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**BAYSIDE VILLAGE MARINA LLC – BACK BAY LANDING BAYFRONT
STABILIZATION AND IMPROVEMENT PROJECT
NOTICE OF PREPARATION OF A DRAFT ENVIRONMENTAL IMPACT REPORT
SCH #2025100840**

Dear Ms. Perez:

The California Department of Fish and Wildlife (Department) received a Notice of Preparation (NOP) of a Draft Environmental Impact Report (DEIR) from the City of Newport Beach (City) for the Bayside Village Marina LLC - Back Bay Landing Bayfront Stabilization and Improvement Project (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 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

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.

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 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: Bayside Village Marina, LLC

Objective: The objective of the Project is to address deteriorating infrastructure and enhance the existing Bayside Village Marina, increase marina parking, and expand public access and recreational opportunities at Back Bay Landing. Back Bay Landing is envisioned to be developed in the future under separate approvals as an integrated, mixed-use waterfront village.

The Project consists of the following components:

- Replacement of the existing Bayside Village Marina seawall, which was originally constructed in 1958;
- Extension of the Bayside Village Marina seawall along the Back Bay Landing bayfront terminating under the Bay Bridge near a proposed gravity wall on the south bayfront;
- Upland soil stabilization to mitigate seismic lateral spreading;
- Marina dock and boat slip extensions, including the addition of 67 wet slips;
- Maintenance dredging within the basin;
- Americans with Disabilities Act (ADA)-compliant features, including accessible gangways, and increased surface parking;
- Identification of and offers to dedicate public access easements along the perimeter of the new seawalls that will facilitate future construction of public bayfront promenades and bike paths as identified in the Back Bay Landing Planned Community Development Plan; and
- Replacement and relocation of the approximately 100-year-old BC-09 City water main that transects the Back Bay Landing site and crosses under the Newport Channel to Lower Castaways Park.

Location: The Project site is located in Newport Beach, Orange County on an 11.87-acre portion of a 30.8-acres parcel immediately north of the East Coast Highway.

Timeframe: The NOP did not include the Project's anticipated start date and duration.

BIOLOGICAL SIGNIFICANCE

Discussion and Comment: Newport Bay (Bay) waters support many resident and migratory fish and special status wildlife such as seabirds, marine mammals, and sea turtles. Important marine plants such as eelgrass (*Zostera marina*) support those fish and wildlife species and may be present throughout shallow coastal environments in the Bay. Eelgrass is important as fish nursery habitat and supports juvenile and adult fish. Bay waters also support commercially and recreationally important fish and invertebrate species such as California grunion (*Leuresthes tenuis*), California halibut (*Paralichthys californicus*), California spiny lobster (*Panulirus interruptus*), and the Northern anchovy (*Engraulis mordax*), which is an important forage fish.

COMMENTS AND RECOMMENDATIONS

The Department 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 resources.

Native Eelgrass Impacts

Comments: Native eelgrass species create large beds beneficial for fish habitat and have been identified as special aquatic sites and given protections by the Clean Water Act. The Magnuson-Stevens Fishery Conservation and Management Act (MSA) identifies eelgrass as a Habitat Area of Special Concern. Additionally, the importance of eelgrass protection and restoration, as well as the marine ecological benefits of eelgrass, is identified in the California Public Resources Code section 35630. The Department uses the California Eelgrass Mitigation Policy (CEMP) (NOAA 2014, Attachment 1), developed by the National Marine Fisheries Service (NMFS), for guidance on identifying eelgrass impacts, eelgrass mitigation measures and compensation, and for identifying appropriate eelgrass mitigation and donor sites.

Recommendations: The NOP stated that a comprehensive mitigation plan that potentially includes eelgrass mitigation will be proposed and evaluated in the DEIR to address potential environmental impacts from the Project. The Department recommends that the mitigation plan includes measures to avoid and minimize potential impacts to eelgrass to the maximum extent feasible, if eelgrass beds or patches are identified within or adjacent to the Project area. The proposed Project should avoid and minimize disturbance and damage or losses of eelgrass beds from Project activities such as marina construction, maintenance dredging, seawall and/or gravity wall construction, pile driving and pulling, and associated tugboats, barges, and/or vessels. Impacts to avoid and minimize may include, at a minimum, barge shading and anchoring within eelgrass habitat, pile driving and pulling bottom disturbances, demolition and construction turbidity, sedimentation, and falling debris. The Department recommends the following if eelgrass beds or patches are identified adjacent to the Project area:

- To avoid direct impacts to eelgrass, locate temporary docks, pile driver barges and vessels, and all barge anchoring outside of eelgrass habitat;
- To avoid scouring of eelgrass and potential eelgrass habitat, anchor chain designs, and locations of barge and vessel moorings, should avoid eelgrass habitat impacts;
- To avoid and minimize impacts to eelgrass from demolition and construction debris, the City should use Best Management Practices (BMPs) such as perimeter debris booms. If debris is observed falling into the water, retrieve debris as soon as possible; and
- To minimize impacts to eelgrass from water turbidity and sedimentation, install silt curtains around pile driving or demolition areas if feasible. Restrict the turbidity plumes to the smallest possible area during all phases of in-water construction.

If eelgrass is identified within the Project area, comprehensive pre-and post-construction surveys for eelgrass beds or patches should be conducted, consistent with the CEMP. If any unavoidable eelgrass impacts occur, these impacts should be compensated using guidance described within the CEMP. Indirect eelgrass impacts such as shading from new piles should also be avoided. Since pile driving work conducted outside of the peak eelgrass growing period may reduce shading impacts when eelgrass beds may have died back, pile location and time of year for pile driving should be considered to avoid eelgrass and other fish and wildlife impacts generated by pile driving.

If eelgrass harvest and transplanting is required for mitigation, a Scientific Collecting Permit (SCP) from the Department will be required prior to harvest and transplanting activities. The SCP may include permit conditions such as donor eelgrass surveys, submittal of an eelgrass harvest and transplant plan, limits on number of turions collected, methods for collection and transplanting, notification of activities, and reporting requirements. Please visit the Department's SCP webpage for more information: <https://wildlife.ca.gov/Licensing/Scientific-Collecting>.

Pile Driving and Sound Criteria

Comments: Pile driving construction activities are often required for marina dock and boat slip extensions. Underwater noise associated with pile driving and pulling activities may cause temporary or permanent impacts to fish, such as temporary movement out of 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 2). The SPL dual criteria include a peak level of 206 dB and a cumulative sound exposure level (SEL) of 187 dB for fish 2 grams and heavier or a cumulative SEL of 183 dB for fish less than 2 grams. Additionally, if hydraulic jetting or an impact hammer is used for pile driving, this may

impact water quality, releasing contaminants from sediments into the water and/or creating turbidity that could harm fish and shade or smother eelgrass beds.

Recommendations: The Department recommends that the DEIR include a model of the expected SPL and SELs for any proposed pile driving activities for the Project. The Department further 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:

- A sound attenuation and monitoring plan should be submitted to the resource agencies for review prior to initiating pile driving activities;
- A wood, or similar material, cushion block should be used between the pile and hammer during all pile driving using an impact hammer;
- To further reduce hydroacoustic impacts to fish and marine mammals, a bubble curtain may be used during all impact pile driving to reduce sound below levels that have been shown to cause injury and/or mortality; 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 to reduce the underwater noise to acceptable levels.

The Department recommends the use of a silt curtain to control turbidity during high turbidity generating activities, such as hydraulic jetting. 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 and/or dredging, within the Project area have the potential to impact these animals if they are present.

Recommendations: The Department recommends that the City prepare and implement a marine mammal and sea turtle monitoring plan that includes, but is not limited to:

- 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;
- Pile driving activities should not occur while marine mammals or sea turtles are present within the exclusion zone;

- Pre-construction monitoring to update the occurrence and use of the area by marine mammals and turtles; and
- Monitoring of marine mammals and sea turtles by an experienced observer immediately prior to and during all construction activities.

The Department recommends that the City consult with the National Marine Fisheries Service and U.S. Fish and Wildlife Service regarding the above recommendation and any other necessary avoidance and mitigation measures to reduce impacts to marine mammals and sea turtles.

Maintenance Dredging

Comments: The NOP noted that a major component of the project includes maintenance dredging within the basin, but does not include any information on the proposed dredging operations such as how the dredged material will be used or disposed.

Southern California waters support important and valuable commercial and recreational fisheries, including California halibut (*Paralichthys californicus*), California spiny lobster (*Panulirus interruptus*), and the Northern anchovy (*Engraulis mordax*). The Project's proposed dredging activities can adversely affect both commercial and recreational fishing. Dredging poses the risk of releasing contaminants into the water, leading to bioaccumulation that impacts the health of fish and consequently, the fishing industry.

Recommendations: The Department recommends that all proposals for sediment placement be reviewed by the Southern California Dredged Material Management Team (DMMT) prior to placement or disposal. The DMMT is comprised of regulatory and trustee agencies (i.e., United States Army Corps of Engineers, United States Environmental Protection Agency, Regional Water Quality Control Boards, California Coastal Commission, National Marine Fisheries Service (NMFS), and the Department), and responsible for managing dredging activities and reviewing technical issues associated with proposed dredging and dredged material disposal projects.

The Department recommends that the DEIR includes an assessment of the potential impacts to important commercial and recreational fish species, and prey species, identified from the proposed dredging activity.

Invasive Species Impacts

Comments: Disturbance of the bottom sediments from dredging activities, seawall construction, and pile 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: The Department recommends conducting pre-construction *Caulerpa* spp. surveys to identify potential existence of invasive *Caulerpa* spp. in accordance with the Caulerpa Control Protocol <https://media.fisheries.noaa.gov/2021-12/caulerpa-control-protocol-v5.pdf> (October 2021). Any sightings of *Caulerpa* spp. should be reported within 24 hours to the Department (Caulerpa@wildlife.ca.gov), and NMFS at 562-980-4037 (nmfs.wcr.caulerpa@noaa.gov).

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 NOP to assist the City in identifying and mitigating Project impacts on biological resources. Questions

Joselyn Perez
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November 10, 2025
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regarding this letter or further coordination should be directed to Leslie Hart,
Environmental Scientist at R7CEQA@wildlife.ca.gov.

Sincerely,



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ATTACHMENTS

Attachment 1: NMFS. 2014. California Eelgrass Mitigation Policy, National Marine Fisheries Service, https://archive.fisheries.noaa.gov/wcr/publications/habitat/california_eelgrass_mitigation/Final%20CEMP%20October%202014/cemp_oct_2014_final.pdf.

Attachment 2: Fisheries Hydroacoustic Working Group. 2008. Interim Criteria for Injury of Fish Exposed to Pile Driving Operations: Memorandum. Washington: Federal Highway Administration.