



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Central Region  
1234 East Shaw Avenue  
Fresno, California 93710  
(559) 243-4005  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

GAVIN NEWSOM, Governor  
CHARLTON H. BONHAM, Director



December 23, 2019

Shawna Scott, Senior Planner  
City of San Luis Obispo Community Development Department  
919 Palm Street  
San Luis Obispo, California 93401

**Subject: Froom Ranch Specific Plan (Project)  
Draft Environmental Impact Report (DEIR)  
SCH#: 2017071033**

Dear Ms. Scott:

The California Department of Fish and Wildlife (CDFW) received a Draft Environmental Impact Report from the City of San Luis Obispo Community Development Department for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under Fish and Game Code.

### **CDFW ROLE**

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish and G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (*Id.*, § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

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<sup>1</sup> 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.

CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code may be required. Please be advised that issuance of a Lake or Streambed Alteration Agreement (LSAA) (Fish & G. Code, § 1602) or an Incidental Take Permit (ITP) (Fish & G. Code, § 2081(b)) is a discretionary approval that will require the appropriate level of CEQA environmental review to support CDFW's Responsible Agency authority. If inadequate or no environmental review occurs, CDFW will not be able to issue the LSAA or the ITP until CEQA for the project is complete.

**Nesting Birds:** CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs and nests include, sections 3503 (regarding unlawful take, possession or needless destruction of the nest or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird).

**Water Pollution:** Pursuant to Fish and Game Code section 5650, it is unlawful to deposit in, permit to pass into, or place where it can pass into "Waters of the State" any substance or material deleterious to fish, plant life, or bird life, including non-native species. It is possible that without mitigation measures, implementation of the Project could result in pollution of Waters of the State from storm water runoff or Project-related erosion. Potential impacts to the wildlife resources that utilize Froom Creek include the following: increased sediment input from road or structure runoff; and toxic runoff associated with development activities and implementation. The Regional Water Quality Control Board and United States Army Corps of Engineers also have jurisdiction regarding discharge and pollution to Waters of the State.

In this role, CDFW is responsible for providing, as available, biological expertise during public agency environmental review efforts (e.g., CEQA), focusing specifically on project activities that have the potential to adversely affect fish and wildlife resources. CDFW provides recommendations to identify potential impacts and possible measures to avoid or reduce those impacts.

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** JM Development Group, Inc.

**Objective:** The Project proposes development in two main components within a 109.7-acre area: Villaggio Life Plan Community (Villaggio) and Madonna Froom Ranch.

- Villaggio would provide up to 404 units of senior housing that would include independent and assisted living units, as well as health care facilities with 51 beds for memory care and skilled nursing.
- Madonna Froom Ranch would provide up to 174 multi-family housing units and up to 100,000 square feet of mixed commercial uses including a potential 70,000 square feet hotel and 30,000 square feet retail commercial uses.

The Project would include roadway, bicycle, and pedestrian circulation improvements, including a new signalized intersection at Los Osos Valley Road (LOVR) and Auto Park Way, and would extend urban infrastructure improvements (e.g., water lines, sewer service) to serve the site. The Project would also include 2.9 acres for a new public park within Madonna Froom Ranch and dedication of 59 acres within the Project area to open space. The Project would realign Froom Creek within the Project area and develop storm water management facilities both within and adjacent to the Project area, including overflow to the existing Calle Joaquin wetlands and a proposed 7.1-acre storm water detention basin, both within the Project site.

**Location:** The Project is located off Los Osos Valley Road and Calle Joaquin, San Luis Obispo, California.

**Timeframe:** Unspecified.

## COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist City of San Luis Obispo Community Development Department 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 CEQA document prepared for this Project.

There are many special-status resources present in and adjacent to the Project area that these resources may need to be evaluated and addressed prior to any approvals that would allow ground-disturbing activities or land use changes. CDFW has concerns about the Project-related impacts that could result in activities occurring in close proximity to Froom Creek and upland grassland habitat, and the associated impacts to species that utilize these habitat types. In particular, CDFW is concerned regarding potential impacts to special-status species including, but not limited to, the State and federally endangered Chorro Creek bog thistle (*Cirsium fontinale var. obispoense*), and the State species of special concern burrowing owl (*Athene cunicularia*) and western

pond turtle (*Actinemys marmorata*). In order to adequately assess any potential impact to biological resources, CDFW recommends focused biological surveys be conducted by a qualified wildlife biologist/botanist during the appropriate survey period(s) in order to determine whether any special status species may be present within the Project area. Properly conducted biological surveys, and the information assembled from them, are essential to identify any mitigation, minimization, and avoidance measures and/or the need for additional or protocol-level surveys, especially in the areas not in irrigated agriculture and to identify any Project-related impacts under CESA and other species of concern. Biological survey results may be submitted to CDFW.

## **I. Environmental Setting and Related Impact**

**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 the United States Fish and Wildlife Service (USFWS)?**

### **COMMENT 1: Special-Status plants**

**Issue:** Special-status plant species have been documented to occur in the vicinity of the Project site (CDFW 2019). The Project site contains habitat that may support special-status plant species meeting the definition of rare or endangered under CEQA Guidelines section 15380 including, but not limited to, the State and federally endangered Chorro Creek bog thistle. CDFW recognizes MM BIO-10 in the DEIR states that all construction activities and disturbance shall avoid Chorro Creek Bog Thistle by 50 feet. However, page 3.4-62 of the DEIR as part of the impact analysis for special-status plants states that individuals may be lost due to direct removal during construction of some Project features. It appears that the 50-foot buffer may not be feasible in some situations and clarifications are warranted to accurately describe how MM BIO-10 will be implemented. Avoidance and minimization measures are necessary to reduce impacts to these special status plant species to a level that is less than significant.

**Specific impact:** Without appropriate avoidance and minimization measures for special-status plants, potential significant impacts resulting from ground- and vegetation-disturbing activities following Project approval include inability to reproduce and direct mortality.

**Evidence impact would be significant:** Special-status plant species known to occur in the vicinity of the Project site are threatened by residential development, road maintenance, vehicles, grazing, trampling, and invasive, non-native plants. In addition, remaining populations of these plants are very small (CNPS 2019).

Therefore, impacts to existing populations have the potential to significantly impact these species.

**Recommended Potentially Feasible Mitigation Measure(s)**

To evaluate potential impacts to special-status plant species associated with the Project, CDFW recommends conducting the following evaluation of the Project site, incorporating the following mitigation measures into the CEQA document prepared for this Project, and that these measures be made conditions of approval for the Project.

**Mitigation Measure BIO-10**

MM BIO-10 of the DEIR proposes to avoid Chorro Creek bog thistle by a 50-foot no-disturbance buffer, but the DEIR states that loss of Chorro Creek bog thistle individuals may result from Project impacts. CDFW recommends delineating and observing a no-disturbance buffer of at least 50 feet from the outer edge of the plant population(s) or specific habitat type(s) required by special-status plant species observed in the Project area, not just Chorro Creek bog thistle. CDFW recommends that MM-BIO 10 include consultation with CDFW if the 50-foot buffers around special-status plant species cannot be observed. If buffers cannot be maintained, then consultation with CDFW is warranted to determine appropriate minimization and mitigation measures for impacts to special-status plant species, or in the case of plant species listed pursuant to CESA or the Native Plant Protection Act, determine if take can be avoided.

**Recommended Mitigation Measure 1: State-listed Plant Take Authorization**

As stated above, if a plant species listed pursuant to CESA or the Native Plant Protection Act is identified during botanical surveys, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, take authorization prior to any ground-disturbing activities may be warranted. Take authorization would occur through issuance of an ITP by CDFW, pursuant to Fish and Game Code section 2081(b).

**COMMENT 2: Burrowing Owl (BUOW)**

**Issue:** BUOW may occur within the Project site. BUOW inhabit open grassland containing small mammal burrows, a requisite habitat feature used by BUOW for nesting and cover. Habitat both within and bordering the Project site, supports grassland habitat.

**Specific impact:** Potentially significant direct impacts associated with subsequent activities and development include burrow collapse, inadvertent entrapment, nest

abandonment, reduced reproductive success, reduction in health and vigor of eggs and/or young, and direct mortality of individuals.

**Evidence impact is potentially significant:** BUOW rely on burrow habitat year-round for their survival and reproduction. Habitat loss and degradation are considered the greatest threats to BUOW in California's Central Valley (Gervais et al. 2008). The Project site contains and is bordered by some of the only remaining undeveloped land in the vicinity, which is otherwise intensively managed for agriculture or housing developments. Therefore, subsequent ground-disturbing activities associated with Project approval have the potential to significantly impact local BUOW populations. In addition, and as described in CDFW's "Staff Report on Burrowing Owl Mitigation" (CDFG 2012), excluding and/or evicting BUOW from their burrows is considered a potentially significant impact under CEQA.

### **Recommended Potentially Feasible Mitigation Measure(s) (Regarding Environmental Setting and Related Impact)**

To evaluate potential impacts to BUOW, CDFW recommends conducting the following evaluation of the Project site, incorporating the following mitigation measures into the CEQA document prepared for this Project, and that these measures be made conditions of approval for the Project.

#### **Recommended Mitigation Measure 2: BUOW Surveys**

CDFW recommends assessing presence/absence of BUOW by having a qualified biologist conduct surveys following the California Burrowing Owl Consortium's "Burrowing Owl Survey Protocol and Mitigation Guidelines" (CBOC 1993) and CDFW's "Staff Report on Burrowing Owl Mitigation". Specifically, CBOC and CDFW's Staff Report suggest three or more surveillance surveys conducted during daylight with each visit occurring at least three weeks apart during the peak breeding season (April 15 to July 15), when BUOW are most detectable.

#### **Recommended Mitigation Measure 3: BUOW Avoidance**

CDFW recommends no-disturbance buffers, as outlined in the "Staff Report on Burrowing Owl Mitigation", be implemented prior to and during any ground-disturbing activities. Specifically, CDFW's Staff Report recommends that impacts to occupied burrows be avoided in accordance with the following table unless a qualified biologist approved by CDFW verifies through non-invasive methods that either: 1) the birds have not begun egg laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival.

Location	Time of Year	Level of Disturbance		
		Low	Med	High
Nesting sites	April 1-Aug 15	200 m*	500 m	500 m
Nesting sites	Aug 16-Oct 15	200 m	200 m	500 m
Nesting sites	Oct 16-Mar 31	50 m	100 m	500 m

\* meters (m)

**Recommended Mitigation Measure 4: BUOW Passive Relocation and Mitigation**

If BUOW are found within these recommended buffers and avoidance is not possible, it is important to note that according to the Staff Report (CDFG 2012), exclusion is not a take avoidance, minimization, or mitigation method and is considered a potentially significant impact under CEQA. However, if necessary, CDFW recommends that burrow exclusion be conducted by qualified biologists and only during the non-breeding season, before breeding behavior is exhibited and after the burrow is confirmed empty through non-invasive methods, such as surveillance. CDFW recommends replacement of occupied burrows with artificial burrows at a ratio of one burrow collapsed to one artificial burrow constructed (1:1) as mitigation for the potentially significant impact of evicting BUOW. BUOW may attempt to colonize or re-colonize an area that will be impacted; thus, CDFW recommends ongoing surveillance, at a rate that is sufficient to detect BUOW if they return.

**COMMENT 3: Western pond turtle (WPT)**

**Issue:** WPT have the potential to occur in the Project site. WPT are known to nest in the spring or early summer within 100 meters of a water body, although nest sites as far away as 500 meter have also been reported (Thomson et al. 2016).

**Specific impact:** Without appropriate avoidance and minimization measures for WPT, potentially significant impacts associated with Project activities could include nest reduction, inadvertent entrapment, reduced reproductive success, reduction in health or vigor of eggs and/or young, and direct mortality.

**Evidence impact is potentially significant:** The Project involves ground-disturbing activities in and adjacent to Froom Creek. Additionally, noise, vegetation removal, movement of workers, and ground disturbance as a result of Project activities have the potential to significantly impact WPT populations.

**Recommended Potentially Feasible Mitigation Measure(s)**

To evaluate potential impacts to WPT, CDFW recommends conducting the following evaluation of the Project site, editing the MND to include the following measures

specific to WPT, and that these measures be made conditions of approval for the Project.

### **Recommended Mitigation Measure 5: WPT Surveys**

CDFW recommends that a qualified biologist conduct focused surveys for WPT no more than ten days prior to Project implementation. In addition, CDFW recommends that focused surveys for nests occur during the egg-laying season (March through August) and that any nests discovered remain undisturbed until the eggs have hatched.

## **II. Editorial Comments and/or Suggestions**

**Lake and Streambed Alteration:** Ground-disturbing activities that have the potential to change the bed, bank, and channel of Froom Creek, or alter riparian habitat, may be subject to CDFW's regulatory authority pursuant Fish and Game Code section 1600 et seq. Fish and Game Code section 1600 et seq. requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake (including the removal of riparian vegetation); or (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral or intermittent as well as those that are perennial. CDFW is required to comply with CEQA in the issuance of a Lake or Streambed Alteration Agreement. For additional information on notification requirements, please contact our staff in the LSA Program at (559) 243-4593.

**Federally Listed Species:** CDFW recommends consulting with the USFWS on potential impacts to federally listed species including, but not limited to, Chorro Creek bog thistle. Take under the Federal Endangered Species Act (FESA) is more broadly defined than CESA; take under FESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS in order to comply with FESA is advised well in advance of any ground-disturbing activities.

## **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



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Database (CNDDDB). The CNDDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be mailed electronically to CNDDDB at the following email address: [CNDDDB@wildlife.ca.gov](mailto:CNDDDB@wildlife.ca.gov). The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

## FILING FEES


If it is determined that the Project has the potential to impact biological resources, an assessment of filing fees will be 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 fee is required in order 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).

CDFW appreciates the opportunity to comment on the Project to assist City of San Luis Obispo Community Development Department in identifying and mitigating the Project's impacts on biological resources.

More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>). If you have any questions, please contact Jim Vang, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 243-4014, extension 254, or by electronic mail at [Jim.Vang@wildlife.ca.gov](mailto:Jim.Vang@wildlife.ca.gov).

Sincerely,



 Julie A. Vance  
Regional Manager

cc: See Page Ten

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cc: United States Fish and Wildlife Service  
2800 Cottage Way, Suite W-2605  
Sacramento, California 95825

Regional Water Quality Control Board  
Central Valley Region  
1685 "E" Street  
Fresno, California 93706-2020

United States Army Corps of Engineers  
San Joaquin Valley Office  
1325 "J" Street, Suite #1350  
Sacramento, California 95814-2928

ec: Linda Connolly  
Jeff Cann  
California Department of Fish and Wildlife  
Central Region

### Literature Cited

- California Burrowing Owl Consortium. 1993. Burrowing owl survey protocol and mitigation guidelines. April 1993.
- California Department of Fish and Game (CDFG). 1994. Staff Report Regarding Mitigation for Impacts to Swainson's Hawks (*Buteo Swainsoni*) in the Central Valley of California. California Department of Fish and Game.
- CDFG. 2012. Staff Report on Burrowing Owl Mitigation. California Department of Fish and Game.
- CDFW. 2019. Biogeographic Information and Observation System (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>. Accessed December 9, 2019.
- California Native Plant Society (CNPS), Rare Plant Program. 2019. Inventory of Rare and Endangered Plants of California (online edition, v8-03 0.39). Website <http://www.rareplants.cnps.org> [accessed December 9, 2019].
- Gervais, J.A., D.D. Rosenberg, and L.A. Comrack. Burrowing Owl (*Athene cunicularia*) in Shuford, W.D. and T. Gardali, editors. 2008. California Bird Species of Special Concern: A ranked assessment of species, subspecies, and distinct populations of birds of immediate conservation concern in California. Studies of Western Birds 1. Western Field Ornithologists, Camarillo, California, and California Department of Fish and Game, Sacramento, California, USA.
- Thomson, R. C., A. N. Wright, and H. Bradley Shaffer, 2016. California Amphibian and Reptile Species of Special Concern. California Department of Fish and Wildlife and University of California Press.