



State of California – Natural Resources Agency  
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**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



June 15, 2022

Governor's Office of Planning & Research

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**Jun 15 2022**

## STATE CLEARINGHOUSE

**Subject: McKee Orchard (Project), Mitigated Negative Declaration (MND),  
SCH #2022050573**

Dear Mr. Silva:

The California Department of Fish and Wildlife (CDFW) has reviewed the above-referenced MND, dated May 26, 2022, for the Project pursuant to 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's 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, subdivision (a) & 1802; Pub. Resources Code, § 21070; California Environmental Quality Act (CEQA) Guidelines, § 15386, subdivision (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 state fish and wildlife resources.

CDFW is also submitting comments as a Responsible Agency under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW may need to exercise regulatory authority as provided by the Fish and Game Code, including lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 *et seq.*). CDFW also administers the Natural Community Conservation Planning (NCCP) program (Fish & G. Code, § 2800 *et seq.*). The City of Poway (City) participates in the NCCP program by implementing its approved Poway Subarea Habitat

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<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 1500.

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Conservation Plan (HCP) and NCCP. The MND for the proposed Project must ensure that all requirements and conditions of the HCP/NCCP are met.

## **PROJECT DESCRIPTION SUMMARY**

The Project proposes to develop a 4.77-acre parcel with a 20-lot single-family residential subdivision as well as an extension of an existing cul-de-sac of Holly Oak. The Project would include the demolition of an existing single-family residence, removal of 44 mature trees present onsite, mass grading, and the construction of 20 one and two-story residences. Construction would occur in four phases of approximately five homes each over a period of several years. Surrounding land uses include institutional uses and single-family residential uses. To the south of the property is Rattlesnake Creek and to the north of the Property is Twin Peaks Road.

Per Alden Environmental Existing Biological Resources on the McKee Orchard Parcel (Alden Environmental 2021), the Project site has been historically disturbed by development and prior agricultural activities. The trees that are onsite include oak, pine, toyon, date palm, American beech, and pepper tree. No special-status species of plants or animals were observed during a biological survey. No active bird nests were observed on the Project site during the general biological survey or during the focused nesting survey conducted for the Project. However, three inactive raptor nests were observed in the pine trees during the surveys.

**Project location:** The proposed Project is located at 13667 Twin Peaks Road in Poway, California.

## **COMMENTS AND RECOMMENDATIONS**

CDFW offers the following comments and recommendations to assist the City in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct, and indirect impacts on fish and wildlife (biological) resources.

### **COMMENT #1: Bats**

Per the Initial Study (IS), page 20, the proposed Project includes the removal of 44 mature trees that are located onsite. Bats will use native and non-native mature trees for day and night roosts as well as maternity roosts. According to the California Natural Diversity Database (CNDDDB), three species of bats have been observed on and near the Project site, pocketed free-tailed bat (*Nyctinomops femorosaccus*; California Species of Special Concern (SSC)), Mexican long-tongued bat (*Choeronycteris mexicana*; SSC), and western yellow bat (*Lasiurus xanthinus*; SSC).

Bats could be negatively impacted by both construction activities and post-construction design. 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

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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 #1: BIO-1 Pre-Construction Bat Acoustic Survey**

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 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 added language to the Biological Resources, BIO-1 mitigation section of the IS, 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. 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. 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, 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”.

### **Comment #2: Nesting Raptors**

Per the IS, page 19, no active bird nests were observed on the project site during the general biological survey on March 3, 2021, or during the focused nesting survey conducted on June 23, 2021. However, there were three inactive raptor nests observed in the pine trees on the Project site during the surveys (Alden Environmental 2021). There is the potential for raptors and other bird species to utilize these trees for breeding in the future. Nesting birds are protected per Fish and Game Code section 3503; therefore, to avoid impacts to sensitive species, these measures as written should establish clear bird breeding survey protocols and nest buffers for other nesting birds that may be impacted by Project activities.

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## **Mitigation Measure #2: Amendments to Raptor Breeding Season Timing and Buffers**

To reduce impacts to less than significant: CDFW recommends that Project activities occur outside of the avian breeding season to adequately avoid impacts to all nesting that may occur within or adjacent to the Project area.

CDFW recommends changing the BIO-1 nesting bird mitigation measure to the final MND that states;

**BIO-1:** Removal of the trees on site shall occur outside of the breeding season for nesting birds ~~(February 1 to September 15)~~, which generally runs from February 1 through September 15 (as early as January 1 for some raptors). If removal of the pine trees must occur during the breeding season, a qualified biologist shall conduct a pre-construction survey to determine the presence or absence of nesting birds or raptors protected under the Migratory Bird Treaty Act and California Fish and Game Code. The pre-construction survey shall be conducted within 3 calendar days prior to the start of construction activities (including removal of vegetation) and shall include the limits of disturbance and an additional 100 feet (300 feet for raptors) from the area of disturbance. The applicant shall submit the results of the pre-construction survey to the City of Poway for review and approval prior to initiating any construction activities.

If an active nest is identified, a buffer shall be established between the construction activities and the nest so that nesting activities are not interrupted. For the given Project site, CDFW generally recommends a 100-foot buffer from common avian species, 300 feet for listed or highly sensitive, and 500 feet for raptors. The buffer should be delineated by temporary fencing and remain in effect as long as construction is occurring. No Project construction shall occur within the fenced nest zone until the young have fledged, are no longer being fed by the parents, have left the nest, and will no longer be impacted by the project. Reductions in the nest buffer distance may be appropriate depending on the avian species involved, ambient levels of human activity, screening vegetation, or possibly other factors.

## **Comment #3: Planting Native Trees**

The IS states the removal of trees exceeding 8 inches in diameter at breast height (DBH) would require replacement at a ratio of two 48-inch box tree specimen trees per one tree removed. Other trees would be replaced at a one-to-one ratio consistent with the requirements of the Municipal Code. These replacement trees would be planted throughout the Project site as street trees or private trees within front or rear yards. The IS does not state what type of trees will be planted as mitigation. CDFW recommends planting native trees throughout the Project site.

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## 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: [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 Emily Gray, Environmental Scientist, at [Emily.Gray@wildlife.ca.gov](mailto:Emily.Gray@wildlife.ca.gov).

Sincerely,

DocuSigned by:

  
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David A. Mayer  
Environmental Program Manager  
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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\\_MitigationCalTrans\\_2004-1.pdf](http://www.wildliferesearchassoc.com/wpcontent/uploads/2017/05/California_Bat_MitigationCalTrans_2004-1.pdf).