

**CALIFORNIA STATE LANDS
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April 7, 2025

File Ref: SCH #2024020006

Connor Hyland
Senior Deputy Attorney
City of Huntington Beach, Office of the City Attorney
2000 Main Street, Fourth Floor
Huntington Beach, CA 92648

VIA ELECTRONIC MAIL ONLY (connor.hyland@surfcity-hb.org)

Subject: Draft Environmental Impact Report for the Pacific Airshow Huntington Beach, Orange County

Dear Connor Hyland:

The California State Lands Commission (Commission) staff has reviewed the Draft Environmental Impact Report (EIR) for the Pacific Airshow Huntington Beach (Project), which is being prepared by the City of Huntington Beach (hereinafter referred to as "the City"). The City is the public agency that has prepared the Draft EIR to inform decision-makers and the general public of the potential environmental impacts resulting from the Project, and is the lead agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.). The Commission is a trustee agency for projects that could directly or indirectly affect State sovereign lands and their accompanying Public Trust resources or uses. Additionally, because the Project involves activity on State sovereign land under the Commission's jurisdiction, the Commission will act as a responsible agency.

Commission Jurisdiction and Public Trust Lands

The Commission has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. The Commission also has certain residual and review authority for tidelands and submerged lands legislatively granted in trust to local jurisdictions (Pub. Resources Code, §§ 6009, subd. (c); 6009.1; 6301; 6306). All tidelands and

submerged lands, granted or ungranted, as well as navigable lakes and waterways, are subject to the protections of the common law Public Trust Doctrine.

As general background, the State of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable lakes and waterways upon its admission to the United States in 1850. The State holds these lands for the benefit of all people of the state for statewide Public Trust purposes, which include but are not limited to waterborne commerce, navigation, fisheries, water-related recreation, habitat preservation, and open space. On tidal waterways, the State's sovereign fee ownership extends landward to the mean high tide line, except for areas of fill or artificial accretion or where the boundary has been fixed by agreement or a court.

A review of the Project described in the Draft EIR indicates that certain components of the Project clearly require Commission authorization, and that other components of the Project may require Commission authorization. The proposed Project includes an Airshow Performance Area which is to be situated on the Pacific Ocean with an east-west length of approximately 3,000 feet and a north-south length of approximately 12,000 feet. This area would be demarcated by 16 large white buoys installed in the Pacific Ocean waterward of the mean high tide line (MHTL), which in this location is ungranted sovereign lands managed by the Commission. Placement of the proposed buoys will require Commission authorization, generally in the form of a lease.

The proposed Project also includes a helicopter and aircraft landing/runway display on a temporary landing surface to be generally located within an open area directly in front of the Main Hospitality Area during the hours of the airshow. Based on the current Project information, the construction and/or use of the proposed runway may encroach waterward of the MHTL and onto sovereign land subject to the Commission's leasing jurisdiction, and, if so, would require Commission authorization.

Additionally, Commission Lease 6616, a General Lease – Public Agency Use, was issued to the City for the operation and maintenance of an existing municipal pier (Huntington Beach Pier or Pier) and related concessions for a term of 25 years, beginning June 21, 2018. The City's lease acknowledges that the Lease Premises, including the Pier, are subject to the Public Trust and are available to members of the public. Staff is aware that the proposed Project will utilize the Pier for purchasable seating, umbrellas, cocktail tables, and bars (page 2-13, *2.6.5 Show Center Layout and Viewing*). The Draft EIR states that all Pier seating would be landward of the MHTL. However, should any Project component or activity on the Pier encroach waterward of the MHTL, Commission authorization will be needed in the form of either an amendment to the City's lease, or issuance of a new lease to the City or the event operator. Furthermore, any

other use of the Pier waterward of the MHTL, such as the proposed pyrotechnic shows described in the Draft EIR, may require Commission authorization; at the very least, these proposed activities will require submission of a detailed proposal to Commission staff for review. Finally, should the Project's use of the Pier impact or prohibit public access to the areas of the Pier waterward of the MHTL, then this would violate the City's lease and the common law Public Trust Doctrine.

It must also be noted that the Commission owns approximately 1,200 acres of sovereign lands in the Bolsa Chica Ecological Reserve (BCER) located within the Project's Temporary Flight Restriction (TFR) Area. The Commission leases these lands to the California Department of Fish and Wildlife (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 the portions of the BCER comprising the Bolsa Chica Lowlands Restoration Project.

Project Objectives

The City provides an extensive list of preliminary Project objectives (page 2-6) and states that the Pacific Airshow Huntington Beach event will achieve the City's objectives and need. Those objectives related to Commission jurisdiction and Public Trust resources include, but are not limited to: providing a gathering place for locals and visitors to enjoy civilian and military aircraft flybys, aerial acrobatics and festivals, promoting coastal access, and promoting awareness and use of the Pier and beaches.

In addition, the Draft EIR claims that the Project will, "Provide an event that reduces potential impacts to the surrounding sensitive habitat including the Bolsa Chica Ecological Reserve, the Huntington Beach Wetlands, the Magnolia Marsh, and special-status wildlife species such as the federally endangered California least tern and western snowy plover" but offers no analysis that adequately supports this claim. The Commission and CDFW have provided the City evidence from past airshow events that the Project has impacted the surrounding sensitive habitat areas, including the BCER. Staff requests that the City include all information the City has regarding documented and potential impacts and the specific ways that the event reduces potential impacts to sensitive habitat.

Project Description

From the Project Description, Commission staff understands that the Project would include the following components that have potential to affect State sovereign land:

- Future airshows: Past airshows have taken place over a 3-day period with 2 or more practice flyover days. Future airshows discussed in the Draft EIR may be extended to 5 event days plus practice flyover days (page 2-7, *Project Characteristics*) and last from as early as 9:00 AM to as late as 11:00 PM.
- Helicopter and aircraft landing/runway display: A temporary runway would be constructed of stadium flooring on the beach in front of the Main Hospitality Area.
- Pyrotechnic Daily and Nightly Shows: Both daily and nightly shows may be discharged by aircraft, the Huntington Beach Pier, or an ocean barge. Nightly pyrotechnic shows would conclude by 11:00 PM.
- Beach Camping: Stadium flooring would be installed on the beach in Area C (page 2-9, *Future Airshow Activities*) to accommodate parking for recreational vehicles to camp on the beach, generally between Thursday and Monday morning following the event.
- Airshow Flight Paths: The Airshow's TFR area includes sensitive habitats, including BCER.

The Draft EIR identifies (page 4-10) Alternative 2: 2023 Airshow Alternative as the Environmentally Superior Alternative, as the No Project Alternative does not fulfill any Project objectives. Alternative 2 considers a 3-day event, with none of the new airshow activities identified in Section 2.6, *Project Characteristics*, which include a music festival, drone displays, pyrotechnic shows, aircraft/runway display, etc.

Environmental Review

As explained in the following comments, the EIR requires revision to comply with CEQA and to support a future lease approval by the Commission. Commission staff requests that the City consider the following comments on the Project's EIR to ensure that impacts to State sovereign land are adequately analyzed for the Commission's use of the EIR when considering a future lease application or other approval for the Project. In addition, Commission staff strongly recommends that the City recirculate the EIR once the document has been updated with more information on the Project site and activities, associated impacts, and mitigation measures to ensure meaningful responsible agency input and public review.

In the absence of an updated EIR, Commission staff may need to undertake subsequent environmental review as part of future lease application processing or to support a future Commission action. Staff have attached the comment letter submitted on March 4, 2024, during the Notice of Preparation comment period (Attachment 1) and will refer to it throughout this section.

General Comments

1. Project Description: Staff comments previously provided (Comments 1 and 2, page 5 of Attachment 1) still generally apply to the Draft EIR. While the Draft EIR states that all project activities would take place “landward of the State Lands Commission MHTL,” several components would be present below the MHTL, such as pyrotechnic shows that would be launched from the Huntington Beach Pier or from an ocean barge as well as the marker buoys required to set the perimeter of the aerobatic box/Airshow Performance Area in the Pacific Ocean. The installation of these buoys, in particular, would require a lease from the Commission and has no description or impact analysis in the Draft EIR, which may hinder the Commission’s ability to rely solely upon the EIR when considering a lease. Staff suggests that the Project area boundary be revised to include all Airshow activities, including those falling below the MHTL. In addition, the Draft EIR lists some project activities in Section 2.6, *Project Characteristics*, (e.g., use of an ocean barge, beach camping, drone shows, helicopter and aircraft landing/runway display etc.) but does not discuss or analyze them further. All activities for the Project need to be analyzed in the EIR and should be included on relevant figures to determine if Commission approval would be required. If these activities are not analyzed in the EIR, then the Project Description must be revised to remove them from the proposed Project/event.

The Final EIR must also confirm specific timing for future airshows. The airshow event dates should be included in the Project Description, where page 2-6 already states that historic airshow events occur “during the fall season, typically towards the end of September/beginning of October.” If the EIR provides impact significance determinations that are predicated on specific scheduling for the event (e.g., the Biological Resources Technical Report (BRTR) conclusion of a less-than-significant impact to nesting birds because the airshow would be scheduled outside of the April-September breeding season), then the Project must be designed and described to include those restrictions. Alternatively, the Project Description could clarify that the event may happen at any point during the year, but the EIR must then revise its analysis to address new, potential impacts and provide feasible mitigation.

2. Project Feature - Biological Monitors: The Draft EIR discusses the use of biological monitors in Section 2.6.4, *Airport Origin, Airshow Flight Paths, and Airshow Performance Duration*, which states, “Because pilots could be instructed by the Federal Aviation Administration (FAA) to fly over BCER, pre-activity surveys and biological monitoring will be conducted each year as part of the Project...to determine whether Airshow activity is impacting bird behavior and to ensure that no airshow-related debris drifts into sensitive ecological areas.” The biological monitors should therefore be included in the Project Description and identified as a project feature. The biological

monitor's role should be comprehensively defined to identify how many biological monitors will be required by the Project, where they will be stationed, what the biological monitor is present to observe, and what responses to impacts they are designated to carry out. For example, Section 3.2.5.1, *Special-Status Species* (page 3.2-40), notes that during a single past airshow event a streamer drifted into the Biological Study Area (BSA) and was removed within 15 minutes by the City's fire department. Staff recommends that the Project Description describe both the biological monitor's purpose, to "...ensure that no airshow-related debris drifts into sensitive ecological areas," and their required response (e.g., the monitor must promptly report fallen debris in the BSA and coordinate with the City of Huntington Beach Fire Department and CDFW for swift removal).

3. Public Agency Approvals: Staff notes that the Draft EIR omits the Commission from the list of public agencies with approval authority over the Project. In the Final EIR's Review and Approvals section, please include: 1) the Commission's Responsible agency review of the Final EIR and adoption of an independent Mitigation Monitoring Program, and 2) Approval of a State Lands Lease(s) and/or Lease Amendment. In the Final EIR's list (page 2-15) of public agencies whose approval is required, please include the Commission as a CEQA Responsible Agency.

Biological Resources

4. Impacts to BCER Special Status Species: A portion of the BCER was included in the Draft EIR's BSA and accompanying BRTR (Appendix D). However, while the BSA and BRTR include flight paths to and from the Training Base at Los Alamitos and John Wayne Airport as part of the project description, neither one includes "turn around" flight paths for jets within the Project's TFR Area, and no surveys were conducted for those "turn around" flight paths. These "turn arounds" have been observed occurring directly over BCER during past airshows, with jets observed flying below 500 feet in elevation. The CDFW on-site management staff at BCER have documented these flights by both photographic and video evidence for the airshows in 2021, 2022, 2023, and 2024. Documentation of these flights in prior years is recorded in emails. Video evidence has been sent to the City of Huntington Beach by Commission staff. CDFW staff shared the video evidence with local non-governmental organizations, FAA, Commission staff, Code Four, California Coastal Commission, United States Fish and Wildlife Service, and CBS news. The Draft EIR's analysis of environmental impacts to BCER is therefore incomplete, as the BRTR lacks critical data both to assess impacts and project effects from the jet "turn arounds" and to consider potential mitigation measures.

The Draft EIR should also evaluate noise and vibration impacts on special status species from potential aircraft fly-overs within and outside of the project area designated within the EIR, including BCER. Mitigation measures could include species-specific activity windows established in coordination with CDFW, USFWS, and the National Marine Fisheries Service. Staff recommends early consultation with these agencies to minimize Project impacts on sensitive species.

In addition, trash and debris created during the event, including streamers used in association with parachute performances, can pose a risk to wildlife through potential exposure, ingestion, and/or entanglement. Trash and debris can also lead to degradation of habitat. Staff request that the EIR should describe avoidance and mitigation measures, including best management practices, for the proper containment of trash and debris from the event to prevent these hazards from overflowing to the surrounding beach, water, and greater coastal area, including BCER.

5. Mitigation: Section 3.3.5.1, *Wildlife Hazards Analysis*, discusses the potential safety hazard posed from wildlife strikes, which could occur in the airspace over Commission jurisdiction and indirectly affect biological resources, sovereign lands, and/or the public utilizing those lands. On page 3.3-12, the "Significance before Mitigation" identifies the impact as "Potentially Significant." However, even though the Draft EIR determines that the resulting level of significance is less than significant with mitigation, neither Mitigation Measure (MM) HAZ-1 nor MM HAZ-2 reduce the severity of this impact. MM HAZ-1 requires a pre-airshow site visit and subsequent wildlife hazard memorandum, at an undetermined date, to recommend wildlife hazard reductions and to potentially include a long-term management strategy. MM HAZ-2 requires a biological monitor to observe event performances and document bird activity during aircraft flyovers and take-off and landing within the Show Center Area, later using this information to inform the wildlife hazard memorandum. Both measures allow the proposed Project's activities to occur, for an undetermined period of time, without addressing the potentially significant impact through alteration of activities or any compensatory mitigation. As such, MM HAZ-1 and MM HAZ-2 are not adequate pursuant to CEQA Guidelines section 15126.4(a)(1)(B), as they defer potential impact reduction to some future time and do not provide specific performance standards for future mitigation actions as well as the types of actions that could feasibly achieve that performance standard. If the Final EIR does not revise MM HAZ-1 and MM HAZ-2 to fulfill these criteria, then the impact determination must be changed to Significant and Unavoidable.

Biological monitoring as mitigation is also potentially discussed in Section 3.2.5.1, *Special-Status Species*, wherein the Draft EIR analyzes bird strike

impacts over BCER. Page 3.2-40 acknowledges that, even after the Applicant's proposed measures, "...the Project could increase the amount of air traffic over [BCER]." The subsequent analysis and impact determination is contradictory: first, the narrative notes that "...with implementation of these measures, impacts from potential overflights are not expected to be significant," which assumes a potentially significant impact absent the measures, but then ends the discussion by stating "...the additional temporary activity of the annual operation of the Airshow would not significantly contribute to impacts to special-status birds within the BSA." If the first statement is correct, then staff notes that the "measures" (preactivity surveys and biological monitoring) are inadequate similar to MM HAZ-1 and MM HAZ-2, discussed immediately above, and the analysis on page 3.2-40 would require similar revisions. If the second statement is correct, then the EIR must be revised to provide substantial evidence for a less-than-significant impact determination.

The Commission strongly encourages the City, as the CEQA lead agency, to collaborate with CDFW, for those species under CDFW's jurisdiction, in the development of enforceable mitigation measures with performance criteria to demonstrate reduced impacts, supported with substantial evidence.

6. Drones: The Draft EIR failed to address Commission comments, submitted during the scoping period (please refer to page 8 of Attachment 1), on the use of drones throughout various Airshow activities. The Draft EIR neglects to analyze impacts on biological resources from the use of drones in the Show Center Area and Airshow Performance Area, or from accidental incursions or drone crashes into BCER. While unrelated to past airshows, the impact risk is more than theoretical given that in 2021¹ an illegally operated drone crashed in the BCER, resulting in approximately 3,000 Elegant Terns leaving their nesting grounds and abandoning an estimated 2,000 eggs, resulting in a massive reproductive loss for the species, which has only four known nesting sites left on earth. Staff recommend that the impacts of drones should be fully analyzed for performances held in the Show Center Area, Airshow Performance Area, and revised BSA (please refer to Comment 4 related to BCER) and appropriate mitigation measures should be included in the Final EIR. Mitigation measures could include, but not be limited to, requiring event Urban Air Mobility (UAM)/drone operators to utilize the FAA's B4UFly app (see CDFW webpage, CDFW Wildlife Areas and Ecological Reserves Added to FAA's Drone Mobile App (<https://wildlife.ca.gov/News/Archive/cdfw-wildlife-areas-and-ecological-reserves-added-to-faas-drone-mobile-app>)). In

¹ Wisckol, Martin, "Illegal drone scares terns, which abandon 2,000 eggs on Bolsa Chica nesting island". Orange County Register, June, 3, 2021. <https://www.ocregister.com/2021/06/03/illegal-drone-scares-terns-which-abandon-3000-eggs-on-bolsa-chica-nesting-island/>

addition, in accordance with the California Code of Regulations title 14, section 550 related to public use of CDFW lands, "No visitor shall operate any aircraft, drone, or other unmanned aircraft system...within department lands except as authorized by a Special Use Permit issued by the department."

Hazards and Hazardous Materials

7. Spills and Vehicle Discharges: Beach camping is an activity planned for Area C of the Show Center Area; this activity was not part of the Project during the NOP scoping period. The construction of the beach camping site would involve laying down and anchoring stadium flooring onto the beach to provide additional overnight parking for recreational vehicles (RVs). Staff note that while the Draft EIR includes Area C camping as part of the Project Description on page 2-9, all other camping discussions in the Draft EIR only identify Area G for RV camping (an area located upland of the beach). The EIR should analyze the risk of accidental spills or other discharges from RVs (e.g., fuels, oils, grey water and black water, trash) camping in Area C and provide mitigation or minimization measures, as appropriate for the level of significance. The EIR should also identify potential impacts from construction equipment or motorized vehicle spills on or adjacent to the beach and include a spill contingency plan as well as refueling restrictions.
8. Streamer Drops: Streamer drops, which are anticipated as part of the opening ceremony on each day of the Airshow, could pose a potentially significant impact to power lines in the BCER. If streamers were to fall on power lines, a fire could start in the active oil operation, endangering human health and safety. The EIR should identify the materials the streamers are made of and analyze this potentially significant impact.

Recreation

9. Public Access: The Draft EIR dismisses recreation impacts from further analysis in Section 5.1, *Environmental Impacts Not Found to be Significant*. One of the Project's stated objectives is to provide an event that "promotes coastal access," and staff have provided specific concerns related to coastal access to the Pier and beach during the Airshow event (Comment 12, page 10 of Attachment 1). The figures provided in the Draft EIR, including Figure 2-8, are not detailed enough to demonstrate how public access will be maintained throughout the event. The text of the Draft EIR only states (page 2-13) that "All Pier seating is landward of the State Lands Commission MHTL...only a portion of the Pier would be reserved for seated ticketholders and pier ingress and egress would still be provided" without describing through figures or photos how this would occur. Figures and/or a written description of how horizontal access to the beach would be maintained are


also not included in the Draft EIR. Staff reiterates these concerns, as originally submitted during the scoping period, and requests that this impact be analyzed and included in the EIR.

Thank you for the opportunity to comment on the Draft EIR for the Project. As a responsible and trustee agency, the Commission will rely on the Final EIR in amending or issuing a new lease. Staff requests that the City consider these comments before certifying the EIR. If the City, as it addresses comments and evaluates new impacts or revises impact discussions, identifies new significant impacts or substantial increases to an impact's severity (mitigated or unmitigated), then, pursuant to CEQA Guidelines section 15088.5(a), staff expect to be notified of the Draft EIR's partial or full recirculation for the opportunity to review and provide meaningful comment.

Please also send electronic copies of the Final EIR, Mitigation Monitoring and Reporting Program, Notice of Determination, approving resolution, CEQA Findings, and Statement of Overriding Considerations when they are final. Please note that federal and state laws require all government entities to improve accessibility of information technology and content by complying with established accessibility requirements. (29 U.S.C. § 794d; 36 C.F.R. § 1194.1 et seq.; Gov. Code, § 7405.) California State law prohibits State agencies from publishing on their websites content that does not comply with accessibility requirements. (Gov. Code, § 115467.) Therefore, any documents submitted to Commission staff during the processing of a lease or permit that will be posted online, including relevant CEQA documentation, must meet accessibility requirements for Commission staff to place the application on the Commission agenda.

Refer questions concerning environmental review to Robin Tuohy, Environmental Scientist, at Robin.Tuohy@slc.ca.gov. For questions concerning Commission leasing jurisdiction, please contact Jeffrey Plovnick, Public Land Management Specialist, at Jeffrey.Plovnick@slc.ca.gov.

Sincerely,



Nicole Dobroski, Chief
Division of Environmental Science,
Planning, and Management

cc: Office of Planning and Research

R. Tuohy, Commission
J. Plovnick, Commission
L. Calvo, Commission
W. Hall, Commission

Attachment:

- 1) March 4, 2024, Notice of Preparation Comment Letter from Commission staff to the City of Huntington Beach

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March 4, 2024

File Ref: SCH # 2024020006

Connor Hyland
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**Subject: Notice of Preparation for a Draft Environmental Impact Report for the
Pacific Airshow Huntington Beach Project, Orange County**

Dear Connor Hyland,

The California State Lands Commission (Commission) staff has reviewed the Notice of Preparation (NOP) for a Draft Environmental Impact Report (DEIR) for the Pacific Airshow Huntington Beach (Project or Airshow), which is being prepared by the City of Huntington Beach (City). The City, as the public agency that must issue a permit for the Project through their Specific Event Permit Process, is the lead agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.). Pacific Airshow LLC is applying for the permit and is proposing to carry out the Project. The Commission is a trustee agency for projects that could directly or indirectly affect State sovereign land and their accompanying Public Trust resources or uses. Additionally, because the Project involves work on State sovereign land, the Commission will act as a responsible agency. Commission staff requests that the City consult with us on preparation of the DEIR as required by CEQA section 21153, subdivision (a) and the State CEQA Guidelines section 15086, subdivisions (a)(1) and (a)(2).

Staff contacted the City and event operator by letter in August 2023 (see attached 2023 letter) regarding the requirement for a Commission lease or lease amendment for the use of sovereign lands for the 2023 Airshow, as well as concerns regarding Airshow impacts on the Bolsa Chica Ecological Reserve

(BCER), which is owned and managed by the Commission. In February 2024, staff again sent letters to the City and event operator (see attached 2024 letter). As previously stated by letter to the City, staff requested coordination with the City and operator to reach a mutually satisfactory resolution on these matters and to achieve a satisfactory approach for the conduct of future Pacific Airshows. As part of the Commission's effort to work with the City, staff offers these comments on the NOP and Initial Study (IS).

Commission Jurisdiction and Public Trust Lands

The Commission has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. The Commission also has certain residual and review authority for tidelands and submerged lands legislatively granted in trust to local jurisdictions (Pub. Resources Code, §§ 6009, subd. (c); 6009.1; 6301; 6306). All tidelands and submerged lands, granted or ungranted, as well as navigable lakes and waterways, are subject to the protections of the common law Public Trust Doctrine.

As general background, the State of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable lakes and waterways upon its admission to the United States in 1850. The State holds these lands for the benefit of all people of the state for statewide Public Trust purposes, which include but are not limited to waterborne commerce, navigation, fisheries, water-related recreation, habitat preservation, and open space. On tidal waterways, the State's sovereign fee ownership extends landward to the mean high tide line, except for areas of fill or artificial accretion or where the boundary has been fixed by agreement or a court. On navigable non-tidal waterways, including lakes, the State holds fee ownership of the bed of the waterway landward to the ordinary low-water mark and a Public Trust easement landward to the ordinary high-water mark, except where the boundary has been fixed by agreement or a court. Such boundaries may not be readily apparent from present day site inspections.

After review of the information contained in the NOP, there are several components of the Project that would require Commission authorization. The Commission authorized Lease PRC 6616, a General Lease – Public Agency Use, to the City for the operation and maintenance of an existing municipal pier (Huntington Beach Pier or Pier) and related concessions. That lease was authorized for a term of 25 years, beginning June 21, 2018. Staff is aware that the proposed Project will utilize the Pier. The City's lease acknowledges that the Lease Premises, including the Pier, are subject to the Public Trust and are available to members of the public. If the City proposes to close a portion of the pier within the Lease Premises to the general public, the City must obtain

Commission authorization through the form of an amendment to the existing lease or issuance of a new lease.

Another component of the proposed Project includes the placement of 16 large white buoys along a 12,000-foot line to be located 500 and 1,500 feet offshore, marking the Airshow Performance Area. This area would restrict public access and water-dependent recreation, including boating, during the event; such a restriction is not authorized by the City's lease. The lands waterward of the ordinary high-water mark remain ungranted sovereign lands under the management of the Commission. The placement of the buoys would constitute an additional encroachment on these sovereign lands, and in the absence of Commission authorization would constitute a trespass subject to the Commission's enforcement authority (Pub. Resources Code, §§ 6216.1, 6224.3 et seq., 6301, 6303.1; 2 CCR § 3002). Therefore, the placement of the buoys in the ocean will require Commission authorization.

The proposed Project also includes a helicopter landing/runway display on a temporary helipad to be generally located within an open area directly in front of the Main Hospitality Area during the hours of the airshow. However, based on the current Project information, the proposed runway may encroach waterward of the ordinary high-water mark and within sovereign land subject to the Commission's leasing jurisdiction. In addition, construction activities associated with the proposed runway may temporarily encroach on sovereign land and require Commission authorization. Please provide staff with more detailed Project plans that show the specific proposed location of the landing/runway.

Therefore, the proposed Project will require an application for an amendment of the existing lease or a new lease. Information on the Commission's leasing process can be found online at www.slc.ca.gov/leases-permits/, the online application can be found at www.oscar.slc.ca.gov/, and any related questions can be directed to Mr. Kelly Connor (contact information below).

In addition, the Commission owns approximately 1,200 acres of sovereign lands in the BCER located within the Project's Temporary Flight Restriction (TFR) Area. The Commission leases these lands to the California Department of Fish and Wildlife (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 the BCER.

Project Description

Pacific Airshow LLC proposes the Pacific Airshow Huntington Beach Project to meet the following objectives and needs:

- Provide a spectacle-scale airshow in Huntington Beach that attracts attendees throughout the Southern California area and beyond.
- Feature civilian and military aircraft flybys and aerial acrobatics, air racing; and helicopter, electric vehicle, drone, and emerging aviation/mobility technology displays.
- Provide visitor-serving entertainment, services, and amenities.
- Provide an event that reduces potential impacts to the surrounding sensitive habitat including the Bolsa Chica Ecological Reserve, the Huntington Beach Wetlands, the Magnolia Marsh, and special-status wildlife species such as the federally endangered California least tern and western snowy plover.

From the Project Description, Commission staff understands that the Project would include the following components that have potential to impact State sovereign land and Public Trust resources:

- Practice flyovers and flight paths: Practice flyover events are proposed to begin the Monday before the start date of the Pacific Airshow event.
- Airshow event activities: Aerial event activities are proposed to take place over a 3 to 5-day period. Event activities include daytime and nighttime events which start at 10:30 AM and nighttime flyovers and/or parachute jumps planned to take place during the evening hours.
- Beach Airstrip: The IS states that a helicopter landing/runway display activity (pg. 2-8) will be held on a temporary airstrip built out on the beach in front of the Main Hospitality Area (pg. 2-11).
- Pyrotechnic nightly shows: A nighttime proposed activity (pg. 2-8) that may be discharged from flyover aircraft, the Huntington Beach Pier, or an ocean barge.
- Event amenities: Event amenities, such as food trucks, wave pool, demonstrations, competitions, drones, and additional events.
- Trash containment and removal: Containment and removal of trash during the event and following the breakdown of the event.
- Single-use plastics: Event vendors providing services and amenities during the event will be strongly encouraged to not use plastic by the Project Sponsor (pg. 2-14).

Environmental Review

Commission staff requests that the City consider the following comments when preparing the DEIR to ensure that impacts to State sovereign land and Public Trust resources are adequately analyzed.

General Comments

1. Project Description: The Project description (PD) provided in the IS discusses former airshow events as well as future proposed airshow events that would include an expansion of the event from 3 to up to 5 days, with later event stop times (10 PM to 11 PM), and would include many additional proposed activities (e.g., pyrotechnic shows, nighttime music festival). The IS states that the performers and types of aerial activities are likely to change each year (pg. 2-10). The Project description for future airshow events is currently broad and lacks pertinent details for evaluating environmental impacts from all the proposed Project activities. All proposed activities and their environmental impacts must be evaluated in the DEIR. In addition, the DEIR must identify and describe the most impactful combination of activities that could possibly occur (the “worst-case scenario”) and carry forward the full environmental impact analysis for that scenario.

A thorough and complete PD should be included in the DEIR to facilitate meaningful environmental review of potential impacts, mitigation measures, and alternatives. The PD should be as precise as possible in describing the details of all allowable activities that originate within or outside the IS's identified Project area (e.g., flight paths from origin airports for practice and event airshow activities, types of aircraft, maximum area of impact, locations of activities within the Project area, etc.), as well as the details of the timing and length of activities. Thorough descriptions will facilitate Commission staff's determination of the extent and locations of its leasing jurisdiction, make for a more robust analysis of the work and activities that may be performed, and minimize the potential for subsequent environmental analysis to be required.

2. Project Description – Project Area: The IS states on pg. 2-1 that “The Show Center Area and Airshow Performance Area collectively comprise of the Project Site.” However, many Project-related activities (e.g., Project-related flights) also occur within the Project's “temporary flight restriction (TFR) airspace” defined on pg. 2-1 as the “five nautical mile (NM) ring centered on the center of the Airshow's aerobatic box.” For purposes of the DEIR, the definition of the Project Site should be expanded to encompass the TFR area. At a minimum, the DEIR should clearly identify a Project Study Area to include the Show Center Area, the Airshow Performance Area, and the 5 nautical mile TFR ring and fully describe and analyze all Project activities and impacts within. Staff encourages the City to work with Pacific Airshow LLC to incorporate Project design changes in the DEIR to avoid sensitive areas like the BCER and that include minimum flight altitude restrictions.

In addition, the IS does not include the locations of the various event amenities within the Project area. Staff recommends having specific locations for these event amenities described in the DEIR.

3. CEQA Document: If the City is unable to identify a worst-case scenario for Project-level EIR analysis (see comment #1, above), then staff suggests that the City consider using a programmatic environmental impact report (PEIR). A PEIR may be more appropriate than a Project EIR to provide for flexibility in evaluating various activities or components during the projected 10-year timeline for the Pacific Airshow. In addition, a PEIR may allow for future CEQA documents and subsequent environmental impact analyses to evaluate any event activities that are not currently identified.
4. Required Approvals: Staff notes that the IS omits the Commission from the list of public agencies with approval authority over the Project. In the DEIR's Review and Approvals section, please include: 1) the Commission's Responsible agency review of the Final EIR and adoption of an independent Mitigation Monitoring Program, and 2) Approval of a State Lands Lease(s) and/or Lease Amendment. In the DEIR's list of public agencies whose approval is required, please include the Commission as a CEQA Responsible Agency.
5. Helipad/Temporary airstrip: The DEIR should expand upon the IS's description of the helicopter landing/runway display (IS pgs. 2-5, 2-8, 2-10, and 2-11) and clarify that the airstrip may be used for planes as well as helicopters. A recent February 15, 2024, media event promoting the Project featured Airshow operator Kevin Elliott and the City's Mayor each arriving at the beach on small planes. Local media covering the event reported, "For this year's air show, event organizers will construct a temporary runway on the beach where planes will land and take off right in front of spectators."¹ In addition, the IS states on pg. 2-8 that the temporary helipad will be constructed in front of the Main Hospitality Area to provide a landing/runway area for aerial performances. The DEIR should provide a robust description of the construction of this runway or airstrip and include the estimated depth of excavation, as repeated references to this project component in the IS describe construction activities as simply "at or near-grade on the sand" (pg. 3-19).

Biological Resources

6. Bolsa Chica Ecological Reserve and Special Status Species: BCER is home to over twenty-two special status species and is designated by the U.S. Environmental Protection Agency as a critical flyway for migratory birds. Pg. 2-6 of the IS states that "Preliminary Project objectives include" providing "an event that reduces potential impacts to the surrounding sensitive habitat

¹ Orange County Register, "[Huntington Beach air show will land planes on the beach for this year's event](https://www.ocregister.com/2024/02/15/huntington-beach-air-show-will-land-planes-on-the-beach-for-this-years-event/)" (Feb. 15, 2024) (<https://www.ocregister.com/2024/02/15/huntington-beach-air-show-will-land-planes-on-the-beach-for-this-years-event/>).

including the Bolsa Chica Ecological Reserve, the Huntington Beach Wetlands, the Magnolia Marsh, and special-status wildlife species such as the federally endangered California least tern and western snowy plover.”

However, to accomplish this objective, the DEIR must analyze the Project’s potential impacts on these sensitive habitats and formulate enforceable mitigation measures to address the CDFW on-site management team’s documented impacts on BCER that have occurred during past Airshows as stated in the August 25, 2023, joint letter from the Commission and CDFW, to the City and airshow operator, Code Four (see attached 2023 letter). While pg. 2-10 of the IS states that “many of the aircraft...seldom fly over land...”, this statement conflicts with multiple observations over multiple years, as referenced in the letters sent by Commission on August 25, 2023, and February 20, 2024, to the City and the airshow operator. These letters document incidents during the 2021, 2022, and 2023 airshows of repeated low flyovers by the airshow jets that caused disruptions in the normal behavior patterns of many bird species, including feeding and sheltering, at BCER. These repeated low flyovers harassed the bird populations and caused them to take flight each time the airplanes flew over. This action is considered a “take” and is in violation of California Code of Regulations, title 14, section 251.1 and U.S. Fish and Wildlife regulations 50 CFR 17.3. Additionally, under sections 550, 630 (18), and 632 (121), (122) 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) and 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 (Fish & G. Code, Ch. 1.5, §§ 2050-2115.5).

The DEIR should include an evaluation of noise and vibration impacts on fish, birds, and other wildlife from the event’s operations activities (practice flyovers and aerial events, pyrotechnic shows, amplified sound, etc.) within the Project radius (5-mile TFR radius centered on the airshow performance area, IS Figure 3), which includes BCER. To support the DEIR’s noise and vibrations analyses and environmental impact significance determinations, staff expects the document to also include representative flight paths for practice flyover and aerial event performances.

7. Existing and Regulatory Settings: For all land under the Commission’s jurisdiction, the DEIR must disclose and analyze all potentially significant effects on sensitive species and habitats in and around the Project Site, including special status wildlife, fish, and plants, and if appropriate, identify

feasible mitigation measures to reduce those impacts. The City should conduct queries of the CDFW's California Natural Diversity Database and U.S. Fish and Wildlife Service's (USFWS) Special Status Species Database to identify any special status plant or wildlife species that may occur in the Project area. The DEIR should also include a discussion of early consultation with the CDFW, USFWS, and National Marine Fisheries Service (NMFS), as applicable, and identify any potentially required permits identified by these agencies.

Additionally, the DEIR's regulatory setting for Biological Resources should include discussion of CDFW regulations prohibiting the use of any "aircraft, hovercraft, or hot air balloon" in Ecological Reserves and other CDFW sites without first obtaining a CDFW Special Use Permit ([Cal. Code Regs., tit. 14, § 550 \(aa\)](#)). The regulatory setting should also include other relevant laws and regulations pertaining to aircraft restrictions in CDFW sites.²

8. Drones: The IS states that drone and similar small aircraft technology will be flown as part of the Project, including on pg. 2-8 ("Aircraft static, EV, drone and other urban air mobility (UAM) technology displays and aerial competitions to occur") and pg. 2-9 ("The Applicant would conduct scheduled drone flights throughout the event days for capture of event promotional footage and documentation of event layouts in various areas"). The DEIR should include analysis of potential impacts should drones and similar technology stray into the BCER and include mitigation measures to avoid such impacts. Mitigation could include, but not be limited to, requiring Airshow UAM operators to utilize the FAA's B4UFLy app. See [CDFW Wildlife Areas and Ecological Reserves Added to FAA's Drone Mobile App](#) (<https://wildlife.ca.gov/News/Archive/cdfw-wildlife-areas-and-ecological-reserves-added-to-faas-drone-mobile-app#gsc.tab=0>). A recent example of drone impacts occurred on May 12, 2021, when an illegally operated drone crashed in the BCER, resulting in approximately 3,000 Elegant Terns leaving their nesting grounds and abandoning an estimated 2,000 eggs,³ resulting in a massive reproductive loss for the species, which has only four known nesting sites left on earth.⁴
9. Trash/Trash Removal: The DEIR should include best management practices and mitigation measures to ensure trash, including streamer drops from the Pacific Airshow's opening ceremonies, will be properly contained for the

² Including but not limited to section 3503 of the Fish and Game Code and California Code of Regulations, title 14, sections 251, 251.1.

³ See CDFW webpage, [Legal and Responsible Drone Operations: Wildlife Disturbance](#) (<https://wildlife.ca.gov/Drones>).

⁴ National Public Radio, "[A Single Drone Has Harmed A Generation Of Wildlife](#)" (June 22, 2021) (<https://www.npr.org/2021/06/22/1008986922/a-single-drone-has-harmed-a-generation-of-wildlife>).

duration of the event and not overflow to the surrounding beach, water, and greater coastal area, including BCER. Trash can present environmental hazards to species through exposure or ingestion and lead to degradation of habitat. Staff also strongly encourages the Project sponsor to not only “strongly encourage,” but require event vendors to avoid single-use plastics (i.e., carry-out bags, cutlery), to the extent feasible, as they are a danger to wildlife (e.g., ingestion, entanglements, etc.).

Air Quality

10. Criteria Pollutants: The IS identified a potentially significant impact to air quality, during the Pacific Airshow’s operations phase, from a net increase of criteria pollutants. However, the IS also determined that “There would be no potential for construction or construction-related ground disturbance generating net new emissions or net new increase in short-term construction employment.” (p.3-10) and “There would be no potential for construction or construction-related ground disturbance generating a considerable net increase in emissions of ozone precursors (VOC and NOX), PM10, and PM2.5. / No further analysis of this issue in the EIR is required.” (p. 3-11) The IS also notes that the Project would include constructing a temporary airstrip on the beach in front of the Main Hospitality Area. Commission staff expects the City to include in the DEIR emissions modeling results for both construction- and operations-related criteria pollutant emissions as well as the associated impact analyses and feasible mitigation measures.

11. Air Quality Management Plan – existing non-attainment: The IS identified a less than significant impact when evaluating conflicts with or obstructions to the South Coast Air Quality District’s (District) Air Quality Management Plan (AQMP). The District provides criteria to evaluate a Project’s consistency, which includes “Criterion 1: Will the project result in any of the following: – An increase in the frequency or severity of existing air quality violations...” (p. 3-9). For those criteria pollutants where the region is already in non-attainment, the IS does not adequately discuss why a Project that creates a potentially significant impact by increasing the emission of criteria pollutants (pg. 3-11) does not also create an increase in the frequency and/or severity of the existing non-attainment violations. In addition, the IS artificially and improperly restricts new emissions to those occurring from “on-site” activities (“The competitions and art installations would not result in new emissions from on-site activities. The temporary event structures would also be similar in scale and location to previous Airshows since 2016 (except in 2020) and would not result in new emissions from on-site activities.”)(*Id.*) By extending the airshow festival length and adding potential activities, the proposed Project does contemplate an increase in criteria pollutant emissions over any potential

CEQA baseline. The extended airshow festival will result in increased aircraft emissions that should be carried forward and analyzed in the DEIR.

Please also consider including emissions evaluations from idling cars sitting in traffic that could contribute to air quality impacts. The DEIR should thoroughly describe the impact of the Project on air quality and the efforts to avoid, minimize, and mitigate those impacts. Staff recommends the inclusion of traffic mitigations to help reduce further impacts to air quality.

Recreation

12. Public Access: The IS states on pg. 2-10 that "Access to the pier ocean ward [sic] of the seating area shall remain open to the public" and on pg. 2-12, "Public access (for non-ticket holders) to the Pier would remain open during future Airshows. Only a portion of the Pier would be reserved for seated ticketholders and pier ingress and egress would still be provided." Regarding coastline access, the IS states at pg. 3-41 that "vertical and horizontal access to the coastline would be maintained throughout the duration of the event." While the IS evaluates physical deterioration related to beach activity and beach use (pg. 3-50), the Recreation discussion does not include potential impacts to public use of and recreational opportunities on the beach or pier. As the City is not restricted to those questions suggested within the CEQA Guidelines, Appendix G checklist, please include the following impact question as part of the DEIR's recreation analysis: "Would the project interfere with existing public use of and recreational opportunities related to the pier and beach?" As part of the analysis, the document should detail, both in text and in diagrams and/or pictures, how public access to the pier and beach will be maintained. Staff recommends that the City consider incorporating public access monitors as potential mitigation to ensure that Project activities do not inhibit or discourage access to public beaches and the Huntington Beach Pier.

Hazardous Materials

13. Hazards and Hazardous Materials: Although the IS determined that there were no potentially significant impacts from reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment (pg. 3-32), the Project has a potential significant impact related to Hazards and Hazardous Materials that should be further evaluated in the DEIR. For example, despite the statement on pg. 2-5 that no oil drilling or oil extraction occurs "within the nearby vicinity," numerous onshore oil wells and related pipelines are nearby, in addition to wells in and adjacent to the BCER. In fact, as the IS notes (pg. 2-5), the 2021 airshow was cut short by an oil spill originating from an offshore oil pipeline. While that particular incident represented an impact on the Airshow from existing activities, the converse is

also reasonably foreseeable, as the Project has the potential to exacerbate existing environmental risks due to the performance of high-risk aerobatic flights over active oil fields, including those in the BCER (*California Bldg. Indus. Ass'n v Bay Area Air Quality Mgmt. Dist.* (2015) 62 Cal.4th 369, 377, 388-389.). Such overflights have occurred repeatedly in past years' airshows, despite the statement in the IS that airshow aircraft "seldom fly over land" (pg. 2-10). Thus, the reasonably foreseeable potential significant impact of an aircraft accident triggering an oil or hazardous material spill should be analyzed in the DEIR, along with avoidance strategies (for example, by avoiding overflights of BCER) and/or mitigation measures.

The IS states at pg. 2-9 that streamer drops are anticipated as part of the opening ceremony on each day of the Airshow. The DEIR should describe and analyze the potentially significant impact that could occur should streamers land on power lines in the BCER and start a fire. During the 2022 Airshow, streamer drops resulted in streamers landing in the BCER near powerlines, leading the BCER CDFW on-site manager to contact Commission staff with concerns about the risk of fire in the active oil field within the BCER. Please see the previous paragraph as well as comment #1, *Project Description*, for suggestions on Project design changes and requests for mitigation measures.

Tribal Cultural Resources

14. Consideration of Tribal Cultural Resources: The IS identifies potentially significant impacts to Tribal Cultural Resources (pg. 3-54) but reports that the Project activities would not result in any permanent structures and that no excavations, grading, or trenching would be associated with the construction phase. The inclusion of a beach airstrip in the Project area challenges this conclusion. AB 52 includes both procedural *and* substantive requirements, including the requirement that lead agencies strive to avoid significant adverse changes to tribal cultural resources, regardless of whether consultation is requested or occurs, and incorporate mitigation measures recommended by tribes unless the lead agency determines those suggestions are not feasible. Please note that it is the Commission's broader policy to go beyond the requirements of AB 52 by conducting outreach and consultation with all tribes culturally affiliated with a Project area, as determined by the Native American Heritage Commission, for a proposed Project that may have significant effects on tribal cultural resources. The Commission strongly encourages early, frequent, and meaningful engagement with all culturally affiliated tribes that may be affected by this Project.

Alternatives

15. Alternatives: Staff recommends the inclusion of a no-Project alternative to provide a baseline for establishing environmental conditions in the Project area. Additionally, if the PD is not revised to specify no overflights will occur over the BCER, then staff recommends the City identify and analyze an alternative which excludes flight paths over the BCER, to potentially reduce the level of impacts to State and Federally protected species. In addition to describing mitigation measures that would avoid or reduce the potentially significant impacts of the Project, the City should identify and analyze a range of reasonable alternatives to the proposed Project that would attain most of the Project objectives while avoiding or reducing one or more of the potentially significant impacts (see State CEQA Guidelines, § 15126.6).

Environmental Justice

16. Environmental Justice: Environmental Justice is defined by California law as “the fair treatment and meaningful involvement of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.” (Gov. Code § 65040.12) This definition is consistent with the Public Trust Doctrine’s principle that management of trust lands is for the benefit of all people. The Commission adopted an updated [Environmental Justice Policy and Implementation Blueprint](#) in December 2018 to ensure that environmental justice is an essential consideration in the agency’s processes, decisions, and programs. The twelve goals outlined in the Policy reflect an urgent need to address the inequities of the past, so they do not continue. Through its policy, the Commission reaffirms its commitment to an informed and open process in which all people are treated equitably and with dignity, and in which its decisions are tempered by environmental justice considerations.

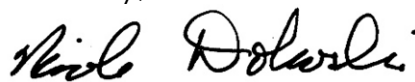
Although not legally required in a CEQA document, Commission staff suggests that the City include a section describing the environmental justice community outreach and engagement undertaken in developing the DEIR and the results of such outreach. The California Office of Environmental Health Hazard Assessment developed the [CalEnviroScreen](#) mapping tool to assist agencies with locating census tracts near proposed Projects and identifying the environmental burdens, should there be any, that disproportionately impact those communities. Environmental justice communities often lack access to the decision-making process and experience barriers to becoming involved in that process. It is crucial that these communities are consulted as early as possible in the Project planning process. Commission staff strongly recommends using the [CalEnviroScreen](#)

tool and then, as applicable, reaching out through local community-based organizations, such as [Communities for a Better Environment](#) and [Orange County Environmental Justice](#). Engaging in early outreach will facilitate more equitable access for all community members. In this manner, the CEQA public comment process can improve and provide an opportunity for more members of the public to provide input related to environmental justice. Commission staff also recommends incorporating or addressing opportunities for community engagement in mitigation measures. Furthermore, a key goal in the Commission's Environmental Justice Policy and Implementation Blueprint is increasing and supporting equitable public access, as discussed in comment #12, above. Commission staff recommends the City consider environmental justice communities in their analysis. Commission staff will review the environmental justice outreach and associated results as part of any future Commission action.

Thank you for the opportunity to comment on the NOP for the Project. As a trustee and responsible agency, Commission staff requests consultation on this Project and to be kept advised of changes to the Project Description and all other important developments. Please send additional information on the Project to the Commission staff listed below as the DEIR is being prepared.

Please refer questions concerning environmental review to Robin Tuohy, Environmental Scientist, at Robin.Tuohy@slc.ca.gov and Christine Day, Environmental Scientist, at Christine.Day@slc.ca.gov. For questions concerning Commission leasing jurisdiction, please contact Kelly Connor, Public Land Management Specialist III, at Kelly.Connor@slc.ca.gov. For questions related to the BCER, please contact Wendy Hall, Environmental Program Manager, at Wendy.Hall@slc.ca.gov.

Sincerely,



Nicole Dobroski
Chief Division of Environmental Science,
Planning, and Management

Attachments:

- 1) February 24, 2024, letter from Commission staff to City of Huntington Beach and Code Four
- 2) August 25, 2023, letter from Commission staff to City of Huntington Beach

cc: Office of Planning and Research
R. Tuohy, Commission

C. Day, Commission
K. Connor, Commission
W. Hall, Commission
L. Calvo, Commission
Y. Ramirez, Commission