



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
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Fresno, California 93710
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Governor's Office of Planning & Research

Jun 22 2020

June 22, 2020

STATE CLEARINGHOUSE

Schani Siong, Project Manager
County of San Luis Obispo Department of Planning & Building
976 Osos Street Room 300
San Luis Obispo, CA 93408

Subject: Avila Valley Partners LLC Tract Map with Conditional Use Permit (ED20-090) SUB2018-00026 TR 3117 (076-251-028) (Project)
SCH No.: 2020050459

Dear Ms. Siong:

The California Department of Fish and Wildlife (CDFW) received a supplemental Request for Comments for the Project from San Luis Obispo Department of Planning and Building for the above-referenced Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

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, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through exercise of our own regulatory authority under the 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 & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in our 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.

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. For example, to the extent implementation of the Project as proposed may result in "take" as defined by

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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State law of any species protected under the California Endangered Species Act (CESA) (Fish & Game Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

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, 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).

PROJECT DESCRIPTION SUMMARY

Proponent: Avila Valley Partners LLC

Objective: Request by Avila Valley Partners LLC for a Vesting Tentative Tract Map (TR 3117) and a concurrent Conditional Use Permit (SUB2018-00026) to subdivide an existing 22.76 acre parcel into 23 lots consisting of: 22 residential parcels ranging from 0.3 to 1 gross acre in size, one non-buildable open space parcel (11.5 gross acre), and the construction of 22 single family residences of approximately 2,500 square feet (average) including garages on each residential lot. Access to the residential lots will be via private streets (Valle Verde Place and Tierras Atlas Avenue) extending west from Ontario Road terminating in two cul-de-sacs. The 22 residential lots will be for sale and/or development.

The project will result in the disturbance of approximately 10.1-acres of the 22.76-acre parcel. The project is within the Residential Suburban land use category and is located on the west side of Ontario Rd and Highway 101, approximately 0.23 miles south of San Luis Bay Dr, approximately 1.5 miles northeast of the community of Avila Beach. The site is within the Urban Reserve Limits of the unincorporated community of Avila Beach in the San Luis Bay Inland Sub Area of the San Luis Obispo Planning Area.

The project is proposed in 2 phases; Phase 1 Valle Verde Place consisting of 13 lots and the open space parcel and Phase 2 Tierras Atlas Avenue consisting of 9 lots, each phase with its associated private driveways and utility installations. Phase 1 development is proposed on the northern portion of the site, with Phase 2 development located on the southern portion of the site. The open space parcel, which is approximately 50% of the site is in the middle between Phase 1 and Phase 2 developments.

The project is designed as a Cluster Division in accordance with LUO Section 22.22.140. Through the issuance of a Conditional Use Permit, the Cluster Division regulations allow for an increase in the residential density within urban and village reservice lines by determining the number of lots based on gross density, rather than net density. In this case the gross acreage of the area to be subdivided is 22.76 acres.

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Location: The proposed Project Area is located at the intersection of San Luis Bay Drive and Ontario Road in San Luis Obispo County, California; Assessor's Parcel Number 076-251-028; 35°11'29.07 "N, 120° 42 ' 10.36 " W.

Timeframe: Unspecified.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist San Luis Obispo Department of Planning & Building in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document.

There are several special-status resources present adjacent to the Project area. These resources may need to be evaluated and addressed prior to any approvals that would allow ground-disturbing activities or land use changes. CDFW is concerned regarding potential impacts to special-status species including, but not limited to, the State candidate-listed as endangered western bumblebee (*Bombus occidentalis*), and the State species of special concern burrowing owl (*Athene cunicularia*). In order to adequately assess any potential impacts to biological resources, focused biological surveys should 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.

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: Western Bumble Bee (WBB)

Issue: On June 28, 2019, the Fish and Game Commission published findings of its decision to advance WBB to candidacy as endangered. Pursuant to Fish and Game Code section 2074.6, CDFW has initiated a status review report to inform the Commission's decision on whether listing of WBB, pursuant to CESA, is warranted. During the candidacy period, consistent with CEQA Guidelines section 15380, the status of the WBB as an endangered candidate species under CESA (Fish & G. Code, § 2050 et seq.) qualifies it as an endangered, rare, or threatened species under CEQA. It is unlawful to import into California, export out of California, or take, possess, purchase, or sell within California, WBB and any part or product thereof, or

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attempt any of those acts, except as authorized pursuant to CESA. Under Fish and Game Code section 86, take means to hunt, pursue, catch, capture, or kill, or to attempt to hunt pursue, catch, capture, or kill. Consequently, take of WBB during the status review period is prohibited unless authorization pursuant to CESA is obtained. WBB have the potential to occur within and near the Project site. Suitable WBB habitat includes areas of grasslands and upland scrub that contain requisite habitat elements, such as small mammal burrows. WBB primarily nest in late February through late October underground in abandoned small mammal burrows, but may also nest under perennial bunch grasses or thatched annual grasses, under brush piles, in old bird nests, and in dead trees or hollow logs (Williams et al. 2014). Overwintering sites utilized by WBB mated queens include soft, disturbed soil (Goulson 2010), or under leaf litter or other debris (Williams et al. 2014). Therefore, ground disturbance and vegetation removal associated with Project implementation has the potential to significantly impact local WBB populations.

Specific impact: Review of species database CNDDDB indicates there are documented occurrences of WBB near the project site. Without appropriate avoidance and minimization measures for WBB, potentially significant impacts associated with ground- and vegetation-disturbing activities associated with construction of the Project include loss of foraging plants, changes in foraging behavior, burrow collapse, nest abandonment, reduced nest success, reduced health and vigor of eggs, young and/or queens, in addition to direct mortality in violation of Fish and Game Code.

Evidence impact is potentially significant: WBB was once common throughout most of California; WBB populations are now largely restricted to high elevation sites in the Sierra Nevada and scattered observations along the California coast (Xerces Society 2018). Analyses by the Xerces Society (2018) suggest there have been sharp declines in relative abundance by 84%.

Recommended Potentially Feasible Mitigation Measure(s)

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

Recommended Mitigation Measure 1: WBB Surveys

CDFW recommends that a qualified biologist determine if suitable habitat is present within the Project site. If suitable habitat is present, CDFW recommends that a qualified biologist conduct focused surveys for WBB and their requisite habitat features to evaluate potential impacts resulting from ground- and vegetation-disturbance associated with the Project.

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Recommended Mitigation Measure 2: WBB Take Avoidance

If surveys cannot be completed, CDFW recommends that all small mammal burrows and thatched/bunch grasses be avoided by a minimum of 50 feet to avoid take and potentially significant impacts. If ground-disturbing activities will occur during the overwintering period (October through February), consultation with CDFW is warranted to discuss how to implement Project activities and avoid take.

Recommended Mitigation Measure 3: WBB Take Authorization

If WBB is detected prior to or during Project implementation, 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 Incidental Take Permit (ITP) by CDFW, pursuant to Fish and Game Code section 2081 subdivision (b).

COMMENT 2: Burrowing Owl (BUOW)

Issue: The proposed mitigation measures recognize the potential for BUOW to occur on or in the vicinity of the Project Area. However, these measures may not be effective in evaluating the potential for the Project to impact BUOW and may not be enforceable. For example, mitigation measure BR-2 (d) requires that the Project Area be surveyed for BUOW occupancy two weeks prior to construction but does not identify survey methods. Therefore, the measures may not be sufficient in reducing impacts to BUOW to a level that is less than significant.

Specific impact: Potentially significant direct impacts associated with the Project's construction 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. The Project Area is within the range of BUOW and suitable burrow habitat is present on or in the vicinity of the Project Area. Therefore, the Project has 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 BUOW is considered a potentially significant impact under CEQA.

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

To evaluate potential Project-related impacts to BUOW, CDFW recommends conducting the following species-specific evaluation of the Project Area prior to construction and editing the Project's CEQA document to include the following measures.

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Recommended Mitigation Measure 4: 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* (CDFG 2012). In addition, CDFW advises that surveys include a 500-foot buffer around the Project Area.

Recommended Mitigation Measure 5: BUOW Avoidance

Because BUOW occupy burrow habitat year-round, CDFW recommends seasonal no-disturbance buffers, as outlined in the "Staff Report on Burrowing Owl Mitigation" (CDFG 2012), be implemented prior to and during any ground-disturbing activities associated with Project implementation. 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 6: BUOW Passive Relocation and Mitigation

If BUOW are found to occupy the Project Area 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 1 burrow collapsed to 1 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 of the Project Area during Project activities, at a rate that is sufficient to detect BUOW if they return.

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ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database that may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be 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. 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 will impact fish and/or wildlife, an assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the 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.)

CONCLUSION

CDFW appreciates the opportunity to comment on the Project to assist San Luis Obispo Department of Planning & Building 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>). Questions regarding this letter or further coordination should be directed to Jaime Marquez, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 243-4014 extension 291, or by electronic email at Jaime.Marquez@wildlife.ca.gov.

Sincerely,

DocuSigned by:

041A77B10D78486...
Julie A. Vance
Regional Manager

Attachment 1

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REFERENCES

- California Burrowing Owl Consortium (CBOC), 1993. Burrowing owl survey protocol and mitigation guidelines. Pages 171-177 in Lincer, J. L. and K. Steenhof (editors). 1993. The burrowing owl, its biology and management. Raptor Research Report Number 9.
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- Goulson, D. 2010. Bumblebees: behaviour, ecology, and conservation. Oxford University Press, New York. 317pp.
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- Xerces Society for Invertebrate Conservation, Defenders of Wildlife, and Center for Food Safety. 2018. A petition to the state of california fish and game commission to list the Crotch bumble bee (*Bombus crotchii*), Franklin's bumble bee (*Bombus franklini*), Suckley cuckoo bumble bee (*Bombus suckleyi*), and western bumble bee (*Bombus occidentalis occidentalis*) as Endangered under the California Endangered Species Act. October 2018.

Attachment 1

**MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)
FOR CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
RECOMMENDED MITIGATION MEASURES**

**PROJECT: Avilla Valley Partners Project
SCH No.: 2020050459**

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Mitigation Measure 1: WBB Surveys	
Mitigation Measure 3: WBB Take Authorization	
Mitigation Measure 4: BUOW Surveys	
<i>During Construction</i>	
Mitigation Measure 2: WBB Take Avoidance	
Mitigation Measure 5: BUOW Avoidance	
Mitigation Measure 6: BUOW Passive Relocation and Mitigation	