



# memo san jose

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to Jack Chamberlain, Noel Chamberlain

from Tay Peterson

re Highland Estates Lot 11 Biological Mitigation Compliance Visit

date 9/24/2019, updated 10/2/2019

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At Noel's request MIG senior biologist Tay Peterson conducted a site visit on Highland Estates Lot 11 on the morning of 9/24/2019 to conduct a pre-construction survey for California red-legged frog and San Francisco dusky-footed woodrat, and met with the crew that was there to install tree and riparian zone protection fencing. We are currently outside of the bird nesting season and the bat breeding season, so bird and bat surveys were not conducted. This memorandum report summarizes the results of the site visit. Ms. Peterson subsequently visited Lot 11 on October 1, 2019 to confirm that fencing protecting the riparian zone and silt fence and wattles is in place.

**Background Information.** The following measures that apply to Lot 11 are included in the Conditions of Approval for the project:

**Mitigation Measure BIO-2b:** *No earlier than two weeks prior to commencement of construction activities that would occur during the nesting/breeding season of native bird species potentially nesting/roosting on the site (typically February through August in the project region), a survey for nesting birds shall be conducted by a qualified biologist experienced with the nesting behavior of bird species of the region. The intent of the survey would be to determine if active nests of special-status bird species or other species protected by the Migratory Bird Treaty Act and/or the California Fish and Game Code are present in the construction zone or within 500 feet of the construction zone. The surveys shall be timed such that the last survey is concluded no more than two weeks prior to initiation of construction or tree removal work. If ground disturbance activities are delayed, then an additional pre-construction survey shall be conducted such that no more than two weeks will have elapsed between the last survey and the commencement of ground disturbance activities. A report is required.*

**Mitigation Measure BIO-2c:** *Prior to the commencement of construction activities during the breeding season of native bat species in California (generally occurs from April 1 through August 31), a focused survey shall be conducted by a qualified bat biologist to determine if active maternity roosts of special-status bats are present within any of the trees proposed for*

*removal. Should an active maternity roost of a special-status bat species be identified, the roost shall not be disturbed until the roost is vacated and juveniles have fledged, as determined by the biologist. Once all young have fledged, then the tree may be removed. Species-appropriate replacement roosting habitat (e.g., bat boxes) shall be provided should the project require the removal of a tree actively used as a maternity roost. The replacement roosting habitat shall be subject to the approval of the CDFG.*

**Mitigation Measure BIO-2d:** *Immediately preceding initial ground disturbance activities on Lot 11, a pre-construction clearance survey shall be conducted by a qualified biologist for California red-legged frogs. The survey shall be conducted to determine whether individual California red-legged frogs are present within the disturbance boundary. Should a California red-legged frog be observed during the clearance survey, all construction activities on Lot 11 shall be immediately halted and the USFWS shall be immediately contacted. Under no circumstances shall a California red-legged frog be collected or relocated, unless USFWS personnel or their agents implement the measure. Construction-related activities may resume once the frog has naturally left the lot or has been relocated by a permitted biologist (authorized by the USFWS).*

**Mitigation Measure BIO-5a:** *Prior to the commencement of construction activities on Lot 11, the outer edge of the willow scrub habitat (facing Lot 11) shall be delineated by a qualified biologist. Temporary fencing shall be installed that clearly identifies the outer edge of the willow habitat and that identifies the willow scrub as an “Environmentally Sensitive Area.” Signs shall be installed indicating that the fenced area is “restricted” and that all construction activities, personnel, and operational disturbances are prohibited.*

**Survey Results.** The requirements for a nesting bird survey and a survey for bat roosts is seasonal, ending on August 31. Therefore, these surveys were not completed.

On September 24, 2019 MIG Senior Biologist Taylor Peterson surveyed the project area on Lot 11 for the presence of California red-legged frog. The lot was surveyed with wandering transects, and more time was spent near the riparian corridor and in grassy areas on the west side of the lot. No frog species were found in the upland areas of lot 11 slated for construction. Ms. Peterson also surveyed the property for woodrat houses. No new houses have been established; there are two houses on the perimeter, outside of the construction zone.

The edge of the riparian zone had been flagged with pink pin flags in a prior visit. Those flags are still in place. During the site visit on October 1, 2019 Ms. Peterson confirmed that the orange fencing, silt fencing, and wattles are all in place with correct signage. Silt fencing and wattles are in place around the entire perimeter of the project site. The riparian zone is fenced with orange plastic fencing outside of the

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dripline of the willow trees. The fencing has signs in three places indicating the environmentally sensitive area. Photographs are attached.

In addition, during the September 24 site visit Ms. Peterson spoke with project personnel, described the species of concern and their habitats, and showed them the location of the woodrat houses.

If there are any questions, please feel free to contact Tay Peterson at [tpeterson@migcom.com](mailto:tpeterson@migcom.com) or (650) 400-5767.

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