



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Bay Delta Region
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



February 3, 2023

Governor's Office of Planning & Research

FEB 3 2023

Sabrina Cardoza, Senior Planner
County of Marin
3501 Civic Center Drive, Room 308
San Rafael, CA 94903
envplanning@marincounty.org

STATE CLEARING HOUSE

Subject: Brian Johnson Trust Coastal Permit, Subsequent Mitigated Negative Declaration, SCH No. 2023010079, Community of Stinson Beach, County of Marin

Dear Ms. Cardoza:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Subsequent Mitigated Negative Declaration (SMND) from the County of Marin (County) for the Brian Johnson Trust Coastal Permit (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

CDFW is submitting comments on the SMND to inform the County, as the Lead Agency, of potentially significant impacts to biological resources associated with the Project.

CDFW ROLE

CDFW is a **Trustee Agency** with responsibility under CEQA pursuant to CEQA Guidelines section 15386 for commenting on projects that could impact fish, plant, and wildlife resources. CDFW is also considered a **Responsible Agency** if a project would require discretionary approval, such as permits issued under the California Endangered Species Act (CESA) or Native Plant Protection Act, the Lake and Streambed Alteration Program, or other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources.

PROJECT DESCRIPTION SUMMARY

Proponent: Brian Johnson Trust

Objective: Construct a one-unit residence with associated infrastructure including a septic system, permeable paving driveway, decks, and landscaping on a 15,200-square-foot (0.35-acre) lot.

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.

Sabrina Cardoza
County of Marin
February 3, 2023
Page 2

Location: 21 Calle Del Onda, Stinson Beach, 94970, Marin County, approximate centroid of Latitude 37.899083 °N, Longitude 122.644889 °W, Assessor's Parcel Number 195-162-49.

REGULATORY REQUIREMENTS

Raptors and Other Nesting Birds

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

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the County in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Based on the Project's avoidance of significant impacts on biological resources with implementation of mitigation measures, including those CDFW recommends below which are also included in Attachment 1 Draft Mitigation and Monitoring Reporting Plan, CDFW concludes that an SMND is appropriate for the Project.

I. Environmental Setting and Related Impact Shortcoming

MANDATORY FINDING OF SIGNIFICANCE. Does the Project have potential to substantially reduce the number or restrict the range of an endangered, rare or threatened species?

COMMENT 1: Western snowy plover, SMND pages 2-19 and 2-20, Appendix A, page A-2; Initial MND, Appendix A, page 10

Issue: The Initial MND concludes that nesting habitat for western snowy plover (*Charadrius nivosus nivosus*) does not occur on or adjacent to the Project site; however, despite negative effects of recreational activity, western snowy plover nest success has been reported in areas frequented by beach goers (Ruhlen 2003). The SMND includes Mitigation Measure BIO-1 (SMND, Appendix A, page A-2), which would require initial ground disturbance and vegetation removal to occur from September 1 to January 31, outside of a nesting season of February 1 to August 31. The 2007 Western Snowy Plover Recovery Plan states that "the nesting season of the western snowy plover extends from early March through late September" and that "fledging (reaching flying

Sabrina Cardoza
County of Marin
February 3, 2023
Page 3

age) of late-season broods may extend into the third week of September throughout the breeding range” (United States Fish and Wildlife Service (USFWS) 2007). Therefore, the proposed Mitigation Measure BIO-1 does not include the full nesting season for western snowy plover.

Specific impacts, why they may occur and be potentially significant: If the Project occurs during the nesting season for western snowy plover, any plover nesting in the Project site or within 600 feet of the Project site could be disturbed directly or by visual or auditory effects caused by Project-related construction activities. Western snowy plover, Pacific coast Distinct Population Segment, is federally listed as endangered under the Endangered Species Act (ESA) and a California Species of Special Concern. If western snowy plover is nesting within 600 feet of the Project site, the above Project disturbances may result in nest abandonment or reduced health and vigor of young, take of the species pursuant to ESA, and a substantial reduction in the species’ population, which would be a mandatory finding of significant impact (CEQA Guidelines, § 15065).

Recommended Mitigation Measure: To reduce potential impacts to western snowy plover to less-than-significant, CDFW recommends including the below mitigation measure in the SMND.

Mitigation Measure BIO-2 (Western Snowy Plover Avoidance): If Project activities are scheduled during the nesting season for western snowy plover (February 1 to September 30), a biologist approved in writing by CDFW shall perform a minimum of 3 focused surveys prior to the beginning of construction, on separate days, to determine the presence of western snowy plovers both at the work area and within 600 feet of the work area. Additional surveys shall be done once per week during Project construction in the breeding season. Surveys shall be conducted following the Western Snowy Plover Breeding Window Survey Protocol – Final Draft (USFWS 2007; see Attachment J, pages J-10 through J-16). The biologist shall notify CDFW at least 7 days prior to the initiation of surveys and within 24 hours of locating any western snowy plovers. The biologist shall notify CDFW and USFWS immediately if any of the below are found:

1. Any dead or injured western snowy plovers.
2. Any western snowy plovers observed at unoccupied beaches or in areas where they haven’t been seen in recent years.
3. Any western snowy plover nests with eggs or adults with chicks.
4. Any females head-bobbing, males tail-dragging, or birds copulating or nest scraping.

Sabrina Cardoza
County of Marin
February 3, 2023
Page 4

If surveys are negative for western snowy plovers, work may proceed during the nesting season. If surveys are positive for western snowy plovers, a 600-foot no-work buffer will be maintained around active plover nests and monitored by the approved biologist to ensure it is not disturbed, and the Project shall consult with CDFW and USFWS.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB 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 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).

CONCLUSION

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

Questions regarding this letter or further coordination should be directed to Alex Single, Environmental Scientist, at (707) 799-4210 or Alex.Single@wildlife.ca.gov; or Melanie Day, Senior Environmental Scientist (Supervisory), at Melanie.Day@wildlife.ca.gov or (707) 210-4415.

Sincerely,

DocuSigned by:

Erin Chappell

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Erin Chappell, Regional Manager
Regional Manager
Bay Delta Region

Sabrina Cardoza
County of Marin
February 3, 2023
Page 5

Attachment 1. Draft Mitigation and Monitoring Reporting Plan

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2023010079)

REFERENCES

Ruhlen, T. D., S. Abbott, L. E. Stenzel and G. W. Page. (2003). Evidence that human disturbance reduces Snowy Plover chick survival. *Journal of Field Ornithology* 74 (3):300-304.

USFWS. 2007. Status Recovery Plan for the Pacific Coast Population of the Western Snowy Plover (*Charadrius alexandrinus nivosus*). California/Nevada Operation Office, USFWS, Sacramento, CA.
https://ecos.fws.gov/docs/recovery_plan/070924_2.pdf

Sabrina Cardoza
 County of Marin
 February 3, 2023
 Page 6

ATTACHMENT 1

Draft Mitigation and Monitoring Reporting Plan

CDFW provides the following language to be incorporated into the Mitigation and Monitoring Program for the Project.

Biological Resources (BIO)			
Mitigation Measure (MM)	Description	Timing	Responsible Party
BIO-2	<p><i>Mitigation Measure BIO-2 (Western Snowy Plover Avoidance):</i> If Project activities are scheduled during the nesting season for western snowy plover (February 1 to September 30), a biologist approved in writing by CDFW shall perform a minimum of three focused surveys prior to the beginning of construction, on separate days, to determine the presence of western snowy plovers both at the work area and within 600 feet of the work area. Additional surveys shall be done once per week during Project construction in the breeding season. Surveys shall be conducted following the Western Snowy Plover Breeding Window Survey Protocol – Final Draft (USFWS 2007; see Attachment J, page J-10 through J-16). The biologist shall notify CDFW at least 7 days prior to the initiation of surveys and within 24 hours of locating any western snowy plovers. The biologist shall notify USFWS immediately if any of the below are found:</p> <ol style="list-style-type: none"> 1. Any dead or injured western snowy plovers. 2. Any western snowy plovers observed at unoccupied beaches or in areas where they haven't been seen in recent years. 3. Any western snowy plover nests with eggs or adults with chicks. 4. Any females head-bobbing, males tail-dragging, or birds copulating or nest scraping. 	Prior to Ground Disturbance and continuing over the course of the Project	Project Applicant

Sabrina Cardoza
County of Marin
February 3, 2023
Page 7

	<p>If surveys are negative for western snowy plovers, work may proceed during the nesting season. If surveys are positive for western snowy plovers, a 600-foot no-work buffer will be maintained around active plover nests and monitored by the approved biologist to ensure it is not disturbed, and the Project shall consult with CDFW and USFWS.</p>		
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