



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Marine Region
1933 Cliff Drive, Suite 9
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wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Governor's Office of Planning & Research

July 26 2021

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STATE CLEARINGHOUSE

Catherine Payne
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BROOKLYN BASIN MARINA EXPANSION PROJECT (PROJECT) DRAFT SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT (SEIR) SCH No. 2004062013

Dear Ms. Payne,

The California Department of Fish and Wildlife (Department) received a SEIR from the City of Oakland for the Project pursuant to 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 the Department, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

DEPARTMENT ROLE

The Department 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, Section 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines Section 15386, subd. (a).) The Department, 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, the Department is charged by law 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. The Department is also responsible for marine biodiversity protection under the Marine Life Protection Act in coastal marine waters of California, and ensuring fisheries are sustainably managed under the Marine Life Management Act.

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.

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The Department is also submitting comments as a Responsible Agency under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). The Department may need to exercise regulatory authority as provided by the Fish and Game Code. Implementation of the Project as proposed may result in take² as defined by State law of any species protected under the California Endangered Species Act (Fish & Game Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required. Pursuant to our jurisdiction, the Department has the following comments and recommendations regarding the Project.

PROJECT DESCRIPTION SUMMARY

Proponent: Zarsion-OHP 1, LLC.

Objective: The Project proposes the Brooklyn Basin Marina Expansion Project (Project Modifications) as a modification of the previously approved 64.2-acre project (Approved Project) analyzed under the 2009 Oak-to-Ninth Avenue Environmental Impact Report (2009 EIR). The Project Modifications include a residential density increase of 600 units and an update to the parking ratios to current zoning code requirements in other zoning districts. Project Modifications also include an expansion of the approved marina infrastructure and operation including increasing the number of slips by 158 and incorporating provisions with the marina improvements to accommodate an existing water taxi/shuttle service currently operating on San Francisco Bay.

Location: The Project site is bounded by Fallon Street and Jack London Square to the west, Embarcadero and Interstate 880 (I-880) to the north, the Oakland Estuary to the south, and 10th Avenue (generally) to the east. Estuary Park, the southern portion of Lake Merritt Channel (the channel), Clinton Basin, and the Ninth Avenue Terminal are included in the Project site, but approximately 4.72 acres of privately-held parcels along 5th Avenue are not included. The Project site consists of Alameda County Assessor's Parcel Numbers (APNs) 018-0430-001-14, 018-0460-004-06, 08, and 11, and 018-0465-002-06, 12, 15, 27, 29, and 30.

MARINE BIOLOGICAL SIGNIFICANCE

The San Francisco Bay-Delta is the second largest estuary in the United States and supports numerous aquatic habitats and biological communities. It encompasses 479 square miles, including shallow mudflats. This ecologically significant ecosystem supports both state and federally threatened and endangered species and sustains important commercial and recreational fisheries.

State and Federally Listed and Commercially/Recreationally Important Species Protected species under the State and Federal Endangered Species Acts that could potentially be present near Project activities include:

² Take is defined by Fish and Game Code Section 86 as to "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill."

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- Chinook salmon (*Oncorhynchus tshawytscha*), state and federally threatened (Spring-run), state and federally endangered (Winter-run)
- Steelhead (*Oncorhynchus mykiss*), federally-threatened (Central California Coast and Central Valley ESUs)
- Green sturgeon (*Acipenser medirostris*), federally-threatened (southern DPS)
- Longfin smelt (*Spirinchus thaleichthys*), state-threatened
- Brown pelican (*Pelecanus occidentalis californicus*), state fully protected
- California least tern (*Sternula antillarum browni*), state and federally endangered and state fully protected
- American peregrine falcon (*Falco peregrines anatum*), state fully protected

Several species with important commercial and recreational fisheries value that could potentially be impacted by Project activities include:

- Dungeness crab (*Cancer magister*),
- Pacific herring (*Clupea pallasii*),
- Rockfish (*Sebastes* spp.),
- California halibut (*Paralichthys californicus*)
- Surfperches (*Embiotocidae*).

COMMENTS AND RECOMMENDATIONS

The Department offers the comments and recommendations below to assist the City of Oakland in adequately identifying and/or mitigating the Project's potential impacts on fish and wildlife (biological) resources.

Longfin Smelt

Comment: Longfin smelt, state listed as threatened, is not discussed nor are potential impacts to the species analyzed within the SEIR. Longfin smelt have the potential to be present within the Project area and may be impacted by Project related activities such as dredging and pile driving. There are no approved work windows to avoid longfin smelt presence and it is assumed that the species could be present year round.

Recommendations: The Department recommends the SEIR include the following:

- A discussion on the potential impacts to longfin smelt from Project activities and potential avoidance and minimization measures.
- A discussion on whether the 2009 EIR analyzed the potential impacts to longfin smelt.

Impacts to State Listed Species

Comment: The Project proposes to drive approximately 162 steel piles using an impact hammer. Of the pile sizes listed, the 85 18-inch diameter piles pose the highest potential to exceed hydroacoustic thresholds which the Department has determined may cause take of state listed species. These thresholds, as described by the Fisheries

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Hydroacoustic Working Group, in which the Department is a signatory, are 206 dB peak sound pressure, 187 dB accumulated sound exposure level (SEL) for fish over 2 grams, and 183 dB accumulated SEL for fish under 2 grams.

The hydroacoustic analysis presented within the SEIR does indicate that exceedances of the 183 dB accumulated sound exposure level may occur. This exceedance could result in take of state listed species, specifically longfin smelt and spring and winter run Chinook salmon.

Recommendations: The Department recommends the following:

- Consult with the Department for incidental take coverage via a 2081(b) Incidental Take Permit (Fish and Game Code Section 2081) for longfin smelt and spring and winter run Chinook salmon.
- Utilize a vibratory hammer to the maximum extent feasible for driving piles to refusal prior to utilizing an impact hammer to reach desired pile depth.
- Utilize a bubble curtain during all impact pile driving.

Work Windows

Comment: The work window for Pacific herring described within the SEIR is incorrect. The SEIR states that the construction work window for dredging is March 1 to November 30. The correct work window for dredging and other in-water activities, related to potential impacts to Pacific herring, is March 15 through November 30. However, the pile driving work window of June 1 through November 30 is correct.

Recommendations: The Department recommends updating the work window, for Pacific herring, in the final SEIR to reflect the correct work window of March 15 through November 30 for dredging and other in-water activities.

Eelgrass (*Zostera marina*) Surveys

Comment: The Department is in agreement with **Mitigation Measure BIO-3: Eelgrass Surveys** which describes the process in which pre- and post-construction eelgrass surveys would be conducted in accordance with the conditions and recommendations outlined within the National Marine Fisheries Service (NMFS) *California Eelgrass Mitigation Policy*. However, the mitigation measure only describes providing the surveys to NMFS staff for review and approval.

Recommendations: The Department recommends that Mitigation Measure BIO-3 should be edited in the final SEIR to include the Department as a required reviewing agency. All eelgrass surveys conducted for the Project should be provided to the Department, as well as NMFS and the other permitting agencies, for review and approval prior to conducting in-water Project activities.

Project Timeline

Comment: There does not appear to be an exact Project timeline listed within the SEIR. It appears that some components of the Approved Project have already been

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initiated. It is not clear exactly when and for how long the Project Modifications will be undertaken and completed.

Recommendations: The Department recommends that the final SEIR include a specific timeline for Project components that have already been started or completed and when the phases of the Project Modifications will be initiated and completed, specifically the proposed expansion of marina infrastructure.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a data base 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). Information on submitting data to the CNDDDB can be found at: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>.

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 the Department. 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

The Department appreciates the opportunity to comment on draft SEIR to assist the City of Oakland in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Arn Aarreberg, Environmental Scientist at (707) 791-4195, Arn.Aarreberg@wildlife.ca.gov

Sincerely,

DocuSigned by:

Becky Ota for

Craig Shuman, D. Env
Marine Regional Manager

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