S J C O G, Inc.

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

The Crossing Retail Center Project
SJMSCP Incidental Take Minimization Measures
(APN: 241-32-44)

Date: December 17, 2020

Findings: Potential nesting habitat for western burrowing owl and Swainson's hawk

Potential nesting habitat for common birds (Migratory Bird Treaty Act)

Total Disturbed Acres Anticipated: 13.40 acres

Habitat Types to be Disturbed: Urban (U) Habitat Land (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. **If 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 SJMSCP covers lawful activities which must comply with all federal, state and local laws for coverage. The **Migratory Bird Treaty Act (MBTA)** is a federal act which protects many birds and their habitats. Those species go beyond the listed SJMSCP species but are included as protective measures for compliance with the federal MBTA measures. The measures will be stated under **MBTA Compliance** in the prescribed ITMM.

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

Conditions

Prior to ground disturbance:

1. Incidental Take Minimization Measures (ITMMs) will be issued to the project and must be signed by the project applicant prior to any ground disturbance but no later than six (6) months from receipt of the ITMMs. If ITMMs are not signed within six months, the applicant must reapply for SJMSCP Coverage. Upon receipt of signed ITMMs from project applicant, SJCOG, Inc. staff will sign the ITMMs. This is the effective date of the ITMMs.

2. Under no circumstance shall ground disturbance occur without compliance and satisfaction of the ITMMs.

3. Upon issuance of fully executed ITMMs and prior to any ground disturbance, the project applicant must:
   a. Post a bond for payment of the applicable SJMSCP fee covering the entirety of the project acreage being covered (the bond should be valid for no longer than a 6 month period); or
   b. Pay the appropriate SJMSCP fee for the entirety of the project acreage being covered; or
   c. Dedicate land in-lieu of fees, either as conservation easements or fee title; or
   d. Purchase approved mitigation bank credits.

4. Within 6 months from the effective date of the ITMMs or issuance of a building permit, whichever occurs first, the project applicant must:
   a. Pay the appropriate SJMSCP for the entirety of the project acreage being covered; or
   b. Dedicate land in-lieu of fees, either as conservation easements or fee title; or
   c. Purchase approved mitigation bank credits.

   Failure to satisfy the obligations of the mitigation fee shall subject the bond to be called.

Pay appropriate SJMSCP 2020 fees based on habitat categories and rates to **SJCOG, Inc.**:

- Urban (U) Habitat – 13.40 acres x $0.00 per acre = $0.00

Total Fee due: $0.00

Note: If fees are not paid prior to January 1, 2021 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:

Surveys

Initial and/or follow up surveys shall be conducted no greater than14 days and 24 hours prior to construction for burrowing owl; and 14 days prior for Swainson's hawk and common nesting birds protected under the Migratory Bird Treaty Act (MBTA). If these species are observed nesting on the project site then the following Incidental Take Minimization Measures shall be implemented.

5.2.4.11 Swainson's Hawk

The Project Proponent has the option of retaining known or potential **Swainson's hawk** nest trees (i.e., trees that hawks are known to have nested in within the past three years or trees, such as large oaks, which the hawks prefer for nesting) or removing the nest trees.

If the Project Proponent elects to retain a nest tree, and in order to encourage tree retention, the following Incidental Take Minimization Measure shall be implemented during construction activities:

If a nest tree becomes occupied during construction activities, then all construction activities shall remain a distance of two times the dripline of the tree, measured from the nest.

If the Project Proponent elects to remove a nest tree, then nest trees may be removed between September 1 and February 15, when the 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).

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.

MBTA Compliance:

Listed below are effective measures that should be employed at all project development sites nationwide with the goal of reducing impacts to birds and their habitats. A qualified biologist will be required to be on site as a biological monitor during these activities. These measures are grouped into three categories: General, Habitat Protection, and Stressor Management. These measures may be updated through time. We recommend checking the MBTA Conservation Measures website regularly for the most up-to-date list.

1. ***General Measures***
   a. *Educate all employees, contractors, and/or site visitors of relevant rules and regulations that protect wildlife. See the Service webpage on Regulations and Policies for more information on regulations that protect migratory birds.*
   b. *Prior to removal of an inactive nest, ensure that the nest is not protected under the Endangered Species Act (ESA) or the Bald and Golden Eagle Protection Act (BGEPA). Nests protected under ESA or BGEPA cannot be removed without a valid permit.*
      i. *See the Service Nest Destruction Policy*
   c. *Do not collect birds (live or dead) or their parts (e.g., feathers) or nests without a valid permit. Please visit the Service permits page for more information on permits and permit applications.*
   d. *Provide enclosed solid waste receptacles at all project areas. Non-hazardous solid waste (trash) would be collected and deposited in the on-site receptacles. Solid waste would be collected and disposed of by a local waste disposal contractor. For more information about solid waste and how to properly dispose of it, see the EPA Non-Hazardous Waste website.*
   e. *Report any incidental take of a migratory bird, to the local Service Office of Law Enforcement.*
   f. *Consult and follow applicable Service industry guidance.*

2. ***Habitat Protection***
   a. *Minimize project creep by clearly delineating and maintaining project boundaries (including staging areas).*

b. *Consult all local, State, and Federal regulations for the development of an appropriate buffer distance between development site and any wetland or waterway. For more information on wetland protection regulations see the Clean Water Act sections 401 and 404.*
c. *Maximize use of disturbed land for all project activities (i.e., siting, lay-down areas, and construction).*
d. *Implement standard soil erosion and dust control measures. For example:*
    i. *Establish vegetation cover to stabilize soil*
    ii. *Use erosion blankets to prevent soil loss*
    iii. *Water bare soil to prevent wind erosion and dust issues*

3. ***Stressor Management***

Stressor: Vegetation Removal

Conservation Goal: Avoid direct take of adults, chicks, or eggs.

***Conservation Measure 1**: Schedule all vegetation removal, trimming, and grading of vegetated areas outside of the peak bird breeding season to the maximum extent practicable. Use available resources, such as internet-based tools (e.g., the FWS's Information, Planning and Conservation system and Avian Knowledge Network) to identify peak breeding months for local bird species; or, contact local Service Migratory Bird Program Office for breeding bird information.*

***Conservation Measure 2**: When project activities cannot occur outside the bird nesting season, conduct surveys prior to scheduled activity to determine if active nests are present within the area of impact and buffer any nesting locations found during surveys.*

1) *Generally, the surveys should be conducted no more than five days prior to scheduled activity.*
2) *Timing and dimensions of the area to be surveyed vary and will depend on the nature of the project, location, and expected level of vegetation disturbance.*
3) *If active nests or breeding behavior (e.g., courtship, nest building, territorial defense, etc.) are detected during these surveys, no vegetation removal activities should be conducted until nestlings have fledged or the nest fails or breeding behaviors are no longer observed. If the activity must occur, establish a buffer zone (100-feet minimum) around the nest and no activities will occur within that buffer zone until nestlings have fledged and left the nest area. The dimension of the buffer zone may need to be expanded depending on the proposed activity, habitat type, and species present and should be coordinated with the biologist on site and/or SJMSCP.*
4) *When establishing the buffer zone, construct a barrier (e.g., plastic fencing) to protect the area. If the fence is knocked down or destroyed, work will suspend wholly, or in part, until the fence is satisfactorily repaired.*
5) *When establishing a buffer zone, a qualified biologist will be present onsite to serve as a biological monitor during vegetation clearing and grading activities to ensure no take of migratory birds occurs. Prior to vegetation clearing, the monitor will ensure that the limits of construction have been properly staked and are readily identifiable. Any associated project activities that are inconsistent with the applicable conservation measures, and activities that may result in the 'take of migratory birds' will be immediately halted and reported to the SJMSCP and the appropriate Service office within 24 hours.*

6) *If establishing a buffer zone of a minimum of 100-feet is not feasible, contact the Service for guidance to minimize impacts to migratory birds associated with the proposed project or removal of an active nest. Active nests may only be removed if you receive a permit from your local Migratory Bird Permit Office. A permit may authorize active nest removal by a qualified biologist with bird handling experience or by a permitted bird rehabilitator.*

***Conservation Measure 3**: Prepare a vegetation maintenance plan that outlines vegetation maintenance activities and schedules so that direct bird impacts do not occur.*

Stressor: Invasive Species Introduction

***Conservation Goal**: Prevent the introduction of invasive plants.*

***Conservation Measure 1:** Prepare a weed abatement plan that outlines the areas where weed abatement is required and the schedule and method of activities to ensure bird impacts are avoided.*

***Conservation Measure 2:** For temporary and permanent habitat restoration/enhancement, use only native and local (when possible) seed and plant stock.*

***Conservation Measure 3:** Consider creating vehicle wash stations prior to entering sensitive habitat areas to prevent accidental introduction of non-native plants.*

***Conservation Measure 4:** Remove invasive/exotic species that pose an attractive nuisance to migratory birds.*

Stressor: Artificial Lighting

***Conservation Goal**: Prevent increase in lighting of native habitats during the bird breeding season.*

***Conservation Measure 1:** To the maximum extent practicable, limit construction activities to the time between dawn and dusk to avoid the illumination of adjacent habitat areas.*

***Conservation Measure 2:** If construction activity time restrictions are not possible, use down shielding or directional lighting to avoid light trespass into bird habitat (i.e., use a 'Cobra' style light rather than an omnidirectional light system to direct light down to the roadbed). To the maximum extent practicable, while allowing for public safety, low intensity energy saving lighting (e.g. low pressure sodium lamps) will be used.*

***Conservation Measure 3:** Minimize illumination of lighting on associated construction or operation structures by using motion sensors or heat sensors.*

***Conservation Measure 5:** Bright white light, such as metal halide, halogen, fluorescent, mercury vapor and incandescent lamps should not be used.*

Stressor: Human Disturbance

***Conservation Goal**: Minimize prolonged human presence near nesting birds during construction and maintenance actions.*

Conservation Measure 1: *Restrict unauthorized access to natural areas adjacent to the project site by erecting a barrier and/or avoidance buffers (e.g., gate, fence, wall) to minimize foot traffic and off-road vehicle uses.*

Stressor: Collision

Conservation Goal*: Minimize collision risk with project infrastructure and vehicles.*

Conservation Measure 1: *Minimize collision risk with project infrastructure (e.g., temporary and permanent) by increasing visibility through appropriate marking and design features (e.g., lighting, wire marking, etc.).*

Conservation Measure 2: *On bridge crossing areas with adjacent riparian, beach, estuary, or other bird habitat, use fencing or metal bridge poles (Sebastian Poles) that extend to the height of the tallest vehicles that will use the structure.*

Conservation Measure 3: *Install wildlife friendly culverts so rodents and small mammals can travel under any new roadways instead of over them. This may help reduce raptor deaths associated with being struck while tracking prey or scavenging road kill on the roadway.*

Conservation Measure 4: *Remove road-kill carcasses regularly to prevent scavenging and bird congregations along roadways.*

Conservation Measure 5: *Avoid planting "desirable" fruited or preferred nesting vegetation in medians or Rights of Way.*

Conservation Measure 6: *Eliminate use of steady burning lights on tall structures (e.g.,*

>200 ft).

Stressor: Entrapment

Conservation Goal*: Prevent birds from becoming trapped in project structures or perching and nesting in project areas that may endanger them.*

Conservation Measure 1: *Minimize entrapment and entanglement hazards through project design measures that may include:*

1. *Installing anti-perching devices on facilities/equipment where birds may commonly nest or perch*
2. *Covering or enclosing all potential nesting surfaces on the structure with mesh netting, chicken wire fencing, or other suitable exclusion material prior to the nesting season to prevent birds from establishing new nests. The netting, fencing, or other material must have no opening or mesh size greater than 19 mm and must be maintained until the structure is removed.*
3. *Cap pipes and cover/seal all small dark spaces where birds may enter and become trapped.*

Conservation Measure 2: *Use the appropriate deterrents to prevent birds from nesting on structures where they cause conflicts, may endanger themselves, or create a human health and safety hazard.*

1. *During the time that the birds are trying to build or occupy their nests (generally, between April and August, depending on the geographic location), potential nesting surfaces should be monitored at least once every three days for any nesting activity, especially where bird use of structures is likely to cause take. It is permissible to remove non-active nests (without birds or eggs), partially completed nests, or new nests as they are built (prior to occupation). If birds have started to build any nests, the nests shall be removed before they are completed. Water shall not be used to remove the nests if nests are located within 50 feet of any surface waters.*

2. *If an active nest becomes established (i.e., there are eggs or young in the nest), all work that could result in abandonment or destruction of the nest shall be avoided until the young have fledged or the nest is unoccupied. Construction activities that may displace birds after they have laid their eggs and before the young have fledged should not be permitted. If the project continues into the following spring, this cycle shall be repeated. When work on the structure is complete, all netting shall be removed and properly disposed of.*

Stressor: Noise

***Conservation Goal**: Prevent the increase in noise above ambient levels during the nesting bird breeding season.*

***Conservation Measure 1:** Minimize an increase in noise above ambient levels during project construction by installing temporary structural barriers such as sand bags*

***Conservation Measure 2:** Avoid permanent additions to ambient noise levels from the proposed project by using baffle boxes or sound walls.*

Stressor: Chemical Contamination

***Conservation Goal**: Prevent the introduction of chemicals contaminants into the environment.*

***Conservation Measure 1:** Avoid chemical contamination of the project area by implementing a Hazardous Materials Plan. For more information on hazardous waste and how to properly manage hazardous waste, see the EPA Hazardous Waste website.*

***Conservation Measure 2:** Avoid soil contamination by using drip pans underneath equipment and containment zones at construction sites and when refueling vehicles or equipment.*

***Conservation Measure 3:** Avoid contaminating natural aquatic and wetland systems with runoff by limiting all equipment maintenance, staging laydown, and dispensing of fuel, oil, etc., to designated upland areas.*

***Conservation Measure 4:** Any use of pesticides or rodenticides shall comply with the applicable Federal and State laws.*

1. *Choose non-chemical alternatives when appropriate*
2. *Pesticides shall be used only in accordance with their registered uses and in accordance with the manufacturer's instructions to limit access to non-target species.*
3. *For general measures to reducing wildlife exposure to pesticides, see EPA's*

Pesticides: Environmental Effects website.

Stressor: Fire

***Conservation Goal**: Minimize fire potential from project-related activities.*

***Conservation Measure 1:** Reduce fire hazards from vehicles and human activities (e.g., use spark arrestors on power equipment, avoid driving vehicles off road).*

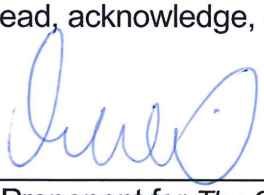
***Conservation Measure 2:** Consider fire potential when developing vegetation management plans by planting temporary impact areas with a palate of low-growing, sparse, fire resistant native species that meet with the approval of the County Fire Department and local FWS Office.*

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)(I)(B) Permit issued by the United States Fish and Wildlife Service and the Section 208l(b) Incidental Take Permit issued by the California Department of Fish and Wildlife, City of Manteca has consulted with and agreed to allow coverage pursuant to the SJMSCP for *The Crossing Retail Center 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 Crossing Retail Center Project,* its successors, agents and assigns to construct, operate and maintain the Project commonly known as *The Crossing Retail Center Project* and located on *Assessor Parcel Numbers 241-320-44* 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 Crossing Retail Center Project* approved by City of Manteca. This Certification applies only to activities on the subject parcel(s) which are carried out in full compliance with the approved plans for*The Crossing Retail Center Project*, Section 10(a)(I)(B) Permit, and Section 208l(b) Incidental Take Permit conditions.

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



Project Proponent for *The Crossing Retail Center Project*

12-17-20

Date

Drew Mickel

Please Print Name Here

FOR SJCOG, Inc. Use Only:

Laurel Boyd

Digitally signed by Laurel Boyd
DN: cn=Laurel Boyd, o=SJCOG, Inc., ou, email=boyd@sjcog.org, c=US
Date: 2020.12.17 14:40:05 -08'00'

SJCOG, Inc. Staff Signature

12/17/2020

Official Date of Issuance

Laurel Boyd

SJCOG, Inc. Staff Print Name Here

06/17/2021

Mitigation Due Date

