

RESOLUTION NO. 2024-62

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA MAKING FINDINGS
AND APPROVING REVISIONS TO MITIGATION MEASURE 4.4-1 OF THE FINAL
ENVIRONMENTAL IMPACT REPORT FOR THE MARINA STATION SPECIFIC PLAN

WHEREAS, the City Council for the City of Marina (the “City Council”) certified a Final Environmental Impact Report for the Marina Station Specific Plan (SCH 2005061056) on March 4, 2008 (“FEIR”) and approved the Marina Station Specific Plan as well as certain entitlements for the Marina Station development project (“Project”);

WHEREAS, the City Council as part of the certification of the FEIR pursuant to Resolution No. 2008-41 adopted certain mitigation measures and adopted a mitigation monitoring and reporting program (“MMRP”); and

WHEREAS, the mitigation measures adopted by the City Council included Mitigation Measure 4.4-1 related to the preparation and approval of a Restoration Plan for the Monterey spineflower; and

WHEREAS, subsequent to the certification of the FEIR and the adoption of the mitigation measures and the MMRP, changes were made to the Project to retain approximately 28.5 acres of wet meadow area within Phase 8 of the Project to provide additional habitat restoration area including for the Monterey spineflower; and

WHEREAS, as a result of the revisions to the Project and the preservation of the 28.5 acres of wet meadow area in Phase 8 along with the Project developer’s agreement to provide an additional 79.78 acres of restoration area immediately north of Phase 8, approximately 108 acres of restoration area is being provided to address the biological impacts of the Project including the impacts on the Monterey spineflower; and

WHEREAS, the Project developer has prepared a Restoration Plan that addresses the requirements of the mitigation measures included in the MMRP; and

WHEREAS, the approval of the Restoration Plan by the United States Fish and Wildlife Service prior to the approval of Final Map and building permits for the Project is no longer necessary since the inclusion of the additional restoration areas in Phase 8 of the Project as well as the dedication of the 79.78 acres of restoration land by the Project developer north of Phase 8 of the Project resulting in approximately 108 acres of restoration area; and

WHEREAS, the City Council, based on information provided in the staff report and at the publicly noticed City Council meeting, has determined that revision of Mitigation Measure 4.4-1 as proposed below will continue to reduce the significant impacts identified in the FEIR to less than significant and will not create any new significant impacts or increase the severity of any already identified impacts in the EIR; and

WHEREAS, On March 4, 2008, the City Council of the City of Marina certified the final environmental impact report for the Marina Station Project (State Clearing House Number 2005061056). The FEIR served as the environmental review for the Development and the Project Approvals and entitlements. Section 15162 of the CEQA Guidelines states that if an FEIR or negative declaration has been adopted for a project, no subsequent FEIR is to be prepared unless there have been substantial changes to the project, substantial changes with respect to the circumstances under which the project is undertaken or new information of substantial importance shows that the project would have significant effects not discussed in the FEIR.

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Marina hereby approves revisions to Mitigation Measure 4.4-1, including in the MMRP to read as follows:

Mitigation 4.1.-1 The applicant shall mitigate for the loss of 51 acres of Monterey spineflower through a program of seed and/or soil bank salvage, establishment of a new spineflower restoration area at a 1:1 ration to the area impacted (either on- or off-site), and managing and monitoring to assure that there will be no net loss of spineflower affected by the project. A Restoration Plan shall be prepared by a qualified biologist outlining the details pertaining to onsite or offsite restoration areas, plant salvage, seeding, and planting specifications, and monitoring programs which describes annual monitoring efforts incorporating success criteria and contingency planning if success criteria are not met. The plan shall be completed and approved by the City and USFWS, as applicable, and funding secured prior to the issuance of any grading or building permit for **Phase 8 of** the project and shall not terminate until there has been verification from a qualified biologist and City staff, in consultation with USFWS, that such measures have been successfully implemented. Possible restoration sites includes the adjacent Armstrong Ranch, the coastal dunes scrub habitat west of Highway 1 within Monterey County Regional Parks land (Marina Dunes Reserve) or private ownership land south of the project site owned by the Monterey Regional Parks District adjacent to Locke Paddon Community Park, ~~or~~ an inland population of Monterey spineflower located along the Salinas River near Soledad **or the wet meadows area located in Phase 8 of the project.** Restoration areas shall be preserved through the establishment of a conservation easement.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 4th day of June 2024, by the following vote:

AYES: COUNCIL MEMBERS: McAdams, Visscher, Delgado

NOES: COUNCILMEMBERS: None

ABSTAIN: COUNCILMEMBERS: None

ABSENT: COUNCILMEMBERS: None

ATTEST:

Bruce C. Delgado, Mayor

Anita Sharp, Deputy City Clerk

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of June 4, 2024

**THE CITY COUNCIL OF THE CITY OF MARINA CONSIDER ADOPTING
RESOLUTION NO. 2024-, MAKING FINDINGS AND APPROVING REVISIONS
TO MITIGATION MEASURE 4.4-1 FOR THE FINAL ENVIRONMENTAL
IMPACT REPORT FOR THE MARINA STATION SPECIFIC PLAN. THIS
ACTION IS EXEMPT FROM ENVIRONMENTAL REVIEW PER § 15162 OF THE
CEQA GUIDELINES.**

REQUEST:

It is requested that the Marina City Council:

1. Approve Resolution 2024-, making findings and approving revisions to Mitigation Measure 4.4-1 for the Final Environmental Impact Report for the Marina Station Specific Plan and find the action exempt from environmental review per § 15162 of the CEQA Guidelines.

BACKGROUND:

The City of Marina certified a Final Environmental Impact Report for the Marina Station Specific Plan (SCH 2005061056) on March 4, 2008, and approved the Marina Station Specific Plan. As part of the Certification of the Final Environmental Impact Report (“FEIR”), the City adopted certain mitigation measures to reduce significant environmental impacts identified in the FEIR and adopted a Mitigation Monitoring and Reporting Program (“MMRP”). The mitigation measures addressed a variety of issues including traffic impacts and measures to address the biological impacts of the Marina Station Project.

The FEIR identified that the “project would require grading, excavation, and other activities that would result in a permanent loss or disturbance of 51 acres of Monterey spineflower, a federally threatened plant species” as a significant impact that could be mitigated to a less than significant level with the following mitigation:

Mitigation 4.1.-1 The applicant shall mitigate for the loss of 51 acres of Monterey spineflower through a program of seed and/or soil bank salvage, establishment of a new spineflower restoration area at a 1:1 ration to the area impacted (either on- or off-site), and managing and monitoring to assure that there will be no net loss of spineflower affected by the project. A Restoration Plan shall be prepared by a qualified biologist outlining the details pertaining to onsite or offsite restoration areas, plant salvage, seeding, and planting specifications, and monitoring programs which describes annual monitoring efforts incorporating success criteria and contingency planning if success criteria are not met. The plan shall be completed and approved by the City and USFWS and funding secured prior to the issuance of any grading or building permit for the project and shall not terminate until there has been verification from a qualified biologist and City staff, in consultation with USFWS, that such measures have been successfully implemented. Possible restoration sites include the adjacent Armstrong Ranch, the coastal dunes scrub habitat west of Highway 1 within Monterey County Regional Parks land (Marina Dunes Reserve) or private ownership land south of the project site owned by the Monterey Regional Parks District adjacent to Locke Paddon Community Park, or an inland population of Monterey spineflower located along the Salinas River near Soledad. Restoration areas shall be preserved through establishment of a conservation easement.

In April 2008, Creekbridge Homes, LLC (“Original Developer”) and the Sierra Club, Ventana Chapter (“SCVC”) entered into an Agreement, Mutual Release and Covenant Not to Sue (“SCVC Agreement”) related to the Marina Station project (“Development”). The SCVC Agreement was entered into to avoid potential litigation from SCVC challenging the adequacy of the FEIR. As part of the SCVC Agreement, the Original Developer agreed to make some modifications to the Development including revisions to Phase 8 of the Development to preserve two wet meadows in that area consisting of approximately 28.5 acres. Additionally, the SCVC Agreement provided for revisions to mitigation measure 4.4-1 related to the preparation of a Restoration Plan pertaining to Monterey spineflower. The SCVC Agreement provided that the Original Developer would apply to the City to amend mitigation measure 4.4-1 to allow for the recording of the Final Map and construction on Phases 1 through 7 of the Development to occur prior to the Restoration Plan for the Monterey spineflower being approved by the City and the United States Fish and Wildlife Service (“USFWS”). The SCVC Agreement requires that the grading of Phase 8 of the Development cannot occur prior to the approval of the Restoration Plan.

The preservation of the wet meadows in Phase 8 of the Development provides a restoration area of the spineflower within the project site. The 28.5 acres in Phase 8 along with additional 79.78 acres of restoration area directly north of Phase 8 of the Development site would result in a mitigation area of approximately 108 acres which in SCVC estimation, in accordance with its comments on the FEIR, would be sufficient to mitigate the 51 acres of spineflower habitat that would be lost as a result of the Development.

The City, as part of the approval of the tentative map for the Development approved revisions to the Development in Phase 8 consistent with the SCVC Agreement preserving the wet meadows and creating an additional 28.5 acres of habitat area for the spineflower that will be incorporated into the conservation easement (“Easement”) covering the lands to the north, outside of the Project boundary. As a result of the revisions to Phase 8 of the Development and the additional 28.5 acres of habitat area created by those revisions with the project site and the 79.78 acres to the north for a total of 108 acres of conserved mitigation areas, the approval of the Restoration Plan by the City and the USFWS before approval of the Final Map and building permits is no longer necessary to mitigate the significant environmental impact identified in the FEIR related to the loss of 51 acres of spineflower habitat. As noted in the FEIR, the intent of the mitigation measure 4.4-1 as originally drafted was to ensure that prior to commencement of construction, habitat restoration areas were identified in the Restoration Plan.¹ Those habitat restoration areas are now clearly identified within the Development itself as part of Phase 8.

Third Millenium Partners, the current developer of the Development contracted with Denise Duffy & Associates (“DD&A”) to prepare the Restoration Plan. The final Restoration Plan, dated April 25, 2024 was approved by the SCVC on May 1, 2024. It should be noted that the original certification of the FEIR as well as the SCVC Agreement identified DD&A as the “biologist of record” and as being uniquely qualified to prepare follow up documents required by the MMRP including the Restoration Plan. City staff has also reviewed the Restoration Plan and has determined that it meets the requirements of the FEIR. However, obtaining USFWS review and approval of the Restoration Plan will take additional time. Third Millenium Partners is seeking approval of the Final Map and intends to start grading Phase 1/2 of the project. Revisions of Mitigation measure 4.4-1 as proposed below will continue to mitigate the impact of the Development on the spineflower to a less than significant level.

¹ Marina Station Specific Plan Final Environmental Impact Report, pg. 62.

Staff is proposing that Mitigation measure 4.4-1 be amended to read as follows (new language underlined and bolded):

Mitigation 4.1.-1 The applicant shall mitigate for the loss of 51 acres of Monterey spineflower through a program of seed and/or soil bank salvage, establishment of a new spineflower restoration area at a 1:1 ratio to the area impacted (either on- or off-site), and managing and monitoring to assure that there will be no net loss of spineflower affected by the project. A Restoration Plan shall be prepared by a qualified biologist outlining the details pertaining to onsite or offsite restoration areas, plant salvage, seeding, and planting specifications, and monitoring programs which describes annual monitoring efforts incorporating success criteria and contingency planning if success criteria are not met. The plan shall be completed and approved by the City and USFWS, **as applicable**, and funding secured prior to the issuance of any grading or building permit for **Phase 8 of** the project and shall not terminate until there has been verification from a qualified biologist and City staff, in consultation with USFWS, that such measures have been successfully implemented. Possible restoration sites includes the adjacent Armstrong Ranch, the coastal dunes scrub habitat west of Highway 1 within Monterey County Regional Parks land (Marina Dunes Reserve) or private ownership land south of the project site owned by the Monterey Regional Parks District adjacent to Locke Paddon Community Park, ~~or~~ an inland population of Monterey spineflower located along the Salinas River near Soledad **or the wet meadows area located in Phase 8 of the project**. Restoration areas shall be preserved through establishment of a conservation easement.

Environmental Determination

On March 4, 2008, the City Council of the City of Marina certified the final environmental impact report for the Marina Station Project (State Clearing House Number 2005061056). The FEIR served as the environmental review for the Development and the Project Approvals and entitlements. Section 15162 of the CEQA Guidelines states that if an FEIR or negative declaration has been adopted for a project, no subsequent FEIR is to be prepared unless there have been substantial changes to the project, substantial changes with respect to the circumstances under which the project is undertaken or new information of substantial importance shows that the project would have significant effects not discussed in the FEIR. Since certification of the FEIR there have been:

- (i) no substantial changes to the project which would require revisions to the FEIR due to the involvement of new significant environmental effects or an increase in the severity of previously identified effects. The revision to the mitigation measure is consistent with prior approvals for the project, including the approval of the tentative map that revised Phase 8 to provide an additional 28.5 acres of habitat restoration area and does not result in new significant environmental effects but rather provides assurances as to the implementation of the mitigation measure consistent with the findings in the FEIR;
- (ii) no substantial changes have occurred with respect to the circumstances under which the project is being undertaken which require revisions to the FEIR due to new significant environmental effects or a substantial increase in the severity of a previously identified effect. There have been no significant changes in the areas surrounding the Development since the FEIR was approved that involve new significant impacts; and
- (iii) no new information shows that the Development will
 - a. have any significant effects that were not discussed in the FEIR;
 - b. that significant effects that were previously examined will be more severe;

- c. mitigations measures or alternatives that were found infeasible would in fact be feasible and reduce one or more significant effects; or
- d. new mitigation measures or alternatives that were not considered in the FEIR would substantially reduce one or more significant effects of the Development on the environment.

Based on the above, no additional environmental analysis is required for the approval of the revised mitigation measure.

FISCAL IMPACT:

The approval of the revised mitigation measure will not have fiscal impact on the City.

Prepared by:

Karen Tiedemann, Goldfarb & Lipman
Special Counsel
City of Marina

REVIEW/CONCUR:

Guido F. Persicone, AICP
Director, CDD
City of Marina

Layne Long
City Manager
City of Marina