



S J C O G, Inc.

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*San Joaquin County Multi-Species Habitat Conservation &  
Open Space Plan (SJMSCP)*

**Crivello Estates Project  
SJMSCP Incidental Take Minimization Measures  
(APN: 208-140-17)**

**Date:** October 28, 2014

**Findings:** Potential habitat for Swainson's hawk and western burrowing owls

**Total Disturbed Acres Anticipated:** 8.61 acres

**Habitat Types to be Disturbed:** Agricultural habitat (SJMSCP City of Manteca Compensation Map)

**Project Jurisdiction:** City of Manteca

### **Advisory Statements**

After inspecting the project site, and project site conditions, the San Joaquin Council of Governments (SJCOG) provides the following *advisory statements* to the applicant. No further action is required with the SJCOG with respect to the following statements. SJCOG does not accept any liability for the accuracy of these statements since each regulatory agency discussed below must determine the extent of its own regulatory authority with respect to the proposed project.

It should be noted that two important federal and state agencies (U.S. Army Corps of Engineers and the California Regional Water Quality Control Board) and California Department of Fish and Wildlife Streambed Alteration requirements have not issued permits to the SJCOG and so payment of the fee to use the SJMSCP will not modify requirements (1600/1602) now imposed by these agencies. **Potential waters of the United States [pursuant to Section 404 Clean Water Act] may occur on the project site.** It therefore may be prudent to obtain a preliminary wetlands map from a qualified consultant. If waters of the United States are confirmed on the project site, the Corps and the Regional Water Quality Control Board (RWQCB) would have regulatory authority over those mapped areas [pursuant to Section 404 and 401 of the Clean Water Act respectively] and permits would likely be required from each of these resource agencies prior to impacting these features on the project site.

The ITMM is not deemed complete until finalized by SJCOG, Inc. staff and provided back to the project.

## Conditions

The following conditions are prescribed by the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP) for the proposed project.

### Prior to Issuance of a Building Permit:

1. Pay the appropriate fee to the City of Manteca based on the SJCOG, Inc. habitat fee 8.61 acres (billable) of Agricultural Habitat Lands (fee per acre) *no greater than 30 days prior to issuance of the building permit.*

Note: If fees are not paid prior to January 1, 2015 this project will be subject to the subsequent fee change, and the fee above will no longer be applicable.

Project Proponent Must Initial Here As to Understanding the Note Above: 

### Prior to commencing ground disturbance:

No Swainson's hawk nests are known on or near the project site at this date. If during preconstruction surveys, a nest is found the Project Proponent has the option of retaining known or potential **Swainson's hawk** nest trees (i.e., trees in which are known to have nested within the past three years or trees, such as large oaks or cottonwoods, which the hawks prefer) or removing the nest trees. [Note: None are known to occur near the project site at this time.] If the project proponent opts to retain a nest tree and the nest tree becomes occupied during construction activities, then all construction activities shall remain a distance of two times the dripline of the tree, as measured from the nest. If the Project Proponent elects to remove a nest tree, then nest trees shall be removed between September 1 and February 15<sup>th</sup>, when nests are unoccupied.

These Incidental Take Minimization Measures are consistent with the provisions of the **Migratory Bird Treaty Act** as described in Section 5.2.3.1(G).

1. If construction is to start between February 1 and August 31, then preconstruction surveys (within 21 days of removal) would be required for nesting **protected raptors** and **Migratory Bird Treaty Act (MBTA)** protected birds.
  - A. If no nesting protected birds are found during the preconstruction surveys then no further Incidental Take Minimization Measures are required.
  - B. If nesting birds covered under the **MTBA** or California Fish and Game Code are found then implement Incidental Take Minimization Measure 5.2.4.15 of the SJMSCP:
    - i. To facilitate compliance with federal and State law (MBTA and CFGC) and prevent impacts to nesting birds, avoid removal of trees, shrubs, or weedy vegetation during the bird nesting period (February 1 through August 31). If no vegetation or tree removal is proposed during the nesting period, no surveys are required. If it is not feasible to avoid the nesting period, a survey for nesting birds shall be conducted by a qualified wildlife biologist no earlier than seven days prior to the removal of trees, shrubs, weedy vegetation, buildings, or other construction activity.

- ii. Survey results shall be valid for the tree removals for 21 days following the survey. If the trees are not removed within the 21-day period, then a new survey shall be conducted. The area surveyed shall include all construction areas as well as areas within 150 feet outside the boundaries of the areas to be cleared or as otherwise determined by the biologist.
- iii. In the event that an active nest for a protected species of bird is discovered in the areas to be cleared, or in other habitats within 150 feet of construction boundaries, clearing and construction shall be postponed for at least two weeks or until the biologist has determined that the young have fledged (left the nest), the nest is vacated, and there is no evidence of second nesting attempts.

#### 5.2.4.15 Burrowing Owls

The presence of ground squirrels and squirrel burrows are attractive to **burrowing owls**. **Burrowing owls** may therefore be discouraged from entering or occupying construction areas by discouraging the presence of ground squirrels

To accomplish this, the Project Proponent should prevent ground squirrels from occupying the project site early in the planning process by employing one of the following practices:

A. The Project Proponent may plant new vegetation or retain existing vegetation entirely covering the site at a height of approximately 36" above the ground. Vegetation should be retained until construction begins. Vegetation will discourage both ground squirrel and owl use of the site.

B. Alternatively, if burrowing owls are not known or suspected on a project site and the area is an unlikely occupation site for red-legged frogs, San Joaquin kit fox, or tiger salamanders:

The Project Proponent may disc or plow the entire project site to destroy any ground squirrel burrows. At the same time burrows are destroyed, ground squirrels should be removed through one of the following approved methods to prevent reoccupation of the project site. Detailed descriptions of these methods are included in Appendix A, Protecting Endangered Species, Interim Measures for Use of Pesticides in San Joaquin County, dated March, 2000:

1. **Anticoagulants.** Establish bait stations using the approved rodenticide anticoagulants Chlorophacinone or Diphacinone. Rodenticides shall be used in compliance with U.S. Environmental Protection Agency label standards and as directed by the San Joaquin County Agricultural Commissioner.
2. **Zinc Phosphide.** Establish bait stations with non-treated grain 5-7 calendar days in advance of rodenticide application, and then apply Zinc Phosphide to bait stations. Rodenticides shall be used in compliance with U.S. Environmental Protection Agency label standards and as directed by the San Joaquin County Agricultural Commissioner.
3. **Fumigants.** Use below-ground gas cartridges or pellets and seal burrows. Approved fumigants include Aluminum Phosphide (Fumitoxin, Phostoxin) and gas cartridges sold by the local Agricultural Commissioner's office. NOTE: Crumpled

newspaper covered with soil is often an effective seal for burrows when fumigants are used. Fumigants shall be used in compliance with U.S. Environmental Protection Agency label standards and as directed by the San Joaquin County Agricultural Commissioner.

4. **Traps.** For areas with minimal rodent populations, traps may be effective for eliminating rodents. If trapping activities are required, the use of traps shall be consistent with all applicable laws and regulations.

If the measures described above were not attempted or were attempted but failed, and burrowing owls are known to occupy the project site, then the following measures shall be implemented:

A. **Breeding season (February 1 through August 31):** Pre-construction surveys for burrowing owls following the Staff Report on Burrowing Owls (CDFG 2012) will be performed no less than 14 days prior and again 24-hours prior to initial ground disturbance activities.

1. Any occupied burrows shall not be disturbed and shall be provided with a 75 meter protective buffer until and unless the TAC, with the concurrence of the Permitting Agencies (representatives on the TAC); or unless a qualified biologist approved by the Permitting Agencies verifies through non-invasive means that either: 1) the birds have not begun egg laying, or 2) juveniles from the occupied burrows are foraging independently and are capable of independent survival.

Once the fledglings are capable of independent survival, a Burrowing Owl Exclusion Plan (BOEP) is developed and approved by the applicable Department of Fish and Wildlife SJMSCP representative/office, and habitat is mitigated in accordance with the Staff Report (CDFG 2012), then the burrow can be destroyed. Pre-construction surveys following destruction of burrows and prior to initial construction activities are required (24-hours prior) to ensure owls do not re-colonize the Project Area.

2. If Project activities are delayed or suspended for more than 15 days during the breeding season, surveys will be repeated.

B. **Non-breeding season (September 1 through January 31):** Pre-construction surveys following the Staff Report on Burrowing Owls (CDFG 2012) will be performed prior (no less than 14-days and again 24-hours prior) to initial ground disturbance activities. Burrowing owls may be evicted after a Burrowing Owl Exclusion Plan is developed and approved by the applicable Department of Fish and Wildlife SJMSCP representative/office and habitat is mitigated in accordance with the Staff Report (CDFG 2012).

Pre-construction surveys following destruction of burrows and prior to initial construction activities are required (24-hours prior) to ensure owls do not re-colonize the Project Area. If owls are found within 50 meters of the Project Area, it is recommended that visual screens or other measures are implemented to limit disturbance of the owls without evicting them from the occupied burrows.

During project construction:

All food-related trash items such as wrappers, cans, bottles, and food scraps shall be disposed of in closed containers and removed at least once a week from the construction site.

In reliance on the Section 10(a)(1)(B) Permit issued by the United States Fish and Wildlife Service and the Section 2081(b) Incidental Take Permit issued by the California Department of Fish and Wildlife, the City of Manteca has consulted with and agreed to allow coverage pursuant to the SJMSCP for the *Crivello Estates Project*, its successors, agents and assigns pursuant to the "Implementation Agreement for the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan" which will allow the *Crivello Estates Project*, its successors, agents and assigns to construct, operate and maintain the Project commonly known as the *Crivello Estates Project*, and located on *Assessor Parcel Numbers 208-140-17* which could result in a legally permitted Incidental Take of the SJMSCP Covered Species in accordance with and subject to the terms and conditions of the *Crivello Estates Project*, approved by San Joaquin County. This Certification applies only to activities on the subject parcel(s) which are carried out in full compliance with the approved plans for the *Crivello Estates Project*, Section 10(a)(1)(B) Permit, and Section 2081(b) Incidental Take Permit conditions.

I have read, acknowledge, and agree to the preceding conditions:

*Toni Raymus*  
Project Proponent for the *Crivello Estates Project*

11-3-14  
Date

*Toni Raymus*  
Please Print Name Here

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| FOR SJCOG, Inc. Use Only:                                      |  |
| <u><i>Laurel Boyd</i></u><br>SJCOG, Inc. Staff Signature       | <u>11/4/2014</u><br>Official Date of Issuance  |
| <u><i>Laurel Boyd</i></u><br>SJCOG, Inc. Staff Print Name Here | <u>Permit-by-Permit</u><br>Mitigation Due Date |