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Governor's Office of Planning & Research

March 4, 2024

March 04 2024

STATE CLEARINGHOUSE

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SUBJECT: PACIFIC AIRSHOW HUNTINGTON BEACH PROJECT (PROJECT); NOTICE OF PREPARATION(NOP) OF A DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR); SCH #2024020006; ORANGE COUNTY, CA

The California Department of Fish and Wildlife (CDFW) has reviewed the above-referenced NOP 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, CDFW appreciates 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 biologically sustainable populations of those species (*Id.*, § 1802.). Similarly, for purposes of CEQA, CDFW 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.

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. For example, 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.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

Proponent: City of Huntington Beach (City)

Objective: The Project is an annual airshow that features civilian and military aircraft flybys, aerial acrobatics, and air racing. The airshow also includes a variety of other entertainment and amenities, such as concessions, food trucks, live music, skateboard and bicycle motocross bowl competitions, sandcastle building competitions, drone shows, aircraft streamer and water drops, and pyrotechnic displays. This event has been held annually in the City during the fall season each year since 2016, except in 2020 due to the

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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COVID-19 pandemic. The most recent airshow took place from September 29 to October 1, 2023.

The Project will include an event program for the continuation of the airshow for up to ten additional years beginning in fall 2024. Historically, the airshow has lasted for three days (Friday through Sunday), with aircraft practice flyovers beginning as early as Monday of the week of the airshow. Future airshows will last up to five days, with aircraft practice flyovers beginning as early as Monday of the week of the airshow, for a total of up to seven days. Airshow activities will typically begin at approximately 10am and may extend to 11pm. New events are anticipated to take place during future airshows that have not historically occurred, including multi-day air racing, a music festival, nighttime flyovers including parachute jumps onto the beach, nightly pyrotechnic shows to be discharged from either aircraft or an ocean barge, and landing aircraft on a temporary helipad/runway on the beach.

Location: The airshow is located in the City of Huntington Beach, which is in coastal Orange County. The on-the-ground event portion of the airshow (the “show center area”) is located on the beach; its boundaries are approximately from 7th Street to Beach Boulevard along Pacific Coast Highway, and from Pacific Coast Highway to the Pacific Ocean including a portion of the Huntington Beach Pier. The Project describes the airshow performance area as being the primary area for aircraft flybys and aerial acrobatics. This area is adjacent to the on-the-ground event area over the Pacific Ocean with an east-west length of approximately 3,000 feet and a north-south length of approximately 12,000 feet. The performance area is identified by 16 buoys placed in the ocean. Many of the aircraft flights spill out of the performance area into the temporary flight restriction (TFR) airspace administered by the Federal Aviation Administration for the airshow. The TFR is a five-nautical mile ring centered on the airshow’s performance area. Per the Initial Study, the show center area and airshow performance area collectively comprise the Project Site. The Initial Study defines a broader study area that extends beyond the Project Site to reflect the potential impacts to biological resources associated with civilian and military aircraft flybys and aerial acrobatics traveling to/from the airshow performance area. This area is defined as the approximately 121.01-acre show center area footprint, including a 500-foot buffer around the Show Center area, as well as a broader 3,647.07-acre study area that includes the potential flight paths and variable buffer areas around the potential flight paths.

Biological Setting: The TFR area contains a wide variety of sensitive habitats and wildlife species, including both marine and terrestrial resources. Less than three miles from the center of the airshow performance area, there are two adjacent marine protected areas: Bolsa Bay State Marine Conservation Area (SMCA) and Bolsa Chica Basin SMCA which are protected under the State Marine Life Protection Act. SMCAs protect tidal lands, wetlands up to the mean high tide line, fish and fish habitat for many fish species that are both state and federally managed.

Bolsa Chica Ecological Reserve (BCER) is in this same area. BCER is an approximately 1,300-acre coastal estuary which contains open water, mudflats, coastal dunes, riparian, freshwater marsh, and saltwater marsh habitats. This saltwater marsh is one of the largest remaining in Southern California. More than 200 avian species have been identified there. BCER is an important stopover along the Pacific flyway for hundreds of migratory bird species, which are protected under the Migratory Bird Treaty Act. CDFW is responsible for on-site management of BCER, which provides important habitat for sensitive wildlife species, including western snowy plover (*Charadrius mivosus nivosus*; CDFW Species of Special Concern (SSC), federal Endangered Species Act (ESA) listed-threatened), light-footed Ridgway’s rail (*Rallus obsoletus levipes*; CESA listed-endangered, ESA listed-endangered, State Fully Protected (FP)), coastal California gnatcatcher (*Polioptila californica californica*; SSC, ESA listed-threatened), Belding’s savannah sparrow (*Passerculus sandwichensis beldingi*; CESA listed-endangered), California least tern (*Sterna antillarum browni*; CESA listed-endangered, ESA listed-endangered, FP), white-tailed kite (*Elanus leucurus*; FP), peregrine falcon (*Falco peregrinus anatum*; FP), burrowing owl (*Athene cunicularia*; SSC), northern harrier (*Circus hudsonius*; SSC),

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Cooper's hawk (*Accipiter cooperii*; CDFW Watch List (WL)), osprey (*Pandion haliaetus*; WL), tricolored blackbird (*Agelaius tricolor*; CESA listed-threatened), and California brown pelican (*Pelecanus occidentalis californicus*; WL).

Project History: CDFW has an extensive history communicating with the FAA, the California Coastal Commission, the State Lands Commission (SLC), the United States Fish and Wildlife Service, and the City regarding the airshow and its impacts to wildlife. CDFW has been communicating over email with the FAA for several years to discuss implementing official flight restrictions over BCER, which is consistent with protections over other biological reserves. This effort is ongoing. On August 25, 2023, CDFW and SLC jointly sent a letter to the City describing impacts to birds due to the airshow in 2021 and 2022. These impacts include aircraft dropping streamers in BCER, and repeated aircraft flyovers that flushed sensitive birds such as northern harrier. In that letter, CDFW and SLC emphasized that sound pollution and low overhead flights pose a threat to birds and other wildlife. CDFW requested that for the 2023 airshow, no flyovers occur over BCER, and that no streamers or any other debris be dropped over BCER. In 2023, hundreds of pelicans were disturbed and seen flushing after jets flew over BCER during the airshow. CDFW incorporates by reference to this letter that August 25, 2023 letter to the City.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

Specific Comments

- 1) Impacts to BCER. While CDFW acknowledges that impacts to BCER will be further evaluated in the DEIR, we feel it is important to restate our position that the Project should avoid impacts to BCER. Aircraft, including planes, helicopters, and drones, can harass birds and cause them to take flight (flush) due to sound, vibrations, or the visual of the aircraft itself. This disturbance can lead to abandonment of nests, aircraft strikes, an interruption in foraging, and energy deficits. CDFW continues to express that the air pollution, sound pollution, vibrations, and close overhead flights associated with the airshow pose a threat to sensitive wildlife species at BCER. Per the Initial Study for the Project, there is potential for airstrike (direct collision with birds), sound pollution, and debris falling from aircraft into sensitive areas. CDFW recommends that the DEIR include an analysis of sound levels due to the airshow within BCER, and how that may impact sensitive wildlife species. Additionally, the DEIR should include an analysis of how the addition of new airshow activities during the evening and at night, such as pyrotechnic shows and a music festival, could impact BCER.

We recommend that the DEIR include a thorough discussion that contextualizes prior CDFW communications regarding impacts to BCER from the airshow such as the information in the August 25, 2023 letter from CDFW and SLC to the City, which is incorporated by reference to this letter. Additionally, we recommend that avoidance and mitigation measures associated with the Project are crafted consistent with prior communications and recommendations. This includes, as requested in the August 25, 2023 letter, that no flyovers occur over BCER; no streamers or other debris are dropped over BCER; and, if flyovers must occur over BCER, that aircraft altitudes be as high as possible.

- 2) Project Area. The Initial Study (IS) currently describes the Project Site as the on-the-ground event area and the small performance area marked by buoys in the ocean. However, the IS also states that a broader study area of approximately 3,600 acres is defined for the Project in order to reflect potential impacts to biological resources. A map of this study area is not provided in the IS. CDFW would like to emphasize that BCER and the adjacent SMCAs should be included in the study area for Project impacts due to proximity to the described Project Site, as well as the potential for more direct impacts due to aircraft flying over.

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- 3) CESA. Project activities could lead to adverse impacts to species protected by CESA, such as Belding's savannah sparrow and tricolored blackbird. These impacts could occur due to potential aircraft strikes, debris, and air, water, and noise pollution. CDFW considers adverse impacts to a species protected by CESA to be significant without mitigation under CEQA. As to CESA, take of any endangered, threatened, candidate species, or CESA-listed plant species that results from the Project is prohibited, except as authorized by state law (Fish & G. Code §§ 2080, 2085; Cal. Code Regs., tit. 14, §786.9). Consequently, if the Project or any Project-related activity will result in take of a species designated as endangered or threatened, or a candidate for listing under CESA, CDFW recommends that the Project proponent seek appropriate take authorization under CESA prior to implementing the Project. Appropriate authorization from CDFW may include an Incidental Take Permit (ITP) or a consistency determination in certain circumstances, among other options [Fish & G. Code, §§ 2080.1, 2081, subds. (b) and (c)]. Early consultation is encouraged, as significant modification to a Project and mitigation measures may be required to obtain a CESA Permit. Revisions to the Fish and Game Code, effective January 1998, may require that CDFW 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 of a CESA ITP.

Please note that CDFW cannot issue an ITP for Fully Protected species, and as such impacts to these species (including but not limited to California least tern, light-footed Ridgway's rail, etc.) must be fully avoided.

- 4) Alternatives Analysis. The DEIR should provide a range of alternatives to the Project design to avoid or otherwise minimize direct and indirect impacts to sensitive biological resources. More specifically, CDFW recommends that the DEIR analyze alternatives that address the following:
- a. Avoiding flyovers over BCER entirely. The DEIR should discuss the feasibility of avoiding aircraft flyovers above BCER. CDFW recommends this alternative to best minimize impacts to sensitive species, especially birds, at BCER;
 - b. Establishing altitude restrictions over BCER for the Project. CDFW is in the process of establishing altitude restrictions over BCER with the FAA. We recommend that specific altitude restrictions over BCER are analyzed in the DEIR with respect to impacts to wildlife. If aircraft will be flying over BCER, CDFW recommends that their altitudes be as high as possible, and at least 1500 feet (Kempf, N. & O. Hüppop 1998); and,
 - c. Other restrictions that could lessen impacts to wildlife such as avoiding flights over BCER after dark, reducing speed for flights over BCER to reduce noise, and/or limiting the number of days of the airshow (e.g., not expanding the airshow to five days).

Project alternatives should be thoroughly evaluated, even if an alternative would impede, to some degree, the attainment of the Project objectives or would be more costly (CEQA Guidelines, § 15126.6). The DEIR should include sufficient information about each alternative to allow meaningful evaluation, public participation, analysis, and comparison with the proposed Project (CEQA Guidelines, § 15126.6). CDFW requests that maps of flight paths be provided in the DEIR.

- 5) Cumulative Impact. The DEIR should consider the cumulative impacts to biological resources, specifically to BCER and the SMCAs, from the airshow and other regularly recurring events hosted by the City (i.e., pyrotechnic displays, festivals, etc.). Cumulative impacts on biological resources can result from collectively significant projects. The Project, when considered collectively with prior, concurrent, and probable future projects, may have a significant cumulative effect on biological resources. The

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Project may have a potential to substantially reduce the number or restrict the range of endangered, rare, or threatened species. Species that may be impacted by the Project include, but is not limited to, the biological resources described in this letter.

Accordingly, CDFW recommends the DEIR evaluate the Project's potential cumulative impacts on biological resources. The Project may have a "significant effect on the environment" if the possible effects of the Project are individually limited but cumulatively considerable. "Cumulatively considerable" means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects [Pub. Resources Code, § 21083(b)]. The City's conclusions regarding the significance of the Project's cumulative impact should be justified and supported by evidence to make those conclusions. Specifically, if the City concludes that the Project would not result in cumulative impacts on biological resources, the City "shall identify facts and analysis supporting the City's conclusion that the cumulative impact is less than significant" [CEQA Guidelines section § 15130(a)(2)].

When using a threshold of significance, the DEIR should briefly explain how compliance with the threshold means that the Project's impacts are less than significant. A threshold of significance is an identifiable quantitative, qualitative, or performance level of a particular environmental effect [CEQA Guidelines, § 15064.7]. Compliance with the threshold does not relieve the City's obligation to consider substantial evidence indicating that the Project's environmental effects may still be significant [CEQA Guidelines, § 15064(b)(2)]. Alternatively, if the City concludes that the Project might contribute to a significant cumulative impact, but the contribution will be rendered less than cumulatively considerable through implementation of mitigation measures, the DEIR should briefly explain how the contribution has been rendered by the City to be less than cumulatively considerable. The City "shall identify facts and analysis supporting the City's conclusion that the contribution will be rendered less than cumulatively considerable" [CEQA Guidelines section, § 15130(a)(3)].

General Comments

- 6) Disclosure. The DEIR should provide an adequate, complete, and detailed disclosure about the effect which a proposed project is likely to have on the environment (Pub. Resources Code, § 20161; CEQA Guidelines, § 15151). Adequate disclosure is necessary so CDFW may provide comments on the adequacy of proposed avoidance, minimization, or mitigation measures, as well as to assess the significance of the specific impact relative to plant and wildlife species impacted (e.g., current range, distribution, population trends, and connectivity).
- 7) Biological Baseline Assessment. An adequate biological resources assessment should provide a complete assessment and impact analysis of the flora and fauna within and adjacent to the Project site and where the Project may result in ground disturbance. The assessment and analysis should place emphasis on identifying endangered, threatened, rare, and sensitive species; regionally and locally unique species; and sensitive habitats. An impact analysis will aid in determining the Project's potential direct, indirect, and cumulative biological impacts, as well as specific mitigation or avoidance measures necessary to offset those impacts. CDFW also considers impacts to SSC a significant direct and cumulative adverse effect without implementing appropriate avoidance and/or mitigation measures. The DEIR should include the following information:
 - a. Information on the regional setting that is critical to an assessment of environmental impacts, with special emphasis on resources that are rare or unique to the region [CEQA Guidelines, § 15125(c)]. The DEIR should include measures to fully avoid and otherwise protect Sensitive Natural Communities. CDFW considers Sensitive Natural Communities as threatened habitats having both regional and local significance. Natural communities, alliances, and associations with a State-wide rarity ranking of S1, S2, and S3 should be considered sensitive and declining at the

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local and regional level. These ranks can be obtained by visiting the [Vegetation Classification and Mapping Program - Natural Communities](#) webpage (CDFW 2022c);

- b. A thorough, recent, floristic-based assessment of special status plants and natural communities following CDFW's [Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities](#) (CDFW 2018). Botanical field surveys should be comprehensive over the entire Project site, including areas that will be directly or indirectly impacted by the Project. Adjoining properties should also be surveyed where direct or indirect Project effects could occur, such as those from fuel modification, herbicide application, invasive species, and altered hydrology. Botanical field surveys should be conducted in the field at the times of year when plants will be both evident and identifiable. Usually, this is during flowering or fruiting. Botanical field survey visits should be spaced throughout the growing season to accurately determine what plants exist in the Project site. This usually involves multiple visits to the Project site (e.g., in early, mid, and late-season) to capture the floristic diversity at a level necessary to determine if special status plants are present;
- c. Floristic alliance- and/or association-based mapping and vegetation impact assessments conducted in the Project site and within adjacent areas. The [Manual of California Vegetation](#) (MCV), second edition, should also be used to inform this mapping and assessment. Adjoining habitat areas should be included in this assessment where the Project's construction and activities could lead to direct or indirect impacts off site;
- d. A complete and recent assessment of the biological resources associated with each habitat type in the Project site and within adjacent areas. CDFW's [California Natural Diversity Database](#) should be accessed to obtain current information on any previously reported sensitive species and habitat (CDFW 2022d). An assessment should include a minimum nine-quadrangle search of the CNDDDB to determine a list of species potentially present in the Project site. A nine-quadrangle search should be provided in the Project's CEQA document for adequate disclosure of the Project's potential impact on biological resources. Please see [CNDDDB Data Use Guidelines – Why do I need to do this?](#) for additional information (CDFW 2011);
- e. A lack of records in the CNDDDB does not mean that rare, threatened, or endangered plants and wildlife do not occur. Field verification for the presence or absence of sensitive species is necessary to provide a complete biological assessment for adequate CEQA review [CEQA Guidelines, § 15003(i)];
- f. A complete, recent, assessment of endangered, rare, or threatened species and other sensitive species within the Project site and adjacent areas, including SSC and California Fully Protected Species (Fish & G. Code, §§ 3511, 4700, 5050, and 5515). Species to be addressed should include all those which meet the CEQA definition of endangered, rare, or threatened species (CEQA Guidelines, § 15380). Seasonal variations in use of the Project site should also be addressed such as wintering, roosting, nesting, and foraging habitat. Focused species-specific surveys, conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable, may be required if suitable habitat is present. See CDFW's [Survey and Monitoring Protocols and Guidelines](#) for established survey protocol (CDFW 2022e). Acceptable species-specific survey procedures may be developed in consultation with CDFW and USFWS; and,
- g. A recent wildlife and rare plant survey. CDFW generally considers biological field assessments for wildlife to be valid for a one-year period, and assessments for rare plants may be considered valid for a period of up to three years. Some aspects of the proposed Project may warrant periodic updated surveys for certain sensitive taxa, particularly if Project implementation build out could occur over a protracted time frame or in phases.

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- 8) Direct and Indirect Impacts on Biological Resources. The DEIR should provide a thorough discussion of direct and indirect impacts expected to adversely affect biological resources with specific measures to offset such impacts. The DEIR should address the following:
- a. A discussion regarding Project-related indirect impacts on biological resources, including resources in BCER, and other 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 Natural Community Conservation Plan (Fish & G. Code, § 2800 et. seq.)]. Impacts on, and maintenance of, wildlife corridor/movement areas, including access to undisturbed habitats in areas adjacent to the Project, should be fully analyzed and discussed in the DEIR;
 - b. A discussion of both the short-term and long-term effects of the Project on species population distribution and concentration, as well as alterations of the ecosystem supporting those species impacted [CEQA Guidelines, § 15126.2(a)]; and,
 - c. A discussion of potential adverse impacts from lighting, noise, pollution from aircraft, temporary and permanent human activity, and exotic species, and identification of any mitigation measures.
- 9) Mitigation Measures. Public agencies have a duty under CEQA to prevent significant, avoidable damage to the environment by requiring changes in a project through the use of feasible alternatives or mitigation measures [CEQA Guidelines, §§ 15002(a)(3), 15021]. Pursuant to CEQA Guidelines section 15126.4, an environmental document “shall describe feasible measures which could mitigate for impacts below a significant level under CEQA.”
- a. Level of Detail. Mitigation measures must be feasible, effective, implemented, and fully enforceable/imposed by the lead agency through permit conditions, agreements, or other legally binding instruments (Pub. Resources Code, § 21081.6(b); CEQA Guidelines, § 15126.4). A public agency “shall provide the measures that are fully enforceable through permit conditions, agreements, or other measures” (Pub. Resources Code, § 21081.6). The DEIR should provide mitigation measures that are specific and detailed (i.e., responsible party, timing, specific actions, location) in order for a mitigation measure to be fully enforceable and implemented successfully via a mitigation monitoring and/or reporting program (Pub. Resources Code, § 21081.6; CEQA Guidelines, § 15097).
 - b. Disclosure of Impacts. If a proposed mitigation measure would cause one or more significant effects, in addition to impacts caused by the proposed Project, the DEIR should include a discussion of the effects of proposed mitigation measures [CEQA Guidelines, § 15126.4(a)(1)]. In that regard, the DEIR should provide an adequate, complete, and detailed disclosure about the Project’s proposed mitigation measure(s). Adequate disclosure is necessary so CDFW may assess the potential impacts of proposed mitigation measures.
- 10) Data. CEQA requires that information developed in environmental impact reports 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 sensitive natural communities detected by completing and submitting [CNDDB Field Survey Forms](#) (CDFW 2022f). To submit information on special status native plant populations and sensitive natural communities, the [Combined Rapid Assessment and Relevé Form](#) should be completed and submitted to CDFW’s Vegetation Classification and Mapping Program (CDFW 2022g). The City should ensure data collected for the preparation of the DEIR be properly submitted, with all data fields applicable filled out.

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- 11) Compensatory Mitigation. The DEIR should include compensatory mitigation measures for the Project's significant direct and indirect impacts to sensitive and special status plants, animals, and habitats. Mitigation measures should emphasize avoidance and minimization of Project-related 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 inadequate to mitigate the loss of biological functions and values, off-site mitigation through habitat creation and/or acquisition and preservation in perpetuity should be addressed. Areas proposed as mitigation lands should be protected in perpetuity with a conservation easement and financial assurance and dedicated to a qualified entity for long-term management and monitoring. Under Government Code, section 65967, the Lead Agency must exercise due diligence in reviewing the qualifications of a governmental entity, special district, or nonprofit organization to effectively manage and steward land, water, or natural resources on mitigation lands it approves.
- 12) Long-term Management of Mitigation Lands. For proposed preservation and/or restoration, the DEIR should include measures to protect the targeted habitat values from direct and indirect negative impacts in perpetuity. The objective should be to offset Project-induced qualitative and quantitative losses of wildlife habitat values. Issues that should be addressed include (but are not limited to) restrictions on access, proposed land dedications, monitoring and management programs, control of illegal dumping, water pollution, and increased human intrusion. An appropriate endowment should be set aside to provide for long-term management of mitigation lands.
- 13) Lake and Streambed Alteration. CDFW has regulatory authority over activities in streams that will divert or obstruct the natural flow, or change the bed, channel, or bank (which may include associated riparian resources) of any river, stream, or lake or use material from a river, stream, or lake. For any such activities, the Project applicant (or "entity") must provide written notification to CDFW pursuant to section 1600 et seq. of the Fish and Game Code. Based on this notification and other information, CDFW determines whether a Lake and Streambed Alteration Agreement (LSAA) with the applicant is required prior to conducting the proposed activities. CDFW's issuance of a LSAA for a project that is subject to CEQA will require CEQA compliance actions by CDFW as a Responsible Agency. CDFW recommends that the City assess whether notification is appropriate. A Notification package for a LSAA may be obtained by accessing CDFW's web site at <http://www.wildlife.ca.gov/Conservation/LSA>.

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: http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB_FieldSurveyForm.pdf. 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: http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp.

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.)

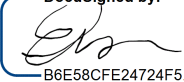
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CONCLUSION

CDFW appreciates the opportunity to comment on the NOP to assist the City in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Brigid Moran at Brigid.Moran@wildlife.ca.gov or (858) 467-2720.

Sincerely,

DocuSigned by:

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Erinn Wilson-Olgin
Regional Manager
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REFERENCES

California Environmental Quality Act (CEQA). 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.

California Office of Planning and Research. 2009 or current version. CEQA: California Environmental Quality Act. Statutes and Guidelines, § 21081.6 and CEQA Guidelines, § 15097, §15126.4(2). California State Lands Commission and California Department of Fish and Wildlife. “Huntington Beach Airshow – Conditions to Protect the Bolsa Chica Ecological Reserve.” August 25, 2023.

Kempf, N. & O. Hüppop. 1998. Wie wirken Flugzeuge auf Vögel? - Eine bewertende Übersicht” in Naturschutz und Landschaftsplanung 30, (I), pp.17 - 28. Summarized in English online at https://www.fai.org/sites/default/files/documents/ln_3-1_aircraft_effects_on_birds.pdf.

STATE OF CALIFORNIA

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August 25, 2023

Sent via postal and E-mail (Michael.Gates@surfcity-hb.org)

Michael E. Gates
City Attorney
City of Huntington Beach
2000 Main Street
Huntington Beach, California

Subject: Huntington Beach Airshow – conditions to protect the Bolsa Chica
Ecological Reserve

Dear Mr. Gates,

The California State Lands Commission (Commission) and California Department of Fish and Wildlife (CDFW) are jointly submitting this letter to address several concerns regarding the upcoming Huntington Beach Pacific Airshow scheduled for September 29th through October 1st, 2023.

As background, the Commission manages four million acres of sovereign tide and submerged lands, the beds of natural, navigable waterways including lakes and rivers, and school lands. The mission of the Commission is to provide the people of California with effective stewardship of the lands, waterways, and resources entrusted to its care through preservation, restoration, enhancement, responsible economic development, and the promotion of public access. This stewardship of sovereign lands and natural resources is guided by the common law Public Trust Doctrine, the California Constitution, various laws, and regulations specific to the Commission, and statutory trust grants.

The Commission owns approximately 1200 acres of sovereign lands in the Bolsa Chica Ecological Reserve (BCER). The Commission leases these lands to the CDFW for on-site management. Additionally, the Commission, along with five other state and federal agencies informally referred to as the Bolsa Chica Steering Committee, provides overall management oversight of BCER.

Portions of the BCER contain active oil operations, including operating wells and pipelines maintained by California Resources Corporation. An aircraft accident in this area could create legal liability for the parties responsible, in addition to potentially causing ecological and human health and safety damage.

CDFW manages California's diverse fish, wildlife, and plant resources, and the habitats upon which they depend, for their ecological values and for their use and enjoyment by the public. CDFW is responsible for the management of over 1.1 million acres of fish and wildlife habitat spanning over 700 properties statewide. These properties provide habitat for a rich diversity of fish, wildlife, and plant species and comprise habitats from every major ecosystem in the state. CDFW is responsible for regulatory enforcement and management of related recreational, commercial, scientific, and educational uses.

During the 2021 and 2022 airshow, several incidents occurred that caused disruptions in the normal behavior patterns of many bird species, including feeding and sheltering at Bolsa Chica Ecological Reserve. Disturbances included dropping streamers in the BCER, causing potential harm to wildlife and fire risk, and repeated low flyovers, which harassed the bird populations and caused them to take flight each time the airplanes flew over. This latter action is considered a "take" and is in violation of CCR T-14 251.1. Additionally, under Section 630 (17) of Title 14 "no aircraft operations are permitted in a reserve, and low flyovers are in violation". The sound pollution and overhead flights pose a threat to birds and other wildlife. The BCER is a critical stopover along the Pacific Flyway for hundreds of migratory bird species which are protected under the Migratory Bird Treaty Act of 1918 (MBTA, 16.U.S.C 703-712). These also include threatened and endangered species which are protected under the Federal Endangered Species Act of 1973 (16 U.S.C 1531-1544), and the California Endangered Species Act of 1970 (FGC, 1.5, 2050-2115.5). A few that depend heavily on the BCER include the Western snowy plover, Light-footed Ridgway's rail, Coastal California gnatcatcher, and the Belding's savannah sparrow.

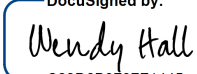
In order to avoid a reoccurrence of these concerns this year for the 2023 airshow, we request compliance with the following conditions:

1. No flyovers will occur over BCER.
2. No streamers or any other debris will be dropped over the BCER.

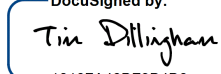
We would be happy to meet with you to discuss these concerns and reach a mutual concurrence on a protocol for the event that accommodates the airshow, while protecting the natural resources of BCER.

Please confirm receipt of this letter.

Sincerely,

DocuSigned by:

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Wendy Hall
Environmental Program Manager
Special Projects Liaison
California State Lands Commission

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Tim Dillingham
Environmental Program Manager
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cc:

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