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DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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Governor's Office of Planning & Research

January 5, 2021

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STATE CLEARINGHOUSE

Kyle Bell, Associate Planner
County of San Luis Obispo Community Development Department
919 Palm Street
San Luis Obispo, California 93401

**Subject: 600 Tank Farm Road Residential Mixed-Use Project (Project)
Notice of Preparation (NOP)
SCH No.: 2020110426**

Dear Mr. Bell:

The California Department of Fish and Wildlife (CDFW) received an NOP 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.

Though the comment period for the Project has closed, CDFW hopes that the following comments will be considered and incorporated into the Project's Environmental Impact Report (EIR).

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust 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

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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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, 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.

PROJECT DESCRIPTION SUMMARY

Proponent: Cdevelop Holding, Inc

Objective: The Project involves zoning-level entitlements: a General Plan Map Amendment, a rezone, a Specific Plan Amendment to the Airport Area Specific Plan, a Minor Use Permit for a mixed-use project, Conceptual Site Plan, a Development Agreement, and environmental clearance and permitting for necessary off-site improvements. The requested entitlements would allow for up to 12,500 square-feet (sf) of non-residential space and 280 residential units on the 11.7-acre site. Conceptual site plans for the site reflect the development of 19 residential buildings, two mixed-use buildings, and one clubhouse building. In addition, the project would provide a roundabout at the intersection of Tank Farm Road and Santa Fe Road and interim improvements for Santa Fe Road including two travel lanes and Class IV bike paths.

Location: The Project is located at 600 Tank Farm Road in San Luis Obispo, California; northeast of the intersection of Tank Farm Road and Santa Fe Road. The Project location is bordered on the eastern side by Acacia Creek and annual grasslands to the west and northwest.

Timeframe: N/A

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.

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There are several special-status resources present in and adjacent to the Project area. CDFW recommends that these resources be evaluated and addressed in the Project's EIR prior to any approvals that would allow ground-disturbing activities or land use changes. In particular, CDFW is concerned regarding the potential for the Project to impact special-status species including, but not limited to, the State candidate-listed as threatened foothill yellow-legged frog (*Rana boylii*), 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*) burrowing owl, (*Athene cunicularia*) and western pond turtle (*Actinemys marmorata*). In order to adequately assess any potential impact to biological resources, CDFW recommends that a qualified wildlife biologist/botanist conduct focused biological surveys 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 and to identify any Project-related impacts to species protected 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: Review of aerial imagery indicates the Project will occur adjacent to Acacia Creek which has the potential to support FYLF and CRLF. The NOP also acknowledges the suitability of the site to support FYLF and CRLF. FYLF are primarily stream dwelling and require shallow, flowing water in streams and rivers with at least some cobble-sized substrate (Thomson et al. 2016). Throughout the year, FYLF can take refuge in adjacent aquatic habitat such as springs, seeps, pools, or in terrestrial moist habitats such as woody debris, root wads, undercut banks, clumps of sedges, and large boulders occurring at high water-lines adjacent to pools (CDFW 2018). 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. During dry months, CRLF can aestivate in small mammal burrows surrounding aquatic habitat (Thomson et al. 2016). The Project area contains habitat that may support both species. As a result, avoidance and

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minimization measures may be necessary to reduce impacts to FYLF and CRLF to a level that is less than significant.

Specific impact: Without appropriate avoidance and minimization measures for FYLF and CRLF, potentially significant impacts associated with the Project's activities include burrow collapse and disturbance to other refugia, 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 2017). 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 area, incorporating the following mitigation measures into the EIR prepared for this Project, and that these measures be made conditions of approval for the Project.

Recommended Mitigation Measure 1: FYLF and CRLF Surveys

Because the NOP acknowledges the suitability of the site to support FYLF and CRLF, CDFW recommends that a qualified wildlife 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 protocol 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 and/or 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 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

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monitor construction activity daily for CRLF. If FYLF are present and breeding, seasonal avoidance may not be possible given the species' natural history. As a result, take authorization may be necessary.

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 area 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 Project will occur adjacent to Acacia Creek which supports riparian woodland vegetation, suitable to support LBV. 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 area, incorporating the following mitigation measures into the EIR prepared for this Project, and that these measures be made conditions of approval for the Project.

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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 area or its immediate 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 Seasonal Avoidance

If suitable habitat is present, CDFW recommends that Project activities be timed to avoid the typical bird breeding season (February 1 through September 15), to avoid impacts to nesting LBV and other avian species.

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

If through surveys it is determined that LBV are occupying or have the potential to occupy the Project area, consultation with CDFW is warranted 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 have the potential to occur near the Project area. Badgers occupy sparsely vegetated land cover with dry, friable soils into which they excavate dens, which they use for cover. Badgers also require fossorial rodent prey populations (i.e., ground squirrels, pocket gophers, etc.) (Zeiner et. al 1990). The Project area may support these requisite habitat features. Therefore, the Project has the potential to impact American badger.

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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.

Evidence impact is potentially significant: Habitat loss is a primary threat to American badger (Gittleman et al. 2001). The Project is expected to 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 area, incorporating the following mitigation measures into the EIR prepared for this Project, and that these measures be made conditions of approval for the Project.

Recommended Mitigation Measure 8: American Badger Habitat Assessment

CDFW recommends that a qualified biologist conduct a habitat assessment to determine the suitability of the Project area to support American Badger.

Recommended Mitigation Measure 9: 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 10: 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: The Project will occur adjacent to Acacia Creek, which is known to support WPT (CDFW 2020). WPT nest in the spring or early summer within 100 meters of a water body, although nest sites as far away as 500 meters have also been reported (Thomson et al. 2016). As a result, the Project area may support nesting WPT.

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

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Evidence impact is potentially significant: The Project area is in potential WPT habitat. WPT are slow to reach sexual maturity (Zeiner et al. 1990), naturally limiting their population and making them particularly susceptible to nest disturbance. Therefore, noise, vegetation removal, movement of workers, and ground disturbance resulting from Project activities has the potential to disturb nests and, as a result, 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 area, including the following measures specific to WPT in the EIR, and that these measures be made conditions of approval for the Project.

Recommended Mitigation Measure 11: WPT Surveys

CDFW recommends that 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 12: 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.

COMMENT 5: Burrowing Owl (BUOW)

Issue: According to the Project's NOP, BUOW are known to overwinter in the Project area. BUOW inhabit open grassland or adjacent canal banks, right-of-ways, vacant lots, etc., containing small mammal burrows, a requisite habitat feature used by BUOW for nesting and cover.

Specific impact: Potentially significant direct impacts associated with Project activities 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 (Gervais et al. 2008). The Project area is bordered by some of the only remaining undeveloped land in the vicinity, which is otherwise primarily surrounded by urban development. Therefore, subsequent ground-disturbing activities associated with the Project have the potential to significantly impact local BUOW populations. In addition, and as described in

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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 area, incorporating the following mitigation measures into the EIR prepared for this Project, and that these measures be made conditions of approval for the Project.

Recommended Mitigation Measure 13: BUOW Surveys

CDFW recommends assessing BUOW population size and behavior (i.e., breeding, overwintering, etc.) by having a qualified biologist conduct surveys following the California Burrowing Owl Consortium's (CBOC) "Burrowing Owl Survey Protocol and Mitigation Guidelines" (CBOC 1993) and CDFW's "Staff Report on Burrowing Owl Mitigation" (CDFG 2012). 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 14: BUOW Avoidance

CDFW recommends 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. 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)

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Recommended Mitigation Measure 15: 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 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, at a rate that is sufficient to detect BUOW if they return.

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

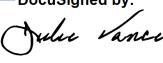
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review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

CDFW appreciates the opportunity to comment on the Project to assist 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:

Julie A. Vance
Regional Manager

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

ec: 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: Tank Farm Road Residential Mixed-Use Project
SCH No.: 2020110426

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 Habitat Assessment	
Mitigation Measure 9: American Badger Surveys	
Mitigation Measure 11: WPT Surveys	
Mitigation Measure 13: BUOW Surveys	
Mitigation Measure 15: BUOW Passive Relocation and Mitigation	
<i>During Construction</i>	
Mitigation Measure 2: FYLF and CRLF Avoidance	
Mitigation Measure 5: LBV Seasonal Avoidance	
Mitigation Measure 10: American Badger Avoidance	
Mitigation Measure 12: WPT Relocation	
Mitigation Measure 14: BUOW Avoidance	