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***GAVIN NEWSOM, Governor***
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October 8, 2024

Laura Russell, Deputy Community Development Director
City of Belmont
1 Twin Palms Lane
Belmont, CA 94002
lrussell@belmont.gov

Subject: Belmont Harbor Industrial Area Specific Plan, Notice of Preparation of a Draft Environmental Impact Report, SCH No. 2024090569, City of Belmont, San Mateo County

Dear Laura Russell:

The California Department of Fish and Wildlife (CDFW) has reviewed the City of Belmont (City) Notice of Preparation (NOP) of a draft Environmental Impact Report (EIR) for the Belmont Harbor Industrial Area Specific Plan (Project) pursuant 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 fish and wildlife resources of the State. Please be advised, by law, CDFW may be required to carry out or approve aspects of the Project through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW is providing the City, as the lead agency, with specific detail about the scope and content of the environmental information related to CDFW's area of statutory responsibility that must be included in the EIR (Cal. Code Regs., tit. 14, § 15082, subd. (b)).

**CDFW ROLE**

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (*Id.*, § 1802). For purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency

[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.

environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority over the Project pursuant to the Fish and Game Code. For example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority, if the Project impacts the bed, channel or bank of any river, stream or lake within the State (Fish & G. Code, § 1600 et seq.). Likewise, to the extent the Project may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

## REGULATORY REQUIREMENTS

### *California Endangered Species Act*

A California Endangered Species Act (CESA) Incidental Take Permit (ITP) must be obtained from CDFW if the Project has the potential to result in "take" of plants or animals listed under CESA, either during construction or over the life of the Project. Under CESA, "take" means "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill." (Fish & G. Code, § 86). CDFW's issuance of an ITP is subject to CEQA and to facilitate permit issuance, any project modifications and mitigation measures must be incorporated into the CEQA document analysis, discussion, and mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain a CESA Permit.

CEQA requires a mandatory finding of significance if a project is likely to substantially impact threatened or endangered species (Pub. Resources Code, §§ 21001, subd. (c) & 21083; CEQA Guidelines, §§ 15380, 15064 & 15065). In addition, pursuant to CEQA, the lead agency cannot approve a project unless all impacts to the environment are avoided or mitigated to less-than-significant levels, or the lead agency makes and supports findings of overriding consideration for impacts that remain significant despite the implementation of all feasible mitigation. Findings of consideration under CEQA; however, do not eliminate the Project proponent's obligation to comply with the Fish and Game Code.

### *Lake and Streambed Alteration*

CDFW requires a Lake and Streambed Alteration (LSA) Notification, pursuant to Fish and Game Code section 1600 et seq., for Project activities affecting river, lakes or streams and associated riparian habitat. Notification is required for any activity that may

substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank (including associated riparian or wetland resources); or deposit or dispose of material where it may pass into a river, lake, or stream. Work within ephemeral streams, drainage ditches, washes, watercourses with a subsurface flow, and floodplains is generally subject to notification requirements. In addition, infrastructure installed beneath such aquatic features, such as through hydraulic directional drilling, is also generally subject to notification requirements. Therefore, any impact to the mainstems, tributaries, or floodplains or associated riparian habitat caused by the proposed Project will likely require an LSA Notification. CDFW may not execute a final LSA Agreement until it has considered the final EIR and complied with its responsibilities as a responsible agency under CEQA.

***Migratory Birds and Raptors***

CDFW has authority over actions that may result in the disturbance or destruction of active bird nest sites or the unauthorized take of birds. Fish and Game Code sections protecting birds, their eggs, and nests include section 3503 (regarding unlawful take, possession, or needless destruction of the nests or eggs of any bird), section 3503.5 (regarding the take, possession, or destruction of any birds-of-prey or their nests or eggs), and section 3513 (regarding unlawful take of any migratory nongame bird). Migratory birds are also protected under the federal Migratory Bird Treaty Act.

**PROJECT DESCRIPTION AND LOCATION SUMMARY**

**Proponent:** City of Belmont

**Objective:** The objective of the Project is to develop the Harbor Industrial Area (HIA) Specific Plan to guide anticipated growth and development in the 62-acre area. Primary Project activities include annexing the HIA Plan area from unincorporated San Mateo County into the City of Belmont, updating zoning districts in the area, and developing infrastructure to manage flooding of Belmont Creek and create a neighborhood for people to work, shop, gather, and live.

**Location:** City of Belmont, San Mateo County, Crossroads: O'Neill Avenue and the Belmont city limits to the north; Old County Road and the Belmont city limits to the west; Belmont Creek, the city limits and the City of San Carlos to the south; and US 101 to the east, 37.521858, -122.270330.

**Timeframe:** 25-year period

The CEQA Guidelines (§§15124 & 15378) require that the draft EIR incorporate a full project description, including reasonably foreseeable future phases of the Project, and that contains sufficient information to evaluate and review the Project's environmental

impact. Please include a complete description of the following Project components in the Project description including but not limited to the below information.

- Land use changes resulting from, for example, rezoning certain areas.
- Footprints of permanent Project features and temporarily impacted areas, such as staging areas and access routes.
- Area and plans for any proposed buildings/structures, ground disturbing activities, fencing, paving, stationary machinery, landscaping, and stormwater systems.
- Operational features of the Project, including level of anticipated human presence (describe seasonal or daily peaks in activity, if relevant), artificial lighting/light reflection, noise, traffic generation, and other features.
- Proposed activities affecting Belmont Creek, including actions that may substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank (including any associated riparian or wetland resources); or deposit or dispose of material where it may pass into the creek.
- Construction schedule, activities, equipment, and crew sizes.

**ENVIRONMENTAL SETTING**

Sufficient information regarding the environmental setting is necessary to understand any potentially significant impacts on the environment of the proposed Project and any alternatives identified in the draft EIR (CEQA Guidelines, §§15125 & 15360). CDFW recommends the draft EIR provide baseline habitat assessments for special-status plant, fish and wildlife species located and potentially located within the Project area and surrounding lands, including all rare, threatened, and endangered species (CEQA Guidelines, §15380). The draft EIR should describe aquatic habitats, such as wetlands or waters of the U.S. or State, and any sensitive natural communities or riparian habitat occurring on or adjacent to the Project site (for sensitive natural communities see: https://wildlife.ca.gov/Data/VegCAMP/NaturalCommunities#sensitive%20natural%20communities), and any stream or wetland set back distances the City may require. Fully protected, threatened or endangered, candidate, and other special-status species or sensitive natural communities that are known to occur, or have the potential to occur in or near the Project site, include, but are not limited to the species listed in Appendix A.

Habitat descriptions and species profiles included in the draft EIR should include robust information from multiple sources: aerial imagery; historical and recent survey data; field reconnaissance; scientific literature and reports; U.S. Fish and Wildlife Service's

(USFWS) Information, Planning, and Consultation System; California Aquatic Resources Inventory; and findings from "positive occurrence" databases such as California Natural Diversity Database (CNDDB). Only with sufficient data and information can the City adequately assess which special-status species are likely to occur in the Project vicinity.

CDFW recommends surveys be conducted for special-status species with potential to occur, following recommended survey protocols if available. Survey and monitoring protocols and guidelines are available at: https://www.wildlife.ca.gov/Conservation/Survey-Protocol.

Botanical surveys for special-status plant species, including those listed by the California Native Plant Society (http://www.cnps.org/cnps/rareplants/inventory/), should also be conducted during the blooming period for all sensitive plant species potentially occurring within the Project area and include the identification of reference populations. Please refer to CDFW protocols for surveying and evaluating impacts to rare plants available at: https://www.wildlife.ca.gov/Conservation/Plants.

**IMPACT ANALYSIS AND MITIGATION MEASURES**

The CEQA Guidelines (§15126.2) necessitate the draft EIR discuss all direct and indirect impacts (temporary and permanent) that may occur with implementation of the Project. This includes evaluating and describing impacts such as:

- Land use changes that would reduce open space and increase residential or other land use involving increased development;
- Changes in hydrological conditions that could alter the timing and magnitude of streamflows both during construction and operation of the Project;
- Potential for impacts to special-status species;
- Loss or modification of breeding, nesting, dispersal and foraging habitat, including vegetation removal, alternation of soils and hydrology, and removal of habitat structural features (e.g., snags, roosts, overhanging banks);
- Permanent and temporary habitat disturbances associated with ground disturbance, noise, lighting, reflection, air pollution, traffic or human presence; and
- Obstruction of movement corridors, fish passage, or access to water sources and other core habitat features.
- Water quality impacts resulting from construction and operation of the Project;

- Impacts both from construction and operation of the Project;
- Impacts to the bed, channel, and bank, in the wetlands and creeks downstream of the Project;
- Impacts to bed, channel, bank, and riparian habitat, and the direct and indirect effects to fish, wildlife, and their habitat;

The CEQA document also should identify existing and reasonably foreseeable future projects in the Project vicinity, disclose any cumulative impacts associated with these projects, determine the significance of each cumulative impact, and assess the significance of the Project's contribution to each impact (CEQA Guidelines, §15355). Although a project's impacts may be insignificant individually, its contributions to a cumulative impact may be considerable; a contribution to a significant cumulative impact (e.g., reduction of available habitat for a listed species) should be considered cumulatively considerable without mitigation to minimize or avoid the impact.

The CEQA Guidelines direct the City, as the lead agency, to consider and describe in the draft EIR all feasible mitigation measures to avoid and/or mitigate potentially significant impacts of the Project on the environment based on comprehensive analysis of the potential direct, indirect, and cumulative impacts of the Project (CEQA Guidelines, §§ 15021, 15063, 15071, 15126.2, 15126.4 & 15370). This should include a discussion of take avoidance and minimization measures for special-status species, which are recommended to be developed in early consultation with USFWS, the National Marine Fisheries Service and CDFW. These measures can then be incorporated as enforceable Project conditions to reduce potential impacts to biological resources to less-than-significant levels.

Fully protected species, such as salt marsh harvest mouse, California least tern, California Ridgway's rail and California black rail may not be taken or possessed at any time and no licenses or permits may be issued for their take except as follows:

- Take is for necessary scientific research,
- Efforts to recover a fully protected, endangered, or threatened species, live capture and relocation of a bird species for the protection of livestock, or
- They are a covered species whose conservation and management is provided for in a Natural Community Conservation Plan (Fish & G. Code, §§ 3511, 4700, 5050, & 5515).

Specified types of infrastructure projects may be eligible for an incidental take permit for unavoidable impacts to fully protected species if certain conditions are met. (See Fish &

G. Code §2081.15.) Project proponents should consult with CDFW early in the project planning process.

**COMMENTS AND RECOMMENDATIONS**

Based on the information provided in the NOP 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/or indirect impacts on fish and wildlife (biological) resources. These comments and recommendations are not an exhaustive list and CDFW may provide additional recommendations as more Project specific information is disclosed. The draft EIR must include a full Project Description, Environmental Setting, and Impact Analysis and Mitigation Measures as outlined above.

**Comment 1:** Riparian setbacks and stream hydromodification

**Issue:** The Project intends to establish policies to revitalize Belmont Creek and develop infrastructure to manage flooding. Belmont Creek is highly channelized and development has historically encroached into riparian vegetation (i.e., "riparian zone"). Encroachment into the riparian zone can adversely impact riparian and aquatic species through reduction in habitat and decreased water quality. Riparian zone encroachment also has the potential to increase flood risk in areas bordering the creek and accelerate erosion. Streambank stabilization activities are commonly needed in areas of riparian encroachment resulting in cumulative impacts over time Similarly, impervious surfaces, that direct and concentrate stormwater into streams can alter natural streamflow patterns that contribute pollution, and increase flooding and erosion which can significantly affect fish and wildlife resources.

**Evidence impact would be significant:** Riparian vegetation, and associated floodplains, provide many essential benefits to stream and aquatic species habitat (Moyle 2002, CDFW 2007). Development adjacent to the riparian zone can result in fragmentation of riparian habitat and decreases in native species abundance and biodiversity (Davies et al. 2001, Hansen et al. 2005, CDFW 2007). Riparian buffers help keep pollutants from entering adjacent waters, benefitting species who rely on those waters for habitat and drinking water. Narrow riparian buffers are considerably less effective in minimizing the effects of adjacent development than wider buffers (Castelle et al. 1992, Brosofske et al. 1997, Dong et al. 1998, Kiffney et al. 2003, Moore et al. 2005).

Riparian habitats also contribute to bank stability and provide flood protection. Development, including increases in impervious surfaces and installation of stormwater systems and storm drain outfalls, can modify natural streamflow patterns by increasing the magnitude and frequency of high flow events and storm flows (Hollis 1975, Konrad and Booth 2005). Riparian habitat and adjacent wetlands and floodplains are critical to

lessening these impacts because they store and meter floodwaters, recharge groundwater aquifers, trap sediment, filter pollution, help minimize erosion, lessen peak flow velocities, and protect against storm surges (Mitsch and Gosselink 2000, Tockner et al. 2008). In doing so, they protect adjacent upland, down-stream, and coastal properties from loss and damage during flooding and help maintain surface and groundwater during summer months.

**Recommendation 1:** CDFW recommends the Project establish and the draft EIR incorporate riparian rehabilitation activities to limit development and expand riparian habitat alongside Belmont Creek. CDFW supports biotechnical riparian rehabilitation techniques and concepts that avoid and reduce "hardscaping." CDFW is available to consult with the City to determine appropriate site-specific riparian rehabilitation design and implementation to reduce impacts to sensitive species and existing riparian habitat to less-than-significant levels. Furthermore, CDFW recommends that storm runoff be dispersed through low impact designs rather than directed to streams or funneled to stormwater outfalls. This can be partially accomplished by expanding riparian habitat and incorporating permeable surfaces throughout the Project area to allow stormwater to percolate in the ground and prevent stream hydromodification.

## ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to prepare subsequent CEQA documents or to make supplemental environmental determinations (Pub. Resources Code, § 21003, subd. (d) & (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to the CNDDB. The CNNDB field survey form can be filled out and submitted online here: https://wildlife.ca.gov/Data/CNDDB/Submitting-Data. The types of information reported to CNDDB can be found here: https://www.wildlife.ca.gov/Data/CNDDB/Plants-and-Animals.

## ENVIRONMENTAL DOCUMENT FILING FEES

CDFW anticipates that the proposed Project, will 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. (See 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 in order to assist the City in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Shannon Husband, Environmental Scientist, at (707) 337-1364 or Shannon.Husband@Wildlife.ca.gov; or Wes Stokes, Senior Environmental Scientist (Supervisory), at (707) 339-6066 or Wesley.Stokes@Wildlife.ca.gov.

Sincerely,

DocuSigned by:
Erin Chappell
B77E9A6211EE486...

Erin Chappell
Regional Manager
Bay Delta Region

cc: Office of Planning and Research, State Clearinghouse, Sacramento

Shannon Husband, Environmental Scientist, Shannon.Husband@Wildlife.ca.gov

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