



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Governor's Office of Planning & Research

July 8, 2020

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STATE CLEARINGHOUSE

Holly Phipps, Project Manager
County of San Luis Obispo Department of Planning and Building
976 Osos Street Room 300
San Luis Obispo, California 93408

**Subject: DRC2019-00260 Peoples' Self Help Housing, Conditional Use Permit
(Project)
Mitigated Negative Declaration (MND)
SCH#: 2020060159**

Dear Ms. Phipps:

The California Department of Fish and Wildlife (CDFW) received an MND from the County of San Luis Obispo Department of Planning and Building for the above-referenced Project pursuant to 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, 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 & 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

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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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. 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.

The use of unallocated stream flows is subject to appropriation and approval by the State Water Resources Control Board (SWRCB) pursuant to Water Code section 1225. CDFW, as Trustee Agency, is consulted by the SWRCB during the water rights process to provide terms and conditions designed to protect fish and wildlife prior to appropriation of the State's water resources. Certain fish and wildlife are reliant upon aquatic ecosystems, which in turn are reliant upon adequate flows of water. CDFW, therefore, has a material interest in assuring adequate water flows within streams for the protection, maintenance and proper stewardship of those resources. CDFW provides, as available, biological expertise to review and comment on environmental documents and impacts arising from project activities.

PROJECT DESCRIPTION SUMMARY

Proponent: Peoples' Self Help Housing

Objective: A request by People's Self Help Housing Rolling Hills III for a Conditional Use Permit (DRC2019-00260) to allow for the construction of an 11,691-square-foot, 28-unit apartment complex, consisting of two structures ranging in size from 5,439 to 6,252 square feet each. The project also includes the construction of a 2,110-square foot learning center and a 432-square-foot maintenance building. The project will result in the disturbance of 2.1 acres of a 3.5-acre parcel, including approximately 2,850 cubic yards of cut and 2,810 cubic yards of fill.

Location: The proposed project is within the Office and Professional land use category and is located at 246 Bennett Way, approximately 260 feet west of the Highway 101/Las Tablas Road intersection, in the community of Templeton. The site is in the Salinas River Sub Area of the North County Planning Area.

Timeframe: N/A

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COMMENTS AND RECOMMENDATIONS

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

There are is potential for special-status resources in and near 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 for listing as threatened foothill yellow-legged frog (*Rana boylei*), the State and federally endangered least Bell's vireo (*Vireo bellii pusillus*), the State species of special concern and federally threatened California red-legged frog (*Rana draytonii*), and the State species of special concern American badger (*Taxidea taxus*) and western pond turtle (*Actinemys marmorata*). In order to adequately assess any potential impact 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: Foothill Yellow-Legged Frog (FYLF) and California Red-Legged Frog (CRLF)

Issue: FYLF are primarily stream dwelling and requires shallow, flowing water in streams and rivers with at least some cobble-sized substrate; CRLF primarily inhabit ponds but can also be found in other waterways including marshes, streams, and lagoons, and the species will also breed in ephemeral waters (Thomson et al. 2016). The Project site contains habitat that may support both species. Avoidance and minimization measures are necessary to reduce impacts to FYLF and CRLF to a level that is less than significant.

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Specific impact: Without appropriate avoidance and minimization measures for FYLF and CRLF, potentially significant impacts associated with the Project's activities include burrow collapse, inadvertent entrapment, reduced reproductive success, reduction in health and vigor of eggs, larvae and/or young, and direct mortality of individuals.

Evidence impact would be significant: FYLF and CRLF populations throughout the State have experienced ongoing and drastic declines and many have been extirpated; historically, FYLF occurred in mountain streams from the San Gabriel River in Los Angeles County to southern Oregon west of the Sierra-Cascade crest (Thomson et al. 2016). Habitat loss from growth of cities and suburbs, invasion of nonnative plants, impoundments, water diversions, stream maintenance for flood control, degraded water quality, and introduced predators, such as bullfrogs are the primary threats to FYLF and CRLF (Thomson et al. 2016, USFWS 2017b). Project activities have the potential to significantly impact both species.

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential impacts to FYLF and CRLF, 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: FYLF and CRLF Surveys

CDFW recommends that a qualified wildlife biologist determine if suitable habitat is present at the Project site. If suitable habitat is present, CDFW recommends a qualified biologist conduct surveys for FYLF and CRLF in accordance with the USFWS "Revised Guidance on Site Assessment and Field Surveys for the California Red-legged Frog" (USFWS 2005) to determine if FYLF and CRLF are within or adjacent to the Project area; while this survey is designed for CRLF, the survey may be used for FYLF with focus on stream/river habitat.

Recommended Mitigation Measure 2: FYLF and CRLF Avoidance

If any FYLF or/and CRLF are found during pre-construction surveys or at any time during construction, consultation with CDFW is warranted to determine if the Project can avoid take. CDFW recommends that initial ground-disturbing activities be timed to avoid the period when FYLF and CRLF are most likely to be moving through upland areas (November 1 and March 31). When ground-disturbing activities must take place between November 1 and March 31, CDFW recommends a qualified biologist monitor construction activity daily for FYLF and CRLF.

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Recommended Mitigation Measure 3: FYLF Take Authorization

Species such as FYLF with a Candidate listing are treated as threatened or endangered by CDFW. If through surveys it is determined that FYLF are occupying or have the potential to occupy the Project site and take cannot be avoided, take authorization would be warranted prior to initiating ground-disturbing activities. 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: Least Bell's Vireo (LBV)

Issue: Review of aerial imagery indicates the presence of riparian woodland vegetation, suitable to support LBV, both within the Project site and its vicinity. Therefore, the Project has the potential to impact LBV.

Specific impact: Without appropriate avoidance and minimization measures for LBV, potential significant impacts associated with Project development include nest abandonment, reduced reproductive success, and reduced health and vigor of eggs and/or young.

Evidence impact is potentially significant: LBV were abundant and widespread in the United States until the 1950s (Grinnell and Miller 1944). By the 1960s, they were considered scarce (Monson 1960), and by 1980, there were fewer than 50 pairs remaining (Edwards 1980), although this number had increased to 2,500 by 2004 (Kus and Whitfield 2005). The primary cause of decline for this species has been the loss and alteration of riparian woodland habitats (USFWS 2006). Fragmentation of their preferred habitat has also increased their exposure to brown-headed cowbird (*Molothrus ater*) parasitism (Kus 2002). Current threats to their preferred habitat include colonization by non-native plants and altered hydrology (diversion, channelization, etc.) (USFWS 2006).

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

To evaluate potential impacts to LBV, 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 4: LBV Habitat Assessment

CDFW recommends that a qualified biologist conduct a habitat assessment in advance of Project implementation, to determine if the Project site or its immediate

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vicinity contains suitable habitat for LBV. Although LBV inhabit riparian woodlands, the species has also been found to benefit from non-riparian systems including brushy fields, second-growth forest or woodland, scrub oak, coastal chaparral, and mesquite brushlands (Kus and Miner 1989 *in* Poulin et al. 2011).

Recommended Mitigation Measure 5: LBV Avoidance

CDFW recommends that Project activities be timed to avoid the typical bird breeding season (February 1 through September 15).

Recommended Mitigation Measure 6: LBV Surveys

If Project activities must take place during the typical bird breeding season, and suitable LBV habitat is detected during habitat assessments, CDFW recommends assessing presence/absence of LBV by conducting surveys following the USFWS' "Least Bell's Vireo Survey Guidelines" (2001) well in advance of the start of Project implementation to evaluate presence/absence of LBV nesting in proximity to Project activities, and to evaluate potential Project-related impacts and permitting needs. Additionally, CDFW advises conducting focused pre-construction surveys for LBV in all areas of potentially suitable habitat within 10 days of Project implementation, when initiated during the bird breeding season.

Recommended Mitigation Measure 7: LBV Take Authorization

LBV detection warrants consultation with CDFW to discuss how to avoid take, or if avoidance is not feasible, to acquire an ITP prior to ground-disturbing activities, pursuant to Fish and Game Code section 2081 subdivision (b).

COMMENT 3: American Badger

Issue: American badger are known to near the Project site (CDFW 2020). Badgers occupy sparsely vegetated land cover with dry, friable soils to excavate dens, which they use for cover, and that support fossorial rodent prey populations (i.e. ground squirrels, pocket gophers, etc.) (Zeiner et. al 1990). The Project site may support these requisite habitat features. Therefore, the Project has the potential to impact American badger.

Specific impact: Without appropriate avoidance and minimization measures for American badger, potentially significant impacts associated with ground disturbance include direct mortality or natal den abandonment, which may result in reduced health or vigor of young.

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Evidence impact is potentially significant: Habitat loss is a primary threat to American badger (Gittleman et al. 2001). The Project has the expectation disturb annual grassland habitat. As a result, ground-disturbing activities have the potential to significantly impact local populations of American badger.

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential impacts to American badger associated with the Project, CDFW recommends conducting the following evaluation of the Project sites, 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 8: American Badger Surveys

If suitable habitat is present, CDFW recommends that a qualified biologist conduct focused surveys for American badger and their requisite habitat features (dens) to evaluate potential impacts resulting from ground- and vegetation-disturbance.

Recommended Mitigation Measure 9: American Badger Avoidance

Avoidance whenever possible is encouraged via delineation and observation of a 50-foot no-disturbance buffer around dens until it is determined through non-invasive means that individuals occupying the den have dispersed.

COMMENT 4: Western pond turtle (WPT)

Issue: 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 presence of riparian habitat indicates the Project site is in potential WPT habitat. Additionally, noise, vegetation removal, movement of workers, and ground disturbance as a result of Project activities have the potential to significantly impact WPT populations.

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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 10: WPT Surveys

CDFW recommends that a qualified biologist determine if suitable habitat is present at the Project site. If suitable habitat is present, CDFW recommends a qualified biologist conduct focused surveys for WPT 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.

Recommended Mitigation Measure 11: WPT Relocation

CDFW recommends that if any WPT are discovered at the site immediately prior to or during Project activities, they be allowed to move out of the area on their own.

II. Editorial Comments and/or Suggestions

Lake and Streambed Alteration

Issue: The proposed Project will undergo groundbreaking activities near a small riparian stream and should notify LSA.

Specific Impact: Watershed and habitat protection are vital to the CDFW's management of California's diverse fish, wildlife, and plant resources. The riparian zone of Templeton supports riparian woodland habitat and associated annual grassland, and may potentially support sensitive species listed as threatened or endangered under the Federal Endangered Species Act (FESA), as well as several State special-status species including least Bell's vireo, California red-legged and foothill yellow-legged frog. CDFW is concerned that the loss of riparian habitat will result in direct and cumulative adverse impacts to these fish and wildlife and other public trust resources supported by the stream and its associated riparian habitats.

Notification: The Project is subject to CDFW's regulatory authority pursuant Fish and Game Code section 1600 et seq. Fish and Game Code section 1602 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; or (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any

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river, stream, or lake” includes those that are ephemeral or intermittent, such as the unnamed stream within the Project site, as well as those that are perennial in nature.

For additional information on notification requirements, please contact our staff in the Lake and Streambed Alteration Program at (559) 243-4593. It is important to note, CDFW is required to comply with CEQA, as a Responsible Agency, when issuing a Lake or Streambed Alteration Agreement (LSAA). If inadequate, or no environmental review, has occurred, for the Project activities that are subject to notification under Fish and Game Code section 1602, CDFW will not be able to issue the Final LSAA until CEQA analysis for the project is complete. This may lead to considerable Project delays.

Federally Listed Species: CDFW recommends consulting with the USFWS on potential impacts to federally listed species including, but not limited to, CRLF. Take under 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 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

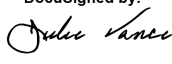
If it is determined that the Project has the potential to impact biological resources, an assessment of filing fees will be necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is 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).

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CDFW appreciates the opportunity to comment on the Project to assist the County of San Luis Obispo Department of Planning and 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>). If you have any questions, please contact Jaime Marquez, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 243-4014, extension 291, or by electronic mail at Jaime.Marquez@wildlife.ca.gov.

Sincerely,

DocuSigned by:

FA83F09FE08945A...
Julie A. Vance
Regional Manager

Attachment 1

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

ec: Annette Tenneboe, Bob Stafford, and Cristen Langner; CDFW

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Attachment 1

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

**PROJECT: Peoples' Self Help Housing
SCH No.: 2020060159**

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Mitigation Measure 1: FYLF and CRLF Surveys	
Mitigation Measure 3: FYLF Take Authorization	
Mitigation Measure 4: LBV Habitat Assessment	
Mitigation Measure 6: LBV Surveys	
Mitigation Measure 7: LBV Take Authorization	
Mitigation Measure 8: American Badger Surveys	
Mitigation Measure 10: Western Pond Turtle Surveys	
<i>During Construction</i>	
Mitigation Measure 2: FYLF and CRLF Avoidance	
Mitigation Measure 5: LBV Avoidance	
Mitigation Measure 9: American Badger Avoidance	
Mitigation Measure 11: WPT Relocation	