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**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



January 29, 2021

Kevin Canning  
 Orange County Public Works  
 601 North Ross Street  
 Santa Ana, CA 92701  
[LegacyatCoto@ocpw.ocgov.com](mailto:LegacyatCoto@ocpw.ocgov.com)

**Subject: Legacy at Coto California Grand Villages (PROJECT), Notice of Preparation (NOP) SCH #2020060567**

Dear Mr. Canning:

The California Department of Fish and Wildlife (CDFW) received a Notice of Preparation (NOP) of a Draft Environmental Impact Report (DEIR) from Orange County Public Works (County) for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

## **CDFW ROLE**

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the state. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 *et seq.*) Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 *et seq.*), the project proponent may seek related take authorization as provided by the Fish and Game Code. CDFW also administers the Natural Community Conservation Planning (NCCP) program. Orange County (County) is a participating landowner under the Central/Coastal Orange County NCCP/Habitat Conservation Plan (HCP).

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<sup>1</sup> CEQA is codified in the California Public Resources Code in section 21000 *et seq.* The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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## PROJECT DESCRIPTION SUMMARY

**Proponent:** Orange County Public Works (County)

**Objective:** The objective of the Project is to construct a 95-unit active senior living residential community on a previously developed site. Primary Project activities include clearing, grubbing, grading, demolition, landscaping, and construction of a 51,000-square-foot building with a subterranean parking facility.

**Location:** The Project site is located at 23333 and 23335 Avenida La Caza in unincorporated Orange County. The project site consists of 3.86 acres, bordered to the northwest by Via Alondra, to the southeast by Avenida La Caza, to the east by the existing Coto Valley Country Club, and to the west by existing residential homes and the Silver Bronze Corporation (SBC) tennis courts.

**Biological Setting:** The Project site topography descends to three existing drainages located west, east, and south of the Project site. The NOP indicates that a small portion of the western end of the Project site is within the 100-year flood zone. Vegetation communities within the Project site include 0.14-acre coast live oak woodland, 0.16-acre mixed oak scrub/peppertree woodland, and 3.58 acres of disturbed/developed land. No sensitive plant or wildlife species were observed on the Project site in the 2019 biological survey. Previous analysis (MND 2019; SCH# 2020060567) of the project site identified three special status species with a moderate potential to occur: pallid bat (*Antrozous pallidus*; California Species of Special Concern (SSC)), western mastiff bat (*Eumops perotis californicus*; SSC), and western red bat (*Lasiurus blossevillii*; SSC). Two special status species have low to moderate potential to occur within the Project site: coastal range newt (*Taricha torosa*; SSC) and coastal whiptail (*Aspidoscelis tigris stejnegeri*; SSC).

## COMMENTS AND RECOMMENDATIONS

CDFW previously analyzed the Mitigated Negative Declaration (MND) associated with this this Project and submitted a comment letter to the County in July 2020. The County did not approve the MND and the Project Description has been updated to accompany the newly proposed NOP and subsequent DEIR. CDFW recommends that the DEIR analyze potential impacts and mitigation for the species addressed in our prior comment letter, summarized in the species-specific comments below. CDFW offers the comments and recommendations below to assist the County in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct, and indirect impacts on fish and wildlife (biological) resources.

### I. General Comments

#### Comment #1: Hydrological Impacts

CDFW has responsibility for wetland and riparian habitats. It is the policy of CDFW to strongly discourage development in wetlands or conversion of wetlands to uplands. We oppose any development or conversion that would result in a reduction of wetland acreage or wetland habitat values, unless, at a minimum, project mitigation assures there will be "no net loss" of either wetland habitat values or acreage. Development and conversion include but are not limited to conversion to subsurface drains, placement of fill or building of structures within the wetland, and channelization or removal of materials from the streambed. All wetlands and watercourses, whether ephemeral, intermittent, or perennial, should be retained and provided with substantial setbacks that preserve the riparian and aquatic values and maintain their value to on-site and off-site wildlife populations.

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Mitigation measures to compensate for impacts to mature riparian corridors must be included in the DEIR and must compensate for the loss of function and value of a wildlife corridor.

CDFW also has regulatory authority over activities in streams and/or lakes that will divert or obstruct the natural flow, or change the bed, channel, or bank (which may include associated riparian resources) of any river, stream, or lake or use material from a river, stream, or lake. For any such activities, the project applicant (or "entity") must provide written notification to CDFW pursuant to section 1600 *et seq.* of the Fish and Game Code. Based on this notification and other information, CDFW determines whether a Lake and Streambed Alteration Agreement (LSAA) with the applicant is required prior to conducting the proposed activities. CDFW's issuance of a LSAA for a project that is subject to CEQA will require CEQA compliance actions by CDFW as a Responsible Agency. CDFW as a Responsible Agency under CEQA may consider the County's Environmental Impact Report for the project. To minimize additional requirements by CDFW pursuant to section 1600 *et seq.* and/or under CEQA, the document should fully identify the potential impacts to the stream or riparian resources and provide adequate avoidance, mitigation, monitoring and reporting commitments for issuance of the LSAA.

**Recommendation:** The DEIR should include an analysis of the project's direct, indirect, and cumulative impacts on hydrologic features, including a discussion of impacts as they pertain to Fish and Game Code section 1600 *et seq.* If impacts to the bed, bank, or channel of a stream - constrained or otherwise - may occur, we encourage the County to consult further with CDFW regarding the possible submittal of a LSA Notification package. A Notification package for a LSA may be obtained by accessing CDFW's web site at <http://www.wildlife.ca.gov/Conservation/LSA>.

## II. Species-Specific Comments

### COMMENT #2: Bat Impacts

Three special status bat species have a moderate potential to occur within the Project site: pallid bat, western mastiff bat, and western red bat. Direct impacts to bats could occur from damage or removal of roosting habitat; indirect impacts could occur from human interference, light disturbance, or construction noise causing disruption of maternal colonies and a decline of breeding success.

**Recommendation:** To reduce potential bat impacts to less than significant, CDFW recommends the following protocol be incorporated into the DEIR.

1. An initial bat survey should be conducted during the maternity season (March 1 to August 31) by a qualified bat biologist to confirm if any maternity colonies have been established within the Project site. Survey protocol should include an appropriate combination of suitable habitat inspection and sampling, as well as at least one evening emergence and acoustic survey. Any ground disturbance or removal of vegetation/suitable roosting habitat should be conducted no more than three days after pre-construction surveys are completed. Furthermore, eviction of any bats found day-roosting during the maternity season should be avoided.
2. If an active roost is identified during maternity season, CDFW requests the opportunity to review any mitigation and exclusion plans for concurrence prior to implementation. Removal of the roost should only occur outside of the maternity season, when the mitigation plan has been approved by the County and by CDFW, and only when bats are not present in the roost. The mitigation plan should detail the methods of excluding bats from the roost and the plans for a replacement roost in the vicinity of the Project site.

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3. If special-status bat species or a maternity roost of any bat species is present, but no direct removal of active roosts will occur, specific avoidance measures should be determined by the bat biologist, which may include implementation of a construction-free buffer around the active roost. Combustion equipment such as generators, pumps, and vehicles should not be parked or operated under or adjacent to the roost habitat. Vibration and noise should be avoided, and personnel should not be present directly under the colony.
4. If the pre-construction survey determines that no active roosts are present, then trees/suitable habitat should be removed within three days following the pre-construction survey. All potential roost trees should be removed in a manner approved by a qualified bat biologist, which may include presence of a biological monitor. Additionally, all construction activity in the vicinity of an active roost should be limited to daylight hours.

### **COMMENT #3: Coastal Range Newt and Coastal Whiptail Impacts**

Two special status species have low to moderate potential to occur within the Project site: coastal range newt and coastal whiptail.

**Recommendation:** To reduce impacts to less than significant, a pre-construction presence/absence survey for Coastal Range newt and coastal whiptail should be performed by a qualified biologist on the day that construction activities, including demolition and grading activities, occur within the Project site where suitable habitat is present. The survey methodology should be consistent with accepted protocols or guidelines for determining presence of sensitive reptile and/or amphibian species in southern California. If either species is detected within the Project site during the survey, avoidance and minimization measures should be implemented such as temporary fencing. Construction personnel should conduct daily inspection of trenches and holes for entrapped wildlife each morning prior to the onset of Project construction, and inspection of pipes, culverts, and similar construction material for entrapped wildlife at the beginning and end of the day.

### **COMMENT #4: Species Relocation Plan**

In addition to CESA, CDFW currently implements its authority to issue permits for the take or possession of wildlife, including mammals, birds, and the nests and eggs thereof, reptiles, amphibians, fish, certain plants, and invertebrates for scientific, educational, and propagation purposes through Section 650, Title 14, California Code of Regulations, by issuing Scientific Collecting Permits. If wildlife is to be physically touched and/or moved, the County should provide a Species Relocation Plan to CDFW for approval prior to the commencement of construction activities. CDFW generally does not support the use of relocation, salvage, and/or transplantation as mitigation for impacts to species, as studies have shown that these efforts are experimental in nature and largely unsuccessful. A Species Relocation Plan may be appropriate to indicate protocol should any species be found.

### **ENVIRONMENTAL DATA**

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a data base which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link:

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[http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB\\_FieldSurveyForm.pdf](http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB_FieldSurveyForm.pdf). The completed form can be mailed electronically to CNDDDB at the following email address: [CNDDDB@wildlife.ca.gov](mailto:CNDDDB@wildlife.ca.gov). The types of information reported to CNDDDB can be found at the following link: [http://www.dfg.ca.gov/biogeodata/cnddb/plants\\_and\\_animals.asp](http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp).

## FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

## CONCLUSION

CDFW appreciates the opportunity to comment on the NOP to assist the County in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Jessie Lane, Environmental Scientist at (858) 636-3159 or [Jessie.Lane@wildlife.ca.gov](mailto:Jessie.Lane@wildlife.ca.gov).

Sincerely,

DocuSigned by:

  
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## ATTACHMENT

A. CDFW Comments on the Mitigated Negative Declaration for the Legacy at Coto Project (SCH #2020060567)

## REFERENCES

Wilson-Olgin, E. 2020. California Department of Fish and Wildlife. Comments on the Mitigated Negative Declaration for the Legacy at Coto Project, Orange County, CA (SCH #2020060567).