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**NEWPORT VILLAGE MIXED-USE PROJECT
NOTICE OF PREPARATION OF A DRAFT ENVIRONMENTAL IMPACT REPORT
SCH #2023100323**

Dear Ms. Westmoreland:

The California Department of Fish and Wildlife (Department) received a Notice of Preparation (NOP) of a Draft Environmental Impact Report (DEIR) from the City of Newport Beach for the Newport Village Mixed-Use Project (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 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 and Game Code, Section 711.7, subd. [a] & 1802; Public Resources Code, Section 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

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.

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. Pursuant to our jurisdiction, the Department has the following comments and recommendations regarding the Project.

PROJECT DESCRIPTION SUMMARY

Proponent: MX3 Ventures – MSM Global

Objective: The objective of the Project is to redevelop the existing Project site and to construct a mixed-use development consisting of residential dwelling units, retail/restaurants, office uses, parking, a new publicly accessible plaza and boardwalk along the waterfront, a new storm drain outfall, seawall reinforcement, bulkhead improvements, and partial marina re-design. Primary Project activities include demolishing the existing Project site structures, except for the existing structures at 2241 and 2244 West Coast Highway and constructing a new 9.4-acre mixed-use development. Per personal communication with the Project applicant's design/engineering team, the in-water construction for the partial marina will include a new floating dock system, new gangways, the removal of 9 pilings, and the installation of 17 new pilings. The proposed Project will include an 812 square-foot net increase of the marina including gangways. The bulkhead improvements and seawall reinforcement construction will occur from the landside.

Location: The Project site is located on two parcels that are across from each other on both sides of West Coast Highway between Newport Boulevard and Dover Drive in the City of Newport Beach, California. The Project's North Parcel is approximately 5.3 acres and located at 2000-2244 West Coast Highway and the Project's South Parcel is approximately 4.1 acres and located at 2001-2241 West Coast Highway, adjacent to the Newport Bay waterfront.

Timeframe: The NOP did not indicate an anticipated timeframe for the construction of the Project.

BIOLOGICAL SIGNIFICANCE

Discussion and Comment: Newport Bay waters support many resident and migratory fish and special status wildlife such as seabirds, marine mammals, and sea turtles. Important marine plants such as eelgrass (*Zostera marina*) support those fish and wildlife species and may be present throughout shallow coastal environments in Newport Bay. Eelgrass is important as fish nursery habitat and supports juvenile and adult fish. Newport Bay waters also support commercially and recreationally important fish and invertebrate species such as California halibut (*Paralichthys californicus*), California spiny lobster (*Panulirus interruptus*), and the important forage fish Northern anchovy (*Engraulis mordax*).

COMMENTS AND RECOMMENDATIONS

The Department offers the comments and recommendations below to assist the City of Newport Beach in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct, and indirect impacts on fish and wildlife resources.

I. Project Level Impacts and Other Considerations

Important Marine Species and Habitats

Comments: Per personal communication with the Project applicant's design/engineering team, the proposed partial marina re-design may involve pile pulling and driving impacts. Pilings create a habitat for numerous marine species including sessile and mobile invertebrates (i.e., barnacles, sea stars, crabs, mollusks, bryozoans, cup coral, and algae), fishes (i.e., lingcod and rockfish often raise their young under pilings), and marine mammals (i.e., seals and sea lions often forage for food under pilings). Additionally, many important commercial and recreational fish species use the Project area for breeding, shelter, spawning, and foraging. A variety of marine species will be impacted from the removal of pilings since they will lose their habitat. These species may also be impacted during pile driving activities due to underwater noise levels.

Recommendations: Potential impacts from pile removal and pile driving activities to marine invertebrates, mammals, and fish, including both commercially and recreationally important species, should be identified in the DEIR and any significant impacts should be avoided and minimized to below a level of significance. Additionally, the DEIR should include a detailed description of the proposed marina/in-water construction, and the impacts that this construction may have on important marine species and habitats.

Native Eelgrass Impacts

Comments: Eelgrass is a species that may be found within the Project area where pile removal and driving impacts may occur. Native eelgrass species create large beds beneficial for fish habitat and have been identified as special aquatic sites and given protections by the Clean Water Act. The Magnuson-Stevens Fishery Conservation and Management Act (MSA) identifies eelgrass as a Habitat Area of Special Concern. Additionally, the importance of eelgrass protection and restoration, as well as the marine ecological benefits of eelgrass, is identified in the California Public Resources Code (PRC §35630). The Department uses the California Eelgrass Mitigation Policy (CEMP) (NOAA 2014), developed by the National Marine Fisheries Service (NMFS), for guidance on identifying eelgrass impacts, eelgrass mitigation measures and compensation, and for identifying appropriate eelgrass mitigation and donor sites.

Recommendations: The Department recommends that plans should be developed to avoid and minimize potential impacts to eelgrass to the maximum extent feasible if eelgrass beds or patches are identified within or adjacent to the Project area. The proposed Project should avoid and minimize disturbance and damage or losses of eelgrass beds from pile pulling, pile driving, and from associated barges and vessels. Impacts to avoid and minimize may include, at a minimum, barge shading and anchoring within eelgrass habitat, pile driving and pile pulling bottom disturbances, demolition and construction turbidity, sedimentation, and falling debris. The Department recommends the following should eelgrass beds or patches be identified within or adjacent to the Project area:

- To avoid direct eelgrass impacts, locate pile driver barges and vessels and all barge anchoring outside of eelgrass habitat.
- To avoid scouring of eelgrass and potential eelgrass habitat, anchor chain designs, and locations of barge and vessel moorings, should avoid eelgrass habitat impacts.
- To avoid and minimize eelgrass impacts from demolition and construction debris, the City of Newport Beach should use Best Management Practices (BMPs) such as perimeter debris booms. If debris is observed falling into the Newport Bay water, retrieve debris as soon as possible.
- To minimize eelgrass impacts from water turbidity and sedimentation, install silt curtains around pile driving or demolition areas if applicable. Restrict the turbidity plumes to the smallest possible area during all phases of in water construction.

If eelgrass is identified in the Project area, comprehensive pre-and post-construction surveys for eelgrass beds or patches should be conducted consistent with the CEMP. If any unavoidable eelgrass impacts occur, these impacts should be compensated using guidance described within the CEMP. Indirect eelgrass impacts such as shading from new piles should also be avoided. Since pile driving work conducted outside of the peak eelgrass growing period may reduce shading impacts when eelgrass beds may have died back, pile location and time of year for pile driving should be considered to avoid eelgrass and other fish and wildlife impacts generated by pile driving.

If eelgrass harvest and transplanting is required for mitigation, a Scientific Collecting Permit (SCP) from the Department will be required prior to harvest and transplanting activities. The SCP may include permit conditions such as donor eelgrass surveys, submittal of an eelgrass harvest and transplant plan, limits on number of turions collected, methods for collection and transplanting, notification of activities, and reporting requirements. Please visit the Department's SCP webpage for more information: <https://wildlife.ca.gov/Licensing/Scientific-Collecting>.

Pile Driving and Sound Criteria

Comments: Underwater noise associated with pile driving and pulling activities may cause temporary or permanent impacts to fish and invertebrates, such as temporary movement out of the Project area, barotrauma injury, or mortality. The Department relies on guidance from the Fisheries Hydroacoustic Working Group to set safe sound pressure level (SPL) criteria for pile driving and pulling activities (Fisheries Hydroacoustic Working Group 2008). The SPL dual criteria include a peak level of 206 dB and a cumulative sound exposure (SEL) level of 187 dB for fish 2 grams and heavier or a cumulative SEL of 183 dB for fish less than 2 grams. Additionally, if hydraulic jetting or an impact hammer is used for pile driving, this may impact water quality, releasing contaminants from sediments into the water and/or creating turbidity that could harm fish and shade or smother eelgrass beds.

Recommendations: The Department recommends using a vibratory hammer for pile driving to the greatest extent feasible, or an alternative technology that produces the least amount of noise. If an impact hammer must be used (e.g., due to pile material, refusal at bedrock), multiple minimization measures are needed to reduce sound levels. The Department recommends the following:

- A wood, or similar material, cushion block should be used between the pile and hammer during all pile driving using an impact hammer.
- To further reduce hydroacoustic impacts to fish and marine mammals, a bubble curtain may be used during all impact pile driving to reduce sound below levels that have been shown to cause injury and/or mortality.
- Underwater sound level monitoring should be conducted during pile driving and pulling. If SPLs and SELs exceed agreed upon levels as per the Interim Criteria for Injury to Fish, additional steps should be taken to reduce the underwater noise to acceptable levels.
- A sound attenuation and monitoring plan should be submitted to the resource agencies for review prior to initiating pile driving activities.

The Department recommends the use of a silt curtain to control turbidity during high turbidity generating activities, such as hydraulic jetting. Additionally, high turbidity generating activities should be conducted when there are no strong outgoing tides since this could exacerbate turbid conditions and negatively impact marine life.

Marine Mammal and Sea Turtle Monitoring

Comments: Harbor seals (*Phoca vitulina*), California sea lions (*Zalophus californianus*), other species of marine mammals, and sea turtles may be present or occur within the Project area. Project activities, particularly noise from pile driving, could impact these animals if they are present.

Recommendations: The Department recommends that the City of Newport Beach prepare and implement a marine mammal and sea turtle monitoring plan that includes, but is not limited to:

- Establishment of an underwater exclusion zone.
- Preconstruction monitoring to update the animals' occurrence and use of the area.
- Monitoring of marine mammals and sea turtles by an experienced observer immediately prior to and during all pile driving activities.
- Pile driving should not occur while marine mammals or sea turtles are present within the exclusion zone.

The Department recommends that the City of Newport Beach consult with the National Marine Fisheries Service and U.S. Fish and Wildlife Service regarding the above recommendation and any other necessary avoidance and mitigation measures to reduce impacts to marine mammals and sea turtles.

Invasive Species Impacts

Comments: Disturbance of the bottom sediments from potential pile construction or anchoring may redistribute non-native species that compete with native species. This could cause widespread adverse impacts to eelgrass and the marine ecology. The invasive alga *Caulerpa taxifolia* is listed as a federal noxious weed under the U.S. Plant Protection Act and while deemed eradicated in 2006 is monitored for potential future emergence. Another invasive alga species found recently in Newport Bay and San Diego Bay is *Caulerpa prolifera*, which is also a potential threat to growth and expansion of native eelgrass beds and other native algae.

Recommendations: The Department recommends conducting pre-construction *Caulerpa Spp.* surveys to identify potential existence of invasive *Caulerpa Spp.* in accordance with the Caulerpa Control Protocol <https://media.fisheries.noaa.gov/2021-12/caulerpa-control-protocol-v5.pdf> (October 2021). Since Newport Bay is considered a *Caulerpa* infected system, two *Caulerpa* pre-construction surveys of the project area of potential effect shall be conducted to determine the presence or absence of *Caulerpa* initiated not less than 60 days apart, and the second survey shall be an Eradication Area Level survey to be conducted within 45 days of initiation of an authorized bottom disturbing activity. Any sightings of *Caulerpa Spp.* should be reported within 24 hours to the Department (Caulerpa@wildlife.ca.gov), and NMFS at 562-980-4037 (nmfs.wcr.caulerpa@noaa.gov).

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 filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

ENVIRONMENTAL DOCUMENT FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document 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 environmental document filing fee is required 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 the NOP to assist the City of Newport Beach in identifying and mitigating Project impacts on biological resources. Questions regarding this letter or further coordination should be directed to Leslie Hart, Environmental Scientist at R7CEQA@wildlife.ca.gov.

Sincerely,



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Marine Regional Manager

ec: Office of Planning and Research, State Clearinghouse
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REFERENCES

NMFS. 2014. California Eelgrass Mitigation Policy, National Marine Fisheries Service, https://archive.fisheries.noaa.gov/wcr/publications/habitat/california_eelgrass_mitigation/Final%20CEMP%20October%202014/cemp_oct_2014_final.pdf.

Fisheries Hydroacoustic Working Group. 2008. Interim Criteria for Injury of Fish Exposed to Pile Driving Operations: Memorandum. Washington: Federal Highway Administration.