



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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January 26, 2023

Governor's Office of Planning & Research

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Curtis Sawyer, Planner II
Napa County
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STATE CLEARING HOUSE

Subject: Erickson Residence, Use Permit Exception to the Conservation Regulations (P21-00067), Exception to the Napa County Road and Street Standards, Viewshed App, Mitigated Negative Declaration, SCH No. 2022120696, Napa County

Dear Mr. Sawyer:

The California Department of Fish and Wildlife (CDFW) received a Mitigated Negative Declaration (MND) from Napa County (County) for the Erickson Residence, Use Permit Exception to the Conservation Regulations (P21-00067), Exception to the Napa County Road and Street Standards, Viewshed App (Project) pursuant 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) Program, or other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources.

PROJECT DESCRIPTION SUMMARY

Proponent: Jessica Erickson

Objective: Construct a new 2,400-square-foot, two-story residence and a 1,200-square-foot accessory dwelling unit, access road and driveway, associated infrastructure

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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improvements, and well. The Project will require a grading permit and a Use Permit Exception to the Conservation Regulations. The Project would remove 2.13 acres of tree canopy. Improvements to the existing paved driveway with turnouts will encroach upon the stream setback of Hirsch Creek in eight locations. Improvements to the existing dirt road will encroach upon stream setbacks of ephemeral streams at four locations.

Location: The project is located approximately 2.5 miles northwest of the City of St. Helena, County of Napa, on Accessor Parcel Number (APN): 022-070-023; Latitude: 38.522103, Longitude: -122.511982. The property is accessed via a shared driveway, which passes through the following APNs: 022-080-024, 022-080-025, 022-080-026, 022-070-032, 022-070-028, 022-070-046, 022-070-047, 022-070-024, and 022-070-023.

REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a CESA Incidental Take Permit (ITP) must be obtained if the Project has the potential to result in “take” of plants or animals listed under CESA, either during construction or over the life of the Project. **The Project has the potential to impact Northern spotted owl (NSO; *Strix occidentalis caurina*), a 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 Agreement

CDFW will require an LSA Notification, pursuant to Fish and Game Code sections 1600 et. seq. 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 river, lake or stream. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to notification requirements. **The Project would impact Hirsch Creek and other ephemeral streams; therefore, an LSA**

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Notification would be required. CDFW, as a Responsible Agency under CEQA, will consider the CEQA document for the Project. CDFW may not execute the final LSA Agreement until it has complied with CEQA as a Responsible Agency.

Nesting Birds

CDFW also has authority over actions that may disturb or destroy active nest sites or take birds. Fish and Game Code sections 3503, 3503.5, and 3513 protect birds, their eggs, and nests. Migratory birds are also protected under the federal Migratory Bird Treaty Act.

Fully Protected Species

Fully Protected species, such as American peregrine falcon (*Falco peregrinus anatum*), may not be taken or possessed at any time (Fish & G. Code, §§ 3511, 4700, 5050, & 5515) except for collecting these species for necessary scientific research, relocation of the bird species for the protection of livestock, or if they are a covered species whose conservation and management is provided for in a Natural Community Conservation Plan.

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. Editorial comments or other suggestions may also be included to improve the document. Based on the Project's avoidance of significant impacts on biological resources with implementation of mitigation measures, including those CDFW recommends in Attachment 1, CDFW concludes that an MND is appropriate for the Project.

I. Mandatory Findings of Significance: Does the Project have the potential to substantially reduce the number or restrict the range of an endangered, rare, or threatened species?

COMMENT 1: Northern Spotted Owl - Mitigation Measure Shortcoming

Issue: Mitigation Measure (MM) BIO-3 may not be sufficient to reduce impacts to NSO to less-than-significant. The measure requires surveys for NSO within 500 feet of the Project site if work is scheduled between February 1 and June 30. However, CDFW considers the NSO nesting season in Napa County to be from March 15 through **July 31**, and nesting NSO may be impacted by construction activities that occur within **0.25 miles** of the Project site.

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Specific impacts and why they may occur and be significant: If suitable NSO nesting habitat occurs on the Project site or within a 0.25-mile radius and active NSO nests are not detected by the proposed surveys in MM BIO-3, NSO could be disturbed 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. The Project may result in audio or visual disturbances to nesting NSO within 0.25-mile of the Project site. NSO is CESA listed as a threatened species and therefore is considered to be a threatened species pursuant to CEQA Guidelines section 15380. Therefore, if an active NSO nest is disturbed by the Project, the Project may result in a substantial reduction in the number of a threatened species, which is considered a Mandatory Finding of Significance pursuant to CEQA Guidelines section 15065, subdivision (a)(1).

Recommended Mitigation Measure: To reduce impacts to NSO to less-than-significant, CDFW recommends replacing MM BIO-3 with the following mitigation measure.

MM BIO-3: Northern Spotted Owl Habitat Assessment and 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 U.S. Fish and Wildlife Service (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 Endangered Species Act (ESA).

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II. 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 2: Napa false indigo - Mitigation Measure Shortcoming

Issue: MM BIO-1 proposes a 1:1 replacement for the removal of Napa false indigo (*Amorpha californica* var. *napensis*, California Rare Plant Rank (CRPR)² 1B.2). This is insufficient to reduce impacts to this special-status plant to less-than-significant because the Project would result in a net loss of Napa false indigo habitat and may result in a significant net loss of the species. Additionally, three years of monitoring may be insufficient to ensure plants have established. Lastly, MM BIO-1 does not provide a guarantee that the area where seeds and cuttings will be distributed will be protected in perpetuity.

Recommended Mitigation Measure: To reduce impacts to Napa false indigo to less-than-significant, CDFW recommends incorporating the following language into MM BIO-1.

MM BIO-1: Special-Status Plant Preservation Area. The Project shall develop and implement a restoration and preservation plan for Napa false indigo, which shall be reviewed and approved by CDFW prior to Project construction. The plan shall include habitat preservation at a minimum 3:1 mitigation to impact ratio based on acreage and/or number of plants as appropriate, or another method accepted in writing by CDFW. The plan shall include habitat enhancement of the preserved area to increase the population of Napa false indigo. To the extent feasible, seeds and propagation cuttings from plants in the impact area shall be collected to distributed in the preservation area. The plan shall include a minimum 5-year monitoring period and require success criteria of 80 percent survival of all installed plants. The plan shall be developed and implemented by a qualified botanist knowledgeable about plant taxonomy, familiar with plants of the region, and have experience conducting botanical field surveys according to vetted protocols. The preservation area shall be designated as such in a conservation easement, unless otherwise approved in writing by CDFW. Land placed in protection shall be restricted from development and other uses that would degrade the quality of the habitat (including, but not limited to, conversion to other land uses such as agriculture or urban development and off-road vehicle use). A qualified botanist shall develop and implement a long-term management plan in perpetuity to ensure survival of the species, and the Project shall provide funding for management plan implementation.

² CRPR rank definitions are available in CDFW's *Special Vascular Plants, Bryophytes, and Lichens List* (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=109383&inline>) and on the California Native Plant Society website (<https://www.cnps.org/rare-plants/cnps-inventory-of-rare-plants>).

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COMMENT 3: Special-Status Herpetofauna – Environmental Setting Shortcoming

Issue: As noted on page 12 of the MND, the Hirsch Creek contains potentially suitable habitat for foothill yellow-legged frog (*Rana boylei*, northwest/north coast clade), California giant salamander (*Dicamptodon ensatus*), red-bellied newt (*Taricha rivularis*), and western pond turtle (*Emys marmorata*), all of which are designated as California Species of Special Concern. The MND suggests that the ephemeral streams where the driveway crossing improvements will occur do not provide suitable habitat for these species, presumably because they will be dry at the time of the Project. However, this is not made clear. Additionally, these species may occur outside of wetted channels, above top of bank, and within ephemeral streams, and therefore may be impacted by work both adjacent to Hirsch Creek and within the ephemeral streams.

Specific impacts and why they may occur and be significant: The Project could impact stream or upland dispersal habitat or refugia for special-status herpetofauna through vegetation removal and grading activities, potentially injuring or killing them. Western pond turtles can move more than four miles up or down stream; therefore, the Project area is within the mobility range of western pond turtle 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 have been documented moving up to 500 feet from the wetted channel of a stream across upland habitat (CDFW 2018). Based on the above, if special-status herpetofauna occur within the Project area, Project impacts to special-status herpetofauna would be potentially significant.

Recommended Mitigation Measures: To reduce impacts to less-than-significant, CDFW recommends including the following mitigation measures in the MND.

MM BIO-7: Special-Status Species Survey. A Qualified Biologist, approved by CDFW for this Project, shall conduct a pre-construction survey within 48 hours prior to the start of Project activities, focusing on the presence of special-status species, including, but not limited to, California giant salamander and red-bellied newt. If any special-status species are discovered during the survey, Project activities shall not begin until CDFW has been consulted with regarding avoidance and minimization measures to avoid and minimize impacts to special-status species. Permittee shall implement the avoidance and minimization measures if required by CDFW.

MM BIO-8: Foothill Yellow-Legged Frog Surveys. Prior to starting Project activities, a qualified biologist shall conduct surveys for foothill yellow-legged frog using a CDFW-approved methodology. The Project shall provide a foothill yellow-legged frog survey methodology, prepared by a qualified biologist, to CDFW for review and written approval no less than 30 days prior to beginning Project activities, unless CDFW approves otherwise in writing. Submitting survey methodology and conducting surveys is not

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required if the stream is dry and there are no areas of persistent summer moisture present in or within 500 feet upstream and downstream of the Project area. Surveys within and adjacent to the Project activity area shall include searching suitable habitat including, but not limited to, cavities under rocks, within vegetation such as sedges and other clumped vegetation, and under undercut banks, no less than 50 feet from the streambed and 500 feet upstream and downstream of the Project activity area. Surveys shall target all life stages and should be conducted at different times of day and under variable weather conditions if possible. If foothill yellow-legged frogs, their eggs, or any other special-status species, are found, CDFW shall be notified immediately, and construction shall not occur without written approval from CDFW allowing the Project activities to proceed. If foothill yellow-legged frog egg masses are observed in a stream that is scheduled for dewatering, dewatering shall not occur until an egg mass relocation plan is approved in writing by CDFW and implemented. In the event adult foothill yellow-legged frogs are observed, a temporary wildlife exclusion fence shall be installed, if requested by CDFW, to prevent frogs and/or other special-status species from entering the work site. The results of the survey shall be submitted to CDFW for written acceptance prior to starting Project activities.

MM BIO-9: Western Pond Turtle Surveys. No more than two weeks prior to the commencement of ground-disturbing activities, a qualified biologist shall perform surveys for western pond turtles and their nests within aquatic and upland habitat at the Project site, unless otherwise approved in writing by CDFW. An additional survey shall occur no more than 48 hours prior to Project activities. If a pond turtle or nest site is detected at any time, CDFW shall be notified immediately. Survey results shall be submitted to CDFW prior to construction activities. All western pond turtles observed on-site shall be avoided and allowed to leave the Project activity area of their own volition or shall be relocated, by a qualified biologist, to appropriate habitat within the same stream the individual was found. Any turtle nest sites shall be avoided with an appropriate buffer identified by a qualified biologist and accepted in writing by CDFW. The Permittee shall prepare and implement a Western Pond Turtle Habitat Improvement Plan, if western pond turtle or their nests are found, if required and approved by CDFW.

III. 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?

COMMENT 4: Impacts to Stream and Riparian Habitat and Sensitive Natural Communities – Environmental Setting and Mitigation Measure Shortcomings

Issue: The MND indicates that the Project will result in impacts to stream and riparian habitat. The Project may also impact sensitive natural communities, including Douglas-fir – tan oak forest (*Pseudotsuga menziesii* – *Lithocarpus densiflorus* Forest Alliance)

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and redwood forest (*Sequoia sempervirens* Forest Alliance). The extent of these impacts is unclear, such as how much of the 2.13 acres of tree canopy that will be removed falls within these sensitive habitat areas. MM BIO-5 proposes a minimum 3:1 preservation to impact ratio for impacts to vegetative cover. CDFW considers this ratio sufficient; however, the proposed monitoring and success criteria may be insufficient if sensitive natural communities will be impacted. Additionally, oak trees within a sensitive natural community may require higher replacement ratios than currently proposed, and the MND does not require the Project submit an LSA Notification to CDFW.

Recommended Mitigation Measures: To reduce impacts to stream and riparian habitat, and sensitive natural communities, to less-than-significant, CDFW recommends clarifying the acreage of impacts to stream and riparian habitat and sensitive natural communities, and including the following mitigation measures in the MND.

MM BIO-10: Streambed Alteration Agreement. Prior to commencement of construction, the Project shall notify CDFW for potential impacts to Hirsch Creek and other ephemeral streams and obtain an LSA Agreement if required by CDFW. The notification should be submitted online via the Environmental Permit Information Management System (EPIMS) at <https://wildlife.ca.gov/Conservation/Environmental-Review/EPIMS>. The Project shall comply with all measures of the LSA Agreement if issued.

MM BIO-11: Restoration Plan. Temporarily impacted areas within the riparian zone or other sensitive natural community shall be restored and planted with native trees, shrubs and grasses. Permanently impacted areas within the riparian zone or other sensitive natural community, such as from channel crossings, shall be restored at a 3:1 mitigation to impact ratio for acreage and linear feet impacted. Restoration shall occur on-site to the extent feasible. If off-site restoration is necessary, it shall be as close the Project site as possible and within the same watershed, unless otherwise approved in writing by CDFW. Restoration shall occur in the same year of the impacts. Trees within the riparian zone or sensitive natural community shall be replaced at the following mitigation to impact ratios, unless otherwise approved in writing by CDFW:

Oak (*Quercus* sp.) trees:

- 4:1 replacement for trees up to 7 inches diameter at breast height (DBH)
- 5:1 replacement for trees greater than 7 inches and up to 15 inches DBH
- 10:1 replacement for trees greater than 15 inches DBH, which are considered old-growth oaks

Non-oak trees:

- 1:1 replacement for non-native trees

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- 1:1 replacement for native trees up to 3 inches DBH
- 3:1 replacement for trees greater than 3 inches DBH and up to 6 inches DBH
- 6:1 replacement for trees greater than 6 inches DBH

Please be advised that an LSA Agreement obtained for this Project would likely require the above recommended mitigation measures, as applicable.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>. **As of January 2023, positive survey results from 2021 and 2022 for and Napa false indigo, Green monardella (*Monardella viridis*, CRPR 4.3), and Narrow-anthered brodiaea (*Brodiaea leptandra*, CRPR 1B.2) have not been submitted to CNDDDB, please submit this information to CNDDDB.**

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 for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist the County in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Alicia Bird, Environmental Scientist, at (707) 980-5154 or alicia.bird@wildlife.ca.gov; or Melanie Day, Senior Environmental Scientist (Supervisory), at (707) 210-4415 or melanie.day@wildlife.ca.gov.

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Sincerely,

DocuSigned by:

Erin Chappell
Regional Manager
Bay Delta Region

Attachment 1: Draft Mitigation Monitoring and Reporting Program

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2022120696)

Jessica Erickson, jericks88@gmail.com

Osborn Erickson, oz@emeraldfund.com

Joel Dickerson, Madrone Engineering, joel@madrone.engineering.com

REFERENCES

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

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

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 language to be incorporated into the MMRP for the Project.

Biological Resources (BIO)			
Mitigation Measure (MM)	Description	Timing	Responsible Party
MM BIO-1	<p><i>The following language is recommended for incorporation and/or replacement of MM BIO-1 as applicable.</i></p> <p>Special-Status Plant Preservation Area. The Project shall develop and implement a restoration and preservation plan for Napa false indigo, which shall be reviewed and approved by CDFW prior to Project construction. The plan shall include habitat preservation at a minimum 3:1 mitigation to impact ratio based on acreage and/or number of plants as appropriate, or another method accepted in writing by CDFW. The plan shall include habitat enhancement of the preserved area to increase the population of Napa false indigo. To the extent feasible, seeds and propagation cuttings from plants in the impact area shall be collected to distributed in the preservation area. The plan shall include a minimum 5-year monitoring period and require success criteria of 80 percent survival of all installed plants. The plan shall be developed and implemented by a qualified botanist knowledgeable about plant taxonomy, familiar with plants of the region, and have experience conducting botanical field surveys according to vetted protocols. The preservation area shall be designated as such in a conservation easement, unless otherwise approved in writing by CDFW. Land placed in protection shall be restricted from development and other uses that would degrade the quality of the habitat (including, but not limited to, conversion to other land uses such as agriculture or urban development and off-road vehicle use). A qualified botanist shall develop and implement a long-term management plan in perpetuity to ensure survival of the species, and the Project shall provide funding for management plan implementation.</p>	Prior to Ground Disturbance	Project Applicant
MM BIO-3	Northern Spotted Owl Avoidance. A qualified biologist shall provide an assessment of potential NSO nesting habitat within the Project area and a 0.25-mile radius and	Prior to Ground Disturbance	Project Applicant

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	<p>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 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>	and continuing over the course of the Project	
MM BIO-7	<p>Special-Status Species Survey. A Qualified Biologist, approved by CDFW for this Project, shall conduct a pre-construction survey within 48 hours prior to the start of Project activities, focusing on the presence of special-status species, including, but not limited to, California giant salamander and red-bellied newt. If any special-status species are discovered during the survey, Project activities shall not begin until CDFW has been consulted with regarding avoidance and minimization measures to avoid and minimize impacts to special-status species. Permittee shall implement the avoidance and minimization measures if required by CDFW.</p>	Prior to Ground Disturbance	Project Applicant
MM BIO-8	<p>Foothill Yellow-Legged Frog Surveys. Prior to starting Project activities, a qualified biologist shall conduct surveys for foothill yellow-legged frog using a CDFW-approved methodology The Project shall provide a foothill yellow-legged frog survey methodology, prepared by a</p>	Prior to Ground Disturbance and continuing	Project Applicant

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	<p>qualified biologist, to CDFW for review and written approval no less than 30 days prior to beginning Project activities, unless CDFW approves otherwise in writing. Submitting survey methodology and conducting surveys is not required if the stream is dry and there are no areas of persistent summer moisture present in or within 500 feet upstream and downstream of the Project area. Surveys within and adjacent to the Project activity area shall include searching suitable habitat including, but not limited to, cavities under rocks, within vegetation such as sedges and other clumped vegetation, and under undercut banks, no less than 50 feet from the streambed and 500 feet upstream and downstream of the Project activity area. Surveys shall target all life stages and should be conducted at different times of day and under variable weather conditions if possible. If foothill yellow-legged frogs, their eggs, or any other special-status species, are found, CDFW shall be notified immediately and construction shall not occur without written approval from CDFW allowing the Project activities to proceed. If foothill yellow-legged frog egg masses are observed in a stream that is scheduled for dewatering, dewatering shall not occur until an egg mass relocation plan is approved in writing by CDFW and implemented. In the event adult foothill yellow-legged frogs are observed, a temporary wildlife exclusion fence shall be installed, if requested by CDFW, to prevent frogs and/or other special-status species from entering the work site. The results of the survey shall be submitted to CDFW for written acceptance prior to starting Project activities.</p>	<p>over the course of the Project</p>	
<p>MM BIO-9</p>	<p>Western Pond Turtle Surveys. No more than two weeks prior to the commencement of ground-disturbing activities, a qualified biologist shall perform surveys for western pond turtles and their nests within aquatic and upland habitat at the Project site, unless otherwise approved in writing by CDFW. An additional survey shall occur no more than 48 hours prior to Project activities. If a pond turtle or nest site is detected at any time, CDFW shall be notified immediately. Survey results shall be submitted to CDFW prior to construction activities. All western pond turtles observed on-site shall be avoided and allowed to leave the Project activity area of their own volition or shall be relocated, by a qualified biologist, to appropriate habitat within the same stream the individual was found. Any turtle nest sites shall be avoided with an appropriate buffer identified by a qualified biologist and accepted in writing by CDFW. The Permittee shall prepare and implement a Western Pond Turtle Habitat Improvement Plan, if western pond turtle or their nests</p>	<p>Prior to Ground Disturbance and continuing over the course of the Project</p>	<p>Project Applicant</p>

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	are found, if required and approved by CDFW.		
MM BIO-10	Streambed Alteration Agreement. Prior to commencement of construction, the Project shall notify CDFW for potential impacts to Hirsch Creek and other ephemeral streams and obtain an LSA Agreement if required by CDFW. The notification should be submitted online via the EPIMS at https://wildlife.ca.gov/Conservation/Environmental-Review/EPIMS . The Project shall comply with all measures of the LSA Agreement if issued.	Prior to Ground Disturbance and continuing over the course of the Project	Project Applicant
MM BIO-11	<p>Restoration Plan. Temporarily impacted areas within the riparian zone or other sensitive natural community shall be restored and planted with native trees, shrubs and grasses. Permanently impacted areas within the riparian zone or other sensitive natural community, such as from channel crossings, shall be restored at a 3:1 mitigation to impact ratio for acreage and linear feet impacted. Restoration shall occur on-site to the extent feasible. If off-site restoration is necessary, it shall be as close the Project site as possible and within the same watershed, unless otherwise approved in writing by CDFW. Restoration shall occur in the same year of the impacts. Trees within the riparian zone or sensitive natural community shall be replaced at the following mitigation to impact ratios, unless otherwise approved in writing by CDFW:</p> <p>Oak (<i>Quercus</i> sp.) trees:</p> <ul style="list-style-type: none"> • 4:1 replacement for trees up to 7 inches diameter at breast height (DBH) • 5:1 replacement for trees greater than 7 inches and up to 15 inches DBH • 10:1 replacement for trees greater than 15 inches DBH, which are considered old-growth oaks <p>Non-oak trees:</p> <ul style="list-style-type: none"> • 1:1 replacement for non-native trees • 1:1 replacement for native trees up to 3 inches DBH • 3:1 replacement for trees greater than 3 inches DBH and up to 6 inches DBH • 6:1 replacement for trees greater than 6 inches DBH 	Prior to Ground Disturbance and continuing over the course of the Project	Project Applicant