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October 31, 2024

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SUBJECT: NOTICE OF PREPARATION OF A DRAFT PROGRAMMATIC ENVIRONMENTAL IMPACT REPORT FOR THE MISSION BAY PARK IMPROVEMENTS PROJECT, SCH NO. 2024100048, SAN DIEGO COUNTY, CA

The California Department of Fish and Wildlife (CDFW) reviewed the Notice of Preparation (NOP) of a Draft Programmatic Environmental Impact Report (DDPEIR) from the City of San Diego (City) for the Mission Bay Park Improvements Program EIR (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines¹.

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 (Fish & G. Code, § 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 may also act as a Responsible Agency under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise

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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regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law² of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.) or the Native Plant Protection Act (NPPA; Fish & G. Code, §1900 et seq.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

CDFW also administers the Natural Community Conservation Planning (NCCP) program, a California regional habitat conservation planning program (Fish and Game Code 2800 et seq.). The City of San Diego participates in the NCCP program by implementing its approved Multiple Species Conservation Program (MSCP) Subarea Plan (SAP) and Implementing Agreement (IA). CDFW issued the City's NCCP permit in 1997 (SCH #93121073). The City of San Diego's Multi-Habitat Planning Area (MHPA) identified in the SAP delineates core biological resource areas and corridors targeted for conservation. The DDPEIR for the proposed Project must ensure that all requirements and conditions of the SAP and IA are met. The DDPEIR should also address any biological issues that are not addressed in the SAP and IA, such as specific impacts to and mitigation requirements for sensitive species that are not covered by the SAP and IA.

PROJECT DESCRIPTION SUMMARY

Proponent: City of San Diego (City)

Objective: The City established the Mission Bay Park Improvement Fund through voter-approved Proposition C in 2008 and Measure J in 2016 to support development and maintenance within Mission Bay Park. This initiative, and the Project analyzed below, are known as the "Ten-Year Plan." It outlines key improvement projects aimed at enhancing safety, navigation, and environmental quality. Planned improvements include dredging for safety and navigation, wetland and water quality enhancements, shoreline protection, habitat expansion, and upgrades to park facilities such as playgrounds, pedestrian paths, and parking areas. The Parks and Recreation Department administers the fund, with oversight from the Mission Bay Park Improvement Fund Oversight Committee, and Project implementation is led by the City's Public Works Department. Key components of the Project are detailed below:

- **Cudahy Creek Wetland and Water Quality Improvements.** Plans include creating 5.2 acres of salt marsh within Cudahy Cove. Subtidal channels will be created to connect the two Cudahy storm drain outfalls and the open water of Mission Bay to

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

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improve tidal circulation. Other activities include installing a berm area, oyster bag slope, and fencing.

- **Tecolote Creek Wetland and Water Quality Improvements.** At Tecolote Creek's outfall, 16.2 acres of salt marsh habitat will be created by filling portions of open water with sediment removed from the creek's mouth. The Fiesta Island Causeway will be modified to add an open channel for better circulation and tidal flushing. Several beach areas will be replaced with sand dunes and coastal strand vegetation.
- **Seawall Restoration.** Five segments of seawall along Mission Beach, from Grand Avenue to Balboa Court, are slated for improvements. Planned upgrades include replacing and raising the aboveground walls to improve resilience to sea level rise, expanding existing walkways to reduce congestion, replacing stairways, relocating lamp poles for historical preservation, installing a new 375-foot segment of seawall, adding handrails and picket-style guardrails, improving accessibility, and constructing a new 75-foot by 15-foot driveway at Thomas Avenue for use by City maintenance vehicles.
- **Shoreline Restoration.** Restoration efforts are planned at eight locations around Mission Bay to improve shorelines. Proposed enhancements include relocating sidewalks, extending and/or elevating beaches, adding cobble berms, repairing and raising riprap, improving oyster habitat, installing cobble breakwater and sheet wall groins to reduce erosion, enhancing stormwater management, landscaping, extending seawalls, and adding a drainage ditch for runoff.
- **Bicycle and Pedestrian Paths.** Improvements are proposed for the Ocean Beach Bike Path, Rose Creek Bike Path, Fiesta Island Causeway, and Robb Field/Gateway Connectivity Path. Improvements will include removing and replacing several existing paths and areas with substandard pavement, replacing hand rails, creating segments of path to improve connections, upgrading to ADA standards including upgrading ramps and curbs, replacing a chain link fence, and reducing slopes, curves, and sharp corners.
- **Deferred Maintenance.** Thirteen areas around Mission Bay were identified to receive improvements such as ADA accessibility improvements, bike racks, drinking fountains, new playgrounds, paving, storm drain enhancements, and fire pits.

Location: Mission Bay Park is a 4,660-acre park within the City of San Diego. The Project area is designated the 'Mission Bay Park Improvement Zone' and is comprised of 164 acres in Mission Bay, along with several surrounding areas. Specific plan areas include Fiesta Island, Tecolote Creek, Vacation Island, West Sail Bay, Cudahy Creek, Sea World, and the seashore along Mission Beach (Attachment A).

Biological Setting: Mission Bay supports a wide variety of biological resources, including diverse marine habitats, coastal salt marsh, salt pan, coastal strand, and

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disturbed habitat (City, 1990). The Bay is an important nursery site for fish spawning, shelter, and foraging, including large areas (i.e., 'beds') of eelgrass (*Zostera marina*, *Z. pacifica*), a sensitive marine habitat important to many aquatic and nearshore species. Mission Bay hosts several nesting colonies for California least tern (*Sternula antillarum browni*; federal Endangered Species Act (ESA) and California Endangered Species Act (CESA) endangered; State Fully Protected (FP)), including at Mariner's Point, Federal Aviation Administration Island, Stony Point, North Fiesta Island, and West Ski Island.

Many special-status birds are known to nest or forage in the Bay, including but not limited to: light-footed Ridgway's rail (*Rallus obsoletus levipes*; CESA and ESA endangered; FP); Belding's savannah sparrow (*Passerculus sandwichensis beldingii*; CESA endangered); American peregrine falcon (*Falco peregrinus anatum*; FP); black skimmer (*Rynchops niger*; California Species of Special Concern (SSC)); black tern (*Chlidonias niger*; SSC); brant (*Branta bernicla*; SSC); California brown pelican (*Pelecanus occidentalis californicus*; FP); Clark's marsh wren (*Cistothorus palustris clarkae*; SSC); common loon (*Gavia immer*; SSC); northern harrier (*Circus hudsonius*; SSC); redhead (*Aythya americana*; SSC); and white-tailed kite (*Elanus leucurus*; FP). Additional wildlife species that may occur in the Project's upland and urban areas include, but are not limited to: monarch butterfly (*Danaus plexippus*; ESA candidate for listing); Southern California legless lizard (*Anniella stebbinsi*; SSC); northwestern San Diego pocket mouse (*Chaetodipus fallax fallax*; SSC); Mexican long-tongued bat (*Choeronycteris mexicana*; SSC); hoary bat (*Lasiurus cinereus*); western red bat (*Lasiurus blossevillii*; SSC); western yellow bat (*Lasiurus xanthinus*; SSC); pallid bat (*Antrozous pallidus*; SSC); and western small-footed myotis (*Myotis ciliolabrum*). There may also be suitable upland habitat on the Project site for Crotch's bumble bee (*Bombus crotchii*; candidate CESA listing).

Several special-status plant species are known to occur around Mission Bay including, but not limited to: Palmer's frankenia (*Frankenia palmeri*; California Rare Plant Rank (CRPR) 2B.1); San Diego marsh-elder (*Iva hayesiana*; CRPR 2B.2); southwestern spiny rush (*Juncus acutus* ssp. *leopoldii*; CRPR 4.2); California seablite (*Suaeda californica*; ESA-listed Endangered; CRPR 1B.1); estuary seablite (*Suaeda esteroa*; CRPR 1B.2); and Nuttall's acmispon (*Acmispon prostratus*; CRPR 1B.1).

Project History: CDFW and the United States Fish and Wildlife Service (USFWS; collectively, the Wildlife Agencies) have engaged with the City on several plans that overlap the Project area, including extensive scoping and issuance of comment letters during periods of CEQA public review. CDFW most recently issued comment letters in response to the NOP and DEIR for the Mission Bay Park Master Plan Update-Fiesta Island Amendment (CDFW, 2017 and 2019).

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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) **Project Overlap with Existing Plans.** Several existing plans currently guide development, recreational use, and natural resource management in Mission Bay. The DDPEIR should thoroughly analyze how the Project interfaces with other existing plans for the Project area, including:

- Mission Bay Park Natural Resource Management Plan (City, 1990)
- Mission Bay Park Master Plan (City, 1994)
- Mission Bay Park Master Plan Update – Fiesta Island Amendment (City, 2021)
- City of San Diego Climate Action Plan (City, 2015)
- City of San Diego Coastal Resilience Master Plan (ongoing; NOP received 2023)

The Wildlife Agencies would like to better understand how this Project interacts with the above-mentioned plans, as well as any other applicable City plans. The USFWS requested a meeting between the City and Wildlife Agencies to obtain more information on the Project and discuss this topic, which is scheduled for November 18, 2024. CDFW may have additional comments following that meeting, which will be sent via e-mail. We appreciate the opportunity to discuss our concerns and provide further feedback as elements of the Project are clarified in ongoing meetings.

2) **Project Consistency with MSCP Subarea Plan.** Several Project areas proposed for wetland restoration, upland habitat restoration, and/or capital improvements occur within or adjacent to the City's Multi-Habitat Planning Area (MHPA). These areas include portions of Fiesta Island, North Fiesta Island, Tecolote Creek, the San Diego River, and the South Shores East Coastal Sage Scrub/Dune Complex shown on Figure 2 of the NOP (Attachment A). CDFW recommends that the DDPEIR analyze Project activities within and adjacent to the MHPA for consistency with the City's Biology Guidelines and MSCP SAP, including but not limited to, any species-specific conditions of coverage for covered species (MSCP Table 3-5) and the land use adjacency guidelines. For example, the MSCP conditions of coverage for California least tern require protection of nesting areas from human disturbance during the reproductive season and measures to protect against edge effects.

3) **Crotch's Bumble Bee.** Upland habitat areas within the Project footprint may provide suitable habitat for Crotch's bumble bee. Specific Project elements that may

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affect occupied habitat include shoreline restoration, upland habitat expansion, construction or expansion of pedestrian and bicycle paths, and other maintenance activities. Crotch's bumble bees often nest underground, sometimes occupying abandoned rodent burrows (Hatfield et al., 2015). If Crotch's bumble bees are using burrows on the Project site for nesting, direct impacts could result from ground-disturbing activities, which could lead to death or injury of adults, eggs, and larva, burrow collapse, nest abandonment, and reduced nest success.

- a. Protection Status. The California Fish and Game Commission accepted a petition to list the Crotch's bumble bee as endangered under CESA, determining the listing "may be warranted" and advancing the species to the candidacy stage of the CESA listing process. Crotch's bumble bee is granted full protection under CESA. Take of any endangered, threatened, candidate species that results from the Project is prohibited, except as authorized by State law (Fish & G. Code, §§ 86, 2062, 2067, 2068, 2080, 2085; Cal. Code Regs., tit. 14, § 786.9). In addition, Crotch's bumble bee has a State ranking of S1/S2. This means that the Crotch's bumble bee is considered critically imperiled or imperiled and is extremely rare (often five or fewer populations). Crotch's bumble bee is also listed as an invertebrate of conservation priority under the Terrestrial and Vernal Pool Invertebrates of Conservation Priority (CDFW 2017).
- b. Surveys and Disclosure³. CDFW recommends that the City retain a qualified biologist familiar with the species to survey the Project site for Crotch's bumble bee and habitat. Surveys for Crotch's bumble bee should be conducted during flying season when the species is most likely to be detected above ground, between March 1 to September 1 (Thorp et al. 1983). The DDPEIR should provide full disclosure of the presence of Crotch's bumble bee and the Project's potential impact on Crotch's bumble bee. CDFW has published a Survey Considerations document for CESA Candidate Bumble Bees, which can be found at the following link: <https://wildlife.ca.gov/Conservation/CESA>. This document describes factors such as evaluating potential for presence, habitat assessment, and survey methods.
- c. Mitigation. The DDPEIR should include measures to first avoid impacts on Crotch's bumble bee. If Crotch's bumble bee is present, a qualified biologist should identify the location of all nests in or adjacent to the Project site. If nests are identified, 50-foot no-disturbance buffer zones should be established around nests to reduce the risk of disturbance or accidental take. If the Project cannot avoid impacts, the City should require the Project Applicant to consult CDFW to determine if a CESA Incidental Take Permit (ITP) is required. In addition, the City

³ Please note that lack of records in the CNDDDB for Crotch bumble bee at the Project site does not mean that Crotch's bumble bee is not present. Reporting data to the CNDDDB is voluntary and it was only recently that entry of data became strongly recommended or required for candidate species like and Crotch's bumble bee. Field verification for the presence or absence of sensitive species is necessary to provide a complete biological assessment for adequate CEQA review.

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should require the Project Applicant to provide compensatory mitigation for removal or damage to any floral resource associated with Crotch's bumble bee. Floral resources should be replaced as close to their original location as is feasible.

- d. CESA ITP. Appropriate take authorization from CDFW under CESA may include an ITP or a Consistency Determination in certain circumstances, among other options (Fish & Game Code, §§ 2080.1, 2081, subs. (b) and (c)). Early consultation is encouraged, as significant modification to the Project and mitigation measures may be required to obtain an ITP. 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 for the Project unless the Project's CEQA document addresses all the Project's impact on CESA endangered, threatened, and/or candidate species. The Project's CEQA document should also specify a mitigation monitoring and reporting program that will meet the requirements of an ITP. It is important that the take proposed to be authorized by CDFW's ITP be described in detail in the Project's CEQA document. Also, biological mitigation monitoring and reporting proposals should be of sufficient detail and resolution to satisfy the requirements for an ITP. However, it is worth noting that mitigation for the Project's impact on a CESA endangered, threatened, and/or candidate species proposed in the Project's CEQA document may not necessarily satisfy mitigation required to obtain an ITP.

- 4) **CESA**. The Project area may support additional CESA-listed species that are not identified as Covered Species under the City's MSCP SAP. CDFW considers adverse impacts to a species protected by CESA to be significant. Take of any endangered, threatened, candidate species, or NPPA-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), or as identified as a Covered Species under the MSCP SAP. 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, subs. (b) and (c)). Early consultation is encouraged, as significant modification to a Project and mitigation measures may be required to obtain a CESA Permit.

To ensure CDFW will be able to use the City's CEQA document for the issuance of an ITP, the DDPEIR should address all Project impacts to CESA-listed species and specify a mitigation, monitoring, and reporting program that will meet the requirements of an ITP.

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- 5) **Lake and Streambed Alteration.** The Project proposes creation of 16.2 acres of new saltmarsh habitat using sediment removed from slopes at the mouth of Tecolote Creek. An additional 5.2 acres of salt marsh habitat will be created in Cudahy Cove, at the outfall of Cudahy Creek. 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 for activities conducted in Cudahy Creek and Tecolote Creek. A Notification package for a LSAA may be obtained by accessing CDFW’s Lake and Streambed Alteration Program website⁴.
- 6) **Beach Nourishment.** Through personal communication with the City, CDFW was informed that the Project may involve beach nourishment in Mission Bay as a component of the Project’s proposed shoreline restoration. Beach nourishment, or beach and/or nearshore sediment placement, may cause increased turbidity, decreased light availability, and/or potential burial of sensitive marine species and their habitats, including eelgrass beds, via direct sediment placement or subsequent littoral drift causing substantial adverse effects. Habitat Areas of Particular Concern (HAPC), a subset of Essential Fish Habitat, are habitats of special importance to fish populations due to their rarity, vulnerability to development and anthropogenic degradation, and/or ability to provide key ecological functions. Eelgrass beds are one of the habitats that have been designated as groundfish HAPC by the Pacific Fisheries Management Council under the Magnuson-Stevens Fishery Conservation and Management Act. Eelgrass beds may occur at the potential sediment placement site(s). Additionally, Mission Bay waters support commercially and recreationally important fish and invertebrate species such as California halibut (*Paralichthys californicus*), California spiny lobster (*Panulirus interruptus*), and the important forage fish Northern anchovy (*Engraulis mordax*). These important species may be impacted by nearshore sediment placement activities via direct burial/smothering, increased turbidity, and/or decreased light availability. The NOP does not include details on the beach nourishment construction activities, potential sediment placement timing, potential sediment placement area(s), whether the potential placement will be on the beach and/or nearshore, and the species and habitats that may be impacted from the construction activities.

⁴ <http://www.wildlife.ca.gov/Conservation/LSA>

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CDFW recommends that the DDPEIR clarify the beach nourishment construction activities, including the anticipated timing of sediment placement and if sediment being distributed across the beach profile will involve equipment operating below the mean high tide line. All beach placement operations should avoid equipment below the mean high tide line if possible. CDFW also recommends a long-shore and cross-shore sediment transport model be used to identify appropriate sediment placement volumes and locations to avoid or minimize marine habitat impacts. Results from the sediment transport model should be included in the DDPEIR. The DDPEIR should also include proposed sediment placement area(s) and the species and habitats that may be impacted from the beach nourishment construction activities.

Potential sediment borrow sites and/or where sediments will be derived from for beach or nearshore placement should be described in the DDPEIR. Sediments should be compatible with the proposed sediment placement area(s). CDFW recommends that all proposals for sediment placement be reviewed by the Southern California Dredged Material Management Team (DMMT) prior to placement. The DMMT is comprised of regulatory and trustee agencies (i.e., United States Army Corps of Engineers, United States Environmental Protection Agency, Regional Water Quality Control Boards, California Coastal Commission, National Marine Fisheries Service (NMFS), and CDFW), and responsible for managing dredging activities and reviewing technical issues associated with proposed dredging and dredged material disposal projects.

If nearshore sediment placement is proposed, CDFW recommends that the DDPEIR quantify the amount of eelgrass that could be lost due to the Project and potential alternatives for nearshore sediment placement. Project plans should be developed to avoid and minimize potential impacts to eelgrass to the maximum extent feasible. If any unavoidable eelgrass impacts occur, these impacts should be compensated using guidance described within the California Eelgrass Mitigation Policy (CEMP) (NOAA 2014). If eelgrass habitat is identified in the Project area, comprehensive pre- and post-construction surveys for eelgrass beds or patches should be conducted consistent with the CEMP. Additionally, CDFW recommends that post-construction monitoring of any nearshore sediment placement should occur to ensure HAPCs and the commercially and recreationally important species that inhabit the HAPCs are not impacted. CDFW recommends consulting with CDFW and NOAA Fisheries on the Project's impact analysis and all proposed mitigation measures for HAPC.

If eelgrass harvest and transplanting is required for mitigation, a Scientific Collecting Permit (SCP) from CDFW will be required prior to harvest and transplanting activities. The SCP may include permit conditions such as donor eelgrass surveys, submittal of an eelgrass harvest and transplant plan, limits on number of turions collected, methods for collection and transplanting, notification of

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activities, and reporting requirements. Please visit the CDFW's SCP webpage for more information: <https://wildlife.ca.gov/Licensing/Scientific-Collecting>.

- 7) **Grunion.** California grunion (*Leuresthes tenuis*) is an ecologically, recreationally, and culturally important species in southern California, and an important prey species for numerous marine species. Grunion are vulnerable to disturbance from beach placement projects within the intertidal and nearshore during their reproductive cycle because they spawn and bury their eggs within the upper intertidal. Grunion have the potential to spawn from March through August. Direct impacts from the Project could include crushing incubating eggs from driving heavy equipment within egg nests and burying incubating eggs from movement of sand, which may lead to inviable eggs or eggs unable to hatch out. Through personal communication with the City, CDFW was informed that construction activities and equipment for the Project's proposed seawall replacement along Pacific Beach and Mission Beach will operate below the mean high tide line. The NOP did not address any potential impacts to grunion that may occur as a result of the seawall replacement construction and did not include the anticipated construction timeline.

CDFW recommends all beach construction activities for the Project's proposed seawall replacement occur outside of grunion spawning season (March through August). If beach construction activities do occur during grunion spawning season and the proposed beach construction site is considered suitable for grunion spawning, CDFW recommends that a grunion monitoring plan is included in the DDPEIR. If grunion spawning occurs within the Project area, work in that area below the mean high tide line should not be conducted until after the grunion eggs have hatched (2 weeks). The locations of the spawning run should be marked physically and/or by Global Positioning System (GPS) locations. The density of the grunion throughout the area should be noted using the Walker Scale. The Project should ensure that maintenance workers avoid the spawning area and that a 50-foot buffer is used to avoid impacting any spawning areas adjacent to the sediment placement sites. Grunion monitoring should be conducted by a qualified biologist for 30 minutes prior to and two hours following the predicted start of each spawning event. If more than 100 fish are reported, then avoidance and minimization measures should be implemented, such as relocation/rescheduling of work/equipment or specification of acceptable vehicle routes.

- 8) **Oyster Bed Installation.** CDFW was informed via personal communication with the City that oyster bed installation is included in the proposed Project's shoreline restoration plans. With limited details from the NOP, CDFW is identifying the proposed infrastructure as an artificial reef as defined in Fish and Game Code Section 6421 subdivision (a). CDFW has authority for artificial reefs under a variety of roles including Statutory/Legislative Authority, Trustee and Responsible Agency Status under CEQA and the Marine Life Management Act, and an advisory role to other agencies. Fish and Game Code Section 6420-6425 established the California Artificial Reef Program (CARP) through legislation in 1985. A comprehensive CARP

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Plan (Plan) is under development that will provide guidance on best practices for artificial reefs creation and management. Completion of the Plan is scheduled for the end of 2026 and in the interim the Department has developed the Interim Artificial Reef Project Review Framework (Framework) (Attachment B). The Framework is intended to be used by permitting agencies and applicants when applying for permits to create artificial reefs which are not related to compensatory mitigation. It reflects CDFW's position of a limited scale and scope experimental approach to artificial reef placement prior to the development of the CARP Plan to gain knowledge about the best approaches to siting, materials, design, function and performance which is consistent with Fish and Game Code section 6423 et seq. and the best available science. The Framework is guided by and consistent with CDFW's authority under the California Endangered Species Act (Cal. Code Regs., tit. 14, §§783.0 -787.9; Fish & G. Code, §§ 2050-2115.5), other permitting authority (Cal. Code Regs. §650 et seq.; Fish & G. Code §§ 1002,1002.5, & 1003), and the California Environmental Quality Act (Cal. Code Regs., tit. 14, § 15000 et seq. (hereafter, CEQA Guidelines); Pub. Resources Code §§ 21000-21189.91).

CDFW recommends that the City follow the Framework guidelines for their shoreline restoration plans as appropriate, including the oyster bed installation. According to the Framework, any artificial reef or living shoreline project should be well-designed and sized appropriately for a pilot or experimental project to support the scientific evaluation of data gaps related to artificial reef siting, materials, design, impact, benefits, and functioning. The project should establish quantitative performance metrics, performance period, monitoring plan, and removal metrics developed in consultation with technical experts as appropriate from regulatory authorities with jurisdiction over the project site or other research institutions, agencies, and consultants with relevant expertise.

CDFW recommends providing discussion within the DDPEIR as to why the oyster beds would be necessary for the City to achieve their shoreline restoration goals. In addition, CDFW recommends including alternatives to the oyster bed installation that could still achieve similar shoreline protection goals.

CDFW is concerned artificial reefs and habitat creation could attract invasive species. CDFW recommends that the DDPEIR should include discussion on developing an invasive species monitoring plan that includes monitoring measures, adaptive management measures, and protocols if invasive species are identified. Additionally, CDFW is concerned that placement of the oyster bed installation would potentially decrease the amount of habitat for further eelgrass expansion. CDFW recommends the DDPEIR include additional discussion on whether the installation of the oyster beds would be within historic, current and/or future eelgrass habitat and whether it could prevent future expansion of eelgrass if it were to be implemented. CDFW recommends including information about how current and modeled future environmental conditions at the proposed installation site align with

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habitat requirements for native oysters and information on historic and current native oyster abundance.

- 9) **Invasive Species Impacts.** Disturbance of the bottom sediments from the Project's potential shoreline restoration construction activities (i.e., beach nourishment, oyster bed installation, rip rap replacement, or other related work) may redistribute non-native species that compete with native species. This may cause widespread adverse impacts to eelgrass and marine ecology. The invasive alga *Caulerpa taxifolia* is listed as a federal noxious weed under the U.S. Plant Protection Act. It occurred in Agua Hedionda Lagoon in 2000 and while deemed eradicated in 2006 is monitored for potential future emergence. Another invasive alga species found recently in Newport Bay and San Diego Bay is *Caulerpa prolifera*, which is also a potential threat to growth and expansion of native eelgrass beds and other native algae. *Caulerpa prolifera* can grow as deep as 50 meters and appears to be more tolerant of low light environments than most other macroalgae. Additionally, since all *Caulerpa* species pose a serious risk in harming native marine life, Fish and Game Code section 2300 was amended in 2023 so that no person shall sell, possess, import, transport, transfer, release alive in the state, or give away without consideration all species of the genus *Caulerpa*, with the exception of bona fide scientific research upon authorization by the CDFW.

If the proposed Project includes any bottom disturbing activities, CDFW recommends conducting pre-construction *Caulerpa spp.* surveys to identify potential existence of invasive *Caulerpa spp.* in accordance with the Caulerpa Control Protocol <https://media.fisheries.noaa.gov/2021-12/caulerpa-control-protocol-v5.pdf> (October 2021). Any sightings of *Caulerpa spp.* should be reported within 24 hours to CDFW (Caulerpa@wildlife.ca.gov), and NMFS at 562-980-4037 (nmfs.wcr.caulerpa@noaa.gov).

General Comments

- 1) Disclosure. The DDPEIR should provide an adequate, complete, and detailed disclosure about the effects which a proposed project is likely to have on the environment (Pub. Resources Code, § 20161; CEQA Guidelines, § 15151). Such disclosure is necessary so CDFW may provide comments on the adequacy of proposed avoidance, minimization, or mitigation measures, as well as assess the significance of the specific impact relative to plant and wildlife species impacted (e.g., current range, distribution, population trends, and connectivity).
- 2) Project Description and Alternatives. To enable adequate review and comment on the proposed Project from the standpoint of the protection of fish, wildlife, and plants, CDFW recommends the following information be included in the DDPEIR.
 - a. A complete discussion of the purpose and need for, and description of the proposed Project.

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- b. A range of feasible alternatives to the Project location to avoid or otherwise minimize direct and indirect impacts on sensitive biological resources and wildlife movement areas. CDFW recommends the City select Project designs and alternatives that would avoid or otherwise minimize direct and indirect impacts on biological resources. CDFW also recommends the City consider establishing appropriate setbacks from sensitive and special status biological resources. Setbacks should not be impacted by ground disturbance or hydrological changes from any future Project-related construction, activities, maintenance, and development. As a general rule, CDFW recommends reducing or clustering a development footprint to retain unobstructed spaces for vegetation and wildlife and provide connections for wildlife between properties and minimize obstacles to open space.
 - c. 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 DDPEIR shall include sufficient information about each alternative to allow meaningful evaluation, public participation, analysis, and comparison with the proposed Project (CEQA Guidelines, § 15126.6).
 - d. Where the Project may impact aquatic and riparian resources, CDFW recommends the City select Project designs and alternatives that would fully avoid impacts to such resources. CDFW also recommends an alternative that would not impede, alter, or otherwise modify existing surface flow, watercourse and meander, and water-dependent ecosystems and natural communities. Project designs should consider elevated crossings to avoid channelizing or narrowing of watercourses. Any modifications to a river, creek, or stream may cause or magnify upstream bank erosion, channel incision, and drop in water level, which may cause the watercourse to alter its course of flow.
- 3) 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 Species of Special Concern (SSC) a significant direct and cumulative adverse effect without implementing appropriate avoidance and/or mitigation measures. The DDPEIR 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 DDPEIR should include

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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 local and regional level. These ranks can be obtained by visiting the [Vegetation Classification and Mapping Program - Natural Communities webpage](#)⁵.

- 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](#)⁶. 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](#)⁷, second edition, (Sawyer, Keeler-Wolf, & Evens, 2009) 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 offsite.
- d. A complete and recent assessment of the biological resources associated with each habitat type in the Project site and within adjacent areas. A full literature review includes but is not limited to CDFW's [California Natural Diversity Database](#)⁸ (CNDDDB). The CNDDDB should be accessed to obtain current information on any previously reported sensitive species and habitat. 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.

⁵ <https://wildlife.ca.gov/Data/VegCAMP/Natural-Communities>

⁶ <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>

⁷ <https://vegetation.cnps.org/>

⁸ <https://wildlife.ca.gov/Data/CNDDDB>

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- e. 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](#)⁹ for established survey protocol. Acceptable species-specific survey procedures may be developed in consultation with CDFW and U.S. Fish and Wildlife Service.
 - f. A recent wildlife and rare plant survey. 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)). 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.
- 4) Direct and Indirect Impacts on Biological Resources. The DDPEIR should provide a thorough discussion of direct and indirect impacts expected to affect biological resources with specific measures to offset such impacts. The DDPEIR should address the following.
- a. A discussion of potential impacts from lighting, noise, temporary and permanent human activity, and exotic species, and identification of any mitigation measures. A discussion regarding Project-related indirect impacts on biological resources. These include resources in nearby public lands, open space, adjacent natural habitats, riparian ecosystems, and any designated and/or proposed or existing reserve lands (e.g., preserve lands associated with a Natural Community Conservation Plan (Fish & G. Code, § 2800 et. seq.)).
 - 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)).

⁹ <https://wildlife.ca.gov/conservation/survey-protocols>

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- c. 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 DDPEIR.
 - d. A discussion of post-Project fate of drainage patterns, surface flows, and soil erosion and/or sedimentation in streams and water bodies. The discussion should also address the potential water extraction activities and the potential resulting impacts on habitat supported by the groundwater. Measures to mitigate such impacts should be included.
 - e. An analysis of impacts from proposed changes to land use designations and zoning, and existing land use designation and zoning located nearby or adjacent to natural areas that may inadvertently contribute to wildlife-human interactions. A discussion of possible conflicts and mitigation measures to reduce these conflicts should be included in the DDPEIR.
- 5) Cumulative Impact. Cumulative impacts on biological resources can result from collectively significant projects which are individually insignificant. The Project, when considered collectively with prior, concurrent, and probable future projects, may have a significant cumulative effect on biological resources. The Project may have the 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 are not limited to, the biological resources described in this letter.

Accordingly, CDFW recommends the DDPEIR 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 Lead Agency's conclusion that the cumulative impact is less than significant" (CEQA Guidelines section § 15130(a)(2)).

- 6) Nesting Birds. To avoid impacts to nesting birds, CDFW recommends that clearing of vegetation occur outside of the peak avian breeding season, which general runs from February 1 through September 1 (as early as January 1 for some raptors). If Project construction is necessary during the bird breeding season, a qualified biologist with experience in conducting breeding bird surveys should conduct a nesting bird survey within three days prior to work in the area. If an active nest is

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identified, a buffer shall be established between the construction activities and the nest so that nesting activities are not interrupted. For the given Project site, CDFW generally recommends a 100-foot buffer from common avian species, 300 feet for listed or highly sensitive, and 500 feet for raptors. The buffer should be delineated by temporary fencing and remain in effect as long as construction is occurring. No Project construction shall occur within the fenced nest zone until the young have fledged, are no longer being fed by the parents, have left the nest, and will no longer be impacted by the Project. Reductions in the nest buffer distance may be appropriate depending on the avian species involved, ambient levels of human activity, screening vegetation, or possibly other factors.

- 7) 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 impacts below a significant level under CEQA. Mitigation measures must be feasible, effective, implementable, 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. The DDPEIR 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. If a proposed mitigation measure would cause one or more significant effects, in addition to impacts caused by the proposed Project, the DDPEIR should include a discussion of the effects of proposed mitigation measures (CEQA Guidelines, § 15126.4(a)(1)). In that regard, the DDPEIR 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.
- 8) Compensatory Mitigation. The DDPEIR should include compensatory mitigation measures for the Project's significant impacts (direct and/or through habitat modification) 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

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assurance and dedicated to a qualified entity for long-term management and monitoring.

- 9) Long-term Management of Mitigation Lands. For proposed mitigation lands, the DDPEIR should include measures to protect the targeted habitat values in perpetuity. The mitigation should offset Project-induced qualitative and quantitative losses of biological resources. 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.
- 10) Translocation/Salvage of Plants and Animal Species. Translocation and transplantation is the process of removing plants and wildlife from one location and permanently moving it to a new location. CDFW generally does not support the use of translocation or transplantation as the primary mitigation strategy for unavoidable impacts to endangered, rare, or threatened plants and animals. These efforts are experimental, and the outcome is unreliable. CDFW has found that permanent preservation and management of habitat capable of supporting these species is often a more effective long-term strategy for conserving plants and animals and their habitats.
- 11) Scientific Collecting Permit. A Scientific Collecting Permit would be necessary if there is a plan to capture and relocate wildlife. Pursuant to the California Code of Regulations, title 14, section 650, qualified biologist(s) must obtain appropriate handling permits to capture, temporarily possess, and relocate wildlife to avoid harm or mortality in connection with Project-related activities. CDFW has the authority to issue permits for the take or possession of wildlife, including mammals; birds, nests, and eggs; reptiles, amphibians, fish, plants; and invertebrates (Fish & G. Code, §§ 1002, 1002.5, 1003). A Scientific Collecting Permit is required to monitor project impacts on wildlife resources, as required by environmental documents, permits, or other legal authorizations; and, to capture, temporarily possess, and relocate wildlife to avoid harm or mortality in connection with otherwise lawful activities (Cal. Code Regs., tit. 14, § 650). For more information, please see CDFW's [Scientific Collecting Permit webpage](#)¹⁰.
- 12) Wetland Resources. CDFW, as described in Fish and Game Code section 703(a), is guided by the [Fish and Game Commission's \(Commission\) policies](#)¹¹. Through its Wetlands Resources policy, the Commission "...seek[s] to provide for the protection, preservation, restoration, enhancement, and expansion of wetland habitat in California" (California Fish and Game Commission, 2005). It is the policy of the Commission to strongly discourage development in or conversion of wetlands. It opposes, consistent with its legal authority, any development or

¹⁰ <https://wildlife.ca.gov/Licensing/Scientific-Collecting>

¹¹ <https://fgc.ca.gov/About/Policies/Miscellaneous>

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conversion that would result in a reduction of wetland acreage or wetland habitat values. To that end, the Commission opposes wetland development proposals unless, at a minimum, project mitigation assures there will be 'no net loss' of either wetland habitat values or acreage. The Commission strongly prefers mitigation which would achieve expansion of wetland acreage and enhancement of wetland habitat values."

- a. The Wetlands Resources policy provides a framework for maintaining wetland resources and establishes mitigation guidance. CDFW encourages avoidance of wetland resources as a primary mitigation measure and discourages the development or type conversion of wetlands to uplands. CDFW encourages activities that would avoid the reduction of wetland acreage, function, or habitat values. Once avoidance and minimization measures have been exhausted, a project should include mitigation measures to assure a "no net loss" of either wetland habitat values, or acreage, for unavoidable impacts to wetland resources. Conversions include, but are not limited to, conversion to subsurface drains, placement of fill or building of structures within the wetland, and channelization or removal of materials from the streambed. All wetlands and watercourses, whether ephemeral, intermittent, or perennial, should be retained and provided with substantial setbacks, which preserve the riparian and aquatic values and functions benefiting local and transient wildlife populations. CDFW recommends mitigation measures to compensate for unavoidable impacts be included in the DDPEIR and these measures should compensate for the loss of function and value.
 - b. The Fish and Game Commission's Water policy guides CDFW on the quantity and quality of the waters of this State that should be apportioned and maintained respectively so as to produce and sustain maximum numbers of fish and wildlife; to provide maximum protection and enhancement of fish and wildlife and their habitat; encourage and support programs to maintain or restore a high quality of the waters of this State; prevent the degradation thereof caused by pollution and contamination; and, endeavor to keep as much water as possible open and accessible to the public for the use and enjoyment of fish and wildlife. CDFW recommends avoidance of water practices and structures that use excessive amounts of water, and minimization of impacts that negatively affect water quality, to the extent feasible (Fish & G. Code, § 5650).
- 13) Use of Native Plants and Trees. CDFW recommends the City require the Project Applicant to provide a native plant palette for the Project. The Project's landscaping plan should be disclosed and evaluated in the DDPEIR for potential impacts on biological resources such as natural communities adjacent to the Project site (e.g., introducing non-native, invasive species). CDFW supports the use of native plants for the Project especially considering the Project's location adjacent to protected open space and natural areas. CDFW strongly recommends avoiding non-native, invasive species for landscaping and restoration, particularly any species listed as

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'Moderate' or 'High' by the [California Invasive Plant Council](#)¹² CDFW supports the use of native species found in naturally occurring plant communities within or adjacent to the Project site. In addition, CDFW supports planting species of trees, such as oaks (*Quercus* genus), and understory vegetation (e.g., ground cover, subshrubs, and shrubs) that create habitat and provide a food source for birds. CDFW recommends retaining any standing, dead, or dying tree (snags) where possible because snags provide perching and nesting habitat for birds and raptors. Finally, CDFW supports planting species of vegetation with high insect and pollinator value.

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 website](#)¹³ provides direction regarding the types of information that should be reported and allows on-line submittal of field survey forms.

In addition, information on special status native plant populations and sensitive natural communities, should be submitted to CDFW's Vegetation Classification and Mapping Program using the [Combined Rapid Assessment and Relevé Form](#)¹⁴.

City should ensure data collected for the preparation of the DDPEIR is properly submitted.

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.)

CONCLUSION

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

¹² <https://www.cal-ipc.org/plants/inventory/>


¹³ <https://wildlife.ca.gov/Data/CNDDDB>

¹⁴ <https://wildlife.ca.gov/Data/VegCAMP/Natural-Communities/Submit>

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Questions regarding this letter or further coordination on terrestrial issues should be directed to Jessie Lane, Environmental Scientist, at Jessie.Lane@wildlife.ca.gov. Questions and further coordination on marine issues should be directed to Leslie Hart, Marine Environmental Scientist, at Leslie.Hart@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Environmental Program Manager
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ATTACHMENTS

Attachment A: Mission Bay Park Improvements Project Site (DUDEK, Figure 2)

Attachment B: CDFW Interim Artificial Reef Project Review Framework

ec: California Department of Fish and Wildlife

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