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State of California – Natural Resources Agency
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GAVIN NEWSOM, Governor
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April 7, 2025

Connor Hyland
Senior Deputy City Attorney
City of Huntington Beach
2000 Main Street, 4th Floor
Huntington Beach, California 92648
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Subject: DRAFT ENVIRONMENTAL IMPACT REPORT for the Pacific Airshow Huntington Beach Project, SCH No. 2024020006, ORANGE COUNTY, CA

Dear Connor Hyland:

The California Department of Fish and Wildlife (CDFW) reviewed the Draft Environmental Impact Report (DEIR) from the City of Huntington Beach (City) for the Pacific Airshow Huntington Beach 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.

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.

PROJECT DESCRIPTION SUMMARY

Proponent: Kevin Elliott, Pacific Airshow LLC (Project proponent/Applicant)

Objective: The Project would provide an Airshow in Huntington Beach that features civilian and military aircraft flybys and aerial acrobatics; air racing; electric vehicle and

[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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drone displays; competitions and shows; and, displays of other emerging aviation/mobility technologies. To achieve this, the Project will use a temporary runway on the beach for helicopters and aircraft. Additional Project features include visitor-serving entertainment, services, and amenities that include but are not limited to: a variety of viewing areas, vehicle and aircraft demonstrations; illustrations; flight simulations; merchandise tents; concessions; food trucks; live music entertainment; skateboard and bicycle motocross bowl competitions; sandcastle building competitions; art installations; and, pyrotechnic shows. This event has been held annually in the City during the fall season each year since 2016, except in 2020 due to the COVID-19 pandemic. Airshow activities will typically begin at approximately 10am and may extend to 11pm. New events that have not historically occurred include multi-day air racing; a music festival; nighttime flyovers including parachute jumps onto the beach; nightly pyrotechnic shows to be discharged from either aircraft or an ocean barge; and, landing aircraft on a temporary runway on the beach.

Location: The Project is in the City of Huntington Beach, which is in coastal Orange County. The on-the-ground event portion of the Airshow (the "show center area") is located on the beach; its boundaries are approximately from 7th Street to Beach Boulevard along Pacific Coast Highway, and from Pacific Coast Highway to the Pacific Ocean (including a portion of the Huntington Beach Pier). The Project describes the Airshow performance area as being the primary area for aircraft flybys and aerial acrobatics. This performance area is over the Pacific Ocean, adjacent to the show center area, with an east-west length of approximately 3,000 feet and a north-south length of approximately 12,000 feet. The performance area is identified by 16 buoys placed in the ocean. Many of the aircraft flights spill out of the performance area into the temporary flight restriction (TFR) airspace administered by the Federal Aviation Administration (FAA) for the airshow. The TFR is a five-nautical mile ring centered on the airshow's performance area. The show center area and the airshow performance area collectively comprise the Project Site. For the purposes of technical analysis within the DEIR, a broader study area was defined that extends beyond the Project Site to reflect the potential impacts associated with civilian and military flybys and aerial acrobatics transiting to/from the Airshow performance area.

Timeframe: Future airshows are anticipated to be held for three to five days, generally Friday through Sunday or up to Wednesday through Sunday, with aircraft flight familiarization and flight practice flyovers beginning as early as Monday of the week of the Airshow.

Settlement: The City and the Project proponent entered into a *Settlement Agreement and General Release*[2] (Settlement), effective May 9, 2023, following litigation pertaining to the City's cancellation of the final day of the Airshow in 2021. The Settlement contemplates the City conducting environmental review as required by CEQA. The Settlement also requires that if the Project proponent desires to conduct future

[2] https://cms3.revize.com/revize/huntingtonbeachca/SETTLEMENT%20AGREEMENT%20AND%20GENERAL%20RELEASE_FINAL_SIGNED.pdf

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airshows, they and the City will enter into a separate "Air Show Event Agreement" to hold at least one airshow event per year, on dates selected by the Project proponent, for a term of 10 years with the option to renew up to 3 times for additional 10-year terms.

Biological Setting: The Project Site and surrounding areas contain a wide variety of extraordinarily sensitive habitats and wildlife species, including both terrestrial and marine resources. The area immediately surrounding the Project Site contains various protected coastal wetlands, including Bolsa Chica Ecological Reserve (BCER). BCER is an approximately 1,300-acre coastal estuary which contains open water, mudflats, coastal dunes, riparian habitats, freshwater marsh, and saltwater marsh. BCER's saltwater marsh is one of largest remaining in Southern California. More than 200 avian species have been identified there. BCER is an important stopover along the Pacific Flyway for hundreds of migratory bird species. CDFW is responsible for on-site management of BCER, which provides important habitat for sensitive wildlife species, including:

- Western snowy plover (*Charadrius nivosus nivosus*; Federal Endangered Species Act (ESA)-listed threatened, California Species of Special Concern (SSC))
- Light-footed Ridgway's rail (*Rallus obsoletus levipes*; ESA-listed endangered, California Endangered Species Act (CESA) listed endangered, State Fully Protected (FP))
- Coastal California gnatcatcher (*Polioptila californica californica*; ESA-listed threatened, SSC)
- Belding's savannah sparrow (Passerculus sandwichensis beldingi; CESA-listed endangered)
- California least tern (*Sterna antillarum browni*; ESA-listed endangered, CESA-listed endangered, FP)
- White-tailed kite (*Elanus leucurus*; FP)
- Peregrine falcon (*Falco peregrinus anatum*)
- Burrowing owl (*Athene cunicularia*; CESA candidate)
- Northern harrier (*Circus hudsonius*; SSC)
- Cooper's hawk (*Accipiter cooperii*; CDFW Watch List (WL))
- Osprey (*Pandion haliaetus*; WL)
- Tricolored blackbird (*Agelaius tricolor*; CESA-listed threatened)
- California brown pelican (*Pelecanus occidentalis californicus*)
- Short-eared owl (*Asio flammeus*; SSC)

Additionally, less than three miles from the center of the airshow performance area, there are two marine protected areas: Bolsa Bay State Marine Conservation Area (SMCA) and Bolsa Chica Basin SMCA. Under the State Marine Life Protection Act, SMCAs protect tidal lands, wetlands up to the mean high tide line, fish, and fish habitat for many species that are both state and federally managed.

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Project History: CDFW has an extensive history communicating with the FAA, the California Coastal Commission, the State Lands Commission (SLC), the United States Fish and Wildlife Service (USFWS), and the City regarding the Airshow and its impacts to wildlife. On August 25, 2023, CDFW and SLC jointly sent a letter to the City describing impacts to birds due to the 2021 and 2022 airshows. These impacts included aircraft dropping streamers in BCER, and repeated low flyovers by military aircraft that flushed sensitive birds. In that letter, CDFW and SLC emphasized that sound pollution and low overhead flights posed a threat to birds and other wildlife. CDFW also provided the City with comments during the public review period for the Initial Study and Notice of Preparation for this Project, in a letter dated March 4, 2024[3]. At that time, CDFW again voiced concerns about impacts to BCER and the sensitive species therein. CDFW attaches those prior communications because they remain relevant and applicable to the Project and the DEIR.

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. Additional comments or other suggestions may also be included to improve the document.

COMMENT # 1: General Disclosure and Mitigation of Impacts to Biological Resources

Issue: The DEIR does not provide a clear, full disclosure and analysis of potentially significant impacts to biological resources, nor does it include mitigation measures to reduce those impacts to a level of less than significant.

Specific Impact: Without a full disclosure and analysis of the Project's effect on biological resources, including mitigation measures in a Mitigation, Monitoring, and Reporting Plan (MMRP), the Project is very likely to have significant adverse effects on special status species due to the Project occurring during bird nesting season, or aircraft flying over BCER (either during or outside of bird nesting season). Furthermore, without robust avoidance, minimization, and mitigation measures, the Project as described will interfere substantially with the movement of native resident or migratory wildlife species, with established native resident or migratory wildlife corridors, and impede the use of native wildlife nursery sites.

Why impact would occur: The DEIR dismisses potential significant impacts to biological resources by improperly relying on assumptions that certain activities would occur (described below), and improperly concludes that impacts to biological resources will be avoided. However, there are no actual measures or other enforceable

[3] Available at: https://files.ceqanet.opr.ca.gov/295302-1/attachment/t54ROc5yulkIGs6au1ip-fpXNsaQryPCQ5ToRpV_DiKthRZqPyWygsSIapUJ4vZFMtdAdmzc_Qd7TvU60

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mechanisms to ensure the DEIR's assumptions would in fact occur, nor does the DEIR analyze and disclose impacts to biological resources that would occur in the absence of the assumptions. This contrasts with the requirements of CEQA and the DEIR's own *Approach to Environmental Analysis* (DEIR Section 3.0.2) which states, "[t]he project-level analysis will estimate the impacts to each resource category before the implementation of applicable mitigation measures. The analyses will then estimate the impacts to each resource category after the implementation of applicable mitigation measures." Assumptions relied upon in the analysis and for which there is no basis to enforce or otherwise ensure the assumptions are accurate include:

a. the Airshow would not be scheduled during bird breeding season – it is improper to assume this because the Project proponent has discretion to determine when the Airshow would occur per the Settlement;
b. the Project proponent would provide daily formal briefings each day of the Airshow to all pilots about the sensitivity of BCER – it is improper to assume this because there is nothing in the DEIR that contemplates this as an enforceable measure, nor is there any other information in the DEIR that indicates the City can require this measure;
c. the Project proponent would request avoidance of overflights over BCER – it is improper to assume this because there is nothing in the DEIR that contemplates this as an enforceable measure, nor is there anything else provided to the public that would indicate the City can require this measure, moreover, it is not up to the City or the Project proponent to finalize flight paths because, according to the DEIR, the FAA has ultimate authority over flight paths;
d. when overflights of the BCER cannot be avoided, the Project proponent would request that overflights occur at 1,000 feet above ground level or above – it is improper to assume this because there is nothing in the DEIR that contemplates this as an enforceable measure, nor is there anything else provided to the public that would indicate the City can require this measure; and
e. because pilots could be instructed by the FAA to fly over the BCER, pre-activity surveys and biological monitoring would be conducted each year as part of the Project, at least one day prior to the Airshow as well as during the operation of the Airshow to determine whether Airshow activity is impacting bird behavior and to ensure that no Airshow-related debris drifts into the sensitive ecological areas - it is improper to assume this because there is nothing in the DEIR that contemplates this as an enforceable measure, nor is there anything else provided to the public that would indicate the City can require this measure.

As mentioned above, there is no information in the DEIR to indicate that these assumptions can be relied upon to reduce or otherwise avoid potentially significant effects. This is especially the case because the City appears to have no control over the Project proponent's implementation of the Project in accordance with the assumptions either due to the Settlement or the lack of any information in the DEIR to indicate the enforceability of such measures. Specifically, it is not clear within the context of the Settlement and Air Show Event Agreement requirement if the Project proponent will be

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required to abide by the assumptions, or how the City will enforce the assumptions. Section 2.b. of the Settlement states, in part, that the Air Show Event Agreement, "will be based on, and supported by, the completed aforementioned CEQA environmental review, and consistent with the terms of the [Settlement]." Because the Air Show Event Agreement will be based on this environmental review, the City should commit to requiring the assumptions as mitigation measures and ensure they are included in the Air Show Event Agreement so that the Airshow is required to implement them.

Nevertheless, because Project elements like flight path are outside the City and Project Proponent's control, the Project's potentially significant impacts to biological resources should be analyzed in the DEIR without reliance on the assumptions. Without disclosure, analysis, and mitigation, the Project could result in significant adverse effects to sensitive nesting, overwintering, migrating, and resident bird species due to the Project occurring during bird nesting season or aircraft flying over BCER (either during or outside of bird nesting season).

Evidence impact may be significant: The DEIR should provide an adequate, complete, and detailed disclosure about the significant effects which the Project may have on the environment (Pub. Resources Code, § 20161; CEQA Guidelines, § 15151). Such disclosure is necessary so CDFW, the public, and decisionmakers 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 the environment, in particular plant and wildlife species impacted for CDFW (e.g., current range, distribution, population trends, and connectivity). Furthermore, unlike the assumptions discussion in the Biological Resources section of the DEIR, mitigation measures should be memorialized in a MMRP table and written so as to be enforceable (CEQA Guidelines § 15126.4). Finally, absent real avoidance, minimization, and/or mitigation measures, impacts to listed species would also be considered significant pursuant to CESA and/or the federal Endangered Species Act.

Recommended Potentially Feasible Mitigation Measure(s)

Recommendation #1: Revised analysis. CDFW strongly recommends that the City revise its discussion and analysis of impacts to biological resources, and provides mechanisms to enforce all the assumptions outlined above. If the City cannot enforce the assumptions, then the Biological Resources impact analysis should be based on the Project as it would occur without those assumptions in place (e.g., assess impacts associated with the Project occurring during the bird nesting season, assess impacts with aircraft flying over BCER, etc.). This analysis should include compensatory mitigation for significant impacts as appropriate. If the City asserts that the assumptions are enforceable, then the City should provide evidence as to how the assumptions would be enforceable, the assumptions should be rewritten as enforceable mitigation measures, and be included in the DEIR's MMRP table.

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COMMENT # 2: Nesting Bird Disturbance

Issue: Impacts to nesting birds, including fully protected, CESA-listed, and ESA-listed species, are likely to be significant due to the lack of any enforceable mechanism for the City to control when the Airshow will be held, and no stated enforceable mitigation.

Specific Impact: Because of the Settlement, there does not appear to be any mechanism for the City to restrict the timing of the Airshow to outside the breeding season. The DEIR relies on the assumption that the Airshow will be scheduled outside the bird breeding season; however, the Settlement indicates that the Project proponent has the right and ability to select the dates for future Airshows, including during important nesting periods for light-footed Ridgway's rail, California least tern, and western snowy plover, as well as a wide variety of common bird species. As detailed in this letter, holding the Airshow during the bird nesting season is likely to result in significant effects to all, or a combination of, the birds identified in the Biological Setting section of this letter.

Why impact would occur: In discussing the potential of the Project to affect birds, the DEIR acknowledges that special-status birds are known to occur in the area and use the beaches and coastal marshes for nesting. The DEIR also indicates that there are breeding sites for California least terns and western snowy plovers that are fenced off from public access. The DEIR does not, however, acknowledge that California least terns and western snowy plovers have also been observed nesting outside the confines of those fenced areas, nor does it discuss other special-status bird species that nest on the beach or in the coastal wetlands. The areas surrounding the show center area, including Huntington Beach, BCER, and other coastal wetlands, are vital habitats for a variety of native species. As the largest coastal wetland remaining in California, BCER supports a heavy concentration of breeding birds.

Because of the ground-nesting behaviors of these species, disturbance of nesting due to Project implementation is prevalent. For example, disturbance from aircraft overflights, fireworks, vehicles, pedestrians, and even blowing trash can result in flushing of nesting birds, increased predation, crushing of eggs, reduced fitness of chicks, and decreases in reproductive success (Jefferson, et al. 2022). Individually, or in combination, the aforementioned impacts can result in significant effects to individual birds as well as a bird population as a whole. For example, California least terns, like many colonial ground nesting birds, rely on coordinated attacks, or mobbing behavior to protect their nests from predators (Jefferson, et al. 2022). In other words, the entire tern colony will react together to resolve a threat. Flushing birds from their nests leaves eggs and chicks vulnerable to thermal exposure and to predators that can take advantage of the parents' absence to prey on eggs and chicks and decimate a nesting site in a short amount of time. Repeated flushing can cause nest abandonment. Therefore, an aircraft or individual/spectator could result in a colony leaving their nests resulting in impacts associated with such flushing.

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Another example of the Project likely resulting in a significant effect on nesting birds involves Western snowy plovers. While not colonial, Western snowy plovers frequently nest within or near tern colonies, and can exhibit increased reproductive success because of the defensive behaviors of terns (Powell 2001). While many different factors combine to influence the reproductive success of birds, nest abandonment remains a primary concern and the Airshow is likely to result in such abandonment if it occurs during the nesting season.

In their 2024 review of California least tern activity at Huntington State Beach (Huntington Beach Wetlands Conservancy 2024), the Huntington Beach Wetlands Conservancy stated:

> *Overall, since 2008, abandonment has been the major cause of nest loss at this colony. Human disturbance is most likely a major cause for egg non-viability and abandonment which together accounted for over 50% of failed nests (36 nests/63 failed nests). The near constant flushing of birds from the nest reduces incubation time. Fourth of July celebrations on the beach cause disturbance at the colony. In 2024, a boat stationed at the river entrance adjacent to the colony set off fireworks. By July 9, the colony activity was depressed and the colony effectively abandoned. As in previous years, helicopters flying and drone flights over the colony caused the terns to flush from the nests. Paragliders launching from the Santa Ana River channel and flying low over the colony caused the birds to flush frequently in past years.*

Although the aforementioned impacts are not the result of the Airshow, low flyovers by jets will have similar effects if they occur during the nesting season. As mentioned in this letter in Comment #4, although the DEIR seems to improperly discount potential impacts from the Airshow based on current activity by aircraft, even if such approach in the DEIR is accurate, which it isn't, the DEIR should, at a minimum, account for the cumulative effect on nesting birds arising from the Airshow.

Another major threat to chicks is insufficient nutrition (Scopel and Diamond 2017). In response to disturbance, some birds may stay longer on the nest, which reduces the time available to forage for food for chicks. Additionally, birds may forage further afield than usual, in order to avoid heavily populated areas or aircraft disturbance, which also leads to reduced feeding of chicks. California least terns are particularly vulnerable, and experience significant loss of chicks in years with low fish abundance.

Depending on where in a species' breeding cycle the Airshow occurs, disturbances can have varying results (Ellenberg, Mattern and Seddon 2013; Jefferson, et al. 2022). If the Airshow occurs just prior to or at the beginning of nesting season, birds may choose not to nest in the area at all. In the case of California least terns and western snowy plovers, the areas near the Project Site represent important breeding sites, with high density of nests. The closest protected tern and plover nesting areas are Seal Beach 3.75 miles to

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the north and Upper Newport Bay Ecological Reserve 6.75 miles to the south. In the absence of a suitable nesting site, an entire season's reproductive effort could be lost. If the Airshow begins after nests have been established, disturbance could lead to mortality of eggs and chicks from nest abandonment, trampling by people or dogs visiting the Airshow, or increased presence of predators drawn to trash and parental absence. If the Airshow occurs toward the end of the nesting season, fledglings could be scared off before they have accumulated the necessary fat reserves to successfully complete migration to their wintering grounds.

Evidence impact may be significant: Least terns and light-footed Ridgway's rails are listed as endangered under both the California Endangered Species Act (CESA) and the federal Endangered Species Act (ESA) and are also fully protected under FGC section 3511(b)(6). As a fully protected species, take cannot be authorized by CDFW. CDFW considers adverse impacts to a species protected by CESA to be significant. Take of any endangered, threatened, or candidate species is prohibited, except as authorized by state law (Fish & G. Code §§ 2080, 2085; Cal. Code Regs., tit. 14, §786.9).

As mentioned in the preceding section, individual birds and populations would be affected by the Project during the nesting season. Nests could be abandoned, eggs and/or chicks may not survive, or a season of nesting could be precluded. By itself or in combination, any of these impacts are likely to be significant to individual birds or their population on either a specific or cumulative basis.

Recommended Potentially Feasible Mitigation Measure(s)

Recommendation #2: Breeding Season Avoidance. If the City is able to restrict the timing of future Airshows, CDFW recommends Mitigation Measure #1 (detailed below) be included in the DEIR and its MMRP table. If the City is unable to restrict timing, CDFW recommends the City include Mitigation Measures #2, #3, and #4, detailed below.

Recommendation #3: Compensatory Mitigation. CDFW recommends the DEIR include a range of potential compensatory mitigation options to offset impacts to nesting birds resulting from the Airshow. Options to explore include conservation and/or restoration of nesting habitat; funding for infrastructure work at conserved coastal wetlands to improve water circulation and habitat conditions; and providing funding to managers of California least tern and western snowy plover nesting colonies for ongoing efforts (i.e., fence repair and predator control). CDFW cautions the City that due to the various factors that could affect the resources, working closely with the Wildlife Agencies and other coastal wetland managers is critical to ensuring that the impacts of the Project will be reduced to below a level of significance.

Mitigation Measure #1: Breeding Season Avoidance. In order to avoid impacts to breeding birds, Airshow activities (including set up and teardown) shall not occur between January 1 and September 15.

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Mitigation Measure #2: Nest Site Surveys and Buffers. The Project proponent shall engage a qualified biologist (familiar with nesting shorebirds and possessing all necessary permits) to survey the technical study area for nesting birds. If nests are found, the qualified biologist shall establish a 300-foot buffer for CESA- or ESA-listed species and a 500-foot buffer for Fully Protected species. The buffer shall be between the Airshow activities, including presence of spectators, and the nest site. The buffer shall be delineated with construction fence, and signs shall be posted along the fence informing the public of the sensitive nature of the nesting site and indicating the area should not be entered. A qualified biologist may determine that additional buffer distance is biologically warranted.

Mitigation Measure #3: Nest Site Monitoring. The Project proponent shall monitor nest sites, including those discovered during the nest site survey and those permanently designated as nest sites (western snowy plover and California least tern nesting areas), during the entire run of the Airshow to ensure spectators do not enter nesting areas and trash and debris are not introduced. Trash and debris shall be removed by or at the direction of a qualified biologist.

Mitigation Measure #4: Compensatory Mitigation. The City shall work closely with CDFW and USFWS (collectively, the Wildlife Agencies) and other coastal wetland managers to determine local needs and develop a compensatory mitigation scenario to be included in the DEIR. This mitigation shall be identified in advance of the Airshow to address certain types of effects and then chosen for implementation after the Airshow to specifically address whatever effects that occurred.

COMMENT # 3: General Avian Disturbance

Issue: Project impacts to migratory and permanent resident avian species are likely to be significant due to the lack of any enforceable mitigation.

Specific Impact: Most aircraft are expected to fly 500 to 1,000 feet above mean sea level (MSL) during their performances, and pilots could be instructed to fly over BCER on their way to or from the performance area. The impacts of low-flying aircraft on the bird species at BCER and other coastal wetlands are significant and should not be underestimated. Behavioral disruptions, increased stress, and habitat alteration caused by jets and other aircraft flying at low altitudes threaten the health and survival of migratory, resident, and wintering birds.

Why impact would occur: CDFW staff and other groups have had opportunity to observe the behavior of birds at BCER in response to overflights, including many instances where birds were displaced from the property or flushed.

a. On September 30, 2021, military jets associated with the Airshow were filmed executing low flyovers over seasonal ponds and Bolsa Basin in BCER. Approximately 450 individual birds were estimated to have flushed as a result of

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one such flyover. CDFW staff observed another low flyover that day that resulted in the flushing of osprey from a perch in Bolsa Bay.

b. After the 2022 Airshow, CDFW photographed streamers that had been dropped into BCER that resulted in flushing birds.
c. Subsequently, CDFW requested that for the 2023 airshow, no flyovers occur over BCER, and that no streamers or other debris be dropped over BCER. Hundreds of pelicans were disturbed and seen flushing after jets flew over BCER during the Airshow despite requests that such flyovers be avoided.
d. Observations of flushing continued during the 2024 Airshow. Species impacted by the hundreds of individuals include brown pelican, black bellied plover, western sand piper, and red-necked phalarope. More than 20 western snowy plover individuals were also recorded flushing as a result of jet activity.
e. Flight Tracker activity, taken by CDFW staff, documents continued low flyover over BCER, despite continued requests and requirements for avoidance. (Staff observations, electronically on file with CDFW)

Behavioral responses to aircraft disturbances add to the daily energy expenditure of birds. When birds are disturbed, they can react with altered behaviors, such as agitation or flushing. Also, a bird may exhibit no outward signs of distress but experience an elevated heart rate (Ellenberg, Mattern and Seddon 2013), increased oxygen consumption, and change in metabolic rate, thus disrupting the bird's energy budget (Kempf and Hüppop 1998). Even outside breeding season, such disturbances can have a high impacts on the individual bird as well as the population. In the winter, birds may require more energy to maintain their body temperature. During the non-breeding season birds need to forage as much as possible to build up fat stores for migration, upcoming breeding activity, or harsh winter conditions (Kempf and Hüppop 1998). Birds that rely on BCER for food and shelter could temporarily abandon these habitats during the Airshow, leading to a loss of critical resources during key times, such as during migration or overwintering periods. This disruption can have significant consequences for their overall health, survival, and reproductive success resulting in significant effects to both individual birds as well as the population.

The proposed timing of the Airshow overlaps with the migratory periods for many species of birds traveling along the Pacific Flyway. As coastal wetlands are important stopovers for annual migration, aircraft disturbances in those areas will affect a large number of birds. Migratory birds rely on specific cues, including environmental factors such as light, temperature, and quiet, to guide their journeys. The presence of high-decibel noise and physical disturbances from aircraft can interfere with these cues, potentially delaying or disrupting migration. This disruption could affect the birds' ability to arrive at their final destination on time, impacting their survival and reproductive success (Schummer and Eddleman 2003). It can also interfere with the birds' flight paths, leading to potential collisions or forced changes in migration patterns. Noise and physical presence of aircraft may also affect the landscape and vegetation used by birds for cover and nesting. While the Airshow is relatively short-lived, repeated

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disturbances over time may lead to cumulative effects that alter the use of BCER's habitat by avian species.

Many species of waterfowl and shorebirds also use BCER as a wintering ground. Shorebirds rely heavily on BCER's mudflats for feeding during migration. Western snowy plover winters and breeds at BCER and can be sensitive to even minor disturbances. Raptors, such as the northern harrier, burrowing owl, and short-eared owl that winter at BCER are particularly at risk, as they tend to remain in one location for extended periods. Disruptions can cause these birds to leave critical feeding or resting areas, reducing their chances of survival during harsh winter conditions. Resident species that live year-round at BCER may also be affected by the Airshow. Species such as the Belding's savannah sparrow and light-footed Ridgway's rail, which are already vulnerable due to habitat loss and predation, may be further stressed by the noise and disruption caused by the event. All the effects mentioned in this paragraph and the preceding ones are likely to result in significant effects to individual birds as well as their populations.

Evidence impact may be significant: CEQA provides protection for special status species, including ESA- or CESA-listed species, Species of Special Concern, and Fully Protected Species (CEQA Guidelines § 15380). The DEIR does not provide an adequate analysis of the potential impacts to special status species, nor does it include mitigation for potential impacts. Inadequate avoidance, minimization, and mitigation measures for impacts to special status species will result in the Project having a significant adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species by the Wildlife Agencies.

Furthermore, the DEIR does not provide an adequate analysis of the potential impacts to migratory patterns or breeding success of birds, nor does it include mitigation for potential impacts. Inadequate avoidance, minimization, and mitigation measures for impacts to migrating or nesting birds will result in the Project continuing to interfere substantially with the movement of native resident or migratory birds or with established migratory corridors or impede the use of native wildlife nursery sites. These are all significant effects on birds and their populations.

Recommended Potentially Feasible Mitigation Measure(s)

Mitigation Measure #5: Monitoring of Bird Behavior. The Project proponent shall engage a qualified biologist (familiar with bird behavior and possessing all necessary permits) to monitor and assess the effects of the Airshow on bird behavior. Monitoring shall occur at BCER, as well as other locations where birds congregate and that may be affected by the Airshow. Monitoring shall include one or more days prior to the start of Airshow activities, to provide a baseline measurement, and shall continue daily until the end of the Airshow. Observations shall be made of bird behaviors and aircraft passing over the study area. The Project proponent shall coordinate with the Wildlife Agencies to develop appropriate study design, methodology, and reporting (see also

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recommended Mitigation Measure # 8 below). If monitoring demonstrates a significant impact to nesting birds, compensatory mitigation as outlined in Mitigation Measure #4 will be implemented, and additional avoidance measures shall be implemented to avoid future impacts. The Wildlife Agencies shall be given the opportunity to review and provide feedback on additional Airshow avoidance measures.

COMMENT # 4: <u>Flyover Disturbance</u>

Issue: As analyzed in the DEIR, impacts to BCER as a result of flyover disturbance are not mitigated to below significant.

Specific Impact: CDFW disagrees with the conclusion that the Project will not result in significant biological resources impacts due to flyover disturbance. Analysis of these impacts in the DEIR is, again, based on specious assumptions as outlined in Comment #1 and not supported by evidence. In fact, it is contradicted by CDFW observations of prior Airshow activity. The Airshow will increase the amount of air traffic that occurs over BCER, Airshow-related debris could drift into sensitive habitat areas, and birds are likely to be displaced due to Project activities.

Why impact would occur: It is inappropriate to compare Airshow-related flyovers to existing conditions at BCER. The DEIR discounts the potential of the Project to impact biological resources because other aircraft fly over BCER, and points to operation of aircraft from the helipad adjacent to BCER (incorrectly identified as being located within the Ecological Reserve) to demonstrate that the airshow will not cause disturbance to birds. The DEIR includes *Table 3.2-2*, which lists Flight Aware aircraft flight observations within the biological survey area for March 11, 2024, to demonstrate “ambient overflight conditions”.

The effort to equate Airshow flyovers to existing conditions is uncompelling for several reasons. For one, the helicopter that uses the helipad next to BCER does not generally cross over BCER; it crosses the beach as it flies to and from an offshore oil platform. In addition, the pilot and CDFW staff coordinate successfully to adjust flight paths as needed to avoid flocks of birds that are loafing under the usual path or other unusual conditions. Second, on the day used in the DEIR to demonstrate ambient flight conditions, 17 aircraft flew over BCER. All but three were at or over 2,000 feet above ground level as they passed over BCER, and none were below 1,300 feet. This is in contrast to observed overflights during past years’ airshows, where multiple aircraft passed over BCER at low altitudes (i.e. well below 1,300 feet) and caused birds to flush (mentioned in Comment #3). Third, while birds may become habituated to aircraft that they encounter frequently, that tolerance will not extend to novel encounters with aircraft of the type that would occur during the Airshow (van der Kolk, et al. 2024). The reaction of a bird to an aircraft will vary depending on factors such as the species of bird, whether they are on a nest, and their familiarity with the particular aircraft. Differences in aircraft size, shape, speed of travel, altitude, and noise level will elicit differing responses. Some birds react strongly to the visual of hang gliders and parachutes, while

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some react to the sound of loud aircraft. For some species, large slow aircraft are more threatening than smaller aircraft (van der Kolk, et al. 2020). Some species react more strongly to helicopters than jets, some the opposite (Fuller, McChesney and Golightly 2018). A stimulus that seems to have a low impact to humans may be perceived by a bird as threatening (Ellenberg, Mattern and Seddon 2013).

Evidence impact may be significant: CEQA provides protection for special status species, including ESA- or CESA-listed species, Species of Special Concern, and Fully Protected Species (CEQA Guidelines § 15380). The DEIR does not provide an adequate analysis of the potential impacts to special status species, nor does it include mitigation for potential impacts. Inadequate avoidance, minimization, and mitigation measures for impacts to special status species will result in the Project continuing to have a significant adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species by the Wildlife Agencies.

Furthermore, the DEIR does not provide an adequate analysis of the potential impacts to migratory patterns or breeding success of birds, nor does it include mitigation for potential impacts. Inadequate avoidance, minimization, and mitigation measures for impacts to migrating or nesting birds will result in the Project continuing to interfere substantially with the movement of native resident or migratory birds or with established migratory corridors or impede the use of native wildlife nursery sites. All the effects mentioned in Comment #3 and this Comment #4 are likely to result in significant effects to individual birds as well as their populations.

Recommended Potentially Feasible Mitigation Measure(s)

Recommendation #4: Flyover Impacts. CDFW recommends that the DEIR include measures to avoid, reduce, and compensate for impacts associated with low-level flyovers. Measures should clearly indicate that they apply to all aspects of the Airshow, including aircraft flight familiarization and flight practice flyovers, and that they apply to all types of aircraft, including parachutes, gliders, and drones. It should also be clear in the DEIR that the measures apply to aircraft involved in photographing the Airshow.

Mitigation Measure #6: Participant Education. The Project proponent shall conduct daily formal pre-flight briefings to familiarize all pilots with the sensitivity of BCER and other coastal wetlands. These briefings shall be held each day of the Airshow, including days with aircraft flight familiarization and flight practice flyovers. The Project proponent shall notify CDFW of all pre-flight meeting times and allow the opportunity for CDFW staff to participate in the meetings. The Project proponent shall coordinate with CDFW each day prior to the meeting in order to have the most current information regarding sensitive resources within BCER.

Mitigation Measure #7: Flight Over BCER. The Project proponent shall encourage pilots to avoid flying over BCER. The Project proponent shall inform participants that coastal wetlands, including BCER, are considered noise-sensitive areas, as that term is

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used in FAA Advisory Circular No: 91-36D[4]. The Project proponent shall encourage pilots to observe the voluntary practices contained therein. In particular, pilots shall be encouraged to maintain an altitude of at least 2,000 feet above ground level when flying over BCER or other coastal wetlands. A copy of the advisory circular shall be included in the participant information package, and it shall be discussed at pre-flight meetings.

Mitigation Measure #8: Post Action Report and Coordination. Within 60 days following the Airshow, the Project proponent shall provide a Post Action Report to the City, the Wildlife Agencies, and other stakeholders. The report shall, at a minimum, summarize the results of the monitoring (see recommended mitigation measure #4 above), any issues that arose during the Airshow and measures that were taken as a result, compensatory measures proposed to offset any impacts (see recommendation #3 above related to compensatory mitigation), and suggested improvements for future Airshows. Upon request, the Project proponent shall meet with the City, the Wildlife Agencies, and/or other stakeholders to discuss the Post Action Report and any proposed additional mitigation measures that would further decrease impacts from future Airshows.

ADDITIONAL COMMENTS

Scope of the Project. While alluded to in other places in our letter, CDFW requests that the scope of the Project be expanded to include, and that all mitigation measures apply to, flight rehearsals leading up to the Airshow. Activities that may have impacts to biological resources post event should also be included.

Bird Strike Hazard. CDFW recommends the City clarify the timing limits of Airshow flights in relationship to bird strikes. Currently, the DEIR says that no flights related to the airshow are planned to occur at night, so, "…the potential for impacts to aircraft from collisions with migratory birds are expected to be less than significant" (page 3.3-11); however, other places in the document say that there will be night flights, potentially as late as 11:00pm (page ES-4). The issue of bird strike with regard to the temporary landing area should also be revisited. The DEIR does not identify the methods that will be used to mitigate bird strike hazards for the temporary runway, but it does indicate hazing could be employed. CEQA requires that if a mitigation measure could, itself, have impacts, those impacts must be disclosed and analyzed in the DEIR (CEQA Guidelines, § 15126.4(a)(1)); therefore, CDFW recommends the DEIR disclose the measures that will be required to mitigate bird strike hazards, analyze the potential impacts to biological resources that could occur as a result of those measures, and include them in a MMRP table. Bird strikes and any bird hazing should be included in the report mentioned in Mitigation Measure #7 in order to develop appropriate compensatory mitigation for the effects to ensure they will be less than significant, either on an individual, specific basis, or from the perspective of a cumulative effect on birds.

[4] https://www.faa.gov/regulations_policies/advisory_circulars/index.cfm/go/document.information/documentID/23156

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Results of Bird Behavior Monitoring. CDFW recommends that the City include the data and a discussion of past monitoring efforts, including methodologies and results, in the environmental document to better inform its analysis of the Project's effects on biological resources. This includes data on the behavior of birds in response to aircraft as well as the monitoring that occurred during the 2023 airshow. Mitigation measures based on discussion of this data should be included in an MMRP table.

Mitigation and Monitoring Reporting Plan. CDFW recommends the Project's environmental document include mitigation measures recommended in this letter. CDFW has provided comments via a mitigation monitoring and reporting plan to assist in the development of feasible, specific, detailed (i.e., responsible party, timing, specific actions, location), and fully enforceable mitigation measures (CEQA Guidelines, § 15097; Pub. Resources Code, § 21081.6). The Lead Agency is welcome to coordinate with CDFW to further review and refine the Project's mitigation measures. Per Public Resources Code section 21081.6(a)(1), CDFW has provided a summary of our suggested mitigation measures and recommendations in the form of an attached Draft Mitigation Monitoring and Reporting Plan (Attachment A).

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 (CNDDB). The CNDDB website[5] 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[6]. The City should ensure data collected for the preparation of the DEIR is properly submitted.

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 CDFW. Payment of the environmental document filing 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.)

[5] https://wildlife.ca.gov/Data/CNDDB
[6] https://wildlife.ca.gov/Data/VegCAMP/Natural-Communities/Submit

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CONCLUSION

CDFW appreciates the opportunity to comment on the DEIR to assist the City in identifying and mitigating Project impacts on biological resources. CDFW requests an opportunity to review and comment on any response that the City has to our comments and to receive notification of any forthcoming hearing date(s) for the Project.

Questions regarding this letter or further coordination should be directed to Jennifer Turner[7], Senior Environmental Scientist Supervisor.

Sincerely,

DocuSigned by:
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Victoria Tang
Environmental Program Manager
South Coast Region

ATTACHMENTS

Attachment A: Draft Mitigation, Monitoring, and Reporting Program

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REFERENCES

Ellenberg, Ursula, Thomas Mattern, and Philip J Seddon. 2013. "Heart Rate Responses Provide an Objective Evaluation of Human Disturbance Stimuli in Breeding Birds." *Conservation Physiology.* doi:10.1093/conphys/cot013.

Fuller, Allison R, Gerard J McChesney, and Richard T Golightly. 2018. "Aircraft Diesturbance to Common Murres (Uria aalge) at a Breeding Colony in Central California." *Waterbirds: The International Journal of Waterbird Biology* 257-267.

Huntington Beach Wetlands Conservancy. 2024. "Activitiy fo the California Least Tern (Sternula antillarum browni) at ."

Jefferson, Camryn N, Marissa M Brown, Lianne M Koczur, Cortney E Weatherby, and Fallan D Batchelor. 2022. "Disturbances to Least Tern (Sternula antillarum) Colonies Along the Alabama Coast." *Alabama Birdlife.*

Kempf, Norbert, and Ommo Hüppop. 1998. "Wie wirken Flugzeuge auf Vögel? - Eine bewertende Übersicht." *Naturschutz und Landschaftsplanung.* Summarized in English online at https://www.fai.org/sites/default/files/documents/ln_3-1_aircraft_effects_on_birds.pdf.

Powell, Abby N. 2001. "Habitat Characteristics and Nest Success of Snowy Plovers Associated with California Least Tern Colonies." *The Condor.*

Schummer, Michael L, and William R Eddleman. 2003. "Effects of Disturbance on Activity and Energy Budgets of Migrating Waterbirds in South-Central Oklahoma." *The Journal of Wildlife Management* 789-795.

Scopel, L C, and A W Diamond. 2017. "Predation and Food-Weather Interactions Drive Colony Collapse in a Managed Metapopulation of Arctic Terns (Sterna paradisaea)." *Canadian Journal of Zoology.* doi:https://doi.org/10.1139/cjz-2016-0281.

van der Kolk, H J, C J Smit, A M Allen, B J Ens, and M van de Pol. 2024. "Frequency-dependent Tolerance to Aircraft Disturbance Drastically Predicted Impact on Shorebirds." *Ecology Letters.* doi:10.1111/ele.14452.

van der Kolk, H, K L Krijgsveld, H Linssen, R Diertens, D Dolman, M Jans, M Frauendorf, B J Ens, and M van de Pol. 2020. "Cumulative Energetic Costs of Military Aircraft, Recreational and Natural Disturbance in Roosting Shorebirds." *Animal Conservation* 359-372. doi:10.1111/acv.12546.

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ATTACHMENT A: DRAFT MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

CDFW provides the following language to be incorporated into the MMRP for the Project.

Mitigation Measures	Timing	Responsible Party
Mitigation Measure #1: Breeding Season Avoidance. In order to avoid impacts to breeding birds, Airshow activities (including set up and teardown) shall not occur between January 1 and September 15.	During the Project	Project Proponent
Mitigation Measure #2: Nest Site Surveys and Buffers. The Project proponent shall engage a qualified biologist (familiar with nesting shorebirds and possessing all necessary permits) to survey the technical study area for nesting birds. If nests are found, the qualified biologist shall establish a 300-foot buffer for CESA- or ESA-listed species and a 500-foot buffer for Fully Protected species. The buffer shall be between the Airshow activities, including presence of spectators, and the nest site. The buffer shall be delineated with construction fence, and signs shall be posted along the fence informing the public of the sensitive nature of the nesting site and indicating the area should not be entered. A qualified biologist may determine that additional buffer distance is biologically warranted.	During the Project	Project Proponent
Mitigation Measure #3: Nest Site Monitoring. The Project proponent shall monitor nest sites, including those discovered during the nest site survey and those permanently designated as nest sites (western snowy plover and California least tern nesting areas), during the entire run of the Airshow to ensure spectators do not enter nesting areas and trash and debris are not introduced. Trash and debris shall be removed by or at the direction of a qualified biologist.	During the Project	Project Proponent

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Mitigation Measures	**Timing**	**Responsible Party**
Mitigation Measure #4: Compensatory Mitigation. The City shall work closely with CDFW and USFWS (collectively, the Wildlife Agencies) and other coastal wetland managers to determine local needs and develop a compensatory mitigation scenario to be included in the DEIR. This mitigation shall be identified in advance of the Airshow to address certain types of effects and then chosen for implementation after the Airshow to specifically address whatever effects that occurred.	Before, during, and after the Project	Project Proponent
Mitigation Measure #5: Monitoring of Bird Behavior. The Project proponent shall engage a qualified biologist (familiar with bird behavior and possessing all necessary permits) to monitor and assess the effects of the Airshow on bird behavior. Monitoring shall occur at BCER, as well as other locations where birds congregate. Monitoring shall include one or more days prior to the start of Airshow activities, to provide a baseline measurement, and shall continue daily until the end of the Airshow. Observations shall be made of bird behaviors and aircraft passing over the study area. The Project proponent shall coordinate with CDFW to develop appropriate study design and methodology.	Before, during, and after the Project	Project Proponent
Mitigation Measure #6: Participant Education. The Project proponent shall conduct daily formal pre-flight briefings to familiarize all pilots with the sensitivity of BCER and other coastal wetlands. These briefings shall be held each day of the Airshow, including days with aircraft flight familiarization and flight practice flyovers. The Project proponent shall notify CDFW of all pre-flight meeting times and allow the opportunity for CDFW staff to participate in the meetings. The Project proponent shall coordinate with CDFW each day prior to the meeting in order to have the most current information regarding sensitive resources within BCER.	During the Project	Project Proponent

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Mitigation Measures	Timing	Responsible Party
Mitigation Measure #7: Flight Over BCER. The Project proponent shall encourage pilots to avoid flying over BCER. The Project proponent shall inform participants that coastal wetlands, including BCER, are considered noise-sensitive areas, as that term is used in FAA Advisory Circular No: 91-36D[8]. The Project proponent shall encourage pilots to observe the voluntary practices contained therein. In particular, pilots shall be encouraged to maintain an altitude of at least 2,000 feet above ground level when flying over BCER or other coastal wetlands. A copy of the advisory circular shall be included in the participant information package, and it shall be discussed at pre-flight meetings.		
Mitigation Measure #8: Post Action Report and Coordination. Within 60 days following the Airshow, the Project proponent shall provide a Post Action Report to the City, the Wildlife Agencies, and other stakeholders. The report shall, at a minimum, summarize the results of the monitoring (see recommended mitigation measure #4 above), any issues that arose during the Airshow and measures that were taken as a result, compensatory measures proposed to offset any impacts (see recommendation #3 above related to compensatory mitigation), and suggested improvements for future Airshows. Upon request, the Project proponent shall meet with the City, the Wildlife Agencies, and/or other stakeholders to discuss the Post Action Report and any proposed additional mitigation measures that would further decrease impacts from future Airshows.		

[8] https://www.faa.gov/regulations_policies/advisory_circulars/index.cfm/go/document.information/documentID/23156

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Mitigation Measures	Timing	Responsible Party
Recommendation #1: Revised analysis. CDFW strongly recommends that the City revise its discussion and analysis of impacts to biological resources, and provides mechanisms to enforce all the assumptions outlined above. If the City cannot enforce the assumptions, then the Biological Resources impact analysis should be based on the Project as it would occur without those assumptions in place (e.g., assess impacts associated with the Project occurring during the bird nesting season, assess impacts with aircraft flying over BCER, etc.). This analysis should include compensatory mitigation for significant impacts as appropriate. If the City asserts that the assumptions are enforceable, then the City should provide evidence as to how the assumptions would be enforceable, the assumptions should be rewritten as enforceable mitigation measures, and be included in the DEIR's MMRP table.	Before the Project	The City
Recommendation #2: Breeding Season Avoidance. If the City is able to restrict the timing of future Airshows, CDFW recommends Mitigation Measure #1 (detailed below) be included in the DEIR and its MMRP table. If the City is unable to restrict timing, CDFW recommends the City include Mitigation Measures #2, #3, and #4, detailed below.	Before the Project	The City
Recommendation #3: Compensatory Mitigation. CDFW recommends the DEIR include a range of potential compensatory mitigation options to offset impacts to nesting birds resulting from the Airshow. Options to explore include conservation and/or restoration of nesting habitat; funding for infrastructure work at conserved coastal wetlands to improve water circulation and habitat conditions; and providing funding to managers of California least tern and western snowy plover nesting colonies for ongoing efforts (i.e., fence repair and predator control). CDFW cautions the City that due to the various factors that could affect the resources, working closely with the	Before the Project	The City

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Mitigation Measures	**Timing**	**Responsible Party**
Wildlife Agencies and other coastal wetland managers is critical to ensuring that the impacts of the Project will be reduced to below a level of significance.		
Recommendation #4: Flyover Impacts. CDFW recommends that the DEIR include measures to avoid, reduce, and compensate for impacts associated with low-level flyovers. Measures should clearly indicate that they apply to all aspects of the Airshow, including aircraft flight familiarization and flight practice flyovers, and that they apply to all types of aircraft, including parachutes, gliders, and drones. It should also be clear in the DEIR that the measures apply to aircraft involved in photographing the Airshow.	Before the Project	The City