



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
South Coast Region  
3883 Ruffin Road  
San Diego, CA 92123  
(858) 467-4201  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



Governor's Office of Planning & Research

June 4, 2021

**June 07 2021**

Norm Pedersen  
City of San Marcos  
1 Civic Center Drive  
San Marcos, CA 92069  
[NPedersen@san-marcos.net](mailto:NPedersen@san-marcos.net)

## STATE CLEARINGHOUSE

**Subject: Diamond Street Industrial Project Initial Study/Mitigated Negative Declaration, SCH # 2021050006**

Dear Mr. Pedersen:

The Department of Fish and Wildlife (CDFW) has received an Initial Study/Mitigated Negative Declaration (IS/MND) from the City of San Marcos for the Diamond Street Industrial Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

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. On June 1, 2021, CDFW requested and received approval from the City for a three-day extension in order to provide our comments on the proposed Project. CDFW appreciates the time extension.

### 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 expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California

<sup>1</sup> 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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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.

CDFW also administers the Natural Community Conservation Planning (NCCP) program. The City of San Marcos has participated in the NCCP program by preparing a draft Subarea Plan (SAP) under the subregional San Diego County Multiple Habitat Conservation Plan (MHCP). However, the 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)).

The proposed Project involves approval of a Tentative Parcel Map to consolidate an existing 22.89-acre site from 13 lots into two lots (Lot A and Lot B). Lot A is proposed to be 16.12 acres and will be graded for an industrial pad. Lot B is 6.77 acres and would be placed in an open space easement and remain in its current condition. The Project also proposes improvements within the San Diego Gas & Electric (SDG&E) 100-foot easement and 50-foot easement. These improvements include the construction of a new access driveway that will be partially within the easement areas, retaining walls, underground drainage improvements, private underground utilities, and landscaped slopes.

The Project site is 22.89 acres and is located northeast of the intersection of Melrose Drive and Diamond Street in the Questhaven/La Costa Meadows Neighborhood in the City of San Marcos, San Diego County. The surrounding land uses are a citrus grove designated as open space to the north, designated open space currently managed by Center for Lands Management (CNLM) to the northwest, east, and southeast, industrial development to the southwest, and Residential development to the west. The Assessor Parcel Numbers (APNs) are 223-341-03 to-14 and -16.

The Project site is comprised of the following vegetation communities: coastal sage scrub/chaparral mix (5.04 acres), Diegan coastal sage scrub (5.82 acres), disturbed Diegan coastal sage scrub (7.23 acres), disturbed (2.94 acres), agriculture (0.09 acre), ornamental (1.09 acres), natural flood channel/streambed (0.44 acre), pampas grass-Mexican fan palm (0.12 acre), pampas grass (0.10 acre), and mulefat scrub (0.01 acre). Wart-stemmed ceanothus (*Ceanothus verrucosus*), a MHCP-covered species, is present throughout the coastal sage-chaparral transition within the study area. The 1.69 acres of coastal sage-scrub transition that contains wart-stemmed ceanothus would be avoided in Parcel B. Per the Biological Resources Assessment (BRA), there is also a primary drainage and its tributary in the north, central, and eastern portions of the study area.

The BRA describes desktop and a one-day reconnaissance survey of the Project site to determine species that occur or have the potential to occur within the project area. These include 13 special-status wildlife species that have a moderate or high potential to occur on or near the vicinity of the Project site: California glossy snake (*Arizona elegans occidentalis*; California Species of Special Concern (SSC)), orange-throated whiptail (*Aspidoscelis hyperythra*), coastal whiptail (*Aspidoscelis tigris stejnegeri*; SSC), red-diamond rattlesnake (*Crotalus ruber*; SSC), coast horned lizard (*Phrynosoma blainvillii*; SSC), coast patch-nosed snake (*Salvadora hexalepis virgulata*; SSC), southern California rufous-crowned sparrow (*Aimophila ruficeps canescens*), Bell's sage sparrow (*Artemisiospiza belli belli*), coastal California gnatcatcher (*Poliophtila californica californica*; federally threatened (FT) and SSC), Dulzura pocket mouse (*Chaetodipus californicus femoralis*; SSC), northwestern San Diego pocket mouse (*Chaetodipus fallax*; SSC), San Diego black-tailed jackrabbit (*Lepus californicus*

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*bennettii*; SSC), and San Diego desert woodrat (*Neotoma lepida intermedia*; SSC). Coastal California gnatcatcher (gnatcatcher) is a federally listed, CDFW Species of Special Concern (SSC), and a MHCP-covered species. The last documented gnatcatcher observation near the Project site was in 2002 (Dudek & Associates 2002). In 2017, gnatcatcher was observed within five miles of the study area based off records from California Natural Diversity Database (CNDDDB). Based on these observations and the high habitat suitability of the coastal sage scrub on site, gnatcatcher has a high potential to be present in the study area.

In addition, five special-status plant species have a low potential to occur on site: San Diego ambrosia (*Ambrosia pumila*; federally endangered (FE)), summer holly (*Comarostaphylis diversifolia*; California Native Plant Society (CNPS) California Rare Plant Rank (CRPR) 1B.2), beach goldenaster (*Heterotheca sessiliflora* ssp. *sessiliflora*; CRPR 1B.1), sea dahlia (*Leptosyne maritima*; CRPR 2B.2), and Munz's sage (*Salvia munzii*; CRPR 2B.2).

CDFW offers the following comments and recommendations below to assist the City of San Marcos in adequately identifying and/or avoiding, minimizing, and adequately mitigating potential Project impacts on biological resources.

1. A portion of the Project site is within the Focused Planning Area (FPA) of the draft City of San Marcos SAP (Natural Communities Conservation Plan for the City of San Marcos, 2000) and this northern area of the property was further graphically identified as "100% Conserved" for the purposes of that Plan. This area is also within the general area for core coastal gnatcatcher conservation based on the Final MHCP, Figure 3-1 (2003). CDFW recognizes that the City has not adopted the draft SAP and state/federal permits have not been issued; however, CDFW nonetheless believes that the biological importance of this portion of the Project site warrants its avoidance, and that pulling back the edge of development to protect this land from direct impacts should not be seen as an unreasonable measure nor as causing the overall on-site development to become infeasible. The Project should avoid and minimize impacts as described in the SAP.

The Project is within the wildlife connectivity area described in the "Draft NCCP for the City of San Marcos" (May 2000). CDFW estimates the open space in north-east portion of Parcel B would be approximately 150-200-foot width for a wildlife corridor. Prior to approval by the City, CDFW recommends a comparison of the mapped conserved lands and the distance from development to the parcel boundary to ensure the minimum areas mapped for conservation in the SAP are met. Moreover, if feasible, CDFW recommends that a 400 feet width of scrub vegetation be retained between the northern edge of development (including any necessary fire buffer, which should occur within the Project footprint) to provide a minimum east-west movement corridor and 'live-in' habitat for California gnatcatcher and other sage/chaparral associated species. Regional planning efforts (e.g., MSCP) generally use a minimum width of 1,000 feet for planning regional corridors, with smaller widths used where 'pinch points' are unavoidable. Therefore, for the current Project, CDFW recommends a minimum 400-foot distance between the northern boundary and the development footprint of the Project.

This wildlife connectivity area is important for gnatcatcher and other species. Per the final MHCP plan "The MHCP will help conserve a core gnatcatcher breeding area

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outside of the MHCP boundary, in unincorporated San Diego County, south of San Marcos and east of Encinitas and Carlsbad (the red circle on Figure 3-1).

Conservation of this offsite core area of 400 to 500 acres of high quality gnatcatcher breeding habitat is expected to contribute to persistence of the gnatcatcher within the MHCP study area by providing a supply of dispersing birds in most years. This should also help maintain the functionality of the regionally important stepping-stone corridor across the study area." (SANDAG 2003, page 3-19).

2. The proposed Project will permanently impact 3.35 acres of coastal sage-chaparral transition, 1.16 acres of Diegan coastal sage scrub, and 6.91 acres of disturbed Diegan coastal sage scrub. The MND states that the Project will be required to mitigate impacts to Diegan coastal sage scrub and coastal sage-chaparral transition 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 of San Marcos 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. Therefore, CDFW recommends the Project proponent mitigate for permanent impacts to coastal sage scrub communities at greater than 1:1 ratio. Based on the gnatcatcher observation in 2002, recent CNDDDB gnatcatcher observations near the Project site, and the high suitability of coastal sage scrub on site, gnatcatchers have a high probability of being present. Because the project is adjacent to wildlife corridor areas and within a core coastal California gnatcatcher area, CDFW recommends a 3:1 ratio for permanent impacts to all of three of the CSS communities identified above. Additionally, CDFW recommends that the Project applicant coordinate directly with the USFWS office in Carlsbad regarding necessary surveys and measures to potentially permit, if necessary, impacts to the federally listed gnatcatcher.
3. The site includes areas adjacent that are designated conserved lands and county open space areas. The Project will include designating Parcel B as Open Space. CDFW needs additional information regarding the future of the designated open space in Parcel B, such as assurance there will be a conservation easement on the area, land management, a long-term management and monitoring plan, and a Property Analysis Record (PAR). CDFW would appreciate the opportunity to review and comment on this information.

The IS/MND also describes that the northeast portion of the project site was identified as a possible habitat corridor as part of its Natural Community Conservation Plan Areas. Lighting should avoid all open space areas. Edge effects, such as light pollution, are known to result in extirpation of species from an area. Therefore, CDFW recommends all post-project lighting be directed towards the development and shielded from the adjacent open space.

4. The Project proposes 0.12 acre of natural flood channel/streambed and 0.01 acre of mulefat scrub to be permanently impacted (Table 2, Biological Resources Assessment). As stated in the BRA, "Approximately 228 linear feet and 0.12 acre of CDFW jurisdiction and 0.06 acre of Regional Water Quality Control Board (RWQCB) jurisdiction would be affected" and that impacts to CDFW and RWQCB jurisdiction

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would be considered significant without mitigation. The Project site is within the San Marcos Creek Watershed and includes two drainages and a tributary on site. Project activities would impact the downstream portion of the primary drainage and its tributary. Per the BRA, the drainage exhibits indicators of regular flow, bed, and banks, but the main drainage does not have surface connection to San Marcos Creek during a typical year. The Project's proposal to impact 0.12 acre of natural flood channel/streambed and 0.01 acre of mulefat scrub may adversely affect the existing stream pattern of the Project site through alteration/diversion of water and may also result in erosion or siltation on site.

Sensitive plant communities are present within the Project site. Accordingly, impacts to sensitive or rare riparian plant communities may occur. The IS/MND does not indicate that there will be a wetland/riparian buffer. Without an adequate buffer, sensitive natural resources will be exposed to all project activities such as noise, light, trespassing, invasive species, litter, and other disturbance, and may result in permanent damage to the flood channel/streambed. CDFW recommends a minimum of a 100-foot buffer be designated around this area.

CDFW has regulatory authority over activities in streams and/or lakes that will divert or obstruct the natural flow, or change the bed, channel, or bank (which may include associated riparian resources) of any river, stream, or lake or use material from a river, stream, or lake. For any such activities, the Project applicant (or "entity") must provide written notification to CDFW pursuant to section 1600 et seq. of the Fish and Game Code. Based on this notification and other information, CDFW determines whether a Lake and Streambed Alteration Agreement (LSAA) with the applicant is required prior to conducting the proposed activities. CDFW's issuance of a LSAA for a Project that is subject to CEQA will require CEQA compliance actions by CDFW as a Responsible Agency. To minimize additional requirements by CDFW pursuant to section 1600 et seq. and/or under CEQA, the MND should fully identify the potential impacts to the stream or riparian resources and provide adequate avoidance, mitigation, monitoring, and reporting commitments for issuance of the LSAA. CDFW recommends the Project proponent submit a Lake and Streambed Alteration Notification to CDFW. The mitigation ratios will be finalized after a Notification has been submitted.

5. CDFW is concerned that the field survey was only conducted on one-day and the time of year may not be appropriate for all species. The field survey was conducted on June 18, 2020. There is a high probability for special-status species to be present on or adjacent to the Project site because of the high-quality vegetation communities. Per the BRA, the one-day reconnaissance survey was conducted outside the typical blooming period for several common and special-status species. The survey was conducted during the day; therefore, the identification of nocturnal wildlife species was limited to presence of burrows, scat, or other detectable signs of presence on the Project site. Last, a single site visit may not be sufficient to identify the presence of the California gnatcatcher, as USFWS protocols require multiple visits using taped vocalizations to elicit a response before concluding that the species is absent. Such focused surveys are generally considered valid for one year.

Direct impacts to species could result from Project construction and activities (e.g.,

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equipment staging, mobilization, and grading); ground disturbance; vegetation clearing; and trampling or crushing from construction equipment, vehicles, and foot traffic. Indirect impacts could result from temporary or permanent loss of suitable habitat. CEQA provides protection not only for CESA- and ESA-listed species, but for any species including but not limited to SSC. CDFW considers impacts to SSC a significant direct and cumulative adverse effect without implementing appropriate avoidance and/or mitigation measures. In addition, take of SSC could require a mandatory finding of significance by the Lead Agency (CEQA Guidelines, § 15065).

CDFW believes that the biological surveys performed in support of the MND fall short of what should be performed to thoroughly assess the flora and fauna of the project site. Notwithstanding the possible need for additional focused surveys for the gnatcatcher for federal permitting purposes, the other potentially occurring SSC species could be adequately off-set through habitat-based mitigation as recommended in Comment 1 above; however, the proposed 1:1 ratio for CSS vegetation communities is not considered sufficient in the absence of a full regional conservation commitment as would be demonstrated in an approved/permitted SAP.

6. Bats have a potential to occur within the project site because of the presence of tall fan palms, rocky outcrops, and streams. CDFW recommends additional surveys to determine the presence of any bat roosts. CDFW would consider direct impacts to maternity or night roosts to be significant without further additional off-setting mitigation measures. Possible measures include installation of bat houses to maintain the colony in the area, which should be seen as a local benefit as bats are known to consume high numbers of mosquitoes. Indirect impacts to bats and roosts could result from increased noise disturbances, human activity, dust, vegetation clearing, ground disturbances (e.g., staging, access, mobilization, and grading), and vibrations caused by heavy equipment. Bats are considered non-game mammals and are afforded protection by state law from take and/or harassment (Fish & G. Code, § 4150; Cal. Code of Regs, § 251.1). Some bat species are also considered California Species of Special Concern (SSC) and meet the CEQA definition of rare, threatened, or endangered species (CEQA Guidelines, § 15065).

CDFW recommends a Designated Bat Biologist conduct bat surveys within the Project footprint to identify potential habitat that could provide daytime and/or nighttime roost sites, and any maternity roosts. CDFW recommends using acoustic recognition technology to maximize detection of bats. Night roosts are typically utilized from the approach of sunset until sunrise. Maternity colonies, composed of adult females and their young, typically occur from spring through fall.

7. The MND states that the Mexican fan palms and numerous shrubs on site provide suitable nesting habitat for nesting birds and raptors. Mitigation measure MM-BIO-2 in the MND addresses activities involving protection for nesting birds and raptors during site clearing activities in the general breeding season (February 1 and August 31). Although the typical nesting period for passerines falls within this time, raptors may nest as early as January 1 and go through September 15. Mitigation measure MM-BIO-2 also indicates if nests are found on the Project site their locations will be flagged and an avoidance buffer ranging in size from 25 to 50 feet for passerines and up to 500 feet for raptors shall be determined. Project activities and construction can

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have direct and indirect impacts on nesting birds and raptors. If the range of the buffer is too small this can result in nest abandonment or failure. The construction of an industrial pad will have various impacts on nesting birds. The buffers are in place to provide a shield of vegetation between the nest and activities associated with construction that will increase noise, light, and dust. Buffers should be maintained until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival.

Conducting surveys outside the nesting season can lead to nests being missed. If nests are missed during surveys and the appropriate buffers are not put in place, the nests can fail. Edge effects are known to result in extirpation of species from an area so maintaining an adequate buffer around nesting birds is necessary to have a successful breeding season. CDFW recommends Mitigation Measure BIO-2 be revised to include nesting surveys beginning as early as 1 January for raptors. In addition, the survey buffer should be increased from a 250-foot to a 500-foot buffer. CDFW also notes that the 25-to-50-foot buffer identified in the MND may need to be increased to as much as 100 feet depending on the passerine species involved and the ambient conditions, such as the amount of screening vegetation, existing levels of human activity, etc.

8. The Project description includes new landscaped slopes as part of the improvements to the SDG&E easement. The City should not plant, seed, or otherwise introduce invasive exotic plant species to landscaped areas that are adjacent and/or near native habitat areas. CDFW recommends using native, locally appropriate plant species and drought tolerant species to reduce water consumption. Information on alternatives for invasive, non-native, or landscaping plants may be found on the California Invasive Plant Council's, Don't Plant a Pest webpage (available here: <https://www.cal-ipc.org/solutions/prevention/landscaping/dpp/>).

CDFW appreciates the opportunity to comment on the IS/MND to assist the City in identifying and mitigating Project impacts on biological resources and ensuring Project consistency with the requirements of the draft SAP under the San Diego County MHCP. Questions regarding this letter or further coordination should be directed to Emily Gray, Environmental Scientist, at [Emily.Gray@wildlife.ca.gov](mailto:Emily.Gray@wildlife.ca.gov).

Sincerely,

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

ec: Jonathan Snyder, USFWS, [Jonathan\\_d\\_Snyder@fws.gov](mailto:Jonathan_d_Snyder@fws.gov)  
State Clearinghouse, Sacramento, [State.Clearinghouse@opr.ca.gov](mailto:State.Clearinghouse@opr.ca.gov)  
Karen Drewe, CDFW, [Karen.Drewe@wildlife.ca.gov](mailto:Karen.Drewe@wildlife.ca.gov)

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Jennifer Ludovissy, CDFW, [Jennifer.Ludovissy@wildlife.ca.gov](mailto:Jennifer.Ludovissy@wildlife.ca.gov)  
Jennifer Turner, CDFW, [Jennifer.Turner@wildlife.ca.gov](mailto:Jennifer.Turner@wildlife.ca.gov)  
CEQA Program Coordinator, CDFW, [CEQACommentLetters@wildlife.ca.gov](mailto:CEQACommentLetters@wildlife.ca.gov)

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