

MEMORANDUM

DATE: May 7, 2020 (revised on April 6, 2022)

To: Ryan Bensley, Associate/Environmental Planner

FROM: Leo Simone, Associate Biologist; Jessica Lieu, Assistant Biologist

SUBJECT: Biological Resources Memorandum of Findings for the Oak Grove Residential Project, Community of Coto de Caza, Unincorporated Orange County, California

This memorandum of findings presents the results of a biological resources assessment conducted for the Oak Grove Residential Project (proposed project) in the Community of Coto de Caza, County of Orange, California. A biological resources assessment was previously prepared for the proposed project in 2016 (refer to Attachment B). This assessment includes an updated database search, a biological survey, and a memorandum of findings. All work for the previous and current assessments was performed in compliance with the California Environmental Quality Act (CEQA).

PROJECT LOCATION AND SITE DESCRIPTION

Regional Project Location

The project site is comprised of two parcels (Parcel 1 and a portion of Parcel 3 of Lot Line Adjustment 2015-018) located in the Oak Grove portion of Coto de Caza, a gated community located in the foothills of the Santa Ana Mountains in the southeastern area of unincorporated Orange County, California. Regionally, the project area is located near the head of Cañada Gobernadora just southeast of Plano Trabuco along the east side of Vista del Verde and west of Via Pajaro, less than 0.2 mile east of Coto de Caza Drive at a point one mile east-southeast of where Antonio Parkway crosses State Route (SR) 241 (the Foothill Transportation Corridor/Toll Road). The project is situated on the south side of the Coto Equestrian Preserve and is depicted on the United States Geological Survey (USGS) *Cañada Gobernadora, California* 7.5-minute topographical quadrangle map in Township 6 South, Range 7 West, within the southeast quarter of the northwest quarter of Section 26 (USGS 1988) (refer to Figure 1, Project Location and Vicinity Map; all figures are provided in Attachment A of this report)). Elevations within the project area range from approximately 820–860 feet (ft) above mean sea level.

Existing Setting

Altogether, the project site is approximately 5.1 acres. The project site is irregular in shape and bound by equestrian uses to the north, medium-density residential uses to the northwest, Via Pajaro and equestrian uses to the east, medium-density residential uses to the southwest, and Vista del Verde and commercial retail uses to the south.

Approximately 2.9 acres of the project site are developed with the now closed and abandoned Merryhill School, and 2.2 acres were developed with facilities associated with a portion of the larger 28.5-acre Coto Equestrian Preserve. Equestrian-related structures associated with the adjacent Coto Equestrian Preserve have been demolished. A maintenance building just east of the Merryhill School site also remains within the current project limits.

Six mature California coast live oak (*Quercus agrifolia*) trees are located on the eastern and central portions of the site, and six California coast live oak trees are located directly adjacent to the northern boundary of the project site. Several mature western Sycamore (*Platanus racemosa*) trees are also scattered throughout the project site. California coast live oak and western Sycamore were the only native vegetation observed on site. The remaining vegetation on the site consists of scattered ornamental landscape trees and shrubs.

Proposed Project

The project proposes to create 13 low-density residential parcels on each side of an internal access road that would bisect the project site from east to west and that would terminate in a cul-de-sac near the northeastern corner of the site. The average size of each residential lot would be approximately 13,900 square feet.

Access to the project site would be provided by a single ingress/egress point off Vista del Verde. Consistent with the Coto de Caza Specific Plan, parking would be provided within attached garages, in driveways, and along each side of the proposed internal access road. In addition, a 12 ft high river stone perimeter wall would be installed along the property line to screen the project from the Coto Equestrian Preserve. No new equestrian-related uses are proposed as part of this project. The cut/fill of soils associated with the project is expected to be balanced (i.e., all of the soil removed/graded/cut would be used as part of the on-site and off-site improvements); therefore, no substantial import or export of soils is required.

METHODS

Record Search

An updated literature record search was conducted on September 13, 2019, to assist in determining the existence or potential occurrence of sensitive plant and animal species on the project site or in the proposed project vicinity. Results from the record search were compared with the record search from 2016. Database records for the *Canada Gobernadora Santiago Peak, El Toro, Alberhill, San Juan Capistrano, Sitton Peak, Dana Point, and San Clemente, California*, USGS 7.5-minute quadrangles were reviewed using the California Department of Fish and Wildlife's (CDFW) California Natural Diversity Data Base (CNDDDB), the California Native Plant Society's (CNPS) *Electronic Inventory of Rare and Endangered Vascular Plants of California (Version 7)*, and the United States Fish and Wildlife Service (USFWS) Information Planning and Conservation System (IPaC) database.

The CNPS has five California Rare Plant Ranks (CRPR) that categorize degrees of concern; however, only Ranks 1 to 2 are considered of high concern and will be reviewed. California Rare Plant Rank 1A comprises plants that are presumed extirpated in California and are rare or extinct in other places. California Rare Plant Rank 1B comprises rare, threatened, or endangered plants in California and

elsewhere. California Rare Plant Rank 2A comprises plants presumed extirpated in California but that are common elsewhere. California Rare Plant Rank 2B comprises plants considered rare, threatened, or endangered in California but that are more common elsewhere.

General Biological Survey

A field survey of the project site and immediately surrounding areas was conducted on September 13, 2019, by LSA Associate Biologist Leo Simone and LSA Assistant Biologist Jessica Lieu. Notes were taken on general site conditions, suitability of habitat for various elements, and plant and animal species observed. Changes to the project site and immediately surrounding areas from the previous survey conducted in 2016 were noted. A large barn in the project area was removed between 2016 and 2019; an inspection for burrowing owl habitat in the area where the barn was removed was conducted during the general biological survey, and no suitable habitat for burrowing owl was detected. The project site is located within the Orange County Southern Subregion Habitat Conservation Plan (HCP) area. However, the project site is within an area designated by the HCP for development. The project site is not located within a designated HCP reserve area or other sensitive conservation area identified by State, regional, or local plans. Thus, project implementation would not conflict with any regional conservation plan or local policies related to biological resources. See Figure 2, Project Boundaries and Photo Points, and Figure 3, Representative Site Photographs (Attachment B).

RESULTS AND DISCUSSION

Site conditions have not significantly changed since the 2016 survey. While there were some differences between the literature record search results from 2016 and 2019, the conclusions remain the same.

CNDDB Literature Record Search Results

The 2019 CNDDB literature record search identified 99 special-interest species with the potential to occur within the proposed project area. The search included species listed as endangered, threatened or rare, or proposed or candidates for listing under the Federal or California Endangered Species Acts (FESA and CESA, respectively) and species designated as either CDFW Special Species of Concern (SSC), USFWS Federally Protected (FP), or Lists 1, 2, or 3 of the *California Rare Plant Ranking System* (CNPS).

The 2019 CNDDB literature record search yielded nine additional special-interest species with the potential to occur within the proposed project area; three of the special-interest species from the 2016 literature record search were not listed in the 2019 search. The additional special-interest species included southern California legless lizard (*Anniella stebbinsi*), California glossy snake (*Arizona elegans occidentalis*), Orcutt's brodiaea (*Brodiaea orcuttii*), Pendleton ceanothus (*Ceanothus pendletonensis*), decumbent goldenbush (*Isocoma menziesii* var. *decumbens*), Santa Catalina Island desert-thorn (*Lycium brevipes* var. *hassei*), southern grasshopper mouse (*Onychomys torridus ramona*), osprey (*Pandion haliaetus*), and southern mountains skullcap (*Scutellaria bolanderi* ssp. *austromontana*). Following the field survey, it was determined that none of the additional special-interest species had a moderate or high potential to occur on the project site or the immediately surrounding areas where the off-site improvements would be constructed.

Threatened/Endangered Species.

In total, 19 Federal/State listed species were identified as potentially present in the project vicinity. All 19 of the Federal/State listed species are considered to be absent from the project site and immediately surrounding areas due to a lack of suitable habitat in those areas, or because the project site and immediately surrounding areas are located outside the known range of the species.

The USFWS can designate critical habitat that identifies specific areas, both occupied and unoccupied, that are essential to the conservation of a listed species. Critical habitat areas may require special management considerations or protections. The project site and immediately surrounding areas are not located within federally designated critical habitat.

Non-Listed, Special Interest Species.

Of the 80 other sensitive species identified in the CNDDDB literature record search, 74 are considered to be absent from the project site and immediately surrounding areas due to a lack of suitable habitat, or because those areas are located outside the known range of the species. One sensitive species has a moderate to high probability of occurrence. Three sensitive species have a moderate potential for occurrence, and two are considered to have a low probability for occurrence. The species identified as having a probability for occurrence are bats known from the area or bird species associated with mature oak and other large trees present on the project site and immediately surrounding areas. The six species identified as having a potential for occurrence are:

- Pallid bat (*Antrozous pallidus*) – moderate to high potential
- Western mastiff bat (*Eumops perotis californicus*) – moderate potential
- Pocketed free-tailed bat (*Nyctinomops femorosaccus*) – moderate potential
- Western red bat (*Lasiurus blossevillii*) – moderate potential
- Mexican long-tongued bat (*Choeronycteris mexicana*) – low potential
- White-tailed kite (*Elanus leucurus*) – low potential

CNPS Literature Record Search Results

The CNPS literature record search identified 60 plant species. All of these species have a CRPR with List 1, 2, or 3 designations and are managed by the CNPS Online Inventory of Rare and Endangered Plants of California.

None of the 60 CRPR plant species identified in the CNPS literature record search were observed on the project site or immediately surrounding areas during the field survey and are considered to be absent from the project site and immediately surrounding areas based on a lack of suitable habitat or the project site and immediately surrounding areas being located outside the known range of the species.

IPaC Literature Record Search Results

The IPaC literature record search identified eight species that are proposed, candidate, threatened or endangered species and are managed by the Endangered Species Program of the USFWS. None of these eight species were observed on the project site or immediately surrounding areas during the field survey and are considered to be absent from the project site and immediately surrounding

areas due to a lack of suitable habitat, or because the project site and immediately areas are located outside the known range of the species.

Migratory Bird Treaty Act

Trees that are present on site may provide nesting habitat for migratory birds and/or birds of prey protected under the Federal Migratory Bird Treaty Act (MBTA) of 1918 (16 United States Code [USC] 703-711). The current Federal administration in its issued Opinion "...finds that, consistent with the text, history, and purpose of the MBTA, the statute's prohibitions on pursuing, hunting, taking, capturing, killing, or attempting to do the same apply only to affirmative actions that have as their purpose the taking or killing of migratory birds, their nests, or their eggs." (M-37050 pages 2 and 18). As a result, the USFWS has ceased enforcement of the MBTA with respect to activities that result in the incidental take of birds or destruction of nests that may occur pursuant to otherwise lawful activities. However, such activities are regulated under the California Fish and Game Code.

All birds are protected under Sections 3503 and 3503.5 of the California Fish and Game Code. Under this Code, it is unlawful to take, possess, or needlessly destroy any bird of prey or the nests or eggs of any kind of bird species except as otherwise provided in the California Fish and Game Codes and regulations. Section 3800 prohibits the take of any non-game bird, e.g., live nestlings, except in accordance with other sections of the California Fish and Game Code, Fish and Game Commission regulations, or certain mining operations. The only species currently excepted from these protections are English sparrows and starlings. Disturbance of any active bird nest during the breeding season would be prohibited by the California Fish and Game Code. Therefore, Mitigation Measure MM BIO-1 requires that any required vegetation removal be conducted outside the avian nesting period, or if vegetation removal is to occur during the avian nesting period, a qualified biologist be retained to conduct nesting bird surveys prior to vegetation removal to ensure compliance with the MBTA and the California Fish and Game Code.

Potential Jurisdictional Waters

There are no waters present on the project site or the immediately surrounding areas where the off-site improvements would be constructed that would require compliance with Sections 404 and 401 of the Clean Water Act (CWA) or Section 1602 of the California Fish and Game Code; therefore, a formal delineation of jurisdictional waters will not be required for the proposed project site. Refer to Attachment B for a complete description of jurisdictional waters regulated by the United States Army Corps of Engineers (USACE) and the CDFW.

POTENTIAL IMPACTS SUMMARY

The CNDDDB records search identified five special-interest bat and one special-interest bird species (white-tailed kite) as potentially occurring within the project area; however, no special-interest species were observed during the pedestrian survey of the project site and immediately surrounding areas. Potential direct and indirect impacts on special-status wildlife species would be considered potentially significant. Therefore, Mitigation Measure BIO-1 is recommended to avoid or minimize impacts to nesting birds, and Mitigation Measure BIO-2 is recommended to avoid or minimize impacts to roosting bats.

Following implementation of Mitigation Measures BIO-1 and BIO-2, project implementation would result in less than significant impacts related to the special-interest biological resources discussed above.

MITIGATION MEASURES

With implementation of the mitigation measures identified below, impacts to biological resources are considered less than significant.

Mitigation Measures (MM)

MM BIO-1 Preconstruction Nesting Bird Surveys. The trees that are present on site may provide nesting habitat for migratory birds protected under the Migratory Bird Treaty Act and the California Fish and Game Code. When possible, vegetation clearing should be restricted to outside the active breeding season (February 1–August 31) for those sensitive bird species present or potentially occurring within the project area or directly adjacent to the project area. However, some of these birds may start nesting as early as January or as late as September in certain years. Therefore, if vegetation is scheduled to be cleared during these extended breeding periods (i.e., January–September), or if it becomes absolutely necessary to clear vegetation during the active breeding season (February 1–August 31), a qualified biologist should conduct clearance surveys for active bird nesting prior to any clearing of vegetation. This is necessary to definitively ascertain whether or not any raptors or other migratory birds are actively nesting in the project area. The location of any active raptor or migratory bird nests would be mapped by the biologist and reported immediately to the construction manager. All construction activities in close proximity to active nests would need to be delayed, or otherwise modified, as necessary to prevent nest failure caused by construction activities.

A biological monitor should be present during all site-clearing and grading activities to flush mobile wildlife species and to ensure that there are no impacts to any areas to be protected.

MM BIO-2 Preconstruction Bat Surveys. Project demolition, grading and construction activities shall occur outside the active bat roosting season (April 1–August 31), if feasible. Should such activities occur during the roosting season (April 1–August 31), the County of Orange Planning Manager, or designee, shall verify prior to issuance of any demolition or grading permits, that the Applicant has retained a qualified Biologist to conduct a preconstruction bat survey no more than 3 days prior to the tree removal/relocation on the project site to verify the absence of bats on site. If active roosting bats are observed in existing trees on the project site, the relocation of trees containing roosts shall occur under the supervision of a qualified bat biologist to prevent potential mortality to roosting bats on site. The County Planning Manager, or designee, shall verify that a preconstruction bat survey has been conducted by a qualified bat biologist and, if the removal of trees with roosting bats

is required, shall verify that the removal of on-site trees containing roosting bats has occurred under the supervision of the qualified bat biologist.

- Attachments:
- A – Figures
 - B – 2016 Biological Resources Memorandum of Findings
 - C – California Department of Fish and Wildlife – Species List
 - D – California Native Plant Society – Inventory of Rare and Endangered Plants
 - E – United States Fish and Wildlife Service – IPaC Trust Resources Report

ATTACHMENT A

FIGURES

ATTACHMENT B

2016 BIOLOGICAL RESOURCES MEMORANDUM OF FINDINGS

ATTACHMENT C

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE – SPECIES LIST

ATTACHMENT D

CALIFORNIA NATIVE PLANT SOCIETY – INVENTORY OF RARE AND ENDANGERED PLANTS

ATTACHMENT E

UNITED STATES FISH AND WILDLIFE SERVICE – IPAC TRUST RESOURCES REPORT