CARLSON STRATEGIC LAND SOLUTIONS, INC.

Memorandum

Date: May 12, 2021

To: Erica Roess, City of Laguna Niguel

From: Brianna Bernard, Carlson Strategic Land Solutions

Subject: Biological Resource Assessment for The Cove at Laguna Niguel in the City of

Laguna Niguel

The City of Laguna Niguel (City) requested Carlson Strategic Land Solutions (CSLS) to prepare a Technical Memo and graphics documenting the finding of a field review for potential sensitive plants and wildlife for the Cove at Laguna Niguel (Project) located in the City of Laguna Niguel, California. In support of Project efforts, CSLS biologist, Brianna Bernard, conducted an analysis of the biological resources onsite on May 12, 2021. This report provides the results of the site visit.

Project Location and Description

The Project site is located off Crown Valley Parkway and Playa Blanca in the City of Laguna Niguel. The Project site is located generally north of Coast Highway and west of Interstate 5 (I-5) and south of the State Route 73 (SR-73), between Club House Drive and Niguel Road (Figures 1 and 2). The Project site assessor's parcel number (APN) is APN 656-231-02.

The Project proposes to construct condominiums and associated streets and infrastructure. A Tentative Tract Map is provided on Figure 3.

Project History

The Project site was previously part of a larger landslide area. In order to stabilize and remediate the landslide area, the slope was graded, terrace drains installed, and Acacia species planted for erosion control.

Methodology

Biological Survey

Prior to the field survey, available literature, historical aerials, and databases were reviewed regarding sensitive habitats, special status plants, and wildlife species within the vicinity. CSLS reviewed and consulted literature and databases focused on Orange County, California, including the California Natural Diversity Database (CNDDB) and the U.S. Fish and Wildlife Service (USFWS) Critical Habitat database. The CNDDB is a California Department of Fish and Wildlife (CDFW) species account database that inventories status and locations of rare plants and wildlife in California. The CNDDB was used to identify any sensitive plant communities and special status plants and wildlife that have potential to occur within the Project site.

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The USFWS's online service for information regarding Final Critical Habitat designation within California was reviewed to determine if the Study Area is within any species' designated Critical Habitat. The USFWS regulatory mapping process for the designation of critical habitat is an imprecise, broad-based, mapping exercise of areas that may or may not include constituent elements of the critical habitat designation. Due to this approach in mapping, large areas are designated as critical habitat regardless of the existing habitat, and as a result may include developed areas, such as buildings, roads, hardscape, and other such facilities, as well as natural habitats.

<u>Jurisdictional Waters</u>

The Project site was assessed for jurisdictional Waters of the United States (U.S.) and Waters of the State. To determine the presence of a wetland, three indicators are required: (1) hydrophytic vegetation, (2) hydric soils, and (3) wetland hydrology. The methodology published in the *U.S. Army Corps of Engineers 1987 Wetland Delineation Manual* and the *Arid West Supplement* sets the standards for meeting each of the three indicators, which normally require that 50 percent or more dominant plant species typical of a wetland, soils exhibiting characteristics of saturation, and hydrological indicators be present.

Additionally, jurisdiction over non-wetland Waters of the U.S. is typically determined through the observation of an Ordinary High Water Mark (OHWM), which is defined as the "line on the shore established by the fluctuation of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas." Projects with impacts to Waters of the U.S. are regulated under Sections 401 and 404 of the Clean Water Act.

Waters of the State are regulated by the California Department of Fish and Wildlife (CDFW) through Section 1600 et seq. of the California Fish and Game Code. The limits of Waters of the State are defined as the "body of water that flows at least periodically or intermittently through a bed or channel having banks and supports fish or other aquatic life. This includes watercourses having surface or subsurface flow that supports or has supported riparian vegetation." Therefore, the limits extend from the channel bed to the top of the bank, with the addition of the canopy of any riparian habitat associated with the watercourse.

Orange County Natural Community Conservation Plan (NCCP), Central and Coastal Subregion The Natural Community Conservation Act, codified at Fish and Game Code Sections 2800-2840, authorizes the preparation of NCCPs to protect natural communities and species while allowing a reasonable amount of economic development. The Community Conservation Plan (NCCP)/Habitat Conservation Plan (HCP), which was reviewed and approved by CDFW (at that time, California Department of Fish and Game) and USFWS in 1996, addresses the protection and management of coastal sage scrub habitat and coastal sage scrub-obligate species, as well

as other covered habitats and species, and mitigates anticipated impacts on those habitats and species on a programmatic, subregional level rather than on a project-by-project, single-species basis. A habitat reserve in excess of 37,000 acres was established for the protection of coastal sage scrub, other upland habitats, and primarily coastal sage scrub-dependent species identified in the NCCP/HCP. Specifically, through take authorization granted with the adoption of the NCCP/HCP, USFWS and CDFW authorized take of 39 identified species of plants and wildlife (including covered and conditionally covered species; i.e., coastal California gnatcatcher). Furthermore, the NCCP/HCP contains requirements for adaptive management, interim management, and funding management for the reserve as well as procedures and minimization measures related to the take of identified species and habitat. Thus, the NCCP/HCP provides for the protection and management of a broad range of plant and wildlife populations while providing certainty to the public and affected landowners regarding the location of future development and open space in the subregion. The City of Laguna Niguel is not a participating entity of the NCCP/HCP.

City of Laguna Niguel Zoning Code

Section 9-1-93.3(d) of the City's Zoning Code provides local regulations for tree preservation, requiring that the construction and design of new projects incorporate preservation measures to protect existing trees in place to the greatest extent possible. Additionally, if the decision-making authority determines that significant existing trees cannot be saved, they may require replacement with new specimen-size trees having a cumulative trunk diameter of up to two times the cumulative trunk diameter of the trees to be removed.

Results

Biological Results

CSLS Biologist conducted a general biological survey within the Project site and surrounding 300-foot buffer on May 12, 2021. The survey was performed between 8:38 a.m. and 10:24 a.m. The temperature ranged from 63° F to 67° F during the field survey, with overcast skies.

The Project site contains built streets and associated infrastructure.

Wildlife species observed onsite during the survey include: California quail (*Callipepla californica*), turkey vulture (*Cathartes aura*), red tailed Hawk (*Buteo jamaicensis*), American crow (*Corvus brachyrhynchos*), black phoebe (*Sayornis nigricans*), mourning dove (*Zenaida macroura*), northern mockingbird (*Mimus polyglottos*), California towhee (Melozone crissalis), Anna's hummingbird (Calypte anna), lesser goldfinch (Spinus psaltria), and song sparrow (*Melospiza melodia*).

Representative photographs of the Project site were taken and included within Attachment A.

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Vegetation Communities

Based on the field survey, the Project site is heavily vegetated with *Acacia sp.* and scattered laurel sumac (*Malosma laurina*). The Acacia species are non-native ornamental species often planted for erosion control. The laurel sumac, while a California native species, is not considered sensitive or protected. The Project site also contains developed areas in the form of streets and concrete terrace drains.

Special Status Plant and Wildlife Species

The Project does not contain any suitable habitat for special status plants or wildlife. Furthermore, no CNDDB occurrences fall within the Project Boundary (Figure 4).

Critical Habitat

No critical habitat was mapped onsite. The closest mapped critical habitat occurs approximately 0.3 miles to the south for the coastal California gnatcatcher (*Polioptila californica californica*). The Project site does not contain any suitable habitat for the species.

Jurisdictional Waters

Per the site visit and historical aerials, the Project site does not contain any waters that meet the definition of Waters of the United States or Waters of the State as stated above.

Orange County NCCP/HCP

The City of Laguna Niguel is not a participating entity of the NCCP/HCP. Furthermore, the closest mapped NCCP/HCP Reserve is located 0.44 miles west of the Project site. The Project site contains non-native vegetation cover and does contain any suitable habitat for special status plant or wildlife species.

Laguna Niguel Zoning Code

The Project site consists primarily of non-native acacia species, scattered laurel sumac, and a mix of nonnative trees along the right of way of Crown Valley Parkway and the northeast corner of the site. Based on the conditions of the Project site, the existing trees species are nonnative, numerous in the City, and are not considered significant; therefore, the tree species do not create a substantial aesthetic for the City per Section 9-1-93.3(d). The proposed Project includes a detailed landscape plan, including the placement of several specimen trees throughout the site. In addition, existing trees and landscaping along Crown Valley Parkway are to remain in place as they are within the right of way. As a result, the Project is consistent with the City's Tree Preservation Zoning Code.

Nesting Bird Species

Direct impacts associated with vegetation removal may occur to all avian species covered under the Migratory Bird Treaty Act (MBTA) with the removal of potential nesting and foraging habitat. The MBTA protects nesting activities of both native and non-native bird species. Under the Act The Cove at Laguna Niguel Biological Review May 12, 2021 Page 5 of 6

it is unlawful to harm, harass, or take a nest. If Project construction is scheduled to occur during the typical breeding bird season (January 15 through August 31 for raptors and February 15 through August 31 for all other avian species), direct removal of vegetation and indirect short-term noise effects to birds that may forage or nest onsite or within the buffer area may occur. In order to reduce direct and indirect impacts on nesting birds, if vegetation removal and/or construction activities were to occur during nesting bird season, a pre-construction nesting bird survey would be required.

Since the Project site contains suitable habitat for nesting and foraging bird species, if work is to be done during the typical avian breeding season (February 15 to August 31 for songbirds; January 15 to August 31 for raptors), a qualified biologist shall conduct a nesting bird survey within all suitable habitat, on-site and within 300-feet surrounding the site (as feasible), to identify any potential nesting activity within 3 days before start of construction.

If active nests are identified, the biologist would establish buffers around the vegetation (500 feet for raptors and sensitive species, 200 feet for non-raptors/non-sensitive species). All work within these buffers would be halted until the nesting effort is finished (i.e. the juveniles are surviving independent from the nest). The onsite biologist would review and verify compliance with these nesting boundaries and would verify the nesting effort has finished. Work can resume within these areas when no other active nests are found. Alternatively, a qualified biologist may determine that construction can be permitted within the buffer areas and would develop a monitoring plan to prevent any impacts while the nest continues to be active (eggs, chicks, etc.). Upon completion of the survey and any follow-up construction avoidance management, a report shall be prepared and submitted to City for mitigation monitoring compliance record keeping.

Summary

The Project site does not contain sensitive habitat or suitable habitat for sensitive species. No jurisdictional features are present that would require regulatory permits. The city is not a participating entity of the Orange County NCCP/HCP. No specific approvals are required by Wildlife Agencies prior to vegetation removal and grading. However, should work occur during nesting season (February 15 to August 31 for songbirds; January 15 to August 31 for raptors), a qualified biologist shall conduct a nesting bird survey within all suitable habitat, on-site and within 300-feet surrounding the site (as feasible), to identify any potential nesting activity within 3 days before start of construction.

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Please contact me at bbernard@carlsonsls.com or 949.542.7042, should you have any questions or comments.

Brianna Bernard Project Manager

Enclosures:

• Figures:

Figure 1: Regional Location

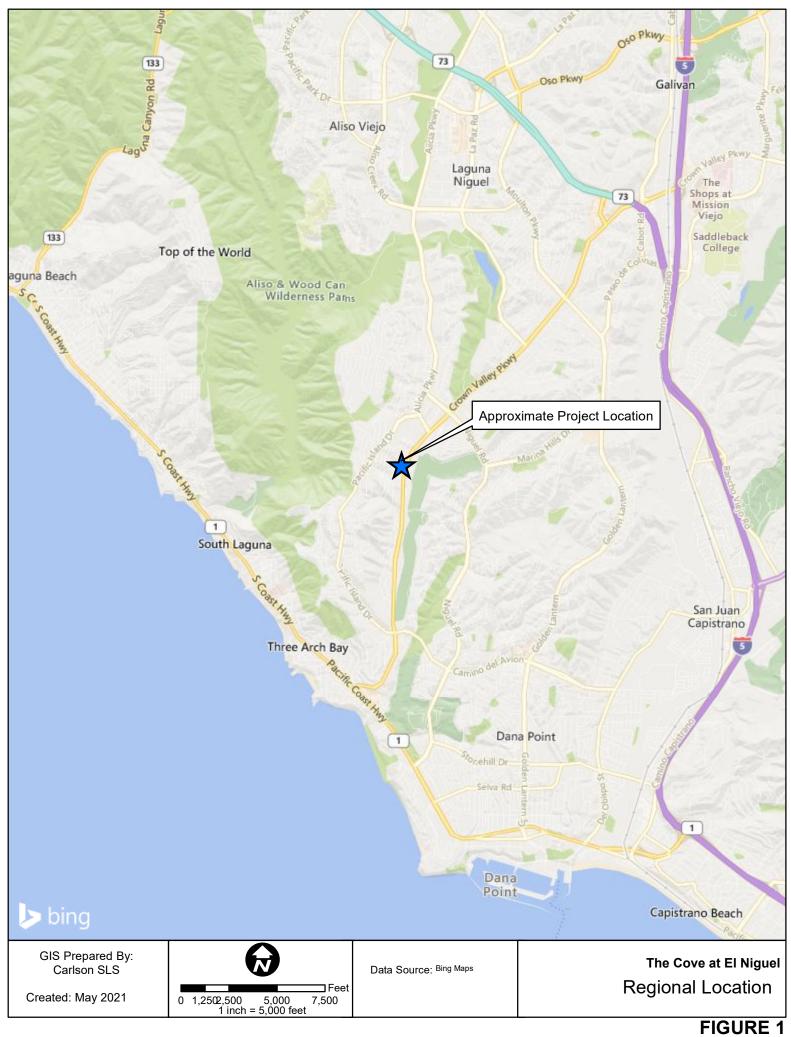
Figure 2: Project Site Location Map

Figure 3: Site Plan

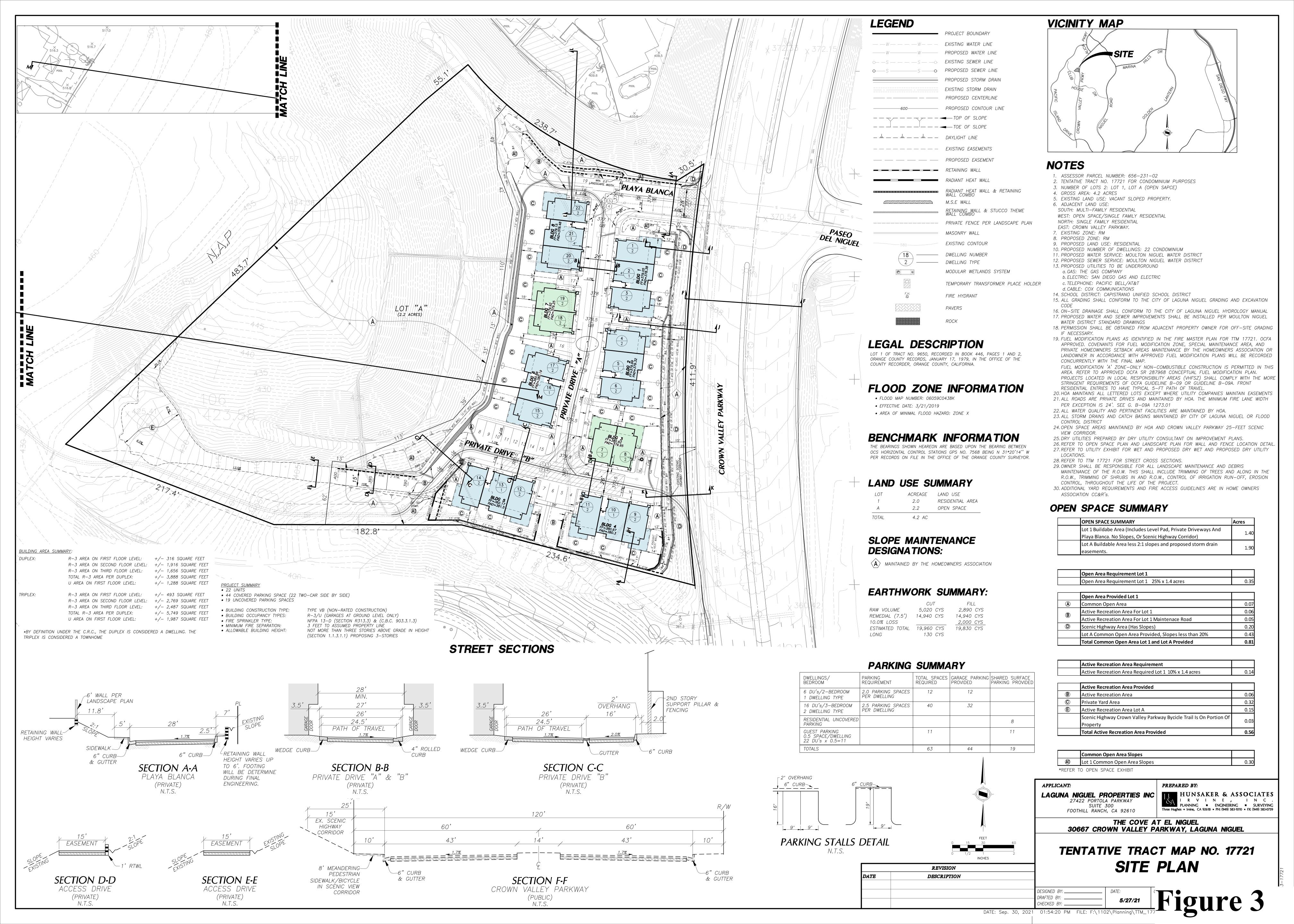
Figure 4: CNDDB Occurrences and Critical Habitat Results

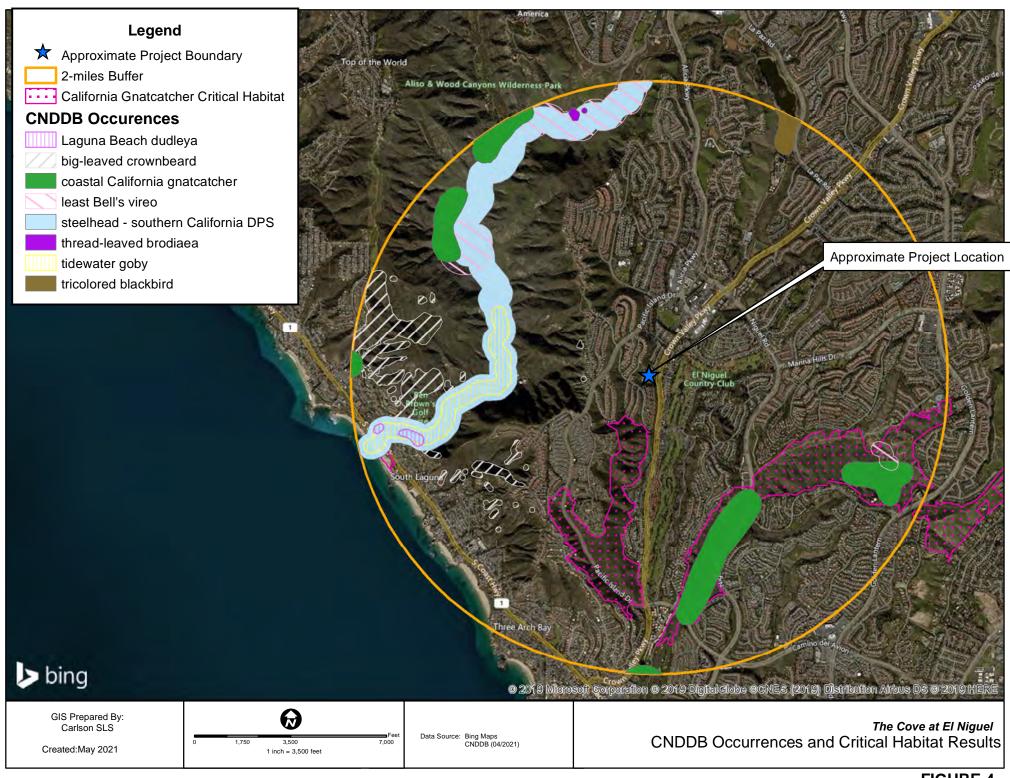
• Attachment A: Representative Photographs

Figures

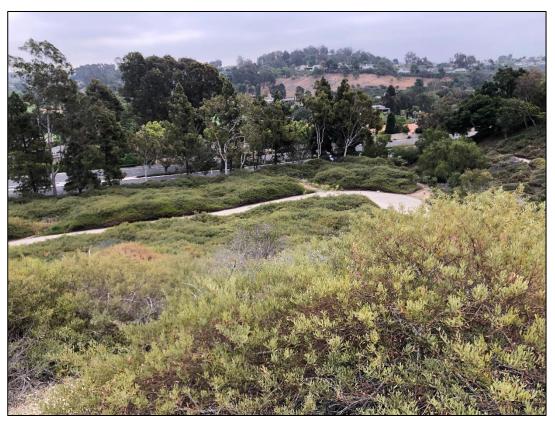












Looking south-east at the Project site.



Looking north-east at the Acacia sp. found onsite.



Looking south within the Project site.



Looking north at the dense Acacia sp. used for erosion control.



Developed areas the Project site.



Looking west at the dense Acacia sp. used for erosion control.