



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

August 30, 2021

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STATE CLEARINGHOUSE

Art Pinon
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**Subject: Twin Oaks Fuel, Convenience Store, and Car Wash Project (Project);
 Mitigated Negative Declaration (MND); SCH #2021070545**

Dear Mr. Pinon:

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

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, 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.

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.

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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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 Multiple Habitat Conservation Plan (MHCP), which addressed eight incorporated cities in northern San Diego County. However, the San Marcos 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)).

PROJECT DESCRIPTION SUMMARY

Proponent: City of San Marcos (City)

Objective: The Project involves construction of an automotive fueling station consisting of a 5,462 square-foot fuel pump canopy, 4,083 square-foot convenience store with 712 square feet of storage space, and a 2,134 square-foot automated car wash. Construction would include 25 parking spaces, vacuum stations serving the nine parking spaces on the south side of the car wash, a trash enclosure, a bicycle rack area, and a 2,303 square-foot biofiltration basin along the southern (downslope) Project boundary. As part of the Project, the City will approve a Conditional Use Permit and variance to allow for a zone boundary encroachment onto Borden Road.

Location: The Project site is a vacant 2.04-acre lot in the City, located at the intersection of Twin Oaks Valley Road and Borden Road. Twin Oaks Valley Road would provide access to the fuel station.

Biological Setting: The undeveloped Project site is in an urbanized area which is primarily developed with commercial, industrial, and residential buildings. The center of the Project site is dominated by disturbed landcover (1.17 acres) consisting of bare ground and ruderal species such as stinkwort (*Dittrichia graveolens*), Bermuda grass, fennel (*Foeniculum vulgare*), black mustard (*Brassica nigra*), castor bean (*Ricinus communis*), tree tobacco (*Nicotiana glauca*), and other invasive plant species. Monotypic stands of western ragweed (*Ambrosia psilostachya*) were observed within the study area's disturbed portions. Southern cottonwood-willow riparian forest is found bordering the Twin Oaks Valley Creek along the eastern and southern portion of the Project site (0.59 acre). The northern and western edges of the site contain Diegan coastal sage scrub (CSS; 0.22 acre). Aerial photos indicate the CSS on site was planted after the completion of the adjacent Borden Road Bridge Project in 2013. The Project site had previously been cleared of all vegetation for the bridge project. A small patch of disturbed CSS (0.06 acre) occurs near the center of the site. San Diego ambrosia (*Ambrosia pumila*), an Endangered Species Act (ESA) listed-Endangered species, was projected to have a low potential to occur on site. However, plant surveys conducted on September 24, 2019, toward the end of the San Diego ambrosia's April-October growing period, did not locate this species on the Project site.

An assessment was performed to determine habitat suitability for coastal California gnatcatcher (*Polioptila californica californica*; gnatcatcher), a species listed as threatened under the federal Endangered Species Act (ESA). No gnatcatchers were observed on site. Due to the small size of CSS patches on site, their isolated nature, and being surrounded by developed and disturbed areas, the Project site does not support sufficient habitat for the gnatcatcher. The MND proposes mitigation for impacts to CSS and disturbed CSS prior to the issuance of grading permits at a mitigation to impact ratio of 2:1.

Twin Oaks Valley Creek contains suitable habitat for least Bell's vireo (*Vireo bellii pusillus*; vireo) which is listed as endangered under the ESA as well as under CESA. The southern cottonwood-

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willow riparian forest habitat provides suitable habitat for the vireo, and two vireo territories were observed within the MND's Study Area (the Project site plus a 500-foot buffer) during 2020 protocol surveys. These territories were located within dense stands of riparian vegetation. One territory was observed on the east side of Twin Oaks Valley Creek directly adjacent to the Project site and a second territory was observed southeast of the Project site. Each territory contained a lone male vireo (i.e., no females were observed) and no vireo nests were observed. The MND proposes mitigation for impacts to southern willow cottonwood-willow riparian forest prior to the issuance of grading permits at a mitigation to impact ratio of 3:1.

The east edge of the Project site contains a wildlife corridor associated with Twin Oaks Valley Creek. A total of 0.59 acre of riparian habitat consisting of southern cottonwood-willow riparian forest will be removed as part of project implementation. These impacts to southern cottonwood-willow riparian forest will temporarily narrow this riparian corridor from 172 feet to 164 feet, restricting the use of this area as a movement corridor. A feature of Project design involves revegetation of the newly graded slope with a native riparian hydroseed mix. The permanent corridor width at its widest point after full Project development and revegetation of the graded slope would be increased to 208 feet.

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

I. Mitigation Measure or Alternative and Related Impact Shortcoming

COMMENT #1: Impacts to Least Bell's Vireo

Issue: Mitigation Measure BIO-2 (MM BIO-2) does not adequately mitigate for potential impacts to least Bell's vireo (vireo). Vireo is CESA-listed; therefore, if impacts to vireo cannot be avoided, an Incidental Take Permit (ITP) may need to be secured from CDFW prior to Project activities.

Specific impact: MM BIO-2 indicates that, if vegetation clearing cannot occur outside of the bird nesting season (March 15 through September 15), then a qualified biologist will conduct a nesting bird survey within 250 feet of any planned construction within three days prior to the start of activities. Suitable buffers will be established until the nests are no longer occupied and the juvenile birds have fledged.

Preconstruction surveys of occupied vireo habitat during the vireo nesting season, in the absence of protocol-level surveys, may not be sufficient to reduce Project impacts to this species to less than significant or to avoid take.

Why impact would occur: The Biological Technical Report indicates that two vireo territories were observed within the Study Area during 2020 protocol surveys. One territory was observed on the east side of Twin Oaks Valley Creek directly adjacent to the project site and a second territory was observed southeast of the project site. Though no nests were found during the 2020 surveys, southern cottonwood-willow riparian forest provides suitable breeding habitat for vireo. The Project will impact 0.59 acre of southern cottonwood-willow riparian forest that could become occupied by nesting vireo. In addition to direct removal of habitat, construction noise,

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vibration, dust, or human disturbance could result in temporary or long-term disturbance of nesting vireo on the Project site.

Evidence impact would be significant: Regarding CESA-listed species, take of any endangered, threatened, or candidate species that results from the Project is prohibited, except as authorized by state law (Fish and Game Code, §§ 2080, 2085). Consequently, if the Project, Project construction, or any Project-related activity during the life of the Project will result in take of a species designated as endangered or threatened, or a candidate for listing under CESA, CDFW recommends that the Project proponent seek appropriate take authorization under CESA prior to implementing the Project. Appropriate authorization from CDFW may include an incidental take permit (ITP) or a consistency determination in certain circumstances, among other options (Fish and Game Code §§ 2080.1, 2081, subds. (b), (c)). Early consultation is encouraged, as significant modification to a Project and mitigation measures may be required in order to obtain a CESA Permit. Revisions to the Fish and Game Code, effective January 1998, may require that CDFW issue a separate CEQA document for the issuance of an ITP unless the Project CEQA document addresses all Project impacts to CESA-listed species and specifies a mitigation, monitoring, and reporting program that will meet the requirements of an ITP. For these reasons, biological mitigation, monitoring, and reporting proposals should be of sufficient detail and resolution to satisfy the requirements for a CESA ITP.

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 complete avoidance of occupied vireo habitat and a 100-foot buffer during the nesting season to avoid take of vireo under CESA. Any adverse impacts to vireo are considered significant without sufficient mitigation. CDFW recommends species-specific protocol level surveys (USFWS 2001), focusing on potential nesting sites within and adjacent to the Project area, prior to ground disturbance, construction activities, or vegetation clearing during vireo nesting season. If vireo territories or nests are identified, further consultation with CDFW is necessary and an Incidental Take Permit or Consistency Determination may be needed. CDFW also encourages the City to consult as soon as possible with the USFWS, as informal or formal consultation may be appropriate to address impacts to vireo.

CDFW recommends adding an additional vireo-specific mitigation measure that states:

“[v]egetation clearing and construction activities shall occur outside of least Bell’s vireo (Vireo bellii pusillus; vireo) nesting season (March 15th to September 15th) to avoid impacts to vireo. Prior to initiation of construction activities within 100’ of suitable nesting or foraging habitat, a CDFW-approved biologist with experience surveying for and observing least Bell’s vireo shall conduct preconstruction surveys in accordance with established protocols to establish use of nesting habitat. Surveys shall be conducted within and adjacent to suitable habitat, where access allows, during the nesting season. If a nest is found, no activity shall occur within a 300-foot buffer of the nest until a qualified biologist determines and CDFW confirms that all chicks have fledged and are no longer reliant on the nest site. If impacts to vireo cannot be avoided and take will occur, an Incidental Take Permit or Consistency Determination under CESA shall be required.”

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COMMENT #2: Mitigation for Impacts to Least Bell's Vireo Habitat

Issue: Mitigation Measure BIO-6 (MM BIO-6) does not adequately mitigate for impacts to vireo.

Specific Impact: Permanent impacts to 0.59 acre of southern cottonwood-willow riparian forest would occur through construction of the Project. The MND proposes a mitigation to impact ratio of 3:1 to be applied through preservation of 1.77 acres of southern cottonwood-willow riparian forest utilizing on-site preservation, off-site acquisition, in lieu fees, and purchase of credits from an approved mitigation bank, or a combination thereof.

Why impact would occur: Project construction would result in permanent loss of 0.59 acre of vireo habitat on site.

Evidence impact would be significant: Mitigation through purchase or preservation of existing habitat does not compensate for the permanent net loss of that habitat type on the Project site.

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 southern cottonwood-willow riparian forest habitat removed from the Project site be replaced at a 3:1 ratio with a minimum of 1:1 consisting of habitat creation and the remainder consisting of on-site restoration. Rather than re-seeding the graded slope on the east portion of the Project site, we recommend that it be actively replanted and restored as southern cottonwood-willow riparian forest.

COMMENT #3: Measures to reduce impacts to vireo from operation of the Project post-construction

Issue: The MND does not identify Project design measures and fuel station operational procedures to reduce indirect impacts to vireo and other species utilizing the riparian corridor from post-construction operation of the fuel station.

Specific Impact: Vireo and other species utilizing the riparian habitat and corridor directly adjacent to the east side of the fuel station could be affected by indirect impacts associated with fuel station operation, such as noise, human presence, nighttime lighting, increase in predators, and spread of non-native species into occupied habitat.

Why impact would occur: Indirect impacts could occur if measures are not taken during Project design and during operation of the fuel station to reduce anthropomorphic disturbances or hazards to vireo and other species from operation of the fuel station once construction is complete.

Evidence impact would be significant: These indirect impacts could result in nest failures or reduction in use of the habitat and corridor next to the fuel station.

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

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Mitigation Measure #3:

To reduce impacts to less than significant: Project design features and fuel station operational procedures (especially along the east side of the site) shall include: reduced, shielded, and/or lighting that is directed away from the riparian corridor; noise elements which do not exceed 60 A-weighted decibels (one hour weighted) at the nearest edge of the riparian corridor; signage, barriers or similar features that shall notify and/or preclude human intrusion into the riparian corridor; 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 or net-covered fiber rolls, and similar. All Best Management Practices and landscaping elements shall also be removed after their useful life or function has ended.

COMMENT #4: Measures to reduce impacts to on-site CSS

Issue: The MND indicates that, based on older aerial imagery, the CSS on the Project site was planted after the completion of the adjacent Borden Road Bridge Project in 2013. The MND does not specify whether this planting was performed as part of required mitigation for impacts from bridge construction.

Specific Impact: Project construction would impact CSS habitat that may have served as mitigation for impacts from an earlier, unrelated project.

Why impact would occur: Project construction will result in removal of 0.22 acre of CSS and 0.06 acre of disturbed CSS determined to have been planted on the Project site after construction of a separate project.

Evidence impact would be significant: Impacting CSS that was intended to replace habitat already removed as part of an earlier project would result in a cumulative loss of CSS in the City.

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

Mitigation Measure #4:

To reduce impacts to less than significant: The City shall determine whether the planted CSS on the Project site previously served as mitigation for the Borden Road Bridge. If so, mitigation for Project impacts shall be doubled from 2:1 to 4:1 to account for the preceding mitigation obligation.

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

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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.

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.)

CONCLUSION

CDFW appreciates the opportunity to comment on the MND 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:



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Jennifer Turner
Senior Environmental Scientist (Supervisor)

for

David Mayer
Environmental Program Manager I
South Coast Region

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	Vegetation clearing and construction activities shall occur outside of least Bell's vireo (<i>Vireo bellii pusillus</i> ; vireo) nesting season (March 15 th to September 15 th) to avoid impacts to vireo. Prior to initiation of construction activities within 100' of suitable nesting or foraging habitat, a CDFW-approved biologist with experience surveying for and observing least Bell's vireo shall conduct preconstruction surveys in accordance with established protocols to establish use of nesting habitat. Surveys shall be conducted within and adjacent to suitable habitat, where access allows, during the nesting season. If a nest is found, no activity shall occur within a 300-foot buffer of the nest until a qualified biologist determines and CDFW confirms that all chicks have fledged and are no longer reliant on the nest site. If impacts to vireo cannot be avoided and take will occur, an Incidental Take Permit or Consistency Determination under CESA shall be required.	Prior to construction activities	City of San Marcos
Mitigation Measure #2	CDFW recommends that southern cottonwood-willow riparian forest habitat lost on the Project site be replaced at a 3:1 ratio with a minimum of 1:1 consisting of habitat creation, and the remainder consisting of on-site restoration. Rather than re-seeding the graded slope on the east portion of the Project site, we recommend that it be actively replanted and restored as southern cottonwood-willow riparian forest.	Prior to construction	City of San Marcos
Mitigation Measure #3	Project design features and fuel station operational procedures (especially along the east side of the site) shall include: reduced, shielded, and/or lighting that is directed away from the riparian corridor; noise elements which do not exceed 60dBA (1 hour weighted) at the nearest edge of the riparian corridor; signage, barriers or similar features that shall notify and/or preclude human intrusion into the riparian corridor;	During design phase, prior to construction, and during operation of	City of San Marcos

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	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 and landscaping elements shall also be removed after their useful life or function has ended.	the fuel station	
Mitigation Measure #4	The City shall determine whether the planted CSS on the Project site previously served as mitigation for the Borden Road Bridge. If so, mitigation for Project impacts shall be increased by fifty percent from 2:1 to 4:1.	Prior to construction	City of San Marcos