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Governor's Office of Planning & Research

April 4 2024

STATE CLEARINGHOUSE

April 4, 2024

Alyson Hunter, AICP, Planning Services Manager
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**Subject: City of Marina General Plan Update (Plan)
Notice of Preparation (NOP)
SCH No.: 2024021141**

Dear Alyson Hunter:

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 Community Development Department (City) for the City of Marina General Plan Update (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 respectfully requests the City of Marina 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,

Conserving California's Wildlife Since 1870

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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 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, reasonably foreseeable 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 reasonably foreseeable 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.

Nesting Birds: CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs and nests include, sections 3503 (regarding unlawful take, possession or needless destruction of the nest or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird).

PROJECT DESCRIPTION SUMMARY

Proponent: City of Marina

Objective: The proposed Plan consists of a comprehensive update to the City's 2000 General Plan. The proposed Plan will serve as a long-term framework for future growth and development, represents the community's vision for the future, and contains goals and policies upon which the City Council, Planning Commission, staff, and the entire community will base land use, development, and natural resource decisions. The Plan would provide a contemporary plan that will guide the community through the next 20 years and will reflect recent development decisions and changes in State law.

The Plan will include updates to the following required General Plan Elements: Land Use, Circulation, Natural Conservation, Safety, Open Space, Air Quality and Environmental Justice. Other non-required topics will include Economic Development and Fiscal Sustainability, Community Character and Identity, and Public Health, among others. The Plan does not include updates to the Housing Element which was adopted in December 2023 and is currently in the process of being certified by the California Department of Housing and Community Development. The City also contains several Specific Plans that will remain in full force and in effect.

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Location: The Plan area includes the entirety of the City of Marina, California. The City of Marina is primarily developed, with parks, beaches, and scattered undeveloped parcels. Portions of the Plan area occur in the Coastal Zone and contain mapped Critical Habitat. In addition, the Plan area contains sensitive archaeological and historic resources.

Timeframe: Approximately the next 20 years

COMMENTS AND RECOMMENDATIONS

The NOP indicates that the DEIR for the Plan will consider potential environmental effects of Plan implementation 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. CDFW is unable to provide substantive comments due to the limited Plan information provided. Many special-status plant and animal species in the proposed Plan area have been reported to the California Natural Diversity Database (CNDDDB) (CDFW 2024). The following species should be considered as part of the DEIR that will be drafted for this Plan:

The State fully protected (FP) and endangered (SE) and federally endangered (FE) Santa Cruz long-toed salamander (*Ambystoma macrodactylum croceum*); the SE and FE coastal dunes milk-vetch (*Astragalus tener* var. *titi*), foothill yellow-legged frog - south coast DPS (*Rana boylei*), Hickman's cinquefoil (*Potentilla hickmanii*), Menzies' wallflower (*Erysimum menziesii*), Monterey clover (*Trifolium trichocalyx*), and Tidestrom's lupine (*Lupinus tidestromii*); the SE and federally threatened (FE) beach layia (*Layia carnosa*); the State threatened (ST) and FE Monterey gilia (*Gilia tenuiflora* ssp. *arenaria*); the ST and federally threatened (FT) California tiger salamander - central California DPS (*Ambystoma californiense* pop. 1); the FP and SE bald eagle (*Haliaeetus leucocephalus*); the SE Seaside bird's-beak (*Cordylanthus rigidus* ssp. *littoralis*); the ST bank swallow (*Riparia riparia*), California black rail (*Laterallus jamaicensis coturniculus*), and tricolored blackbird (*Agelaius tricolor*); the State candidate listed endangered (SCE) Crotch's bumble bee (*Bombus crotchii*) and western bumble bee (*Bombus occidentalis*); the FP and FT southern sea otter (*Enhydra lutris nereis*); the FP golden eagle (*Aquila chrysaetos*) and white-tailed kite (*Elanus leucurus*); the species of special concern (SSC) and federally threatened (FT) California red-legged frog (*Rana draytonii*) and western snowy plover (*Charadrius nivosus nivosus*); the federally threatened and California Rare Plant Rank (CRPR) 1B.2 Monterey spineflower (*Chorizanthe pungens* var. *pungens*); the SSC and federally proposed threatened (FPT) western pond turtle (*Actinemys marmorata*) and western spadefoot (*Spea hammondi*); the FT steelhead - south-central California coast DPS (*Oncorhynchus mykiss irideus*); and the SSC American badger (*Taxidea taxus*), black swift (*Cypseloides niger*), burrowing owl (*Athene cunicularia*), coast horned lizard

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(*Phrynosoma blainvillii*), coast range newt (*Taricha torosa*), Monterey hitch (*Lavinia exilicauda harengus*), Monterey ornate shrew (*Sorex ornatus salarius*), northern California legless lizard (*Anniella pulchra*), northern harrier (*Circus hudsonius*), and yellow warbler (*Setophaga petechia*).

California Endangered Species Act

Some reasonably foreseeable future projects tiered from this Plan will be subject to CDFW's regulatory authority pursuant to CESA. In the event that species listed under CESA are detected and have potential to be impacted by a project proposed tiered from this Plan, consultation with CDFW is warranted to discuss how to avoid "take," or if avoidance is not feasible, to acquire a State Incidental Take Permit (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 therefore recommends that the DEIR for this Plan include information related to these requirements 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.

Botanical Surveys

CDFW recommends that the DEIR for this Plan include a measure requiring that each project implemented within the Plan area be surveyed by a qualified botanist for any possible special-status plants following the "Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities" (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>) as part of the biological technical studies completed in support of the CEQA documents tiered from this Plan. CDFW recommends that the plant surveys be floristic and utilize a known reference site for any special status plants in order to provide a high level of confidence in the effort and results.

If a special status plant is found, CDFW recommends that the 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 or federally listed plant species is identified during botanical surveys, consultation with CDFW and/or the USFWS is warranted to determine permitting needs.

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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 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 as referenced above.

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 any variance from these buffers and notify CDFW in advance of implementing a variance.

Cumulative Impacts

Given that a general 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 Plan,

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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 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.

Lake and Stream Alteration (LSA)

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 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 LSAA.

CEQA Alternatives Analysis

CDFW recommends that the information and results obtained from the cumulative impacts analysis conducted as part of this Plan's DEIR document 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, that 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 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 consulting with the USFWS on potential impacts to federally listed species. 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 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 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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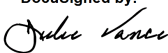
operative, vested, and final. (Cal. Code Regs, tit. 14, Section 753.5; Fish & G. Code, Section 711.4; Pub. Resources Code, Section 21089.)

CONCLUSION

CDFW appreciates the opportunity to comment on the NOP to assist the City of Marina 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>). 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:

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Regional Manager

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REFERENCES

California Department of Fish and Wildlife. 2024. Biogeographic Information and Observation System (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>. Accessed 26 March 2024.