STATE OF CALIFORNIA
COUNTY OF MARIPOSA
PLANNING COMMISSION

Resolution
No. 2020-013

A resolution conditionally approving a Conditional Use Permit No. 2019-212 with findings, conditions, and mitigation measures, and adopting the Mitigated Negative Declaration (SCH No. 2020060504); Assessor Parcel Numbers 003-010-0340 and 003-010-0350; Better Place Forests, applicants

WHEREAS, a Conditional Use Permit application was received on December 12th 2019 for a memorial forest, an alternative to burial/interment options, on two contiguous parcels totaling 170-acres, located at 10967 Stout Lane and an unassigned address in Coulterville, also known as Assessor Parcel Numbers 003-010-0340 and 003-010-0350; and

WHEREAS, the parcels are located in the Mountain Home (MHZ), Mountain General (MGZ) and Timber Exclusive (TEZ) zones with a General Plan Planning Study Area, Natural Resource and Residential land use classification; and

WHEREAS, the proposed use is not contemplated in County Zoning or Land Use codes; and

WHEREAS, County staff has prepared and supports a Similar Use Determination for this project as the proposed use is consistent with permitted and conditionally permitted uses allowed in the MGZ and TEZ zones; and

WHEREAS, the Planning director has deferred the Similar Use Determination to the Planning Commission pursuant to Mariposa County Code, §2.52.180.E; and

WHEREAS, the Planning Department circulated the application among trustee and responsible agencies, interested public organizations, and others as appropriate; and

WHEREAS, a Staff Report and Initial Study (SCH No. 2020060504) were prepared pursuant to the California Government Code, Mariposa County Code, California Environmental Quality Act, and local administrative procedures; and

WHEREAS, the Initial Study was circulated on June 23rd 2020; and

WHEREAS, a duly noticed Agricultural Advisory Committee meeting was scheduled for the June 25th 2020; and

WHEREAS, the Agricultural Advisory Committee did hold their meeting on the noticed date and considered all the information in the public record, including the Staff Report, and their own knowledge of county-wide agricultural operations; and

WHEREAS, the Agricultural Advisory Committee recommended that the Planning Commission approve the Conditional Use Permit; and

WHEREAS, a duly noticed Planning Commission public hearing was scheduled for the July 24th 2020; and

WHEREAS, the Planning Commission public hearing scheduled for July 24th 2020 was continued by the Planning Commission to Friday August 28th 2020 at 9 a.m. or as soon thereafter as possible; and
WHEREAS, a duly noticed Greeley Hill Planning Advisory Committee meeting was scheduled for the August 5th 2020; and

WHEREAS, the Greeley Hill Planning Advisory Committee did hold their meeting on the noticed date and considered all of the information in the public record, including the Staff Report, and their own knowledge of the project region; and

WHEREAS, the Greeley Hill Planning Advisory Committee recommended that the Planning Commission approve the Conditional Use Permit as presented; and

WHEREAS, the Planning Commission did hold a public hearing on the continued date and considered all of the information in the public record, including the Initial Study and updated Staff Report, testimony presented by the public concerning the application, and the comments of the applicant.

NOW IT THEREFORE, BE IT RESOLVED THAT the Planning Commission of the County of Mariposa does hereby adopt a Mitigated Negative Declaration.

BE IT FURTHER RESOLVED THAT the Planning Commission of the County of Mariposa does hereby approve Conditional Use Permit No. 2019-212.

BE IT FINALLY RESOLVED THAT the project is approved based on the findings set forth in Exhibit 1 and the conditions set forth in Exhibit 2.

ON MOTION BY Commissioner McCamman, seconded by Commissioner Walls, this resolution is duly passed and adopted this 28th day of August 2020 by the following vote:

AYES: WALLS, HERMAN, HARRIS, MCCAMMAN

NAYS: NONE

ABSENT: Sweeney

ABSTAIN: NONE

Larry Harris, Chairman
Mariposa County Planning Commission

Attest:

Carol Suggs, Secretary to the Planning Commission
Exhibit 1 Recommended Findings for Cup 2019-212

In accordance with Section 17.112.050 of the Mariposa County Zoning Code, the following findings are made for Conditional Use Permit Application No. 2019-212:

1. **FINDING**: Adequate open space is provided by this proposal. (§17.112.040.A, Mariposa County Zoning Code)

   **EVIDENCE**: Lot coverage is approximately 0.0004% with the existing and proposed improvements preserving ample open space. Furthermore, a Forest Management Plan is proposed by Better Place Forest (BPF) to manage the forest to mitigate fire risk, promote a healthy ecosystem, and utilize sustainable harvest methods.

2. **FINDING**: The site is physically suited for the proposed development. (§17.112.040.B, Mariposa County Zoning Code)

   **EVIDENCE**: Proposed project related improvements are limited in scope and designed to minimize environmental disturbance. The operation center and parking area are proposed in a pre-existing clearing previously used as a logging landing.

3. **FINDING**: Adequate provisions have been made for sewage disposal and the handling of solid waste. (§17.112.040.C, Mariposa County Zoning Code)

   **EVIDENCE**: The project proposes the installation of a septic system to meet the needs of the proposed use. Disposal of solid waste is the responsibility of the applicant; the Mariposa County landfill has the capacity to process the limited waste streams the project is anticipated to produce.

4. **FINDING**: The proposed development will have adequate potable water for public use and fire protection. (§17.112.040.D, Mariposa County Zoning Code)

   **EVIDENCE**: The project site is served by a private well producing 45 gallons per minute. Additionally, applicants are proposing a 2,500-gallon water tank to meet CAL FIRE requirements for the improvements and project site. Design plans shall be required and approved prior to building permit issuance.

   Conditions of approval require verification from the Health and Human Services Department and State for compliance with applicable State Drinking Water standards and Division of Drinking Water requirements for the water system permitting. Compliance with those requirements is sufficient to address any potential impacts to less than significant levels for the water supply.

5. **FINDING**: The project proposal complies with all standard and special setback requirements and adequate buffers have been provided for adjacent land uses. (§17.112.040.E, Mariposa County Zoning Code)

   **EVIDENCE**: The project, as proposed, meets the minimum applicable County setback standards. Proposed development is roughly 1,000 feet from the nearest residence. There are no special setbacks required for this project. Additionally, cemains will never be spread within the active bed or banks of any watercourse or in wetland habitats and 50-foot buffers shall be observed adjacent to watercourses where spreading will not take place during the wet season (October 15 - April 15).
6. **FINDING:** Appropriate access is available or is proposed to the development. (§17.112.040.E, Mariposa County Zoning Code)

**EVIDENCE:** The project will not conflict with any public easements. The project is located off of Dexter Road. Public Works field inspected the County roads which serve as access to the site from Greely Hill Road. Fiske and Dexter Roads are currently paved with an asphalt width of 20 feet, and therefore meet the County Rural Class II designation. The current ADT count for Fiske Road is 432 ADT at the intersection of Fiske/Dexter. The project proposes a weekly average ADT of an additional 70 ADT for a total of approximately 500 ADT. Fiske and Dexter Roads both meet the additional demand the project is proposing.

7. **FINDING:** The proposed use is consistent with the policies and standards of the General Plan and any applicable specific plan. (§17.112.040.G, Mariposa County Zoning Code)

**EVIDENCE:** Project improvements are located within the Natural Resources land use classification which purpose is stated as, "...lands for open space, recreation, ecosystem conservation, watershed protection, environmental protection, conservation of natural resources, and protection of public health and safety..." The proposed “memorial forest” will preserve the property for open space, recreation, ecosystem conservation, watershed protection, and environmental protection. The protection of these resources will also provide the benefits of carbon sequestration and oxygen production. The proposed development is limited to less than three acres of the property so the vast majority of the site will remain as open space, thus preserving natural resources and ecosystems.

8. **FINDING:** The project as approved will not have a significant effect on the environment, or the significant impacts have been eliminated or substantially lessened, or has been determined that the significant effects are unavoidable and acceptable due to overriding concerns. (§17.112.040.H, Mariposa County Zoning Code)

**EVIDENCE:** The project Initial Study and a Mitigated Negative Declaration were prepared for Conditional Use Permit No. 2019-212, pursuant to provisions of the California Environmental Quality Act (CEQA). Approval of the project with significant impacts requires that findings be made by the lead agency pursuant to CEQA guidelines and requires a finding that the significant impacts of a project are either: (1) mitigated to a less-than-significant level or (2) that the public benefits of a project outweigh the significant impacts (requires a Statement of Overriding Consideration).

The Better Place Forests Initial Study concluded that all project impacts would be mitigable to less than significant; the project would not result in significant and unavoidable impacts. The project CEQA findings and mitigation and monitoring program are incorporated herein by reference.

9. **FINDING:** The establishment, maintenance, or operation of the use applied for will not, under the circumstances of the particular case, be detrimental to the health, safety, morals, comfort, and general welfare of the persons residing or working in the neighborhood or the general welfare of the county. (§17.112.040.I, Mariposa County Zoning Code)

**EVIDENCE:** The Initial Study evaluated all potential environmental impacts of the proposed project and concluded that the project could occur with no significant environmental impacts based upon the implementation of adequate and feasible mitigation measures. These mitigation measures are incorporated into the project.
This Conditional Use Permit has been reviewed through a discretionary process, and there have been opportunities for public input on health, safety, morals, comfort and general welfare issues through the public process. All public input on these matters as well as input and recommendations from regulatory agencies with regulatory authority over the project have been considered. The Planning Commission has considered the Initial Study for this project. Finally, the Planning Commission has considered the staff report, project findings, the recommended conditions, and the CEQA Findings of Fact and Mitigation Monitoring and Reporting program, establishing requirements to address:

- Protection of special status plant species
- Protection of special status animal species
- Protection of cultural resources
- Minimizing grading and grading impacts
- Protection of trees and vegetation
- Elimination of off-site noise impacts
- Elimination of off-site lighting impacts
- Limitation to hours and days of outside construction activities
- Implementation of a Forest and Land management Plan
- Implementation of Fire and Hazard requirements and Fire Protection
- Roadway and site maintenance

The Planning Commission finds that with mitigation and conditions, the continued maintenance and operation of the use as conditioned will not, under the circumstances of the particular case be detrimental to the health, safety, morals, comfort, or general welfare of the persons residing or working in the neighborhood of such proposed use, and will not be injurious or detrimental to the property and improvements in the neighborhood or the general welfare of the county.

10. **FINDING**: The proposed use is consistent with the policies and standards of the Mariposa County Zoning Ordinance and Timber Exclusive Zone. (§17.44.010, Mariposa County Zoning Code)

**EVIDENCE**: The project parcels have a current Timber Harvest Plan in place (Timber Exclusive Zoning). The forested memorial property has functioned as a harvestable unit in the past and, as presented, the conservation memorial forest project will not diminish the forest productivity or eliminate harvest infrastructure from the site.

§17.44.010, Timber Exclusive Zoning (TEZ) of the Mariposa County Zoning Ordinance lists, "...wildlife preserves; management for watershed, fish and wildlife habitat; hunting, fishing, hiking and Camping..." as a permitted use.

The proposed “memorial forest” use functions as a wildlife preserve, watershed management area, fish and wildlife habitat, and hiking trail network, all of which are permitted uses within the TEZ district. As outlined in the project’s Forest Management Plan, BPF plans to engage in active timber management and period harvesting on the property. By doing so, BPF aims to restore and enhance timber stands towards an old-growth ecosystem, reduce ground fuel to mitigate fire risk, manage the eradication of non-native species, and maintain existing harvest infrastructure.

Pursuant to §2.52.180.E, the Planning Director may refer approval authority for a Similar Use Determination to the Planning Commission for final approval of the use. §17.44.010 lists, “membership or public parks” as a Conditionally Permitted Use. The proposed project is found be a similar use to that of a “membership park”. The Timber Compatibility Analysis found the
utilization of BPF to be compatible with the provisions of the TEZ zoning, as it will not preclude the future harvesting of timber.

11. **FINDING:** Verification of Non-Applicability of Cemetery Requirements.

**EVIDENCE:** In the State of California, the spreading of cremated remains does not constitute nor create a cemetery, so we do not need to be zoned or permitted as such. This is outlined in the California Health and Safety Code Section 7116, which states the following (underline added for emphasis):

"§ 7116. Cremated remains may be scattered in areas where no local prohibition exists, provided that the cremated remains are not distinguishable to the public, are not in a container, and that the person who has control over disposition of the cremated remains has obtained written permission of the property owner or governing agency to scatter on the property. A state or local agency may adopt an ordinance, regulation, or policy, as appropriate, authorizing, consistent with this section, or specifically prohibiting, the scattering of cremated human remains on lands under the agency’s jurisdiction. The scattering of the cremated remains of more than one person in one location pursuant to this section shall not create a cemetery pursuant to Section 7003 or any other provision of law."

BPF is proposing surface spreading of cremains mixed with local soil, and have confirmed with the California Cemetery and Funeral Bureau that the project is not viewed as and therefore not regulated as a cemetery in California. Interment of the cremains/soil mixture subsurface is not proposed or allowed as a part of this project.

**Exhibit 2 - Recommended Conditions of Approval and Mitigation Measures for Cup 2019-212**

**Project Name:** Better Place Forests  
**Project Approval Date:** August 28th 2020

The following conditions of approval and mitigation measures are applied to this project in order to ensure compliance with all applicable codes and policies and the findings of the initial study prepared for the project.

1. Conditional Use Permit No. 2019-212 is approved for the following uses:
   
a. Establishment of a memorial forest where patrons can purchase a tree the rights to place cremains around a dedicated tree  
b. Construction of an approximate 1,200 square foot operation center with deck, which will provide office space  
c. Construction of ADA-compliant restroom facilities  
d. Welcome area for guests  
e. Construction of a 600 square foot storage unit for storage forest maintenance materials  
f. Construction of 26 parking spaces  
g. Outside seating areas  
h. Walking Trails  
i. Low intensity path lighting  
j. Trail markers  
k. Site landscaping
1. Days of operation are to be two to seven days a week, depending on the season, with visitation primarily scheduled by reservation 
   m. Up to six full time employees

2. The project shall be developed in substantial compliance with the approved site plan dated December 19, 2019. Prior to any modification and/or any deviation from the approved site plan, said modification/deviation shall be reviewed and approved by the Planning Director in accordance with the conditions of approval. Minor modifications in the site layout, configuration, size, and materials of the project may be approved by the Planning Director provided that any expansion does not exceed 10% of the size of area of the approved facility, and provided a finding can be made that the potential modification does not create impacts which were not addresses in the original approval. Should any proposed modification(s) result in potential impacts which were not reviewed and conditioned by the original action and approval of this Conditional Use Permit then an application for amended conditions/amended site plan of the Conditional Use Permit may be required by the Planning Director.

   (Section 17.112.050, Title 17; Mariposa Planning Recommendation)

3. This project is approved on August 28th 2020. This approval shall expire August 28th 2023. If the conditions of approval are not completed and the project is not fully implemented by August 28th 2023 the applicant may request one (1) time extension of up to eighteen (18) months (total). The applicant must make this request in writing prior to August 28th 2023. The project shall be allowed to be phased at the discretion of the project proponent providing the entire project is implemented within the time frames required by this condition.

4. Frontage improvements consisting of the installation of a Commercial driveway encroachment shall be done in accordance with the County Road Improvement and Circulation Policy and the County Improvement Standards and shall meet these standards prior to Certificate of Project Occupancy, as confirmed to have been completed by the County Engineer.

   (Public Works Recommendation; Section D, Road Improvement and Circulation Policy).

5. An encroachment permit shall be obtained from Mariposa County prior to any work being done on or adjacent to Dexter Road (Access segment 1). In addition, all grading and road improvement work required as a condition of approval of this project shall comply with the Mariposa County Improvement Standards and all requirements contained therein. The existing encroachment does not have adequate sight distance at the current location, which must be mitigated prior to final approval. Options include completing vegetation management along Dexter Road frontage and/or relocation of the driveway encroachment. Should significant grading occur, revegetation shall be required as prescribed by Public Works and/or NRCS/RCD for erosion control measures. The County Engineer may require engineered improvement plans prepared by a Registered Civil Engineer for any improvements required as a condition of approval for this project. If engineered improvement plans are required, the plans shall be approved by the County Engineer prior to commencement of construction work on the required road improvements (Chapter 11, County Improvement Standards). Evidence that this has been completed shall be submitted to the Planning Department prior to initiation of proposed project activities. The proposed access from Dexter Road shall meet all current County standards.

   (Mariposa Public Works and Planning Recommendation)
6. New addressing for the site, off Dexter Road, is required prior to issuance of Certificate of Occupancy. Verification that this condition has been met will be made through the Mariposa County Assessor’s office by the Planning Department.

(Mariposa Planning Recommendation)

7. A stop sign shall be placed at the intersection of the on-site access road and Dexter Road and Dexter Road for traffic exiting the on-site access road. The stop sign must be installed to Mariposa County Improvement Standards and be approved and accepted by Public Works prior to final project approval.

(Mariposa Public Works Recommendation)

8. All required signs, which may be installed along Dexter Road (Access Segment 1) shall be installed on metal, break-away type posts prior to map recordation. The design and placement of signs shall be approved by the County Engineer prior to installation.

(Mariposa Public Works Recommendation)

9. Prior to initiation of any activities, the access road and driveway shall be improved to the required standards. The driveway (Access Segment 2) shall be improved to a minimum 12' wide gravel driveway with turnouts or higher as required by CAL FIRE. The project proponent shall provide the Mariposa County Planning Department with written approval that the required improvements have been reviewed and approved by CAL FIRE prior to opening to the public. The road shall be maintained in accordance with the approved engineering plans for the life of the project.

(Mariposa Planning Recommendation and Public Resources Code 4290)

10. All drainage issues associated with the project must meet the approval of the County Engineer and may require engineered improvement plans prepared by a Registered Civil Engineer for any improvement required as a condition of approval for this project. If engineered improvement plans are required, the plan shall be approved by the County Engineer prior to commencement of construction work on the required road improvements.

(Mariposa Public Works Recommendation, Access Segments 1 & 2)

11. Should work in the stream crossing be necessary (Access Segment 2), consultation from the California Department of Fish and Wildlife will be required for a Stream Bed Alteration Agreement. Verification of consultation shall be required prior to building and/or grading permit issuance.

(Mariposa Planning Recommendation)

12. Prior to the issuance of any building or grading permits, the project proponent shall obtain from the Regional Water Quality Control Board (RWQCB) a General Permit for Discharges of Storm Water Associated with Construction Activity, unless it can be shown to the satisfaction of the Mariposa County Planning Director through evidence submitted by a qualified person, such as a licensed land surveyor or registered civil engineer, that less than one acre of land will be disturbed to implement the project. A copy of the approved permit or evidence that a permit is not required shall be submitted to the Mariposa County Public Works Department by the project proponent prior to the commencement of any grading work on-site. If a permit is required, all provisions and
requirements of the permit shall be completed prior to issuance of certificate of occupancy. The proponent shall submit to the County Surveyor evidence that the permit requirements have been met to the satisfaction of the RWQCB.

(State Water Quality Control Board Order No. 2009-0009-DWQ, National Pollutant Discharge Elimination System (NPDES))

13. The following are additional fire safety requirements that the project proponent shall maintain at the project site for the life of the project:

a) There shall be a minimum 2,500 gallons of readily accessible water for fire protection. Water storage facilities shall meet CAL FIRE standards.

b) Property addressing shall be posted in accordance with Public Resources Code 4290.

The project proponent shall provide a written statement from CAL FIRE to the Mariposa County Planning Department that the conditions of approval have been met prior to the issuance of the Certificate of Occupancy. The project proponent shall be responsible for paying for all inspection fees as may be required from CAL FIRE.

(Public Resources Codes 4290 and 4291)

14. Prior to opening or prior to commencement of activities that will provide domestic water to patrons and staff, the project proponent shall obtain the required permits from the Mariposa County Health and Human Services Department, Environmental Health Unit or as a public water system permit from the State Department of Public Health – Division of Drinking Water as determined by the Mariposa County Health and Human Services Department. The project proponent shall provide copies of that permit to the Mariposa County Health Department and the Mariposa County Planning Department upon receipt. (Applicable sections of Title 22, California Code of Regulations)

(Mariposa County Health and Human Services Department, Environmental Health Unit Recommendation)

15. The buildings must maintain all required setbacks from the leach field/septic system for the residence. The Health and Human Services Department, Environmental Health Unit shall review the Building Permit Plans for compliance with this condition and shall approve the site plan prior to issuance of the building or grading permit.

(Mariposa Planning Recommendation)

16. All wastewater/sewage disposal shall be conducted in a manner approved by the Mariposa County Health and Human Services Department, Environmental Health Unit. Written confirmation from the Health and Human Services Department, Environmental Health Unit that all necessary permits and requirements have been met shall be provided to the Planning Department prior to initiation of any project activities.

(Mariposa County Health and Human Services Department, Environmental Health Unit Recommendation)

17. There shall be adequate refuse containers on site to handle all solid waste. Solid waste shall be handled in compliance with all applicable sections of Mariposa County Code Title 8.36. Outdoor
trash containers shall be required to meet the standards of Chapter 8.44, of Title 8, Health and Safety, Mariposa County Code, commonly known as the “Mariposa County Bear Control Ordinance.” Verification by the Planning Department prior to issuance of Certificate of Occupancy.

(Mariposa Planning Recommendation)

18. Final landscaping plans shall be submitted at time of building permit submittal. The project proponent shall use only native or later demanding plant species for landscaping purposes. Landscaping plans shall be reviewed and approved by the Planning Director prior to installation.

(Mariposa Planning Recommendation)

19. Prior to issuance of the Certificate of Occupancy, all fees associated with the County’s processing of the map and filing of associated documents shall be paid. The Department of Fish and Game filing fee ($2,406.75 as of January 1st 2020) and County Clerk fee ($50 as of January 1, 2020) shall be paid by the applicant within five (5) working days of the approval of the application (by Friday, September 4th 2020, because if the fee is not paid within 5 working days, and the Notice of Determination is not filed with the County Clerk prior to close of business on Friday, September 4th 2020 the environmental determination is not operative, vested, or final (Section 21089(b) Public Resources Code).

The County Clerk requires that one check be submitted to cover both of these fees, for a total of $2,456.75 (effective January 1st 2020), and that it be in the form of a cashiers check or money order payable to “Mariposa County;” The County Clerk will not accept a personal check for these fees. Submit the check to Mariposa Planning who will file this fee and other required documents with the County Clerk.

NOTE: The filing fees are adjusted annually, effective January 1st of each year, pursuant to Fish and Game Code.

(California Department of Fish and Wildlife Requirement; Mariposa Planning Recommendation)

20. The Property Owner (Owner) shall indemnify, protect, defend, and hold harmless the County, and any agency or instrumentality thereof, and officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the County, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, any approval of the County, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the County, concerning the project and the approvals granted herein. Actions concerning the project and approvals granted shall include, but not be limited to, the environmental determination made pursuant to the California Environmental Quality Act (CEQA). Furthermore, Owner shall indemnify, protect, defend, and hold harmless the County, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against another governmental entity in which Owner’s project is subject to that other governmental entity’s approval and a condition of such approval is that the County indemnify and defend such governmental entity. County shall promptly notify the Owner of any claim, action, or proceeding. County will further cooperate in the defense of the action.
An agreement on a form approved by Mariposa County Counsel shall be executed within twenty (20) working days of the date of project action. Non-compliance with this condition may result in revocation of project approval by the county.

(Mariposa Planning Recommendation)

21. Non-compliance with any of the conditions of approval for Conditional Use Permit (CUP) No. 2019-212 may be grounds for revocation of the CUP.

(Mariposa Planning Recommendation)

22. It shall be the responsibility of the applicant to schedule an inspection with the Planning Department, two years after commencing operation of the project, to ensure continued compliance with the approved conditions of the project. The Planning Director may request information to determine compliance. At the discretion of the Planning Director, an item may be scheduled for the Planning Commission to review any compliance issues associated with the project.

(Mariposa Planning Recommendation)

23. All exterior lighting fixtures shall be shielded and shall be designed and located to confine lighting directly on the premises. Lighting should be of minimum, but adequate, intensity. Exterior lighting fixtures shall not shine light upon or directly illuminate any surface other than the area required to be lighted, and must meet International Dark Sky requirements (General Plan Implementation Measure 11-1.d(1)). A lighting plan showing the design and location of all exterior lights shall be submitted to the Planning Department up to thirty (30) days after the issuance of a Building Permit and the design of the lighting fixtures shall be subject to Planning Director approval.

(Mariposa Planning Recommendation)

MITIGATION MEASURES

24. If construction activities occur during the nesting season (usually March to September), a pre-construction survey for the presence of great gray owl within ¼ mile of project activities or 500 feet for any other nesting bird species should be conducted by a qualified biologist. Special attention should be given to large trees in the vicinity of the annual grassland/wet meadow complex. If respective active nests are identified in these areas, California Department of Fish and Wildlife (CDFW) and/or United States Fish and Wildlife Services (USFWS) should be consulted to develop measures to avoid “take” of active nests prior to the initiation of any construction activities. Avoidance measures may include the establishment of a buffer zone using construction fencing or the postponement of vegetation removal until after the nesting season, or until after a qualified biologist has determined the young have fledged and are independent of the nest site. (Mitigation Measure 4.a.1)

25. A qualified botanist shall perform a pre-construction botanical survey, ideally within the blooming period for Small’s southern clarkia, Parry’s horkelia, and stinkbells. If any special-status plants are detected during the surveys, the plants shall be avoided by a buffer of 25 feet or more. If the plants cannot be avoided, mitigation measures shall be implemented, such as transplanting or seeding in a protected area. Erosion control measures and noxious weed control shall be implemented to protect potential habitat quality of special-status plants consistent with any general construction
permit or other environmental permit. The limits of planned Project ground disturbance shall be
demarcated using barrier fencing or stakes and flagging and be maintained at all times. (Mitigation
Measure 4.a.2)

26. Because special-status species that occur in the vicinity could migrate onto the Study Area between
the time that the field survey was completed and the start of construction, a pre-construction survey
for special-status species shall be performed by a qualified biologist to ensure that special-status
species are not present. If any listed species are detected, construction shall be delayed, and the
appropriate wildlife agency (CDFW and/or USFWS) shall be consulted and project impacts and
mitigation reassessed.

Prior to ground disturbance, all construction personnel shall undergo an environmental awareness
training to be developed by a qualified biologist. The environmental awareness training shall
include biological information related to the potential protected species that could be affected by
the Project as identified in this Biological Resource Assessment, including foothill yellow frog,
western pond turtle, great gray owl, Small’s southern clarkia, Parry’s horkelia, and stinkbells.
(Mitigation Measure 4.a.3)

27. Prior to the issuance of any building or grading permits, the permit holder shall provide to the
Director of the Planning Department with a Cremated Remains Management Plan (CRMP). The
provisions shall include, at a minimum, protocols for cremains sampling/testing required to meet the
minimum standards for potential constituents of concern as determined by a California licensed
hydrologist, geologist or other appropriately licensed professional and as authorized by the Planning
Director in consultation with the Mariposa County Health and Human Services Agency,
Environmental Health Unit. The CRMP shall include protocol and best management practices
(BMP) for:

a. The removal of soil, mixing of cremains, placement of cremains/soil mixture and erosion
  control measures.

b. The method by which the Plan will be implemented through regular facility employees or
  by contract. Copies of executed contracts may be submitted with the Plan.

c. Site plan shall identify all cultural resource avoidance areas and drainage buffer zones as
  identified in the Initial Study. Site plan shall also identify the location of the proposed
  project improvements. BMP shall include the protocol for placement to which no cremains
  shall be located in the buffer zones.

d. The CRMP shall include, but is not limited to, summary reports for the CRMP of an
  adequate frequency to demonstrate compliance for sampling and testing protocols and best
  management practices (BMPs). The CRMP and summary reports which maintains
documentation on the testing, quantities, and BMPs shall be available on-site for inspection
and review for the period of time based on the interval and retention time as outlined in the
final approved CRMP. Any changes to the final approved CRMP requires separate review
and approval by the Planning Director prior to instituting any CRMP changes, unless a
modification is triggered by an applicable governing regulation.

The Draft CRMP shall be submitted for review and approval prior to building permit issuance and
a final CRMP shall be approved prior to occupancy. (Mitigation Measure 4.c.1)
28. If it is determined at a later date that construction of the project would require the placement of fill or structures in a wetland or channel (such as a culvert extension), aquatic permits will need to be obtained before the work commences. Any such placement of fill in a wetland or alteration or degradation of a channel below the ordinary high water mark requires a waiver from USACE or a Clean Water Act Section 404 permit. If the footprint of project-related impacts is less than 0.5 acres and less than 300 linear feet of channel, the Proposed Project would be eligible for the expedited Nationwide Permit Program or a waiver. Avoidance and minimization measures, as well as compensatory mitigation for loss of jurisdictional waters, is required by federal and state permits to maintain the policy of “No Net Loss” of wetlands and other protected water resources. Compensatory mitigation would consist of any combination of in-lieu fee payment to a mitigation bank, stream enhancement, or land dedication, at mitigation ratios determined by USACE. Clean Water Act Section 401 Water Quality Certification would be required in conjunction with a Section 404 permit. Alteration of a channel or destruction of vegetation of a streambank within the limits of riparian vegetation (the Stream Zone) would require a California Fish and Game Code Section 1600 streambed alteration agreement. Avoidance and minimization measures, as well as compensatory mitigation for loss of jurisdictional waters, are required under state permits. 
(Mitigation Measure 4.c.2 and 10.a.b, and c.1)

29. No construction activities within the boundaries of the four sites listed in the Cultural Resource Study (NIC-2019-STOUT-002, P-22-1022, -3166, and -3167) shall occur. A project site plan shall be prepared by a licensed surveyor identifying the cultural resources avoidance areas based on the recommendation of the registered professional archaeologist. Site shall be protected for the life of the project or until such time that a registered professional archaeologist evaluates and determines alternative mitigation that meets the minimum CRHR requirements.

Prior to the commencement of site disturbance activities of any kind, the Planning Director shall receive a detailed preconstruction site plan, verified by a cultural resource specialist, that clearly identifies the location of all cultural resource avoidance areas. These areas shall be avoided during all project-related activities and for the life of the project. In addition, a construction management plan identifying the avoidance methods shall be provided to and approved by the Planning Director prior to project commencement. At a minimum, the construction management plan shall stipulate that all cultural resource sensitivity areas shall be delineated and protected using plastic safety fencing or equivalent. (Mitigation Measure 5.b.1)

30. In the event that unanticipated cultural resources are discovered during Project activities, work must be halted within 100 feet (30 meters) of the find and a qualified archaeologist (36 CFR Part 61) notified so that an evaluation of the resource can be completed. Construction activities may continue in other areas, but not resume in the vicinity of the find until Mariposa County (County) provides written permission. If the discovery proves to be significant, additional work, such as data recovery excavation, may be warranted and would be discussed in consultation with the County, local tribes, and other stakeholders, as appropriate. (Mitigation Measure 5.b.2)

31. In the event human remains, artifacts, or potentially significant cultural resources are discovered during ground disturbance on the project site, a Native American monitor shall be on-site for the duration of ground disturbance. During any construction activity that involves ground disturbance, if any signs of prehistoric, historic, archaeological, paleontological resources are evident, all work activity within fifty feet of the find shall stop and the Mariposa County Planning Department shall be notified immediately. No work shall be done within fifty feet of the find until Planning has identified appropriate measures to protect the find and those measures have been implemented by the applicant. Protection measures for the site may include, but not be limited to, requiring the applicant to hire a qualified archaeologist who shall conduct necessary inspections and research,
and who may supervise all further ground disturbance activities and make any such recommendations as necessary to ensure compliance with applicable regulations. In addition to the Planning Department, the Mariposa County Coroner and the Native American Heritage Commission shall be notified should human remains be discovered. If the remains are determined by the Native American Heritage Commission to be Native American, the NAHC guidelines shall be adhered to in treatment and disposition of the remains. Representatives of the Most Likely Descendant shall be requested to be on-site during disturbance and/or removal of human remains. (Mitigation Measure 5.c.1)

32. Sampling a 3:1 ratio of native soils to cremains for pH, chloride and potassium levels shall occur in order to further understand the effect cremains might have on soil health and habitability for local flora once cremains have been spread on-site. This sampling shall include in-situ tests for pH, potassium and chloride. The pH test shall be conducted using a H19811 meter by Hannah Instruments, or similar instrumentation as deemed appropriate by a registered geologist. The potassium test shall be conducted using the H196750 Potassium Portable Photometer made by Hanna Instruments, or similar instrumentation as deemed appropriate by a registered geologist. The chloride shall be tested using the H196753 Chloride Photometer made by Hanna Instruments, or similar instrumentation as deemed appropriate by a registered geologist. Future sampling by a qualified Geologist will be required that demonstrates additional confirmation that the spreading of cremains would have nominal effects on the environment (Nominal effect shall be defined as less than ten times the current condition). A cremated remains management plan (CRMP), as detailed in monitoring for mitigation measure 4.c.1, will be required as a part of the approval of this project. (Mitigation Measure 7.b)

33. If it is determined at a later date that construction of the project would require the placement of fill or structures in a wetland or channel (such as a culvert extension), a California Water Act (CWA) Section 404 permit must be obtained and mitigation performed before these water features are disturbed or altered. CWA 401 water quality certification from Regional Water Quality Control Board (RWQCB) will also be necessary if a Section 404 permit is issued. If the sum of affected water resources is less than 0.5 acre, a Section 404 Nationwide Permit may be obtained from United States Army Corps of Engineers (USACE). If the sum of affected water resources is greater than 0.5 acre, a Section 404 Individual Permit must be obtained from USACE. Compliance with all the terms and conditions of the appropriate USACE permit and implementation of compensatory, minimization, and avoidance mitigation would minimize impacts to waters of the US to a less than significant level. (Mitigation Measures 10.a, b, and c.1)

34. If project implementation requires construction in, or disturbance to, a wetland, stream channel, or a “stream zone” (i.e., riparian habitat), a California Fish and Game Code Section 1600 Streambed Alteration Agreement with CDFW will be needed before ground disturbance is initiated. California Water Act (CWA) 401 water quality certification from the RWQCB may also be necessary if a Streambed Alteration Agreement is formed. This Streambed Alteration Agreement and Water Quality Certification typically require compensatory mitigation for loss of jurisdictional waters. Compliance with all the terms and conditions of the appropriate State permit(s) and implementation of compensatory, minimization, and avoidance mitigation would minimize impacts to waters of the State to a less than significant level. County permits, such as Grading Permits, may be required for vegetation clearing in riparian areas and any loss of sensitive habitats such as wetlands or channels. (Mitigation Measures 10.a, b, and c.2)