

Exhibit D

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A BIOLOGICAL RESOURCES REPORT *for the* W&SMITH CA INC. RESIDENTIAL PROPERTY

3180 CORTEZ ROAD, PEBBLE BEACH CA 93953

Monterey County APN 008-233-010

For - Guofeng Wang / W&SMITH CA INC.

Copy - Amy L. Denny, Project Manager / IDG, Inc.

From - Jeffrey B. Froke, Ph.D. / jbfroke@mac.com

Califauna

Mon, 21 August 2023

The Property Owner has planned and designed to shift or flip access points to both the property from the serving roadway and to the main house entryway. The scope of the project, which also includes interior work, is driven by life and safety concerns.

- ▶ Allowable lot coverage = 13,248 ft²
- ▶ Existing coverage = 8,449 ft² //
- ▶ Proposed coverage would equal 8,748 ft².



GEOGRAPHIC BACKGROUND

The subject property (2.03 acres at 3180 Cortez Road) is situated within Pebble Beach, which is the only residential community inside the 5,300-acre Del Monte Forest. Del Monte Forest is the single unincorporated residential community on the Monterey Peninsula; representing the balance of the peninsula are the municipalities of Pacific Grove (entirely), Carmel-by-the-Sea (partially), and Monterey (partially).

The two aerial overlays on the front page (Figures A and B) accurately identify the location and developed (low-density) suburban setting of the subject property. For a following discussion, Figure A (left) depicts a 1.0-mile diameter circle pinned to the subject property, i.e., centric-area of 503 acres.

Mapping References

- Property Area: 2.03 acres
- Elevation Range: 55 ft (280 - 335 ft ASL)
- Map Coordinates: 36.575724° lat. | -121.945067° lon.
- USGS 7.5-minute quadrangle: *Monterey, California.*; (Figure C identifies adjoining 4 quadrangles — per CEQA)
- Triangulation: 1.90 mi f/ Cypress Point @ 68.7°
1.10 mi f/ Pescadero Point @ 21.4°
- Pebble Beach Unit: Pescadero
- Watershed: Stillwater Creek > Pacific Ocean

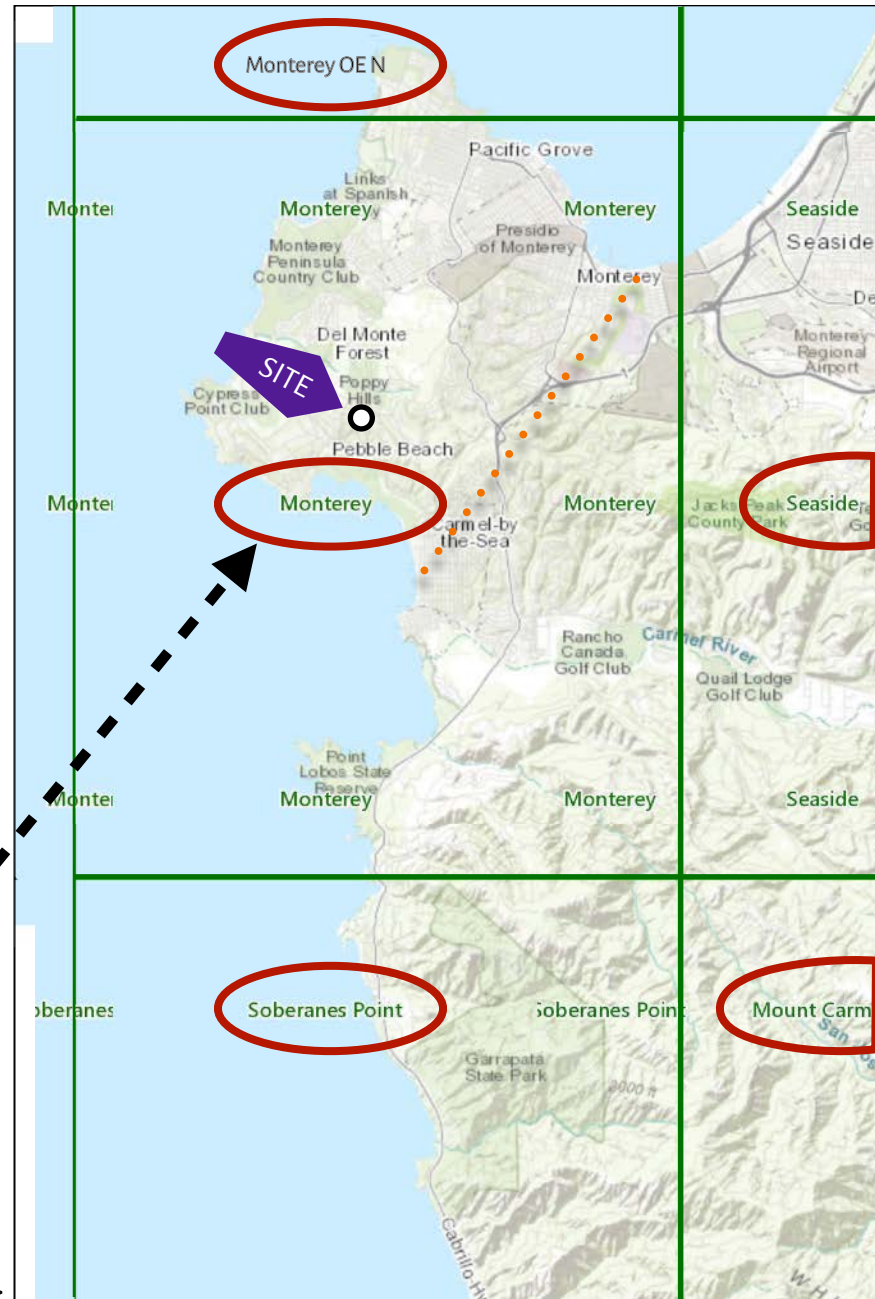


FIGURE C >>

Biogeographic Data Sources

- Taxonomy and Status
- Principal Floristic Basis
- Secondary Floristic Basis
- Principal Faunistic Basis
- Secondary Faunistic Basis



CDFW¹ Special Animals List and Special Plants List

CALFLORA²

CDFW Natural Diversity Database (CNDDDB)

Personal records, expert knowledge (30 years in Pebble Beach)

CNDDDB

[1] CDFW: California Department of Fish and Wildlife

[2] CALFLORA is an independent 501(c)(3) NGO that is not affiliated with other organizations.

CALFLORA is managed by botanists and governed by an independent Board composed of academic, professional, and government experts. Among CALFLORA's numerous data sources, the Consortium of California Herbaria (CCH) is a vital gateway to information from California vascular plant specimens that are housed in over 30 participating herbaria: the records of several member herbaria date back to the early 1800s. At last count, CCH serves over 2 million specimen records, 70 percent of which are georeferenced with latitude and longitude.

[3] California Natural Diversity Database (CNDDDB). July 2023. Special Animals List. California Department of Fish and Wildlife. Sacramento, CA.

[4] California Natural Diversity Database (CNDDDB). July 2023. Special Vascular Plants, Bryophytes, and Lichens List. California Department of Fish and Wildlife. Sacramento, CA

● Circuitous dug burrows of the abundant Botta's Pocket-Gopher (*Thomomys bottae*) are widespread throughout all open-ground areas of the subject property.

STUDY APPROACH

Prior Data

Among the first pro forma tasks made to organize the field work for this project was a review of CDFW’s California Natural Diversity Database (CNDDDB). The main aim of the review was to know whether and where there might be registered, vouch-safe plant records for taxa identified within the USGS Sleepy Valley 7.5-minute quadrangle. CNDDDB data for observed and confirmed animal taxa also were evaluated.

As noted above, effort studying botanical records was weighted towards the CALFLORA ecosystem. Besides, all of CNDDDB plant records, once verified, are incorporated within CALFLORA.

In addition to familiarity with external databases and determining suggestible species for the project environment, an important next-step is to chart certain collection locations for taxa that reasonably, or responsibly might be expected to occur within the project setting. In this, and in the field, aerial imagery and maps, e.g., Google Earth Pro, were valuable, or rather invaluable.

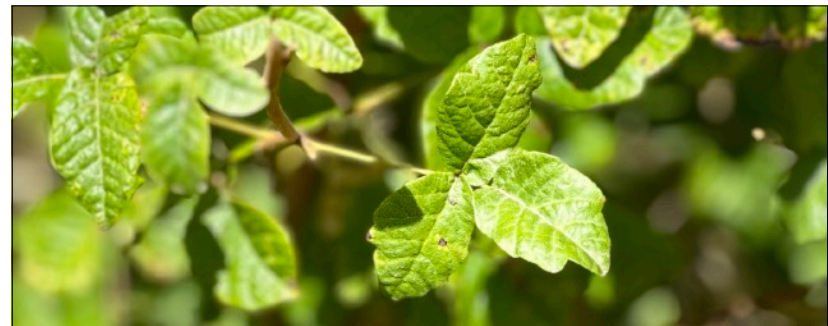
For plants, CALFLORA was run for all life forms of vascular plants, including graminoids. Inquiries were limited to the one-mile diameter circle that is shown by Figure 1. The closed-cone coniferous forest near the seacoast, and the definitive 3-sided formation of Monterey Peninsula are locally exceptional to the degree that screening for taxa outside of the *Monterey* quadrangle was not required.

Afield

The combination of a relatively open site, albeit well treed, with few obstructions to viewing, an extensive series of roads and pathways, and still-cool daily temperatures, made possible a thorough and unimpeded visual assessment of the site and its immediate surroundings. The best description of a field methodology would be a “comprehensive and attentive walkabout of the entire site, punctuated with plentiful opportunities to stop and take stock of the vivid landscape.”

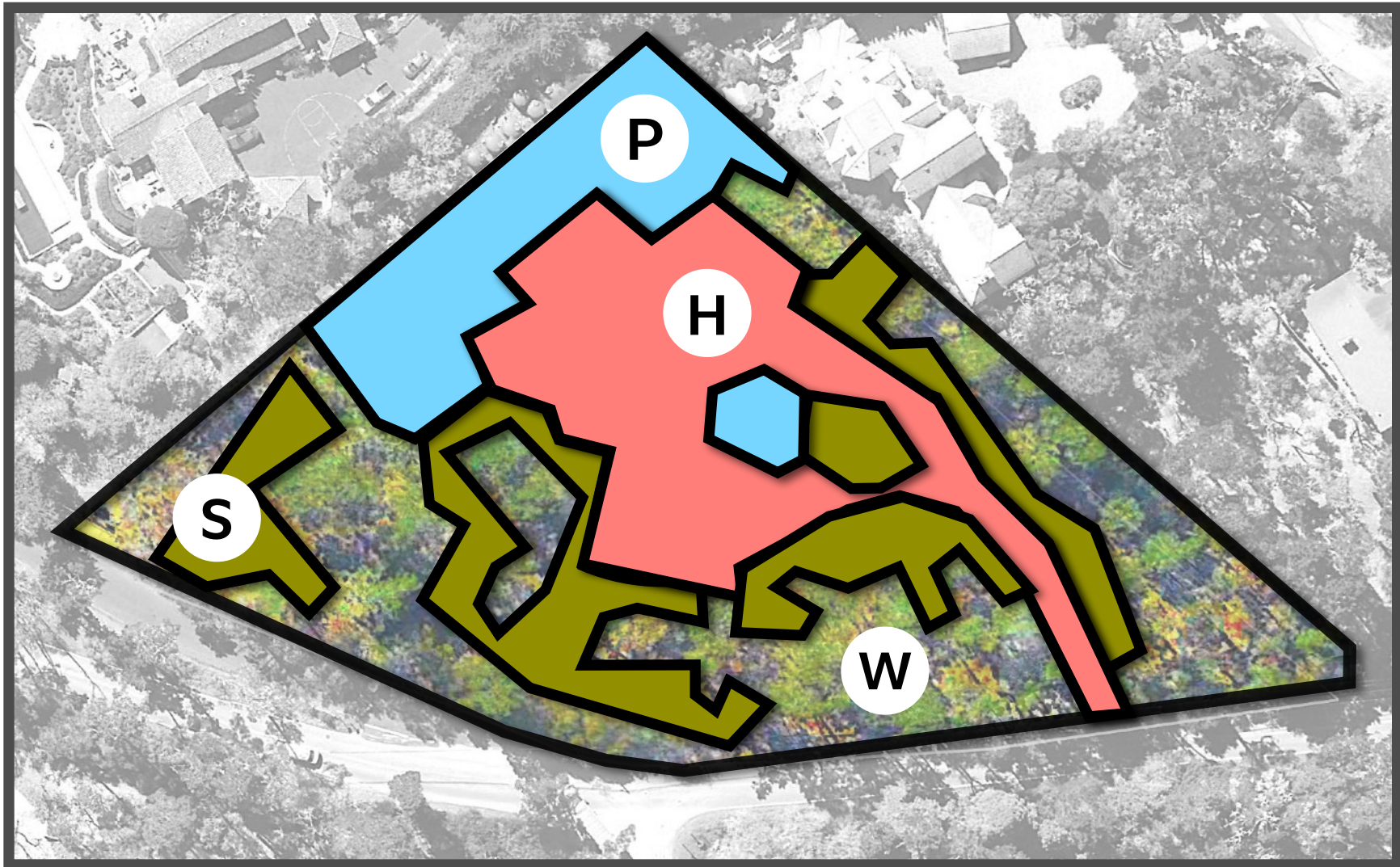
Plantlife was discriminated to species by visual inspection and with using the Munz Flora as a key, if and when necessary: taxonomic puzzles and updates would be attended to afterwards. The Jepson Manual also was at-hand. All observed native and nonnative taxa were included in both field and follow-up assessments, without bias.

Birds were identified to species by sight and sound, or song; mammals by sight plus their respective tracks and various spoor including scrapings, scat, and hair patches. With the exception of species that are identified by very specific and discernible dens or egg-masses, etc., special-status reptiles and amphibians, and for that matter special invertebrates, would be recorded from direct observations, only.



“Leaves of three...”. PACIFIC POISON OAK, *Toxicodendron diversilobum*

FIGURE D. GENERAL COVER MAP for the subject property, which is developed (residential) and landscaped. Plant species makeup across the property and inside each cover type, except for “H: (habitation and hardscape) are further described in following text. Areal representation (percent of total for each cover type) is described from gross measurement: Total property = 2.03 ac; Wooded (W) = 1.00 ac (~50 pct.); House and Hardscape (H) = 0.50 ac (25 pct); Shrubbery (S) = 0.28 ac (14 pct); Planted slopes and beds (P) = 0.25 ac (13 pct).



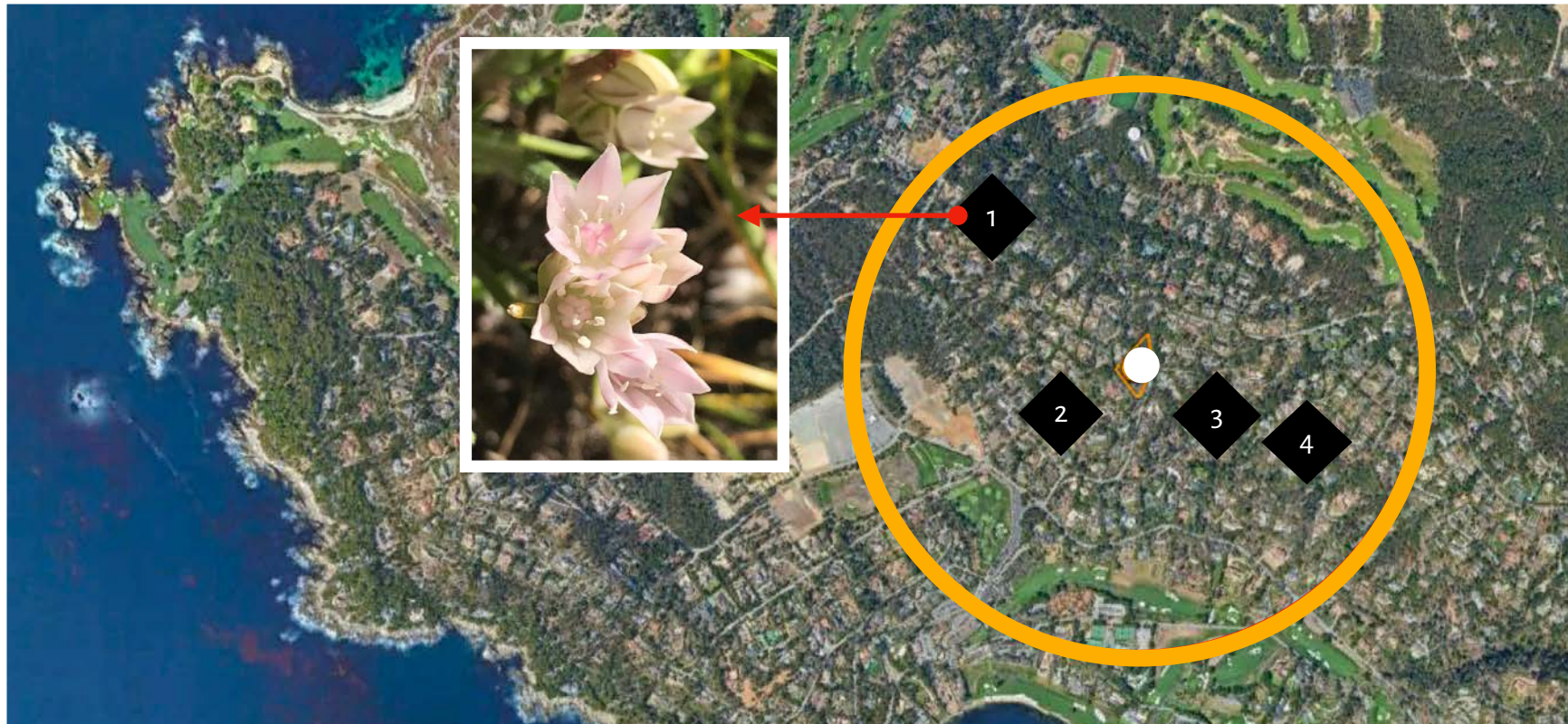
INQUIRY OF EXISTING DATA (Q1): Is there evidence of listed or other special species (CDFW 2023) of plant present on or reasonably near the subject property?

DATAPOINTS FROM CALFLORA (D1-4):

- D1 — 1979 rec. of *Allium hickmani* on a forested estate w habitat.
- D2 — 1959 rec. of *Pinus radiata* on a private estate.
- D3 — 1973 rec. of *Paspalum dilatatum* in a roadside ditch.
- D4 — 1940 rec. of *Mimulus auranticus*, roadside.

SINGLE REASONABLE ANSWER (A1) — In reference to plant records, one specimen of a single ranked rare species, Hickman’s Onion (RPR 1B.2), has been recorded inside the one mile diameter circle that evenly surrounds the subject property (A = 503 ac). That recorded observation was made in 1979; subsequent plants have been found in numerous Del Monte Forest locations since 1979, and the species is well known across appropriate habitat at Fort Ord.

◆ *Appropriate habitat for Allium hickmani is present neither on nor adjoining the subject property. Species is absent.*



OBSERVED VEGETATION AND PLANT SPECIES, 14 AUG 2023

As a horizontal cover or mantle over the planted and/or naturally occurring vegetated three-quarters of the property, native plantlife is predominant; this is owed to the broad growth of Coast Live Oak and (mostly mature) Monterey Pine. On an ecological basis, the same mixed woodland is not native in composition given the absence of native understory and groundcover and a predominantly exotic groundcover of Glory Mat, here a popular landscape plant.

Without counting the variety of cultivated and horticultural taxa, which is the greater number, the species diversity of the site is low. With exception of Yarrow, native forbs are absent; Golden Wattle is the principal adventitious species, and from hundreds of densiform shoots is clearly spreading widely and surely successfully.

TABLE 1. DOMINANT plant species detected on the subject property at 3180 Cortez Road, Pebble Beach CA. Local and California native taxa are prioritized. Nonnatives not listed.

Quercus agrifolia, California Live Oak

➔ *Pinus radiata*, Monterey Pine (natural and planted)

Ceanothus gloriosus, Glory Mat (not native)

Toxicodendron diversilobum, Pacific Poison Oak

Achillea millefolium, Yarrow

Hesperocyparis macrocarpa, Monterey Cypress (not native)

Sequoia sempervirens, Coast Redwood (planted to site)

Aristida species, unidentified species of wiregrass

Arctostaphylos tomentosa, Woollyleaf Manzanita



OBSERVED WILDLIFE, 14 AUG 2023

The subject property provides local wildlife with cover that is associated with a broader and coalesced upland habitat across the residential developed portion of the Del Monte Forest. While no native habitat community exists on site, the presence of oaks and pines suits more accommodating species, while others are drawn to the open and planted shrubbery and bare ground. In this setting, the effects of which are amplified by the broader and comparable context of the surrounding suburban neighborhood, special birds, mammals, reptiles and amphibians are with few exceptions likely to be found onsite.

Finally, provided expertise — and evidence, it is reasonable to surmise and predict at least occasional appearances of several native species of the named vertebrate orders. In this case, Gray Fox, Brush Rabbit, Great Horned Owl, several winter warblers, Western Fence Lizard, Pacific Gopher Snake, and Santa Lucia Mountains Slender Salamander — none of which are listed or otherwise special per California Department of Fish and Wildlife — *Special Animals List*, July 2023.

TABLE 2 Native vertebrate animal species visually observed or otherwise positively detected on the subject property at 3180 Cortez Road, Pebble Beach CA.

Aphelocoma californica, California Scrub-Jay

Junco hyemalis, Dark-eyed Junco

Pipilo maculatus, Spotted Towhee

Colaptes auratus, Northern Flicker

Thryomanes bewickii, Bewick’s Wren

Lophotryx californica, California Quail

Patagioenas fasciata, Band-tailed Pigeon

Haemorhous mexicana, House Finch

Melanerpes formicivorus, Acorn Woodpecker

Sphyrapicus ruber, Red-breasted Sapsucker

Dryobates nuttallii, Nuttall’s Woodpecker

Thomomys bottae, Botta’s Pocket Gopher

Mephitis mephitis, Striped Skunk

Procyon lotor, Raccoon

Psuedacris sierrae, Sierran Chorus Frog

APPLICABLE LAWS AND REGULATIONS

PLANTLIFE / *California State Laws Protecting Native Plants*

Certain native plants are protected by California law. Important Among the California laws for native plant protection are two that are potentially applicable to residential lot improvement are California Endangered Species Act (CESA), and the California Environmental Quality Act (CEQA).

■ California Endangered Species Act

CESA was enacted in 1984 to parallel the federal Endangered Species Act and allows the Fish and Game Commission to designate species, including plants, as threatened or endangered. CESA makes it illegal to import, export, “take”, possess, purchase, sell, or attempt to do any of those actions to species that are designated as threatened, endangered, or candidates for listing, unless permitted by CDFW. “Take” is defined as “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.” There are 156 species, subspecies, and varieties of plants that are protected as threatened or endangered under CESA (PDF). Under CESA, CDFW may permit take or possession of threatened, endangered, or candidate species for scientific, educational, or management purposes, and may also permit take of these

species that is incidental to otherwise lawful activities if certain conditions are met. Some of the conditions for incidental take are that the take is minimized and fully mitigated, adequate funding is ensured for this mitigation, and that the activity will not jeopardize the continued existence of the species.

The Native Plant Program coordinates CDFW’s plant listing activities under CESA, prepares evaluation reports, and provides recommendations to the Fish and Game Commission. If you are considering petitioning the Fish and Game Commission to list a plant species pursuant to CESA, please email NativePlants@wildlife.ca.gov.

■ California Environmental Quality Act

CEQA is a law that requires public agencies to analyze and publicly disclose the environmental impacts from projects they approve, and adopt feasible alternatives and mitigation measures to mitigate for the significant impacts they identify. During CEQA review, public agencies must evaluate and disclose impacts to the 220 plant species protected under CESA and the NPPA, and in most cases must mitigate all significant impacts to these species to a level of less than significance. In addition, during the CEQA process, public agencies must also address plant species that may not be listed under CESA or the NPPA, but that may nevertheless meet the definition of rare or endangered provided in CEQA. CDFW works in collaboration

with the California Native Plant Society and with botanical experts throughout the state to maintain an Inventory of Rare and Endangered Plants, and the similar Special Vascular Plants, Bryophytes, and Lichens List (PDF). Species on these lists may meet the CEQA definition of rare or endangered. As the trustee agency for the wildlife of California, which includes plants, ecological communities and the habitat upon which they depend, CDFW advises public agencies during the CEQA process to help ensure that the actions they approve do not significantly impact such resources. CDFW often advises that impacts to plant species with a California Rare Plant Rank in the Inventory be disclosed by the lead agency during project review to ensure compliance with CEQA.

SUMMARY AND CONCLUSION

In summary, the entire property was surveyed for its vegetation, cover conditions, and potential habitat for special plants and animals. All species — native and nonnative were

identified (in a handful of cases, plants to genus, only). Reported findings emphasized native species; this for the purpose of conforming with CEQA conformation, i.e., evaluating the potential effects of the proposed project on sensitive native taxa.

Confidence level was high for detection and sufficiency of detections for making an assessment of the survey objectives.

The project does not pose a risk of diminishing or adversely affecting sensitive habitat, nor would it reduce or harm to sensitive plant or animal species. But for Monterey Pines, none are present or expected. Q: Removal of live Monterey Pines, if any, for the project, would call the question: would doing as much cause an adverse impact to the species, particularly in light of its sensitivity status (Rare Plant Rank 1B.1)? See below.

Special Vascular Plants, Bryophytes, and Lichens List – July 2023

Scientific Name	Common Name	Element Code	Federal Listing Status	State Listing Status	Heritage Rank	Rare Plant Rank	Other Status	Seed Banked	Records in CNDDDB?
<i>Pinus radiata</i>	Monterey pine	PGPIN040V0	None	None	G1/S1	1B.1	IUCN:EN	Yes	Yes

A: Absent essential elements of a legitimate Monterey Pine forest, particularly on a maintained residential property, the actual development of a native habitat and naming the site as such by a qualified biologist are precluded. Missing elements include natural or recoverable soil conditions, native or near-native ground cover, and at least broken sections of evidence of natural seed germination and recruitment. Further indicators include, e.g., predominantly native or recoverable native understory, or a manageable condition that would steer the site toward actual forest conditions, i.e., locally the exclusion of invasive woody plants - shrubs and trees.

Beneficial Project Effects (?)

The proposed project would shift uses and functions of the residence from one side of the house to the opposite; landscaping also would be displaced and replaced. Affirmatively, opening up of the SE quarter of the site — to build the relocated driveway, will serve to open up the over-dense woodland cover of Glory Mat and allow greater sunlight to diversify planting opportunities. This will positively affect by diversifying wildlife use of the landscape, particularly by birds.

WILDLIFE / *California State Laws Protecting Native Animals*

■ California Endangered Species Act, as cited above.

■ State and Federal Laws Specific to Protecting Nesting Birds

➔ *Added message to Monterey County re correctable instructions to applicants re nesting bird conditions.*

The absence of listed or otherwise special animal species, as these defined and identified by CDFW (2023), does not obviate the constant lawful obligations of both the County and the Applicant to protect against harm or loss (take) of nesting native birds in connection with the proposed project. Furthermore, it may be helpful to clarify and underscore where County Planning could update and improve the accuracy of how it presents the nesting bird protection scope and regulations.

In the discussion that follows — regarding the immediate project — the description of a proposed mitigation action with respect to locally nesting birds, if any, emphasizes datelines, species range, and method that are more aligned with actual birds' requirements for actual nesting . First, the background:

■ Federal Law - The Migratory Bird Treaty Act of 1919, as amended.

■ NOTE: California Fish and Game Code §§ 3503 and 3503.5
California laws that are free-standing and separately independently enforceable from the above Federal law are included by this reference in the following discussion, as the purpose and effect of both are encapsulated by the original Act.

Lot developers and homebuilders and the public agencies that advise and provide their terms of compliance are responsible to recognize the importance of MBTA1919, the fundamental objective of which is to ensure the welfare of all native birds of the USA when nesting. The term “nesting” spans the timeframe from early nest-site discovery, nest construction or improvements, the nest itself, and the eggs, hatchlings and young through the period when they are attached to the nest site, until fledged.

Anywhere in coastal Monterey County, e.g., Carmel Valley and the Preserve, Carmel and Big Sur coast, Monterey Peninsula, and Monterey Bay regions, the true and annual nesting period starts around December 1st (Anna’s Hummingbirds, Great Horned Owls, *et al*), and conservatively

runs through July 31st (species of flycatchers, *et al.*). In other words, it is appropriate for the coastal slope of Monterey

County to consistently cite a “*Nesting Period of December 1st through July 31st - of any year.*”

Frequently, applicants and their agents misunderstand the County’s intentions when specifying that the nesting bird protection apply to Birds of Prey, whether exclusively or separately from other birds. This is derived from a misunderstanding of California Fish and Game Code, but is point-out here to emphasize that MBTA19 recognizes virtually all species of native bird.

There has been a long-standing but incorrect restatement of a bygone formula for avoiding disturbance of nesting birds while attempting to mitigate or prevent disruption of the nesting birds by construction or land-work that has been authorized to proceed: Citations of, for example, 150 or 350 ft from the nest tree are not helpful. These always should be left entirely to the biologist on the ground to determine at the time, chiefly because the range of variables — human, biological, and physical — affecting whether and for what distance (etc.) are nearly endless.

Finally, the training and expertise of the person who is authorized to observe, interpret, and negotiate the onsite conditions for mitigating the terms for construction to proceed near a active bird nest is imperative. The person needs to be an expert in bird nesting ecology as well as simple identification and location of large and obvious nests, i.e., raptor nests.

It will better serve public and the protected resource when the County specifies expertise and sufficient training such as, at minimum, a B.S. or (better) an M.S. in Wildlife Biology or Ornithology. Requiring a “County-approved biologist” without explicit qualifications, at least for the bird portion of the assignment is valueless, unfortunately.

RECOMMENDED MITIGATION.

➔ Protection of Nesting Birds, Their Nests and Young

In the event that any physical, onsite aspect of construction, e.g., ground-clearing, tree-trimming, or excavation of any sort, etcetera, would start during the nesting period of local birdlife — between December 1st and July 31st of any year, the following steps to mitigate to mitigate the potential disturbance of the birds, their nests, and progeny, would be authorized by applicant and/or applicant’s agent:

1. Enlisting the expertise of a qualified ornithologist or wildlife biologist, who in term would see to the following
2. Conduct an appropriately broad or focused search for evidence of bird nesting behavior and nest-location cues, recording the species and location of each found nest area. And if in jeopardy alerting the contractor of the potential conflict.
3. Unless and until a suitable avoidance program can be worked out - one that 1st addresses the welfare of the bird resources, and 2nd is practicable to the contractor.

NOTE: *When such an agreement cannot be attained, the birds win the argument and construction that in any way would risk harm to the birds will be stalled until the nest effort is completed.*



QUALIFICATIONS

This report was prepared by Jeffrey B. Froke, Ph.D., who has practiced as a wildlife professional, ornithological researcher, college educator, conservation executive, and private consultant for 50 years — working internationally, nationwide, and throughout the period all over California. The past 34 years, he has lived and based his work in Monterey County, particularly Pebble Beach and the Preserve, of which he was a founding partner.

Jeff is sole proprietor of two statewide ecological, policy, and design consulting firms, Califauna and Golfauna.

Education:

B.S., *Wildlife and parks conservation*; M.S. *Wildlife ecology and ornithology* — both, Humboldt State University; Ph.D., *Landscape ecology and ornithology* — UC Los Angeles; *Marine science and deep-sea ecology* — UC Scripps Institute of Oceanography; *Hawaiian geography and Pacific Islands studies* — University of Hawai'i, Manoa; *Plant taxonomy*, CSU Long Beach.

Fellowships:

Harvard University, Advanced Environmental Studies - School of Design;

National Audubon Society, GIS and management of bird populations.

