# ATTACHMENT J

# CALIFORNIA DEPARTMNT OF FISH & WILDLIFE LETTER DATED JUNE 14, 2024 AND PROJECT BIOLOGIST RESPONSE

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State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
South Coast Region
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San Diego, CA 92123
(858) 467-4201
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***GAVIN NEWSOM, Governor***
***CHARLTON H. BONHAM, Director***

June 14, 2024

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

**SUBJECT: FINAL ENVIRONMENTAL IMAGE REPORT (FEIR) FOR THE PACIFIC SPECIFIC PLAN, for SCH #2022050650, SAN DIEGO COUNTY**

Dear Chris Garcia:

The California Department of Fish and Wildlife (CDFW) provided comments on the Notice of Preparation (NOP) of a draft Environmental Impact Report (DEIR) for the proposed Pacific Specific Plan (Project) on July 12, 2022. We also provided comments on the DEIR on April 17, 2023. CDFW has reviewed the FEIR and the City of San Marcos' (City's) responses to CDFW's comments on the DEIR, provided to us on May 31, 2024. As detailed below, we disagree that our comments, which raised large concerns about biological resources impacts, were adequately addressed in the FEIR and Response to Comments. We request that the City postpone certifying the FEIR until such time as CDFW and the U.S. Fish and Wildlife Service (USFWS) concur that adequate mitigation for impacts to California Endangered Species Act (CESA) and Federal Endangered Species Act (ESA) listed species, as well as mitigation for other sensitive resources on the Project site, is achieved and the deficiencies identified in CDFW's comment letters are adequately addressed.

The proposed Project would develop 449 residential units, including a mix of apartments, rowhomes, villas, and affordable flats, on approximately 15.1 acres of a 33.2-acre Project site in the City. The Project would include a total of 927 parking spaces and 134,985 square feet of common open space area. The proposed Project would also include landscaping, bio-retention areas, and circulation improvements. The remaining approximately 17.9 acres of the Project site would be preserved and restored open space and conserved habitat.

Following meetings and site visits with the Project Proponent and the City, and upon reviewing the 2022 Notice of Preparation of the DEIR, CDFW expressed concern regarding the extremely high biological value of the property. Though surrounded by development, the Project site contains multiple sensitive resources, including a vernal pool/mima mound complex, sensitive habitat types, and multiple CESA- and ESA- listed species. Sensitive resources are distributed over the entirety of the Project site. CDFW and USFWS suggested two alternatives to the proposed Project be considered:

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conservation of the entire Project site as-is or a reduced footprint in which no more than 25% of the Project site would be impacted by the development footprint. The Reduced Footprint Alternative was considered in the DEIR. The proposed Project design would have reduced impacts to vernal pools but increased impacts to thread-leaved brodiaea (*Brodiaea filifolia*). The Reduced Footprint Alternative was deemed environmentally superior to the proposed Project; however, it was not selected.

Upon further meetings and discussions with CDFW and USFWS, the City added a Reduced Development Footprint Alternative – Vernal Pool Impact Minimization design to the FEIR. This design would result in approximately 16% less (5.22 acres less) development impact area to the total 33.2-acre Project site in comparison to the originally proposed Project and avoid all features occupied by San Diego fairy shrimp (*Branchinecta sandiegonensis*). Although this alternative would impact a substantially larger amount of thread-leaved brodiaea in comparison to the original Project, the Reduced Development Footprint Alternative – Vernal Pool Impact Minimization plan was determined in the FEIR to be the environmentally superior alternative due to the reduction in impacts to vernal pools and increase in preserve area in comparison to the originally proposed Project. This was selected as the new Project design.

CDFW has expressed concerns that mitigating for impacts to thread-leaved brodiaea, San Diego button celery (*Eryngium aristulatum* var. *parishii*), Orcutt's brodiaea (*Brodiaea orcuttii*), and San Diego fairy shrimp entirely within the Project site would exceed the proposed on-site conserved area's carrying capacity. Specifically, the mitigation for impacts to these species would be limited to the on-site conserved area that would be approximately half the size of the currently undeveloped property. Mitigation would consist of translocation of sensitive plant species and vernal pool creation and enhancement in interstitial areas currently not occupied by those species. The FEIR and Response to Comments argue that there is adequate unoccupied space to receive and maintain the translocated species. The FEIR states that there would be no net loss of these species or of acreage of their habitat and that impacts would be considered temporary, as the unoccupied areas would then become occupied habitat, and that the proposed mitigation would ultimately reduce impacts to Less that Significant. However, the proposed on-site mitigation may not be biologically viable, and success of the translocations is not guaranteed. A contingency plan with an adequate financial security should be put in place in the event that the mitigation fails.

For impacts to CESA-listed San Diego button celery and thread-leaved brodiaea, a CESA Incidental Take Permit (ITP) would be required (pursuant to Fish & G. Code, § 2080 et seq.). The standards for issuance of an ITP require impacts to the species covered by an ITP to be both minimized and fully mitigated [Cal. Code of Regs., § 783.2(a)(8); Fish & G. Code, § 208(b)(2)]. The fully mitigated standard may require permanent protection and perpetual management of compensatory habitat for impacts to the species covered by an ITP, and/or habitat enhancement and restoration. In order for CDFW to issue an ITP, impacts to CESA-listed species must meet the fully mitigated standard (Cal. Code of Regs., § 783.5). The FEIR and Response to Comments acknowledge that Project

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impacts cannot occur until permits from the US Fish and Service and CDFW, take permits, including an ITP from CDFW, are issued.

Proposed on-site mitigation is diagrammed in Figures 13a and 13b of Appendix C of the FEIR: the Biological Resources Technical Report. However, a detailed Habitat Mitigation and Monitoring Plan (HMMP) with methodologies and success criteria and a Preserve Management Plan (PMP) have not yet been submitted to the CDFW. CDFW recommends that the City and Project Proponent coordinate with CDFW to develop these plans to achieve the fully mitigated standard prior to certifying the FEIR and applying for an ITP. Topics of continued discussion included:

- potential preservation of habitat off site;
- translocation methodology;
- success criteria and contingency measures;
- cost analysis for funding a Security to ensure mitigation and short term-monitoring and management and an endowment for long term (in-perpetuity) protection and management of the Habitat Management (HM) Lands. The Security should be enough to replace the mitigation, including acquisition of HM lands if need be, if the mitigation fails;
- protection of the on-site Preserve from human and domestic pet encroachment, as there is no proposed buffer zone between the sensitive resources and the edges of the development; and,
- whether there will there be a required fuel modification zone that will encroach into occupied habitat in the on-site Preserve.

We would like to acknowledge that the City and Project Proponent have consulted repeatedly with the CDFW and USFWS to develop adequate compensatory mitigation measures and consider various reconfigurations of the Project design to reduce the unavoidable environmental impacts of the proposed Project. Unfortunately, more work remains to be done to develop a Project configuration and mitigation package which would adequately avoid and/or mitigate the Project's impacts to listed species and sensitive resources on site. If the City should move forward with approval of the Specific Plan project as currently proposed, we advise the City to be cognizant that the mitigation as currently proposed may not meet the standards for issuance of an ITP.

At this time, we recommend that the City postpone certification of the proposed Pacific Specific Project FEIR until the City, the Project Proponent, CDFW, and USFWS agree on the adequacy of the proposed mitigation. We would appreciate your cooperation in this matter and request that the CDFW be advised of any decisions made regarding the Pacific Specific Project. If you should have any questions pertaining to our comments,

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please contact Meredith Osborne[1] at (858) 354-3334.

Sincerely,

DocuSigned by:
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Heather A. Pert
Environmental Program Manager
South Coast Region

ec: California Department of Fish and Wildlife
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# Memorandum

**HELIX Environmental Planning, Inc.**
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**Date:** June 17, 2024

**To:** Greg Waite, The Las Posas Owner LPV, LLC

**cc:** Gill Miltenberger, The Las Posas Owner LPV, LLC
Vanessa Schiedel, DUDEK
Matt Simmons, CCI
Jason Gremminger, CCI
Kimberly Foy, Gatzke Dillon & Ballance LLP

**From:** Thomas Liddicoat, HELIX Environmental Planning, Inc.

**Subject:** Response to the June 14, 2024 letter from CDFW on the Final Environmental Impact Report (FEIR) for the Pacific Specific Plan (SCH #2022050650)

**HELIX Project:** 00357.00040.001

**Message:**

This memorandum was prepared to address the June 14, 2024 letter from the California Department of Fish and Wildlife (CDFW) commenting on the Final Environmental Impact Report (FEIR) for the Pacific Specific Plan (Project), State Clearinghouse (SCH) #2022050650, San Diego County (CDFW 2024).

The project applicant has collaborated extensively with the wildlife agencies (CDFW and USFWS) about the site since mid-2020 to design a project, as well as consider several alternatives, which would avoid and minimize impacts to sensitive natural communities and special-status plants and animal species to the extent feasible. As a result of this multi-year collaboration, there is a uniform understanding that no cohesive 25% development alternative would avoid impacts to natural communities or avoid all special-status species. During meetings, both on-site and virtually, it was emphasized by the wildlife agencies that the vernal pools occupied by listed fairy shrimp and vernal pools supporting listed plants were the most sensitive resources on-site and that a development alternative along the southern portion of the site would be most sensible to avoid and minimize impacts to the most sensitive resources despite the impact to thread-leaved brodiaea.

In addition to designing a general footprint to avoid and minimize impacts, these various project designs considered specific elements with respect to fire protection, fuel modification zones, and development buffers from preserve areas. Review of the project by the City Fire Department determined that additional fuel modification zones that could extend or encroach into the preserve would not be required. Although no fuel modification zones would be required, the project design includes buffers

(minimum of six feet wide approximately) to set-back development from proposed preserve areas to avoid potential edge effects and ensure protection of species and habitats in the proposed on-site preserve. Furthermore, the proposed preserve on-site is separated from development by a five-foot tubular steel fence, as well as in many cases, grade separated by a retaining wall.

In consideration of the CDFW comments regarding off-site contingency and as discussed on page RTC-3 of the Responses to Comment Letters Received on the Draft EIR, biological surveys for the project found the resources and sensitive species on-site occur in range and density that would suggest that the site does have the carrying capacity to mitigate fully on-site. In addition, the smaller development footprint in the 228 plan (i.e., Reduced Development Alternative – Vernal Pool Impact Minimization design) provides more available land for mitigation. Consequently, the locations and spatial area of on-site proposed mitigation as presented on Figures 13a and 13b of EIR Appendix C and on Figure 2 of EIR Appendix C-1, are expected to provide sufficient on-site compensation without needing to rely on an off-site contingency. Should an issue arise during the agency permitting process that necessitates an offsite augmentation to the mitigation (EIR MM-BIO-1), the project applicant has identified several nearby off-site locations in the City of San Marcos that are suitable candidate receptor sites (with appropriate soils and habitat) to support mitigation for the target species. Evidence of thread-leaved brodiaea translocations have been successfully demonstrated within the city of San Marcos previously. In the event onsite translocation is deemed inadequate during the subsequent permitting process, the project applicant has committed to achieving full mitigation, whether onsite or offsite as noted in the CDFW letter.

Nevertheless, to address and accommodate the wildlife agency comments about carrying capacity and off-site contingency, the mitigation measures in the FEIR (i.e., MM-BIO-1 and MM-BIO-7b) provide requirements pertinent to off-site contingency. Further as an additional contingency, these mitigation measures of the EIR, as well as EIR MM-BIO-2, require funding via an endowment of other funding mechanism approved by the City and pertinent permit-issuing resource agency prior to project implementation. These mitigation measures (i.e., MM-BIO-1, MM-BIO-2, and MM-BIO-7b) also acknowledge that additional specific contingencies may be required by the wildlife agencies as part of approval of the final mitigation plans, management plans, and permitting process. The applicant understands that wildlife agency approval of detailed mitigation plans, as specified by the EIR mitigation measures, will be required. Based on the past four years of coordination with the wildlife agencies on the project, including the proposed mitigation, the FEIR fully addresses and incorporates the agencies comments and provides adequate mitigation to fully mitigate significant impacts to biological resources.

As referenced in the CDFW letter, there is a process and application for the required Incidental Take Permit (ITP) which will include the steps, concerns and topics included in the letter. Additionally, the ITP application process cannot start until the project is approved and the EIR is certified. We look forward to continuing to work with the agencies through this permitting process prior to development.

**References Cited:**

California Department of Fish and Wildlife (CDFW). 2024. Final Environmental Image Report (FIER) for the Pacific Specific Plan, for SCH #2022050650, San Diego County. June 14.