



HAMILTON BIOLOGICAL

October 25, 2021

Daniel Ruelas
Great Scott Tree Care
10761 Court Avenue #2435
Stanton, CA 90680

SUBJECT: NESTING BIRD SURVEY REPORT RUSTY FIG TREE, BIXBY ANNEX PARK

Dear Daniel,

At your request, Hamilton Biological, Inc., has conducted a survey for any birds potentially nesting in or near a Rusty Fig (*Ficus rubiginosa*) in Bixby Annex Park in Long Beach (Figure 1). The tree recently lost large limbs and has been determined to represent a potential danger to public health and safety. This report discusses relevant federal, state, and local regulations protecting nesting birds, provides the methods and results of my survey, and provides recommendations for completing the project.



Figure 1. The survey covered a damaged Rusty Fig (*Ficus rubiginosa*) on the west side of Bixby Annex Park, south of East Ocean Boulevard and east of Cherry Avenue. In addition, trees within 300 feet were surveyed for the potential presence of nesting raptors.

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 Service 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. On October 4, 2021, the USFWS revoked the provisions of the rules issued on January 7, 2021, with the effect of again leaving open the possibility of prosecution of MBTA violations incidental to otherwise legal activities. The USFWS plans to develop new regulations that will codify an interpretation of the MBTA that prohibits incidental take and potentially a regulatory framework for the issuance of permits to authorize incidental take. At this time, the MBTA should be considered 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.

City of Long Beach Tree Pruning and Removal Policy

Tree pruning/removal on City land in the Coastal Zone is governed by applicable laws and policies, including Special Condition 1 of the City's Tree Trimming and Removal Policy, which states, in part:

Tree trimming or tree removal shall be prohibited during the breeding and nesting season of the bird species referenced above (January through September) unless the City of Long Beach Department of Parks, Recreation and Marine, in consultation with a qualified arborist, determines that a tree causes danger to public health and safety. A health and safety danger exists if a tree or branch is dead, diseased, dying, or injured and said tree or branch is in imminent danger of collapse or breaking away. The City shall be proactive in identifying and addressing diseased, dying or injured trees as soon as possible in order to avoid habitat disturbances during the nesting season. Trees or branches with a nest that has been active anytime within the last five years shall not be removed or disturbed unless a health and safety danger exists.

It is my understanding that the dead branch in the identified Rusty Fig tree has been determined by the City of Long Beach to represent a potential health and safety danger that requires immediate pruning or removal.

SURVEY METHODS

Photo 1, below, shows the damaged Rusty Fig. Biologist Robert A. Hamilton conducted the nesting bird survey on October 25, 2021, from 12:15 to 12:30 p.m. Skies were 100% overcast, with intermittent light showers; winds were in the range of 1-3 miles per hour; and the temperature was 61° F. The area was surveyed by walking slowly under and around the tree planned for branch removal, and adjacent areas, 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.



Photo 1. View, facing north, of the damaged Rusty Fig tree.

SURVEY RESULTS

I did not observe any evidence of birds nesting in the Rusty Fig, or any other nearby trees, during my survey. No inactive nests of colonial waterbirds or raptors were observed in the fig tree or any other trees in the nearby vicinity.

I detected three bird species during the survey: Rock Pigeon, American Crow, and House Finch.

DISCUSSION & RECOMMENDATION

The survey found no indication of active nesting, and no inactive nests of colonial waterbirds or raptors that require preservation. Hamilton Biological therefore recommends that pruning or removal of the Rusty Fig may proceed without a biological monitor being present. This survey report is valid for 10 days. If work extends past November 4, 2021, an updated survey is recommended.

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.

If work crews encounter an active nest not reported here, they should avoid disturbing the nest. If crews intend to work near the 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>