



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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December 4, 2024

Giuseppe Sanfilippo, Senior Planner
San Joaquin County Community Development Department
1810 East Hazelton Avenue
Stockton, CA 94205
GSanfilippo@sjgov.org

Subject: PA-2200045 (A), Initial Study/Mitigated Negative Declaration,
SCH2024110143, San Joaquin County

Dear Mr. Sanfilippo:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an Initial Study/Mitigated Negative Declaration (IS/MND) from the San Joaquin County Community Development Department for the PA-2200045 (A) 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. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

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.) 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.

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 as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's Lake and Streambed

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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Alteration (LSA) regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed 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

Lake And Streambed Alteration

The Project has the potential to impact resources of the San Joaquin River and Turner Cut within the identified limits of the Project. If proposed work will impact the bed, bank, channel, or riparian habitat, including the trimming or removal of trees and riparian vegetation, please be advised that the proposed Project may be subject to LSA Notification. CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et. seq., for or any activity that may substantially divert or obstruct the natural flow; change or use material from the bed, bank or channel 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 generally subject to notification requirements.

California Endangered Species Act and Incidental Take Permits

Please be advised that an Incidental Take Permit (ITP) must be obtained if a project has the potential to result in take of species of plants or animals listed under the CESA or the Native Plant Protection Act (NPPA), either during construction or over the life of the Project. Issuance of an ITP is subject to CEQA documentation. If the Project will impact CESA-listed species, species that are candidates for listing under CESA, or native plants designated by the California Fish and Game Commission as endangered or rare, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain a CESA permit.

Fully Protected Species

Fully protected species such as white-tailed kit (*Elanus leucurus*) and black rail (*Laterallus jamaicensis*), may not be taken or possessed at any time and no licenses or permits may be issued for their take except for collecting these species for necessary scientific research, relocation of the bird species for the protection of livestock, or if they are a covered species whose conservation and management is provided for in a Natural Community Conservation Plan (Fish & G. Code, §§ 3511, 4700, 5050, and 5515).

PROJECT DESCRIPTION AND LOCATION SUMMARY

Proponent: Lost Isle, LLC/Lost Isle Resort, LLC

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Project Description: The objective of the Project is to expand an existing marina and associated uses on Acker Island in two phases over five years. The Project will reconstruct structures destroyed by fire and construct new structures. The Project structures include:

- 2,500-square-foot restaurant building;
- 1,200-square foot tiki bar;
- 1,200-square-foot covered seating area;
- 800-square-foot covered seating area;
- Stage platform;
- Retrofit and remodel two barges for entertainment uses;
- 1,150 square foot office and store;
- 100-foot-tall security tower;
- Emergency helipad;
- 300-square-foot restroom;
- 800-square-foot restroom/storage/security building; and
- In-water work:
 - Removal of existing dock bridge and access ramps;
 - Dock replacement;
 - Service ramp construction;
 - Water-side existing dock replacement (6,400 square feet);
 - Replacement of new dock bridge and access ramps (1,000 square feet); and
 - Construct main dock access ramp.

Location: The Project site is on west Acker Island, adjacent to the Stockton Deep Water Channel and Turner Cut in San Joaquin County. The APN number is 131-020-01

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and the address is 11050 West Acker Island, City of Stockton. Latitude 37.9978086, Longitude -121.4495683. The site is 7.17 acres.

Timeframe: The Project will consist of two phases. The first phase will be 18 months and the second phase will be a maximum of five years.

According to the Biogeographic Information and Observation System (BIOS) records, the Project site has the potential to support special-status wildlife and plants. Species with the potential to occur onsite include, but are not limited to:

- Delta Smelt (*Hypomesus transpacificus*), SE, FT²
- Longfin Smelt (*Spirinchus thaleichthys*), ST
- Central Valley Spring Run Chinook Salmon (*Onchorhynchus tshawytscha*) ST, FT
- Sacramento Winter Run Chinook Salmon (*Oncorhynchus tshawytscha*) ST, FT
- Green Sturgeon (*Acipenser medirostris*), SSC, FT
- White Sturgeon (*Acipenser transmontanus*), SSC, SC
- Central Valley Steelhead (*Oncorhynchus mykiss irideus*), FT
- Swainson's hawk (*Buteo swainsoni*), ST
- White-tailed Kite (*Elanus leucurus*), SFP
- California Black Rail (*Laterallus jamaicensis coturniculus*), SFP
- Giant Garter Snake (*Thamnophis gigas*), FT, ST
- Western Pond Turtle (*Emys marmorata*), SSC
- Woolly rose-mallow (*Hibiscus lasiocarpus* var. *occidentalis*), 1B.2
- Suisun marsh aster (*Symphotrichum lentum*), 1B.2

² FT = Federally Threatened; ST = State Threatened; SE = State Endangered; SFP = State Fully Protected; SC = State Candidate; SSC = Species of Special Concern, Rare=State designation under the NPPA; California Native Plant Society (CNPS) Plant Ranks; 1B = Rare, Threatened, or Endangered in California and Elsewhere;

0.1 – Seriously threatened in California (over 80% of occurrences threatened/high degree and immediacy of threat)

0.2 – Moderately threatened in California (20-80% of occurrences threatened/moderate degree and immediacy of threat)

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- Mason's lilaeopsis (*Lilaeopsis masonii*), Rare, 1B.1

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist San Joaquin County Community Development Department in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document.

COMMENT 1: Aquatic Species Impacts

CDFW recommends that the Permittee identify and disclose biological impacts and incorporate enforceable avoidance measures, minimization measures, and mitigation measures in the IS/MND. In particular the IS/MND does not, at a minimum, analyze impacts to aquatic species as a result of the Project. Page 10 of the IS/MND states that participation in the San Joaquin Multi-Species Conservation and Open Space Plan (SJMSCP) ensures that impacts are mitigated below a level of significance in compliance with the CEQA. However, the Lead Agency must perform its own project-specific evaluation of impacts to biological resources and disclose those impacts and incorporate enforceable measures to minimize significant impacts to the extent feasible in the CEQA environmental document. In addition, SJMSCP provides incidental take coverage and mitigation for Project impacts to terrestrial species only. The SJMSCP does not offer coverage for aquatic species. The Project will involve in-water work such as dock bridge, access ramp, and dock removal and dock replacement. Depending on the methods of removal and replacement, significant impacts, injury, or death could occur to special-status aquatic species. Therefore, specific avoidance, minimization, and mitigation measures should be incorporated into a revised and recirculated IS/MND to reduce the project impacts to a level of less-than-significant.

Example avoidance and minimization measures include the following:

- Use of vibratory drivers only when installing pilings for docks;
- In-water work during August 1 – November 30 to avoid impacts to special-status fish species;
- Use of underwater sound reduction methods if impact hammer use is necessary such as use of an impact hammer cushion block, use of impact hammers during daylight hours only, pile driving during slack tides, using a ramping up technique such that the pile strikes gradually increase energy and frequency until full force and frequency are achieved, use of cofferdams, pipe caissons installed with a

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vibratory hammer to isolate piles from the water, and use of a bubble curtain surrounding the pile to be driven;

- Hydroacoustic monitoring of pile driving to ensure that sound thresholds (182 decibels at 10 meters) are not exceeded to avoid injury and death to aquatic species; and
- Marine mammal avoidance (use of a 500-meter buffer such that work does not occur within 500 meters of marine mammals until they leave of their own accord).

COMMENT 2: Preconstruction Surveys Recommendation

CDFW recommends that prior to Project implementation, surveys be conducted for special-status species with potential to occur at or near the Project site and should follow recommended survey protocols if available. Survey and monitoring protocols and guidelines are available at: <https://www.wildlife.ca.gov/Conservation/Survey-Protocols>. If survey results are positive for special-status species (i.e., endangered, threatened, species of special concern, candidate species, and fully protected species), then CDFW recommends that specific avoidance, minimization, and mitigation measures are incorporated into a revised and recirculated IS/MND. Currently the IS/MND defers mitigation measures with the assumption the Project will be receiving coverage in the SJMSCP and determining incidental take minimization measures through the SJMSCP in the future.

COMMENT 3: Special-Status Plants

The California Natural Diversity Database (CNDDDB) in BIOS shows various special-status plant occurrences within the vicinity of Acker Island, including Mason's lilaeopsis, which is a state-listed rare plant and protected under CESA. Several special-status plant species have the potential to occur on the shoreline of the Project site based on CNDDDB records. To ensure that special-status plants are documented onsite and avoided, rare plant surveys are recommended.

For an adequate environmental setting and to ensure impacts to rare and CESA-protected plants to a level of less-than-significant, CDFW recommends adding the following mitigation measure to the revised and recirculated IS/MND:

Recommended Mitigation Measure 1: Rare Plant Surveys

Plant surveys shall be conducted at the Project site (on the shoreline and terrestrially) before Project activities commence and during the blooming period for identification by a qualified botanist experienced in the identification of rare plant species. The surveys shall be conducted according to CDFW's *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities*

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(2018) available at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>. A botanical survey report shall be submitted to CDFW. The report shall include the Project and location description, and a detailed description of methodology and results as listed in the CDFW protocol above. If any rare plants are found within the Project site, including staging, stockpile areas, or access routes, individual plants or stands shall be flagged for avoidance during preconstruction surveys for avoidance during project-related activities. A 50-foot buffer shall be demarcated around each plant or stand of plants.

Additionally, if the rare plant surveys indicate the presence of rare plants on the Project site where construction will occur, a Mitigation and Monitoring Plan should be prepared and implemented prior to Project implementation for all special-status plants found during surveys. The IS/MND should outline which species of special-status plants will be impacted and should provide a well-developed, robust proposal for how the Project should be re-designed to avoid, minimize, and /or mitigate impacts to those special-status plants. The applicant should provide a copy of the special-status plant survey results to CDFW for review and acceptance.

COMMENT 4: Artificial Light Impact

CDFW recommends the following measures are incorporated as conditions of approval in the revised IS/MND:

Recommended Mitigation Measure 1: Avoiding Artificial Light at Night

Project site structures shall be designed to eliminate all non-essential lighting and avoid or limit the use of artificial light during the hours of dawn and dusk, as these windows of time are when many wildlife species are most active. The Project shall only use motion-activated lighting to decrease the amount of time artificial night lighting is used and decrease wildlife exposure. The Project shall ensure that lighting for necessary activities such as security purposes is shielded, cast downward, and does not spill over onto other properties or upwards into the night sky (see the International Dark-Sky Association standards at <http://darksky.org/>). The Project shall use only LED lighting with a correlated color temperature at or under 2,700 kelvin or less that results in the output of a warm white color spectrum, properly dispose of hazardous waste, and recycle all lighting that contains toxic compounds with a qualified recycler.

Recommended Mitigation Measure 2: Light Pole Modifications and Shielding

All light poles or sources of illumination that are new or replacement installations of existing light sources should be installed with the appropriate shielding to avoid excessive light pollution into natural landscapes or aquatic habitat within the Project site. In addition, the light pole arm length and mast heights should be modified to site-

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specific conditions to reduce excessive light spillage into natural landscapes or aquatic habitat surrounding the Project site.

Night lighting can disrupt the circadian rhythms of many wildlife species. Many species use photoperiod cues for communication (e.g., bird song; Miller 2006), determining when to begin foraging (Stone et al. 2009), behavior thermoregulation (Beiswenger 1977), and migration (Longcore and Rich 2004). Even aquatic species can be affected; migration of salmonids can be slowed or halted by the presence of artificial lighting (Tabor et al. 2004, Nightingale et al. 2006). Phototaxis, a phenomenon which results in attraction and movement towards light, can disorient, entrap, and temporarily blind wildlife species that experience it (Longcore and Rich 2004).

Specifically for fish, artificial lighting can suppress the immune system of fish resulting in increased pathogen and parasite infections (Leonardi and Klempau 2003, Navara and Nelson 2007). Artificial lighting can also disrupt feeding patterns of juvenile salmon (Valdimarsson et al. 1997). Salmonids also use changes in ambient light to guide their migration patterns, which can be disrupted by artificial lighting (Grau et al. 1981). Also, Delta and longfin smelt experience diel shifts vertically in the water column that may be disrupted from artificial light. Additionally, artificial light can disrupt migration of Swainson's hawks and cause them to become disoriented (Ogden 1996, Longcore and Rich 2016).

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 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.)


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CONCLUSION

CDFW appreciates the opportunity to comment on the IS/MND to assist the San Joaquin County Community Development Department in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Andrea Boertien, Environmental Scientist, at Andrea.Boertien@wildlife.ca.gov or (707) 317-0388; or Sara Kern, Senior Environmental Scientist (Supervisory), at Sara.Kern@wildlife.ca.gov or (916) 531-4465.

Sincerely,

DocuSigned by:

Erin Chappell
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Erin Chappell
Regional Manager
Bay Delta Region

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2024110143)
David Wheeler, CEO of Lost Isle Resort, LLC - Dave@MuddyRiverCapital.com

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