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Planning, Building & Environmental Services

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David Morrison
Director

To: Zoning Administrator	From: Sean Trippi
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Date: March 24, 2021	Re: Sebastien Marineau-Mes Residence Viewshed P20-00230-VIEW Mitigated Negative Declaration (MND), and MMRP & Conditions of Approval
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Statutory Background

In accordance with Section 15073 of the California Environmental Quality Act (CEQA) Guidelines, Napa County submitted the initial proposed IS/MND to the State Clearinghouse for a 30-day review period beginning on February 22, 2021. In addition, Napa County circulated a Notice of Intent to adopt the proposed IS/MND to interested agencies and individuals. During the public review period, the County received a comment letter, dated March 17, 2021, from the California Department of Fish and Wildlife (CDFW), attached, expressing concerns about potential impacts to Pallid bats and nesting birds, including tree removal procedures related to bat species and the timing of pre-construction surveys for nesting birds.

Pursuant to Section 15073.5 of the CEQA Guidelines recirculation of the MND is not required unless a new, avoidable significant effect is identified and mitigation measures or project revisions must be added in order to reduce the effect to insignificance, or the lead agency determines that the proposed mitigation measures or project revisions will not reduce potential effects to less than significance and new measures or revisions must be required.

This memorandum further supports the environmental analysis and conclusions reached in the Mitigated Negative Declaration, and supports the finding that the proposed project does not raise any new issues and does not exceed the level of impacts identified in the previously prepared Mitigated Negative Declaration.

Applicable Reports in Circulation

This memo supplements the Sebastien Marineau-Mes Residence Mitigated Negative Declaration and referenced reports. A copy of said documents are available for review at the offices of the Napa County Planning, Building & Environmental Services Department, 1195 Third Street, Suite 210, Napa, Calif.

Minor Technical Changes or Additions to the Sebastien Marineau-Mes Residence Mitigated Negative Declaration (MND)

Biological Resources

A Biological Resources Reconnaissance Survey Report, dated July 2020, was prepared by WRA. As noted in the report, although not observed, the project area has the potential to support two special-status wildlife species, as well as non-status birds protected under the MBTA. The report included measures to avoid or otherwise minimize potential impacts to these species. However, CDFW recommended revision to further reduce potential impacts to the two protected bat species and nesting birds.

Use Permit - Revised Conditions of Approval

In addition to tree removal procedures related to bat species/habitat and the timing of pre-construction surveys for nesting birds, the CDFW letter suggested tree replacement at 5:1 or 10:1, depending on the size of the tree to be removed, for the Coast live oak trees proposed to be removed. However, as discussed in MND, the Napa County General Plan and Napa County Code (NCC) include provisions for retaining and/or replacing oak woodlands impacted by development. General Plan Policy CON-24 promotes the maintenance and improvement of oak woodland and requires replacement of lost oak woodlands or preservation of like habitat at a 2:1 ratio when retention of existing vegetation is found to be infeasible. In addition, NCC 18.108.020(C) requires that in the AW zoning district, a minimum of seventy percent vegetation canopy cover as configured on the parcel existing on June 16, 2016 must be maintained and NCC Section 18.108.020(D) requires that the removal of any vegetation canopy cover be mitigated by permanent replacement or preservation of comparable vegetation canopy cover, on an acreage basis at a minimum 3:1 ratio.

The 4.07 property contains approximately 3.01 acres of coast live oak woodland. In order to ensure that a 3:1 ratio is maintained, per NCC Section 18.108.020(D) approximately 0.75 acres of the property can be developed. Approximately 0.23 acres of coast live oak woodland will be impacted as part of the project, which was designed to be in compliance with both the 70 percent retention and the 3:1 tree preservation requirements. Further, NCC Section 18.108.020(E) requires that preserved vegetation canopy cover shall be enforceably restricted with a perpetual protective easement or perpetual deed restriction preserving and conserving the preserved vegetation canopy cover, which is included as a project condition of approval. Staff found potential impacts related to tree removal to be less than significant and therefore has not included tree replacement requirements suggested by the CDFW.

Based on recommendations from the CDFW in their letter dated March 17, 2021, except for tree replacement requirements, staff recommends revisions to the conditions of approval below. Conditions of approval 6.13 and 7.5 have been revised to reflect the proposed revisions to mitigation measures BIO-1 and BIO 2, as follows (added language underlined and deleted language ~~struck through~~):

BIO-1: Tree removal shall be performed during seasonal periods of bat activity: Prior to maternity season – from approximately March 1 (or when night temperatures are above 45°F and when rains have ceased) through April 15 (when females begin to give birth to young); and prior to winter torpor – from September 1 (when young bats are self-sufficiently volant) until October 15 (before night temperatures

~~fall below 45 degrees Fahrenheit and rains begin). Prior to tree removal, a qualified biologist shall perform from September 1 through March 31, outside of the general bat maternity season. If tree removal is proposed during this period, it is recommended that a bat habitat assessment of all trees proposed for removal to determine if any trees contain suitable bat roosting habitat (e.g., cavities, crevices, deep bark fissures), which shall be documented in a brief formal report. If any trees contain suitable bat roosting habitat, presence of bats shall be presumed and trees shall be removed using the following two-day phased method: On day 1, under the supervision of a qualified biologist who has prior experience overseeing tree removal using this method, all limbs not containing suitable bat roosting habitat (e.g., cavities, crevices, deep bark fissures) shall be removed using chainsaws only. The next day, the rest of the tree shall be removed, and survey effort (the latter if needed) be performed by a qualified biologist prior to tree removal to determine if bats are present in the trees. If no suitable roosting habitat for bats is found, then no further study is warranted. If special status bat species or bat maternity roosts are detected, then roost trees shall be avoided until the end of the maternity roosting season as determined by a qualified biologist in consultation with CDFW. Irrespective of time of year, all felled trees should remain on the ground for at least 24 hours prior to chipping, off-site removal, or other processing to allow any bats present within the felled trees to escape.~~

~~Method of Monitoring: The permittee shall have a bat habitat assessment and the mitigation and monitoring plan shall be submitted to and accepted by CDFW in writing, prior to starting Project construction, and survey, as applicable, prior to any tree removal during the bat maternity season (April 1 to August 31). In the event special status bat species or bat maternity roosts are detected, construction activities will be scheduled to avoid the maternity roosting season.~~

~~BIO-2: If tree/vegetation removal and initial ground disturbance must shall occur during from August 16 to January 31, outside of the general bird nesting season (i.e., February 1 to August 31) If tree/vegetation is proposed during this time, a pre-construction nesting bird survey shall be performed by a qualified biologist no more than 44 seven (7) days prior to the initiation of tree removal or ground disturbance. The survey shall should cover the Project Area (including tree removal areas) and surrounding areas within 500 feet. If active bird nests are found during the survey, an appropriate no-disturbance buffer shall be established by the qualified biologist. A qualified biologist shall monitor all active nests during construction each day for one week, and weekly thereafter, to ensure that construction activities do not disturb nesting birds or raptors. If the qualified biologist observes birds displaying nest-disturbance behavior, the qualified biologist shall cease all work and CDFW shall be consulted with regarding appropriate avoidance and minimization measures prior to resuming construction. In this event, construction shall not resume without CDFW's written permission. Monitoring shall continue until a qualified biologist Once it is determined that the young have fledged (left the nest) or the nest is no longer active, at which point otherwise becomes inactive (e.g., due to predation), the no-disturbance buffer may be lifted and work may be initiated within the buffer.~~

Method of Monitoring: The permittee shall have a nesting bird survey completed prior to any ground disturbing activities scheduled to occur on the site from February 1 through August 31~~45~~. The survey results shall be provided to the Napa County Planning, Building and Environmental Services. In the event any special-status or other protected nesting birds are found to occur on-site construction activities shall be scheduled to avoid nesting and breeding periods and consultation will be sought with CDFW to develop appropriate measures to reduce potential impacts to nesting birds protected under the Fish and Game Code section 3500 et seq. and Migratory Bird Treaty Act.

In addition, the following mitigation measures addressing Tribal Cultural Resources were not included in the Recommended Conditions of Approval. Conditions of approval 6.13 and 7.5 will be revised to include mitigation measures TCR-1 through TCR-4, as follows:

- TCR-1: Ground disturbing activities occurring in conjunction with the Project (including surveys, testing, concrete pilings, debris removal, rescrapes, punch lists, erosion control (mulching, waddles, hydroseeding, etc.), pot-holing or auguring, boring, grading, trenching, foundation work and other excavations or other ground disturbance involving the moving of dirt or rocks with heavy equipment or hand tools within the Project area) shall be monitored on a full-time basis by qualified tribal monitor(s) approved by the Tribe. The tribal monitoring shall be supervised by the project Tribal Cultural Advisor. Tribal monitoring should be conducted by qualified tribal monitor(s) approved by the Tribe, who is defined as qualified individual(s) who has experience with identification, collection and treatment of tribal cultural resources of value to the Tribe. The duration and timing of the monitoring will be determined by the project Tribal Cultural Advisor. If the project Tribal Cultural Advisor determines that full-time monitoring is no longer warranted, he or she may recommend that tribal monitoring be reduced to periodic spot-checking or cease entirely. Tribal monitoring would be reinstated in the event of any new or unforeseen ground disturbances or discoveries.
- TCR-2: The project Tribal Cultural Advisor and tribal monitor(s) may halt ground disturbance activities in the immediate area of discovery when known or suspected tribal cultural resources are identified until further evaluation can be made in determining their significance and appropriate treatment or disposition. There must be at minimum one tribal monitor for every separate area of ground disturbance activity that is at least 30 meters or 100 feet apart unless otherwise agreed upon in writing between the Tribe and applicant. Depending on the scope and schedule of ground disturbance activities of the Project (e.g., discoveries of cultural resources or simultaneous activities in multiple locations that requires multiple tribal monitors, etc.) additional tribal monitors may be required on-site. If additional tribal monitors are needed, the Tribe shall be provided with a minimum of three (3) business days advance notice unless otherwise agreed upon between the Tribe and applicant. The on-site tribal monitoring shall end when the ground disturbance activities are completed, or when the project Tribal Cultural Advisor have indicated that the site has a low potential for tribal cultural resources.
- TCR-3: All on-site personnel of the Project shall receive adequate cultural resource sensitivity training approved by the project Tribal Cultural Advisor or his or her authorized designee prior to initiation of ground disturbance activities on the Project. The training must also address the potential for exposing subsurface resources and procedures if a potential resource is identified. The Project applicant will coordinate with the Tribe on the cultural resource sensitivity training.
- TCR-4: The Project applicant must meet and confer with the Tribe, at least 45 days prior to commencing ground disturbance activities on the Project to address notification,

protection, treatment, care and handling of tribal cultural resources potentially discovered or disturbed during ground disturbance activities of the Project. All potential cultural resources unearthed by Project activities shall be evaluated by the project Tribal Cultural Advisor. The Tribe must have an opportunity to inspect and determine the nature of the resource and the best course of action for avoidance, protection and/or treatment of tribal cultural resources to the extent permitted by law. If the resource is determined to be a tribal cultural resource of value to the Tribe, the Tribe will coordinate with the Project applicant to establish appropriate treatment and disposition of the resources with appropriate dignity which may include reburial or preservation of resources. The Project applicant must facilitate and ensure that the determination of treatment and disposition by the Tribe is followed to the extent permitted by law. No laboratory studies, scientific analysis, collection, curation, or video recording are permitted for tribal cultural resources without the prior written consent of the Tribe.

Method of Monitoring: Prior to initial ground disturbance the permittee shall provide documentation to the Planning Division that the permittee has retained a project Tribal Cultural Advisor designated by the Tribe, to direct all mitigation measures related to tribal cultural resources.

SUMMARY AND FINDINGS

The following findings are provided in accordance with CEQA §15073.5 (c) concerning the decision not to recirculate the Mitigated Negative Declaration pursuant to §15073.5(a)

Recirculation is not required under the following circumstances:

- (1) Mitigation measures are replaced with equal or more effective measures pursuant to Section 15074.1.
- (2) New project revisions are added in response to written or verbal comments on the project's effects identified in the proposed negative declaration which are not new avoidable significant effects.
- (3) Measures or conditions of project approval are added after circulation of the negative declaration which are not required by CEQA, which do not create new significant environmental effects and are not necessary to mitigate an avoidable significant effect.
- (4) New information is added to the negative declaration which merely clarifies, amplifies, or makes insignificant modifications to the negative declaration.

The conclusions and recommendations contained herein are professional opinions derived in accordance with current standards of professional practice. They are based on a review of the Napa County Environmental Resource Maps, the other sources of information listed in the file, and the comments received, conversations with knowledgeable individuals; the preparer's personal knowledge of the area; and, where necessary, a visit to the site. For further information, please see the Sebastien Marineau-Mes Residence Mitigated Negative Declaration dated February 17, 2021.



March 17, 2021

Mr. Sean Trippi, Planner
Napa County
1195 Third Street, Suite 210
Napa, CA 94559
sean.trippi@countyofnapa.org

Subject: Sebastian Marineau-Mes Residence Viewshed Application, Mitigated
Negative Declaration, SCH No. 2021020357, Napa County

Dear Mr. Trippi:

California Department of Fish and Wildlife (CDFW) personnel reviewed the Mitigated Negative Declaration (MND) for the Sebastian Marineau-Mes Residence Viewshed Application (Project). CDFW is submitting comments on the MND to inform Napa County, as Lead Agency, of our concerns regarding potentially significant impacts to sensitive resources associated with the proposed Project.

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

ENVIRONMENTAL SETTING

The Project is located on a 4.07-acre parcel at 4000 Silverado Trail, approximately 0.35 miles south of Larkmead Lane and 2.9 miles southeast of the City of Calistoga, Napa County. The Project parcel contains 3.01 acres of coast live oak (*Quercus agrifolia*) woodland with Douglas-fir (*Pseudotsuga menziesii*), Ponderosa pine (*Pinus ponderosa*), California black oak (*Quercus kelloggii*), Pacifica madrone (*Arbutus menziesii*), and California bay (*Umbellularia californica*) trees. Surrounding land uses include a winery (Davis Estates), vineyards and rural residences to the north, vineyard to the west, rural residences to the south, and undeveloped areas to the east. No watercourses occur on the Project parcel, but Dutch Henry Creek occurs on the opposite side of Silverado Trail within ¼-mile.

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PROJECT DESCRIPTION

The proposed Project would construct a 3,996 square-foot single family residence, a 1,125 square-foot garage, a 972 square-foot accessory dwelling unit, and swimming pool. The Project would also include driveway improvements, construction of a 5,000-gallon water storage tank, and installation of a wastewater treatment system.

COMMENTS AND CONCERNS

Pallid Bat (*Antrozous pallidus*) and Tree Removal

The MND states that 0.23 acres of coast live oak woodland will be permanently impacted by the Project, including the removal of 20 trees ranging from 8 to 40 inches in diameter at breast height. The MND also states that the Project site could support pallid bat, which is a California Species of Special Concern and could roost within trees on the Project site. Removal of trees supporting special-status bats is a potentially significant impact and Mitigation Measure BIO-1 would not reduce impacts to less-than-significant because it would not mitigate the loss of bat roosting habitat. Pallid bats are very sensitive to disturbance at the roost. The conversion of oak woodlands to vineyards and other developments is likely the most significant factor contributing to the species decline in Napa County (Brylski, Collins, Pierson, Rainey, and Kucera, 1998). CDFW recommends revising Mitigation Measure BIO-1 as follows (added language in **bold italics**, deleted language in ~~strikethrough~~):

*Tree removal shall be performed **during seasonal periods of bat activity: Prior to maternity season – from approximately March 1 (or when night temperatures are above 45°F and when rains have ceased) through April 15 (when females begin to give birth to young); and prior to winter torpor – from September 1 (when young bats are self-sufficiently volant) until October 15 (before night temperatures fall below 45 degrees Fahrenheit and rains begin). Prior to tree removal, a qualified biologist shall perform from ~~September 1 through March 31, outside of the general bat maternity season. If tree removal is proposed during this period, it is recommended that a bat habitat assessment of all trees proposed for removal to determine if any trees contain suitable bat roosting habitat (e.g., cavities, crevices, deep bark fissures), which shall be documented in a brief formal report. If any trees contain suitable bat roosting habitat, presence of bats shall be presumed and trees shall be removed using the following two-day phased method: On day 1, under the supervision of a qualified biologist who has prior experience overseeing tree removal using this method, all limbs not containing suitable bat roosting habitat (e.g., cavities, crevices, deep bark fissures) shall be removed using chainsaws only. The next day, the rest of~~***

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the tree shall be removed. Additionally, to mitigate for the loss of potential special-status bat roosting habitat, the project proponent shall plant native oak trees (e.g., coast live oak) at the following mitigation to impact ratios: 5:1 for the removal of trees between 10 and 15 inches in diameter at breast height; and 10:1 for the removal of trees greater than 15 inches in diameter at breast height.

If tree plantings cannot occur on-site then the Project proponent shall have a qualified biologist prepare a mitigation and monitoring plan including, but not be limited to, the proposed location for off-site tree plantings, success criteria (i.e., target percent survival of tree plantings), a minimum of 5 years of monitoring, an irrigation and weed maintenance plan, and a written statement from the landowner allowing trees to be planted and maintained on the property. and survey effort (the latter if needed) be performed by a qualified biologist prior to tree removal to determine if bats are present in the trees. If no suitable roosting habitat for bats is found, then no further study is warranted. If special-status bat species or bat maternity roosts are detected, then roost trees shall be avoided until the end of the maternity roosting season as determined by a qualified biologist in consultation with CDFW. Irrespective of time of year, all felled trees should remain on the ground for at least 24 hours prior to chipping, off-site removal, or other processing to allow any bats present within the felled trees to escape.

Method of Monitoring: The bat habitat assessment and the mitigation and monitoring plan shall be submitted to and accepted by CDFW in writing, prior to starting Project construction. Mitigation for the loss of trees containing suitable bat roosting habitat shall occur within the same calendar year of Project construction. Annual monitoring reports shall be submitted to CDFW for a minimum of 5 years and shall describe the condition and percent survival of all off-site tree plantings. If plantings have not achieved success criteria by the end of 5 years, additional plantings with the same amount of maintenance monitoring shall be implemented to achieve success criteria. and survey, as applicable, prior to any tree removal during the bat maternity season (April 1 to August 31). In the event special-status bat species or bat maternity roosts are detected, construction activities will be scheduled to avoid the maternity roosting season.

Nesting Birds

Mitigation Measure BIO-2 does not reduce impacts to birds to less-than-significant because it does not include monitoring of nests during construction to determine if established no-disturbance buffers adequately avoid disturbance. CDFW recommends

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that Mitigation Measure BIO-2 be revised as follows (added language in **bold italics**, deleted language in ~~strikethrough~~):

*If ~~tree/vegetation removal and initial ground disturbance~~ **must** ~~shall~~ occur **during** ~~from August 16 to January 31, outside of the general bird nesting season (i.e., February 1 to August 31)~~ **February 1 to August 31** ~~if tree/vegetation is proposed during this time, a pre-construction nesting bird survey shall be performed by a qualified biologist no more than 147 days prior to the initiation of tree removal or ground disturbance. The survey~~ **shall** ~~should~~ cover the Project Area (including tree removal areas) and surrounding areas within 500 feet. If active bird nests are found during the survey, an appropriate no-disturbance buffer shall be established by the qualified biologist. **A qualified biologist shall monitor all active nests during construction each day for one week, and weekly thereafter, to ensure that construction activities do not disturb nesting birds or raptors. If the qualified biologist observes birds displaying nest-disturbance behavior, the qualified biologist shall cease all work and CDFW shall be consulted with regarding appropriate avoidance and minimization measures prior to resuming construction. In this event, construction shall not resume without CDFW's written permission. Monitoring shall continue until a qualified biologist** ~~Once it is determined that the young have fledged (left the nest) or the nest is no longer active, at which point otherwise becomes inactive (e.g., due to predation), the~~ **no-disturbance** buffer may be lifted and work may be initiated within the buffer.*

*Method of Monitoring: The permittee shall have a nesting bird survey completed prior to any ground disturbing activities scheduled to occur on the site from February 1 through August ~~31~~**15**. The survey results shall be provided to the Napa County Planning, Building and Environmental Services. In the event any special-status or other protected nesting birds are found to occur on-site construction activities shall be scheduled to avoid nesting and breeding periods and consultation will be sought with CDFW to develop appropriate measures to reduce potential impacts to nesting birds protected under the **Fish and Game Code section 3500 et seq. and Migratory Bird Treaty Act.***

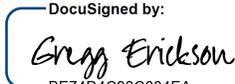
FILING FEES

CDFW anticipates that the Project will have an impact on fish and/or wildlife, and assessment of filing fees is necessary (Fish and Game Code, § 711.4; Pub. Resources Code, § 21089). Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW.

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CDFW appreciates the opportunity to provide comments on the MND for the proposed Project and is available to meet with you to further discuss our concerns. If you have any questions, please contact Mr. Garrett Allen, Environmental Scientist, at Garrett.Allen@wildlife.ca.gov; or Ms. Melanie Day, Acting Senior Environmental Scientist (Supervisory), at Melanie.Day@wildlife.ca.gov.

Sincerely,

DocuSigned by:

BE74D4C93C604EA...
Gregg Erickson
Regional Manager
Bay Delta Region

cc: State Clearinghouse

REFERENCES

Bolster, B.C., editor. 1998. Terrestrial Mammal Species of Special Concern in California. Draft Final Report prepared by P.V. Brylski, P.W. Collins, E.D. Pierson, W.E. Rainey and T.E. Kucera. Report submitted to California Department of Fish and Game Wildlife Management Division, Nongame Bird and Mammal Conservation Program for Contract No.FG3146WM.