



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



September 19, 2024

Jenna Yang, Water Resource Control Engineer
California Regional Water Quality Control Board
Central Valley Sacramento Region 5
11020 Sun Center Drive #200
Rancho Cordova, CA 95670
Jenna.Yang@waterboards.ca.gov

Subject: Pleasure Cove Marina II Addition Project, Initial Study/Negative Declaration,
SCH No. 2024081254, Napa County

Dear Ms. Yang:

The California Department of Fish and Wildlife (CDFW) received an Initial Study/Negative Declaration (IS/ND) from the California Regional Water Quality Control Board (RWQCB) for the Pleasure Cove Marina II Addition Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.

CDFW is submitting comments on the IS/ND to inform the California RWQCB, 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), the Lake and Streambed Alteration (LSA) Agreement, 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: Suntex Marinas

Objective: The Project involves adding five floating dock structures with a total of 158 boat slips to the existing marina; the new slips would accommodate boats of various sizes. The floating dock would be connected to the lakeshore via a pedestrian ramp. The slip structures and dock would be held in place by concrete anchors weighing from 9,969 pounds to 14,500 pounds each, set on the bottom of Lake Berryessa with stainless steel cables connecting the facilities to the anchors. At the end of the

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southernmost structure would be a floating deck of approximately 300 square feet. A sanitary pump-out facility would be installed on the floating dock for boater use, directed to an off-site lift station on Wragg Canyon Road. No trenching or excavation would be required for the Project.

Location: The Project is located at Pleasure Cover Marina, Lake Berryessa, Napa County; at approximately 38.50082 °N and -122.16169 °W.

REGULATORY REQUIREMENTS

Lake and Streambed Alteration

An LSA Notification, pursuant to Fish and Game Code section 1600 et. seq., is required for project activities affecting lakes or streams and associated riparian habitat. Notification is required for any activity that will 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, washes, watercourses with a subsurface flow, and floodplains are subject to LSA notification requirements. **The Project would impact Lake Berryessa, therefore an LSA Notification is warranted, as further described below.** CDFW as a Responsible Agency under CEQA, would consider the CEQA document for the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement until it has complied with CEQA as a Responsible Agency.

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 (MBTA).

California Fully Protected Species

Fully protected species 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

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- 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 (Fish & G. Code, § 2081.15). Project proponents should consult with CDFW early in the project planning process. **The Project has the potential to impact nesting bald eagle (*Haliaeetus leucocephalus*), a California fully protected species.**

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the California RWQCB 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 and included in **Attachment 1** Draft Mitigation Monitoring and Reporting Program, CDFW concludes that a Mitigated Negative Declaration (MND) is appropriate for the Project.

I. Environmental Setting Related Impact Shortcomings

Would the Project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by CDFW or U.S. Fish and Wildlife Service (USFWS)?

COMMENT 1: Lake and Riparian Habitat Alteration

Issue: The Project does not adequately evaluate and mitigate impacts to lake and riparian habitat.

Specific Impacts and why they may occur and be significant: The Project would permanently impact habitat both at the surface and bottom of Lake Berryessa, and potentially riparian habitat along the shoreline. Specifically, the Project's 158 floating boat slips, deck, and pumping facilities would permanently impact surface water habitat for common and special-status wildlife including waterfowl and bald eagle, a California fully protected species, which may hunt from the lake surface. The ramp leading to the boat slips may impact riparian vegetation and habitat. Furthermore, the concrete anchoring blocks measuring five feet by five feet, would permanently alter the lake bottom by removing habitat from use by fish and other aquatic organisms, although it is unclear how many blocks will be installed.

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The IS/ND on Page 3-8 states that “Riparian habitat is located along streams. As the project is on a lake, it is not in an area of riparian habitat. No biologically sensitive habitats were identified in the biological assessment of the marina area (Salix Consulting 2023). The project would have no impact on riparian or sensitive habitats.” However, riparian habitat is the transition from the aquatic area to the upland and can also be associated with lakes. Furthermore, page 3-7 of the IS/ND states that “...the exposed shoreline supports opportunistic wetland vegetation, including common horsetail, poison hemlock, mayweed, Western goldenrod, pennyroyal, hyssop loosestrife, and common monkeyflower.” Therefore, it appears that the project would impact riparian habitat. Permanent loss of lake aquatic and associated riparian habitat would be a *potentially significant impact*.

Recommended Mitigation Measure: To reduce impacts to lake and riparian habitat to less-than-significant and comply with Fish and Game Code 1600 et seq., CDFW recommends incorporating the following mitigation measure into an IS/MND.

MM BIO-1: Lake and Riparian Habitat. Prior to the commencement of Project activities, the Project shall conduct a thorough assessment for potential impacts to lake and riparian habitat including, but not limited to impacts resulting from installation of the boat slips, anchoring blocks, and pedestrian access ramp. The Project shall submit a Lake and Streambed Alteration notification to CDFW for any such impacts. More information for the notification process is available at <https://wildlife.ca.gov/Conservation/Environmental-Review/LSA>. The Project shall comply with all measures of the Lake and Streambed Alteration (LSA) Agreement, if issued, and shall not commence activities with potential to impact the lake or riparian habitat until the LSA Agreement process has been completed.

Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by CDFW or USFWS?

COMMENT 2: Bald Eagle and other Nesting Birds

Issue: The IS/ND does not adequately evaluate the potential for nesting birds such as bald eagle and osprey (*Pandion haliaetusi*), to occur and be impacted by the Project. These species have occurred on Lake Berryessa according to the California Natural Diversity Database (CNDDDB). Furthermore, the IS/ND on page 3-8 states that “Due to suitable nesting opportunities in the oak woodland, the most abundant species within the project area were birds.”

Specific impacts and why they may occur and be significant: Human activity and removal of habitat has contributed to the loss of a significant proportion of the

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total number of birds in the United States and Canada since the 1970s (Rosenburg et al. 2019). Nesting birds such as bald eagle, a California Fully Protected species, may be disturbed by Project noise, visual changes, and human presence, which could lead to nest abandonment or reduced health and vigor of young, a *potentially significant impact*.

Recommended Mitigation Measure: To reduce impacts to nesting birds to less-than-significant and comply with Fish and Game Code 3500 et seq., CDFW recommends incorporating the following mitigation measure into an IS/MND

MM BIO-2: Nesting Bird Surveys. If construction, grading, vegetation removal, or other Project-related activities are scheduled during the avian nesting season, February 1 to August 31, a qualified biologist shall conduct a survey for active bird nests within 7 days prior to the beginning of Project-related activities. The survey shall cover the entire Project site and a minimum 500-foot buffer around the Project site. If a lapse in Project-related work of seven days or longer occurs, another survey shall be conducted before Project work can be reinitiated. If an active nest is found during surveys, the qualified biologist shall immediately notify the CDFW contact below, or if unavailable another CDFW representative, and establish site- and species-specific no-work buffers to ensure the nest is not disturbed. The buffer distances shall be specified to protect the bird's normal behavior to prevent nesting failure or abandonment and comply with Fish and Game Code section 3500 et seq. and the federal MBTA. Abnormal nesting behaviors which may cause reproductive harm include, but are not limited to, defensive flights/vocalizations directed towards Project personnel, standing up from a brooding position, and flying away from the nest. The qualified biologist shall have authority to order the cessation of all nearby Project activities if the nesting birds exhibit abnormal behavior which may cause reproductive failure (nest abandonment and loss of eggs and/or young) until an appropriate buffer is established.

The qualified biologist shall monitor the behavior of the birds (adults and young, when present) at the nest site to ensure that they are not disturbed by Project work. Nest monitoring shall continue during Project work until the young have fully fledged (have completely left the nest site and are no longer being fed by the parents), as determined by the qualified biologist, unless otherwise approved in writing by CDFW.

Please be advised that an LSA Agreement, if issued for the Project, would likely include the above recommended mitigation measures, as applicable, and may include additional measures to protect fish and wildlife resources.

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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 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. (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 IS/ND to assist the California RWQCB in identifying and mitigating Project impacts on biological resources. Questions regarding this letter or further coordination should be directed to Nicholas Magnuson, Environmental Scientist, at (707) 815-4166 or Nicholas.Magnuson@wildlife.ca.gov; or Melanie Day, Senior Environmental Scientist (Supervisory), at (707) 210-4415 or Melanie.Day@wildlife.ca.gov.

Sincerely,

DocuSigned by:

Erin Chappell

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Erin Chappell
Regional Manager
Bay Delta Region

Attachment 1: Draft Mitigation Monitoring and Reporting Program

ec: Office of Planning and Research, State Clearinghouse No. 2024081254

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REFERENCES

Rosenburg, Kenneth V.; Dokter, Adriaan M.; Blancher, Peter J.; Sauer, John R.; Smith, Adam C.; Smith, Paul A.; Stanton, Jessica C.; Panjabi, Avrind; Helft, Laura; Parr, Michael; and Marra, Peter P. 2019. Decline of the North American Avifauna. *Science*: 120-124.

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ATTACHMENT 1

Draft Mitigation Monitoring and Reporting Program (MMRP)

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

Biological Resources (BIO)			
Mitigation Measure (MM)	Description	Timing	Responsible Party
MM BIO-1	<p><u>MM BIO-1: Lake and Riparian Habitat.</u> Prior to the commencement of Project activities, the Project shall conduct a thorough assessment for potential impacts to lake and riparian habitat including, but not limited to impacts resulting from installation of the boat slips, anchoring blocks, and pedestrian access ramp. The Project shall submit a Lake and Streambed Alteration notification to CDFW for any such impacts. More information for the notification process is available at https://wildlife.ca.gov/Conservation/Environmental-Review/LSA. The Project shall comply with all measures of the Lake and Streambed Alteration (LSA) Agreement, if issued, and shall not commence activities with potential to impact the lake or riparian habitat until the LSA Agreement process has been completed.</p>	Prior to Ground Disturbance	Project Applicant
MM BIO-2	<p><u>MM BIO-2: Nesting Bird Surveys.</u> If construction, grading, vegetation removal, or other Project-related activities are scheduled during the avian nesting season, February 1 to August 31, a qualified biologist shall conduct a survey for active bird nests within seven days prior to the beginning of Project-related activities. The survey shall cover the entire Project site and a minimum 500-foot buffer around the Project site. If a lapse in Project-related work of 7 days or longer occurs, another survey shall be conducted before Project work can be reinitiated. If an active nest is found during surveys, the qualified biologist shall immediately notify the CDFW contact below, or if unavailable another CDFW representative, and establish site- and species-specific no-work buffers to ensure the nest is not disturbed. The buffer distances shall be specified to protect the bird's normal behavior to prevent nesting failure or abandonment and comply with Fish and Game Code section 3500 et seq. and the federal MBTA. Abnormal nesting behaviors which</p>	Prior to Ground Disturbance	Project Applicant

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	<p>may cause reproductive harm include, but are not limited to, defensive flights/vocalizations directed towards Project personnel, standing up from a brooding position, and flying away from the nest. The qualified biologist shall have authority to order the cessation of all nearby Project activities if the nesting birds exhibit abnormal behavior which may cause reproductive failure (nest abandonment and loss of eggs and/or young) until an appropriate buffer is established.</p> <p>The qualified biologist shall monitor the behavior of the birds (adults and young, when present) at the nest site to ensure that they are not disturbed by Project work. Nest monitoring shall continue during Project work until the young have fully fledged (have completely left the nest site and are no longer being fed by the parents), as determined by the qualified biologist, unless otherwise approved in writing by CDFW.</p>		
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