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GAVIN NEWSOM, Governor  
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October 15, 2019

Governor's Office of Planning & Research

**OCT 15 2019**

## STATE CLEARINGHOUSE

Ms. Makana Nova, AICP  
City of Newport Beach  
Community Development Department  
100 Civic Center Drive  
Newport Beach, CA 92660  
mnova@newportbeachca.gov

**Subject: Comments on the Notice of Preparation of a Draft Environmental Impact Report for the Bayside Family Resort Hotel, Newport Beach, CA (SCH# 2019090334)**

Dear Ms. Nova:

The California Department of Fish and Wildlife (Department) has reviewed the above-referenced Notice of Preparation (NOP) for the Bayside Family Resort Hotel Draft Environmental Impact Report (DEIR). The following statements and comments have been prepared pursuant to the Department's authority as Trustee Agency with jurisdiction over natural resources affected by the project (California Environmental Quality Act [CEQA] Guidelines § 15386) and pursuant to our authority as a Responsible Agency under CEQA Guidelines section 15381 over those aspects of the proposed project that come under the purview of the California Endangered Species Act (CESA; Fish and Game Code § 2050 *et seq.*) and Fish and Game Code section 1600 *et seq.* The Department also administers the Natural Community Conservation Planning (NCCP) program. The City of Newport Beach (City) is a participating landowner under the Central/Coastal Orange County NCCP/Habitat Conservation Plan.

The project will construct a three-story hotel on a 14.29-acre portion of Newport Dunes, within the City's corporate limits; the project area is currently used for recreational activities and boat storage. Newport Dunes includes 100 acres of tidelands within Upper Newport Bay, adjacent to Upper Newport Bay Ecological Reserve (UNBER) and Upper Newport Bay State Marine Conservation Area.

The Department offers the following comments and recommendations to assist the City in avoiding or minimizing potential project impacts on biological resources.

### Specific Comments

1. There are several known special-status species within UNBER that are proximate to the project area, including but not limited to: Belding's savannah sparrow (*Passerculus sandwichensis beldingi*; CESA-listed endangered), coastal California gnatcatcher (*Polioptila californica californica*; Endangered Species Act [ESA]- listed threatened), California least tern (*Sterna antillarum browni*; California fully protected species; CESA- and ESA-listed endangered), light-footed Ridgway's rail (*Rallus obsoletus levipes*; CESA- and ESA-listed endangered; formerly light-footed clapper rail), coast woolly head (*Nemacaulis denudata* var. *denudata*; California Rare Plant Rank [CRPR] 1B.2), and salt marsh bird's beak (*Chloropyron maritimum* ssp. *maritimum*; CESA- and ESA-listed endangered; CRPR 1B.2). Direct and indirect impacts to UNBER should be analyzed and discussed in the EIR. Specifically:

- a. the DEIR should require that all permanent lighting is of the lowest illumination necessary for human safety, selectively placed, and shielded/directed away from UNBER and adjacent areas; and,
  - b. To avoid and minimize noise-related impacts to wildlife, the DEIR should fully describe methods (i.e., barriers/walls, sound muffling devices on mechanized equipment, etc.) that will be implemented to attenuate project-related construction and operational noise levels in excess of ambient levels as measured at the edge of sensitive habitats.
2. Bird strikes, a direct impact to which migratory avian species are particularly susceptible, can be minimized through incorporation of “bird safe” architectural design elements<sup>1</sup>. Purpose driven elements such as glazed windows, well-articulated building facades, and minimal nighttime lighting are encouraged to reduce collisions of migratory birds with buildings. Large flat windows, reflective glass, and transparent corners are strongly discouraged. With an abundance of sensitive avian species adjacent to the project area, the Department recommends that the City incorporate the guidelines described in Standards for Bird Safe<sup>2</sup> Buildings (Ibid.) in the project’s structure designs.

### General Comments

3. The Department considers adverse impacts to a species protected by the California Endangered Species Act (CESA), for the purposes of CEQA, to be significant without mitigation. As to CESA, take of any endangered, threatened, or candidate species that results from the project is prohibited, except as authorized by state law (Fish and Game Code, §§ 2080, 2085). Consequently, if the project, project construction, or any project-related activity during the life of the project will result in take of a species designated as endangered or threatened, or a candidate for listing under CESA, the Department recommends that the project proponent seek appropriate take authorization under CESA prior to implementing the project. Appropriate authorization from the Department may include an incidental take permit (ITP) or a consistency determination in certain circumstances, among other options (Fish and Game Code §§ 2080.1, 2081, subds. (b),(c)). Early consultation is encouraged, as significant modification to a project and mitigation measures may be required in order to obtain a CESA Permit. Revisions to the Fish and Game Code, effective January 1998, may require that the Department issue a separate CEQA document for the issuance of an ITP unless the project CEQA document addresses all project impacts to CESA-listed species and specifies a mitigation monitoring and reporting program that will meet the requirements of an ITP. For these reasons, biological mitigation monitoring and reporting proposals should be of sufficient detail and resolution to satisfy the requirements for a CESA ITP.

To enable the Department to adequately review and comment on the proposed project from the standpoint of the protection of plants, fish, and wildlife, we recommend the following information be included in the DEIR:

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<sup>1</sup> City of San Francisco. 2011. Design Standards for Bird Safe Buildings. <https://sfplanning.org/standards-bird-safe-buildings#info>

<sup>2</sup> Ibid.

- a) the document should contain a complete discussion of the purpose and need for, and description of, the proposed project, including all staging areas and access routes to the construction and staging areas; and,
- b) a range of feasible alternatives should be included to ensure that alternatives to the proposed project are fully considered and evaluated; the alternatives should avoid or otherwise minimize impacts to sensitive biological resources. Specific alternative locations should be evaluated in areas with lower resource sensitivity where appropriate.

#### Biological Resources within the Project's Area of Potential Effect

4. The document should provide a complete assessment of the flora and fauna within and adjacent to the project area, with particular emphasis upon identifying endangered, threatened, sensitive, and locally unique species and sensitive habitats. This should include a complete floral and faunal species compendium of the entire project site, undertaken at the appropriate time of year. The DEIR should include the following information:
  - a) CEQA Guidelines, section 15125(c), specifies that knowledge on the regional setting is critical to an assessment of environmental impacts and that special emphasis should be placed on resources that are rare or unique to the region;
  - b) a thorough, recent floristic-based assessment of special status plants and natural communities, following the Department's Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities (see <https://www.wildlife.ca.gov/Conservation/Plants/Info>). The Department recommends that floristic, alliance-based and/or association-based mapping and vegetation impact assessments be conducted at the project site and neighboring vicinity. The Manual of California Vegetation, second edition, should also be used to inform this mapping and assessment (Sawyer et al. 2008<sup>3</sup>). Adjoining habitat areas should be included in this assessment where site activities could lead to direct or indirect impacts offsite. Habitat mapping at the alliance level will help establish baseline vegetation conditions;
  - c) a current inventory of the biological resources associated with each habitat type on site and within the area of potential effect. The Department's California Natural Diversity Data Base in Sacramento should be contacted at <https://www.wildlife.ca.gov/Data/BIOS> to obtain current information on any previously reported sensitive species and habitat, including Significant Natural Areas identified under Chapter 12 of the Fish and Game Code; and,
  - d) an inventory of rare, threatened, endangered and other sensitive species on site and within the area of potential effect. Species to be addressed should include all those which meet the CEQA definition (see CEQA Guidelines, § 15380). This should include sensitive fish, wildlife, reptile, and amphibian species. Seasonal variations in use of the project area should also be addressed. Focused species-specific surveys, conducted at the appropriate time of year and time of day when the sensitive species are active or

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<sup>3</sup> Sawyer, J. O., T. Keeler-Wolf and J.M. Evens. 2009. A Manual of California Vegetation, Second Edition. California Native Plant Society Press, Sacramento.

otherwise identifiable, are required. Acceptable species-specific survey procedures should be developed in consultation with the Department and the U.S. Fish and Wildlife Service.

#### Analyses of the Potential Project-Related Impacts on the Biological Resources

5. To provide a thorough discussion of direct, indirect, and cumulative impacts expected to adversely affect biological resources, with specific measures to offset such impacts, the following should be addressed in the DEIR:
  - a) a discussion of potential adverse impacts from lighting, noise, human activity, exotic species, and drainage should also be included. The latter subject should address: project-related changes on drainage patterns on and downstream of the project site; the volume, velocity, and frequency of existing and post-project surface flows; polluted runoff; soil erosion and/or sedimentation in streams and water bodies; and post-project fate of runoff from the project site. The discussions should also address the proximity of the extraction activities to the water table, whether dewatering would be necessary, and the potential resulting impacts on the habitat, if any, supported by the groundwater. Mitigation measures proposed to alleviate such impacts should be included;
  - b) discussions regarding indirect project impacts on biological resources, including resources in nearby public lands, open space, adjacent natural habitats, riparian ecosystems, and any designated and/or proposed or existing reserve lands (e.g., preserve lands associated with a NCCP). Impacts on, and maintenance of, wildlife corridor/movement areas, including access to undisturbed habitats in adjacent areas, should be fully evaluated in the DEIR;
  - c) the zoning of areas for development projects or other uses that are nearby or adjacent to natural areas may inadvertently contribute to wildlife-human interactions. A discussion of possible conflicts and mitigation measures to reduce these conflicts should be included in the environmental document; and,
  - d) a cumulative effects analysis should be developed as described under CEQA Guidelines, section 15130. General and specific plans, as well as past, present, and anticipated future projects, should be analyzed relative to their impacts on similar plant communities and wildlife habitats.

#### Mitigation for the Project-related Biological Impacts

6. The DEIR should include measures to fully avoid and otherwise protect Rare Natural Communities (<https://www.wildlife.ca.gov/Conservation/Plants>) from project-related impacts. The Department considers these communities as threatened habitats having both regional and local significance.
7. The DEIR should include mitigation measures for adverse project-related impacts to sensitive plants, animals, and habitats. Mitigation measures should emphasize avoidance and reduction of project impacts. For unavoidable impacts, on-site habitat restoration or enhancement should be discussed in detail. If on-site mitigation is not feasible or would not be biologically viable and therefore not adequately mitigate the loss of biological functions and values, off-site mitigation through habitat creation and/or acquisition and preservation in perpetuity should be addressed.

8. For proposed preservation and/or restoration, the DEIR should include measures to perpetually protect the targeted habitat values from direct and indirect negative impacts. The objective should be to offset the project-induced qualitative and quantitative losses of wildlife habitat values. Issues that should be addressed include restrictions on access, proposed land dedications, monitoring and management programs, control of illegal dumping, water pollution, increased human intrusion, etc.
9. The Department recommends that measures be taken to avoid project impacts to nesting birds. Migratory nongame native bird species are protected by international treaty under the Federal Migratory Bird Treaty Act (MBTA) of 1918 (Title 50, § 10.13, Code of Federal Regulations). Sections 3503.5 and 3513 of the California Fish and Game Code prohibit take of all raptors and other migratory nongame birds and section 3503 prohibits take of the nests and eggs of all birds. Proposed project activities (including, but not limited to, staging and disturbances to native and nonnative vegetation, structures, and substrates) should occur outside of the avian breeding season which generally runs from February 1-September 1 (as early as January 1 for some raptors) to avoid take of birds or their eggs. If avoidance of the avian breeding season is not feasible, the Department recommends surveys by a qualified biologist with experience in conducting breeding bird surveys to detect protected native birds occurring in suitable nesting habitat that is to be disturbed and (as access to adjacent areas allows) any other such habitat within 300 feet of the disturbance area (within 500 feet for raptors). Project personnel, including all contractors working on site, should be instructed on the sensitivity of the area. Reductions in the nest buffer distance may be appropriate depending on the avian species involved, ambient levels of human activity, screening vegetation, or possibly other factors.
10. Plans for restoration and revegetation should be prepared by persons with expertise in southern California ecosystems and native plant revegetation techniques. Each plan should include, at a minimum: (a) the location of the mitigation site; (b) the plant species to be used, container sizes, and seeding rates; (c) a schematic depicting the mitigation area; (d) planting schedule; (e) a description of the irrigation methodology; (f) measures to control exotic vegetation on site; (g) specific success criteria; (h) a detailed monitoring program; (i) contingency measures should the success criteria not be met; and (j) identification of the party responsible for meeting the success criteria and providing for conservation of the mitigation site in perpetuity.

The Department appreciates the opportunity to comment on the referenced NOP. Questions regarding this letter and further coordination on these issues should be directed to Jennifer Turner at (858) 467-2717 or via email at [jennifer.turner@wildlife.ca.gov](mailto:jennifer.turner@wildlife.ca.gov).

Sincerely,



*For*  
Gail K. Sevrens  
Environmental Program Manager

ec: Christine Medak (U.S. Fish and Wildlife Service)  
Scott Morgan (State Clearinghouse)

