



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
South Coast Region
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GAVIN NEWSOM, Governor
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Governor's Office of Planning & Research

January 19, 2022

Mar 24 2022

Mr. Norm Pedersen
Associate Planner
City of San Marcos
1 Civic Center Drive
San Marcos, CA 92069
NPedersen@san-marcos.net

STATE CLEARINGHOUSE

Subject: Hallmark-Barham Specific Plan (Project), Draft Environmental Impact Report (DEIR), SCH #2021040009

Dear Mr. Pederson:

The California Department of Fish and Wildlife (CDFW) has reviewed the City of San Marcos' DEIR for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

2-1

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 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 may also 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.*), the project proponent may seek related take authorization as provided by the Fish and Game Code.

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CDFW also administers the Natural Community Conservation Planning (NCCP) program. The City of San Marcos (City) has participated in the NCCP program by preparing a draft Subarea Plan

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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(SAP) under the subregional Multiple Habitat Conservation Plan (MHCP), which addressed eight incorporated cities in northern San Diego County. However, the City's SAP has not been finalized and has not been adopted by the City or received permits from the Wildlife Agencies (collectively the CDFW and the U.S. Fish and Wildlife Service (USFWS)).

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PROJECT DESCRIPTION SUMMARY

Proponent: City of San Marcos (City)

Objective: The proposed Project would involve development of 151 multi-family residential units and approximately 5.35 acres of associated common and private open space on a 10.56-acre site, as contemplated in the Hallmark-Barham Specific Plan for the City. The project proposes a total of 349 parking spaces, including 264 garage spaces, and the proposed landscape plan emphasizes moderate water use species including a mix of trees, shrubs, grasses, and groundcover. A 150-foot fire fuel modification buffer is required in the southern end of the project and is included in the biological resources impact analysis. The Project Applicant is requesting the following discretionary approvals from the City to allow for development of the proposed project: General Plan Amendment, Specific Plan, Rezone, Multi-Family Site Development Plan, Tentative Subdivision Map, Conditional Use Permit, and Grading Variance.

Location: The 10.94-acre Project site (San Diego County Assessor's Parcel Number (APN): 228-310-01) is located at 943 E. Barham Drive, west of Le Moree Drive in the eastern portion of the City. The Project vicinity is developed primarily with residential uses. To the west of the Project is the Crescent Court residential development and to the southwest is the Williamsburg residential development. East of the Project site is Grace Church and the Barham Park & Ride. Southeast of the Project site is residential development associated with the Walnut Hills II Specific Plan. The northern boundary of the Project site is E. Barham Drive and immediately north of E. Barham Drive is landscaping, a sound wall, and State Route 78 (SR-78). South of the project site is preserved open space, a private community park/viewpoint, and additional residences within the Williamsburg residential development.

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Biological Setting: The following tasks were performed for the purpose of identifying potential biological impacts from construction of the Project: 1) biological and aquatic resource database review, 2) general biological survey and vegetation mapping, 3) habitat assessments for special status plant and wildlife species, 4) focused rare plant surveys, 5) protocol surveys for coastal California gnatcatcher (*Polioptila californica californica*, Endangered Species Act-listed threatened and California Species of Special Concern), and 6) a reconnaissance-level assessment for potentially jurisdictional aquatic resources.

The Project site has a north-aspect slope with elevations of approximately 650 to 755 feet above mean sea level. Most of the Project site supports non-native grassland (NNG; 9.50 acres consisting of non-native grasses such as ripgut grass (*Bromus diandrus*), slender wild oat (*Avena barbata*), and glaucous barley (*Hordeum murinum* ssp. *glaucum*)). According to the environmental analysis, this suggests that the site, though undeveloped, may have been disturbed in the past as the vegetation differs from that of the adjacent open space. Located along the southern Project site boundary is 0.62 acre of Diegan coastal sage scrub (CSS) habitat dominated by coast monkey flower (*Mimulus dentatus*), black sage (*Salvia mellifera*), coastal sagebrush (*Artemisia californica*), and laurel sumac (*Malosma laurina*). A smaller area of *Baccharis*-dominated Diegan CSS habitat (CSS dominated by coyote brush (*Baccharis pilularis* ssp. *consanguinea*)) occurs along the eastern Project boundary. Along the northern boundary is 0.40 acre consisting of paved roads. Scattered

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throughout the NNG across most of the site are ruderal vegetation (<0.01 acre consisting mostly of black mustard (*Brassica nigra*), tocalote (*Centaurea melitensis*), and filaree/storksbill (*Erodium* spp.)) and ornamental vegetation (0.22 acre including pepper trees (*Schinus* spp.), Mexican fan palm (*Washingtonia robusta*), and China berry (*Melia azedarach*)).

The proposed impacts to CSS and *Baccharis*-dominated CSS are considered potentially significant and require mitigation. Direct impact to 0.61 acre of CSS and 0.03 acre of *Baccharis*-dominated CSS are proposed to be mitigated at a 1:1 ratio for a total of 0.64 acre. Direct impacts to 9.50 acres of NNG are proposed to be mitigated at a 0.5:1 ratio for a total of 4.75 acres. The DEIR specifies that this mitigation shall be accomplished by the Project Applicant through on-site preservation, off-site acquisition, in lieu fees, a purchase of credits from an approved mitigation bank, or a combination thereof as approved by the Planning Manager. Proof of on-site preservation, off-site acquisition, payment of in lieu fees, purchase of credits from an approved mitigation bank or a combination thereof shall be provided to the Planning Manager prior to issuance of a grading permit.

No defined bed, bank, or other regular flow indicators were observed during the initial aquatic resources assessment; thus, no potential non-wetland waters of the U.S./State or CDFW streambed were observed on site. Two plant species commonly associated with depressional areas confined by clay soils, coastal plantain (*Plantago elongata*) and slender woolly marbles (*Psilocarphus tenellus*), were observed in low-lying areas on site. Four wetland delineation samples were taken near these areas. None of the four sampling points met the required federal- or state-jurisdictional wetland parameters. As such, it was concluded that the on-site low-lying areas are not expected to be jurisdictional under the Army Corps of Engineers, Regional Water Quality Control Board, nor CDFW.

No special status plant species were located on the Project site. One special status bird species, Cooper's Hawk (*Accipiter cooperii*; CDFW Watch List species when nesting) was observed flying over the Project site during the 2020 general biological survey. Although Cooper's hawk may use the Project site as a hunting territory, suitable nesting habitat containing large trees is not present. As such, Cooper's hawk is not anticipated to nest within the Project site.

Protocol 2020 breeding season gnatcatcher surveys for the Project were negative. However, California Natural Diversity Database (CNDDB) and U.S. Fish and Wildlife Service (USFWS) databases include reports of gnatcatcher within one mile of the Project site.

The Project area does not occur within a local movement corridor identified in the City's General Plan. As such, impacts on wildlife movement and corridors would be considered less than significant. However, the Project site does abut preserved open space on the southern boundary.

The Project site does not occur within lands designated as Focused Planning Areas in the City's Draft MHCP Subarea Plan (2001). The Project seeks to comply with habitat mitigation requirements outlined in the City's Draft MHCP Subarea Plan.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect

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impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document.

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I. Mitigation Measure or Alternative and Related Impact Shortcoming

COMMENT #1: Permanent impacts to CSS

Issue: Proposed mitigation for impacts to CSS are not adequate to fully mitigate for permanent loss of potential gnatcatcher habitat.

Specific impact: The proposed Project will permanently impact 0.61 acre of CSS and 0.03 acre of *Baccharis*-dominated CSS.

Why impact would occur: CSS habitat would be permanently lost due to Project construction and vegetation management to create a fuel buffer. The DEIR states that the Project will be required to mitigate impacts to CSS at a 1:1 ratio based on the location of the Project site being outside of the FPA. The issue with the proposed mitigation ratio is that the ratio is based on a finalized NCCP MHCP plan. The City does not have a finalized plan; higher mitigation ratios are typically applied in jurisdictions that are undergoing regional planning or otherwise have not yet committed to a long-term regional conservation effort.

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Evidence impact would be significant: Based on the historic gnatcatcher observations in the vicinity of the Project area, the suitability of CSS habitat on site, and the adjacency to open space to the south of the Project site, there is potential for gnatcatchers to utilize this vegetation for foraging and/or nesting.

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Mitigation Measure or Alternative and Related Impact Shortcoming)

Mitigation Measure #1: To reduce impacts to less than significant:

CDFW recommends that permanent impacts to CSS communities be mitigated at a minimum 2:1 ratio. Additionally, on-site mitigation is not recommended as such a small patch of habitat as which currently exists is not expected to maintain biological value in the absence of considerable management effort, which would require a substantial financial investment. Therefore for the subject project, CDFW recommends that mitigation for CSS be accomplished by purchasing of CSS credits from a CDFW-approved conservation bank.

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COMMENT #2: Permanent impacts to NNG and Agency Approval of Mitigation Lands

Issue: Proposed mitigation for impacts to NNG are not adequate to fully mitigate for permanent loss of raptor foraging habitat.

Specific impact: The proposed Project will permanently impact 9.50 acres of NNG.

Why impact would occur: NNG habitat would be permanently lost due to Project construction of housing units, parking facilities, and open space areas to be planted with ornamental vegetation.

Evidence impact would be significant: Non-native grasslands in San Diego County provide important foraging habitat for raptors. Although the Project site does not provide suitable raptor nesting habitat it does provide a significant area (9.50 acres) for foraging. The DEIR calls for

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mitigation by the project applicant through on-site preservation, off-site acquisition, in lieu fees, a purchase of credits from an approved mitigation bank, or a combination thereof as approved by the Planning Manager. The DEIR requires proof that this mitigation has been accomplished be provided to the Planning Manager prior to issuance of a grading permit but does not specify that the Wildlife Agencies be involved in the selection of mitigation lands.

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Mitigation Measure or Alternative and Related Impact Shortcoming)

Mitigation Measure #2: To reduce impacts to less than significant:

CDFW recommends that the impacts to 9.50 acres of non-native grassland be mitigated by the purchase of non-native grassland credits at a CDFW-approved conservation bank. On-site conservation is not recommended as this property lies outside of the draft SAP's Focused Planning Area. Therefore, it is not expected to retain long-term conservation value as the City builds out its planned development as anticipated under the General Plan. Similar to the reasoning applied to the CSS discussion above, maintaining biological value of this small block of habitat would require considerable effort and financial commitment, and that is why use of a conservation bank credits is recommended. CDFW concurs with the use of a 0.5:1 mitigation ratio for a total of 4.75 acres of equivalent habitat within a CDFW-approved conservation bank.

COMMENT #3: Land Use Adjacency Protection Measures

Issue: The DEIR does not identify Project design measures and post construction operational procedures to reduce direct and indirect impacts to species utilizing the preserved open space to adjacent to the southern border of the Project site.

Specific Impact: Species utilizing the open space directly adjacent to the south side of the residential community could be affected after construction of the Project is complete by impacts associated with use and operation of the residential community, such as noise, human presence, nighttime lighting, increase in predators, and spread of non-native species into occupied habitat.

Why impact would occur: Direct and indirect impacts could occur if measures are not taken during Project design to reduce anthropogenic disturbances or hazards to native species from use and operation of the residential community once construction is complete.

Evidence impact would be significant: Anthropogenic impacts could result in mortality of native species or reduction in use of the habitat next to the residential community.

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Mitigation Measure or Alternative and Related Impact Shortcoming)

Mitigation Measure #3: To reduce impacts to less than significant:

Building and parking lot features (especially on the south side of the Project site) shall include: reduced, shielded, and/or lighting that is directed away from the preserved open space; bird safe glass or features which allow bird strikes to be eliminated or avoided; noise elements which do not exceed 60dBA (1 hour weighted) at the nearest edge of the open space; signage, barriers or similar features that shall notify and/or preclude human and domestic animal intrusion into the open space; and avoidance and/or proper use of and minimization of toxic chemicals and wildlife entrapping/endangering products including petroleum products, pesticides, herbicides,

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rodenticides, plastic netting/net covered fiber rolls, and similar. All Best Management Practices (BMPs) and landscaping elements shall also be removed after their useful life or function has ended.

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COMMENT #4 – Assurance That All Impacts Are Restricted to the Subject Property

In addition to the above, CDFW recommends that the project be evaluated by the local fire authority to ensure that no fire-fuel clearing would be required on the adjacent off-site open space along the southern border of the site. Project development should ensure that sufficient distances are provided so that all impacts are contained within the project's boundaries.

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ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a data base 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: http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB_FieldSurveyForm.pdf. 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: http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp.

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FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

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CONCLUSION

CDFW appreciates the opportunity to comment on the DEIR to assist the City in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Meredith Osborne, Environmental Scientist, at Meredith.Osborne@wildlife.ca.gov.

Sincerely,

DocuSigned by:
David Mayer
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David Mayer
Environmental Program Manager
South Coast Region

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ec: CDFW

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Attachments

A. CDFW Comments and Recommendations

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Attachment A:

CDFW Comments and Recommendations

| | Recommendations/Mitigation Measures | Timing | Responsible Party |
|----------------------|---|----------------------------------|--|
| Mitigation Measure 1 | Permanent impacts to CSS communities be mitigated at a minimum 2:1 ratio by purchasing of CSS credits from a CDFW-approved conservation bank. | Prior to construction activities | Project Applicant and City of San Marcos |
| Mitigation Measure 2 | Impacts to 9.50 acres of non-native grassland should be mitigated at a 0.5:1 ratio, requiring 4.75 acres of credits, by the purchase of non-native grassland credits at a CDFW-approved conservation bank. | Prior to construction activities | Project Applicant and City of San Marcos |
| Mitigation Measure 3 | Building and parking lot features (especially on the south side of the Project site) shall include: reduced, shielded, and/or lighting that is directed away from the preserved open space; bird safe glass or features which allow bird strikes to be eliminated or avoided; noise elements which do not exceed 60dBA (1 hour weighted) at the nearest edge of the open space; signage, barriers or similar features that shall notify and/or preclude human and domestic animal intrusion into the open space; and avoidance and/or proper use of and minimization of toxic chemicals and wildlife entrapping/endangering products including petroleum products, pesticides, herbicides, rodenticides, plastic netting/net covered fiber rolls, and similar. All Best Management Practices (BMPs) and landscaping elements shall also be removed after their useful life or function has ended. | | |

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Letter 2
California Department of Fish and Wildlife

- 2-1 This comment provides opening remarks and does not raise any specific environmental issues.
- 2-2 This comment identifies CDFW's role as both a Trustee Agency and a Responsible Agency for the project. Page 2-15 of the EIR notes CDFW's role as both a Trustee Agency and a Responsible Agency.
- 2-3 This comment provides a summary of the project's objective, location and biological setting. It does not raise any specific environmental issues.
- 2-4 This comment provides an introduction to specific recommendation for the project.
- 2-5 This comment requests a 2:1 mitigation ratio for impacts to coastal sage scrub habitat. The Draft EIR included a 1:1 mitigation ratio. Based upon this comment, mitigation measures MM-BIO-2 has been revised. The revised mitigation measure is presented below in a strike-out/underline format:

MM-BIO-2 Direct impact to 0.61 acre of Diegan coastal sage scrub and 0.03 acre of Diegan coastal sage scrub – *Baccharis* dominated shall be mitigated at a ~~1:1~~ 2:1 ratio for a total of ~~1.28~~ 0.64 acre. Direct Impact to 9.50 acres of non-native grassland shall be mitigated at a 0.5:1 ratio for a total of 4.75 acres. These mitigation ratios are consistent with Tables 4-6 and 4-7 of the MHCP (SANDAG 2003) and Table 4 in Section 5.2.1 of the City's Draft Subarea Plan (City of San Marcos 2001).

This mitigation shall be accomplished by the project applicant through ~~on-site preservation~~, off-site acquisition, in lieu fees, a purchase of credits from an approved mitigation bank, or a combination thereof as approved by the Planning Manager. Proof of ~~onsite preservation~~, off-site acquisition, payment of in lieu fees, purchase of credits from an approved mitigation bank or a combination thereof shall be provided to the Planning Manager prior to issuance of a grading permit.

- 2-6 This comment addresses the mitigation for nonnative grassland. The comment does not raise concern with the proposed mitigation ratio (0.5:1). Rather the comment requests that the mitigation occur through the purchase of credits in a CDFW-approved conservation bank and not occur onsite. Due the site's size and proposed footprint of development, conservation onsite would not be feasible for the project anyway. Mitigation measures MM-BIO-2, presented above, was revised to remove the option of on-site preservation since it would not be feasible anyway.
- 2-7 This comment addresses the potential for project operations to impact the preserved open space that is located adjacent to the southern boundary of the project site. The project design has taken into consideration the offsite preserve area and no direct or indirect impacts are anticipated.

The preserve area is grade separated from the project by a steep slope. There is a 150' fire fuel modification buffer between the residential buildings and the property line which provides an additional buffer. The first 50 feet of this buffer from the residences will be landscaped and irrigated. The remaining 100 feet of fire buffer will be thinned to reduce fire

fuel loads. This buffer area will solely be for fuel modification and will not be for passive use by residents. There is no parking along the southern development boundary. Parking for residents is within ground floor garages and trees are planted at the end of the drive aisle facing southward to further shield vehicle lighting from going into the buffer area and offsite. Guest parking areas, which would be expected to have more turnover, are located internal to the project and shielded from the offsite preserve area with intervening buildings. Similarly, the more active communal areas of the project are within the central portion of the project site community building. A small amenity area with a tot lot and seating is proposed in the southeastern portion of the site. Landscaping is proposed around this area to provide a buffer. Finally, all lighting will be required to conform with the City's lighting ordinance and standards which requires shielding and no offsite spillage of lighting. In summary, the project design and grade separation will avoid any potential impacts to the offsite preserve area. No changes were made the EIR based upon this comment.

- 2-8 This comment requests that the project be reviewed by the local fire authority regarding fuel modification. The City of San Marcos Fire Department has reviewed the project. As noted on page 3.8-24 of the Draft EIR "The project includes a 150-foot onsite fuel modification buffer along the southern portion of the project site to further minimize fire risk to the proposed development. Per the Fire Marshal, offsite fuel modification is not required for the project." No changes were made to the EIR based upon this comment.
- 2-9 This comment addresses contribution of environmental data to the California Natural Diversity Database (CNDDDB). The project biologist will be responsible for submitting any required field survey results to the CNDDDB.
- 2-10 This comment addresses the CDFW filing fees. The project applicant will pay the applicable filing fee at the time the Notice of Determination is filed with the County Clerk.
- 2-11 This comment provides a summary table of the proposed mitigation measures, as recommended by CDFW. Each of these items was addressed earlier in comments 2-5 through 2-7 above.