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November 27, 2023

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**Subject: Downtown Vitalization Specific Plan (Plan)
Notice of Preparation (NOP)
SCH No.: 2023100567**

Dear Guido Persicone:

The California Department of Fish and Wildlife (CDFW) received a Notice of Preparation (NOP) to prepare a Draft Environmental Impact Report (DEIR) from the City of Marina's Community Development Department (City of Marina) for the City of Marina Downtown Vitalization Specific Plan (Plan) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Plan that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Plan 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. While the comment period may have ended, CDFW would appreciate it if you will still consider our comments.

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 & Game Code, Section 711.7, subd. (a) & 1802; Pub. Resources Code, Section 21070; CEQA Guidelines Section 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (Id., Section 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing

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specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, Section 21069; CEQA Guidelines, Section 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, future projects tiered from this Plan may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & Game Code, Section 1600 et seq.). Likewise, to the extent implementation of future projects tiered from this Plan may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & Game Code, Section 2050 et seq.), related authorization as provided by the Fish and Game Code may be required.

PLAN DESCRIPTION SUMMARY

Proponent: City of Marina

Objective: The purpose of the Specific Plan is to establish a direct connection between the City of Marina's General Plan and opportunities for vitalization and enhancement within Downtown Marina. The planning horizon for the Specific Plan is the 20-year period starting with the Plan's adoption date. An overall goal is the orderly development of Downtown Marina in a method consistent with the City's General Plan and, more specifically, with the community's vision as developed through the community outreach process. Based on existing land use designations and underlying zoning requirements, described under General Plan land use designations above, potential buildout of the Specific Plan could include approximately an additional 1,385,000 square feet of new retail and office space and 2,904 new housing units. When added to existing development, the Plan area could include a total of up to approximately 2,390,000 square feet of commercial and retail space and up to 5,205 housing units. However, the pace of future development would largely be determined by market forces, and thus it is difficult to determine at what date buildout would occur.

Location: The Plan area is Downtown Marina located in the City of Marina. The City of Marina is located in Monterey County, adjacent to Monterey Bay and along State Route 1, approximately nine miles north of the City of Monterey and 18 miles south of the City of Watsonville. The city encompasses approximately 9.8 square miles and extends for five miles along the Pacific Ocean, from former Fort Ord land and the California State University Monterey Bay (CSUMB) campus on the south, to the Salinas River on the north, and inland for four miles to the Marina Municipal Airport. The former Fort Ord Army Base, which was closed in 1994, is located in the southern portion of the city. The Plan area does not include any former Fort Ord lands. The Plan area encompasses approximately 322 acres near the center of the City of Marina.

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The Plan area is generally bounded:

- On the northeast by parcels along the north side of Reservation Road
- On the south by Reindollar Avenue and various residential north-south secondary roads, such as Sunset Avenue, Carmel Avenue, and Crescent Avenue
- On the east by Salinas Avenue
- On the northwest by Del Monte Boulevard, approximately 0.5 mile east of State Route (SR) 1

Timeframe: Unspecified

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the City of Marina in adequately identifying and/or mitigating the Plan's significant, or potentially significant, direct, indirect, and cumulative impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document for this Plan.

The NOP indicates that the DEIR for the Plan will consider potential environmental effects of the proposed Plan to determine the level of significance of the environmental effects and will analyze these potential effects to the detail necessary to make a determination on the level of significance. The DEIR will also identify and evaluate alternatives to the proposed Plan. When a DEIR is prepared, the specifics of mitigation measures may be deferred, provided the lead agency commits to mitigation and establishes performance standards for implementation.

To adequately assess any potential impact to biological resources, focused biological surveys should be conducted by a qualified biologist and/or botanist during the appropriate survey period(s) in order to determine whether any special-status species may be present within the vicinity of the planning area for all future projects tiered from this Plan. Properly conducted biological surveys, and the information assembled from them, are essential to identify necessary avoidance, minimization, and mitigation measures and/or the need for additional or protocol-level surveys, and to identify any project-related impacts under CESA and to other species of concern.

Special-Status Species

Based on aerial imagery and species occurrence records from the California Natural Diversity Database (CNDDDB) (CDFW 2023), the proposed Plan area is known to and/or has the potential to support special-status species, and these resources need to be evaluated and addressed prior to any approvals that would allow ground-disturbing activities. CDFW is concerned regarding potential impacts to special status species

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including, but not limited to, the State endangered Seaside bird's-beak (*Cordylanthus rigidus ssp. littoralis*); the State threatened and federally endangered Monterey gilia (*Gilia tenuiflora ssp. arenaria*); the State threatened tricolored blackbird (*Agelaius tricolor*); the State candidate listed endangered Crotch's bumble bee (*Bombus crotchii*) and western bumble bee (*Bombus occidentalis*); and the State species of special concern burrowing owl (*Athene cunicularia*), coast horned lizard (*Phrynosoma blainvillii*), Monterey shrew (*Sorex ornatus salarii*), and Northern California legless lizard (*Anniella pulchra*).

Special Status Plants

Plants listed pursuant to the federal Endangered Species Act, CESA, and the Native Plant Protection Act (NPPA), as well as other special status plants identified by the California Native Plant Society Rare Plant Ranking System may occur in many locations within the Plan. State listed species with the potential to occur include but are not limited to the State endangered Seaside bird's-beak and State threatened and federally endangered Monterey gilia.

The revised initial study on page 40 states that, "no Federal or State listed plants were observed within the Specific Plan area." However, the field reconnaissance survey did not survey for special status plants during the appropriate bloom period. As such, CDFW recommends that a qualified botanist conduct a habitat assessment for any projects tiered from this Plan well in advance of project implementation to determine if the project area or its vicinity contains suitable habitat for special-status plant species. If suitable habitat is present, CDFW recommends that individual project sites be surveyed for special-status plants by a qualified botanist following the "Protocols for surveying and evaluating impacts to special status native plant populations and sensitive natural communities" (California Department of Fish and Wildlife 2018). This protocol, which is intended to maximize detectability, includes identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period.

If special-status plants are detected, CDFW recommends special-status plant species be avoided whenever possible by delineating and observing a no-disturbance buffer of at least 50 feet from the outer edge of the plant population(s) or specific habitat type(s) required by special-status plant species. If buffers cannot be maintained, then consultation with CDFW is warranted to determine appropriate minimization and mitigation measures for impacts to special-status plant species.

If a State-listed or NPPA rare plant species, such as the State endangered Monterey gilia, is identified during botanical surveys conducted as part of a project tiered from this Plan, consultation with CDFW is warranted to determine if the project can avoid take of that species. If take cannot be avoided, take authorization would need to occur through

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issuance of an ITP pursuant to Fish and Game section 2081 subdivision (b) or California Code of Regulations, title 14, section 786.9, subdivision (b).

Crotch's Bumble Bee and Western Bumble Bee

The NOP states on page C-10, that the planning area has a low potential for these species due to lack of sightings recorded on CNDDDB. CDFW does not concur with this conclusion due to the CNDDDB being a positive occurrence database only, which can be reliable for determining presence of a species but unreliable as a primary source for concluding absence. For all future projects tiered from this Plan, CDFW recommends conducting a habitat assessment for Crotch's bumble bee (CBB) and Western bumble bee (WBB). If suitable habitat is present, CDFW recommends conducting protocol surveys following the "Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species" (CDFW 2023). This survey protocol recommends conducting three onsite surveys during biological studies to document the presence or absence of this species. "Each survey should ideally be spaced 2-4 weeks apart during the Colony Active Period to ensure that they cover a range of dates and account for variability in resource use by the candidate species and floral resource phenology within the site" (CDFW 2023).

If CBB or WBB needs to be captured or handled as part of the survey effort, please note that a 2081(a) Memorandum of Understanding (MOU) with CDFW will be needed (CDFW 2023). If CBB or WBB is found at any point during surveys or during the construction of a project, consultation with CDFW is warranted to determine if the project can avoid take. If take cannot be avoided, take authorization is warranted prior to initiating or continuing with ground-disturbing activities to comply with CESA. Take authorization would occur through issuance of an Incidental Take Permit (ITP) by CDFW, pursuant to Fish and Game section 2081 subdivision (b).

Cumulative Impacts

Given that the Plan serves primarily as a planning tool and that future project-level CEQA documents are expected to be tiered from it, CDFW recommends that a cumulative impact analysis be conducted for all potential biological resources that will either be significantly or potentially significantly impacted by implementation of the this Plan, including those whose impacts are determined to be less than significant with mitigation incorporated or for those resources that are rare or in poor or declining health and will be impacted by the any future project, even if those impacts are expected to be relatively small (i.e. less than significant). CDFW recommends cumulative impacts be analyzed using an acceptable methodology to evaluate the impacts of past, present, and reasonably foreseeable future projects on resources and be focused specifically on the resource, not the project. An appropriate resource study area identified and utilized

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for this analysis is advised. CDFW staff is available for consultation in support of cumulative impacts analyses as a trustee and responsible agency under CEQA.

California Endangered Species Act

Reasonably foreseeable future projects tiered from this Plan may be subject to CDFW's regulatory authority pursuant to CESA. In the event that species listed under CESA are detected during surveys for these projects, consultation with CDFW is warranted to discuss how to implement the project and avoid "take," or if avoidance is not feasible, to acquire a State ITP, pursuant to Fish and Game Code section 2081 subdivision (b), prior to any ground disturbing activities. In addition, CDFW advises that mitigation measures for the CESA listed species be fully addressed in the CEQA document prepared for any future project tiered from this Plan.

CDFW also recommends that the DEIR for this Plan include the CESA recommendations above and advises that projects tiered from this Plan retain a qualified biologist to determine if potential impacts to CESA listed species may require the need to obtain a 2081 ITP.

Lake and Stream Alteration

Reasonably foreseeable future projects tiered from this Plan may be subject to CDFW's regulatory authority pursuant to Fish and Game Code section 1600 et seq. Fish and Game Code section 1602 requires project proponents to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake; or (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral or intermittent as well as those that are perennial in nature. For additional information on notification requirements, please contact our staff in the Lake and Streambed Alteration (LSA) Program at (559) 243-4593, or R4LSA@wildlife.ca.gov.

CDFW therefore recommends that the DEIR for this Plan include information related to these requirements of Fish and Game code and advise that projects tiered from this Plan retain a qualified biologist to determine if potential impacts to streams may require the need to obtain a 1600 LSA Agreement.

Nesting birds

CDFW recommends that all projects tiered from this Plan occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the breeding season (February 15 through September 15), each future

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project applicant is responsible for ensuring that implementation of their project does not result in a violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes.

To evaluate future project-related impacts on nesting birds, CDFW recommends that a qualified biologist conduct an assessment of nesting habitat during biological surveys in support of each project's CEQA document, and then conduct pre-activity surveys for active nests no more than 10 days prior to the start of ground or vegetation disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around each future project site to identify nests and determine their status. A sufficient area means any area potentially affected by a project. In addition to direct impacts (i.e., nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. Prior to initiation of construction activities, CDFW recommends that a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once construction begins, CDFW recommends having a qualified biologist continuously monitor nests to detect behavioral changes resulting from each future project. If behavioral changes occur, CDFW recommends halting the work causing that change and consulting with CDFW for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or on-site parental care for survival. Variance from these no-disturbance buffers is possible when there is compelling biological or ecological reason to do so, such as when the construction areas would be concealed from a nest site by topography. CDFW recommends that a qualified biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

CEQA Alternatives Analysis

CDFW recommends that the information and results obtained from the cumulative impacts analysis conducted as part of this Plan's DEIR be used to develop and modify the Plan's alternatives to avoid and minimize impacts to biological resources to the maximum extent possible. Please note that for all future projects tiered from this Plan, when efforts to avoid and minimize have been exhausted, remaining impacts to sensitive biological resources may need to be mitigated to reduce impacts to a less than significant level, if feasible.

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CNDDDB

Please note that the CNDDDB is populated by and records voluntary submissions of species detections. As a result, species may be present in locations not depicted in the CNDDDB but where there is suitable habitat and features capable of supporting species. A lack of an occurrence record in the CNDDDB does not mean a species is not present. All project's tiered from this Plan should adequately assess any potential project-related impacts to biological resources by ensuring biological surveys are conducted by a qualified wildlife biologist during the appropriate survey period(s) and using the appropriate protocol survey methodology as warranted in order to determine whether or not any special status species are present at or near the project area.

Federally Listed Species

CDFW recommends projects tiered from this Plan consult with the USFWS on potential impacts to federally listed species including, but not limited to Monterey gilia and Monterey spineflower (*Chorizanthe pungens* var. *pungens*) depending on the location of the project. Take under the Federal Endangered Species Act (FESA) is more broadly defined than CESA; take under FESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS in order to comply with FESA is advised well in advance of any ground disturbing activities.

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, Section 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: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. 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: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

Filing Fees

The Plan, 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

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operative, vested, and final. (Cal. Code Regs, tit. 14, Section 753.5; Fish & G. Code, Section 711.4; Pub. Resources Code, Section 21089.)

CONCLUSION

CDFW appreciates the opportunity to comment on the NOP to assist the City of Marina's Community Development Department in identifying and mitigating this Plan's impacts on biological resources.

More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>). Please see the enclosed Mitigation Monitoring and Reporting Program (MMRP) table which corresponds with recommended mitigation measures in this comment letter. Questions regarding this letter or further coordination should be directed to Evelyn Barajas-Perez, Environmental Scientist, at (805) 503-5738 or evelyn.barajas-perez@wildlife.ca.gov.

Sincerely,

DocuSigned by:

Bob Stafford

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Bob Stafford for Julie A. Vance
Regional Manager

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REFERENCES

California Department of Fish and Wildlife. 2018. Protocols for surveying and evaluating impacts to special status native plant populations and sensitive natural communities. California Department of Fish and Wildlife, Sacramento, California, USA.

California Department of Fish and Wildlife. 2023. Survey considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species. California Department of Fish and Wildlife, Sacramento, California, USA.