



July 30, 2020

Coto de Caza Community Association Board of Directors  
c/o Ms. Beverly Eickmeyer  
Crummack Huseby Inc.  
25531 Commercentre Drive, Suite 100  
Lake Forest, California 92630

Re: Legacy at Coto - Planning Application No. PA 20-0022  
Comments on Initial Study/Draft Mitigated Negative Declaration

Dear Members of Board of Directors:

The Coto de Caza Community Association ("CCCA") has engaged my services to review and provide comments on the Initial Study/Draft Mitigated Negative Declaration ("Draft MND") that has been prepared by the County of Orange ("County") to serve as the environmental documentation for Planning Application No. PA 20-0022 ("Application"). The Application was submitted to the County's Public Works, Development Services/Planning Department by California Grand Villages Coto Partners, LLC ("Applicant") for the "Legacy at Coto" project ("Project"). The Project is being proposed for development on a 3.86-acre site located at 23333 and 23335 Avenida La Caza ("Project Site"). I understand that CCCA is responsible for administering and enforcing the CC&Rs and Village Architectural Guidelines which govern the use and development of the Project Site.

The Applicant is seeking the County's approval to demolish existing recreational uses at the Project Site and replace them with the Project, consisting of a 101-unit building for senior living residential use with business office and sales, private food service, private recreation amenities and a 113 square foot bistro open to the public. The Project proposes to provide 120 onsite parking spaces, primarily located in a parking structure, and 25 offsite parking spaces currently appurtenant to the Coto Valley Country Club (which is not part of the Project), for a total of 145 parking spaces. Construction of the Project would remove 93 existing trees. The Project Applicant is requesting permission from the County to deviate from the required fuel modification standards and is proposing a 4-hour wall that is 25 feet in height on the northern end of the senior living building. The Applicant is also seeking permission to (a) exceed the County's building height limit of 40 feet by an additional 4 feet 8 ½ inches and (b) deviate from the Orange County Zoning Code to allow seven compact parking spaces located at the main entry of the building.

**THE DRAFT MND DOES NOT COMPLY WITH CEQA AND THE CEQA GUIDELINES  
BECAUSE IT IS CLEAR THAT AN EIR SHOULD BE PREPARED FOR THE PROJECT**

The Draft MND fails to satisfy the requirements of the California Environmental Quality Act ("CEQA") and the State

CEQA Guidelines ("Guidelines"). As a threshold matter, the Notice of Intent to Adopt Mitigated Negative Declaration and the Draft MND are deficient because neither contains the mandatory public notice required by CEQA section 21167.6.2(d).

In my professional opinion, an Environmental Impact Report ("EIR"), not a mitigated negative declaration, should be prepared for the Project. Subdivision (f)(1) of section 15064 of the Guidelines explicitly provides that "... if a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect." Likewise, the very next subdivision, (f)(2), of section 15064 provides that a mitigated negative declaration can only be used in place of an EIR "... where clearly no significant effect on the environment would occur and there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment . . . ." Sections 15002(k), 15063(b)(2), and 15070 of the Guidelines specify these same standards for determining when a mitigated negative declaration may properly be used instead of an EIR.

As explained below in greater detail, there is substantial evidence, and a "fair argument" can be made, that the Project "may" result in significant adverse effects on the environment in the areas of aesthetics, air quality, biological resources, hazards due to wildfire, hydrology and water quality, land use planning, transportation and wildfire evacuation. In fact, based on the results of my analysis, I have concluded that, not only "may" the Project cause such adverse environmental impacts to occur, but the development of the Project "will" result in such impacts. As such, an EIR, rather than a mitigated negative declaration, should be prepared to properly analyze all of the significant environmental effects, reasonable project alternatives, and feasible mitigation measures associated with developing the Project.

In this regard, the Draft MND prepared for the Project is inaccurate and inadequate. The conclusions reached by the Draft MND regarding no impact and or less than significant environmental impact are not supported by evidence or analysis because the proposed Project Design Features and Mitigation Measures do not result in reducing the significant adverse environmental effects of the Project to no impact or less than significant impact.

Specifically, the Draft MND improperly concludes the Project will have no significant effect on the environment, but provides no evidence to support that conclusion with respect to the Project's significant adverse impacts on biological resources, the Waters of the United States, the Waters of the State, aesthetics, transportation and hazards due to wildfire risk and evacuation of the community during a wildland fire event.

Absent from the Draft MND is any analysis of the Project's transportation impacts in terms of vehicle miles travelled ("VMT"). As of July 1, 2020, CEQA section 21099 and section 15064.3 of the Guidelines make such a VMT analysis mandatory for all development projects being processed for approval in California. Since the Project is in the very early stages of the CEQA compliance process, sections 15002(e) and 15007(b) of the Guidelines make the Project subject to the provisions of section 15064.3 which require a VMT analysis to be performed before the Project can be considered for approval. However, this analysis has not been undertaken by the County, and that renders the Draft MND deficient.

In order to comply with the requirements of CEQA, not only should a proper VMT analysis be performed, but an EIR should be prepared that includes additional studies to fully identify and address the environmental effects of the

Project and incorporates all feasible mitigation measures in the Project in order to reduce or eliminate the Project's adverse environmental effects. The EIR would not only analyze the benefits of revising the design and design features of the Project, but would also cause the following studies to be revised if they have already been prepared or would prepare them in the first instance: air quality and greenhouse gas assessment, traffic impact study, biological resource assessment, stormwater analysis, 404 Permit concerning impact to Waters of the United States and Waters of State of California, 401 Permit regarding impact to riparian habitat, section 1600 Permit from the California Department of Fish and Wildlife, Tree Preservation and Replanting Plan, Fire Risk Assessment using FlamMap Model (or other CalFire approved model) and the Wildfire Emergency Evacuation Plan.

## PROJECT ANALYSIS

### Project Description

The Project is simply too massive to be developed on the Project Site. This is evident from (1) the numerous issues associated with the Project as described in the Project Description and associated plans provided in the Draft MND and (2) the lack of information necessary to disclose the actual adverse impacts to the Coto community from the implementation of this Project. The Project Description in the Draft MND is inadequate because it does not describe the Project accurately and, as such, an EIR should be prepared to properly disclose what is actually being planned for development so that the public can fully understand the Project's significant adverse environmental effects on the surrounding properties and the community of Coto de Caza in general.

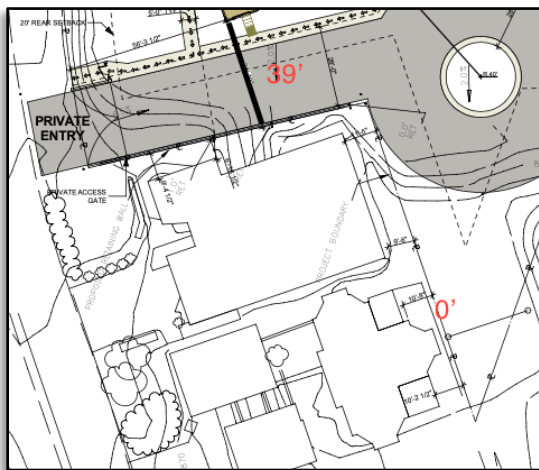
Notably, no other Community Center/Commercial building in Coto de Caza has ever been built in such close proximity to residential properties as is being proposed for this Project. No other intense/dense commercial or residential project of this type has ever been developed in Coto de Caza. The Project will significantly increase by 22% the number of homes in The Village. There are very few Community Center/Commercial buildings in Coto de Caza, as was purposely envisioned in the Coto Specific Plan. The largest building in Coto de Caza is the Coto de Caza Golf and Racquet Club, which is 40 feet in height, but is also located over 300 feet from the nearest residence and provides significant landscape screening and buffering. The Project proposes to locate construction directly on the property line in several locations with no landscape buffer or screening of any kind. In addition, the Project proposes to construct the 40-foot-high, 101-unit residential building less than 39 feet away from the nearest residence.

Although the Project is described as providing heavy landscaping to soften and buffer the development from adjacent properties, this is not the case. There is no landscaping between the Project's main access drive from Avenida La Caza and the parking structure entrance (Figure 3-9b-01). This will have a direct impact on the adjacent Coto Valley Country Club's facilities, especially the swimming pool that serves the community. There is a retaining wall proposed in this area, but an EIR needs to be prepared to provide a rendering of the view from the pool in order to understand the visual effect of this feature and to lessen its adverse visual impacts. Likewise, in the EIR, a project design alternative and related mitigation measures should be analyzed that would (a) set the access drive back from the property line by at least 20 feet in order to lessen its adverse visual impacts and (b) provide an adequate landscape buffer and screening between the Project and the community recreation facilities.



**Figure 3-9b-01**

Furthermore, an EIR should be prepared to provide mitigation in the form of landscaping between the residents on Via Alondra and the paved emergency access drive and turn around (Private Entry). The drive is on the property line and there is no room for landscape screening to soften the Project's visual adverse impacts, see Figures 3-6a and 3-12 above. The Project plans are inaccurate in depicting the location of the second residence in this area that actually has a 0' rear setback from property line and the building runs the length of the yard instead of only a small portion as depicted on Figure 3-6a, Site Plan. The existing tennis college provides a heavy screening of trees between the tennis courts and the residences that lessens the impacts from light and glare, noise and visual impacts. The Project proposes to provide sparse landscaping of low grasses, a few succulents and one tree in this area. Mitigation measures should be incorporated as part of an EIR to provide a minimum 20 feet of landscaping between the emergency access drive and adjacent properties to mitigate the Project's adverse impacts.



**Figure 3-6a**



**Figure 3-12**

As depicted on Figure 3-9b-01, Exterior Elevations, the northern most building elevation depicts a huge 25-foot tall 4-hour concrete wall as the entire end of the building. The 4-hour wall is needed because the Project as designed cannot meet the standards for fuel modification required in High Severe Wildfire Zones. An EIR should be prepared to study a project alternative and related mitigation measures that would involve redesigning the 101-unit building to eliminate the need for the 4-hour concrete wall by setting back the building, stepping back the roof line in this location, and providing architectural articulation and features to avoid the need for a large blank wall.



*Figure 3-9b-01*

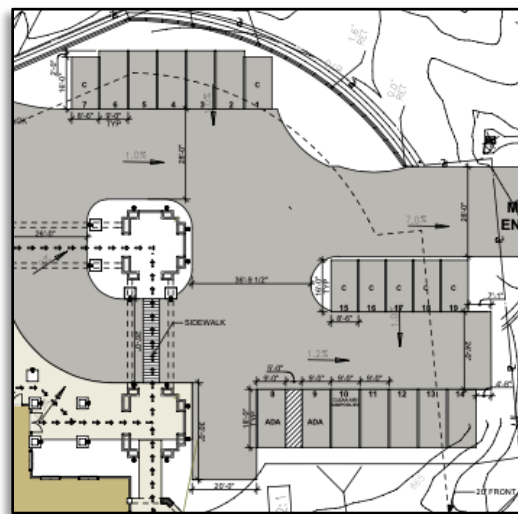
The Project Description in the Draft MND and associated Project plans are inconsistent in describing the proposed condition of the west elevation. Figure 3-13, Preliminary Grading Plan, labels the fire access sidewalk that encompasses the building as located at elevation 872.8 and depicts the adjacent non-disturbed protected streambed at grade 860.0, a difference of 12.8 feet. Figure 3-10, Retaining Wall Plan does not show a retaining wall in this location, but there clearly needs to be one and this should be addressed in an EIR for the Project. Figure 3-10 indicates that there is a steep stairway from the upper elevation near the main entry to the lower with the steep slope. This makes it a virtual certainty that the jurisdictional stream would be disturbed by the grading activities necessary to build a retaining wall. The development and associated grading are within the protected jurisdictional delineated stream and therefore will have a significant adverse impact to biological resources. An EIR should be prepared to correctly describe this area and to identify and address all environmental adverse impacts to the jurisdictional delineated stream.

Also, in the same area, the Project plans depict a pedestrian bridge, but, according to the Preliminary Grading Plan, the bridge connects to a retaining wall from the tennis courts. The Project Description indicates that the Project is providing east to west community pathway connections from Avenida La Caza to Via Alondra via this sidewalk and the steep stairway. This connection is not consistent with the requirements of the Coto Specific Plan for recreation and community connections. An EIR should be prepared to depict the location of the travel path that non-residents will use to provide this connection and the EIR should also explain how the Project will meet ADA requirements.

As part of an EIR, additional cross sections should be prepared to show the change in elevations in all areas in which retaining walls are being proposed, particularly in the area of the pedestrian bridge, the area between the community swimming pool and the Project drive, and the area adjacent to residences.

The Site Plan indicates that the drive aisle for the 15-car surface parking lot is a 1.2% slope grade. However, Figure 4.1-2a, Visual Simulation of the Entry from Avenida La Caza, shows vehicles parked on a steeper grade. That steeper grade is consistent with Figure 3-14, Conceptual Grading Plan, that depicts a steep change in grade between the entry area and the street. An EIR should be prepared to indicate the correct slope of the parking aisle. Although the visual simulation shows landscaping screening between the parked vehicles and the access drive from Avenida La Caza, Figure 3-12, Conceptual Landscape Plan, does not depict any landscaping in this area. As mitigation in an EIR, the proposed compact parking spaces should be removed in order to provide adequate landscape screening of the parked cars. There are many design conflicts and plan issues in this area of the Project that do not seem to have been fully reviewed or vetted by the County of Orange to the degree that typically occurs for projects of this nature, especially ones that have been released for public review.

Although the Appendix G, Parking Analysis Memorandum, concludes that the parking demand for the Project is 68 parking spaces, the Project proposes to provide 145 total parking spaces of which 120 parking spaces are located onsite and 25 are located offsite. This is more than two times what is required for the Project pursuant to the parking demand analysis. The Site Plan, Figure 3-6a, layout overloads the surface parking spaces and this results in parking spaces that do not meet the Orange County Zoning Code standards for parking lot design. The Project Applicant is seeking approval from the County to deviate from standards for seven compact parking spaces. However, there is nothing about the senior living facility that would seem to justify compact parking spaces in a visitor lot, except to accommodate an inadequate project design and a Project that is too large for the Project Site. As part of an EIR, a project design alternative and related mitigation should be analyzed to (a) eliminate compact parking spaces, (b) provide landscaping that screens any parked vehicles from offsite views, (c) provide for all Project parking to be located onsite, and (d) reduce unnecessary parking spaces.



*Figure 3-6a*

The Project Description does not accurately state the number of employees and staff that will be associated with the "resort" living Project and its many services and amenities. Table 3-5, Parking Provision, indicates the number of employees will be a mere 19 persons. This appears to be a material undercounting of the number of employees and staff that will serve a luxury-resort residential facility. The number of employees for a senior living facility of this type and size would be more like 70. It seems highly improbable that only 19 employees would be onsite at any one time., particularly during a shift change. It is reasonable to assume that the largest portion of employees and staff will be onsite during peak day-time hours with activities such as meal preparation and service, laundry and cleaning, management office, sales and providing social activities to the residents. An EIR should be prepared to address the impacts associated with a more reasonable and realistic estimate of the number of persons who will be employed in connection with the Project.

The Project only provides one parking space for each dwelling unit. However, many people over 60 are still working and, given the luxury nature of the proposed Project, it is reasonable to assume that the residents are likely to have more than one vehicle per unit. The parking demand analysis has significantly understated the parking needs for the Project in order to reduce Project cost by not constructing parking spaces to serve the Project's parking demand. As such, this is inadequate to properly describe the environmental effects of the Project and should be corrected in an

EIR.

An EIR should be prepared to indicate the route for refuse pick-up and deliveries and indicate where on the Site Plan the refuse and recycling enclosure is located.

Although the Project Description states the access from Via Alondra is only for emergency vehicles, the Site Plan labels this access as a "Private Drive". The plans for the Project show that there is a private drive that provides access to the parking structure. Emergency vehicles do not need to enter the parking structure to fight a fire. As part of a project design alternative and related mitigation measures in an EIR, all vehicle access to the parking structure should be removed from the emergency access drive. The Project proposes to put an access gate from Via Alondra. Since this access is restricted to only Orange County Fire Authority ("OCFA"), an EIR should analyze a project design alternative and related mitigation to close this access and install a locked gate that only the OCFA can open in order to prevent the use of this drive by residents and employees. An EIR should be prepared to specify an Emergency Access Route from Coto de Caza Drive to the Project. Via Alondra is a narrow rural road with only one outlet at Via Conejo and an EIR should analyze (1) not using this roads for medical emergency calls to the OCFA, except to respond to a structure fire and (2) directing all non-structure emergencies to the main building entrance off of Avenida La Caza.

The Project Description states that the Project will not allow any passenger pick-up or drop-off. This seems highly irregular and inappropriate for a senior living facility, considering the fact that the residents are elderly and visitors desire to give their elderly friends or family member the ease of not having to walk far to the car. A more reasonable assumption would be that passenger pick-up and drop-off would clearly be needed for this type of use. As part of an EIR, a project design alternative and related mitigation should be devised that would include a passenger pick-up and drop-off that meets the County standards. If the Project does not plan for this necessary function, it will occur anyway and may result in adverse impacts to the surrounding properties from a congested entry.

An EIR should be prepared to indicate the ADA path of travel in order to understand what the ADA pathway will have to cross from the two accessible parking spaces in the surface parking lot to the main entrance to the building. This is needed in order to determine if it will meet ADA regulations. At this point, it is unclear whether the ADA pathway users will need to cross behind the delivery truck parking. This needs to be clarified in an EIR

The Draft MND states that the Project is to be located on a 3.86-acre site, but the Site Plan indicates the site area is actually 4.2 acres and different site acreages are used in the appendices to the Draft MND. This difference in site area impacts the site coverage calculation, and also affects the analysis of the Project's significant adverse impacts on the environment. The actual landscaped area of the Project is only 8% of the site with the rest of the Project covered in pavement and buildings. As an example of inconsistent plans, the Due Diligence Plan is inconsistent with the Conceptual Grading Plan, and needs to be revised in an EIR to make sure all Project Plans and descriptions are consistent with each other.

The Project setting in the Draft MND is described as "suburban," which gives an image of tract homes on wide suburban streets, but that is simply not the case. The Project is located in the North Ranch area of Coto de Caza, which is the oldest part of Coto de Caza and this area was developed under significantly different development standards than the newer South Ranch area. As depicted in the photographs below, the Project is in the Coto Community Association area (Specific Plan Planning Areas 3 and 20) in North Ranch and is characterized by low



density residential, limited to three to six dwelling units per gross acre, homes clustered below ridges and hills, with stands of dense mature trees along the canyon floor and lower slopes with extremely limited access provided by twisting narrow rural roads with no gutters or sidewalks. These roads are used by pedestrians and equestrians.



*North Ranch Via Venado*



*North Ranch Via Alondra*



*South Ranch: Augusta*

The Project Description of the existing land uses and associated square footage is confusing and needs to be clarified in an EIR because no existing building square footage total is provided to determine the percentage increase of the Project square footage from the existing condition. The Project Description seems to indicate the existing building area (former Vic Branden Tennis College) totals 18,102 square feet of which 14,280 square feet is currently being used for office, archive storage, and a design center for custom homes. If this is the case, then the Project, with



a total building area of 154,131 square feet, would be 750% larger than the existing building of 18,102 square feet building. This represents a huge increase in building mass and size compared to what is currently located on the Project Site. The increase becomes even more startling when the surrounding properties are considered. Those properties are at a maximum density of six dwelling units per acre, but the Project involves over 25 dwelling units per acre, which would represent a 316% increase in density compared to the surrounding area. These massive increases need to be properly disclosed and analyzed in an EIR

An EIR should be prepared to include the land use designation information for the surrounding land uses that is set forth in Table 3-1 of the Coto de Caza Specific Plan ("Coto Specific Plan").

The Project Description provides a summary of construction activities and construction durations for those activities, but this summary significantly underestimates how much time such construction activities will actually take to complete for a residential project of this size. This underestimation of the Project's construction impacts results in a failure to properly assess the Project's significant adverse environmental effects on air quality, greenhouse gas, noise and other construction activities on the surrounding properties and community. Rather than incorporating the County regulations, an EIR should be prepared to specify the following construction hours that are consistent with the CC&Rs governing the Project Site:

Hours of Operations: All construction operations may be carried on between the hours of 7:00 AM and 6:00 PM on Monday through Friday and 8:00 AM and 4:00 PM on Saturdays. In the event County Ordinances are more restrictive, the County Ordinances shall prevail. No construction shall be permitted on Sundays or the following holidays: Christmas Eve Day, Christmas Day, New Year's Day, Memorial Day, 4th of July, Labor Day, and Thanksgiving Day.

The Orange County Zoning Code allows senior living facilities in specific plan areas that are zoned for multifamily or commercial uses. The number of units do not affect the residential unit limitations established in the specific plan. Base district regulations are used for development standards. In this case, the Project is proposing to apply the Community Center/Commercial development standards in the Coto Specific Plan. However, Orange County Zoning Code Section 7-9-142, Senior Living Facilities states that a senior living facility use permit application shall be reviewed on a case-by-case basis and appropriate modified development standards can be approved based on compatibility with adjacent development. A strict application of the Community Center/Commercial development standards would not be appropriate for the Project. As part of a project design alternative in an EIR, the 101-unit building should be redesigned to be more compatible with Medium Residential standards than a commercial facility in building height, a maximum of 35 feet. As mitigation in an EIR, the Project should provide increased landscape setbacks between the access drives from adjacent residential uses and swimming pool in order to provide landscape buffer and screening.

The use of the Community Center/Commercial development regulations renders the Project incompatible with surrounding properties. A senior living facility is a residential land use. The Project does not "primarily serve the residents of the community" such as a commercial recreation use or a fire station. There is no reasonable justification for the stated premise that the Project should be at a "scale to identify its presence as a major element within the community." To the contrary, the existing Community Center/Commercial uses within Coto de Caza (a) have significant setbacks from adjacent residential uses and streets; (b) are typically located at a lower elevation from the adjacent streets and residents to provide a low profile when viewed from the street; (c) have limited building elements at a height of 40 feet; (d) provide significant landscape buffer and screening; and (e) are designed to protect streambeds and oaks, sycamores and willow trees.



*Figure 4.1-2a with a Red Line Indicating Project Building Height in Red*

The Project, in comparison to the existing tennis college building, increases the building roof line elevation by 61 feet. The existing building's finished floor is at a lower elevation than the Avenida La Caza so that the building does not dominate the surrounding properties. Therefore, the Project will significantly change the visual character of the area and will not be compatible with the adjacent properties. As part of a project design alternative in an EIR, the Project should be redesigned so that the roof line elevation is similar to the height of the existing building using the same finished floor elevation as the existing. Although the Project Description states the parking structure will be subterranean, it is not. In certain areas, such as at the main entrance to the building, fill soil has been added to raise the ground level to the higher first floor to make it appear the parking structure is subterranean. This raised fill is depicted as the new finished floor elevation for the building. This misleading feature should be addressed in an EIR in order to accurately depict the true visual nature of the Project and to analyze how it will adversely impact the surrounding properties.

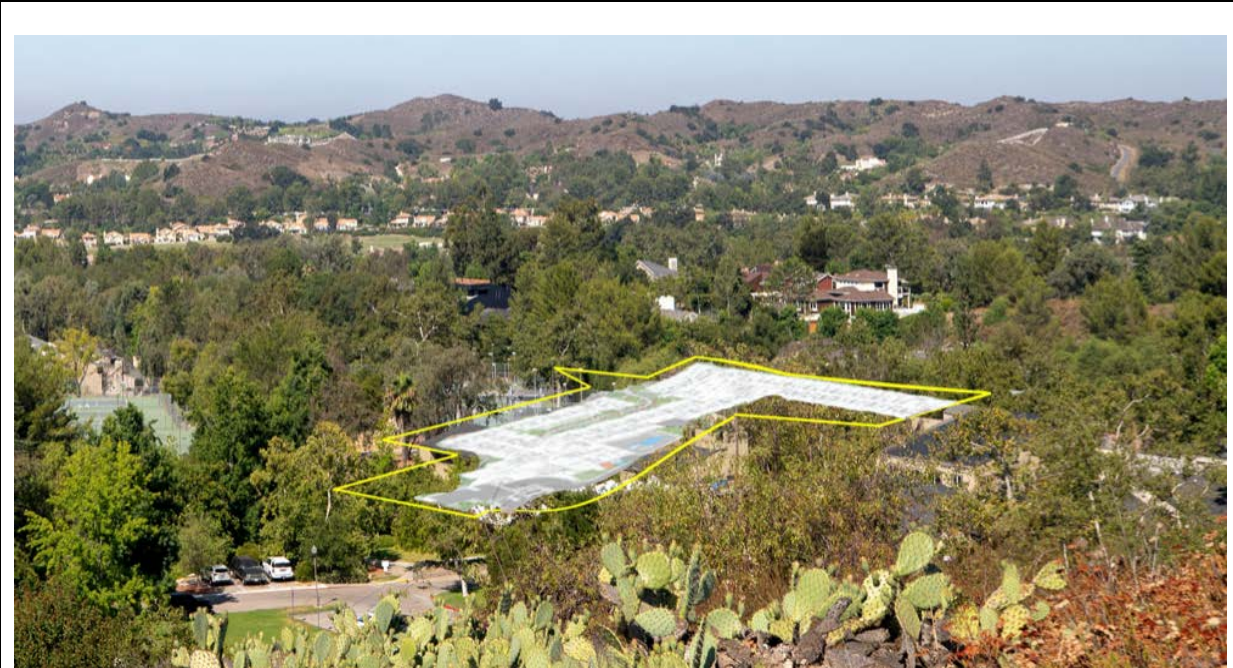
An EIR should be prepared to provide a summary of how the Project meets the requirements of the Coto Specific Plan, the Community-Wide Area Plan, the Coto Oak Tree Preservation Guidelines, and the Coto Village Architectural Guidelines, all of which govern the design of the Project. The Community-Wide Area Plan requires the preservation of streambeds and natural features. The Coto Oak Tree Preservation Guidelines require the preservation of oaks, sycamores, and willow trees and also impose a replacement standard of three (3) 15-gallon trees for every one tree removed. An EIR should be prepared to provide a tree preservation and replanting plan consistent with these Preservation Guidelines. The Project will be reviewed by the Coto Community Association for compliance with the Coto Village Architectural Guidelines. The Project is considered a residential use for purposes of the architectural review.

An EIR should be prepared to provide information on why the Project requires a conditional use permit. In addition, in order to fully disclose the full scope of the Project, an EIR needs to explain why the Project Applicant is seeking permission to deviate from standards for building height and compact parking spaces.

## ENVIRONMENTAL ANALYSIS

### Aesthetics

The Project will have significant adverse effects on scenic vistas, but these impacts are not discussed in section 4.1, Aesthetics of the Draft MND. Specifically, the Project will result in a significant increase in building mass, as well as in the height of the building's roof line elevation compared to the existing building's roof line elevation. Also, the Project will introduce significant light and glare (glow) to the Coto de Caza valley as seen from the Sunrise Regional Riding and Hiking Trail along the nearby ridgeline. An EIR should be prepared to perform a view analysis from this public trail and mitigation needs to be provided as part of the EIR to reduce the significant adverse effects on scenic vistas.



*View from Sunrise Regional Riding and Hiking Trail – Project Outlined in Yellow*

The Project will conflict with approved regulatory documents concerning scenic quality in that the Project removes significant, protected trees identified as suitable for preservation, but does not present a plan to preserve trees or a replanting plan. As part of an EIR, mitigation measures should be provided to preserve trees and a replanting plan must be prepared in compliance with the Coto Oak Tree Preservation Guidelines, the Community-wide Area Plan, and the Coto Specific Plan.

There is nothing about the architecture of the Project that is rural in character except for the name “Country French”. The Project design calls for white stucco with small stone elements at the entry and a few areas on the building elevations. As part of a project design alternative and related mitigation in an EIR, the Project should be redesigned to reduce the mass and height of the 101-unit structure and to provide significant landscape buffer and screening, including boundary landscaping to reduce the visual impact on surrounding properties. As discussed above, the scale, mass, and height of that structure will significantly conflict with the aesthetics of the existing community.

The Project will create new sources of substantial light and glare which would adversely affect nighttime views in the

area. Although the Project Design Features state the Project will comply with County regulations such that all direct rays will be confined to the property and shielded, the light fixtures identified in Figure 3-11, Typical Example of Lighting Features, do not comply because the light source is not shielded as required. Coto de Caza is a Dark Skies community and architectural guidelines require only necessary lighting and Dark Skies lighting fixtures. As part of an EIR, an architectural lighting plan should be prepared with design lumen calculations to properly disclose the type and location of light fixtures. In the EIR, an analysis should be performed of the existing nighttime lighting level in the area of the Project and the lighting levels post-construction. In addition, the EIR should address the Project's new sources of substantial light and glare that will result in significant adverse effects on aesthetics in the surrounding community.



*Figure 3-11, Unshielded Light Fixtures*

In summary, the Project may—in fact, will—cause significant impacts on scenic vista and trees, will degrade scenic quality, and will create a new sources of light and glare that have not been analyzed or mitigated, thus requiring the preparation of an EIR to address and mitigate these significant impacts.

## **Air Quality**

The air quality analysis in the Draft MND relies on the estimated construction durations for the activities listed in Table 3-8, Summary of Construction Activities. However, the projected construction durations are significantly understated when compared to the actual duration of construction that the surrounding properties will likely experience. In this case, the duration of the various construction activities for the Project will directly affect the severity of the Project's significant air quality impacts on the surrounding properties. As part of an EIR, Table 3-8 should be revised to reflect not the Applicant's most optimistic construction schedule for the Project, but, instead, a realistic and reasonable construction schedule based on a third-party contractor's experience building such projects. Only then will the true extent of the Project's air quality impacts be identified and disclosed to the public.

The Project will result in significant adverse air quality impacts in the form of dust and fumes, including diesel fumes. The severity of these impacts will be especially acute with respect to (a) the residential properties in close proximity to the Project and (b) the community pool users because the Project will be constructed immediately adjacent to the property line in these areas. The children and adults recreating in the community swimming pool are considered sensitive receptors, as are the residents in the surrounding homes. An EIR should be prepared to perform an air quality analysis that would study the unique and particular conditions of the Project, such as its impacts on the community swimming pool users, given that the Project's main access drive will be located right next to the existing pool.

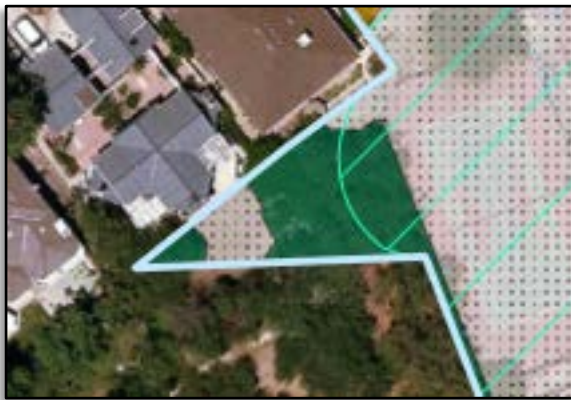
The air quality section of the Draft MND is inadequate and fails to properly identify and analyze the Project's



significant environmental effects on air quality, both for short term and long-term impacts. The Project may—in fact, will—have significant adverse air quality impacts on sensitive receptors, thus requiring the preparation of an EIR to address and mitigate these impacts.

## Biological Resources

The Project will result in significant adverse effects to biological resources. The Biological Resources Assessment, Appendix B1 of the Draft MND, concludes that the Project is not subject to State of California or Federal jurisdiction because Jurisdictional Waters of the United States (“WOUS”) and Waters of the State (“WOS”) will not be impacted by Project activities. Indeed, Figure 5 of Appendix B1 indicates that the Project will not impact the area behind the residents and adjacent to the tennis courts that are designated as Coast Live Oak Woodland as well as WOUS and WOS. However, in sharp contrast to the Biological Resources Assessment, the Conceptual Landscape Plan shows this area as being completely disturbed by grading activities and ornamental landscaping.



*Figure 5 Appendix B1, Biological Resources Assessment*



*Figure 3-12 Conceptual Landscape Plan MND*



*Figure 5, Appendix B1, Biological Resources Assessment*

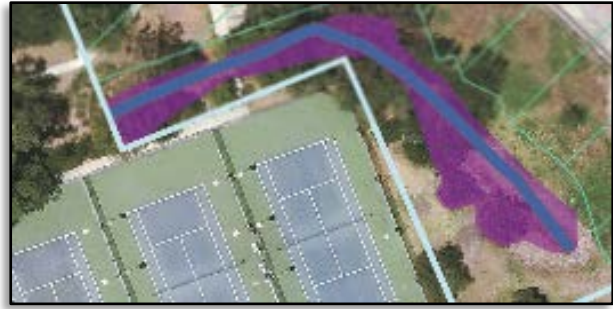


*Figure 3-12 Conceptual Landscape Plan MND*





**Figure 4.4-3 Delineation Map MND**



**Figure 4.4-3 Delineation Map MND**

An EIR should be prepared to address the fact that the Project will significantly impact WOUS and WOS in the areas that will be disturbed by grading activities and ornamental landscaping. The WOUS and WOS are the head waters of the Canada Gobernadora, a protected stream that is part of the San Juan Creek watershed and therefore subject to the Clean Water Act. Additional discussion of the Project's significant adverse impacts to WOUS and WOS is set forth below in the Hydrology and Water Quality section of this report.

The Biological Resources Assessment concerning special status wildlife species is based on one field survey done in December 2019. This field survey analysis is not adequate to determine the Project's impacts on special status wildlife species. The Biological Resources Assessment recognizes a special status species of bat on the Project and concludes there is a potential for bat roosting in Project trees. However, the Project will eliminate 93 existing trees (every existing tree on the Project Site) with the construction of the Project as depicted on Figure 4.4-4, Tree Inventory Map. Therefore, the Project will completely destroy the bat roosting habitat. The Mitigation Measures BIO-1 are not adequate to protect the special status bat species, since the implementation of the Project will result in the removal of the potential roosting trees. In order to fully disclose and mitigate the Project's significant adverse effects on biological resources, an EIR should be prepared to analyze and adopt mitigation measures that have been reviewed and accepted by the US Fish and Wildlife Service and the California Department of Fish and Wildlife.

The Project must comply with the regulatory requirements for impacts to WOUS and WOS and must obtain a Section 404 permit from the US Army Corp of Engineers, a Section 401 permit from the San Diego Regional Water Quality Control Board, and Section 1600 and Section 4150 permits from the California Department of Fish and Wildlife. These requirements are confirmed in the Conceptual Water Quality Management Plan, Appendix F1 of the Draft MND. By necessity, therefore, the Project must undergo review by the regulatory agencies prior to any determination of less than significant impacts to these resources. As such, an EIR should be prepared to address the significant adverse impacts, direct and indirect, that the Project will have on special status species regulated by the California Department of Fish and Wildlife and the US Fish and Wildlife Services as well as jurisdictional delineated streams.

The Project is in conflict with the Coto Community-Wide Area Plan, the Coto Specific Plan, and the Coto Oak Tree Preservation Plan that require (a) protection and avoidance of natural features such as the Canada Gobernadora upper stream waters, (b) avoidance and preservation of oak, sycamore, and willow trees and (c) preparation of a restoration and replanting plan with a replacement of three trees for every one tree removed. The Project does not protect or avoid impacts to the Canada Gobernadora, a protected jurisdictional delineated stream, but, instead, will cause such impacts as a result of (1) generating dirt and small fines from grading, (2) placing ornamental grasses right up to the edge of the streambed, and (3) using fertilizers and pesticides that will increase pollutants to the San Juan Watershed. Construction of the Project will impact 17 oak trees, seven sycamore trees, and one willow tree

that are deemed suitable for preservation as disclosed in Appendix B2, Tree Inventory Report. An EIR should be prepared to formulate and analyze a project design alternative and related mitigation that would preserve existing oaks, sycamores, or willow trees and would provide mitigation for direct Project impacts to these natural resources.

An EIR needs to be prepared to discuss the important fact, notably omitted from the Biological Resources Assessment in the Draft MND, that Coto de Caza is a potential wildlife movement corridor for mountain lions. These apex predators are frequently encountered in this area of Coto de Caza because of the dense cover provided by vegetation and water sources. An EIR should be prepared to devise mitigation measures to protect wildlife movements to water sources and to provide a method for notifying residents that the Project Site is a mountain lion movement area.

The Project may—in fact, will—cause significant adverse effects on biological resources that cannot be avoided or mitigated to a level of insignificance, thus requiring the preparation of an EIR to address these impacts.

## **Energy**

The Energy section of the Draft MND states that the Project will provide electric vehicle charging stations in 10 percent of the parking spaces, yet the Project plans do not indicate the location of these charging stations. However, since the Project will supposedly be providing 145 parking spaces, the Project must have 15 electric vehicle charging stations in order to be in compliance with the Orange County General Plan energy policies. Accordingly, an EIR should be prepared to revise the Project plans so that they are brought into compliance with these policies.

The Energy section of the Draft MND states the Project will be designed to be solar ready with the roof of the 101-unit building designed to hold solar panels. However, an EIR needs to be prepared to show the location of the solar panels and provide visual simulations of views from public trails.

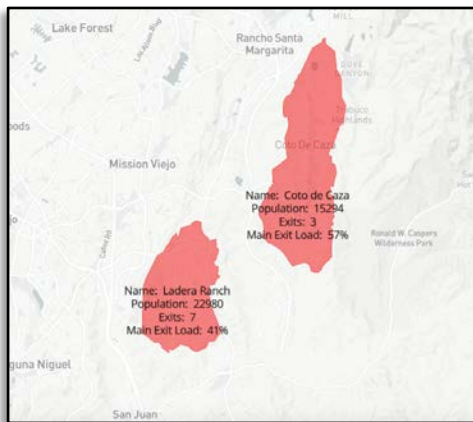
## **Hazards and Hazardous Materials**

An EIR should be prepared to analyze the significant adverse impacts on hazards and hazardous materials that the Project will cause by exacerbating, impairing, and interfering with wildfire risk and the evacuation of the community of Coto de Caza. These impacts will be especially severe in the North Ranch area of Coto de Caza during a wildfire event, due to its rural nature, narrow twisting roadways, and mature trees. The analysis in the Draft MND, including the proposed evacuation plan, and the conclusions reached in the Draft MND that the Project will have a less than significant impact to evacuation or exposing people to risk of loss, injury or death involving wildfire, are not supported by facts or reason. The Draft MND contains no discussion of the existing conditions concerning wildfire risk or evacuation risk to the Coto de Caza Community and how the Project adds to and exacerbates these risks. An EIR must be prepared to devise a Fire Protection and Emergency Evacuation Plan similar to the study prepared by Dudek for the Esperanza Hills EIR, dated June 2013, which utilized FlamMap fire behavior modeling and evacuation plan, and included key indicators on when the community should evacuate.

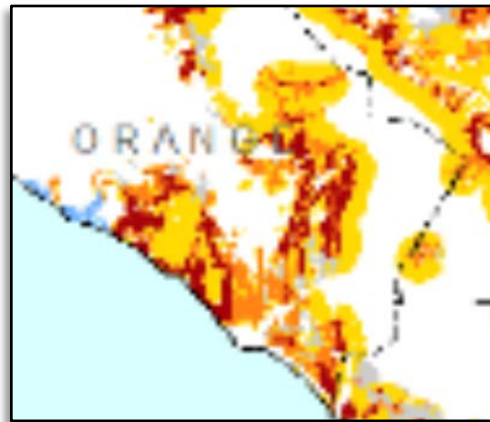
Unquestionably, Coto de Caza is in a Very High Sever Fire Zone and the Project Site will be significantly impacted by wildfire events, Figure 4.20-1a. The number of wildfire events in Orange County, and throughout California, has significantly increased in the last decade. However, since the Draft MND fails to do so, an EIR should be prepared to discuss the critical existing hazard condition that puts the entire Coto de Caza community at risk of loss, injury and

death from wildfire events. The Project significantly increases this risk by introducing a vulnerable population in the North Ranch setting. In a study prepared in 2019, StreetLight Data, a San Francisco based traffic analytics company, found that the community of Coto de Caza was the most evacuation-constrained community in California with a very high fire-hazard severity risk of wildfire.

In fact, Coto is ranked 13<sup>th</sup> overall in the nation in terms of its disaster and evacuation risk factors. This is based on several factors: (1) Coto de Caza is located in the wildlands-urban interface area of Orange County and the Project is located less than one-half mile from protected wildland areas including Starr Ranch and Cleveland National Forest; (2) ingress and egress of the entire Coto de Caza community, a population of 14,931 in 2020 (highest population of 15,041 in 2012) is severely limited to only three access points with limited travel lanes, and (3) the population of Coto de Caza is older with a median age of 42.2 years than the rest of Orange County with a median age of 38.3. There are additional risk factors that are unique to Coto de Caza concerning emergency response time and various responsible agency for fire and evacuation. An EIR should be prepared to analyze the fact that the Project will introduce a significant vulnerable population, in high numbers, into an already critical hazard situation that will increase the risk of loss, injury, and death in the Coto community.



**CWPP Evacuation Risk Areas**

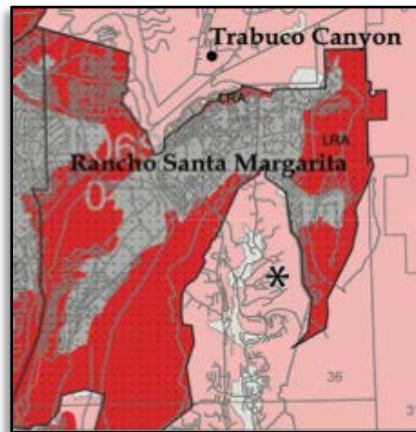


**Very High Priority Areas**

*Community Wildfire Prevention and Mitigation Report (Wildfire Prevention Report)*, prepared by California Department of Forestry and Fire Protection, dated February 22, 2019 that was prepared in response to Executive Order N-05-19, identifies Coto de Caza as a Very High Priority for reducing threat to communities as shown in red on the map. This is based on the identification of vulnerable communities situated next to wildlands and magnified by socioeconomic factors such as age and lack of ingress and egress corridors.

The Project is located across the street from open space maintained by CCCA that directly connects to Coto de Caza's Scenic and Resource Preservation land as designated by the Coto Specific Plan. These resource protected areas connect directly to the resource protected Audubon's 4,000-acre Starr Ranch that borders Caspers Wilderness Park the Cleveland National Forest. The OCFA has designated Coto de Caza as being located in a Very High Fire Hazard Sever Zone (HVFHSZ) as identified by CalFire pursuant to Gov. Code 51175-89. The wildfire response for Coto is set forth in the State and Federal Responsibility Zone, as depicted on the Very High Fire Hazard Severity Zones In Unincorporated Orange County, Figure 4.20-1a of the Draft MND. This map indicates this area of Orange County is served by local responsibility areas in red and state (CAL FIRE) and federal (USFWS) responsibility areas in pink. Although, the Draft MND analysis assumes that all these agencies will all coordinate there is no discussion of

response times for the existing condition or with the Project in a wildfire event.



*Figure 4.20-1a, Fire Hazard Severity Zones*

A County-wide Community Wildfire Protection Plan ("CWPP"), covering Orange County was prepared in April 2017. The purpose of the CWPP is to provide people living in the CWPP boundaries with an overview of the wildland fire risks. This study identified the extreme evacuation risk to the community of Coto de Caza because there are only three (3) exits for the entire community. The Draft MND inappropriately concludes that, since there is not an approved emergency evacuation plan, then the Project does not have an adverse impact on emergency evacuation of the community and the Project is not required to provide any mitigation. This is clearly not a reasonable basis for failing to analyze the significant adverse effects to the wildfire hazards caused by the Project. Recently, the California auditor was highly critical of state and county emergency management officials for inadequate disaster and evacuation planning concerning the Camp Fire that left many people trapped on clogged roadways with little time to escape, as reported by the Sacramento Bee, December 5, 2019.



*Evacuation – Camp Fire Paradise California*

Furthermore, the Draft MND concludes that the Project's claimed evacuation plan is to evacuate by buses for all 140 elderly residents and that the Project will do so before any evacuation order is issued. This proposed evacuation plan

is not supported by professional analysis or modeling and puts the entire community at risk of loss, injury, and death because the buses will block the narrow twisting roads trying to get to the Project and interfere with the evacuation of existing residents, the trailering of horses from the equestrian facility, and emergency vehicles attempting to access the fire. The Draft MND provides no analysis of (1) how much time will it take to evacuate the Project in consideration of the existing conditions; (2) how long will it take to order the buses and from how far away; and (3) how long will it take for the buses to arrive and how long it will take to load the Project's estimated 140 elderly residents.

As discussed above, North Ranch has narrow twisting streets, and, even assuming for argument's sake that the Project's residents and those in the North Ranch area are successful in accessing Vista Del Verde, the majority of other residents in Coto de Caza will also need to use Vista Del Verde to access Coto de Caza Drive because there are only three (3) exits out of Coto with a limited number of lanes. This traffic will then meet the traffic from persons evacuating Dove Canyon, Robinson Ranch and Rancho Santa Margarita. Without providing any evidence, the Draft MND concludes that the narrow treelined roadways and driveways in the North Ranch area will act as firebreaks to minimize wildfire. This is simply not the case and it is unreasonable to reach such a conclusion, particularly with respect to a wildfire fanned by high winds that will spread fire embers for miles from the fire source. An EIR should be prepared to properly address these wildfire conditions and analyze the extent to which they will be exacerbated by the development of the Project.



There is no discussion in the Draft MND of emergency firefighting water storage or supply for the community of Coto de Caza, the North Ranch area, or the Project. Although the Project is providing fire hydrants pursuant to the new fire codes, the question as to whether there be water available to fight a wildfire has gone unanswered in the Draft MND. An EIR should be prepared to provide information on availability and amount and method of storage for emergency water supply. The Project is proposing to supply numerous fire hydrants, but this would be a futile measure if water storage is not adequate to supply the hydrants. This was a critical issue for the development of the Esperanza Hills project in unincorporated Orange County that was located in the Wildland-Urban Interface. Accordingly, an EIR needs to be prepared to analyze the availability of emergency water storage and supply for a wildfire event.

The Wildfire Prevention Report recommends that CalFire and other state agencies provide expertise and support to local government in making safe choices to enable land use planning that minimizes fire risk. The CWPP states that local jurisdictions can reduce the risk of wildfire risk based on a solid understanding of where and how to locate and arrange residential development. An EIR should be prepared to study whether the Project should not be developed in Coto de Caza because of (a) the high risk of severe wildfire, (b) the location of the Project in the wildland urban



interface area, (c) the serious constraints on the ability to successfully evacuate Coto de Caza during a wildfire event, and (d) the introduction of a vulnerable population that increases the severity of the hazard of loss, injury, and death from wildfire. The EIR should also address whether there are feasible alternative locations outside of Coto de Caza for this Project that have not been considered in the Draft MND.

Due to the numerous wildfire risks and hazards discussed above, the Project will require approval of a tentative map to create a building parcel. Government Code section 66474.02, as added by SB 1241, requires that a legislative body of a county must make three findings before approving a tentative map, or parcel map, in an area located in a state responsibility area or a very high fire hazard severity zone. Before any such tentative map could be approved, an EIR would need to be prepared to identify the fire equipment access road standards, signage, street identification, and as private water supply reserves for emergency fire use. Even if the County were to prepare such an EIR and adopt a statement of overriding considerations pursuant to CEQA, the substantive requirements in the Government Code regarding fire protection would still need to be satisfied. As such, the preparation of an EIR would be required to devise wildfire hazard and evacuation plans and related mitigation measures that would need to be in place in order for the County to be able to make the findings required by Government Code section 66474.02.

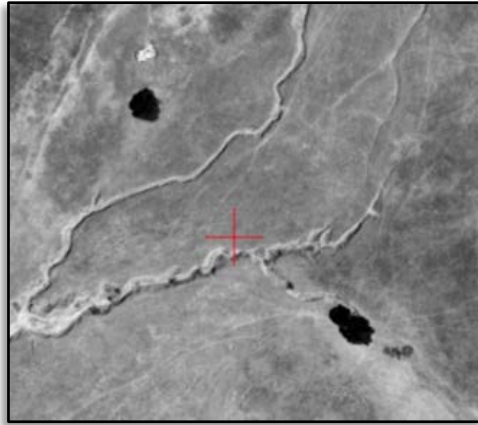
In summary, the Project will impair the implementation of, or physically interfere with, an emergency evacuation plan and would expose people and structures, directly and indirectly, to significant hazards and risks of loss, injury, or death involving wildland fires. The Project does not propose any mitigation measures to reduce these hazards and risks and the Project's design features are not reasonable or adequate to lessen these impacts to less than significant.

The Project may—in fact, will—have significant adverse effects on hazards due to wildfire that cannot be avoided or mitigated to a level of insignificance, thus requiring an EIR to be prepared to address these impacts.

## Hydrology and Water Quality

The Conceptual Water Quality Management Plan ("CWQMP"), Appendix F1 of the Draft MND does not correctly analyze the Project and therefore cannot be used to determine the Project's potential significant effects on hydrology and water quality. The CWQMP describes the existing site's condition as approximately 75% impervious surfaces based on the "tennis courts, a pool, parking, and offices". Only a portion of the tennis courts, parking and offices are on the Project site and the community swimming pool is not located on the Project site. An EIR needs to be prepared to revise the CWQMP so that it clearly and correctly delineates the study area and the existing conditions at the Project Site.

The CWQMP states that the Project Site is 3.44 acres in size, but the Project Description in the Draft MND states that the Project Site is 3.86 acres. To add to the confusion, the Site Plan indicates that the site is 4.2 acres. These discrepancies regarding the size of the Project Site will obviously distort the analysis and conclusions set forth in the Conceptual WQMP and they need to be corrected. Contrary to what is stated in the Draft MND's Project Description and on the Site Plan the actual impervious landscaped area of the Project is only 8% of the Project Site. The Conceptual WQMP does not address or analyze the existing flooding that occurs during heavy rain events that results in ponding at Avenida La Caza and Via Pavo Real, the Project entry. An EIR needs to be prepared to devise mitigation measures to ensure that this flooding will not block the use of the Project's driveway.



*1960's Aerial Photo of Streambeds*

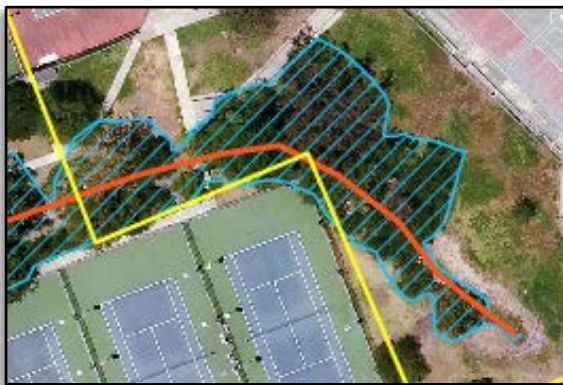
There is a jurisdictional delineated streambed on the western portion of the site that, in connection with the existing site condition, was piped under the tennis courts. As depicted in the photograph taken in the 1960's prior to the development of Coto de Caza, streambeds are clearly shown on the Project Site as indicated with a red marker. It is unclear if the piping of the streambed was reviewed or approved by State and Federal regulators and it clearly impaired the blueline watercourse. However, the Project is an entirely new development that involves the constructions of a large 101-unit residential building and the demolition of the existing improvements located on the Project Site. Moreover, the Project proposes to further alter the streambed by again rerouting the stream in a culvert to avoid the Project's building and pool along the west property line. An EIR should be prepared to devise a project design alternative and related mitigation to (a) avoid adversely impacting the streambed, and (b) restoring the streambed along with its riparian habitat adjacent to the Project consistent with the Coto Specific Plan, State and Federal regulations, and the County general plan.

The Conceptual WQMP states that the Project will follow the TGD's guidelines to reduce erosion by not disturbing natural channels and steep or unstable slopes. The Project proposes to grade and develop within inches of the natural channel and proposes a 10-foot high retaining wall next to the natural channel as indicated on the Project plans. The Conceptual WQMP states this area will have less than a 5% slope with some 2:1 slopes. This is not consistent with the other Project plans showing construction within the jurisdictional delineated stream. Accordingly, an EIR needs to be prepared to devise a project design alternative and related mitigation that will cause the Project to be setback to avoid the delineated stream and ensure that the natural channels are not adversely impacted by the Project.

The Project will result in 90% impervious surfaces with no infiltration because of soils and limited landscaping. The Project proposes to hold all stormwater runoff onsite and pipe it into a Modular Wetland System within a proprietary bioretention system. The Draft MND provides no evidence that this proposed system will work for such a large site. Rainfall amounts are significantly greater in the Orange County foothills where the Project is located. There are often storms that produce greater than .25 inches per hour as assumed in Figure E-7 of the CWQMP. The Draft MND does not provide evidence that the bioretention system is sized to hold and treat stormwater from a 100-year storm. As such, the Project could result in erosion of jurisdictional streambeds and increased pollution from untreated runoff from the Project's roof and pavement areas. All the bioretention systems are planned to discharge into the one streambed located on the eastside of the Project, but an EIR should be prepared to study whether that could result in a significant alteration to the streambed located on the western side of the Project. An EIR is also needs to provide

information on discharge during 100-year storms and the adverse impacts to the jurisdictional delineated streambeds.

The CWQMP includes a letter concerning jurisdictional delineation by VCS Environmental, dated November 7, 2018, and includes Figure 1, Delineation. However, the Figure 4.4-3, Delineation Map in the Biological Resources Section of the Draft MND is significantly different and that results in a failure to adequately identify and address the Project's significant adverse effects on jurisdictional delineated streambeds. When comparing the two different delineation exhibits, the Project impact area is shown in light blue lines, and it can be seen that these lines have been manipulated in the Draft MND to prevent the public from seeing and understanding that the Project will substantially impact a jurisdictional delineated streambed. As discussed above, the Project's Conceptual Landscape Plan places new ornamental landscaping within this delineated streambed.



*Figure 1 – Delineation Appendix F1 of the MND*



*Figure 4.4-3 Delineation Map of MND*

Although not discussed in the Draft MND, the Project will (a) cause significant impacts to water quality standards, (b) substantially degrade surface water quality, (c) substantially alter the existing drainage pattern of the site and area, (d) result in substantial erosion and siltation on- or offsite, (e) substantially increase the rate of surface runoff that could result in flooding offsite, (f) create runoff water that would exceed the capacity of the existing stormwater drainage system, and (g) impede and redirect flood flows. These significant adverse impacts to hydrology and water quality have not been mitigated by the Project design or design features.

As described above, the Project may—in fact, will--have significant adverse effects on hydrology and water quality that cannot be avoided or mitigated to a level of insignificance, thus requiring an EIR be prepared to address these impacts.

## Land Use and Planning

The Land Use and Planning section of the Draft MND concludes that, since the Project will not physically divide an established community, it would not result in any land use incompatibility impacts. The Project Description and the Project plans do not support this conclusion.

The proposed Project has already succeeded in “dividing” the established community because the residents in the surrounding areas are strongly opposed to the Project for a number of reasons, including the fact that it will create a

major land use incompatibility problem. For decades, the CC&Rs governing the Project Site have expressly limited the property to recreational use, but now the Project Applicant proposes to develop over 100 residential units on the Project Site in direct conflict with this long-standing recreational land use restriction. The overwhelming community opposition to allowing the Project Site to be used for large-scale residential purposes is, by itself, a recognized ground under CEQA and the Guidelines for requiring the preparation of an EIR for the Project.

In addition to the fact that the Project is directly incompatible with the recreational land use restriction in the CC&Rs, there are numerous other examples of incompatibility impacts that will be caused by the Project, and an EIR should be prepared to properly address the many ways in which the Project would not be compatible with the areas surrounding the Project Site.

For example, although the Project Description states that the existing community pathway connections will be provided, the plans fail to indicate the location of these pathways. The existing bridge that crosses the jurisdictional streambed will now lead to a 10-foot retaining wall. The Project plans indicate that any pedestrian link to the community will need to use a steep stairway. Given these incompatible features, an EIR should be prepared to clearly delineate and analyze the community's pathways through the Project.

More examples of incompatibility would include the fact that the Project is too massive for the Project Site and will create a new roof line that will be at three times as high of the existing roof line. Furthermore, the Project does not provide landscape screening or buffering between residential uses and the Project. The Project does not provide landscape screening or buffering between the Project's main access to the parking structure and the community swimming pool. The Project will result in unshielded light fixtures, does not comply with The Village Community Architectural Guidelines, and will not be consistent with Coto de Caza Dark Skies community standards. The Project seeks to alter roadways to accommodate the Project that are not consistent and compatible with the desires of the community.

Moreover, the Project directly conflicts with the Coto Specific Plan, the Community-wide Area Plan, and the Orange County General Plan and Zoning Code. The Project proposes to allow the community access to a 113 square foot bistro, why? The bistro is so small, what is the purpose of allowing access to this one amenity, when the community does not have access to any other. Table 4.11-1, Neighborhood Commercial Guidelines Consistency, states the community can walk, bike and use vehicle parking to access the bistro. How will the community bike to the bistro, what is the path for bicycles? Where is the bicycle parking for the bistro? Is the community allowed to park in the Project? What parking spaces are reserved for the community to access the bistro? The Project assumes that 25 offsite parking spaces will be "reserved" for the bistro. What is the path of travel from these offsite parking spaces to the Project? An EIR should be prepared to answer all of these questions.

Table 4.11-1 also refers to the general standard of one acre of commercial development per 1,000 people in the service area. The population of Coto de Caza is 15,041; therefore, there should be 15 acres of commercial development in Coto de Caza. The 113 square foot bistro hardly seems adequate to address the undeveloped commercial needs of the area.

There is no discussion of what type of license this Project requires or conditions of approval that would prevent the building owner from revising the operational license to allow a skilled nursing facility or memory care facility. Conditions should be included in the Project to limit the license to be consistent with the Project Description and

intent.

As discussed in the Land Use and Planning section of the Draft MND, a senior living use permit is discretionary, is reviewed on a case-by-case basis, and must meet each of the following three requirements:

1. Demonstrate compatibility with adjacent development.

As discussed in detail above, the Project is not compatible with the adjacent development. The Project is too massive and out of scale for the Project Site as reflected in the poor design solutions that shoehorns the Project onto the Site. The parking structure is not subterranean as described in the Project Description. The Project places 17 feet of fill to hide the parking structure at the Project entry as it faces Avenida La Caza to make it appear subterranean from that vantage point. This raising of the land results in the Project's roof line being significantly higher (60 feet) than the existing building, resulting in the Project visually dominating the surrounding area. The Project brings the driveways directly up to the property line next to existing residents and the community swimming pool without providing any landscape screening or buffer of any kind. The Project will create light and glare and is does not comply with the Dark Skies community standards. The Project design features are not adequate and therefore the Project is not compatible with adjacent existing land uses.

2. Provide a parking study that will be used to determine if a modification to the base district parking standard will be necessary:

The parking analysis, Appendix G, is not adequate for the Project and bases parking on a trip generation rate that obviously understates the parking demand for the Project. The parking analysis concludes only 68 parking spaces are required for the Project. However, the Project is providing 145 parking spaces (120 onsite and 25 offsite). The clear inference to be drawn from this is that the Applicant knows that the Project has a greater parking demand than is indicated in the parking study. The Project includes 3- and 2-bedroom units and the Project is geared towards active seniors, 60 years and older, many of which will have more than one vehicle. The parking analysis understates the number of employees and staff that will be needed during peak daytime hours. The parking demand study should be rejected and an EIR should be prepared to perform a parking analysis using a more appropriate trip generation rate.

3. Provide the location of all services and how they are accessed by residents and non-residents, including deliveries and including universal design features in compliance with the American with Disabilities Act (ADA).

The Project Description describes access pathways for the community that are not consistent with the Project plans and do not meet ADA requirements. As discussed above, the pedestrian bridge leads into a 10-foot retaining wall and the path of travel includes a steep stairway. Although the Project Description states the community will have reserved parking to access the bistro, the plans do not indicate the location of the reserved parking. The Project description states that the community will be able to access the bistro with bicycles; however, there is no bicycle parking shown on the plans.

The Project may—in fact, will—have significant adverse effects on land use and planning that cannot be avoided or mitigated to a level of insignificance, thus requiring the preparation of an EIR to address these impacts.



## Noise

The Noise analysis of the Draft MND does not fully disclose the Project's noise impacts from construction activities because it is based on a construction phasing schedule that understates the duration of the Project's construction activities. The Project will generate noise from construction of the Project that is 50-70 dBA higher than the what is typically experienced in the very quiet surrounding area. The substantial adverse impacts from construction noise will have a duration greater than the year and one-half estimated in the Project Description. The construction duration could reasonably extend approximately one year beyond that estimate. An EIR should be prepared to devise mitigation measures to lessen the impact of construction noise, such as reduced hours of construction.

The mitigation measures in the Draft MND are not adequate to mitigate the Project's substantial adverse noise impacts. The noise complaints should be directed to the County of Orange Code Enforcement Officer rather than the contractor who does not have the same interest or incentive as the County in remedying noise complaints or enforcing restrictions on the Project. An EIR should be prepared to adopt noise reduction measures, including (1) placing Noise monitoring equipment next to the nearest residents to directly monitor and record noise levels and (2) automatically reporting these noise levels to a representative of CCCA for monitoring, as well as to the County of Orange Code Enforcement officer. The mitigation measures in the EIR should also specify the remedial actions the contractor and Project developer must take to reduce noise levels when notified by CCCA or by the Orange County Code Enforcement officers.

## Transportation

The Transportation section of the Draft MND does not adequately disclose the substantial adverse transportation impacts that will result from the implementation of the Project. The Draft MND only describes the roadway configuration of Coto de Caza Drive as a 4-lane divided road, but fails to describe the roadway configuration of Vista Del Verde, Via Conejo Via Alondra, Via Venado, Avenida La Caza or Trigo Trail. These other roads are single lane streets without lane striping and are rural in character with narrow roadways, changes in elevation and twisting turns. The traffic study in the Draft MND also fails to note that the roads in the area do not have sidewalks and are therefore used by pedestrians. The roadways are also used by equestrians and children accessing school bus stops.

The transportation impact analysis is based on a trip generation rate that is too low for the Project. The trip generation associated with a luxury resort living residential facility should be significantly higher. Active people over 60 still work, commute, shop outside of Coto de Caza, go to doctor's appointments and out to dinner similar to other residents in Coto de Caza. The trip generation rate associated with a population of 140 residents and the approximately 70 employees and staff should be analyzed and mitigated in connection with preparing an EIR for the Project.

The Project Trip Distribution, Figure 4.17-2 indicates that 5% of the Project traffic will travel north using Via Pajaro to Plano Trabuco Road. This is an overstatement of the actual travel patterns of this area. An EIR should be prepared to study the more reasonable traffic condition of 100% of the Project traffic going through the 3-way stop at the intersection of Via Conejo and Via Pajaro to access the intersection of Vista Del Verde. The traffic study does not analyze the Via Conejo/Via Pajaro intersection, nor does it acknowledge that (a) it is within 100 feet of the Vista Del Verde/Via Pajaro intersection and (b) this area is further impaired with equestrian users crossing to access trails and

children access to the school bus stop.

The traffic study does not provide any description of the limited access gates for Coto de Caza or how the Project will impact the operation of the gate at Coto de Caza Drive, where 95% of the traffic will pass through. The Project introduces an intense commercial operation into Coto de Caza that has not been experienced before. An EIR should be prepared to devise mitigation measures and design features to lessen the impact to the guard gates from the commercial operation and residents of the Project.

The Project does not comply with CEQA guidelines section 15064.3, subdivision (b) in that the traffic study does not provide an analysis of the vehicle miles traveled ("VMT") associated with the Project, nor does it provide any VMT mitigation. Section 15064.3, which has been published in the Guidelines since December 2018 and became effective statewide on July 1, 2020, requires a VMT analysis to be prepared to address a project's significant adverse effects on transportation and related mitigation. VMT Impact Analysis Guidelines published by the California Governor's Office of Planning and Research, dated December 28, 2018 ("OPR Technical Advisory") recommend a threshold of significance requiring a VMT analysis to be performed if a given project would generate more than 110 average daily trips ("ADT"). The Project will generate 382 ADT, even with using a trip generation rate that understates the traffic generated by the Project and thus will exceed this threshold. As such, an EIR should be prepared to address the Project's VMT-related impacts as required by the Guidelines.

The Project does not provide design features or mitigation measures to reduce VMT. The Project Site is not located in a High-Quality Transit Area because it is situated well over a half mile from a transit station and is not served by two or more existing bus routes with a frequency of service intervals of 15 minutes or less. Pursuant to Orange County Transportation Authority, there are no bus routes with an interval of 15-minute or less south of SR 55 that serve south Orange County. The Project will increase VMT in the County of Orange. The state VMT guidelines recommend that a Project provide mitigation to accomplish a 15% reduction in VMT. An EIR should be prepared to devise mitigation measures to reduce the Project's VMT impacts if possible.

What is apparent from a review of the public record is that the Project has not been reviewed by Orange County Public Works staff in its typical manner and seems to have been hurriedly processed in order to circulate the Draft MND prior to July 1, 2020, in hopes of avoiding having to comply with the VMT analysis requirements in section 15064.3 of the Guidelines. Curiously, the Project has only been through one application submittal review by Public Works planning staff, First Submittal-PA20-0022, dated May 1, 2020, that listed many issues with the Project that have still not been resolved as is apparent from the incomplete and inadequate nature of the Project Description, Project plans, and other Draft MND documents. Planning staff typically provides additional follow-up comments on the applicant's responses to the 1st screen check set of comments from the County. This has not been done for this Project, there is no evidence in the public record that the Project was reviewed more than one time before the Draft MND was circulated for public review.

As such, this appears to be an unprecedented case of special treatment being afforded to an applicant seeking approval of a large-scale development in Coto de Caza in that the Project was only reviewed once by County planning staff before the application was deemed complete for purposes of making a CEQA determination. Typically, a formal letter is sent to the applicant that the project has been deemed complete. In this case, the public record indicates that the County did not issue such a letter. Instead, the Applicant's consultant, which prepared the Draft MND, was allowed to circulate that document for public review just prior to the July 1, 2020 effective date for section

15064.3 in an attempt to purposely avoid having to identify and mitigate the Project's VMT impacts. In this regard, the Draft MND states:

However, projects commenced and circulated for public review prior to this date are not required to prepare VMT-bases analyses. (See CEQA Guidelines Section 15004(c)) The analysis in this study utilizes existing, long-established protocols in accordance with CEQA and the County's CEQA thresholds to evaluate traffic impacts. No impacts would occur, and no mitigation is required.

A review of Guidelines section 15004(c) does not reveal any exemption from the VMT requirements in section 15064.3. Section 15002 of the Guidelines addresses the "Time for Compliance" with the Guidelines and provides that a governmental agency must comply with all CEQA procedures in effect when the agency proposes to "approve" the activity in question. The Project has not yet been approved and, until that approval has been given, the public is allowed (in fact, required under CEQA section 21177) to submit comments citing instances of noncompliance with CEQA before the close of the public hearing on the project. In this regard, section 15007(b) of the Guidelines provides that "New requirements in amendments will apply to steps in the CEQA process not yet undertaken by the date when agencies must comply with the amendments." The "approval" step in the CEQA process has not yet been undertaken for the Project.

Likewise, under subdivisions (a), (c), and (f) of section 15064 of the Guidelines, the time for a public agency, such as the County, to determine whether a given project may have a significant effect on the environment is after the public has been given an opportunity to express its views on the subject and to make a fair argument that the project may have such an effect on the environment in light of the "whole record" before the agency. That important step in the CEQA process is now underway, and members of the public are submitting their comments on the Draft MND for the County to consider in determining the significance of the environmental effects caused by the Project. Thus, the County must comply with the VMT analysis requirements of section 15064.3 by preparing an EIR to address the VMT impacts of the Project which have clearly not been mitigated to a level below the threshold of significance suggested by OPR.

The Project may—in fact, will—have significant adverse effects on transportation that cannot be avoided or mitigated to a level of insignificance, thus an EIR must be prepared to address these impacts.

## Wildfire

In addition to addressing "wildland fires" in assessing a project's potentially significant environmental effects on hazards and hazardous materials, the Environmental Checklist Form that is attached as Exhibit G to the Guidelines now requires "wildfire" to be separately assessed in determining its significance as an impact on the environment. Specifically, the Guidelines call for the following questions to be answered assessing each project that is subject to CEQA: If located in or near state responsibility areas or lands classified as very high fire hazard severity zones, would the project: (a) Substantially impair an adopted emergency response plan or emergency evacuation plan? (b) Due to slope, prevailing winds, and other factors, exacerbate wildfire risks, and thereby expose project occupants to pollutant concentrations from a wildfire or the uncontrolled spread of a wildfire? (c) Require the installation or maintenance of associated infrastructure (such as roads, fuel breaks, emergency water sources, power lines or other utilities) that may exacerbate fire risk or that may result in temporary or ongoing impacts to the environment? (d) Expose people or structures to significant risks, including downslope or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes?

With reference to question (a) above, the Project is located both in a state responsibility area and an area that is classified a Very High Fire Hazard Severity Zone. The Project will result in significant adverse effects relating to wildfire. The Project will impair and contribute to the severe lack of evacuation routes for the community of Coto de Caza. As discussed above in the Hazard section, Coto de Caza has the most restricted access points for evacuation in the entire State of California and is ranked the 13<sup>th</sup> most restricted in the nation. This is a critical issue for the community of Coto de Caza and a disaster waiting to happen.

In fact, the current conditions are so dire that the County should not approve the development of one more dwelling unit in Coto de Caza until the issue of evacuation access has been adequately addressed, an EIR has been prepared and certified that includes a formal written evacuation plan has been approved by the County, and there is a program put in place to inform the residents in the community how and when they need to take action if certain wildfire events occur.

The Draft MND proposes to leave the evacuation of Coto de Caza to the discretion of law enforcement agencies at the time of the wildfire emergency and assumes that those agencies will somehow create additional access points, create an evacuation plan, enforce it, and communicate door-to-door with the entire community. This is simply not reasonable or adequate given the severity of the situation and the potential for injury and loss of life to the Coto de Caza community.

In addition, the Project proposes to significantly add to the number of elderly people into the area, which are recognized by CalFire as a vulnerable population in wildfire events that will exacerbate the severity of the situation. The Project also proposes to require all its residents to be bussed from the site. This cannot reasonably be enforced because it is inconceivable the staff would be willing or able to prevent people in a rapidly moving wildfire event from attempting to leave in their own vehicles to save their lives. Therefore, contrary to what is presented in the Draft MND, it is not reasonable to conclude that the Legacy at Coto staff will be able to determine when to evacuate prior to any evacuation order.

As discussed in the Hazard section, the proposed evacuation by bus will further congest the narrow roadways and could block other residents from evacuating as well as firefighting equipment from entering the area. The Draft MND incorrectly assumes that the Project will not cause congestion during a wildfire evacuation event based on the Project's trip generation rate. This is not supportable because trip generation is based on daily behavior and trip counts, and has nothing to do with the emergency evacuation of a community. An EIR should be prepared to formulate an adequate evacuation plan for the Project to address the Project's significant adverse effects relating to wildfire.

The evacuation plan to be prepared for the Project as part of an EIR should be a Fire Protection and Emergency Evacuation Plan that is similar in form and content to the study prepared by Dudek for the Esperanza Hills EIR, dated June 2013 that used FlamMap fire behavior modeling to create an evacuation plan and made recommendations as to when the community should evacuate without relying on communication or notice from firefighting personnel or law enforcement officers. This is very important because wildfire events are unpredictable and wind-driven that can give a person little or no time to react. An evacuation plan would provide trigger points when Coto de Caza needs to evacuate and the community would know the length of time that is expected to successfully evacuate. For example, the Esperanza Hills plan determined that, if a wildfire event occurred within a certain area given wildfire history and

winds during Santa Ana conditions and terrain, the community should evacuate. This trigger area was miles from the Esperanza Hills development.

This is the type of information that should be set forth in an EIR for the Project so that the residents in the surrounding community can understand the significant restraints to evacuation and to appreciate that it will take substantially longer to evacuate than they can envision. As is evident by past wildfires in California, people wait too long to evacuate, and communication is extremely difficult. Communication is even more difficult, now that electric companies turn off power to lessen their liability during high wind events. The wildfire analysis in the EIR that should be prepared for the Project should include alternative means of communication if the power is turned off.

The Project will have significant adverse wildfire effects due to slope, winds during Santa Ana conditions, and other factors that exacerbate wildfire risk. The Project is within a half mile of a wildland area and, therefore, is directly exposed to wildfire risk. There is no evidence in the Draft MND that the regional riding and hiking trail, narrow tree covered streets, and residential driveways will act as fire breaks to protect the Project. Likewise, there is no analysis in the Draft MND of the fuel load of the adjacent open space and North Ranch area of Coto de Caza to conclude that wildfire spread will be minimized. The discussion of prevailing winds is not relevant since wildfire events in Orange County are associated with sporadic Santa Ana wind conditions.

The Draft MND does not provide any analysis of Santa Ana wind conditions and exposure to air pollutants from wildfire. Many of the homes and buildings in Coto de Caza were constructed prior to the 2010 California Building Code that required fire hardening of structures. These structures are vulnerable to wildfire spread from embers generated miles from the fire source. As often witnessed during wildfire events, attics catch on fire first from embers driven under eaves and down air vents. These vulnerable buildings add to the available fuels that spread wildfire.

The Project may—in fact, will—have significant environmental effects relating to wildfire events that cannot be avoided or mitigated to a level of insignificance, thus requiring the preparation of an EIR to address these impacts.

### **Mandatory Findings of Significance**

The Project has the potential to substantially degrade the quality of the environment and substantially reduce the habitat of a wildlife species. The mitigation Measure BIO-1 for impacted special listed species does not result in protection of species habitat, but, instead, results in the removal of the habitat. Since the Project will impact one or more jurisdictional streams, the Project needs to obtain regulatory permits from both federal and state regulatory agencies.

The Project has impacts that are individually limited, but cumulatively considerable in that there are 44 dwelling units listed for a related cumulative project that, if approved, will exacerbate the substantial adverse effects on hazards and wildfire to the community of Coto de Caza. The Draft MND lists another 172 dwelling units that, if approved, will exacerbate the substantial adverse effects on hazards and wildfire on the community of Coto de Caza. As of January 1, 2020, state Law allows the construction of Accessory Dwelling Units ("ADUs") as a ministerial approval to lessen California's housing shortage. Given the typically large single-family lots, it is reasonable to conclude that there will be a significant increase in the population of Coto de Caza as ADUs are constructed and occupied. This will have a significant cumulative effect on transportation, hazards, and wildfire.



Implementation of the Project will cause substantial adverse effects on human beings, both directly and indirectly by causing a large number of vulnerable adults to reside in a High High Sever Wildfire Zone that has the most constrained evacuation routes in California. This will result in the potential of loss, injury, and death to the residents of the Project and the Coto de Caza community.

## Project Alternatives

An EIR should be prepared for the Project in order to examine a range of reasonable project alternatives and feasible mitigation measures that will avoid and reduce the adverse environmental impacts generated by the Project. The Project objective is to construct an attached residential building for people 60 and over. This project objective may not be accomplished without findings of overriding consideration for impacts to Aesthetics, Biological Resources, Hazards, Wildfire and Transportation. In addition to a No Project alternative, alternatives to the Project should incorporate the following design features, measures, and revisions, as well as the other items mentioned above:

- Reduce the number of units
- Reduce the building size
- Increase the landscape screening and buffer next to residents and the community swimming pool
- Provide an adequate number of parking spaces for employees, staff, residents and community using the bistro located onsite
- Construct the parking structure below existing ground elevation to reduce the roof line elevation of the Project when compared to the existing building's roof line
- Provide architectural enhancement to all sides of the building
- Eliminate the need for a 4-hour concrete wall to meet fuel modification and defensible space regulations
- Provide a Bioretention BMP that is sized for a 100-year storm
- Avoid disturbing any jurisdictional waters of the United States and California
- Restore the western streambed to its natural water course
- Preserve all suitable oak, sycamore, and willow trees
- Limit retaining walls to a maximum of 6 feet in height
- Preserve, but, if not possible, replant all oaks, sycamore, and willow trees consistent with the Coto Tree Preservation Plan
- Provide ADA assessable community pathways through the Project and to connect to commercial facilities open to the community
- Provide bicycle parking

In addition to analyzing the effects of a reduced-density alternative to the Project, and given the fact that the residents of Coto do not want to lose recreational opportunities that were planned for the Coto community as part of the Community-wide Area Plan and Coto Specific Plan, an EIR for the Project should also study the environmental effects of developing a project alternative that would preserve the recreational use of the Project Site by reusing the existing facility to provide, for example, a number of recreational uses, such as indoor sports courts for basketball and volleyball, an outdoor sand volleyball court, outdoor roller hockey rinks, multi-sport cages for baseball, tennis, and hockey, etc. Such an alternative would need to be vetted with the members of the community, but it would certainly merit analysis in an EIR for the Project to determine its feasibility as a project alternative that might greatly lessen or avoid the significant adverse impacts of the Project and be entirely compatible with the CC&Rs governing

the Project Site.

Given the significant environmental effects of the Project, another project alternative should be considered that would locate the Project outside of a High Sever Wildfire Zone and not within the Coto de Caza gated community in order to reduce the Project's adverse effects on the environment.

Thank you for the opportunity to provide my review and comments on the Initial Study/Draft Mitigated Negative Declaration for the Legacy at Coto project.

Whittaker Planning Services



Susan B. Whittaker  
Principal

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