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DEPARTMENT OF FISH AND WILDLIFE
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May 5, 2025

Scott Nightingale
City of San Marcos
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**Subject: DRAFT ENVIRONMENTAL IMPACT REPORT for the Woodward 46
Specific Plan Project, SCH No. 2023080449, SAN DIEGO COUNTY, CA**

Dear Scott Nightingale:

The California Department of Fish and Wildlife (CDFW) reviewed the Draft Environmental Impact Report (DEIR) from City of San Marcos (City) for the Woodward 46 Specific Plan (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines¹.

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, CDFW appreciates 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 (Fish & G. Code, § 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 may also act as a Responsible Agency under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise

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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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 law² of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.) or the Native Plant Protection Act (NPPA; Fish & G. Code, §1900 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, a California regional habitat conservation planning program. The City participated in the planning of the Subregional Multiple Habitat Conservation Program (MHCP), which addresses regional conservation planning across seven incorporated jurisdictions in northern San Diego County. The City had prepared a draft Subarea Plan (SAP) under the Subregional MHCP; however, the SAP was not finalized, and state and federal permits were not issued to the City. While the City does not have an adopted SAP, the conservation principals in the subregional MHCP and draft SAP remain extremely relevant for development projects occurring in San Marcos and are referenced for guidance toward assessing the significance of impacts to biological resources under CEQA.

PROJECT DESCRIPTION SUMMARY

Proponent: City of San Marcos

Objective: The objective of the Project is to develop a 46-unit residential development, with a total of 23 buildings, a common open space recreation area, a 24-foot-wide private access road, and two water quality basins. The Project will request approval of a Specific Plan Amendment to the Heart of the City Specific Plan, the proposed Woodward 46 Specific Plan, and a General Plan Amendment. These approvals will establish new development criteria allowing development of 5.7 dwelling units per acre. Primary Project activities include vegetation removal; grading; blasting and rock crushing; construction of residential buildings, access road and 108 parking spaces (two-car garage per unit and 16 parking spots); installation of lighting, fencing, and retaining walls; and installation of irrigated landscaping in fire buffer zones.

Location: The 8.27-acre Project site is located within the Richland neighborhood in the City of San Marcos, San Diego County, California. The Project site consists of a vacant parcel located at Assessor's Parcel Number 220-210-49-00, just east of Woodward Street, between Mission Road to the south and Vineyard Road to the north. The Project site is bound by existing residential development to the east and northeast, and a new housing development is under construction to the south. Woodward Street borders the western Project edge, and the northern boundary of the site is directly adjacent to a

² "Take" is defined in Section 86 of the Fish and Game Code as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill."

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7.73-acre open space easement which is considered MHCP Focused Planning Area (FPA) Hardline Preserve. The FPA designates areas of high biological value within the draft SAP. The Project site is undeveloped and steeply sloped with elevation ranging from 754 feet above mean sea level in the eastern portion of the Project site down to 615 feet in the southwestern portion of the Project site. Grading and earthwork required for site preparation will alter the existing topography.

Timeframe: The Project is anticipated to start construction in 2025, and full occupancy of residential buildings is anticipated in 2027. However, the DEIR does not include an end date for construction.

Biological Setting: Per the DEIR Full Biological Resource Report (Rincon Consultants, Inc. 2025; FBRR), the Project site consists of 5.49 acres of Diegan Coastal Sage Scrub (DCSS), 0.26 acre of disturbed DCSS, 0.05 acre of disturbed habitat, and 0.03 acre of Urban/Developed land cover. Existing fuel modification easements overlap 0.25 acre of both sensitive plant communities. Additionally, DCSS impacted by this Project is part of a contiguous block of 16.72 acres of gnatcatcher-occupied DCSS habitat, which includes vegetation contained in the MHCP Hardline Preserve to the north, northeast, east, and west of the Project boundary as depicted in Figure 7 in the FBRR.

Three special status wildlife species have been observed within the Project area: coastal California gnatcatcher (gnatcatcher; *Polioptila californica californica*; ESA listed-threatened; CDFW Species of Special Concern (SSC), Cooper's hawk (*Accipiter cooperii*; CDFW Watch List), and Crotch's bumble bee (CBB; *Bombus crotchii*; CESA candidate). Gnatcatcher were observed during protocol surveys conducted in 2018, and during preconstruction surveys in 2020. No gnatcatchers were observed during the protocol surveys in 2023. CBB was detected foraging in DCSS within the central portion of the Project site on June 6, 2024, during focused bumble bee surveys.

The Project proposes to mitigate direct impacts to DCSS habitat at a minimum 1:1 ratio through a combination of on-site mitigation, off-site acquisition, in lieu fees, and/or a purchase of credits from Buena Creek Mitigation Bank or another approved mitigation bank, as approved by the City's Planning Manager and Wildlife Agencies prior to issuance of the Project's grading permit. The Project proposes developing a long-term management plan to minimize impacts associated with increased human and domestic pet presence from the Project on the adjacent open space within the MHPA Hardline Reserve. The Project also includes Mitigation Measure (MM)-BIO-2 in the DEIR, which requires pre-activity surveys for avoidance of impacts to CBB.

Project History: CDFW previously submitted a comment letter in response to the Notice of Preparation (NOP) for the Project on September 20, 2023 (CDFW 2023). Our comment letter requested the DEIR include an analysis of consistency with the MHCP and draft City of San Marcos SAP; an increased mitigation ratio for permanent impacts to California gnatcatcher-occupied DCSS; and, an analysis of potential impacts to Crotch's bumble bee.

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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 and maintaining consistency with the regional conservation objectives in the MHCP and draft City of San Marcos SAP. Additional comments or other suggestions may also be included to improve the document. CDFW recommends the measures or revisions below be included in a science-based monitoring program that contains adaptive management strategies as part of the Project's CEQA mitigation, monitoring and reporting program (Pub. Resources Code, § 21081.6; CEQA Guidelines, § 15097).

COMMENT # 1: Crotch's Bumble Bee

Issue: The Project may impact suitable nesting, foraging, and overwintering habitat for Crotch's bumble bee, a candidate species for CESA listing. The DEIR does not propose appropriate avoidance, minimization, and mitigation measures to reduce impacts to Crotch's bumble bee to a less than significant level under CEQA.

Specific impact: The Project will result in permanent loss of suitable nesting, foraging, and overwintering habitat of Crotch's bumble bee. Specifically, the Project will result in permanent loss of suitable nesting and occupied foraging habitat. Project ground disturbing activities and vegetation removal may cause death or injury of adults, eggs, and larva; burrow collapse; nest abandonment; and reduced nest success. The avoidance measure proposed in the DEIR is not sufficient as the Project will result in the loss of habitat during the active colony season, it does not capture the need for CDFW consultation to ensure impacts to CBB are authorized and will be fully mitigated, and it does not provide adequate and specific mitigation for CBB impacts.

Why impact would occur: The FBRR states that the DCSS within the Project site is occupied by Crotch's bumble bee and potentially significant impacts could occur through loss of habitat. The focused surveys confirmed suitable habitat for this species and resulted in a positive detection of CBB within the central portion of the site. As a result, the DEIR proposes MM-BIO-2 to avoid direct impacts to CBB, which includes pre-activity surveys during the Colony Active Period and consultation with CDFW to establish, monitor, and maintain no-work buffers. However, CDFW disagrees that this measure mitigates impacts to this species to be below significant as the measure does not fully address potential impacts to foraging habitat, nests, and overwintering individuals, nor does it include species-specific compensatory mitigation as would be required for take of CESA-listed or candidate species. Furthermore, the DEIR does not require coordination with CDFW to determine if an Incidental Take Permit is warranted for the Project prior to City approvals or issuance of City permits.

As with any flying species, Crotch's bumble bee may fly throughout the Project site and utilize adjacent areas that have suitable nesting habitat and floral resources. Given the nesting ecology of Crotch's bumble bee, avoidance of incidental take is particularly

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challenging if the species is present, as nests are difficult to identify. Crotch's bumble bees primarily nest in late February through late September underground in abandoned small mammal burrows but may also nest under perennial bunch grasses or thatched annual grasses, beneath brush piles, in old bird nests, and in dead trees or hollow logs (Williams et al. 2014; Hatfield et al. 2018). Overwintering sites utilized by Crotch's bumble bee queens include soft, disturbed soil (Goulson 2010), or under leaf litter or other debris (Williams, et al. 2014). Ground disturbance from grading and vegetation removal during the overwintering period may inadvertently impact nests or cause mortality of overwintering queens through crushing, burrow destruction, or loss of foraging habitat. These actions could reduce breeding success or lead to nest abandonment or failure, potentially resulting in take under CESA, which is prohibited unless authorized by an Incidental Take Permit. Furthermore, the DEIR does not propose adequate compensatory mitigation to offset impacts to this species, as some of the proposed mitigation options are inappropriate for the species. For example, there are no CDFW approved mitigation banks with CBB credits, nor an existing in-lieu fee system benefiting CBB. The DEIR should expand the discussion on habitat suitability for Crotch's bumble bee including the suitability of conserved open space lands adjacent to the Project site. The discussion should also disclose the Project's potential direct and indirect impacts on Crotch's bumble bee. The discussion should be of depth and scope that a CESA Incidental Take Permit can be issued based on the analysis provided in the DEIR.

Evidence impact may be significant: The California Fish and Game Commission accepted a petition to list Crotch's bumble bee as threatened or endangered under CESA, determining the listing "may be warranted" and advancing the species to the candidacy stage of the CESA listing process. Pursuant to Fish and Game Code section 2085, CESA candidate species are afforded the same protection as CESA-listed threatened and endangered species. Therefore, take of Crotch's bumble bee is prohibited, except as authorized by State law through the issuance of an ITP or other authorization (Fish & G. Code, §§ 2080, 2085).

Further, Crotch's bumble bee has a State ranking of S1/S2. This means that the Crotch's bumble bee is also considered critically imperiled or imperiled and is extremely rare (often 5 or fewer populations). Crotch's bumble bee is also listed as an invertebrate of conservation priority under the [California Terrestrial and Vernal Pool Invertebrates of Conservation Priority](#)³ (CDFW 2017). CESA-listed species and their habitats meet the definition of endangered, rare, or threatened under CEQA (CEQA Guidelines § 15380). Impacts to CESA listed species and their habitats may result in a mandatory finding of significance because the Project has the potential to substantially reduce the number or restrict the range of an endangered, rare, or threatened species (CEQA Guidelines § 15065).

³file:///C:/Users/PPerez/Downloads/SCP_Terrestrial%20and%20Vernal%20Pool%20Inverts%20of%20Co
nservation%20Priority%20List%2006-12-2017%20(2).pdf

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Recommended Potentially Feasible Mitigation Measure(s)

Mitigation Measure #1: Incidental Take Permit- Crotch's bumble bee was detected onsite; thus all suitable habitat onsite is determined to be occupied. Ground disturbance from grading and vegetation removal may inadvertently impact nests or cause mortality of overwintering queens through crushing, burrow destruction, or loss of foraging habitat. The substantial reduction and degradation of habitat may potentially impair the viability and size of Crotch's bumble bee populations, including those dependent on adjacent natural lands. Because of this, impacts to Crotch's bumble bee cannot be feasibly avoided, and the Project applicant shall consult with CDFW and obtain appropriate take authorization from CDFW (pursuant to Fish & G. Code, § 2080 et seq.). The Project applicant shall comply with the mitigation measures detailed in the take authorization issued by CDFW. The Project applicant shall provide a copy of a fully executed take authorization prior to the issuance of a grading permit and before any ground disturbance and vegetation removal.

Mitigation Measure #2: Revisions to the DEIR Measure (MM-BIO-2)

The City has proposed Mitigation Measure BIO-2 to reduce potentially significant impacts to Crotch's bumble bee. The Measure indicates that it will only apply if Crotch's bumble bee remains a candidate species or is listed as a state threatened or endangered species at the time of Project construction. CDFW recommends that the City amend MM-BIO-2 with the changes below and incorporate it into the DEIR as an enforceable mitigation measure. Changes are denoted in ~~strike through~~ and **bold**:

Crotch's Bumble Bee (Impact BIO-2)

Mitigation Measure-BIO-2

Focused surveys found the Diegan Coastal Sage Scrub onsite to be occupied by Crotch's bumble bee. Thus, there is potential for **take of** Crotch's bumble bee and adverse impacts may occur through the removal of occupied habitat. However, the project would incorporate the following Crotch's bumble bee avoidance, **minimization, and mitigation** measures to **reduce** avoid ~~“take” and significant impacts to below significant~~ should the species remain a candidate for ~~state listing~~.

*Avoidance, **Minimization, and Mitigation** Measure for Crotch's Bumble Bee*

Prior to the Notice to Proceed (NTP) for any construction permits, including, but not limited to, the first Grading Permit, the City shall verify the following project requirements regarding Crotch's bumble bee are shown on the construction plans. ~~Should this species no longer be a potential candidate for listing at the time of the preconstruction meeting, then no avoidance measures shall be required.~~

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Incidental Take Permit:

- a. **Crotch's bumble bee has been detected onsite, and all suitable habitat is considered occupied. As avoidance of impacts is not feasible, the Project applicant shall consult with CDFW and obtain appropriate take authorization from CDFW (pursuant to Fish & G. Code, § 2080 et seq.). If an incidental take permit is issued, the Project applicant shall comply with the mitigation measures detailed in the take authorization issued by CDFW. In addition, the terms and conditions of that permit shall supersede any conflicting measures contained in this document. The Project applicant shall provide a copy of a fully executed take authorization prior to the issuance of a grading permit and before any ground disturbance and vegetation removal.**

Pre-activity surveys:

- b. To avoid **direct** impacts on Crotch's bumble bee, removal of habitat (**i.e., defined as any habitat disturbance**) ~~in the proposed area of disturbance~~ must occur outside of the Colony Active Period, **generally occurring between ~~(April 1~~ February 1 through August 31)**. If the removal of habitat ~~in the proposed area of disturbance~~ must occur during the Colony Active Period, a Qualified Biologist shall conduct a pre-activity **survey** (~~defined as any habitat disturbance~~) **survey following CDFW's Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species (CDFW 2023) or the latest guidance from CDFW** no more than ~~three~~ **ten days and no less than 3 days** prior to the initiation of construction activities to determine the presence or absence of Crotch's bumble bee within the proposed area of disturbance. ~~Survey results will be considered valid until the start of the next Colony Active Period.~~
- c. A Qualified Biologist must demonstrate the following ~~qualifications: at least 40 hours of experience surveying for bee or other co-occurring aerial invertebrate species (such as Quino checkerspot butterfly) and have completed a Crotch's bumble bee detection/identification training by an expert Crotch's bumble bee entomologist; or the biologist must have at least 20 hours of experience directly observing Crotch's bumble bee.~~ **meet the qualifications discussed in the CDFW guidance (i.e., Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species, dated June 6, 2023). Resumes shall be provided to CDFW for review.**
- d. The pre-activity survey shall consist of **non-lethal photo vouchers** ~~photographic surveys following CDFW guidance (i.e., Survey Considerations for California Endangered Species Act [CESA] Candidate Bumble Bee Species, dated June 6, CDFW 2023). The surveys shall consist of passive methods unless a Memorandum of Understanding is obtained.~~ **The Qualified Biologist shall send all photographic**

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vouchers to a CDFW approved taxonomist to confirm the identifications of the bumble bees encountered during surveys.

~~If additional activities (e.g., capture or handling) are deemed necessary to identify bumble bees of an unknown species that may be Crotch's bumble bee,~~ **If candidate bumble bees will be captured or handled during surveys,** ~~to~~ identify bumble bees of an unknown species that may be Crotch's bumble bee, then the Qualified Biologist shall obtain the required authorization via a Memorandum of Understanding or Scientific Collecting Permit pursuant to CDFW **guidance** ~~Survey Considerations for CESA Candidate Bumble Bee Species~~ (CDFW 2023). Survey methods that involve lethal take of species are not acceptable.

- e. ~~If pre-activity surveys identify Crotch's bumble bee individuals on-site, the Qualified Biologist shall notify and consult with CDFW to determine whether project activities would result in impacts to Crotch's bumble bee, in which case an Incidental Take Permit (ITP) may be recommended.~~ **If impacts to Crotch's bumble bee cannot be feasibly avoided, the Project applicant shall consult with CDFW and obtain appropriate take authorization from CDFW (pursuant to Fish & G. Code, § 2080 et seq.). The Project applicant shall comply with the mitigation measures detailed in the take authorization issued by CDFW. The Project applicant shall provide a copy of a fully executed take authorization prior to the issuance of a grading permit and before any ground disturbance and vegetation removal. If an Incidental Take Permit is required, it shall be obtained prior to issuance of Grading Permit, Demolition Plans/Permits and Building Plans/Permits, and all necessary permit conditions shall be fulfilled prior to initiation of project activities.**
- f. ~~If pre-activity surveys identify Crotch's bumble bee individuals on-site, The~~ **Qualified Biologist shall consult with CDFW** to establish, monitor, and maintain no-work buffers around the associated floral/nest resources **or identified nesting locations**. The size and configuration of the no-work buffer shall be based on the best professional judgment of the Qualified Biologist in consultation with CDFW. Construction activities shall not occur within the no-work buffers until the bees ~~appear~~ **are** no longer active (i.e., associated floral resources appear desiccated and no bees are seen flying for three consecutive days indicating dispersal from the area). Take of any endangered, threatened, candidate species that results from the project is prohibited, except as authorized by State law (Fish and Game Code section 86, 2062, 2067, 2068, 2080, 2085; California Code Regulations, Title 14, section 786.9) under CESA.
- g. Survey data shall be submitted by the Qualified Biologist to the California Natural Diversity Database (CNDDDB) in accordance with the Memorandum of Understanding with CDFW, or Scientific Collecting Permit requirements, as applicable.

Compensatory Mitigation for Impacts to Crotch's Bumble Bee Habitat

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~~Should the species remain a candidate for listing,~~ **To reduce impacts to Crotch's bumble bee to a less than significant impact,** mitigation for the loss of Crotch's bumble bee occupied Diegan Coastal Sage Scrub shall be conducted in conjunction with the Diegan coastal sage scrub mitigation described in MM-7. ~~Specifically, the Diegan coastal sage scrub mitigation shall include habitat compensation at a minimum 1:1 ratio~~ **or higher as negotiated through consultation with CDFW for an incidental take permit** to also benefit the Crotch's bumble bee. This mitigation may be satisfied through off-site acquisition, **or habitat enhancement or restoration in lieu fees, as approved by CDFW.** If necessary, habitat enhancement **or restoration** also may be incorporated, to be described in an HMMP (i.e. planting of native Diegan coastal sage scrub flowering plant species known to support bumble bee populations, removal of invasive species, etc.). **The HMMP or other plans for CBB habitat enhancement or restoration will be provided to CDFW for review and approval. Any land acquired as off-site mitigation to benefit CBB shall include a cost estimate for long-term management, an endowment, and a land protection mechanism such as a conservation easement. Mitigation lands for CBB must be occupied or include high quality suitable habitat.** This species shall also be included in the WEAP educational program described in MM-3 and BMPs implemented per MM-5.

COMMENT # 2: Impacts to Coastal California Gnatcatcher and Sensitive Habitats

Issue: The Project will impact suitable foraging, nesting, and breeding habitat for coastal California gnatcatcher, an ESA-listed threatened species and a California Species of Special Concern. The DEIR does not propose appropriate mitigation to reduce impacts to gnatcatcher to a less than significant level under CEQA.

Specific impacts: Project construction activities will result in permanent loss of high-quality foraging and nesting habitat occupied by gnatcatcher. Further, clearing and grubbing of occupied habitat may result in direct mortality of gnatcatcher. Additionally, DCSS is considered a sensitive community by the City, designated as Habitat Group C in the MHCP. The proposed measures within the DEIR are insufficient because: 1) the compensatory mitigation ratio does not account for gnatcatcher occupancy and use of the site; 2) the mitigation ratio is based on conservation assurances of a finalized NCCP MHCP plan; 3) no financial assurances or land protection mechanism are proposed for the mitigation site; and 4) there is no available in-lieu fee mitigation program benefiting gnatcatcher.

Why impact would occur: The FBRR states that the DCSS within and adjacent to the Project site is occupied gnatcatcher habitat and potentially significant impacts could occur through removal of habitat. At least two family groups of gnatcatchers were observed foraging and nesting during USFWS protocol surveys conducted in 2018, and during preconstruction surveys in 2020. While 2023 focused surveys were negative for

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gnatcatcher, there is a high likelihood of continued gnatcatcher nesting and foraging on-site. The substantial reduction and degradation of habitat may impair the viability and, number of gnatcatchers in this area, including those dependent on adjacent natural lands. Coastal California gnatcatchers are non-migratory, territorial, and have been found to remain close to their natal nests (Preston 1998; Vandergast 2019). Thus, the preservation of sensitive natural communities which they have been occupying is critical.

DEIR MM-BIO-6 proposes compensatory mitigation for impacts to sensitive communities at a 1:1 ratio based on the location of the Project site outside of FPA. The City of San Marcos does not have a finalized SAP; thus, this standard does not apply. An adopted and permitted MCHP SAP would ensure regional-scale conservation through coordinated reserve assembly, long-term management, and long-term species monitoring, all which afford the benefit of reduced mitigation for biological impacts at the project level. Since the NCCP framework would have provided for greater conservation outcomes than project-by-project permitting, the 1:1 ratio is not biologically justifiable. Furthermore, the DEIR does not assure that any mitigation lands would be protected by a conservation easement, nor does it specify long-term management and associated funding typically required for habitat mitigation lands.

Evidence impact would be significant: Species of Special Concern (SSC) and their habitats meet the definition of endangered, rare, or threatened under CEQA (CEQA Guidelines § 15380). Therefore, impacts to SSC species and their habitats may result in a mandatory finding of significance because the Project has the potential to substantially reduce the number or restrict the range of an endangered, rare, or threatened species (CEQA Guidelines § 15065). Impacts to any sensitive or special status species should be considered significant under CEQA unless they are clearly mitigated below a level of significance. The reductions in the number of special status bird species, either directly or indirectly through nest abandonment or reproductive suppression, would constitute a significant impact absent appropriate mitigation. Inadequate avoidance and mitigation measures will result in the Project continuing to have a substantial adverse direct and cumulative effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by CDFW and/or USFWS.

Recommended Potentially Feasible Mitigation Measure(s)

Mitigation Measure #1: Revisions to the DEIR Measures

The City has proposed Mitigation Measure BIO-6 to reduce potentially significant impacts to gnatcatcher. CDFW recommends that the City amend MM-BIO-6 with the changes below and incorporate it into the DEIR as an enforceable mitigation measure. Changes are denoted in ~~strike through~~ and **bold**

Impact to **coastal California gnatcatcher-occupied** Sensitive Habitat (Impact BIO-6)

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Mitigation Measure-BIO-6

The permanent loss of 5.5 acres of Diegan Coastal Sage Scrub, and Disturbed Diegan Coastal Sage Scrub shall be mitigated at a minimum 34:1 ratio. Section 5.2.1 of the Draft Subarea Plan for San Marcos references the preferred order of mitigation to be on-site mitigation, off-site acquisition, in-lieu fees, and mitigation credits. For mitigation purposes, the Diegan Coastal Sage Scrub and Disturbed Diegan Coastal Sage Scrub acreages on the project site that would be impacted have been combined as these two vegetation communities are considered to have similar sensitivity under the Multiple Habitat Conservation Program. Thus, 5.5 acres of occupied coastal California gnatcatcher Diegan Coastal Sage Scrub will be preserved by the project applicant through off-site acquisition, ~~in-lieu fees,~~ **or** a purchase of credits from Buena Creek Mitigation Bank or another approved mitigation bank, or a combination thereof as approved by the City of San Marcos Planning Manager and ~~the Wildlife Agencies~~ **the Wildlife Agencies** prior to issuance of the grading permit. If on site or off-site habitat mitigation will be completed by the Applicant to satisfy the compensatory mitigation requirements, it shall be carried out in accordance with a Habitat Mitigation and Monitoring Plan (HMMP) that outlines the strategy for enhancement and maintenance of the habitat for locally sensitive species occupying Diegan Coastal Sage Scrub. **The HMMP will be provided to Wildlife Agencies for review and approval. Any land acquired as off-site mitigation to benefit gnatcatcher shall include a cost estimate for long-term management, an endowment, and land protection mechanism such as a conservation easement. Mitigation lands for gnatcatcher must be occupied or include high quality suitable habitat.**

ADDITIONAL COMMENTS

Landscaping. The DEIR includes a landscaping plant palette for the engineered slopes of the proposed Project. There are inconsistencies in the plant species list to be used for the Project between the MM, FBRR, and the landscaping plan (Appendix A4). Specifically, the MM and FBRR include a list of species to avoid in the landscaping plan due to invasive qualities and inclusion in the California Invasive Plant Council's list of Exotic Pest Plants of Greatest Ecological Concern in California. These species are documented to have substantial and severe ecological impacts on physical processes, plant and animal communities, and vegetation structure. However, the landscaping plan still includes non-native, invasive plant species that should not be planted, seeded, or otherwise introduced to areas that are adjacent to and/or near native habitat areas, e.g. fountain grass (*Pennisetum rubrum*). Accordingly, CDFW recommends the Project restrict use of any species, particularly those that are 'Moderate' or 'High' listed by the California Invasive Plant Council (Cal-IPC 2025). CDFW recommends the Project only use native species found in naturally occurring vegetation communities within or adjacent to the Project site.

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Mitigation and Monitoring Reporting Plan. CDFW recommends the Project's environmental document include mitigation measures recommended in this letter. CDFW has provided comments via a mitigation monitoring and reporting plan to assist in the development of feasible, specific, detailed (i.e., responsible party, timing, specific actions, location), and fully enforceable mitigation measures (CEQA Guidelines, § 15097; Pub. Resources Code, § 21081.6). The City of San Marcos is welcome to coordinate with CDFW to further review and refine the Project's mitigation measures. Per Public Resources Code section 21081.6(a)(1), CDFW has provided a summary of our suggested mitigation measures and recommendations in the form of an attached Draft Mitigation Monitoring and Reporting Plan (Attachment A).

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. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, any special status species and natural communities detected during Project surveys should be reported to the California Natural Diversity Database (CNDDDB). The [CNDDDB website](#)⁴ provides directions regarding the types of information that should be reported and allows on-line submittal of field survey forms.

In addition, information on special status native plant populations and sensitive natural communities, should be submitted to CDFW's Vegetation Classification and Mapping Program using the [Combined Rapid Assessment and Relevé Form](#)⁵.

The City of San Marcos should ensure data collected for the preparation of the DEIR is properly submitted.

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the environmental document filing fee is required 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 DEIR to assist City of San Marcos in identifying and mitigating Project impacts on biological resources and ensuring Project consistency with requirements of the draft City of San Marcos Subarea Plan and the subregional San Diego County MHCP. CDFW requests an opportunity to

⁴ <https://wildlife.ca.gov/Data/CNDDDB>

⁵ <https://wildlife.ca.gov/Data/VegCAMP/Natural-Communities/Submit>

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review and comment on any response that the City of San Marcos has to our comments and to receive notification of any forthcoming hearing date(s) for the Project (CEQA Guidelines, § 15073(e)).

Questions regarding this letter or further coordination should be directed to Paola Perez⁶, Environmental Scientist.

Sincerely,

Signed by:

AD7D070BCB66466...

Glen M. Lubcke
Environmental Program Manager
South Coast Region

ATTACHMENTS

Attachment A: Draft Mitigation, Monitoring, and Reporting Program

cc: California Department of Fish and Wildlife
Melanie Burlaza
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ATTACHMENT A: DRAFT MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

CDFW provides the following language to be incorporated into the MMRP for the Project.

Mitigation Measure	Timing	Responsible Party
<p>Mitigation Measure #1: Incidental Take Permit- Crotch’s bumble bee was detected onsite; thus all suitable habitat onsite is determined to be occupied. Ground disturbance from grading and vegetation removal may inadvertently impact nests or cause mortality of overwintering queens through crushing, burrow destruction, or loss of foraging habitat. The substantial reduction and degradation of habitat may potentially impair the viability and size of Crotch’s bumble bee populations, including those dependent on adjacent natural lands. Because of this, impacts to Crotch’s bumble bee cannot be feasibly avoided, and the Project applicant shall consult with CDFW and obtain appropriate take authorization from CDFW (pursuant to Fish & G. Code, § 2080 et seq.). The Project applicant shall comply with the mitigation measures detailed in the take authorization issued by CDFW. The Project applicant shall provide a copy of a fully executed take authorization prior to the issuance of a grading permit and before any ground disturbance and vegetation removal.</p>	<p>Prior to Project Activities and before Issuance of a Grading Permit or Vegetation Removal</p>	<p>City of San Marcos/ Project Applicant</p>
<p>Mitigation Measure #2: Revisions to the DEIR Measure (MM-BIO-2)</p> <p>The City has proposed Mitigation Measure BIO-2 to reduce potentially significant impacts to Crotch’s bumble bee. The Measure indicates that it will only apply if Crotch’s bumble bee remains a candidate species or is listed as a state threatened or endangered species at the time of Project construction. CDFW recommends that the City amend MM-BIO-2 with the changes below and incorporate it into the DEIR as an enforceable mitigation measure. Changes are denoted in strike through and bold:</p> <p>Crotch’s Bumble Bee (Impact BIO-2)</p>	<p>Prior to finalizing CEQA document and Project Activities</p>	<p>City of San Marcos/ Project Applicant</p>

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Mitigation Measure	Timing	Responsible Party
<p>Mitigation Measure-BIO-2</p> <p>Focused surveys found the Diegan Coastal Sage Scrub onsite to be occupied by Crotch’s bumble bee. Thus, there is potential for take of Crotch’s bumble bee and adverse impacts may occur through the removal of occupied habitat. However, the project would incorporate the following Crotch’s bumble bee avoidance, minimization, and mitigation measures to reduce avoid “take” and significant impacts to below significant should the species remain a candidate for state listing.</p> <p><i>Avoidance, Minimization, and Mitigation Measure for Crotch’s Bumble Bee</i></p> <p>Prior to the Notice to Proceed (NTP) for any construction permits, including, but not limited to, the first Grading Permit, the City shall verify the following project requirements regarding Crotch’s bumble bee are shown on the construction plans. Should this species no longer be a potential candidate for listing at the time of the preconstruction meeting, then no avoidance measures shall be required.</p> <p>Incidental Take Permit:</p> <p>a. Crotch’s bumble bee has been detected onsite, and all suitable habitat is considered occupied. As avoidance of impacts is not feasible, the Project applicant shall consult with CDFW and obtain appropriate take authorization from CDFW (pursuant to Fish & G. Code, § 2080 et seq.). If an incidental take permit is issued, the Project applicant shall comply with the mitigation measures detailed in the take authorization issued by CDFW. In addition, the terms and conditions of that permit shall supersede any conflicting measures contained in this document. The</p>		

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Mitigation Measure	Timing	Responsible Party
<p>Project applicant shall provide a copy of a fully executed take authorization prior to the issuance of a grading permit and before any ground disturbance and vegetation removal.</p> <p>Pre-activity surveys:</p> <ul style="list-style-type: none"> b. To avoid direct impacts on Crotch’s bumble bee, removal of habitat (i.e., defined as any habitat disturbance) in the proposed area of disturbance must occur outside of the Colony Active Period, generally occurring between (April 1 February 1 through August 31). If the removal of habitat in the proposed area of disturbance must occur during the Colony Active Period, a Qualified Biologist shall conduct a pre-activity survey (defined as any habitat disturbance) survey following CDFW’s Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species (CDFW 2023) or the latest guidance from CDFW no more than three ten days and no less than 3 days prior to the initiation of construction activities to determine the presence or absence of Crotch’s bumble bee within the proposed area of disturbance. Survey results will be considered valid until the start of the next Colony Active Period. c. A Qualified Biologist must demonstrate the following qualifications: at least 40 hours of experience surveying for bee or other co-occurring aerial invertebrate species (such as Quino checkerspot butterfly) and have completed a Crotch’s bumble bee detection/identification training by an expert Crotch’s bumble bee entomologist; or the biologist must have at least 20 hours of experience directly observing Crotch’s bumble bee. meet the qualifications discussed in the CDFW guidance (i.e., Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species, dated June 6, 2023). Resumes shall be provided to CDFW for review. 		

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Mitigation Measure	Timing	Responsible Party
<p>d. The pre-activity survey shall consist of non-lethal photo vouchers photographic surveys following CDFW guidance (i.e., Survey Considerations for California Endangered Species Act [CESA] Candidate Bumble Bee Species, dated June 6, CDFW 2023). The surveys shall consist of passive methods unless a Memorandum of Understanding is obtained. The Qualified Biologist shall send all photographic vouchers to a CDFW approved taxonomist to confirm the identifications of the bumble bees encountered during surveys.</p> <p>If additional activities (e.g., capture or handling) are deemed necessary If candidate bumble bees will be captured or handled during surveys, to identify bumble bees of an unknown species that may be Crotch's bumble bee, then the Qualified Biologist shall obtain the required authorization via a Memorandum of Understanding or Scientific Collecting Permit pursuant to CDFW guidance Survey Considerations for CESA Candidate Bumble Bee Species (CDFW 2023). Survey methods that involve lethal take of species are not acceptable.</p> <p>e. If pre-activity surveys identify Crotch's bumble bee individuals on-site, the Qualified Biologist shall notify and consult with CDFW to determine whether project activities would result in impacts to Crotch's bumble bee, in which case an Incidental Take Permit (ITP) may be recommended. If impacts to Crotch's bumble bee cannot be feasibly avoided, the Project applicant shall consult with CDFW and obtain appropriate take authorization from CDFW (pursuant to Fish & G. Code, § 2080 et seq.). The Project applicant shall comply with the mitigation measures detailed in the take authorization issued by CDFW. The Project applicant shall provide a copy of a fully executed take authorization prior to the issuance of a grading permit and before any ground disturbance and vegetation removal. If an Incidental</p>		

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Mitigation Measure	Timing	Responsible Party
<p>Take Permit is required, it shall be obtained prior to issuance of Grading Permit, Demolition Plans/Permits and Building Plans/Permits, and all necessary permit conditions shall be fulfilled prior to initiation of project activities.</p> <p>f. If pre-activity surveys identify Crotch's bumble bee individuals on-site, The Qualified Biologist shall consult with CDFW to establish, monitor, and maintain no-work buffers around the associated floral/nest resources or identified nesting locations. The size and configuration of the no-work buffer shall be based on the best professional judgment of the Qualified Biologist in consultation with CDFW. Construction activities shall not occur within the no-work buffers until the bees appear are no longer active (i.e., associated floral resources appear desiccated and no bees are seen flying for three consecutive days indicating dispersal from the area). Take of any endangered, threatened, candidate species that results from the project is prohibited, except as authorized by State law (Fish and Game Code section 86, 2062, 2067, 2068, 2080, 2085; California Code Regulations, Title 14, section 786.9) under CESA.</p> <p>g. Survey data shall be submitted by the Qualified Biologist to the California Natural Diversity Database (CNDDDB) in accordance with the Memorandum of Understanding with CDFW, or Scientific Collecting Permit requirements, as applicable.</p> <p><i>Compensatory Mitigation for Impacts to Crotch's Bumble Bee Habitat</i></p> <p>Should the species remain a candidate for listing, To reduce impacts to Crotch's bumble bee to a less than significant impact, mitigation for the loss of Crotch's bumble bee occupied Diegan Coastal Sage Scrub shall be conducted in conjunction with the Diegan coastal sage scrub mitigation</p>		

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Mitigation Measure	Timing	Responsible Party
<p>described in MM-7. Specifically, the Diegan coastal sage scrub mitigation shall include habitat compensation at a minimum 1:1 ratio or higher as negotiated through consultation with CDFW for an incidental take permit to also benefit the Crotch's bumble bee. This mitigation may be satisfied through off-site acquisition, or habitat enhancement or restoration in lieu fees, as approved by CDFW. If necessary, habitat enhancement or restoration also may be incorporated, to be described in an HMMP (i.e. planting of native Diegan coastal sage scrub flowering plant species known to support bumble bee populations, removal of invasive species, etc.). The HMMP or other plans for CBB habitat enhancement or restoration will be provided to CDFW for review and approval. Any land acquired as off-site mitigation to benefit CBB shall include a cost estimate for long-term management, an endowment, and a land protection mechanism such as a conservation easement. Mitigation lands for CBB must be occupied or include high quality suitable habitat. This species shall also be included in the WEAP educational program described in MM-3 and BMPs implemented per MM-5.</p>		
<p>Mitigation Measure #1: Revisions to the DEIR Measures</p> <p>The City has proposed Mitigation Measure BIO-6 to reduce potentially significant impacts to gnatcatcher. CDFW recommends that the City amend MM-BIO-6 with the changes below and incorporate it into the DEIR as an enforceable mitigation measure. Changes are denoted in strikethrough and bold</p> <p>Impact to coastal California gnatcatcher-occupied Sensitive Habitat (Impact BIO-6)</p> <p>Mitigation Measure-BIO-6</p>	<p>Prior to finalizing CEQA document and Project Activities</p>	<p>City of San Marcos/ Project Applicant</p>

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Mitigation Measure	Timing	Responsible Party
<p>The permanent loss of 5.5 acres of Diegan Coastal Sage Scrub, and Disturbed Diegan Coastal Sage Scrub shall be mitigated at a minimum 34:1 ratio. Section 5.2.1 of the Draft Subarea Plan for San Marcos references the preferred order of mitigation to be on-site mitigation, off-site acquisition, in-lieu fees, and mitigation credits. For mitigation purposes, the Diegan Coastal Sage Scrub and Disturbed Diegan Coastal Sage Scrub acreages on the project site that would be impacted have been combined as these two vegetation communities are considered to have similar sensitivity under the Multiple Habitat Conservation Program. Thus, 5.5 acres of occupied coastal California gnatcatcher Diegan Coastal Sage Scrub will be preserved by the project applicant through off-site acquisition, in-lieu fees, or a purchase of credits from Buena Creek Mitigation Bank or another approved mitigation bank, or a combination thereof as approved by the City of San Marcos Planning Manager and the Wwildlife Agencies prior to issuance of the grading permit. If on site or off-site habitat mitigation will be completed by the Applicant to satisfy the compensatory mitigation requirements, it shall be carried out in accordance with a Habitat Mitigation and Monitoring Plan (HMMP) that outlines the strategy for enhancement and maintenance of the habitat for locally sensitive species occupying Diegan Coastal Sage Scrub. The HMMP will be provided to Wildlife Agencies for review and approval. Any land acquired as off-site mitigation to benefit gnatcatcher shall include a cost estimate for long-term management, an endowment, and land protection mechanism such as a conservation easement. Mitigation lands for gnatcatcher must be occupied or include high quality suitable habitat.</p>		