



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
South Coast Region  
3883 Ruffin Road  
San Diego, CA 92123  
(858) 467-4201  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



April 11, 2022

Governor’s Office of Planning & Research

**Apr 11 2022**

**STATE CLEARINGHOUSE**

Eric Lardy  
Principal Planner  
City of Carlsbad  
1635 Faraday Avenue  
Carlsbad, CA 92008  
[Eric.Lardy@carlsbadca.gov](mailto:Eric.Lardy@carlsbadca.gov)

**Subject: Veteran Memorial Park (PROJECT), Mitigated Negative Declaration (MND), SCH #2022030349**

Dear Mr. Lardy:

The California Department of Fish and Wildlife (CDFW) has reviewed the above-referenced MND, dated March 2022, for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

**CDFW ROLE**

CDFW is California’s **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW also administers the Natural Community Conservation Planning (NCCP) program, a California regional habitat conservation planning program. The City of Carlsbad (City) is the only City under the subregional North County Multiple Habitat Conservation Program (MHCP) that has an approved and permitted Subarea Plan (The City of Carlsbad Habitat Management Plan (HMP)). The City adopted their HMP in December 1999; the Wildlife Agencies (jointly, CDFW and the U.S. Fish and Wildlife Service (USFWS)) granted final approvals, including an Implementing Agreement,

---

<sup>1</sup> CEQA is codified in the California Public Resources Code in Section 21000 et seq. The “CEQA Guidelines” are found in Title 14 of the California Code of Regulations, commencing with Section 15000.

Eric Lardy  
City of Carlsbad  
April 11, 2022  
Page 2 of 7

in November 2004.

## PROJECT DESCRIPTION SUMMARY

**Proponent:** City of Carlsbad

**Objective:** The Project proposes to develop a public park on 38.82 acres of a 93.62-acre parcel, which would include a Veterans memorial plaza/gathering area, playgrounds, a bike park, formal picnic areas, passive recreation areas, outdoor exercise and education areas, open turf, and multi-use trails. Project activities include vegetation clearing, grading, landscaping, installing buffers and fencing between the park and preserve areas. The Project's impact footprint of 38.82 acres is slightly larger than the actual grading footprint (37.1 acres) because it incorporates the impacts of trails and indirect impact buffers. The remaining 43.37 acres on the eastern half of the Project site will be preserved as HMP hardline preserve (Veterans Park Preserve and Macario Canyon Preserve). The Project will also require a HMP Minor Amendment to adjust the HMP hardline preserve boundary because the Project will encroach into a portion of the existing preserve's disturbed habitat on the south side of the property (3.36 acres, 0.2 of which are coastal sage scrub). In exchange, the Project will add 12.86 acres to the HMP hardline, including 10.13 acres of higher quality coastal sage scrub, thus resulting in a net increase of 9.50 acres hardline. On March 16, 2022, the City emailed the Wildlife Agencies a concurrence request to formally facilitate amending this boundary change. The Project proposes to restore 1.88 acres of disturbed habitat as Diegan coastal sage scrub on-site and to mitigate non-native grassland impacts by debiting the appropriate acreage from the City's Lake Calavera Mitigation Parcel. In addition, impacts to 0.10 acre of willow-dominated riparian scrub will be mitigated with unused wetland creation credits the City previously purchased from the North County Habitat Bank.

**Location:** The Project site is located southeast of the Faraday Avenue/Whitman Way intersection in the City of Carlsbad in San Diego County, California. The Project site is generally undeveloped except for an existing receiver pit for the Carlsbad desalination project pipeline located approximately 430 feet southeast of Whitman Way. Surrounding land uses include residential homes, the Interstate 5/Cannon Road interchange to the east, and Agua Hedionda Lagoon 0.5 mile to the northwest.

**Biological Setting:** Per the Biological Technical Report (BTR), the Project's development area consists of non-native grassland (35.35 acres) that is mowed annually, Diegan coastal sage scrub (12.43 acres) on two islands and along the northern boundary, and riparian scrub (0.19 acre). The HMP hardline preserve area consists of Diegan coastal sage scrub (35.68 acres), with smaller patches of southern maritime chaparral (2.12 acres), oak woodland (0.12 acre) and non-native grassland (4.71 acres). PSOMAS biologists conducted biological surveys on the Project site in February, April, and May of 2019. Three special status plant species were observed during the field survey: California adolphia (*Adolphia californica*; California Rare Plant Rank (CRPR) 2B.1), summer holly (*Comarostaphylis diversifolia* ssp. *diversifolia*; CRPR 1B.2), and Nuttall's scrub oak (*Quercus dumosa*; CRPR 1B.1). These plant species, however, were only observed in the preserved areas of the Project. (PSOMAS biologists, February 2022).

In addition, protocol-level surveys for coastal California gnatcatcher (*Poliioptila californica californica*; federal Endangered Species Act (ESA)-listed threatened; CDFW Species of Special Concern (SSC); gnatcatcher) were conducted on-site in May and June of 2019. The protocol-level surveys indicated the site is occupied, as three territories consisted of gnatcatcher pairs, which exhibited behavior consistent with breeding. Two of the three pairs had active nests which were documented with nestlings during the first focused survey. One nest was in a black sage shrub, in

Eric Lardy  
City of Carlsbad  
April 11, 2022  
Page 3 of 7

the southeastern portion of the Project site and the other nest was in a California sagebrush shrub approximately 300 feet outside of the northeast boundary of the Project's development area. While this nest location was outside of the Project site boundary, the territory of the pair extended into the Project site and included the coastal sage scrub habitat located just within the northeastern boundary. All three territories were located within the existing HMP hardline (PSOMAS biologists, February 2022). One loggerhead shrike (*Lanius ludovicianus*; SSC) was also detected during biological surveys and has the potential for nesting on the Project site; however, per the BTR's Exhibit 5 map, this individual was detected outside of the Project development area.

Additional species with the potential to occur on-site include western spadefoot (*Spea hammondi*; SSC), burrowing owl (*Athene cunicularia*; SSC), northern harrier (*Circus hudsonius*; SSC), California horned lark (*Eremophila alpestris actia*; CDFW Watch List (WL)), monarch (*Danaus plexippus*), golden eagle (*Aquila chrysaetos*; CDFW Fully Protected (FP) Species), Cooper's hawk (*Accipiter cooperii*; WL), and white-tailed kite (*Elanus leucurus*; FP Species). Bat species that may occur on or adjacent to the Project site for foraging and/or roosting include pallid bat (*Antrozous pallidus*; SSC), Townsend's big-eared bat (*Corynorhinus townsendii*; SSC), western mastiff bat (*Eumops perotis californicus*; SSC), hoary bat (*Lasiurus cinereus*), and Yuma myotis (*Myotis yumanensis*).

**Timeframe:** The Project is expected to span approximately 20 months and is planned to begin in Summer 2023.

## COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the City in adequately avoiding, minimizing, and identifying and/or mitigating the Project's significant, or potentially significant, direct, and indirect impacts on fish and wildlife (biological) resources. The MND should provide complete disclosure of the Project's potential impacts on biological resources. [Pub. Resources Code, § 21061; CEQA Guidelines, §§ 15003(i), 15151]. In addition, the MND should follow the conservation guidelines and mitigation ratios outlined in the MHCP and HMP.

### COMMENT #1: White-tailed Kite Avoidance

Mitigation Measure BIO-4 (MM BIO-4) and Mitigation Measure BIO-5 (MM BIO-5) do not adequately avoid impacts to white-tailed kite, a CDFW Fully Protected species (Fish & G. Code, § 3511(b)(6)). A Fully Protected species may not be taken at any time and loss of any individual kites, eggs, or nestlings would be considered significant. As written, MM BIO-4 states that Project construction activities will occur outside of the bird-breeding season (February 15–August 31), if feasible. However, if the breeding season cannot be avoided and nests of listed birds, migratory birds, raptors, or other special-status species are located, they shall be fenced with a protective buffer of 500 feet. All construction activity shall be prohibited within this area until the birds have fully fledged, or the nest is determined to no longer be active. In addition, BIO-5 incorporates measures to reduce impacts from Project lighting, site cleanliness, and pets and exotic species that may occur on the Project site. However, the implementation of MM BIO-4 and MM BIO-5 may not be sufficient to make impacts to white-tailed kite less than significant. Per the MND, page 28, white-tailed kite has the potential to forage and nest in the Project area.

Eric Lardy  
City of Carlsbad  
April 11, 2022  
Page 4 of 7

## **Recommended Potentially Feasible Mitigation Measure(s) (Regarding Project Description and Related Impact Shortcoming)**

### **Mitigation Measure #1:**

To reduce impacts to less than significant: In addition to the mitigation proposed in MM BIO-4 and MM BIO-5, CDFW recommends that the Project proponent conduct focused surveys for white-tailed kite within the Project area to adequately avoid impacts to the species and active nests that may occur in the Project area.

CDFW recommends adding an additional white-tailed kite mitigation measure that states:

“For each year in which Project activities commence between February 1 and September 15, a focused survey for white-tailed kite nests on the site and within 0.25 mile of the site will be conducted by a qualified biologist no greater than 15 days prior to the start of construction work (including clearing and grubbing). If white-tailed kites are found, the qualified biologist shall develop a species-specific avoidance plan for CDFW review and approval. Any measures approved in the avoidance plan will be implemented prior to the start of any ground-disturbing activities. If no active nests are found during the focused survey, nothing further will be required. If active nests are found during the focused survey, Project personnel shall immediately notify CDFW and establish a minimum 500’ no-work buffer zone until the qualified biologist determines, and CDFW confirms, that all chicks have fledged and are no longer reliant on the nest site. If a lapse in Project-related activities of 14 days or longer occurs, another focused survey is required before Project activities can be reinitiated.”

### **COMMENT #2: Bats**

Per the BTR, page 7, various bat species may use any portion of the Project site as foraging habitat, including pallid bat, Townsend's big-eared bat, western mastiff bat, hoary bat, and Yuma myotis. During the bat maternity season, bats are known to form colonial maternity roosts where multiple pregnant females give birth to flightless pups and rear the young. If there were a maternity roost present in the trees, impacts to that roost site would be significant. Clearing of vegetation occupied by bats would result in direct take of the species. Modifications to roost sites can have significant impacts on bat usability of a roost and can impact bat fitness and survivability (Johnston et al. 2004). Extra noise and vibration can lead to the disturbance of roosting bats which may have a negative impact on the animals. Human disturbance can also lead to a change in humidity, temperatures, or the approach to a roost that could force the animals to change their mode of egress and/or ingress to a roost. Although temporary, such disturbance can lead to the abandonment of a maternity roost (Johnston et al. 2004). Bats are considered non-game mammals and are afforded protection by State law from take and/or harassment (Fish & G. Code, § 4150; Cal. Code of Regs, § 251.1). Bats with a California SSC status meet the CEQA definition of rare, threatened, or endangered species (CEQA Guidelines § 15065). Take of SSC could require a mandatory finding of significance by the Lead Agency (CEQA Guidelines § 15065).

### **Mitigation Measure #2: BIO-2 Pre-Construction Bat Acoustic Survey**

To reduce impacts to less than significant: Because various bat species have the potential to occur within the Project area, CDFW recommends that the Project proponent conduct two sets of bat surveys prior to the initiation of the Project. The first survey should occur during the bat roosting season within all suitable habitat to determine presence/absence of bat species and analyze the potential significance of tree removal. The second (pre-construction) survey should be conducted

Eric Lardy  
City of Carlsbad  
April 11, 2022  
Page 5 of 7

no less than 30 days prior to tree removal, to ensure no bats are roosting (e.g., day, night, maternity roosts) within the trees at the time of removal.

CDFW recommends the following amended language to BIO-5, E, to adequately survey and avoid Project impacts to bat species that may occur within the Project corridor:

“A qualified biologist with expertise and experience conducting bat surveys, shall be retained by the City as a Designated Bat Biologist. CDFW recommends the Designated Bat Biologist conduct a bat survey within the Project area (plus a 100-foot buffer as access allows) to identify potential habitat that could provide daytime and/or nighttime roost sites, and any maternity roosts, especially within trees within the Project area. The survey shall occur during the roosting season (approximately March-September), using acoustic technology and emergence counts to maximize detection of bats on-site. Night roosts are typically utilized from the approach of sunset until sunrise. Maternity colonies, composed of adult females and their young, typically occur from spring through fall.

Prior to any tree removal, a qualified bat biologist will survey the trees proposed for removal for potential to support tree-roosting bat species. No more than 30 days prior to vegetation removal, the Designated Bat Biologist will conduct a pre-construction bat survey within all trees or structures that provide suitable bat roosting habitat. If a maternity roost is determined present within a tree to be removed, tree removal shall only occur between September 1 and February 28, outside of the maternity roosting season when young bats are present but are yet ready to fly out of the roost (March 1 to August 31). a 300-foot no work buffer shall be placed around the roost and no work shall occur within the buffer until after the roosting season is over. Work may proceed after a qualified biologist is able to verify that the roost is no longer active.

Trees to be removed shall be pushed down using heavy machinery rather than felling with a chainsaw. To ensure the optimum warning for any roosting bats that may still be present, trees should be pushed lightly two or three times, with a pause of approximately 30 seconds between each nudge to allow bats to become active. The tree should then be pushed to the ground slowly and remain in place until it is inspected by a bat specialist. Trees that are known to be bat roosts should not be bucked or mulched immediately. A period of at least 24 hours shall elapse prior to such operations to allow bats to escape.”

### **COMMENT #3 Exotic Species**

Per the MND, MM BIO-5c, states that a qualified biologist will relocate exotic species permanently from the Project site to an appropriate open space area to be coordinated with the City. CDFW does not recommend relocation as a method of exotic species control. CDFW recommends that the City provide further clarification as to the type of exotic species observed or expected on-site, methods of relocation, proposed open space relocation areas, and justification for why these exotic species are being relocated instead of removed permanently from the environment.

### **ENVIRONMENTAL DATA**

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a data base which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be mailed electronically to CNDDDB at the following email address:

Eric Lardy  
City of Carlsbad  
April 11, 2022  
Page 6 of 7

[CNDDDB@wildlife.ca.gov](mailto:CNDDDB@wildlife.ca.gov). The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

## FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying Project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)


## CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist the City in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Alison Kalinowski, Environmental Scientist, at [Alison.Kalinowski@wildlife.ca.gov](mailto:Alison.Kalinowski@wildlife.ca.gov).

Sincerely,

DocuSigned by:

  
D700B4520375406...

David A. Mayer  
Environmental Program Manager  
South Coast Region

ec: CDFW

David Mayer, San Diego – [David.Mayer@wildlife.ca.gov](mailto:David.Mayer@wildlife.ca.gov)  
Jennifer Turner, San Diego – [Jennifer.Turner@wildlife.ca.gov](mailto:Jennifer.Turner@wildlife.ca.gov)  
Alison Kalinowski, San Diego – [Alison.Kalinowski@wildlife.ca.gov](mailto:Alison.Kalinowski@wildlife.ca.gov)  
Cindy Hailey, San Diego – [Cindy.Hailey@wildlife.ca.gov](mailto:Cindy.Hailey@wildlife.ca.gov)  
Jonathan Snyder, USFWS – [Jonathan\\_D\\_Snyder@fws.gov](mailto:Jonathan_D_Snyder@fws.gov)  
State Clearinghouse, Office of Planning and Research – [State.Clearinghouse@opr.ca.gov](mailto:State.Clearinghouse@opr.ca.gov)

## REFERENCES

California Department of Fish and Wildlife. 2022. California Natural Diversity Database (CNDDDB). Available from: <https://wildlife.ca.gov/Data/CNDDDB>.

California Department of Fish and Wildlife. 2021. CNDDDB – Plants and Animals. Available from: <https://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

California Department of Fish and Wildlife. 2022. Special Animal List. January 2022. Available from: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=109406&inline>.

California Department of Fish and Wildlife. 2022. State and Federally Listed Endangered and Threatened Animals of California. January 2022. Available from: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=109405&inline>.

Eric Lardy  
City of Carlsbad  
April 11, 2022  
Page 7 of 7

California Department of Fish and Wildlife. 2022. State and Federally Listed Endangered, Threatened, and Rare Plants of California. January 2022. Available from:  
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=109390&inline>.

California Department of Fish and Wildlife. 2021. Submitting Data to the CNDDDB. Available from:  
<https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>.

California Office of Planning and Research (COPR). 2009 or current version. CEQA: California Environmental Quality Act. Statutes and Guidelines, § 21081.6 and CEQA Guidelines, §15097, §15126.4(2).

Johnston D., Tatarian G., and Pierson E. 2004. California Bat Mitigation Techniques, Solutions and Effectiveness. Available from:  
[http://www.wildliferesearchassoc.com/wpcontent/uploads/2017/05/California\\_Bat\\_Mitigation\\_CalTrans\\_2004-1.pdf](http://www.wildliferesearchassoc.com/wpcontent/uploads/2017/05/California_Bat_Mitigation_CalTrans_2004-1.pdf).

PSOMAS Biologists. February 2022. Veterans Memorial Park Project Draft Biological Technical Report.

PSOMAS Biologists. March 2022. Veterans Memorial Park Project Draft Initial Study/Mitigated Negative Declaration.