



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

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



April 17, 2023

Governor's Office of Planning & Research

Chris Garcia, Associate Planner
City of San Marcos Planning Division
1 Civic Center Drive
San Marcos, CA 92069
CGarcia@san-marcos.net

Apr 17 2023**STATE CLEARINGHOUSE**

**Subject: 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 the 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, Fish & G. Code, §1900 *et seq.*), CDFW recommends the Project proponent obtain appropriate authorization under the Fish and Game Code.

Conserving California's Wildlife Since 1870

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 planning of the Subregional Multiple Habitat Conservation Program (MHCP) in the late 1990's and early 2000'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 in the subregional MHCP remain extremely relevant for development projects occurring in San Marcos and the other jurisdictions, and should be seen as a strong guide toward assessing the significance of impacts to biological resources under CEQA.

Project Description and Summary

Objective: The Project proposes a General Plan Amendment, Specific Plan, Rezone, Multi-Family Site Development Plan, and Tentative Subdivision Map for a proposed residential community 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 includes site grading and new construction of 449 dwelling units on approximately 15.09 acres of the 33.2-acre Project site, comprising a mix of apartments, rowhomes, villas, and affordable flats. The Project would also include a total of 927 parking spaces and 134,985 square feet of common open space area. The Project also includes biofiltration/retention features, landscaping, and circulation improvement elements. The remaining approximately 17.94 acres of the 33.2-acre Project site would be preserved and restored as open space and habitat area.

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 property owing to the heavy clay soils comprising the site. The biological resource values have been well-documented, and the property has long been recognized as having extremely high biological value that is not found elsewhere in northern San Diego County.

Six special status plant species were observed on-site during biological surveys conducted in 2018, 2020, 2021 and 2022: 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), small-flowered morning glory (*Convolvulus simulans*; CNPS Rare Plant Rank 4.2), and graceful tarplant (*Holocarpha virgata* ssp. *elongata*; CNPS Rare Plant Rank 4.2).

One special status animal species was detected on-site during protocol wet season and dry season focused 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 the San Diego fairy shrimp 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 and San Diego button celery. 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 regionally sensitive Orcutt's brodiaea.

Following meetings and site visits with the Project proponent and the City, and upon reviewing the 2022 Notice of Preparation of the DEIR, CDFW and the U.S. Fish and Wildlife Service (collectively the Wildlife Agencies) suggested two alternatives to the proposed Project. The first was conservation of the entire Project site as-is. Conservation of the site would occur through purchase with grants or mitigation funds from other projects or through the establishment of a mitigation bank. The Mitigation Bank Alternative was considered in the DEIR but rejected. The second alternative was a reduced footprint in which no more than 25% of the site would be impacted by the development footprint. The Reduced Footprint Alternative was considered in the DEIR. The proposed design would have reduced impacts to vernal pools but increased impacts to thread-leaved brodiaea. The Reduced Footprint Alternative was deemed environmentally superior to the proposed Project; however, it was not selected.

Four of the special-status plant species occurring on-site would be directly impacted by the Project. Approximately 33,714 individuals (19%) of thread-leaved brodiaea and 47 individuals of San Diego button-celery (29%) are located within the Project footprint and would be directly impacted. Approximately 80,907 of the 127,517 Orcutt's brodiaea individuals mapped on site (approximately 63.4%) would be impacted. The MHCP identifies the Project site as supporting a critical population of Orcutt's brodiaea. Impacts to graceful tarplant would occur but were not quantified and not considered significant in the DEIR. Direct impacts to chaparral rein orchid and small-flowered morning-glory are not expected. Proposed mitigation for impacts to thread-leaved brodiaea, San Diego button-celery, and Orcutt's brodiaea is translocation and/or replanting through propagation into existing suitable habitat in the on-site open space preserve interspersed with existing patches of these species. Numbers of individuals that would be impacted was quantified in the DEIR, but not the spatial area occupied by the sensitive species that would be lost or the area of the proposed receptor sites on the Project property.

The Project would impact 8 basins occupied by San Diego fairy shrimp, with the remaining 12 basins on-site occupied by San Diego fairy shrimp (11 vernal pools and 1 road rut) to be avoided by the Project development, including avoidance of their corresponding watersheds plus a buffer surrounding the watershed. The Project considered on-site drainage direction and would be designed in a manner to mimic the potential drainage/discharge flow point and path on-site; thus, Project impacts to site drainage were considered less than significant in the DEIR. Proposed mitigation for impacts to vernal pools would be creation, re-establishment, and/or restoration to occur on-site within appropriate suitable habitat. Impacts to San Diego fairy shrimp would consist of salvage and translocation of cysts by inoculation into existing suitable habitat within approved preserve areas or into created or restored habitat on-site.

Project implementation would result in significant impacts to sensitive natural communities (i.e., Diegan coastal sage scrub (1.09 acres), native grassland (5.32 acres), mixed grassland (5.52 acres), non-native grassland (3.57 acres), and vernal pools (0.15 acre). Proposed mitigation for these impacts would consist of implementation of on-site and/or off-site habitat preservation, creation, restoration, and/or enhancement and/or purchase of off-site conservation credits from a conservation bank in the region and deemed acceptable by the City. Proposed mitigation ratios for the impacted habitats are as follows: Diegan coastal sage scrub (1:1), native grassland (2:1), mixed grassland (0.5:1), non-native grassland (0.5:1), and vernal pools (3:1).

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.

1. Mitigation Measure or Alternative and Related Impact Shortcoming

Comment #1:

Issue: Proposed on-site mitigation for impacts to vernal pools containing San Diego fairy shrimp and for San Diego button celery, thread-leaved brodiaea, and Orcutt's brodiaea are not adequate to fully mitigate for permanent loss of occupied habitat acreage.

Specific Impacts: Project impacts would permanently reduce the acreage of vernal pool habitat and habitat for the three sensitive plant species.

Why impacts would occur: Project construction would directly impact the San Diego fairy shrimp and special status plants occurring within the Project footprint and result in permanent loss of acreage of habitat for these species.

Evidence impacts would be significant: The Project site includes the largest remaining vernal pool complex in the City that supports the San Diego fairy shrimp and San Diego button celery. The Project site also includes the largest remaining unconserved native grassland in the City that supports one of the largest known populations of the thread-leaved brodiaea and regionally sensitive Orcutt's brodiaea. Over the years, there has been cumulative loss within the City of vernal pools and occupied habitat acreage for these sensitive species, three of which are proposed MHCP Narrow Endemics, due to construction of other projects.

Recommended Potentially Feasible Mitigation Measure(s):

Mitigation Measure #1: Creation of new vernal pools and translocation of the impacted sensitive species is proposed to occur on the Project site, in areas interspersed with existing vernal pools, thread-leaved brodiaea, and Orcutt's brodiaea. This proposed on-site mitigation may not be biologically viable and therefore not adequate to fully mitigate the loss of biological functions and values as required under CESA. Areas where an impacted species is already present are often at the carrying capacity for the habitat, and introduction of transplanted individuals may actually disrupt the equilibrium of the population and could decrease the on-site vitality of the species. In addition to on-site translocation of individuals of the impacted species, the final EIR should address off-site mitigation through acquisition and preservation in perpetuity of existing vernal pools containing San Diego fairy shrimp and/or San Diego button celery, as well as off-site preservation of existing occupied habitat for thread-leaved brodiaea and Orcutt's brodiaea. CDFW acknowledges it may not be possible to find one off-site location that supports multiple target species as occurs on the project site.

Specific Comments

1. For impacts to CESA-listed San Diego button celery and thread-leaved brodiaea, an Incidental Take Permit (ITP) would be required (pursuant to Fish & Game Code, § 2080 et seq.). To obtain appropriate take authorization under CESA, early consultation with CDFW is encouraged, as significant modification to a 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 (MMRP) that will meet the requirements of an ITP. For these reasons, the take proposed to be authorized by CDFW's ITP, biological mitigation monitoring, and reporting proposals should be described in detail in the Project's CEQA document to satisfy the requirements for a CESA ITP.
2. The areas proposed as mitigation lands should be protected in perpetuity with a perpetual biological conservation easement (CE), financial assurance, and dedication 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. The CE should be approved by the Wildlife Agencies prior to its execution and should follow the Agency-approved template. There should be no provision for public trails in the CE areas. The Project Applicant should submit the CE to the Wildlife Agencies for review and approval at least 60 days prior to initiating Project impacts. The Project Applicant should submit the final easements and evidence of their recordation to the Wildlife Agencies within 60 days of receiving approval of the draft CE.
3. The Project Applicant should implement a Habitat Management Plan (HMP) to cover perpetual management, maintenance, and monitoring of the biological CE areas. The Applicant should also establish a non-wasting endowment for an amount approved by the Wildlife Agencies based on a Property Analysis Record (PAR) (Center for Natural Lands Management ©1998) or similar cost estimation method to secure the ongoing funding for the perpetual management, maintenance, and monitoring of the biological conservation easement areas by an agency, non-profit organization, or other entity approved by the

Chris Garcia
City of San Marcos
April 17, 2023
Page 6 of 7

Wildlife Agencies. The Applicant should submit a draft HMP including a description of perpetual management, maintenance, and monitoring actions and the PAR or other cost estimation results for the non-wasting endowment to the City and Wildlife Agencies for approval at least 60 days prior to initiating Project impacts. The Applicant should submit the final plan to the Wildlife Agencies and transfer the funds for the non-wasting endowment to a non-profit conservation entity, within 60 days of receiving approval of the draft plan.

The HMP should include measures to protect the targeted habitat values of the mitigation areas in perpetuity from direct and indirect negative impacts. Issues that should be addressed include but are not limited to the following: protection from any future development and zone changes; prohibition on public access; proposed land dedications; control of illegal dumping; control of invasive plants; water pollution; and monitoring and enforcement against human intrusion. Adequate funding should be provided to allow for patrolling of the CE area 2-3 times per month to inspect for signs of human intrusion or damage. The PAR should include contingency funding that would provide for not only periodic fence repair, but complete replacement of the fencing should it become necessary, as well as the ability to hire an outside contractor to monitor for trespassing.

4. All off-site mitigation areas, including mitigation banks, should be agreed to by the Wildlife Agencies and the City. Evidence that off-site mitigation has been purchased and/or placed within a biological open space CE should be provided to the Wildlife Agencies and City prior to impacts occurring on the Project site.

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.

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

We appreciate the opportunity to comment on the DEIR for the Pacific Specific Plan to assist the City in identifying and mitigating Project impacts on biological resources. If you have any questions or comments regarding this letter, please contact Meredith Osborne, Environmental Scientist, at Meredith.Osborne@wildlife.ca.gov or (858) 354-3334.

Chris Garcia
City of San Marcos
April 17, 2023
Page 7 of 7

Sincerely,

DocuSigned by:


D700B4520375406...

David Mayer
Environmental Program Manager
South Coast Region

ec: CDFW
David Mayer, San Diego – David.Mayer@wildlife.ca.gov
Jennifer Turner, San Diego – Jennifer.Turner@wildlife.ca.gov
Cindy Hailey, San Diego – Cindy.Hailey@wildlife.ca.gov
Meredith Osborne, San Diego – Meredith.Osborne@wildlife.ca.gov

OPR
State Clearinghouse, Sacramento – State.Clearinghouse@opr.ca.gov