

MEMORANDUM

To: Stephanie Strelow
From: Dave Compton, Biologist
Subject: Wharf Master Plan Comments Regarding Birds
Date: October 14, 2016

Comments on the Santa Cruz Wharf Master Plan Mitigated Negative Declaration were submitted to the City Council on August 22, 2016 after the close of the public review period that ended on April 12, 2016. Several comments raised the issue of pigeon guillemots (*Cephus columba*) and other birds nesting on the Wharf and requested a biological review of impacts of the proposed Wharf Master Plan on birds.

Specific comments include:

“A small number of pigeon guillemots nest under the wharf at the south end. This species is protected under the Migratory Bird Treaty Act. Snowy egrets were also noted to “inhabit” the western side of the wharf.”

“A wide variety of birds either nest, rest or shelter on the structure and may be significantly impacted by Master Plan projects. In particular the pigeon guillemot and other bird species are regularly found nesting in this structure.”

Citing information in the *Birds of North America Online* (Rodewald 2016), one comment stated that to avoid disturbing nesting pigeon guillemots, “at a very minimum, no construction activity should take place after March 15 or before September 15, i.e. 6 months.”

Therefore, these comments emphasize several points:

1. Pigeon guillemots and other bird species nest under or on the wharf, with guillemots nesting under the southern portion of the wharf.
2. Impacts to nesting birds could occur from construction activities associated with the master plan projects, in violation of the Migratory Bird Treaty Act.
3. Construction should be prohibited for at least six months (March 15 to September 15) to avoid disturbing these nesting birds.

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4. Wharf Master Plan projects could result in removal of nesting habitat for pigeon guillemots and other species nesting under or on the Wharf, which should be considered a significant impact.

This response acknowledges that pigeon guillemots nest on the Santa Cruz Wharf (“Wharf”), and accepts that bird nesting on the Wharf could potentially occur at least from March 15 to September 15. The discussion below explains that no nesting habitat for pigeon guillemot or any other species will be removed, and it introduces a measure to ensure that no take of birds or bird nests will result from implementation of Wharf Master Plan projects, in violation of the Migratory Bird Treaty Act (MBTA) and the California Fish and Game Code. It also addresses the issue of the Wharf as Coastal Bird Habitat, per the General Plan 2030 (City 2012) and Local Coastal Program (LCP), and addresses bird species issues related to this designation. These issues are addressed below in supplemental text to the MND/IS.

INITIAL STUDY BIOLOGICAL RESOURCES

In accordance with the California Environmental Quality Act (CEQA), State CEQA Guidelines, City of Santa Cruz plans and policies, and agency and professional standards, the MND/IS Section 4 states that a project impact would be considered significant if the project would:

- a. 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 the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service;
- b. Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service;
- c. Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means;
- d. Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites;
- e. Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance; or
- f. Conflict with the provisions of an adopted Habitat Conservation Plan (HCP), Natural Community Conservation Plan (NCCP), or other approved local, regional, or state habitat conservation plan.

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Criteria c. and f. are not potentially relevant to the issue of nesting or roosting birds. Therefore, this response addresses only criteria a., b., d. and e.

a. Special-Status Species – No impact. Pigeon guillemot is a common species that is not listed under ESA or CESA and does not possess any special-status species designation, per the California Special Animals List (CDFW 2016b). It is listed in the General Plan 2030 Environmental Impact Report (General Plan EIR; City 2012) as a species roosting or nesting on the Wharf, and the Wharf is identified as Coastal Bird Habitat in the General Plan 2030 (City 2012). However, it is not considered a sensitive species in City’s General Plan (2012). The City’s LCP Land Use Plan Map EQ-9, Sensitive Species and Habitats, identifies pigeon guillemot as a sensitive species, although the LCP map shows the species in an area near the lighthouse on West Cliff Drive, but not on the Wharf. Therefore, impacts to nesting habitat for pigeon guillemot are addressed below under b. Riparian and Sensitive Habitats.

The commenters also mention snowy egret as a species occurring at the wharf. This species is not listed under ESA or CESA, but is on the Special Animals List, but only for nesting colonies, which occur in trees and other vegetation types that are absent from the Wharf. It is not mentioned in the General Plan 2030 EIR (City 2012) or the LCP (City 1992). Therefore, there would be no impacts to this species as there is no nesting at the Wharf.

The City’s General Plan Table 1, Sensitive Management Protocols for Sensitive Species and Habitat, includes the brown pelican (*Pelecanus occidentalis*) as a species that nests or roosts on the Wharf, although it does not describe the exact nature of the species’ use of the Wharf. However, LCP Map EQ-9 identifies the Wharf as a sensitive species location for the California brown pelican (City 1992). The California brown pelican (*P.o. californicus*) is fully protected species for nesting and roosting, and potential impacts are discussed below.

Other special-status bird species nesting in the vicinity of the Wharf can be determined from a query of the California Natural Diversity Database (CNDDDB; CDFW 2016a), a review of all bird species occurring on the Special Animals List, and a review of bird species considered as special-status in the General Plan 2030 (City 2012). CNDDDB was queried for all bird species occurring in the Santa Cruz U.S. Geological Survey quadrangle (quad), in which the Wharf is located, and the surrounding four quads: Davenport, Felton, Laurel, and Soquel. Breeding bird species identified in the City (2012) and for which CNDDDB includes occurrences are listed below. However, no bird species tracked in CNDDDB were recorded nesting on the Wharf.

- Bank swallow (*Riparia riparia*) – State threatened (ST)
- Black oystercatcher (*Haematopus bachmani*) – U.S. Fish and Wildlife bird species of conservation concern (BCC)

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- Black swift (*Cypseloides niger*) – BCC; California species of special concern (CSSC)
- Black-crowned night-heron (*Nycticorax nycticorax*) – Special Animal (SA)
- Burrowing owl (*Athene cunicularia*) – BCC, CSSC
- California horned lark (*Eremophila alpestris actia*) – WL
- Chipping sparrow (*Spizella passerina*) – General Plan only
- Cooper’s hawk (*Accipiter cooperi*) – Watch List (WL)
- Double-crested cormorant (*Phalacrocorax auritus*) – WL
- Ferruginous hawk (*Buteo regalis*) – WL
- Golden eagle (*Aquila chrysaetos*) – FP, WL
- Great blue heron (*Ardea herodias*) – SA
- Hermit warbler (*Setophaga occidentalis*) – SA
- Long-eared owl (*Asio otus*) – CSSC
- Marbled murrelet (*Brachyramphus marmoratus*) – Federally threatened (FT), State endangered (SE)
- Merlin (*Falco columbarius*) - WL
- Oak titmouse (*Baeolophus inornatus*) – SA
- Osprey (*Pandion haliaetus*) – WL
- Saltmarsh common yellowthroat (*Geothlypis trichas sinuosa*) – BCC, CSSC
- Sharp-shinned hawk (*Accipiter striatus*) – WL
- Tricolored blackbird (*Agelaius tricolor*) – BCC, CSSC, State candidate (SC)
- Vaux’s swift (*Chaetura vauxi*) – CSSC
- Western snowy plover (*Charadrius alexandrinus nivosus*) – BCC, FT, CSSC
- White-tailed kite (*Elanus leucurus*) – FP
- Yellow warbler (*Setophaga petechia*) – CSSC
- Yellow-breasted chat (*Icteria virens*) – CSSC

With the exception of osprey, none of the above species are known to nest within or on structures. Species granted special-status designations for other reasons, such as wintering, are not expected to occur on the Wharf due to absence of suitable habitat. While osprey are reported on occasion in the vicinity of the Wharf, reports from the area in the online database eBird (CLO and NAS 2016) are limited to the period when wintering and migrant birds are present, and include no reports of nesting. The General Plan 2030 EIR (City 2011) does not mention this species. However, the city of Santa Cruz lies outside of the breeding range of the osprey and have not been reported at the Wharf (EcoSystems West Consulting Group, 2009). No other bird species on the Special Animals List has the potential to occur on the Wharf for the part of its life cycle in which it is designated as a special animal. American peregrine falcons (*Falco peregrinus anatum*; federally delisted, BCC, State delisted, FP) occur

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occasionally at the Wharf (CLO and NAS 2016). However, this species is protected only for nesting, and no nesting habitat occurs on the wharf.

Therefore, the only special-status bird species potentially occurring at the Wharf is California brown pelican. Although the General Plan EIR (City 2011) and the LCP (City 1992) includes brown pelican on a list of nesting or roosting species for the Wharf, Appendix F-1 of the EIR (*Biological Resources for the City of Santa Cruz General Plan Update*) describes the brown pelican in Santa Cruz only as a potential roosting species (Ecosystems West Consulting Group 2009), and this species is not known to nest north of the Channel Islands, off of southern California (74 FR 59447). Appendix F further describes the only communal roosts in the City as occurring along West Cliff from Lighthouse Point to Younger Lagoon, although it also known to roost on the Wharf (Ecosystems West Consulting Group 2009). As the Master Plan would involve installing wharf pilings and expanding the wharf for public access, it would not result in removal of roosting habitat for this species. Construction could result in temporary disturbances, but California brown pelicans would be able to continue roosting in various areas around the Wharf, away from construction, while construction activities are underway, and no significant impact would result. After implementation of Wharf Master Plan projects, they would be able to continue using the Wharf as previously. Therefore, no impacts are expected to California brown pelican or to special-status bird species.

b. Riparian and Sensitive Habitats – No impact. The City’s General Plan identifies the Wharf as Coastal Bird Habitat, a sensitive habitat. The General Plan EIR reports the following birds at the Wharf: pigeon guillemots and western gulls (*Larus occidentalis*) and roosting by brown pelicans. Therefore, removal of nesting habitat for pigeon guillemot and western gull or removal of roosting habitat for brown pelican, could represent a significant impact. However, the addition of pilings, the relocation of the Entry Gate, the construction of the East Promenade, and construction of new boat landings and three new buildings would not result in removal of habitat, and these species would be able to occupy the Wharf after construction in the same manner as previously. General Plan Action NRC2.2.1 indicates that as part of the CEQA review process for development projects, potential impacts to sensitive habitat should be evaluated and mitigated for sites located within or adjacent to these areas. NRC2.4.1 references biological assessment protocols to be followed to determine if a sensitive biological resource is present, and identifies general avoidance or management strategies to be employed when sensitive biological resources occur. Table 1 of the General Plan, Assessment and Management Protocols for Sensitive Species and Habitat, includes “Coastal Bird Rookeries” in which avoidance of direct impacts is specified, including conducting construction activities outside of the nesting season and/or establishing appropriate construction buffers. Potential impacts to nesting species are addressed in subsection (d) below.

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d. Wildlife Movement/Breeding – Potentially significant. Implementation of Wharf Master Plan projects would not interfere with the movement of bird species in the project vicinity, which could continue to move about the area freely. However, as noted in the comments, nests of pigeon guillemots and potentially other species (including western gull, which is also known to nest on the Wharf) are protected under the Migratory Bird Treaty Act (MBTA), and they are also protected under the California Fish and Game Code Section 3503. Individual adult pigeon guillemots or other birds are unlikely to be directly killed or injured during construction activities because they are highly mobile and would likely leave the area during construction. However, nesting activities by pigeon guillemots, western gulls, and other bird native bird species could be disrupted, if construction occurs during the breeding season and the birds are present. Noise and vibration, such as from pile driving, could potentially disturb adult birds and result in abandonment of nests, eggs, and young, and in nesting failure. This would represent a violation of MBTA and the California Fish and Game Code, and would be contrary to policies in the General Plan. Therefore this impact would be significant absent mitigation.

Implementation of the following mitigation measure will reduce this impact to less than significant:

Mitigation Measure 2. Pre-construction Nesting Bird Survey and Exclusion.

No less than seven days prior to initiation of construction activities, including pile-driving, scheduled to begin during the nesting season for pigeon guillemot, western gull, or other species potentially nesting on the Wharf (February 15 through September 15, or as determined by a qualified biologist), the City shall have a nesting bird survey conducted by a qualified biologist to determine if active nests of bird species protected by the Migratory Bird Treaty Act and/or the California Fish and Game Code are present in the disturbance zone or within 300 feet of the disturbance zone. If active nests are found, pile-driving or other construction activities within 300 feet of the nests (or as determined by the qualified biologist in consultation with CDFW) shall be postponed or halted, until the nest is vacated and young have fledged, as determined by the biologist, and there is no evidence of a second attempt at nesting. Bird surveys shall include inspection of areas underneath the Wharf for indications of nesting by pigeon guillemots, inspection of rooftops for nesting western gulls, and inspection of any other areas within 300 feet of the construction zone where birds may be nesting.

With the implementation of Mitigation Measure 2, impacts to nesting pigeon guillemots and other common bird species would be mitigated to less than significant.

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e. Conflict with Local Ordinances and Policies – No impact. As noted in the response to d. Riparian and Sensitive Habitats, although the Wharf is considered Coastal Bird Habitat in the City (2012), implementation of Wharf Master Plan projects would not result in permanent impacts to Coastal Bird Habitat.

MANDATORY FINDINGS OF SIGNIFICANCE

In accordance with the California Environmental Quality Act (CEQA), State CEQA Guidelines, City of Santa Cruz plans and policies, and agency and professional standards, a project impact to a wildlife species would be considered significant if the project would:

- a. substantially reduce the habitat of a fish or wildlife species,
- b. cause a fish or wildlife population to drop below self-sustaining levels,
- c. threaten to eliminate a plant or animal community,
- d. reduce the number or restrict the range of a rare or endangered plant or animal.

As noted above, implementation of Wharf Master Plan projects would only result in potential temporary impacts to bird species, including pigeon guillemot and special-status bird species. However, impacts to nesting birds can be mitigated, and no significant impacts to pelican roosting would occur. No permanent loss of habitat would occur to any bird species. Therefore, implementation of Wharf Master Plan projects would not substantially reduce habitat for any bird species, cause a bird species population to drop below self-sustaining levels, threaten to eliminate an animal community, or reduce the number or restrict the range of a rare or endangered bird species.

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