



## Legislation Text

File #: 17-898, Version: 2

### MEMORANDUM

**TO:** Board of Supervisors

**FROM:** Robert Massarelli, Community Development Director  
Peggy Barthel, Assistant Resource Planner

**SUBJECT:** Consideration of Appeal (AB 17-04) of Planning Commission's Adoption of Mitigated Negative Declaration based on Initial Study IS 17-21, and Approval of Lakebed Encroachment Permit

**DATE:** October 24, 2017

**EXHIBITS:**

- A. Vicinity Map
- B. Planning Commission Staff Report dated September 14, 2017
- C. Planning Commission Minutes of September 28, 2017
- D. Shoreline Ordinance Appeal AB17-04

### EXECUTIVE SUMMARY:

#### **I. PROJECT DESCRIPTION**

Project Name: Bell Haven Homeowners Association Lakebed Encroachment Permit

Application: Lakebed Encroachment Permit, Initial Study

Applicant: Bell Haven Homeowners Association  
3400 Dillard Ave, Kelseyville, CA 95451

Project Summary: The Applicant applied for a Lakebed Encroachment Permit to replace the existing ramp and floating dock system and create a contiguous elevated dock and pavilion with ramps down to a covered floating boat lift and a floating boat dock. The new dock features would necessitate installing 21 8" steel pilings. Lighting would also be installed to illuminate the dock deck and pavilion. The parcel currently has a private dock facility, composed of an elevated dock with a ramp down to a floating dock. The existing dock facilities occupy 1,457 square feet. The proposed facilities would occupy 3,063 square feet, increasing the floating dock area by 401 square feet and the elevated dock area by 1,205

square feet.

The rehabilitation is proposed to protect people and property from harm. The Applicant is taking this opportunity to upgrade its facilities with amenities to better serve property owners and guests.

Location: 6460 Soda Bay Drive, Kelseyville, CA

APN: 044-030-01

Zoning: "O-FF" Open Space-Floodway Fringe

General Plan: Public Facilities

Flood Zone: Flood Zone AE: this parcel is in an area of 100-year flood; base flood elevation and flood hazard factors determined. Parcel is mapped within the Floodway Fringe Combining District.

Slope: Less than 10% slope

## **II. APPEAL BACKGROUND**

Staff previously issued a Class 2 Categorical Exemption (CE16-64), for the replacement or repair of an existing structure located on the same site. A timely appeal to the Planning Commission (AA16-02) was received on December 19, 2016 and heard before the Planning Commission on March 9, 2017. The Planning Commission denied the appeal. A timely appeal to the Board of Supervisors (AB17-03) of the Planning Commission's decision was received on March 10, 2017 and heard on June 20 and August 22, 2017. The Board of Supervisors denied the appeal.

Concurrently, the California Department of Fish and Wildlife (CDFW) made a determination that an Initial Study was required to address effects of the project on the Clear Lake Hitch, a recently listed Threatened Species. Projects which require an Initial Study to comply with the provisions of CEQA are submitted by the Community Development Department to the Planning Commission for action thereon. The Planning Commission adopted the Initial Study and associated mitigated negative declaration, and granted the Lakebed Encroachment Permit, on September 28, 2017 (Exhibit C). On October 2, 2017, Joan Sturges filed a timely appeal of the Planning Commission's decision (Exhibit D).

## **III. SHORELINE ORDINANCE APPEAL DISCUSSION**

Ms. Sturges appealed the Planning Commission's decision with the following reason:

*"The proposed dock and structures are too huge. Wildlife of 128 species of birds, deer, foxes, fish, otters, etc. would be disrupted and their natural habitate (sic) gone. I do not want to look at it as it consumes half of my view shed."*

Each appeal item is detailed below:

*"The proposed dock and structures are too huge."*

In accordance with Shoreline Ordinance Section 23.6-2, the placement of all piers, docks, buoys, boat ramps or launching facilities shall be permitted only within an area and to a depth

defined as follows (*only sections relating to size are included here*):

(A) An area within lines extended parallel to and ten feet (10') inward of property lines extending lakeward from the high water mark (7.79 feet Rumsey) into the foreshore and nearshore. Lakebed Management may require verification of the location of the property lines by a legal record of survey. Piers, docks, buoys, boat ramps and launching facility structures shared by two (2) adjacent properties or more may qualify for a zero lot line setback."

**In 2000, the Planning Commission approved a variance for the Bell Haven Resort dock such that it could extend 182 feet beyond zero Rumsey; 82 feet longer than normally allowed. This extension was required to allow guests to safely moor their boats in the shallow waters of Soda Bay. The proposed work will not extend the length of the structure beyond the approved variance and will not interfere with the littoral access rights of adjoining property owners.**

(E) Homeowner's Associations, Condominium and Townhouse Developments, Mobile Home Parks, Resorts and Commercial Properties.

(4) For any proposed multiple launching facility, the structure shall not cover more than fifty percent (50%) of the shoreline frontage of the parcel or two hundred feet (200'), whichever is most limiting.

**The proposed structure will be 75 feet in width. Lakebed Management Staff determined that the shoreline frontage of the Bell Haven parcel is 150 feet. Therefore, the proposed structure complies with the Clear Lake Shoreline Ordinance.**

*"Wildlife of 128 species of birds, deer, foxes, fish, otters, etc. would be disrupted and their natural habitate (sic) gone."*

**Potential impacts to sensitive species were identified in the Initial Study, Section IV. CDFW recommends construction between October 15 and January 1 to protect Clear Lake hitch habitat. The construction footprint would be limited to the immediate vicinity of the dock and the area of shoreline immediately located on either side of the existing dock. Riparian vegetation located further away from the existing dock would not be impacted. Relative to the footprint of Clear Lake, the proposed project area is small and would not impede the ability of any fish or aquatic species to move freely throughout the lake or along the shoreline. The shoreline would not be physically blocked. Implementation of and compliance with project mitigation measures and conditions of approval identified in the Initial Study and the Mitigation and Monitoring Plan would avoid or reduce potential impacts to less than significant levels.**

*"I do not want to look at it as it consumes half of my view shed."*

**The appellant did not provide other documentation to support this statement. As discussed in the September 14, 2017 Staff Report to the Planning Commission (Exhibit B) and the discussion of Clear Lake Shoreline Ordinance Section 23.6.2 above, Lakebed Management has reviewed the project and determined that the project is in conformance with the Clear Lake Shoreline Ordinance. The project will maintain the**

**existing structure and widen the lakeward end of the pier. The height of the proposed structure will not exceed 20 feet Rumsey.**

#### **IV. ENVIRONMENTAL ANALYSIS**

A CEQA Initial Study for this project was completed (Attachment 3). Comments were received from the public and are included as Attachment 4. Recommendations and mitigation measures provided in IS17-21 were incorporated into the Mitigation and Monitoring Plan (Attachment 5) to reduce potential environmental impacts.

Implementation of and compliance with project mitigation measures and conditions of approval identified in the CEQA Initial Study and the Mitigation and Monitoring Plan, as outlined below, would avoid or reduce potential impacts to less than significant levels.

##### **1. AESTHETICS, CULTURAL RESOURCES, NOISE, TRIBAL CULTURAL RESOURCES**

**No potentially-significant impacts were identified. Conditions are in place to ensure that the project will not cause significant impacts.**

##### **2. AGRICULTURE AND FORESTRY RESOURCES, AIR QUALITY, GEOLOGY & SOILS, GREENHOUSE GAS EMISSIONS, HAZARDS & HAZARDOUS MATERIALS, HYDROLOGY & WATER QUALITY, LAND USE & PLANNING, MINERAL RESOURCES, POPULATION & HOUSING, PUBLIC SERVICES, RECREATION, TRANSPORTATION & TRAFFIC, UTILITIES & SERVICE SYSTEMS**

**No potentially-significant impacts were identified.**

##### **3. BIOLOGICAL RESOURCES**

**Potential impacts will be reduced to less than significant with Mitigation Measures identified in the Mitigation and Monitoring Plan.**

#### **V. CLEAR LAKE SHORELINE ORDINANCE STANDARDS FOR REGULATING USES, OPERATIONS, CONSTRUCTION, AND ALTERATIONS, AND ACTIVITIES ON THE LAKE**

23.5-1 Before Lakebed Management shall issue any administrative encroachment permit, it must be established that the proposed use, operation, alteration, construction, or activity will not cause significant harm to:

(A) The water quality of the lake, including but not limited to its clarity, temperature, color, taste and odor.

**The project will not adversely affect water quality.**

(B) The nearshore and foreshore.

**The project will not adversely affect the nearshore or foreshore.**

(C) The land underlying the lake.

**The project will not adversely affect the lakebed.**

(D) Fish and other aquatic forms of life, their habitats, their breeding and spawning grounds.

**Potential impact to immature hitch in the nearshore and foreshore areas will be avoided by the seasonal timing of construction activities.**

(E) The natural beauty of the area.

**The project will not adversely affect the natural beauty of the area.**

(F) Navigation, safety, or health.

**The project will not adversely affect navigation, safety, or health.**

(G) The long-term preservation of the project site in its natural condition.

**No significant harm will be caused by this project.**

(H) Archeological or historical resources of state-wide significance.

**No archaeological or historical resources of state-wide significance have been identified.**

(I) The wetlands.

**No wetlands are identified in the location of the project.**

23.5-2 Before Lakebed Management shall issue any administrative encroachment permit, it shall find that the proposed use, operation, alteration, construction, or activity will:

(A) Be in furtherance of general statewide interest.

**The project will further the general statewide interest.**

(B) Not be inconsistent with the public rights of commerce, navigation, fishery, recreation, and preservation of the project site in its natural state.

**The project is consistent with public rights and preservation of the natural state of the site.**

(C) Not result in substantial interference with public use of the lake's navigable waters.

**The project will not interfere with navigation.**

(D) Be supported by sufficient accessory uses to accommodate the proposed construction or use.

**The project will be used as proposed by the Applicant.**

(E) Not violate any other provision of law.

**The project does not violate any laws.**

(F) Not be incompatible with existing nearshore and foreshore uses or structures on or in the immediate vicinity of the littoral parcel.

**The project is consistent with nearby shorezone uses.**

**REQUIRED FINDINGS:** The California Environmental Quality Act (CEQA) requires the approval of a

mitigated negative declaration be based on the following findings:

**Mitigated Negative Declaration for a Lakebed Encroachment Permit:**

1. Potential environmental impacts related to biological resources have been mitigated to insignificant levels by use permit condition section C.
2. Potential environmental impacts related to timing and monitoring have been mitigated to insignificant levels by use permit conditions section F.
3. This project is consistent with land uses in the vicinity.
4. This project is consistent with the Clear Lake Shoreline Ordinance with the incorporated mitigations and conditions of approval.
5. As mitigated, this project will not result in any significant adverse environmental impacts.

According to the Lake County Shoreline Ordinance, the approval of a Lakebed Encroachment Permit requires the following findings:

**Lakebed Encroachment Permit:**

1. The proposed use, operation, alteration, construction, or activity will not cause significant harm to:
  - (A) The water quality of the lake, including but not limited to its clarity, temperature, color, taste and odor.
  - (B) The nearshore and foreshore.
  - (C) The land underlying the lake.
  - (D) Fish and other aquatic forms of life, their habitats, their breeding and spawning grounds.
  - (E) The natural beauty of the area.
  - (F) Navigation, safety, or health.
  - (G) The long-term preservation of the project site in its natural condition.
  - (H) Archeological or historical resources of state-wide significance.
  - (I) The wetlands.
2. The proposed use, operation, alteration, construction, or activity will:
  - (A) Be in furtherance of general statewide interest.
  - (B) Not be inconsistent with the public rights of commerce, navigation, fishery, recreation, and preservation of the project site in its natural state.
  - (C) Not result in substantial interference with public use of the lake's navigable waters.

- (D) Be supported by sufficient accessory uses to accommodate the proposed construction or use.
- (E) Not violate any other provision of law.
- (F) Not be incompatible with existing nearshore and foreshore uses or structures on or in the immediate vicinity of the littoral parcel.

**FISCAL IMPACT:** ☒ None ☐ Budgeted ☐ Non-Budgeted

Estimated Cost:

Amount Budgeted:

Additional Requested:

Annual Cost (if planned for future years):

**FISCAL IMPACT (Narrative):** Action taken by the Board will have no fiscal impact on the County.

**STAFFING IMPACT (if applicable):** N/A

**RECOMMENDED ACTION:**

Staff recommends the Board of Supervisors deny Shoreline Ordinance Appeal AB17-04 and uphold the decisions of the Planning Commission to adopt the Mitigated Negative Declaration and grant the Lakebed Encroachment Permit, based on the findings listed in the staff memorandum dated October 24, 2017. Furthermore, staff recommends the Board of Supervisors direct County Counsel prepare Findings of Fact.