HAMILTON BIOLOGICAL

March 24, 2021

Larry Smith, Senior Project Manager Consultant
Conservation Corps of Long Beach
340 Nieto Avenue
Long Beach, CA 90814

SUBJECT: NESTING BIRD SURVEY REPORT
WRIGLEY GREENBELT
LONG BEACH, LOS ANGELES COUNTY, CALIFORNIA

Dear Larry,

At your request, Hamilton Biological, Inc., has conducted a survey for any birds potentially nesting in trees planned for pruning/removal at the Wrigley Greenbelt in Long Beach (Figure 1). This report discusses relevant federal and state regulations protecting nesting birds, provides the methods and results of my survey, and provides recommendations for completing the project.

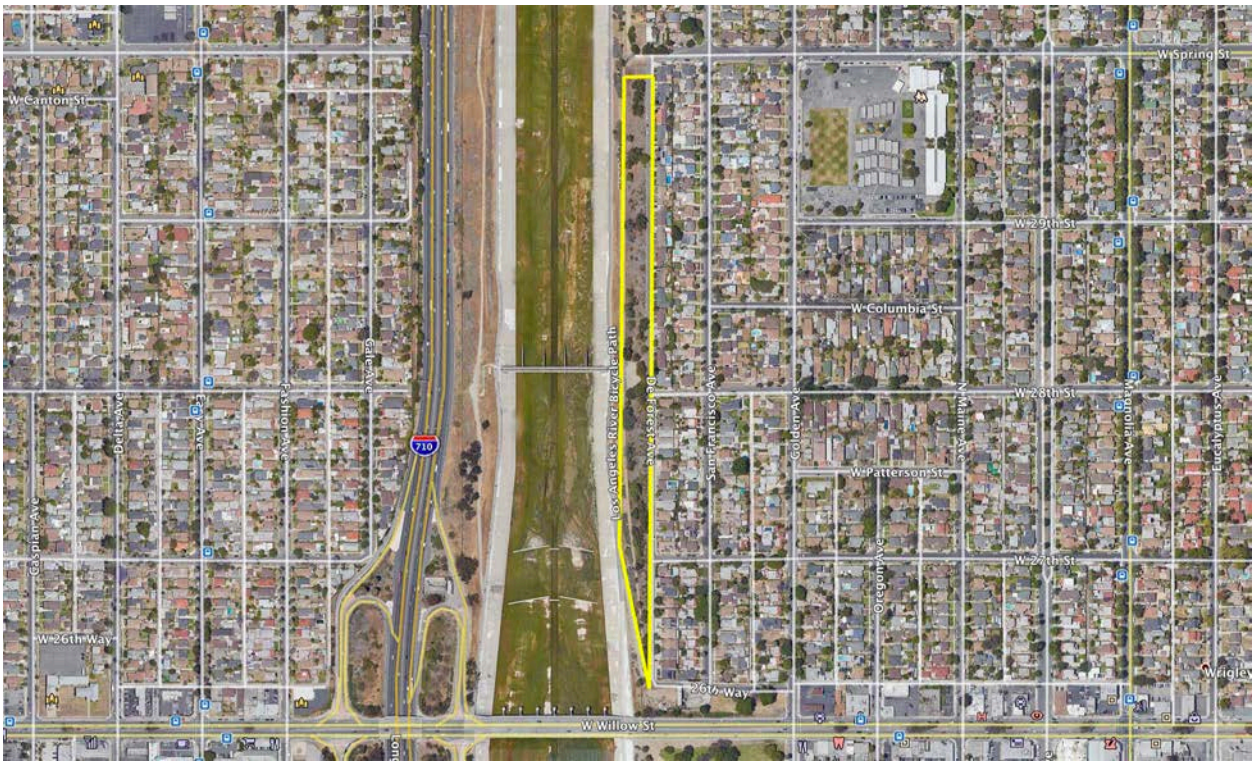

Figure 1. The Survey Area consisted of the Wrigley Greenbelt in Long Beach, located just east of the Los Angeles River channel north of West Willow Street and south of West Spring Street. Trees within 300 feet of this area were surveyed for the potential presence of nesting raptors.

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REVIEW OF REGULATIONS PROTECTING NESTING BIRDS

Federal Migratory Bird Treaty Act

The federal Migratory Bird Treaty Act (MBTA) of 1918 implemented the 1916 Convention between the U.S. and Great Britain (for Canada) for the protection of migratory birds. Later amendments implemented treaties between the U.S. and Mexico, the U.S. and Japan, and the U.S. and the Soviet Union (now Russia). At the heart of the MBTA is this language:

> Establishment of a Federal prohibition, unless permitted by regulations, to "pursue, hunt, take, capture, kill, attempt to take, capture or kill, possess, offer for sale, sell, offer to purchase, purchase, deliver for shipment, ship, cause to be shipped, deliver for transportation, transport, cause to be transported, carry, or cause to be carried by any means whatever, receive for shipment, transportation or carriage, or export, at any time, or in any manner, any migratory bird, included in the terms of this Convention . . . for the protection of migratory birds . . . or any part, nest, or egg of any such bird." (16 U.S.C. 703)

For many years, this language was subject to broad interpretation, which in some cases led to prosecution for violations of the MBTA that were incidental to otherwise lawful activities, such as tree trimming. On February 3, 2020, the U.S. Fish and Wildlife Service (USFWS) published in the Federal Register a proposed rule stating that the MBTA applies only to intentional injuring or killing of birds. On June 5, 2020, the USFWS published a draft Environmental Impact Statement with a 45-day public comment period, ending July 20, 2020. On November 27, 2020, the USFWS announced the publication of the final Environmental Impact Statement (FEIS). On January 7, 2021, the final regulation defining the scope of the MBTA was published in the Federal Register. On February 9, 2021 the Correction of Effective Date and Request for Public Comments published in the Federal Register changed the effective date to March 8, 2021, 60 days from its initial publication, and re-opened the public comment period on whether the rule should be amended, rescinded, further delayed, or allowed to go into effect. On March 8, 2021, the Department of the Interior withdrew its 2017 legal opinion which preceded and formed the basis of the rule. This opinion has been the subject of legal challenges and was vacated by a federal district court in August 2020. In withdrawing the opinion, Interior stated that this federal court decision was consistent with its long-standing interpretation of the MBTA.

It is therefore likely that the Trump Administration's MBTA liability rule will be short-lived. In its place the Biden Administration may return to policies initiated under the Obama Administration, which had considered a proposal to develop an incidental take program. Thus, as of today's date, the MBTA remains potentially relevant to the planned action.

California Fish and Game Code

Section 3503 of the California Fish and Game Code states, "It is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by this code or any regulation made pursuant thereto." Thus, in California, it remains a

potential State offense to knowingly disrupt an active nest of virtually any native bird species. The term "active nest" is not clearly defined in the Fish and Game Code, and in some circumstances may be left to the discretion of the biologist in the field. At present, wardens for the California Department of Fish & Wildlife (CDFW) typically define an active nest as one that is completed and holding at least one egg (Erinn Wilson, CDFW, pers. comm.).

Survey Methods

Biologist Robert A. Hamilton conducted the nesting bird survey on March 24, 2021, from 2:00 to 4:00 p.m. Skies were 10% overcast; winds were in the range of 4–10 miles per hour; and the temperature was 72° F. The area was surveyed by walking slowly under the trees proposed for pruning or removal, looking for nests in the trees above, observing the behavior of the birds in the area and listening to their vocalizations, and inspecting the ground for guano or "pellets" of undigested fur and bone often deposited beneath the nests of owls and other raptors. Trees within 300 feet of the park were inspected for the potential presence of nesting raptors.

Survey Results

I observed two nests under construction during the survey (both less than 50 percent complete), as well as a complete nest that may or may not have been active (no bird activity seen during the survey). See Figures 2–4 and Photos 1–6.

Figure 2. Showing the locations of two nests under construction and a third nest possibly active. See Figures 3–5 for close-ups of these locations. See also Photos 1–6.

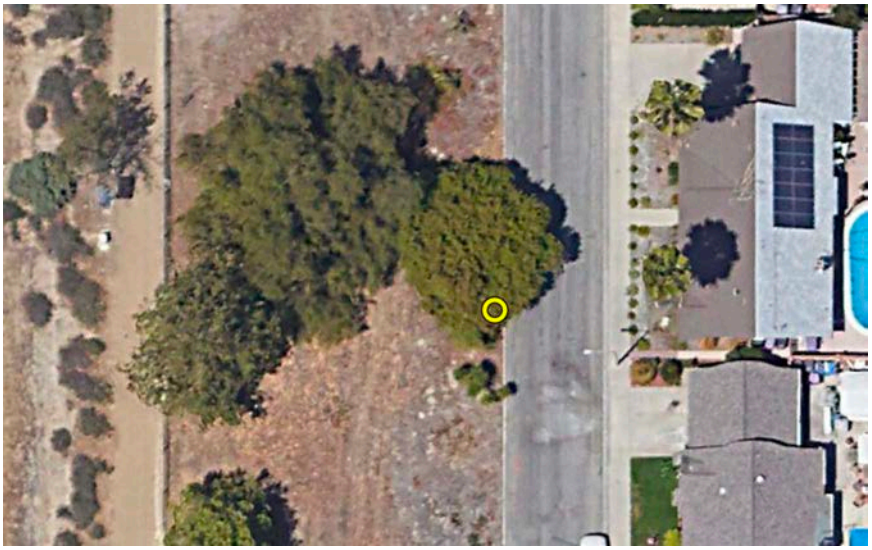

Figure 3. Showing the location of a House Finch nest under construction on March 24, 2021. The nest was approximately 6 feet up in a Brazilian Pepper Tree across the street from 2930 DeForest Avenue. See Photos 1, 2.

Figure 4. Showing the location of a potentially active nest, bird species unknown, detected on March 24, 2021. The nest was approx. 12 feet up in a Peruvian Pepper Tree across the street from 2706 DeForest Avenue. See Photos 3, 4.

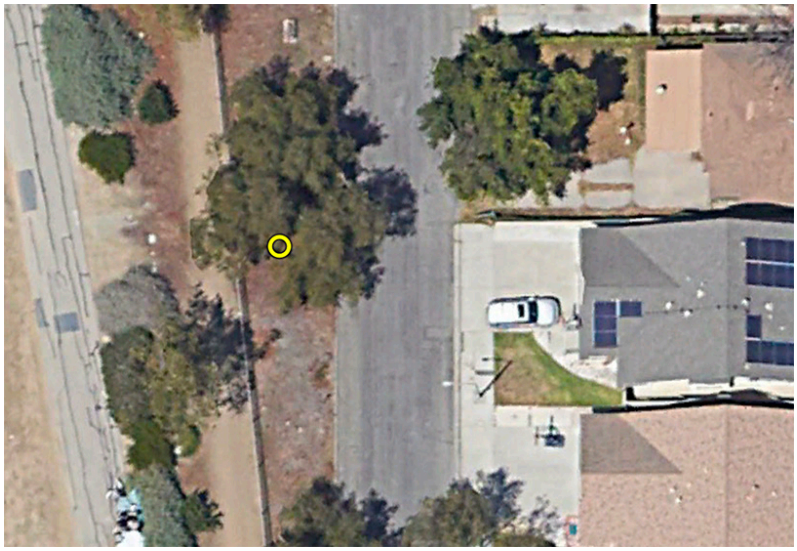

Figure 5. Showing the location of a Bushtit nest under construction on March 24, 2021. The nest was approximately 12 feet up in a Peruvian Pepper Tree across the street from 2658 DeForest Avenue. See Photos 5, 6.

Photo 1. Showing the location of a House Finch nest under construction on March 24, 2021. The nest was approximately 6 feet up in a Brazilian Pepper Tree across the street from 2930 DeForest Avenue. See Photo 2 and Figure 3.

Photo 2. Closeup of the House Finch nest under construction on March 24, 2021. See Photo 1 and Figure 3.

Photo 3. Showing the location of a a potentially active nest, bird species unknown, detected on March 24, 2021, approximately 12 feet up in a Peruvian Pepper Tree across the street from 2706 DeForest Avenue. See Photo 4 and Figure 4.

Photo 4. Closeup of a potentially active nest, species unknown, on March 24, 2021. See Photo 3 and Figure 4.

Photo 5. Showing the location of a Bushtit nest under construction on March 24, 2021. The nest was approx. 12 feet up in a Peruvian Pepper Tree across the street from 2706 DeForest Avenue. See Photo 6 and Figure 5.

Photo 6. Closeup of the Bushtit nest under construction on March 24, 2021. See Photo 5 and Figure 5.

The following 21 bird species were detected during the survey.

List of Bird Species Detected

Mallard 5
Rock Pigeon 7
Eurasian Collared-Dove 1
Anna's Hummingbird 3
Allen's Hummingbird 4
Black Phoebe 1
American Crow 2
No. Rough-winged Swallow 1
Cliff Swallow 10
Bushtit 4
Northern Mockingbird 1
House Sparrow 6
American Pipit 1
House Finch 8
Lesser Goldfinch 1
White-crowned Sparrow 5
Song Sparrow 1
California Towhee 1
Orange-crowned Warbler 1
Yellow Warbler 1
Yellow-rumped Warbler 5

DISCUSSION & RECOMMENDATION

As documented and discussed herein, I observed two nests under construction during the survey, as well as a completed nest that was potentially active (but no bird activity was observed at or near the completed nest during the survey).

It is Hamilton Biological's understanding that applicable federal and state laws prohibiting disruption of nesting birds require avoidance of nests that are complete and that have at least one viable egg. The two nests under construction appeared to be less than 50 percent complete, and thus do not satisfy this criterion (and likely will not for at least three days). Nevertheless, the City of Long Beach should determine whether or not it will allow the disruption of nests that are still under construction as part of this project.

If the House Finch nest under construction is allowed to be completed through the fledging of young, this would likely require avoiding the nest and a 25-foot recommended buffer for approximately 5-6 weeks (through the end of April or first week of May).

If the Bushtit nest under construction is allowed to be completed through the fledging of young, this would likely require avoiding the nest and a 25-foot recommended buffer for approximately 5-6 weeks (through the end of April or first week of May).

The third nest observed during the survey is complete, but appears unlikely to be active. If the City intends to remove this nest tree, a crew member should first check the nest to ensure that no viable eggs or young are present. If, however, one or more eggs or young are present, the nest and a 25-foot recommended buffer should be avoided until after fledging (or until the nest is observed to have failed).

This survey report is valid for seven days, so if tree pruning or removal extends past April 1, 2021, an updated survey is recommended. Hamilton Biological is also available to conduct supplemental surveys or to monitor work near active nests, if necessary.

As a general disclaimer, this field review represents a good-faith effort to find and document bird nests, and to recommend actions intended to ensure compliance with applicable regulations as landscape trees are pruned and removed. Birds may initiate new nests at any time, and it is possible that unfound nests existed in or near the survey area at the time of the survey. The recommendations provided represent my best understanding of state and federal regulations, and the steps needed to achieve compliance. In particular, it is stipulated here that an active nest is understood to be one that is complete and holding at least one potentially viable egg.

If work crews encounter an active nest not reported here, they should avoid disturbing the nest. If crews intend to work within 25 feet of any active nest, Hamilton Biological should be notified so that the nest may be properly identified and appropriate protective measures taken.

Thank you for the opportunity to work with you on this project. Please call me at 562-477-2181 if you have questions or wish to further discuss any matters; you may send e-mail to robb@hamiltonbiological.com.

Sincerely,

Robert A. Hamilton, President
Hamilton Biological, Inc.
http://hamiltonbiological.com