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**BERTHS 121-131 CONTAINER TERMINAL REDEVELOPMENT PROJECT
DRAFT ENVIRONMENTAL IMPACT STATEMENT/ENVIRONMENTAL IMPACT REPORT
SCH # 2014041050**

Dear Ms. Lisa Ochsner:

The California Department of Fish and Wildlife (Department) received a joint Draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR) from the Port of Los Angeles, which is operated by the Los Angeles Harbor Department (LAHD), and the United States Army Corps of Engineers (USACE) for the Berths 121-131 Container Terminal Redevelopment Project (Project), pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that the Department, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

DEPARTMENT ROLE

The Department is California's Trustee Agency for fish and wildlife resources and holds those resources in trust by statute for all the people of the state. (Fish & G. Code, section 711.7, subd. (a) & 1802; Pub. Resources Code, section 21070; CEQA Guidelines section 15386, subd. (a).) The Department, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, section 1802.) Similarly for purposes of CEQA, the Department is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources. The Department is also responsible for marine

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.

biodiversity protection under the Marine Life Protection Act in coastal marine waters of California and ensuring fisheries are sustainably managed under the Marine Life Management Act.

PROJECT DESCRIPTION SUMMARY

Proponent: LAHD

Objective: The primary Project objective is to improve maritime shipping and commerce by improving container terminal infrastructure in, over, and under water and on terminal backlands at Berths 121-131. LAHD plans to achieve this objective by enlarging and modernizing the wharf, deepening the berths, providing larger, modern cranes, and expanding the West Basin Intermodal Container Transfer Facility (WBICTF) on-dock railyard. These improvements would allow the terminal to optimize cargo handling efficiency and accommodate the future cargo vessel fleet mix, including the larger vessels that currently dock at other port terminals.

The proposed Project's construction activities consist of the following:

- Dredging up to approximately 310,000 cubic yards (cy) of sediments to deepen Berths 126-129 to -53 feet (ft) Mean Lower Low Water (MLLW) with a two-foot overdredge allowance for a total depth of -55 ft MLLW;
- Disposing of dredged sediments at approved upland sites (approximately 260,000 cy) and the approved LA-2 ocean disposal site (approximately 50,000 cy);
- Demolishing the existing wharf at Berths 126-129, including removing piles and reconstructing the existing rock dike, installing new concrete piles, and constructing a new concrete, pile-supported wharf at Berth 126-129;
- Relocating the five existing cranes to Berths 121-125 and installing up to ten new 100-ft- or 120-ft-gauge electrically powered wharf cranes on the new wharf at Berths 126-129;
- Expanding the WBICTF on-dock rail yard by adding three or four loading tracks and installing up to seven electrically powered rail-mounted gantry cranes; and
- Constructing backland improvements such as repaving, restriping, and relocation of minor support buildings, structures, and utilities.

Location: The proposed Project site is located in Los Angeles County near the communities of San Pedro and Wilmington and is approximately 20 miles south of downtown Los Angeles. The Project site is a 186-acre marine container terminal which occupies Berths 121 – 131, within an industrial area in the vicinity of the West Basin in Los Angeles Harbor and also includes an administration building and parking area at 2001 John S. Gibson Boulevard.

Timeframe: The Project's construction is expected to begin in 2026. Construction of waterside and landside improvements would take approximately 24 months to complete. The terminal is assumed to begin full operation in 2028 upon completion of construction.

BIOLOGICAL SIGNIFICANCE

The Los Angeles Harbor waters support resident and migratory fish and special-status wildlife including marine mammals and seabirds, contributing to the ecological productivity of the San Pedro Bay. The Department designates certain species as California Species of Special Concern (SSC) due to declining population levels, limited ranges, and/or continuing threats that have made them vulnerable to extinction. Species that occur in the Project area and are protected under the California Endangered Species Act (CESA), Federal Endangered Species Act (ESA), Marine Mammal Protection Act (MMPA), or designated as SSC include:

- California sea lion (*Zalophus californianus*), MMPA;
- Harbor seal (*Phoca vitulina*), MMPA;
- Common bottlenose dolphin (*Tursiops truncatus*), MMPA;
- Common dolphin (*Delphinus* spp.), MMPA;
- Gray whale (*Eschrichtius robustus*), MMPA;
- Black abalone (*Haliotis cracherodii*), ESA;
- White abalone (*Haliotis sorenseni*), ESA;
- Green sea turtle (*Chelonia mydas*), Federally Threatened;
- California least tern (*Sternula antillarum browni*), State and Federally Endangered;
- Western burrowing owl (*Athene cunicularia hypugaea*), CESA Candidate Species; and
- Western snowy plover (*Charadrius alexandrinus nivosus*), Federally Threatened.

Important recreational species are also frequently caught near the Los Angeles Harbor waters including California halibut (*Paralichthys californicus*), Pacific sardine (*Sardinops sagax*), and Northern anchovy (*Engraulis mordax*), which is an important forage fish.

COMMENTS AND RECOMMENDATIONS

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

Pile Driving and Sound Criteria

Comments: The Project's proposed pile driving construction involves a combination of using a vibratory hammer, impact hammer, and jetting. Underwater noise associated with pile driving and pulling activities may cause temporary or permanent impacts on fish, such as temporary movement out the Project area, barotrauma injury, or mortality. The Department relies on guidance from the Fisheries Hydroacoustic Working Group to set safe sound pressure level (SPL) criteria for pile driving and pulling activities (Fisheries Hydroacoustic Working Group 2008, Attachment 1). The SPL dual criteria include a peak level of 206 dB and a cumulative sound exposure (SEL) level of 187 dB for fish 2 grams and heavier or a cumulative SEL of 183 dB for fish less than 2 grams. Additionally, if jetting or an impact hammer is used for pile driving, this may also impact water quality, releasing contaminants from sediments into the water and/or creating turbidity that could harm fish.

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

- A sound attenuation and monitoring plan should be submitted to the resource agencies for review prior to initiating pile driving activities;
- Wood, or similar material, cushion block should be used between the pile and hammer during all pile driving using an impact hammer;
- A bubble curtain should be used, where feasible, during all impact pile driving to further reduce sound below levels that have been shown to cause injury and/or mortality to fish and marine mammals; and
- Underwater sound level monitoring should be conducted during pile driving. If SPLs and SELs exceed agreed upon levels as per the Interim Criteria for Injury to Fish, additional steps should be taken, including reaching out to the regulatory agencies in the Fisheries Hydroacoustic Working Group (Attachment 1), to reduce the underwater noise to acceptable levels.

To address potential water quality impacts that may occur from pile driving and could harm sensitive species and/or habitats, the Department recommends including the use of a silt curtain as a mitigation measure in the Final EIS/EIR to control turbidity during high turbidity generating activities. Additionally, high turbidity generating activities should be conducted when there are no strong outgoing tides since this could exacerbate turbid conditions and negatively impact marine life.

Marine Mammal and Sea Turtle Monitoring

Comments: Harbor seals (*Phoca vitulina*), California sea lions (*Zalophus californianus*), other species of marine mammals, and sea turtles may be present or occur within the Project area. Construction activities such as pile driving, dredging, and vessel transits within the Project area have the potential to impact these animals if they are present. The Department appreciates that the Draft EIS/EIR includes Mitigation Measure (MM) BIO-1 to protect marine mammals, however, this mitigation measure did not discuss protections for sea turtles.

Recommendations: The Department recommends that LAHD adds sea turtle monitoring to MM BIO-1 in the Draft EIS/EIR, and that LAHD should prepare and implement a marine mammal and sea turtle monitoring plan that includes, but is not limited to:

- Pre-construction monitoring to update the occurrence and use of the area by marine mammals and turtles;
- Establishment of an underwater exclusion zone as a designated focus area for species protection to allow animals to evacuate the area prior to commencement of construction activities;

- Monitoring of marine mammals and sea turtles by an experienced observer immediately prior to and during all construction activities; and
- Pile driving activities should not occur while marine mammals or sea turtles are present within the exclusion zone.

The Department recommends that LAHD consult with the National Marine Fisheries Service (NMFS) regarding the above recommendations and any other necessary avoidance and mitigation measures to reduce impacts to marine mammals and sea turtles.

Invasive Species Impacts

Comments: Disturbance of the bottom sediments from dredging, pile driving and pulling construction, and anchoring may redistribute non-native species that compete with native species. This could 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 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 Department.

Recommendations: While the Department appreciates that the Draft EIS/EIR notes that pre-construction *Caulerpa spp.* surveys would be conducted for the proposed Project, the Department recommends that LAHD includes a mitigation measure in the Final EIS/EIR to conduct 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 the Department (Caulerpa@wildlife.ca.gov), and NMFS at 562-980-4037 (nmfs.wcr.caulerpa@noaa.gov).

Western Burrowing Owl

Comments: Project activities such as demolition and reconstruction of an existing container terminal wharf and berthing area, backland improvements construction, relocation of over-water cranes, and increased human presence may impact western burrowing owls (*Athene cunicularia hypugaea*), their nests or eggs, or destroy or degrade western burrowing owl habitat. On October 15, 2024, the Fish and Game Commission published a Notice of Findings that designates western burrowing owl as a CESA candidate species (FGC 2024). Therefore, western burrowing owl is a species designated as candidate for listing as threatened or endangered pursuant to CESA (Fish & G. Code, section 2050 *et seq.*). Take of any endangered, threatened, or candidate species that results from the Project is prohibited, except as authorized by State law (Fish & G. Code, sections 86, 2062, 2067, 2068, 2080, 2085; Cal. Code Regs., tit. 14, section 786.9). Additionally, take of

individual western burrowing owl and their nests is defined by Fish and Game Code section 86 and prohibited by sections 3503, 3503.5, and 3513. Take is defined in Fish and Game Code section 86 as “hunt, pursue, catch, capture or kill, or attempt to hunt, pursue, catch, capture or kill.” Inadequate avoidance and mitigation measures will result in the Project continuing to have a substantial adverse direct and cumulative effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the Department.

The Draft EIS/EIR does not provide analysis of potential impacts to western burrowing owl, nor does it propose mitigation measures to reduce the significance of the impacts to the species. In addition, focused surveys for western burrowing owl have not been performed within the Project site or adjacent areas. If Project activities overlap with the breeding season (February 1st – August 31st) for western burrowing owl, there is potential for Project activities to result in abandonment of burrows, burrow collapse, or injury/mortality of owlets. Furthermore, attempts to flush western burrowing owl from the site may disturb, distress, or lead to potential take of individual western burrowing owl.

Recommendations: The Department recommends that the Final EIS/EIR acknowledge that western burrowing owl is designated as a CESA candidate species and afforded full protection under CESA. The Final EIS/EIR should also provide a thorough discussion of the Project’s potential direct and indirect impacts to western burrowing owl. If the Project has the potential to impact western burrowing owl, the Final EIS/EIR should propose measures to mitigate for potential impacts to the species as well as for habitat that supports the species. The discussion should be of depth and scope that a CESA Incidental Take Permit could be issued based on the analysis provided in the Final EIS/EIR.

If an occupied burrow or western burrowing owl is identified within the Project site or adjacent areas, LAHD shall coordinate with the Department and obtain appropriate take authorization from the Department (pursuant to Fish and Game code, section 2080 *et seq.*). LAHD shall comply with the mitigation measures detailed in the take authorization issued by the Department. LAHD shall obtain a fully executed take authorization prior to implementing Project activities with potential to impact western burrowing owl.

Nesting Birds and Raptors

Comments: Project activities include dredging, wharf demolition and reconstruction, backland improvements construction, and the use of vessels and vehicles. These activities can potentially alter habitat and make suitable nesting habitat unavailable to nesting birds and raptors due to increased noise, vibration, light, dust, and human activity. Moreover, Project activities occurring during the breeding season of nesting birds and raptors could result in the incidental loss of fertile eggs, or nestlings, or otherwise lead to nest abandonment in trees and shrubs directly within and adjacent to the Project’s boundaries.

Migratory nongame native bird species are protected by international treaty under the Migratory Bird Treaty Act (MBTA) of 1918 (Code of Federal Regulations, Title 50, section 10.13). Sections

3503, 3503.5, and 3513 of the California Fish and Game Code prohibit take of all birds and their active nests including raptors and other migratory nongame birds (as listed under the MBTA).

Recommendations: The Department recommends that measures be taken, primarily, to avoid Project impacts to nesting birds and raptors. To avoid impacts to nesting birds and raptors, the Department recommends that clearing of vegetation and grubbing activities occur outside of the peak avian breeding season, which generally 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 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, the Department 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.

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, section 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

ENVIRONMENTAL DOCUMENT FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by the Department. Payment of the environmental document filing fee is required for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, section 753.5; Fish & G. Code, section 711.4; Pub. Resources Code, section 21089.)

CONCLUSION

The Department appreciates the opportunity to comment on the Draft EIS/EIR to assist LAHD and USACE in identifying and mitigating Project impacts on biological resources. Questions regarding this

letter or further coordination should be directed to Leslie Hart, Environmental Scientist at R7CEQA@wildlife.ca.gov.

Sincerely,



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ATTACHMENT

Attachment 1: Fisheries Hydroacoustic Working Group. 2008. Interim Criteria for Injury of Fish Exposed to Pile Driving Operations: Memorandum. Washington: Federal Highway Administration.

REFERENCE

[FGC] California Fish and Game Commission. 2024. *Notice of Findings – Western Burrowing Owl (Athene cunicularia hypugaea)*. Available at:
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=227089&inline>