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December 16, 2019

DEC 16 2019

STATE CLEARINGHOUSE

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**Subject: Ford Ord Multi-Species Habitat Conservation Plan (Project)
Draft Environmental Impact Statement (EIS)/Environmental Impact
Report (EIR)
SCH #2005061119**

Dear Messrs. Metz and Henry:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a Draft EIR/EIS from the Fort Ord Reuse Authority for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

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, we appreciate 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

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.

biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly, for purposes of CEQA, CDFW's role is 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 is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise 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 law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related take authorization as provided by Fish and Game Code will be required.

In this role, CDFW is responsible for providing, as available, biological expertise during public agency environmental review efforts (i.e., CEQA), focusing specifically on project activities that have the potential to adversely affect fish and wildlife resources. CDFW provides recommendations to identify potential impacts and possible measures to avoid or reduce those impacts.

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, 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). CDFW encourages Project implementation occur during the bird non-nesting season. However, if ground-disturbing activities must occur during the breeding season (February through mid-September), the Project applicant(s) is/are responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes.

Fully Protected Species: CDFW has jurisdiction over fully protected species of birds, mammals, amphibians, reptiles, and fish, pursuant to Fish and Game Code sections 3511, 4700, 5050, and 5515. Take of any fully protected species is prohibited, and CDFW cannot authorize their take in association with a general project except under limited circumstances such as the provisions of a Natural Communities Conservation Plan (NCCP) or a Memorandum of Understanding for scientific purposes.

Rare Species: Species of plants and animals need not be listed as Endangered, Rare or Threatened (E, R or T) pursuant to CESA and/or the Federal Endangered Species Act (ESA) to be considered E, R or T under CEQA. If a species can be shown to meet

the criteria for a listing as E, R or T under CESA and/or ESA as specified in the CEQA Guidelines (Cal. Code Regs., tit. 14, § 15380; hereafter CEQA Guidelines), it should be fully considered in the environmental analysis for the Project.

Lake and Streambed Alteration: CDFW has regulatory authority with regard to activities occurring in streams and/or lakes that could adversely affect any fish or wildlife resource, pursuant to Fish and Game Code sections 1600 *et seq.* Section 1602(a) of the Fish and Game Code requires an entity to notify CDFW before engaging in activities that would substantially change the bed, channel, or bank of a stream or substantially divert or obstruct the natural flow of a stream.

Water Pollution: Pursuant to Fish and Game Code Section 5650, it is unlawful to deposit in, permit to pass into, or place where it can pass into "Waters of the State" any substance or material deleterious to fish, plant life, or bird life, including non-native species. It is possible that without mitigation measures implementation of the Project could result in pollution of Waters of the State from storm water runoff or construction-related erosion. Potential impacts to the wildlife resources that utilize these watercourses include the following: increased sediment input from road or structure runoff; toxic runoff associated with development activities and implementation; and/or impairment of wildlife movement along riparian corridors. The Regional Water Quality Control Board and United States Army Corps of Engineers also has jurisdiction regarding discharge and pollution to Waters of the State.

PROJECT DESCRIPTION SUMMARY

Proponent: Fort Ord Reuse Authority (hereafter, the Authority)

Project Description: The Project consists of the Habitat Conservation Plan (HCP) and the issuance of Federal and State incidental take permits (ITPs) by the United States Fish and Wildlife Service (USFWS) under Section 10(a)(1)(B) of the Federal Endangered Species Act of 1973, and by CDFW pursuant to Fish and Game Code Section 2081 in compliance with CESA. The issuance of the ITPs would authorize take of the State and Federally listed species identified in the HCP during the development and redevelopment of the former Fort Ord military base.

Location: The former Fort Ord military base is the entirety of the area covered by the HCP and is referred to here-in as the Plan Area. The Plan Area is located along the Pacific Ocean, approximately 100 miles south of San Francisco, California and is in the northern portion of the County of Monterey. Approximately seventy-two percent (72%) of the Plan Area is within unincorporated areas of the County of Monterey; approximately fifteen percent (15%) is within the City of Seaside; approximately twelve percent (12%) is within the City of Marina; approximately one percent (1%) is within the City of Del Rey Oaks; and less than half a percent (0.5%) is within the City of Monterey.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the Authority in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources so that the Authority can submit a complete application package to CDFW when an ITP is sought. Editorial comments or other suggestions may also be included to improve the Draft EIR/EIS.

Project Definition: In the Draft EIR/EIS the Authority describes the Project as the HCP and the issuance of State and Federal ITPs. However, under CEQA a Project is defined as: "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment (CEQA Guidelines, §§ 15378, subd. (a)). The term "project" refers to the activity which is being approved and which may be subject to several discretionary approvals by government agencies. The term "project" does not mean each separate "government approval" (CEQA Guidelines, §§ 15378, subd. (b)). Based on the definition of the term "Project" under CEQA, the Draft EIR/EIS would be more accurate to identify the Project as the development and the redevelopment of the former Fort Ord military base. Nevertheless, CDFW has structured this letter to use the term Project in reference to the development and redevelopment of the former Fort Ord military base and the term HCP to refer to the Draft Multi-Species Habitat Conservation Plan included as an Appendix to the Draft EIR/EIS.

Survey Methodologies and Project Baseline Conditions: The methodology discussion in the Draft EIR/EIS and HCP appears to be incomplete and as a result is likely to require supplementation for CDFW to issue an ITP. The methodology sections in the CEQA document and HCP do not fully describe the survey methodologies that were used to inventory special-status species that occur or have the potential to occur within the Plan Area. Instead the Draft EIR/EIS and HCP refer to the original studies; however, these studies were not included in either the CEQA document or its appendices and therefore were not readily available for CDFW review and/or comment. Since these surveys provide the baseline assessment of the Plan Area and the Draft EIR/EIS acknowledges limitations and assumptions exist within these survey methodologies (ex. potential overestimations of occupied habitat, studies conducted over a single floristic season, etc.), CDFW strongly recommends, that at a minimum, the original survey methodologies and results that were used to establish the CEQA baseline for the Project be provided to CDFW as part of any application for an ITP.

Based on the information provided, CDFW cannot determine if impacts to the Monterey gilia, one of the CESA listed species, are being minimized and mitigated by this approach since the habitat that is set aside as mitigation may be unoccupied, occupied at lower densities than habitat being impacted by the Project, or may be reduced in

quality from the habitat that is being impacted. CDFW recommend that it be contacted prior to preparing the ITP application submittal to ensure CDFW receives the information and analysis it needs.

Avoidance and Minimization Measures (AMM) and Mitigation Measures (MM): The Draft EIR/EIS does not fully describe the extent of the development activities that will be allowed in the Habitat Mitigation Areas (HMA) and where they will occur within each parcel in contrast to where species populations occur within the Plan Area. Due to this lack of information, and the lack of species-specific population occurrences described within the entire Plan Area, CDFW cannot fully evaluate Project-related impacts to special-status species or provide thorough and robust comments on the proposed AMM and MM. Species-specific population occurrences and a discussion of the location of development activities within the HMAs in relation to these occurrences for the CESA-listed species would be useful for CDFW when it is reviewing an ITP application.

In addition, more information about the AMM and MM that are currently described in the Draft EIR/EIS would assist CDFW's review of an application. For example, the CEQA document describes the use of escape ramps and trench covers to minimize special-status species entrapment within excavations; however, design requirements for the escape ramps and trench covers and other requirements for their use are not described in the CEQA document or included as an AMM.

The Draft EIR/EIS also references AMM and MM in other plans, such as the Reuse Plan and Habitat Management Plan (HMP) that would reduce impacts to special-status species. Clear inclusion of AMM and MM from other plans or documents to mitigate impacts on the CESA listed species would also assist in CDFW's review. Currently, it is unclear how measures in other documents informed the lead agency's CEQA significance determination in the Draft EIR/EIS. Also, assuming the measures were used to inform the significance determination, it is also unclear how the measures would be enforceable or implemented to ensure the significance determination is accurate.

Project-Related Impacts: The Draft EIR/EIS and HCP state that impacts occurring within designated development areas that were previously developed as part of the Fort Ord military base would not require State and Federal ITPs. However, these areas have been mostly abandoned since the closure of the Fort Ord military base and have the potential to provide habitat for several special status animal species. While a more limited possibility, special status plants also have the potential to occur within these abandoned areas if recolonization or population expansion has occurred since the closure of the military base or previously unidentified populations remain within these areas. The assumption of the absence of special-status species within these developed areas in the Draft EIR/EIS and HCP may result in an underestimation of the Project's potential impacts on these species.

CDFW also disagrees with the Draft EIR/EIS definition of a temporary impact. For ITP purposes, CDFW generally considers temporary impacts to be impacts that occur only during the Project-related activity (e.g., temporary impacts occurring during the active installation of a bridge, etc.) as opposed to impacts that continue to occur after the activity has been completed for up to a period of five (5) years. Temporal impacts that extend beyond active construction and preclude use as foraging, denning, dispersal, reproduction, or movement corridors would be considered to be permanent impacts in an ITP. CDFW would also appreciate more information about several Project-related activities such as, but not limited to: beach species management activities; controlled burns; California tiger salamander (*Ambystoma californiense*; CTS) hybrid identification, removal, and potential habitat impacts; special status plant species seed collection and reseedling; CTS barriers; fencing design and location; and other described and undescribed Project-related activities. The CEQA document lacks sufficient detail and analysis for CDFW to fully assess any future ITP application.

Proposed Mitigation and Mitigation Lands: The Plan Area consists of a total of 27,832 acres, of which 10,069 acres will be impacted by the Project. The proposed mitigation lands for the Project will occur on a combination of Federal (14,645 acres) and non-Federal lands (3,895 acres), with the largest portion of the mitigation lands occurring on Bureau of Land Management (BLM) lands (i.e., federal lands) within the Fort Ord National Monument (FONM) (14,645 acres). The Draft EIR/EIS and HCP state that the use of Federal lands is critical to the HCP; however, BLM will not be a Permittee under the State ITP or a party to the HCP, nor otherwise subject to the requirements of the HCP. While the intention of the Draft EIR/EIS and HCP is for BLM to participate with the ITP Permittees to allow Project mitigation to take place on the FONM, and manage those lands in accordance with the HCP, "nothing in the HCP will or shall be interpreted as superseding BLM's requirements under the Rangeland Management Plan, its step-down plans, national monument designation, Area of Critical Environmental Concern designation, HMP, or any requirements of BLM's governing law and regulation" (Draft EIR/EIS 2019). "In addition, Congress may modify the FONM designation or other requirements of Federal land management. Nothing in the HCP may be interpreted as impacting the ability of the Department of the Interior, BLM or Congress in making these modifications" (Draft EIR/EIS 2019). The Draft EIR/EIS and the HCP also clearly state that the activities and MM described in all the aforementioned documents may change and are not permanent restrictions on use or obligations for use. This includes the two percent (2%) development restriction included in the HCP for development on BLM lands.

Since the majority of the mitigation lands occur on BLM lands and BLM will not be a permittee under the Federal or State permits, and as a result will not be bound to comply with any MM included in either the Draft EIR/EIS, HCP or State and Federal ITPs, and measures listed within the HCP may be changed either through an

amendment to the HCP or through adaptive management measures, the Project as proposed may not meet State ITP issuance criteria without additional information or analysis because currently: (1) there is no certainty that the impacts of the authorized take will be minimized and fully mitigated through a binding instrument in perpetuity, (2) there is no assurance that the measures required to minimize and fully mitigate the impacts of the authorized take will be roughly proportional in extent to the impact of the taking on the species, and (3) there is no assurance that impacts of the taking will not jeopardize the continued existence of a State listed species because there is no guarantee that the HMA lands within the BLM's jurisdiction will be permanently conserved and managed for the benefit of the species in perpetuity.

Mitigation Credit: In several locations the Draft EIR/EIS states that BLM's current management activities and any additional MM would be credited to the Permittees by CDFW for its Section 2081 ITP. In order to satisfy ITP requirements, mitigation must result in the permanent protection and perpetual management of compensatory habitat and is necessary and required pursuant to CESA to fully mitigate project-related impacts of the taking on the Covered Species that will result with implementation of the Project.

CDFW is unclear if the amounts calculated for mitigation land acreages include some of the development areas as mitigation (ex. trails, disturbance areas, land above underground pipelines, etc.). For example, Wolf Hill and Look Out Ridge are limited to thirty (30) acres and one-hundred and ten (110) acres for habitat conversion activities, respectively. However, the HCP states that the specific requirement is that facilities do not extend beyond areas already disturbed by Army activities. The HCP does not define the current Army disturbance area and CDFW is unclear if the Army has disturbed more area than is restricted in the thirty (30) and one-hundred and ten (110) acre habitat conversion amounts listed above. The HCP also seems to include overflow parking areas in the amount of mitigation land acreages described in the HCP. If these activities occur on lands included in the amount of mitigation land described in the HCP, CDFW recommends these areas be removed from the total acreages of mitigation lands since these areas will be impacted by the Project on an ongoing basis and will not be consistently managed for the primary benefit of the species.

Adaptive Management: The Draft EIR/EIS and HCP incorporate adaptive management practices into the AMM and MM which will allow specific actions, monitoring protocols and other activities described in the HCP to be implemented or revised without needing to amend the HCP. CDFW would like to remind the Authority that if these measures are included in a State ITP, the Permittees will not be able to use adaptive management measures as a Covered Activity under the ITP unless they are fully described and incorporated into the ITP or the ITP is amended to include these measures and all potential impacts from these measures are fully mitigated prior to their

implementation. CDFW also recommends all potential adaptive management measures be fully described in any application for an ITP for CDFW to fully evaluate any potential impacts to CESA-listed species.

Third Party State ITP Take Coverage: There is language in the Draft EIR/EIS and HCP that alludes to Permittees having the authority to convey State ITP take coverage to other developers that are not listed as a Permittee under a State ITP that would be completing a project within the Plan Area. There is also language that states that if a Permittee under a State ITP sells land within the Plan Area the new landowner may obtain take coverage under a Certification of Inclusion issued by the Permittee. CDFW would like to clarify that for a project or landowner to have State ITP take coverage, each project or landowner would be required to either obtain their own ITP or be added as a Permittee to an existing ITP that covers the project area.

The Draft EIR/EIS and HCP also includes language that defines the qualifications and duties that will be performed by a Designated Biologist and Biological Monitor. Please be advised that the ITP(s) will specifically define the qualifications and duties that will be required of the Designated Biologist and Biological Monitor and may not necessarily conform to those listed in the HCP.

Contrary to the language included in the HCP, CDFW has not received an application for an ITP and therefore, CDFW cannot at this time determine if the Project can meet ITP issuance criteria as described in Fish and Game Code section 2081. However, the Project does not currently appear to meet the requirements for ITP issuance as discussed in the Proposed Mitigation and Mitigation Lands section of this letter and additional information or analysis will likely be needed prior to ITP issuance. In addition, CDFW response times for ITP application review and ITP issuance will comply with statutory mandates. Please note that any subsequent changes to the HCP that will affect the Project description, impacts and/or Covered Activities will require an ITP amendment prior to the initiation of these changes if the changes will result in impacts not described and contemplated in the ITP.

Hybrid CTS Removal: The Draft EIR/EIS includes a discussion about the control and removal of hybrid CTS from the Plan Area. However, a detailed description of these methods and the criteria for determining if a CTS is a hybrid have been omitted from the Draft EIR/EIS and HCP. In addition, some of the suggested methods (e.g., reducing pool hydroperiods, removal of CTS, etc.) may harm, negatively impact, or result in take of native CTS or other special-status species, or their associated habitats. CDFW advises that these potential impacts be fully described, analyzed, and include quantified enforceable measures to reduce these impacts to less than significant in any application to CDFW for an ITP.

Please be advised that in order for CTS hybrids to be removed from the population or for habitat conditions to be altered to be inhospitable to CTS hybrids, the Project will first need to obtain a State ITP and will be required to include a CTS hybrid identification plan and impact analysis for CTS hybrid removal.

Monterey Gilia: The Plan Area has one of the largest known occurrences of Monterey gilia in the entire species range (USFWS 1998). Preliminary estimates indicate that as much as sixty percent (60%) of the total known individuals of this species occur within the Plan Area (USFWS 1998). While the Draft EIR/EIS and HCP do not provide a discussion of the Project's impacts to Monterey gilia based on impacts to population occurrences (instead impacts are focused on preserved versus impacted habitat) the *USFWS Recovery Plan for Seven Coastal Plants and the Myrtle's Silverspot Butterfly* (USFWS Recovery Plan) and the *USFWS Monterey Gilia 5 Year Review* (USFWS 5 Year Review) specifically discuss the impact of the HCP on populations of Monterey gilia.

As described in the HCP and further discussed in the USFWS Recovery Plan, under the HCP several population occurrences of Monterey gilia on the former Fort Ord military base are designated for development and while these areas are relatively small in acreage they contain high quality habitat and a high density of individuals (USFWS 1998). "Development of these lands will constitute the loss of some of the most productive and high density occupied habitat known for this subspecies" (USFWS 2008). The majority of the remaining occurrences in the central and eastern portion of the Plan Area are intended to be managed for conservation by BLM; however, the density of Monterey gilia individuals within these occurrences appear to be low (USFWS 2008). "It has also been observed that in the more inland areas of its distribution, Monterey gilia has morphological characteristics that intergrade with *Gilia tenuiflora* ssp. *tenuiflora*" which is not endangered and is not a special-status species of any kind (USFWS 2008). According to the USFWS 5 Year Review, the baseline studies conducted on the former Fort Ord military base assumed that all plants observed were Monterey gilia due to the difficulty to identify the subspecies in the eastern portion of the former military base and later surveys conducted by BLM personnel also followed this protocol to simplify their procedures. Therefore, it "is important to understand the morphological and genetic variability in Monterey gilia in inland areas, because most of the future development on the former Fort Ord military base is planned for the western half of the base. Preservations of populations farther north and east, including where the taxonomy is in question, is intended as mitigation for the development-associated losses in the western areas" and additional surveys will be needed to clarify the taxonomic identities of *Gilia* subspecies within the Plan Area (USFWS 2008). Due to the extent of Project-related impacts on high density populations, the preservation of lower quality habitat with fewer individuals, the question of taxonomy in the eastern preserved areas and the uncertainty of BLM in regards to permanent protection and perpetual management for the benefit of the species on the mitigation lands (see

Proposed Mitigation and Mitigation Lands section above), additional information or analysis is likely to be needed in order to meet State ITP issuance criteria for take of Monterey gilia and ensure that permit issuance does not jeopardize the continued existence of this subspecies.

Lake and Streambed Alteration: Project activities are proposed that may involve work within the bed, bank, or channel (which may include associated riparian resources) of rivers, streams, or lakes which could require notification to CDFW and an agreement under Section 1600 et seq. of the Fish and Game Code.

CDFW recommends that formal stream mapping and wetland delineation be conducted by a qualified biologist to determine the location and extent of streams (including any floodplain) and wetlands within and adjacent to the Plan Area. Please note that, while there is overlap, State and Federal definitions of wetlands as well as what activities require Notification pursuant to Fish and Game Code Section 1602 differ. Therefore, it is advised that a wetland delineation be completed that identifies both State and Federal wetlands in the Plan Area as well as what activities may require Notification to comply with Fish and Game Code. Fish and Game Code Section 2785(g) defines wetlands; further, sections 1600 et seq. applies to any area within the bed, channel, or bank of any river, stream, or lake. It is important to note that while accurate wetland delineations by qualified individuals have resulted in more rapid review and response from the United States Army Corps of Engineers and CDFW, substandard or inaccurate delineations have resulted in unnecessary time delays for applicants due to insufficient, incomplete, or conflicting data. CDFW advises that site map(s) designating wetlands as well as the location of any activities that may affect a lake or stream be included with a revised Draft EIR/EIS along with an analysis of potential Project-related impacts to CDFW jurisdictional features. Including this information in an EIR will facilitate CDFW's issuance of an agreement under Fish and Game Code Section 1603. The Project applicant must also submit a Lake and Streambed Alteration Notification to CDFW for any Project-related impacts to CDFW jurisdictional features.

HCP Implementation and Compliance: The HCP states that CDFW and USFWS are participants in the oversight of HCP implementation and compliance. CDFW would like to clarify that the HCP is for a federal approval and as a result CDFW has no authority to oversee its implementation or compliance. In contrast, CDFW will monitor a Project's State ITP for Permittee compliance and implementation. As a result, CDFW would participate in HCP implementation and compliance only to the extent there is overlap with the State ITP. Nevertheless, CDFW is available to provide input on resource issues that don't implicate the State ITP to the extent that CDFW staff are available. CDFW welcomes any questions related to CDFW's role during permit oversight and compliance.

Other State ITPs Within the Plan Area: In contrast to language included in the HCP, project-specific ITPs that are within the Plan Area that were issued prior to issuance of the Fort Ord ITP, will remain in effect and the Permittees of those ITPs will be required to complete all mitigation obligations required by the ITP unless the Permittees have not engaged in project-related activities covered under the ITP and notify CDFW that they would like to withdraw their ITP.

Trustee Agency Comments:

CDFW offers the following comments and recommendations below as a Trustee Agency to assist the Authority in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife resources.

Fully Protected Species: CDFW has jurisdiction over fully protected species of birds, mammals, amphibians, reptiles, and fish, pursuant to Fish and Game Code sections 3511, 4700, 5050, and 5515. Take of any fully protected species is prohibited, and CDFW cannot authorize their take in association with a general project except under certain limited circumstances such as through an NCCP or a Memorandum of Understanding for scientific purposes which do not currently apply to the Project. The fully protected California brown pelican (*Pelecanus occidentalis californicus*), white-tailed kite (*Elanus leucurus*) and golden eagle (*Aquila chrysaetos*) are known to occur within the Plan Area, and the American peregrine falcon (*Falco peregrinus anatum*), California black rail (*Laterallus jamaicensis coturniculus*), and Santa Cruz long-toed salamander (*Ambystoma macrodactylum croceum*) have the potential to occur within the Plan Area. This status, and the absence of an NCCP for the Project, precludes CDFW from authorizing any amount of incidental take for fully protected species. When projects show the potential to cause take of fully protected species, we advise on appropriate measures to avoid take. Given the legal status of fully protected animals, take avoidance measures must meet very high standards of effectiveness, substantially greater than the measures to minimize take required under ITPs. CDFW recommends that permittees prepare an analysis of potential project-related impacts to fully protected species and include appropriate AMM and MM to ensure full avoidance of the above-listed species. If full avoidance cannot be achieved, CDFW recommends the Project apply for an NCCP.

Rare Plants: A large number of rare plant species are known to occur or have the potential to occur within the Plan Area and may be impacted by Project-related activities. The following twenty-eight (28) plant species are listed as California Native Plant Society (CNPS) California Rare Plant Rank (CRPR) 1B species, are known to occur within the Plan Area, and meet the aforementioned CEQA Guidelines for consideration under CEQA: *vernal pool bent grass* (*Agrostis lacuna-vernalis*), *Hickman's onion* (*Allium hickmanii*), *Hooker's manzanita* (*Arctostaphylos hookeri* ssp.

hookeri), Toro manzanita (*Arctostaphylos montereyensis*), Pajaro manzanita (*Arctostaphylos pajaroensis*), sandmat manzanita (*Arctostaphylos pumila*), pink Johnny-nip (*Castilleja ambigua* var. *insalutata*), Congdon's tarplant (*Centromadia parryi* ssp. *congdonii*), Fort Ord spineflower (*Chorizanthe minutiflora*), Monterey spineflower (*Chorizanthe pungens* var. *pungens*), robust spineflower (*Chorizanthe robusta* var. *robusta*), seaside bird's-beak (*Cordylanthus rigidus* ssp. *littoralis*), Eastwood's goldenbush (*Ericameria fasciculata*), sand-loving wallflower (*Erysimum ammophilum*), Yadon's wallflower (*Erysimum menziesii* ssp. *yadonii*), Monterey (sand) gilia (*Gilia tenuiflora* ssp. *arenaria*), Monterey cypress (*Hesperocyparis macrocarpa*), Kellogg's horkelia (*Horkelia cuneata* var. *sericea*), Contra Costa goldfields (*Lasthenia conjugens*), legenere (*Legenere limosa*), Oregon meconella (*Meconella oregana*), marsh microseris (*Microseris paludosa*), northern curly-leaved monardella (*Monardella sinuata* ssp. *nigrescens*), Monterey pine (*Pinus radiata*), Yadon's rein orchid (*Piperia yadonii*), Choris' popcornflower (*Plagiobothrys chorisianus* var. *chorisianus*), Santa Cruz clover (*Trifolium buckwestiorum*), and Pacific Grove clover (*Trifolium polyodon*).

An additional twenty-four (24) plant species may also occur within the Plan Area and are listed as CNPS CRPR 1B species that also meet the aforementioned CEQA Guidelines for consideration under CEQA: Little Sur manzanita (*Arctostaphylos edmundsii*), alkali milk-vetch (*Astragalus tener* var. *tener*), coastal dunes milk-vetch (*Astragalus tener* var. *titi*), round-leaved filaree (*California macrophylla*), Jolon clarkia (*Clarkia jolonensis*), San Francisco collinsia (*Collinsia multicolor*), Hospital Canyon larkspur (*Delphinium californicum* ssp. *interius*), Hutchinson's larkspur (*Delphinium hutchinsoniae*), Menzies' wallflower (*Erysimum menziesii* ssp. *menziesii*), fragrant fritillary (*Fritillaria liliacea*), Santa Cruz tarplant (*Holocarpha macradenia*), Point Reyes horkelia (*Point Reyes horkelia*), beach layia (*Layia carnosa*), Tidestrom's lupine (*Lupinus tidestromii*), Carmel Valley bush-mallow (*Malacothamnus palmeri* var. *involucratus*), Santa Lucia bush-mallow (*Malacothamnus palmeri* var. *palmeri*), Carmel Valley malacothrix (*Malacothrix saxatilis* var. *arachnoidea*), woodland woollythreads (*Monolopia gracilens*), San Francisco popcornflower (*Plagiobothrys diffusus*), Hickman's cinquefoil (*Potentilla hickmanii*), angel's hair lichen (*Ramalina thrausta*), Santa Cruz microseris (*Stebbinsoseris decipiens*), maple-leaved checkerbloom (*Sidalcea malachroides*), and California screw-moss (*Tortula californica*).

The Draft EIR/EIS notes that impact analysis for special-status plant species determined to have a low or unlikely potential to occur within the Plan Area is not necessary. The determination of low or unlikely potential for habitation appears to be based upon documented occurrences within the Plan Area, California Natural Diversity Database (CNDDDB) documented occurrences, and whether the species was planted or occurred naturally within the Plan Area.

As stated in the Draft EIR/EIS, the "most comprehensive surveys that took place in the Plan Area were the 1992 *Flora and Fauna Baseline Study of Fort Ord, California*"

conducted in 1992. The baseline studies were only conducted during one season, were outside of the floristic period for many of the rare plants listed above, did not focus on the documentation of specific plant population locations, or follow approved floristic survey methodologies which include the use of reference populations. As has been stated previously, while the baseline studies were updated to include resource agency database occurrences and results from surveys conducted for various projects in the Plan Area up through 2017, these surveys were project site-specific and did not cover the entire Plan Area and were not all plant focused. CDFW cautions that the CNDDDB is a voluntary database that is reliant on the voluntary submission of data from outside sources. Therefore, it is not a complete assessment of species presence; and absence of species data in the database should not be used to provide justification for absence. Furthermore, the planting of special-status plant species within the Plan Area does not remove their special status designation, and potential Project-related impacts to these species are advised to be analyzed under CEQA.

The Draft EIR/EIS and HCP also failed to analyze potential Project-related impacts to the remainder of the rare plant species listed above. The Draft EIR/EIS referred to the HCP for the Project-related impact analysis, AMM, and MM that would benefit these species. However, the HCP only addresses four (4) plant species (i.e., Monterey spineflower, seaside bird's-beak, Monterey (sand) gilia and Yadon's rein orchid) and the impact analysis and associated AMM and MM are specific to these four (4) plant species. While a few AMM and MM may provide some incidental benefit to the rare plant species, they are not specific measures to reduce impacts to these species and the overall benefit and Project-related impacts to these species cannot be determined since an impact analysis was not provided in either the Draft EIR/EIS or the HCP. Therefore, CDFW recommends an AMM and MM be added to the Draft DEIR/DEIS that requires surveys to be conducted 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" (CDFW 2018) prior to initiation of any vegetation or ground disturbing activities in all areas that have potentially suitable habitat for special-status plant species. 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. CDFW recommends that 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 CDFW recommends providing greater detail regarding alternate minimization and compensatory mitigation measures, such as reduced buffers, describing the intent and anticipated success of transplanting, and specifying success criteria for transplanted plants and related long-term protection and management that would occur under a conservation easement.

Cumulative impacts: Due to the generalized way in which the Draft EIR/EIS has defined cumulative impacts, the CEQA document does not appear to contain a complete analysis of cumulative impacts. Therefore, CDFW recommends more information and analysis of cumulative impacts involving past, present and reasonably foreseeable probable future projects in and within the vicinity of the Plan Area including, but not limited to, the realignment of State Route 68 and the Fort Ord Regional and Greenway Project be included as part of any ITP application.

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, 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 Project, 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 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 Draft EIR/EIS to assist the Authority in identifying and mitigating Project impacts on biological resources and for the Authority to prepare an application to CDFW for an ITP. Due to the issues presented in this letter, CDFW concludes that additional information and analysis is likely necessary in order for CDFW to issue a State ITP and fulfill its related CEQA obligations in its role as a Responsible Agency.

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 Lori Bono,

Josh Metz, Fort Ord Reuse Authority
Stephen Henry, United States Fish and Wildlife Service
December 13, 2019
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Senior Environmental Scientist (Specialist), at the address provided on this letterhead,
by telephone at (559) 243-4014, extension 350, or by electronic email at
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Sincerely,



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REFERENCES

CDFW, 2018. Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities. California Department of Fish and Wildlife. March 20, 2018.

USFWS, September 1998. Seven Coastal Plants and the Myrtle's Silverspot Butterfly Recovery Plan.

USFWS, March 2008. Monterey Gilia Five-Year Review: Summary and Evaluation.