries shall not occur during peak travel times (2:30 p.m. to 3:30 p.m. on weekdays and 2:00 p.m. to 3:00 p.m. on Saturdays and Sundays).

A log book (or similar record) shall be maintained to document the number of visitors to the winery (for either tours and tastings or marketing events), and the dates of the visits. This record of visitors shall be made available to the Planning, Building and Environmental Services (PBES) Department upon request.

4.3 MARKETING

Marketing events shall be limited to the following:

- a. Private Food and Wine Tastings
 - 1. Frequency: 12 times per year
 - 2. Maximum number of persons: 45
 - 3. Time of Day: 10:00 a.m. to 10 p.m.
- b. All food for the marketing events will be catered and prepared off-site.
- c. No winery visits for tours and tastings will be held on the same day as a marketing event.

"Marketing of wine" means any activity of a winery which is conducted at the winery on a prearranged basis for the education and development of customers and potential customers with respect to wine which can be sold at the winery on a retail basis pursuant to the County Code. Marketing of wine may include cultural and social events directly related to the education and development of customers and potential customers provided such events are clearly incidental, related and subordinate to the primary use of the winery. Marketing of wine may include food service, including food and wine pairings, where all such food service is provided without charge except to the extent of cost recovery.

Business events are similar to cultural and social events, in that they will only be considered as "marketing of wine" if they are directly related to the education and development of customers and potential customers of the winery and are part of a marketing plan approved as part of the winery's Use Permit. To be considered directly related to the education and development of customers or potential customers of the winery, business events must be conducted at no charge except to the extent of cost recovery, and any business content unrelated to wine must be limited.

Careful consideration shall be given to the intent of the event, the proportion of the business event's non-wine-related content, and the intensity of the overall marketing plan (County Code).

All marketing event activity, excluding quiet clean-up, shall cease by 10:00 p.m. If any event is held which will exceed the available on-site parking, the permittee shall prepare an event-specific parking plan which may include, but not be limited to, valet service or off-site parking and shuttle service to the winery.

Auction Napa Valley (ANV) events need not be included in a participating winery's marketing plan because they are covered by ANV's Category 5 Temporary Permit. The winery may utilize any ANV event authorized in this permit for another charitable event of similar size.

4.4 ON-PREMISES CONSUMPTION

In accordance with State law and the PBES Director's July 17, 2008 memo, "Assembly Bill 2004 (Evans) & the Sale of Wine for Consumption On-Premises," on-premises consumption of wine produced on-site and purchased from the winery may occur solely in the 298 sq. ft. covered patio area adjacent to the existing

residence. Any and all visitation associated with on-premises consumption shall be subject to the maximum per person weekday and weekend daily tours and tastings visitation limitation and/or applicable limitations of permittee's marketing plan set forth in COA Nos.4.2 and 4.3 above.

4.5 RESIDENCE OR NON-WINERY STRUCTURES

Unless specifically authorized by this permit or a previously approved permit, the existing single-family residence, covered porch, garage, and swimming pool shall not be used for commercial purposes or in conjunction with the operation and/or visitation/marketing program for the winery. If the residence is rented, it shall only be rented for periods of 30 days or more, pursuant to the County Code.

4.6 GRAPE SOURCE

At least 75% of the grapes used to make the winery's still wine or the still wine used by the winery to make sparkling wine shall be grown within Napa County. The permittee shall keep records of annual production documenting the source of grapes to verify that 75% of the annual production is from Napa County grapes. The report shall recognize the Agriculture Commission's format for County of origin of grapes and juice used in the Winery Production Process. The report shall be provided to the PBES Department upon request, but shall be considered proprietary information and not available to the public.

4.7 COMPLIANCE REVIEW

Permittee shall obtain and maintain all permits (use permits and modifications) and licenses from the California Department of Alcoholic Beverage Control (ABC) and United States Tax and Trade Bureau (TTB), and California Department of Food and Agriculture (CDFA) Grape Crush Inquiry data, all of which are required to produce and sell wine. In the event the required ABC and/or TTB permits and/or licenses are suspended or revoked, permittee shall cease marketing events and tours and tastings until such time as those ABC and/or TTB permits and licenses are reinstated.

Visitation log books, visitor reports, custom crush client records, and any additional documentation determined by Staff to be necessary to evaluate compliance may be requested by the County for any code compliance. The permittee (and their successors) shall be required to participate fully in the winery code compliance review process.

4.8 RENTAL/LEASING

No winery facilities, or portions thereof, including, without limitation, any kitchens, barrel storage areas, or warehousing space, shall be rented, leased, or used by entities other than persons producing and/or storing wine at the winery, such as alternating proprietors and custom producers, except as may be specifically authorized in this Permit or pursuant to the Temporary Events Ordinance (County Code Chapter 5.36).

4.9 GROUND WATER MANAGEMENT - WELLS

This condition is implemented by the Planning, Building and Environmental Services Department:

The permittee shall be required (at the permittee's expense) to record well monitoring data (specifically, static water level no less than quarterly, and the volume of water no less than monthly). Such data will be provided to the County, if the PBES Director determines that substantial evidence¹ indicates that water usage at the winery is affecting, or would potentially affect, groundwater supplies or nearby wells. If data indicates the need for additional monitoring, and if the applicant is unable to secure monitoring access to neighboring wells, onsite monitoring wells may need to be established to gauge potential impacts on the groundwater resource utilized for the project. Water usage shall be minimized by use of best available control technology and best water management conservation practices.

In order to support the County's groundwater monitoring program, well monitoring data as discussed above will be provided to the County if the Director of PBES determines that such data could be useful in supporting the County's groundwater monitoring program. The project well will be made available for inclusion in the groundwater monitoring network if the Director of PBES determines that the well could be useful in supporting the program.

In the event that changed circumstances or significant new information provide substantial evidence¹ that the groundwater system referenced in the Use Permit would significantly affect the groundwater basin, the PBES Director shall be authorized to recommend additional reasonable conditions on the permittee, or revocation of this permit, as necessary to meet the requirements of the County Code and to protect public health, safety, and welfare.

4.10 AMPLIFIED MUSIC

There shall be no amplified sound system or amplified music utilized outside of approved, enclosed, winery buildings.

4.11 TRAFFIC

To the maximum extent feasible, scheduling of reoccurring vehicle trips to and from the site for employees and deliveries shall not occur during peak travel times (2:30 p.m. to 3:30 p.m. on weekdays and 2:00 p.m. to 3:00 p.m. on Saturdays and Sundays). All road improvements on private property required per Engineering Services shall be maintained in good working condition and in accordance with the Napa County Roads and Streets Standards.

4.12 PARKING

The location of visitor parking and truck loading zone areas shall be identified along with proposed circulation and traffic control signage (if any).

¹ Substantial evidence is defined by case law as evidence that is of ponderable legal significance, reasonable in nature, credible and of solid value. The following constitute substantial evidence: facts, reasonable assumptions predicated on facts; and expert opinions supported by facts. Argument, speculation, unsubstantiated opinion or narrative, or clearly inaccurate or erroneous information do not constitute substantial evidence.

Parking shall be limited to approved parking spaces only and shall not occur along access or public roads or in other locations except during harvest activities and approved marketing events. In no case shall parking impede emergency vehicle access or public roads.

4.13 BUILDING DIVISION – USE OR OCCUPANCY CHANGES

Please contact the Building Division with any questions regarding the following:

In accordance with the California Building Code (CBC), no change shall be made in the use of occupancy of an existing building unless the building is made to comply with the requirements of the current CBC for a new building.

4.14 FIRE DEPARTMENT – TEMPORARY STRUCTURES

Please contact the Fire Department with any questions regarding the following:

The permittee and/or designee shall obtain a tent permit from the Fire Department for any temporary structures utilized for authorized marketing events allowed per COA No. 4.3 above.

4.15 NAPA COUNTY MOSQUITO ABATEMENT PROGRAM **[RESERVED]**

4.16 GENERAL PROPERTY MAINTENANCE – LIGHTING, LANDSCAPING, PAINTING, OUTDOOR EQUIPMENT STORAGE, AND TRASH ENCLOSURE AREAS

- a. All lighting shall be permanently maintained in accordance with the lighting and building plans approved by the County. Lighting utilized during harvest activities is exempt from this requirement.
- b. All landscaping and outdoor screening, storage, and utility structures shall be permanently maintained in accordance with the landscaping and building plans approved by the County. No stored items shall exceed the height of the screening. Exterior winery equipment shall be maintained so as to not create a noise disturbance or exceed noise thresholds in the County Code.
- c. The colors used for the roof, exterior walls and built landscaping features of the winery shall be limited to earth tones that will blend the facility into the colors of the surrounding site specific vegetation. The permittee shall obtain the written approval of the Planning Division prior to any change in paint colors that differs from the approved building permit. Highly reflective surfaces are prohibited.
- d. Designated trash enclosure areas shall be made available and properly maintained for intended use.

4.17 NO TEMPORARY SIGNS

Temporary off-site signage, such as “A-Frame” signs, is prohibited.

4.18 COMPLIANCE WITH OTHER DEPARTMENTS AND AGENCIES –
OPERATIONAL CONDITIONS

The attached project conditions of approval include all of the following County Divisions, Departments and Agencies' requirements. Without limiting the force of those other requirements which may be applicable, the following are incorporated by reference as enumerated herein:

- a. Engineering Services Division operational conditions as stated in their Memorandum dated August 23, 2023.
- b. Engineering Services Division Road Exception Request conditions as stated in their Memorandum dated June 25, 2024.
- c. Environmental Health Division operational conditions as stated in their Memorandum dated April 9, 2024.
- d. Fire Department operational conditions as stated in their Inter-Office Memo dated August 22, 2023.
- e. Department of Fish and Wildlife letter dated July 31, 2024 (see Mitigation Measures incorporated in COA 6.12.d. through g.)

The determination as to whether or not the permittee has substantially complied with the requirements of other County Divisions, Departments and Agencies shall be determined by those County Divisions, Departments or Agencies. The inability to substantially comply with the requirements of other County Divisions, Departments and Agencies may result in the need to modify this permit.

4.19 OPERATIONAL MITIGATION MEASURES **[RESERVED]**

4.20 OTHER CONDITIONS APPLICABLE TO THE OPERATIONAL ASPECTS OF THE PROJECT

- a. The project area includes pool ancillary facilities, including but not limited to the pool deck area which shall not be available to winery visitors. For the pool and ancillary areas to be considered non-public, an enclosure compliant with Section 3119B must be constructed, separating the pool and ancillary areas from areas accessed by winery visitors.
- b. Greenhouse Gas Best Management Practices – Operational items checked on the attached Voluntary Best Management Practices Checklist for Development Projects, submitted by the applicant dated April 14, 2024, shall be implemented and evidence of implementation shall be provided to staff upon request.

4.21 PREVIOUS CONDITIONS **[RESERVED]**

PART III

5.0 PREREQUISITE FOR ISSUANCE OF PERMITS

5.1 PAYMENT OF FEES

No building, grading or sewage disposal permits shall be issued or other permits authorized until all accrued planning permit processing fees have been paid in full. This includes all fees associated with plan check and building inspections, associated development impact fees established by County Ordinance or Resolution, and the Napa County Affordable Housing Mitigation Fee in accordance with County Code.

6.0 GRADING/DEMOLITION/ENVIRONMENTAL/BUILDING PERMIT/OTHER PERMIT PREREQUISITES

Permittee shall comply with the following with the submittal of a grading, demolition, environmental, building and/or other applicable permit applications.

6.1 COMPLIANCE WITH OTHER DEPARTMENTS AND AGENCIES – PLAN REVIEW, CONSTRUCTION AND PREOCCUPANCY CONDITIONS

The attached project conditions of approval include all of the following County Divisions, Departments and Agencies' requirements. The permittee shall comply with all applicable building codes, zoning standards, and requirements of County Divisions, Departments and Agencies at the time of submittal and may be subject to change. Without limiting the force of those other requirements which may be applicable, the following are incorporated by reference as enumerated herein:

- a. Engineering Services Division operational conditions as stated in their Memorandum dated August 23, 2023.
- b. Engineering Services Division Road Exception Request conditions as stated in their Memorandum dated June 25, 2024.
- c. Environmental Health Division operational conditions as stated in their Memorandum dated April 9, 2024.
- d. Fire Department operational conditions as stated in their Inter-Office Memo dated August 22, 2024.
- e. Department of Fish and Wildlife letter dated July 31, 2024 (see Mitigation Measures incorporated in COA 6.12.d. through g.)

The determination as to whether or not the permittee has substantially complied with the requirements of other County Divisions, Departments and Agencies shall be determined by those County Divisions, Departments or Agencies. The inability to substantially comply with the requirements of other County Divisions, Departments and Agencies may result in the need to modify the permit.

6.2 BUILDING DIVISION – GENERAL CONDITIONS

- a. A building permit shall be obtained for all construction occurring on the site not otherwise exempt by the California Building Code (CBC) or any State or local amendment adopted thereto.
- b. If there are any existing structures and/or buildings on the property that will need to be removed to accommodate construction activities, a separate demolition permit shall be required from the Building Division prior to removal. The permittee shall provide a “J” number from the Bay Area Air Quality Management District (BAAQMD) at the time the permittee applies for a demolition permit if applicable.
- c. All areas of newly designed and newly constructed buildings, facilities and on-site improvements must comply with the CBC accessibility requirements, as well as, American with Disability Act requirements when applicable. When alterations or additions are made to existing buildings or facilities, an accessible path of travel to the specific area of alteration or addition shall be provided as required per the CBC.

6.3 LIGHTING – PLAN SUBMITTAL

- a. Two (2) copies of a detailed lighting plan showing the location and specifications for all lighting fixtures to be installed on the property shall be submitted for Planning Division review and approval. All lighting shall comply with the CBC.
- a. All exterior lighting, including landscape lighting, shall be shielded and directed downward, shall be located as low to the ground as possible, shall be the minimum necessary for security, safety, or operations; on timers; and shall incorporate the use of motion detection sensors to the greatest extent practical. All lighting shall be shielded or placed such that it does not shine directly on adjacent properties or impact vehicles on adjacent streets. No flood-lighting or sodium lighting of the building is permitted, including architectural highlighting and spotting. Low-level lighting shall be utilized in parking areas as opposed to elevated high-intensity light standards. Lighting utilized during harvest activities is exempt from this requirement.

6.4 LANDSCAPING – PLAN SUBMITTAL

- a. Two (2) copies of a detailed final landscaping and irrigation plan, including parking details, shall be submitted with the building permit application package for the Planning Division’s review and approval prior to the issuance of any building permit associated with this Use Permit. The plan shall be prepared pursuant to the County’s Water Efficient Landscape Ordinance (Chapter 18.118 of the County Code) requirements in effect at the time of building permit application submittal, as applicable, and shall indicate the names and locations of all plant materials to be used along with their method of maintenance.
- b. Plant materials shall be purchased locally when practical, and to the greatest extent possible, the plant materials shall be the same native plants

found in Napa County. The Agricultural Commissioner's office shall be notified of all impending deliveries of live plants with points of origin outside of Napa County.

- c. No trees greater than 6" diameter at breast height shall be removed, except for those identified on the submitted site plan. Any Oak trees removed as a result of the project shall be replaced at a 2:1 ratio and shown on the landscaping plans for the Planning Division's review and approval. Trees to be retained shall be protected during construction by fencing securely installed at the outer most dripline of the tree or trees. Such fencing shall be maintained throughout the duration of the work undertaken in connection with the winery development/construction. In no case shall construction material, debris or vehicles be stored in the fenced tree protection area.
- d. Evergreen screening shall be installed between the industrial portions of the operation (e.g. tanks, crushing area, parking area, etc.) and any off-site residence from which these areas can be viewed.

6.5 COLORS

The colors used for the roof, exterior walls and built landscaping features of the winery shall be limited to earth tones that will blend the facility into the colors of the surrounding site specific vegetation. The permittee shall obtain the written approval of the Planning Division in conjunction with building permit review and/or prior to painting the building. Highly reflective surfaces are prohibited.

6.6 OUTDOOR STORAGE/SCREENING/UTILITIES

- a. Details of outdoor storage areas and structures shall be included on the building and landscape plans. All outdoor storage of winery equipment shall be screened from the view of residences of adjacent properties by a visual barrier consisting of fencing or dense landscaping. No stored item shall exceed the height of the screening. Water and fuel tanks, and similar structures, shall be screened to the extent practical so as to not be visible from public roads and adjacent parcels.
- b. New utility lines required for this project that are visible from any designated scenic transportation route (see Community Character Element of the General Plan and the County Code) shall be placed underground or in an equivalent manner be made virtually invisible from the subject roadway.
- c. Exterior winery equipment shall be located, enclosed or muffled so as not to exceed noise thresholds in the County Code.

6.7 TRASH ENCLOSURES

Adequate area must be provided for collection and loading of garbage and recyclables generated by the project. The applicant must work with the franchised garbage hauler for the service area in which they are located, in order to determine the area and the pedestrian and vehicle access needed for the collection site. The garbage and recycling enclosure shall meet the minimum enclosure requirements

established by staff and the franchised hauler, which shall be included in the building permit submittal.

6.8 ADDRESSING

All project site addresses shall be determined by the PBES Director and be reviewed and approved by the United States Post Office. The PBES Director reserves the right to issue or re-issue an appropriate situs address at the time of issuance of any building permit to ensure proper identification and sequencing of numbers. For multi-tenant or multiple structure projects, this includes building permits for later building modifications or tenant improvements.

6.9 HISTORIC RESOURCES **[RESERVED]**

6.10 ACTIVITIES **[RESERVED]**

6.11 VIEWSHED – EXECUTION OF USE RESTRICTION **[RESERVED]**

6.12 PERMIT PREREQUISITE MITIGATION MEASURES

The permittee shall comply with the following permit prerequisite mitigation measures identified in the adopted Initial Study/Mitigated Negative Declaration and Project Revision Statement/Mitigation Monitoring and Reporting Program prepared for the project:

- a. Mitigation Measure AG-1 – The owner/permittee shall implement the following measure to comply with NCC Section 18.108.020 (D) 3:1 vegetation canopy cover preservation ratio. Prior to building permit issuance, a vegetation canopy cover area shall be identified on the subject property and shall permanently preserve a minimum of 0.7 acres of developable oak woodland (i.e., on land with slopes less than 30% and located outside of aquatic resource setbacks pursuant to NCC Sections 18.108.025 and 18.108.026), this area shall be identified as Vegetation Canopy Cover Preservation Area on the site plan prepared for the building permit. The vegetation canopy cover preservation area shall also be recorded with an easement or other similar mechanism prepared by Napa County.

Method of Monitoring: Prior to building permit issuance, a vegetation canopy cover area shall be identified on the subject property and shall permanently preserve a minimum of 0.7 acres of developable oak woodland (i.e., on land with slopes less than 30% and located outside of aquatic resource setbacks pursuant to NCC Sections 18.108.025 and 18.108.026), this area shall be identified as Vegetation Canopy Cover Preservation Area on the site plan prepared for the building permit. The vegetation canopy cover preservation area shall also be recorded with an easement or other similar mechanism prepared by Napa County.

Responsible Agency(ies): PBES

- b. Mitigation Measure BIO-1 – Northern Spotted Owl: Prior to the start of construction, a biologist would provide a training session for all work personnel to identify any sensitive species, including northern spotted owl, that may be in the area, their basic

habits, how they may be encountered in their work area, and procedures to follow when they are encountered. Any personnel joining the work crew later would receive the same training before beginning work. Upon completion of the education program, employees would sign a form stating they attended the program and understand all protection measures. A pamphlet that contains images of sensitive species that may occur within the project area, environmentally sensitive areas within the project area, key avoidance measures, and employee guidance would be given to each person who completes the training program. These forms would be made available to the resource agencies upon request.

Even though the presence of NSO within 330 feet of the project site is unlikely, the presence of this species in this area cannot be completely discounted. Therefore, to ensure that potential adverse noise or visual impacts on NSO are avoided and/or minimized, a preconstruction survey will be conducted in areas of potential NSO habitat within the 330-foot visual line of disturbance contour of the project site. The focus of the survey should be on the detection of the species and potential active nest sites that could be affected by proposed project work. If an active nest is found within the 330-foot contour visual line of disturbance, the start of construction will be delayed until the young have fledged. Young NSO generally leave the nest (that is, fledge) in late May or June. If an active nest is found within the 330-foot visual line of disturbance contour, it will be monitored by a qualified biologist to document when the young have left the nest and construction can start.

If project activities take place between February 1 and September 30, then a qualified biologist shall conduct a preconstruction survey for other nesting birds no more than 3-days before tree removal. If active nests are found, then an appropriate buffer would be established, and the nest would be monitored for compliance with the federal Migratory Bird Treaty Act and California Fish Game Code Section 3503.

No project work shall be conducted at night.

To minimize noise generated from the proposed action to the degree possible, all construction equipment, fixed or mobile, will be fitted with properly operating and maintained mufflers consistent with manufacturer's standards.

Method of Monitoring: If project activities take place between February 1 and September 30, then a qualified biologist shall conduct a preconstruction survey for other nesting birds no more than 3-days before tree removal. If active nests are found, then an appropriate buffer would be established, and the nest would be monitored for compliance with the federal Migratory Bird Treaty Act and California Fish Game Code Section 3503.

Responsible Agency(ies): PBES

- c. Mitigation Measure BIO-2 – California Giant Salamander, Foothill Yellow-Legged Frog and Western Pond Turtle: Prior to the start of construction, a biologist would provide a training session for all work personnel to identify any sensitive species, including California giant salamander, foothill yellow legged frog, western pond

turtle, and northern spotted owl that may be in the area, their basic habits, how they may be encountered in their work area, and procedures to follow when they are encountered. Any personnel joining the work crew later would receive the same training before beginning work. Upon completion of the education program, employees would sign a form stating they attended the program and understand all protection measures. A pamphlet that contains images of sensitive species that may occur within the project area, environmentally sensitive areas within the project area, key avoidance measures, and employee guidance would be given to each person who completes the training program. These forms would be made available to the resource agencies upon request.

No project work shall be conducted at night.

If logs, bark, or rocks are in the driveway improvement areas, a biological monitor shall be present during clearing and grubbing activities.

Install a temporary wildlife exclusion fence between the edge of the pond and driveway improvement locations to prevent animals from entering the work area.

Method of Monitoring: Prior to the start of construction, a biologist would provide a training session for all work personnel to identify any sensitive species, including California giant salamander, foothill yellow legged frog, western pond turtle, and northern spotted owl that may be in the area, their basic habits, how they may be encountered in their work area, and procedures to follow when they are encountered.

Responsible Agency(ies): PBES

- d. Mitigation Measure BIO-3 – Northern Spotted Owl Surveys: A qualified biologist shall provide an assessment of potential NSO nesting habitat within the Project area 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 within 0.25 miles of potential NSO nesting habitat shall occur between March 15 and July 31 unless a qualified biologist approved in writing by CDFW conducts NSO surveys following the USFWS Protocol for Surveying Proposed Management Activities That May Impact Northern Spotted Owls, dated (revised) January 9, 2012. Surveys shall be conducted in accordance with Section 9 of the survey protocol, Surveys for Disturbance-Only Projects. If breeding 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 each year. 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 ESA.

- e. Mitigation Measure BIO-4 – Special-Status Herpetofauna: For all Project activities that occur within 500 feet of stream or wetland habitat, prior to ground-disturbing activities, a qualified biologist shall conduct a pre-construction survey within 48 hours prior to the start of Project activities, focusing on the presence of CGS, FYLF, and WPT and their nests. If any of these special-status species are discovered during the survey, Project activities shall not begin until CDFW has been consulted and approved in writing measures to avoid and minimize impacts to special-status species, and the measures have been implemented.
- f. Mitigation Measure BIO-5 – Pre-Project Special-Status Plant Surveys: Prior to the start of Project activities, a Qualified Biologist shall conduct a habitat assessment for special-status plants. If potential habitat for special-status plants is present, botanical surveys shall be conducted during the appropriate blooming period and conditions for all special-status plants that have the potential to occur within or near the Project where they may be directly or indirectly impacted by for example, modifications to hydrological conditions. More than one year of surveys during appropriate conditions may be necessary. Surveys and associated reporting shall be conducted according to CDFW's 2018 Protocol for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (See <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>), including visiting reference sites. The habitat assessment and survey reports shall be submitted to CDFW prior to the start of construction. Project activities shall not proceed until CDFW has provided written approval of the habitat assessment and survey reports. If any special-status plant species are observed, the Project shall fully avoid direct and indirect impacts to all individuals and prepare and implement a CDFW-approved avoidance plan prior to Project activities. If impacts to special status plants cannot be avoided, the Project shall provide habitat compensation at a 3:1 mitigation to impact ratio including permanent protection of habitat through a conservation easement and funding and implementing a long-term management plan, prior to Project activities, unless otherwise approved in writing by CDFW.
- g. Mitigation Measure BIO-6 – Impacts to the Stream and placement, construction, and operation of the driveway modifications and tree removal: If impacts to the bed, bank, channel, and riparian area of the stream cannot be avoided, the Project shall notify CDFW for potential Project impacts to the ephemeral stream. More information for the notification process is available at <https://wildlife.ca.gov/Conservation/Environmental-Review/LSA>. The Project shall comply with all measures of the LSA, if issued, and shall not commence activities with potential to impact the stream until the LSA process has been completed.

Please be advised that a LSA, if issued for the Project, would likely include the above recommended mitigation measures, as applicable, and may include additional measures to protect fish and wildlife resources Riparian Areas: Prior to the commencement of Project Activities, the Project shall conduct a thorough assessment for potential impacts to the stream including, but not limited to, the placement, construction, and operation of the driveway modifications and tree removal. If impacts to the bed, bank, channel, and riparian area of the stream cannot be avoided, the Project shall notify CDFW for potential Project impacts to the ephemeral stream. More information for the notification process is available at <https://wildlife.ca.gov/Conservation/Environmental-Review/LSA>. The Project shall comply with all measures of the LSA, if issued, and shall not commence activities with potential to impact the stream until the LSA process has been completed. Please be advised that a LSA, if issued for the Project, would likely include the above recommended mitigation measures, as applicable, and may include additional measures to protect fish and wildlife resources.

While there may be a lack of documented occurrences on the Project site, CNDDDB is a positive sighting database; information on negative sightings is only included when it pertains to previously documented occurrences. It is important to emphasize that absence of data is not proof of absence. There are areas of the state that have not been surveyed or where data have not been submitted to the CNDDDB program. Just because a species has not been documented in the CNDDDB at a given location does not necessarily mean the species does not occur there. The absence of data in the CNDDDB is NOT proof of absence and does not constitute an adequate basis for determining lack of presence (CDFW 2020). CNDDDB shows 11 special-status plant species occurring within 5 miles of the Project area. The MND does not include or discuss impacts to special-status plant species resulting from Project activities including driveway modifications and tree removal, nor was an adequate scientific methodology utilized for a special-status plant assessment. Specific impacts and why they may occur and be significant: If survey protocols and results for special-status plants are not fully reported, impacts may go undetected, and state listed plants or other plants considered rare per CEQA guidelines section 15380 could be taken. Therefore, the presence of Special Status plants in the project area cannot be completely ruled out. Mitigation Measure BIO-5 would reduce impacts to Special Status plants to less than significant.

The Project includes installing turnouts and widening sections on a driveway which runs adjacent to and crosses over an unnamed tributary of Pickle Creek at two culverted sections. A total of 10 trees have been identified for complete or partial removal as part of the driveway modification project. The stream and adjoining riparian habitat is subject to CDFW jurisdiction and Fish and Game Code 1602 et. seq, notwithstanding seasonality of flows. Specific impacts and why they may occur and be significant: Construction activities and tree removal pose numerous threats to streams and the habitats they support. Impacts include

inputs of deleterious materials, removal of riparian vegetation, obstructions and diversions, equipment staging and operation, and disturbances to riparian corridors, special-status wildlife and their habitats, and nesting birds. In order for the Project to consider impacts to the stream and riparian habitat resulting from the driveway modifications and tree removal, the implementation of Mitigation Measure BIO-6, considering impacts to the stream and placement, construction, and operation of the driveway modifications and tree removal would result in a less than significant impact to biological resources.

6.13 PARCEL CHANGE REQUIREMENTS **[RESERVED]**

6.14 FINAL MAPS **[RESERVED]**

6.15 OTHER CONDITIONS APPLICABLE TO THE PROJECT PERMITTING PROCESS

- a. The project area includes pool ancillary facilities, including but not limited to the pool deck area which shall not be available to winery visitors. For the pool and ancillary areas to be considered non-public, an enclosure compliant with Section 3119B must be constructed, separating the pool and ancillary areas from areas accessed by winery visitors.
- b. In conjunction with building permit application submittal, the permittee shall not include natural gas appliances or natural gas plumbing within new buildings or the renovation of existing buildings.
- c. In conjunction with building permit application submittal, the project shall comply with electric vehicle requirements in the most recently adopted version of CALGreen Tier 2.
- d. In conjunction with building permit application submittal, the permittee shall provide documentation confirming to the Planning Division that all checked Voluntary Best Management Practices Measures submitted with the project Use Permit application shall be addressed through project construction and/or implemented through winery operation.

7.0 PROJECT CONSTRUCTION

Permittee shall comply with the following during project construction:

7.1 **SITE IMPROVEMENTS**

Please contact Engineering Services with any questions regarding the following.

a. **GRADING AND SPOILS**

All grading and spoils generated by construction of the project facilities shall be managed per Engineering Services direction. Alternative locations for spoils are permitted, subject to review and approval by the PBES Director, when such alternative locations do not change the overall concept, and do

not conflict with any environmental mitigation measures or conditions of approval.

b. DUST CONTROL

Water and/or dust palliatives shall be applied in sufficient quantities during grading and other ground disturbing activities on-site to minimize the amount of dust produced. Outdoor construction activities shall not occur when average wind speeds exceed 20 mph.

c. AIR QUALITY

During all construction activities the permittee shall comply with the most current version of BAAQMD Basic Construction Best Management Practices including but not limited to the following, as applicable:

1. Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. The BAAQMD's phone number shall also be visible.
2. Water all exposed surfaces (e.g., parking areas, staging areas, soil piles, grading areas, and unpaved access roads) two times per day.
3. Cover all haul trucks transporting soil, sand, or other loose material off-site.
4. Remove all visible mud or dirt traced onto adjacent public roads by using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
5. All vehicle speeds on unpaved roads shall be limited to 15 mph.
6. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
7. Idling times shall be minimized either by shutting off equipment when not in use or reducing the maximum idling time to five (5) minutes (as required by State Regulations). Clear signage shall be provided for construction workers at all access points.
8. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified visible emissions evaluator. Any portable engines greater than 50 horsepower or associated equipment operated within the BAAQMD's jurisdiction shall have either a California Air Resources Board (ARB) registration Portable Equipment Registration Program (PERP) or a BAAQMD permit. For general information regarding the certified visible emissions evaluator or the registration program, visit the ARB FAQ

http://www.arb.ca.gov/portable/perp/perpfact_04-16-15.pdf or the PERP website <http://www.arb.ca.gov/portable/portable.htm>.

d. **STORM WATER CONTROL**

The permittee shall comply with all construction and post-construction storm water pollution prevention protocols as required by the County Engineering Services Division, and the California Regional Water Quality Control Board.

7.2 **ARCHEOLOGICAL FINDING**

In the event that archeological artifacts or human remains are discovered during construction, work shall cease in a 50-foot radius surrounding the area of discovery. The permittee shall contact the PBES Department for further guidance, which will likely include the requirement for the permittee to hire a qualified professional to analyze the artifacts encountered and to determine if additional measures are required.

If human remains are encountered during project development, all work in the vicinity must be halted, and the Napa County Coroner informed, so that the Coroner can determine if an investigation of the cause of death is required, and if the remains are of Native American origin. If the remains are of Native American origin, the permittee shall comply with the requirements of Public Resources Code Section 5097.98.

7.3 **CONSTRUCTION NOISE**

Construction noise shall be minimized to the greatest extent practical and feasible under State and local safety laws, consistent with construction noise levels permitted by the General Plan Community Character Element and the County Noise Ordinance. Construction equipment muffling and hours of operation shall be in compliance with the County Code. Equipment shall be shut down when not in use. Construction equipment shall normally be staged, loaded, and unloaded on the project site, if at all practicable. If project terrain or access road conditions require construction equipment to be staged, loaded, or unloaded off the project site (such as on a neighboring road or at the base of a hill), such activities shall only occur daily between the hours of 8 am to 5 pm.

7.4 **CONSTRUCTION MITIGATION MEASURES [RESERVED]**

7.5 **OTHER CONSTRUCTION CONDITIONS APPLICABLE TO THE PROJECT PROPOSAL [RESERVED]**

8.0 TEMPORARY CERTIFICATE OF OCCUPANCY - PREREQUISITES

A Temporary Certificate of Occupancy (TCO) may be granted pursuant to the County Code to allow the commencement of production activities prior to completion of all project improvements. Permittee shall comply with the following before a TCO is granted:

8.1 **TEMPORARY OCCUPANCY**

All life and safety conditions shall be addressed prior to issuance of a TCO by the County Building Official. TCOs shall not be used for the occupancy of hospitality buildings and shall not exceed the maximum time allowed by the County Code which is 180 days. Departments and/or agencies with jurisdiction over the project are authorized as part of the TCO process to require a security deposit or other financial instrument to guarantee completion of unfinished improvements.

9.0 FINAL CERTIFICATE OF OCCUPANCY – PREREQUISITES

Permittee shall comply with the following before a Final Certificate of Occupancy is granted by the County Building Official, which upon granting, authorizes all use permit activities to commence.

9.1 FINAL OCCUPANCY

All project improvements, including compliance with applicable codes, conditions, and requirements of all Departments and Agencies with jurisdiction over the project, shall be completed.

9.2 SIGNS

Detailed plans, including elevations, materials, color, and lighting for any winery identification or directional signs shall be submitted to the Department for administrative review and approval prior to installation. Administrative review and approval is not required if signage to be installed is consistent with signage plans submitted, reviewed and approved as part of this permit approval. All signs shall meet the design standards as set forth in the County Code. At least one legible sign shall be placed at the property entrance with the words “Tours and Tasting by Prior Appointment Only” to inform the public of same. Any off-site signs allowed shall be in conformance with the County Code.

9.3 GATES/ENTRY STRUCTURES

Any gate installed at the winery entrance shall be reviewed by the PBES Department and the Fire Department to assure that the design allows large vehicles, such as motorhomes, to turn around if the gate is closed without backing into the public roadway, and that fire suppression access is available at all times. If the gate is part of an entry structure an additional permit shall be required pursuant to the County Code and in accordance with the Napa County Roads and Street Standards. A separate entry structure permit is not required if the entry structure is consistent with entry structure plans submitted, reviewed, and approved as part of this permit approval.

9.4 LANDSCAPING

Landscaping shall be installed in accordance with the approved landscaping plan.

9.5 ROAD OR TRAFFIC IMPROVEMENT REQUIREMENTS [RESERVED]

9.6 DEMOLITION ACTIVITIES [RESERVED]

9.7 GRADING SPOILS

All spoils shall be removed in accordance with the approved grading permit and/or building permit.

9.8 MITIGATION MEASURES APPLICABLE PRIOR TO ISSUANCE OF A FINAL CERTIFICATE OF OCCUPANCY **[RESERVED]**

9.9 OTHER CONDITIONS APPLICABLE PRIOR TO ISSUANCE OF A FINAL CERTIFICATE OF OCCUPANCY

- a. All required parking spaces shall be marked in compliance with the County's Road and Street Standards for a total of seven (7) parking spaces.
- b. Temporary fencing, required above, shall be removed prior to final occupancy.



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www.countyofnapa.org

Brian D Bordona
Director

MEMORANDUM

To: Wendy Atkins, Planning	From: Raulton Haye, Engineering
Date: August 23, 2023	Re: P23-00101 Hillwalker Winery APN: 034-110-047

The Engineering Division has reviewed the use permit application P23-00101 for the proposed Winery Use Permit located on assessor’s parcel number 034-110-047. Based upon the information provided in the application, Engineering finds the application **complete** and recommends the following conditions of approval:

RECOMMENDED APPROVAL CONDITIONS:

OPERATIONAL CHARACTERISTICS

1. The facility is designated as a discharger that discharges stormwater associated with industrial activity to waters of the United States. Therefore, the facility shall maintain or apply for coverage under the State Water Resources Control Board’s Industrial General Permit (IGP), including meeting all applicable provision and protocols of the IGP. If the facility fails to meet the discharge prohibitions of the IGP, Napa County may require the facility to make the necessary improvements to eliminate all exposures to stormwater of the pollutant(s) for which the water body is impaired.

PREREQUISITES FOR ISSUANCE OF PERMITS

2. Any roadway, access driveway, and parking areas, proposed new or reconstructed shall meet the requirements as outlined in the latest edition of the Napa County Road & Street Standards for Commercial development at the time of use permit approval. The property owner shall obtain a grading permit for all proposed roadway improvements.
3. All on site civil improvements including but not limited to the excavation, fill, general grading, drainage, curb, gutter, surface drainage, storm drainage, parking and drive isles, shall be constructed according to plans prepared by a registered civil engineer, which will be reviewed and approved by the Engineering Division of the Napa County Planning, Building, and Environmental Services Department (PBES) **prior to the commencement** of any on site land preparation or construction. Plans shall be wet signed and submitted with the building and/or grading permit documents at the time of permit application. A plan check fee will apply.

4. Grading and drainage improvements shall be constructed according to the current Napa County Road and Street Standards, Chapter 16.28 of the Napa County Code, and Appendix J of the California Building Code.
5. **Prior to issuance of a building permit** the owner shall submit the necessary documents for Erosion Control as determined by the area of disturbance of the proposed development in accordance with the Napa Countywide Stormwater Pollution Prevention program Erosion and Sediment Control Plan Guidance for Applicant and Review Staff dated December 2014.
6. **Prior to issuance of a building permit** the owner shall prepare a Regulated Project Stormwater Control Plan (SCP) in accordance with the latest edition of the BASMAA Post-Construction Manual for review and approval by the Engineering Division in PBES.
7. **Prior to issuance of a building permit**, an Operation and Maintenance Plan shall be submitted and tentatively approved by the Engineering Division in PBES. **Before final occupancy** the property owner must legally record the "Operation and Maintenance Agreement", approved by the Engineering Division in PBES.

PREREQUISITES FOR TEMPORARY CERTIFICATE OF OCCUPANCY

8. All roadway improvements shall be completed **prior to execution** of any new entitlements approved under this Use Permit. **** If no temporary occupancy is requested, then this becomes a requirement prior to final occupancy.**

PREREQUISITES FOR FINAL CERTIFICATION OF OCCUPANCY

9. Operations and Maintenance Agreement for post construction Stormwater facilities must be legally recorded.
10. Site shall be completely stabilized to the satisfaction of the County Engineer prior to Final Occupancy.

Any changes in use may necessitate additional conditions for approval.

If you have any questions regarding the above items, please contact Raulton Haye from Napa County Planning, Building, and Environmental Services Department, Engineering Division, at (707)253-4621 or by email at Rauton.Haye@countyofnapa.org



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Brian D Bordona
Director

MEMORANDUM

To: Wendy Atkins, Planning	From: Raulton Haye, Engineering
Date: June 25, 2024	Re: P23-00101 Hillwalker Winery Road Exception Evaluation APN: 034-100-020,-043, 034-110-047, -059

ROAD EXCEPTION REQUEST:

The Engineering Services Division received a request for an exception to the Napa County Road and Street Standards (NCRSS) for the shared access road serving the proposed winery located at 1871 Mt. Veeder Road, Napa CA.

The subject parcel is served by an existing gravel road that starts at the intersection of Mt. Veeder Road. From Mt Veeder Road, the road runs adjacent to a blueline stream for about 2200 ft, and then meanders to terminate its 4400 ft length at the proposed site. The Napa County Road and Street Standards (NCRSS) requires a 22ft minimum width for roads serving commercial uses such as this proposed winery. The majority of the existing road does not meet the minimum width requirement. The Hillwalker Winery project is seeking exception to the NCRSS to accommodate environmental and physical constraints that present challenging obstacles to the installation of a fully compliant road. The Engineering and Fire Divisions have visited the site to evaluate the exception request.

Driveway Exception Request

STA 2+50 to 25+50

The Napa County Road and Street Standards (NCRSS) requires a 22ft minimum width for commercial access roads. This segment of the road is constrained by steep slopes and an adjacent blueline stream that runs parallel to the road. These existing conditions prevent road expansion to the compliant width. Six turnouts are proposed for this segment, five of the six turnouts are spaced only 300 ft apart. Only the last two turnouts have a 500ft interval between them. Turnouts are placed to ensure intervisibility and, vegetation removal and maintenance will be performed to maintain clear sight lines along the road and between turnouts. These measures will serve to provide the same overall practical towards providing defensible space, in accordance with the SRA Fire Safe Regulations.

STA 28+00 to 36+00

The Napa County Road and Street Standards (NCRSS) requires a 22ft minimum width for commercial access roads. This segment of the road is constrained by steep slopes exceeding 30%, prohibiting road expansion to the compliant minimum width. Three turnouts are proposed for this 800ft segment. There is a 200ft interval between turnouts and, they are placed to be inter-visible. Vegetation removal and maintenance will be performed to maintain clear sight lines along the road and between turnouts. These measures will serve to provide the same overall practical towards providing defensible space, consistent with the SRA Fire Safe Regulations.

STAs 0+00 to 2+50, 25+50 to 28+00 and 36+00 to 44+00

Exceptions are not being requested for these segments; a standard roadway width will be installed.

ENGINEERING DIVISION EVALUATION AND RECOMMENDATION:

Engineering Division staff has reviewed the Request noted above with the applicant's authorized agents, Engineering staff and the Fire Marshal's office. With respect to Section (3) of the NCRSS as adopted by Resolution No. 2023-059 by the Board of Supervisors on April 18, 2023, this division has determined that the applicant has met the provisions for an exception to the NCRSS. The proposed improvement achieves the same overall practical effect by installing inter-visible turnouts along sub-standard segments of the road, and implementing vegetation management measures to maintain line of sight. The applicant will also consider implementing additional mitigation measures which includes signage at the beginning of the access road at Mt Veeder to indicate distances, fire water connections and fire water volume.

Any changes in use or design may necessitate additional review and approval. If you have any questions regarding the above items please contact Raulton Haye from Napa County PBES Department Engineering Division at (707) 253-4621 or via e-mail at raulton.haye@countyofnapa.org



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**Brian Bordona
Director**

MEMORANDUM

MSB

To: Wendy Atkins, Project Planner	From: Maureen S. Bown, Senior Environmental Health Specialist
Date: April 9, 2024	Re: Hillwalker Vineyards Winery- Use Permit 1871 Mount Veeder Road, Napa APN 034-110-047-000 P23- 00101

This Division has reviewed an application requesting approval to construct new 7,000 gallon winery as depicted in application materials. This Division has no objection to approval of the application with the following conditions of approval:

Prior to issuance of building permits:

1. Plans for the proposed process wastewater Hold and Haul system and reserve area, as described in the Onsite Wastewater Disposal Feasibility Report, dated February 8, 2024, shall be submitted for review and approval by this Division. No building clearance for any structure that generates process wastewater to be disposed of by this system will be approved until such plans are approved by this Division.
2. Permits to construct the process wastewater Hold and Haul system must be secured from this Division prior to approval of a building permit for any structure that generates wastewater to be disposed of by this system.
3. The water system to serve this residence and winery is not currently required to be regulated as a small public water system by this Division under California Code of Regulations, Title 22, or Napa County Code. The applicant will be required to provide a Declaration, prior to approval of a building permit.
4. Prior to the approval of a building permit, a current inspection/monitoring report of the Alternative Treatment Sewage System must be available, and the system must be in good working order and in compliance with the Annual Operating Permit requirements.

Prior to granting final occupancy:

5. During the construction, demolition, or renovation period of the project the applicant must use the franchised garbage hauler for the service area in which they are located for all wastes generated during project development, unless applicant transports their own waste. If the applicant transports their own waste, they must use the appropriate landfill or solid waste transfer station for the service area in which the project is located.

Upon final occupancy and thereafter:

6. Food service will be catered; therefore, all food must be prepared and served by a Napa County permitted caterer. If the caterer selected does not possess a valid Napa County Permit to operate, refer the business to this Division for assistance in obtaining the required permit prior to providing any food service.
7. The winery must comply with California Health and Safety Codes- HSC 118375, 118380.
8. A commercial food facility is not included in this project.
9. The existing pool will be used for residential purposes only.
10. Adequate area must be provided for collection of recyclables. The applicant must work with the franchised garbage hauler for the service area in which they are located, in order to determine the area and the access needed for the collection site. The garbage and recycling enclosure must meet the enclosure requirements provided during use permit process and be included on the building permit submittal. The designated area shall remain available and be properly maintained for its intended use.
11. Pursuant to Chapter 6.95 of the California Health and Safety Code, businesses that store hazardous materials above threshold planning quantities (55 gallons liquid, 200 cubic feet compressed gas, or 500 pounds of solids) shall obtain a permit, file an approved Hazardous Materials Business Plan to <http://cers.calepa.ca.gov/>, and be approved by this Division within 30 days of said activities.
12. All solid waste shall be stored and disposed of in a manner to prevent nuisances or health threats from insects, vectors, and odors.
13. All diatomaceous earth/bentonite must be disposed of in an approved manner. If the proposed septic system is an alternative sewage treatment system, the plan submitted for review and approval must address bentonite disposal.



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Bay Delta Region
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Fairfield, CA 94534
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



July 31, 2024

Wendy Atkins, Planner II
County of Napa
1195 Third Street
Napa, CA 94559
Wendy.Atkins@CountyofNapa.org

Subject: Hillwalker Vineyards Winery Use Permit #P23-00101-UP, Exception to the NCRSS, and Use Permit Exception to the Conservation Regulations P23-00239-UP, Mitigated Negative Declaration, SCH No. 2024070222, Napa County

Dear Ms. Atkins:

The California Department of Fish and Wildlife (CDFW) received a Notification of Intent to adopt a Mitigated Negative Declaration (MND) from the County of Napa (County) for the Hillwalker Vineyards Winery Use Permit #P23-00101-UP, Exception to the NCRSS, and Use Permit Exception to the Conservation Regulations P23-00239-UP (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

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 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) Agreement, 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: Kevin Morrison, Hillwalker Vineyards Winery

Objective: Develop a new winery including the following: 1) conversion of a 1,500-square foot (sq. ft.) residential cave to a commercial cave for wine production and

¹ 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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County of Napa
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storage; 2) conducting visitation activities in an existing unenclosed 298-sq. ft. covered patio area and allowing on-site consumption in accordance with Business and Professions Code Sections 23358, 23390 and 23396.5 (AB2004-Evans Bill); 3) provide on-site parking for 7 vehicles including an accessible parking space and an electric vehicle charging station; and, 4) installation of a 2,500-gallon hold and haul tank for winery process wastewater and 5) modifications to the existing driveway with the construction of 9 turnout shoulders and 3 areas of driveway widening, involving the removal of native trees and vegetation.

Location: The Project is located on approximately 20.46 acres at 1871 Mount Veeder Road, in unincorporated Napa County; and at approximately 38.35265 °N, -122.3983 °W; at Assessor Parcel Number (APN) 034-110-047. Access to the property is through APNs 034- 110-029 and 034-100-020. The driveway follows an unnamed tributary of Pickle Creek.

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*), 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. 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.

Lake and Streambed Alteration

An LSA Notification, pursuant to Fish and Game Code section 1600 et. seq. is required for Project activities affecting lakes or streams and associated riparian habitat. Notification is required for any activity that will substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a

Wendy Atkins
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river, lake or stream. **The Project has potential to impact an unnamed tributary of Pickle Creek and therefore, an LSA Notification may be needed, as further described below.** Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to LSA notification requirements. CDFW, as a Responsible Agency under CEQA, would consider the CEQA document for the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement until it has complied with CEQA as a Responsible Agency.

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.

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 the below recommendations and those in the Draft Mitigation, Monitoring and Reporting Program (Attachment 1), CDFW concludes that an MND is appropriate for the Project.

Mitigation Measure Related Impact Shortcomings

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)?

COMMENT 1: Northern Spotted Owl

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Issue: Thank you for providing the Northern Spotted Owl (NSO) Habitat Assessment, which concludes on page 5 that while "...there are four activity centers within a 2-mile radius of the project site.", "...the oak woodland within 330 feet of the project site does not appear to provide suitable nesting and/or diurnal roosting habitat for NSO due to its generally low stature and lack of large multi-canopied trees; however, this woodland could provide nocturnal foraging and dispersal habitat for NSO." Regarding habitat and trees along the driveway, the NSO Habitat Assessment (page 5) states that "The 11 trees proposed for removal average between 1 and 6 inches in diameter at breast height, are adjacent to an existing active driveway, and are too small to provide suitable NSO nesting and/or diurnal roosting habitat." This is inconsistent with the provided Table A of the assessment which includes 12 trees with diameters at breast height ranging from 6 to 12 inches. Furthermore, **this assessment did not analyze or survey for NSO occurrence within a 0.25-mile radius from the Project site** as described in the *Protocol for Surveying Proposed Management Activities that May Impact Northern Spotted Owls* (USFWS 2012). NSO can be impacted through visual or auditory disturbance up to 0.25 miles away from a project. Although typically associated with old-growth or mature forests, NSO can utilize a wide variety of forested habitat types. While typical NSO habitat characteristics include a multi-storied structure and high canopy cover (Press et al. 2010), NSO exhibit flexibility in their use of different forested areas for nesting, roosting, and feeding requirements. Finally, 2024 Google Earth satellite imagery suggests that potential habitat, including multi-storied structure and a high canopy, appears to occur within 0.25 miles of Project area, including the areas slated for driveway modifications and development for the winery. Based on this data, there is reasonable potential for NSO nesting habitat to be present within 0.25 miles of the Project.

Specific impacts and why they may occur and be significant: If active NSO nests are not detected within the 0.25-mile range of potential disturbance, NSO could be impacted by Project activities resulting in 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 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).

Recommendation: To reduce impacts to NSO to less-than-significant and comply with CESA, CDFW recommends that the MND include an analysis of potential impacts to NSO and add the below mitigation measure.

Mitigation Measure BIO-1 Northern Spotted Owl Surveys: A qualified biologist shall provide an assessment of potential NSO nesting habitat within the Project area and a

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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 within 0.25 miles of potential NSO nesting habitat shall occur between March 15 and July 31 unless a qualified biologist approved in writing by CDFW conducts NSO surveys following the USFWS *Protocol for Surveying Proposed Management Activities That May Impact Northern Spotted Owls*, dated (revised) January 9, 2012. Surveys shall be conducted in accordance with Section 9 of the survey protocol, *Surveys for Disturbance-Only Projects*. If breeding 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 each year.

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 ESA.

COMMENT 2: Special-Status Herpetofauna

Issue: Thank you for including in the MND and Biological Habitat Assessment (BHA) a discussion on nearby occurrences and potential for impacts to special-status herpetofauna including California giant salamander (*Dicamptodon ensatus*, CGS), foothill yellow legged frog (*Rana boylei*, FYLF), and western pond turtle (*Actinemys marmorata*, WPT). The MND (page 30) states that "Construction activities could temporarily preclude the movement of some wildlife including small mammals, reptiles, and amphibians. However, after the driveway improvements are constructed, wildlife that may move across the site would be able to continue to do so. In addition, the California giant salamander, Foothill yellow-legged frog, and Western pond turtle are not expected to be within the compacted gravel driveway improvement areas or ephemeral drainage...". However, the MND and Mitigation Measure BIO-2 do not include methodology for the detection and avoidance of these species.

Specific impacts and why they may occur and be significant: The Project could impact stream or upland dispersal habitat or refugia for the above special-status herpetofauna through vegetation removal and construction activities, potentially injuring or killing them. Individual western pond turtles, a Species of Special Concern (SSC) can move more than four miles up or down stream; therefore, the Project site is within the

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mobility range of other western pond turtle California Natural Diversity Database (CNDDDB) documented observations (Holland 1994). The species may also survive outside of aquatic habitat for several months in uplands up to several hundred feet from aquatic habitat (Purcell et al. 2017; Zaragoza et al. 2015). Foothill yellow-legged frogs, SSC, have been documented moving up to 500 feet from the wetted channel of a stream across upland habitat (CDFW 2018). Based on the above information, if these special-status herpetofauna occur within the Project area, Project impacts to special-status herpetofauna would be potentially significant.

Recommended Mitigation Measure: For an adequate environmental setting and to reduce impacts to special-status plants to less-than-significant, CDFW recommends including the below mitigation measure in the MND.

Mitigation Measure BIO-2 Special-status Herpetofauna: For all Project activities that occur within 500 feet of stream or wetland habitat, prior to ground-disturbing activities, a qualified biologist shall conduct a pre-construction survey within 48 hours prior to the start of Project activities, focusing on the presence of CGS, FYLF, and WPT and their nests. If any of these special-status species are discovered during the survey, Project activities shall not begin until CDFW has been consulted and approved in writing measures to avoid and minimize impacts to special-status species, and the measures have been implemented. If California red-legged frog is encountered, the Project shall consult with USFWS pursuant to the federal ESA and obtain any required authorization for impacts.

I. Environmental Setting Related Impact Shortcomings

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 USFWS?

COMMENT 3: Special-Status Plants

Issue: The MND (page 9) states that “According to County of Napa Environmental Mapping (CNDDDB layer) there are no Special Species plants on the parcel.” While there may be a lack of documented occurrences on the Project site, CNDDDB is a positive sighting database; information on negative sightings is only included when it pertains to previously documented occurrences. It is important to emphasize that absence of data is not proof of absence. There are areas of the state that have not been surveyed or where data have not been submitted to the CNDDDB program. Just because a species has not been documented in the CNDDDB at a given location does not necessarily mean the species does not occur there. The absence of data in the CNDDDB is NOT proof of absence and does not constitute an adequate basis for determining lack of presence

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(CDFW 2020). CNDDDB shows 11 special-status plant species occurring within 5 miles of the Project area. The MND does not include or discuss impacts to special-status plant species resulting from Project activities including driveway modifications and tree removal, nor was an adequate scientific methodology utilized for a special-status plant assessment.

Specific impacts and why they may occur and be significant: If survey protocols and results for special-status plants are not fully reported, impacts may go undetected, and state listed plants or other plants considered rare per CEQA guidelines section 15380 could be taken. 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.).

Recommended Mitigation Measure: For an adequate environmental setting and to reduce impacts to special-status plants listed above to less-than-significant, CDFW recommends incorporating the below mitigation measure.

Mitigation Measure BIO-3 Pre-Project Special-Status Plant Surveys: Prior to the start of Project activities, a Qualified Biologist shall conduct a habitat assessment for special-status plants. If potential habitat for special-status plants is present, botanical surveys shall be conducted during the appropriate blooming period and conditions for all special-status plants that have the potential to occur within or near the Project where they may be directly or indirectly impacted by for example, modifications to hydrological conditions. More than one year of surveys during appropriate conditions may be necessary. Surveys and associated reporting shall be conducted according to CDFW's 2018 Protocol for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (See: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>), including visiting reference sites. The habitat assessment and survey reports shall be submitted to CDFW prior to the start of construction. Project activities shall not proceed until CDFW has provided written approval of the habitat assessment and survey reports. If any special-status plant species are observed, the Project shall fully avoid direct and indirect impacts to all individuals and prepare and implement a CDFW-approved avoidance plan prior to Project activities. If impacts to special-status plants cannot be avoided, the Project shall provide habitat compensation at a 3:1 mitigation to impact ratio including permanent protection of habitat through a conservation easement and funding and implementing a long-term management plan, prior to Project activities, unless otherwise approved in writing by CDFW.

Would the Project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by CDFW or USFWS?

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COMMENT 4: Stream Alteration

Issue: According to the BHA (page 3 and Figure 2), The Project includes installing turnouts and widening sections on a driveway which runs adjacent to and crosses over an unnamed tributary of Pickle Creek at two culverted sections. The BHA also states that “A total of 11 trees have been identified for complete or partial removal as part of the driveway modification project.” It’s not clear that the Project has considered impacts to the stream and riparian habitat resulting from the driveway modifications and tree removal. Please be advised that the stream and adjoining riparian habitat is subject to CDFW jurisdiction and Fish and Game Code 1602 et. seq, notwithstanding seasonality of flows.

Specific impacts and why they may occur and be significant: Construction activities and tree removal pose numerous threats to streams and the habitats they support. Impacts include inputs of deleterious materials, removal of riparian vegetation, obstructions and diversions, equipment staging and operation, and disturbances to riparian corridors, special-status wildlife and their habitats, and nesting birds.

Recommendation: To comply with Fish and Game Code section 1600 et seq., CDFW recommends including the below mitigation measure.

Mitigation Measure BIO-4 Impacts to the Stream and Riparian Areas: Prior to the commencement of Project Activities, the Project shall conduct a thorough assessment for potential impacts to the stream including, but not limited to, the placement, construction, and operation of the driveway modifications and tree removal. If impacts to the bed, bank, channel, and riparian area of the stream cannot be avoided, the Project shall notify CDFW for potential Project impacts to the ephemeral stream. More information for the notification process is available at <https://wildlife.ca.gov/Conservation/Environmental-Review/LSA>. The Project shall comply with all measures of the LSA, if issued, and shall not commence activities with potential to impact the stream until the LSA process has been completed. Impacts to waters, wetlands, and riparian areas subject to the permitting authority of CDFW shall be mitigated by providing compensatory mitigation at a minimum 3:1 ratio in area for permanent impacts and 1:1 ratio for temporary impacts, unless otherwise approved in writing by CDFW.

Please be advised that an LSA, if issued for the Project, would likely include the above recommended mitigation measures, as applicable, and may include additional measures to protect fish and wildlife resources.

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

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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 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 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:

Erin Chappell
Regional Manager
Bay Delta Region

Attachment 1: Draft Mitigation Monitoring and Reporting Program

cc: Office of Planning and Research, State Clearinghouse (SCH No. 2024070222)

REFERENCES

CDFW. 2018. Considerations for Conserving the Foothill Yellow-Legged Frog.
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=157562&inline>

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Holland, Dan C. 1994. The western pond turtle: habitat and history. Unpublished final report, U. S. Dept. of Energy, Portland, Oregon.

Press, D., D. Adams, H. Jensen, K. Fehring, W. Merkle, M. Koenen, and L. A. Starcevich. 2010. San Francisco Bay Area Network northern spotted owl monitoring protocol: Version 6.4. Natural Resource Report NPS/SFAN/NRR—2010/245. National Park Service, Fort Collins, Colorado.

Purcell, Kathryn L.; McGregor, Eric L.; Calderala, Kathryn. 2017. Effects of drought on western pond turtle survival and movement patterns. *Journal of Fish and Wildlife Management*. 8(1): 15-27.

Zaragoza, George; Rose, Jonathan P.; Purcell, Kathryn.; Todd, Brian. 2015. Terrestrial habitat use by western pond turtles (*Actinemys marmorata*) in the Sierra Foothills. *Journal of Herpetology*. 49(3): 437-441.

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ATTACHMENT 1

Draft Mitigation Monitoring and Reporting Program (MMRP)

CDFW provides the following mitigation measure (MM) language to be incorporated into the MMRP for the Project.

Biological Resources (BR)			
Mitigation Measure (MM)	Description	Timing	Responsible Party
MM BIO-1	<p>MM BIO-1 Northern Spotted Owl Surveys: A qualified biologist shall provide an assessment of potential NSO nesting habitat within the Project area 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 within 0.25 miles of potential NSO nesting habitat shall occur between March 15 and July 31 unless a qualified biologist approved in writing by CDFW conducts NSO surveys following the USFWS <i>Protocol for Surveying Proposed Management Activities That May Impact Northern Spotted Owls</i>, dated (revised) January 9, 2012. Surveys shall be conducted in accordance with Section 9 of the survey protocol, <i>Surveys for Disturbance-Only Projects</i>. If breeding 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</p>	Prior to Ground Disturbance	Project Applicant

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	<p>qualified biologist and survey report prior to Project construction occurring between March 15 and July 31 each year.</p> <p>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 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-2</p>	<p>MM BIO-2 Special-status Herpetofauna: For all Project activities that occur within 500 feet of stream or wetland habitat, prior to ground-disturbing activities, a qualified biologist shall conduct a pre-construction survey within 48 hours prior to the start of Project activities, focusing on the presence of CGS, FYLF, and WPT and their nests. If any of these special-status species are discovered during the survey, Project activities shall not begin until CDFW has been consulted and approved in writing measures to avoid and minimize impacts to special-status species, and the measures have been implemented.</p>	<p>Prior to Ground Disturbance and continuing over the course of the Project</p>	<p>Project Applicant</p>
<p>MM BIO-3</p>	<p>Mitigation Measure BIO-3: Pre-Project Special-Status Plant Surveys: Prior to the start of Project activities, a Qualified Biologist shall conduct a habitat assessment for special-status plants. If potential habitat for special-status plants is present, botanical surveys shall be conducted during the appropriate</p>	<p>Prior to Ground Disturbance and continuing over the</p>	<p>Project Applicant</p>

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	<p>blooming period and conditions for all special-status plants that have the potential to occur within or near the Project where they may be directly or indirectly impacted by for example, modifications to hydrological conditions. More than one year of surveys during appropriate conditions may be necessary. Surveys and associated reporting shall be conducted according to CDFW's 2018 <i>Protocol for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities</i> (See https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline), including visiting reference sites. The habitat assessment and survey reports shall be submitted to CDFW prior to the start of construction. Project activities shall not proceed until CDFW has provided written approval of the habitat assessment and survey reports. If any special-status plant species are observed, the Project shall fully avoid direct and indirect impacts to all individuals and prepare and implement a CDFW-approved avoidance plan prior to Project activities. If impacts to special-status plants cannot be avoided, the Project shall provide habitat compensation at a 3:1 mitigation to impact ratio including permanent protection of habitat through a conservation easement and funding and implementing a long-term management plan, prior to Project activities, unless otherwise approved in writing by CDFW.</p>	<p>course of the Project</p>	
<p>MM BIO-4</p>	<p>MM BIO-4: Impacts to the Stream and Riparian Areas: Prior to the commencement of Project Activities, the Project shall conduct a thorough assessment for potential impacts to the stream including, but not limited to, the</p>	<p>Prior to Ground Disturbance and continuing over the</p>	<p>Project Applicant</p>

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	<p>placement, construction, and operation of the driveway modifications and tree removal. If impacts to the bed, bank, channel, and riparian area of the stream cannot be avoided, the Project shall notify CDFW for potential Project impacts to the ephemeral stream. More information for the notification process is available at https://wildlife.ca.gov/Conservation/Environmental-Review/LSA. The Project shall comply with all measures of the LSA, if issued, and shall not commence activities with potential to impact the stream until the LSA process has been completed.</p> <p>Please be advised that a LSA, if issued for the Project, would likely include the above recommended mitigation measures, as applicable, and may include additional measures to protect fish and wildlife resources</p>	course of the Project	
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