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Jul 12 2022

STATE CLEARINGHOUSE

July 12, 2022

Chris Garcia, Associate Planner
City of San Marcos Planning Division
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Subject: Notice of Preparation of a Draft Environmental Impact Report for the Pacific Specific Plan, SCH #2022050650, San Diego County

Dear Mr. Garcia:

The California Department of Fish and Wildlife (CDFW) has reviewed a Notice of Preparation (NOP) of a Draft Environmental Impact Report (DEIR) from the City of San Marcos (City; Lead Agency) for the Pacific Specific Plan (Project). 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's 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, subdivision (a) & 1802; Pub. Resources Code, § 21070; California Environmental Quality Act (CEQA) Guidelines, § 15386, subdivision (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 State 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, including 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.*), or CESA-listed rare plant pursuant to the Native Plant Protection Act (NPPA; Fish & G. Code, §1900 *et seq.*), CDFW recommends the Project proponent obtain appropriate authorization under the Fish and Game Code.

CDFW also administers the Natural Community Conservation Planning (NCCP) program, a California regional habitat conservation planning program. The City was a local jurisdiction participant in the early planning of the Subregional Multiple Habitat Conservation Program (MHCP) in the late 1990's. The City had prepared a draft Subarea Plan under the Subregional MHCP, which addressed regional conservation planning across seven incorporated jurisdictions on northern San Diego County. However, the San Marcos Subarea Plan was not finalized, and state and federal permits have not been issued to the City. To date, only the City of Carlsbad has received permits pursuant to the MHCP; however, the conservation principals remain relevant for development projects occurring in the other jurisdictions.

Project Description and Summary

Objective: The EIR will evaluate a request for a Specific Plan, General Plan Amendment, Rezone, Multi-Family Site Development Plan, and Tentative Subdivision Map for a proposed residential development. The General Plan Amendment and Rezone would change the General Plan designation and Zoning from Industrial (I) to Specific Plan Area (SPA) to allow the Project. The proposed Project consists of residential development on undeveloped land as well as infrastructure improvements and connections to existing surrounding developed areas. The Project generally includes site grading and new construction of 449 dwelling units, comprising a mix of apartments, rowhomes, villas, and affordable flats. The Project also includes biofiltration/retention features, landscaping, community common open space areas, a paved road, driveways, and off-street parking areas. Outside of the development areas, the Project also includes a conservation open space area where biological habitats and associated species would be preserved and managed in perpetuity.

Location: The proposed Project site is located within Assessor's Parcel Numbers (APNs) 219-222-01-00, 219-222-02-00, 219-222-03-00, and 219-222-04-00 in the northwestern portion of San Diego County within the City. The Project site is surrounded by development, bordered by La Mirada Drive to the north, South Las Posas Road to the east, Linda Vista Drive to the south, and South Pacific Street to the west.

Biological Resources: Though surrounded by development, the Project site contains multiple sensitive resources, including a vernal pool/mima mound complex, sensitive habitat types, and multiple state and federally listed species. Sensitive resources are distributed over the entirety of the site. The biological resource values have been well-documented, and the property has long been recognized as having extremely high value.

Five special status plant species were observed on-site during the most recent biological surveys conducted in 2020 and 2021. San Diego button-celery (*Eryngium aristulatum* var. *parishii*; federally listed-endangered, state listed-endangered, California Native Plant Society (CNPS) Rare Plant Rank 1B.1, proposed Narrow Endemic under the MHCP), thread-leaved brodiaea (*Brodiaea filifolia*; federally listed-threatened, state listed endangered, CNPS Rare Plant Rank 1B.1, proposed Narrow Endemic under the MHCP), Orcutt's brodiaea (*Brodiaea orcuttii*; CNPS Rare Plant Rank 1B.1), chaparral rein orchid (*Piperia cooperi*; CNPS Rare Plant Rank 4.2), and small-flowered morning glory (*Convolvulus simulans* CNPS Rare Plant Rank 4).

One special status animal species was detected on-site during the biological surveys in 2020. San Diego fairy shrimp (*Branchinecta sandiegonensis*) is a vernal pool obligate species that is federally listed as endangered and proposed as a Narrow Endemic under the MHCP. The MHCP considers the on-site population to be a critical population of the species for the subregion.

The Project site is located within the boundaries of the MHCP, and within the Vernal Pool Major Amendment Area in the City's Draft Subarea Plan. In the context of the MHCP, the Project site is outside of the Biological Core and Linkage Area and is identified as a "Major Amendment Area" in the MHCP Focused Planning Area FPA. The site is not within or adjacent to any conserved lands. Although the Project site was specifically excluded from the MHCP conservation areas/acreages, estimates, and requirements, the site is recognized in the MHCP to support sensitive biological resources and is targeted as an isolated preserve area for conservation and incorporation into the MHCP preserve system.

The Project site is located within U.S. Fish and Wildlife Service (USFWS) designated critical habitat for three species, including the San Diego fairy shrimp, spreading navarretia, and thread-leaved brodiaea.

In summary, the Project site includes the largest remaining vernal pool complex in the City that supports the San Diego fairy shrimp, San Diego button celery, and spreading navarretia (*Navarretia fossalis*). The Project site also includes the largest remaining non-conserved native grassland in the City and supports one of the largest known populations of the state endangered thread-leaved brodiaea, as well as the non-listed but still sensitive Orcutt's brodiaea.

Comments and Recommendations

CDFW offers the comments and recommendations below to assist the City in adequately identifying, avoiding, and/or mitigating the Project's significant, or potentially significant, direct, and indirect impacts on fish and wildlife (biological) resources. The DEIR should provide adequate and complete disclosure of the Project's potential impacts on biological resources [Pub. Resources Code, § 21061; CEQA Guidelines, §§ 15003(i), 15151]. CDFW looks forward to commenting on the DEIR when it is available.

Specific Comments

1. Development of the Project site is very constrained by the number, density, and distribution of highly sensitive species and resources. CDFW considers the Project site to be of high biological value and conservation priority. As stated in previous meetings with the City and applicant, if possible, we recommend that Project site be conserved through purchase with grants or mitigation funds from other projects, or through the establishment of a mitigation bank.
2. The DEIR should include at least one development alternative preferable to the Wildlife Agencies in which no more than 25% of the site would be impacted by the development footprint. The 25% development limit has been used in regional conservation plans in San Diego County to allow reasonable economic use of properties with exceptionally high conservation value. The alternative should prioritize avoidance of the vernal pools complex and the hydrological connection through the site and mima mounds. All alternatives should include an analysis of the impacts of the Project construction on the hydrology of the site and the long-term viability of the vernal pools.
3. CDFW recommends that the Project design prioritize the avoidance of vernal pools and their watersheds, as well as avoid thread-leaved brodiaea; to that end, we encourage the Project Proponent to consider limiting development to the southern edge of the site, where these resources are least dense. Limited development in this area would avoid direct impacts to most of the vernal pools and their watersheds, minimize impacts to the north to

south/southeast surface flow across the Project site (as assessed from available topography mapping), and minimize impacts to significant areas occupied by thread-leaved brodiaea.

CDFW recognizes this alternative would likely result in impacts to the two drainages in the southeast corner of the Project site which are potentially subject to CDFW jurisdiction pursuant to Sections 1600-1603 of the Fish and Game Code. It would be preferred that mitigation for impacts to these drainages be implemented on the property, in a manner that conserved and/or enhances the biological value on the property.

4. As part of any Project approval, the undeveloped portion of the site should be maintained and managed as a Preserve, funded through a non-wasting endowment, by a land manager agreed upon by CDFW and the USFWS. Management should emphasize control of invasive species and prevention of human encroachment into the open space (e.g., the Preserve should be fenced and monitored for human activities).

General Comments

To enable the Wildlife Agencies to adequately review and comment on the proposed Project from the standpoint of the protection of plants, fish, wildlife, and other biological resources, we recommend the following information be included in the DEIR.

- 1) Environmental data. CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations [Public Resources Code, § 21003, subd. (e)]. Accordingly, please report any special status species and natural communities detected by completing and submitting CNDDDB Field Survey Forms.
- 2) California Endangered Species Act (ESA). CDFW considers adverse impacts to a species protected by CESA to be significant without mitigation under CEQA. As to CESA, take of any endangered, threatened, candidate species, or CESA-listed rare plant species that results from the Project is prohibited, except as authorized by State law (Fish and Game Code, §§ 2080, 2085; Cal. Code Regs., tit. 14, §786.9). Consequently, if the Project, Project-related construction, or any Project-related activity for the duration 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 or at an individual project-level. Appropriate authorization from CDFW may include an Incidental Take Permit (ITP) or a consistency determination in certain circumstances, among other options [Fish & Game Code, §§ 2080.1, 2081, subds. (b) and (c)]. Early consultation is encouraged, as significant modification to the Project and mitigation measures may be required 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's 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.
- 3) Compensatory Mitigation. The DEIR should include mitigation measures for adverse Project-related impacts to sensitive plants, animals, and habitats. Mitigation measures should emphasize avoidance and reduction of Project-related impacts. For unavoidable

impacts, on-site habitat restoration or enhancement should be discussed in detail. If on-site mitigation is not feasible or would not be biologically viable and therefore not adequately mitigate the loss of biological functions and values, off-site mitigation through habitat creation and/or acquisition and preservation in perpetuity should be addressed. Areas proposed as mitigation lands should be protected in perpetuity with a conservation easement, financial assurance and dedicated to a qualified entity for long-term management and monitoring. Under Government Code, section 65967, the lead agency must exercise due diligence in reviewing the qualifications of a governmental entity, special district, or nonprofit organization to effectively manage and steward land, water, or natural resources on mitigation lands it approves.

- 4) Lake Streambed Alteration (LSA) Agreement. As a Responsible Agency under CEQA, CDFW has authority over activities in streams and/or lakes that will divert or obstruct the natural flow; or change the bed, channel, or bank (including vegetation associated with the stream or lake) of a river or stream; or use material from a streambed. 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 an LSA Agreement with the applicant is required prior to conducting the proposed activities. CDFW's issuance of an LSA Agreement for a project that is subject to CEQA will require related environmental compliance actions by CDFW as a Responsible Agency. As a Responsible Agency, CDFW may consider the CEQA document prepared by the City for the Project. To minimize additional requirements by CDFW pursuant to section 1600 *et seq.* and/or under CEQA, the DEIR 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 LSA Agreement.
 - a) The Project area supports aquatic, riparian, and wetland habitats; therefore, a preliminary jurisdictional delineation of the streams and their associated riparian habitats should be included in the DEIR. Jurisdiction should evaluate all rivers, streams, and lake including culverts, ditches, storm channels that may transport water, sediment, and pollutants and discharge into rivers, streams, and lakes. Also, the delineation should be conducted pursuant to the United States Fish and Wildlife Service (USFWS) wetland definition adopted by the CDFW (Cowardin 1970). Some wetland and riparian habitats subject to CDFW's authority may extend beyond the jurisdictional limits of the U.S. Army Corps of Engineers' section 404 permit and Regional Water Quality Control Board section 401 Certification.
 - b) In areas of the Project site which may support ephemeral streams, herbaceous vegetation, woody vegetation, and woodlands also serve to protect the integrity of ephemeral channels and help maintain natural sedimentation processes; therefore, CDFW recommends effective setbacks be established to maintain appropriately sized vegetated buffer areas adjoining ephemeral drainages.
 - c) Project-related changes in drainage patterns, runoff, and sedimentation should be included and evaluated in the DEIR.

Conclusion

We appreciate the opportunity to comment on the NOP for the Pacific Specific Plan to assist the City in identifying and mitigating Project impacts on biological resources. If you have any

City of San Marcos
July 12, 2022
Page 6 of 6

questions or comments regarding this letter, please contact Meredith Osborne, Environmental Scientist, at Meredith.Osborne@wildlife.ca.gov or (858) 354-3334.

Sincerely,

DocuSigned by:

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ec: CDFW

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