



STATE OF CALIFORNIA
DEPARTMENT OF FISH AND WILDLIFE

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March 2, 2026

Bethelhem Telahun, Planner
City of San Jose
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Subject: Heritage Oaks Memorial Park, Supplemental Environmental Impact Report, SCH No. 2024090194; Santa Clara County

Dear Bethelhem Telahun:

The California Department of Fish and Wildlife (CDFW) received a Supplemental Environmental Impact Report (EIR) from the City of San Jose (City) for the Heritage Oaks Memorial Park project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.

CDFW is submitting comments on the supplemental EIR to inform the City, as the Lead Agency, of our concerns regarding potentially significant impacts to sensitive resources associated with the proposed Project. CDFW is providing these comments and recommendations regarding those activities involved in the Project that are within CDFW's area of expertise and relevant to its statutory responsibilities (Fish and G. Code, § 1802), and/or which are required to be approved by CDFW (CEQA Guidelines, §§ 15086, 15096 and 15204).

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.) 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.

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CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority over the Project pursuant to the Fish and Game Code. For example, the Project may be subject to CDFW's Lake and Streambed Alteration (LSA) regulatory authority, if the Project impacts the bed, channel or bank of any river, stream or lake within the State (Fish & G. Code, § 1600 et seq.). Likewise, to the extent the Project may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

REGULATORY REQUIREMENTS

California Endangered Species Act

A CESA Incidental Take Permit (ITP) must be obtained from CDFW if the Project has the potential to result in "take" of plants or animals listed under CESA, either during construction or over the life of the Project. Under CESA, "take" means "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill." (Fish & G. Code, § 86.) CDFW's issuance of an ITP is subject to CEQA and to facilitate permit issuance, any project modifications and mitigation measures must be incorporated into the CEQA document analysis, discussion, and mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain a CESA Permit.

California Environmental Quality Act

CEQA requires a mandatory finding of significance if a project is likely to substantially impact threatened or endangered species. Pub. Resources Code, §§ 21001, subd. (c) & 21083; CEQA Guidelines, §§ 15380, 15064 & 15065.) In addition, pursuant to CEQA, the Lead Agency cannot approve a project unless all impacts to the environment are avoided or mitigated to less-than-significant levels, or the Lead Agency makes and supports Findings of Overriding Consideration (FOC) for impacts that remain significant despite the implementation of all feasible mitigation. Findings of consideration under CEQA, however, do not eliminate the Project proponent's obligation to comply with the Fish and Game Code.

Lake and Streambed Alteration

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et seq., for Project activities affecting river, lakes or streams and associated riparian habitat. Notification is required for any activity that may substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank (including associated riparian or wetland resources); or deposit or dispose of material where it may pass into a river, lake, or stream. Work within ephemeral streams, drainage ditches, washes, watercourses with a subsurface

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flow, and floodplains is generally subject to notification requirements. In addition, infrastructure installed beneath such aquatic features, such as through hydraulic directional drilling, is also generally subject to notification requirements. Therefore, any impact to the mainstems, tributaries, or floodplains or associated riparian habitat caused by the proposed Project will likely require an LSA Notification. CDFW may not execute a final LSA Agreement until it has considered the final EIR and complied with its responsibilities as a responsible agency under CEQA.

Migratory Birds and Raptors

CDFW has authority over actions that may result in the disturbance or destruction of active bird nest sites or the unauthorized take of birds. Fish and Game Code sections protecting birds, their eggs, and nests include section 3503 (regarding unlawful take, possession, or needless destruction of the nests or eggs of any bird), section 3503.5 (regarding the take, possession, or destruction of any birds-of-prey or their nests or eggs), and section 3513 (regarding unlawful take of any migratory nongame bird). Migratory birds are also protected under the federal Migratory Bird Treaty Act (MBTA).

PROJECT DESCRIPTION AND LOCATION SUMMARY

Proponent: City of San Jose

Objective: The Project is a "Planned Development" to effectuate the 2014 Planned Development Zoning and begin construction within Area 1 of the Project. Area 1 would be developed with up to 8 community mausoleum buildings totaling up to 19,900 square feet (sf), an approximately 24,400 sf 2-level terraced funeral home/administrative building with a chapel, offices, prep center, and small chapel/reception center, a 5,231-sf maintenance building and adjacent maintenance storage yard and parking areas, and an approximately 4,300 sf crematory. Area 1 would include construction of new roads within the Project site, gardens, and the removal of 20 trees. Off-site construction for the Project would include a 17,000-linear-foot recycled water line extending from the Metcalf Energy Center and 6,220 linear feet of potable water line extending from Santa Teresa Boulevard to the Project site.

Location: GPS Latitude: 37°10'48.6"N, Longitude: 121°44'48.7"W; Cross streets of Bailey Avenue, Monterey Road, Santa Teresa Road, and Laguna Avenue in the City of San Jose, County of Santa Clara, California; Associated Parcel Numbers (APN) 712-03-114, 712-03-115, and 712-03-098.

Timeframe: Approximately 2026 - 2226

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ENVIRONMENTAL SETTING

Sufficient information regarding the environmental setting is necessary to understand any potentially significant impacts on the environment of the proposed Project and any alternatives identified in the supplemental EIR (CEQA Guidelines, §§15125 & 15360). **CDFW recommends the supplemental EIR provide baseline habitat assessments for special-status plant, fish and wildlife species located and potentially located within the Project area and surrounding lands, including all rare, threatened, and endangered species (CEQA Guidelines, §15380).** The supplemental EIR should describe aquatic habitats, such as wetlands or waters of the U.S. or State, and any sensitive natural communities or riparian habitat occurring on or adjacent to the Project site (for sensitive natural communities (<https://wildlife.ca.gov/Data/VegCAMP/NaturalCommunities#sensitive%20natural%20communities>), and any stream, riparian, or wetland set back distances the City may require. Fully protected, threatened or endangered, candidate, and other special-status species or sensitive natural communities that are known to occur, or have the potential to occur in or near the Project area include, but are not limited to: the species listed in the State and Federally Listed Endangered and Threatened Animals of California – February 2026 list at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=109405&inline> or State and Federally Listed Endangered, Threatened, and Rare Plants of California – January 2026 at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=109390&inline>.

Habitat descriptions and species profiles included in the supplemental EIR should include robust information from multiple sources: aerial imagery; historical and recent survey data; field reconnaissance; scientific literature and reports; U.S. Fish and Wildlife Service's (USFWS) Information, Planning, and Consultation System; California Aquatic Resources Inventory; and findings from "positive occurrence" databases such as California Natural Diversity Database (CNDDDB). Only with sufficient data and information can the City adequately assess which special-status species are likely to occur in the Project vicinity.

CDFW recommends surveys be conducted for special-status species with potential to occur, following recommended survey protocols if available. Survey and monitoring protocols and guidelines are available at: <https://www.wildlife.ca.gov/Conservation/Survey-Protocol>.

Botanical surveys for special-status plant species, including those listed by the California Native Plant Society (<http://www.cnps.org/cnps/rareplants/inventory/>), should also be conducted during the blooming period for all sensitive plant species potentially occurring within the Project area and include the identification of reference populations. Please refer to CDFW protocols for surveying and evaluating impacts to rare plants available at: <https://www.wildlife.ca.gov/Conservation/Plants>.

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IMPACT ANALYSIS AND MITIGATION MEASURES

The CEQA Guidelines (§15126.2) necessitate the supplemental EIR discuss all direct and indirect impacts (temporary and permanent) that may occur with implementation of the Project. This includes evaluating and describing impacts such as:

- Land use changes that would reduce open space or agricultural land uses and increase residential or other land use involving increased development;
- Potential for impacts to fully protected and special-status species;
- Permanent and temporary habitat disturbances associated with ground disturbance, noise, lighting, reflection, air pollution, traffic or human presence;
- Obstruction of movement corridors, fish passage, or access to water sources and other core habitat features;
- Water quality impacts resulting from construction and operation of the Project;
- Impacts to the bed, channel, and bank, in the reservoirs and creeks downstream of the Project;
- Permanent and temporary habitat disturbances associated with ground disturbance, noise, lighting, reflection, air pollution, traffic or human presence; and
- Impacts both from construction and future operation of the Project.

The CEQA document also should identify existing and reasonably foreseeable future projects in the Project vicinity, disclose any cumulative impacts associated with these projects, determine the significance of each cumulative impact, and assess the significance of the Project's contribution to each impact (CEQA Guidelines, § 15355). Although a project's impacts may be insignificant individually, its contributions to a cumulative impact may be considerable; a contribution to a significant cumulative impact (e.g., reduction of available habitat for a listed species) should be considered cumulatively considerable without mitigation to minimize or avoid the impact.

The CEQA Guidelines direct the City, as the Lead Agency, to consider and describe in the supplemental EIR all feasible mitigation measures to avoid and/or mitigate potentially significant impacts of the Project on the environment based on comprehensive analysis of the potential direct, indirect, and cumulative impacts of the Project. (CEQA Guidelines, §§ 15021, 15063, 15071, 15126.2, 15126.4 & 15370.) This should include a discussion of take avoidance and minimization measures for special-status species, which are recommended to be developed in early consultation with the USFWS, the National Marine Fisheries Service

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and CDFW. These measures can then be incorporated as enforceable Project conditions to reduce potential impacts to biological resources to less-than-significant levels.

Fully protected species may not be taken or possessed at any time except in limited circumstances (Fish & G. Code, §§ 3511, 4700, 5050, & 5515). Therefore, the supplemental EIR should include measures to completely avoid "take" of fully protected species.

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, including:

COMMENT 1: Migratory Birds and Nesting Raptors

Issue: The supplemental EIR acknowledges there is foraging bird habitat and potential nesting habitat on the Project site that may be impacted by Project disturbance. This includes potential habitat for special-status species like white-tailed kite (*Elanus leucurus*), northern harrier (*Circus hudsonius*), Swainson's hawk (*Buteo swainsoni*), peregrine falcon (*Falco peregrinus*), golden eagle (*Aquila chrysaetos*), black swift (*Cypseloides niger*), loggerhead shrike (*Lanius ludovicianus*), and grasshopper sparrow (*Ammodramus savannarum*). The supplemental EIR indicates site disturbance may occur during the nesting bird season (February 1 through August 31). MM BIO-3 specifies a Qualified Biologist shall conduct a habitat assessment and pre-construction nesting bird and ground nesting species no more than seven days prior to initiation of work and that "if an active nest is found in or close enough to the Project area to be disturbed by construction activities, a construction free buffer zone shall be established by a qualified biologist around the nest. Buffer zones are typically 300 feet (radius) for raptors and 100 feet (radius) for other birds but would be determined by the qualified biologist according to site-specific, Project-specific, and activity-specific considerations such as visual barriers between the nest and the type of activity, and the species of nesting bird and its tolerance of the activity." CDFW has additional recommendations related to qualified biologist authority and raptor behavior, as the supplemental EIR allows construction and vegetation removal to occur with relatively small nest buffers for raptor bird species. These buffers are not biologically protective for many species and risk nest abandonment, reduced productivity, and unlawful "take" under California Fish & Game Code and the MBTA.

Evidence that the impact would be significant: Raptors are highly sensitive to human disturbance during courtship, incubation, and fledging. Repeated flushes and noise/activity near nests are linked to lower nesting success. Spatial and temporal buffers are necessary to prevent disturbance, and effective distances vary by species and site conditions, often exceeding a few hundred feet (Richardson and Miller 1997). CDFW emphasizes that all raptors are protected under state law (Fish & Game Code §§3503, 3503.5, 3513) and

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inadequate buffers that cause nest failure or harassment would constitute a significant impact and potential violation (CDFW 2019). Additional raptor research underscores that buffer-setting should account for species traits and local visibility/line-of-sight; conservative distances and seasonal restrictions reduce disturbance risk (White et al. 2022).

Recommendations: The City should revise the supplemental EIR's mitigation to adopt species-specific, seasonally appropriate, and enforceable measures, including:

1. **Minimum no-disturbance buffers:** General raptors should have a buffer of greater than or equal to 500 feet (ft) with direct line-of-sight, which may only be reduced with screening and Qualified Biologist approval (Richardson and Miller 1997). For species like Swainson's hawk, there should be at least a 0.5-mile buffer until fledging is confirmed by a Qualified Biologist (CDFW 2000).
2. **Protocol surveys & timing:** Conduct protocol-level raptor surveys within at least 1,000 feet of disturbance footprint before any work during nesting season.
3. **Seasonal work windows:** Schedule tree removal and high-noise activities outside the nesting season where feasible; if not feasible, implement full buffers and monitoring (Richardson and Miller 1997).
4. **Regulatory coordination:** Consult with CDFW/USFWS when active raptor nests are within buffer zones.

COMMENT 2: Bats

Issue: The supplemental EIR does not adequately assess or disclose potential impacts to bats resulting from tree removal and structural disturbance associated with the Project. While the Project proposes removal of many trees that may provide suitable roosting habitat, the supplemental EIR lacks a comprehensive bat habitat assessment and relies on limited, short-term pre-construction surveys to address potential impacts. Mitigation Measure MM BIO-4 proposes bat surveys within seven days prior to Project activities; however, this is insufficient to establish baseline conditions, identify seasonal roosting patterns, or ensure avoidance of maternity or hibernation roosts. Surveys should occur at least two seasons in advance of Project initiation. As a result, the supplemental EIR minimizes the potential for significant impacts to bats and does not demonstrate that impacts would be reduced to less-than-significant.

Evidence of Impacts: Bats are a sensitive species that rely on a variety of roosting features, including large trees with cavities or exfoliating bark, crevices in bridges and buildings, and other structural voids. Many bat species exhibit strong seasonal variation in roost use, shifting between maternity roosts, day roosts, night roosts, and hibernacula depending on time of year. Removal or disturbance of roosting habitat during critical life stages, such as maternity

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season, can result in direct mortality, abandonment of young, or long-term population declines (Kunz and Lumsden 2003; Cryan and Barclay 2009).

Scientific literature demonstrates that single-season or last-minute surveys are inadequate to characterize bat use of a site. Bat occupancy can vary substantially between spring, summer, and fall, and absence during a short survey window does not indicate absence during other biologically important periods (Weller 2007). Maternity colonies, which are typically present during late spring and summer, are especially vulnerable because females give birth to non-volant young that cannot escape disturbance or habitat removal (Kunz and Fenton 2005). Disturbance of maternity roosts is widely recognized as a significant impact because reproductive success in bats is low, with most species producing only one pup per year.

Recommendations: The supplemental EIR should include:

- Multi-Season Bat Surveys: Focused bat surveys conducted during at least two biologically relevant seasons prior to Project initiation, such as:
 - o Spring/early summer (March 1–April 15) to identify maternity roost establishment; and
 - o Late summer/fall (August 31–October 15) to document late-season roost use and migration-related activity.
- Bat Habitat Monitoring by a qualified biologist of suitable habitat from March 1 to April 1 or August 31 to October 15 prior to construction activities. If the focused survey reveals the presence of roosting bats, then the appropriate exclusionary or avoidance measures will be implemented prior to construction during the period between March 1 to April 15 or August 31 to October 15.
- Bat Project Avoidance: If active bat roosts are observed during environmental assessments or during construction, at any time, all Project activities shall stop until the qualified biologist develops a bat avoidance plan to be implemented at the Project site. The bat avoidance plan should utilize seasonal avoidance, phased construction as well as temporary and permanent bat housing structures developed in coordination with CDFW.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database 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 CNDDDB. The CNDDDB field survey form can be found at the following

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link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data#44524420-pdf-field-survey-form>.
The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: <https://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 and Game Code, § 711.4; Pub. Resources Code, § 21089).

CONCLUSION

CDFW appreciates the opportunity to comment on the supplemental EIR to assist the City in identifying and mitigating Project impacts on biological resources. Please contact Emily Carlson, Environmental Scientist, at Emily.Carlson@wildlife.ca.gov or Jason Faridi, Senior Environmental Scientist (Supervisory), at Jason.Faridi@wildlife.ca.gov if you have questions.

Sincerely,

DocuSigned by:

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Erin Chappell
Regional Manager
Bay Delta Region

ec: Office of Land Use and Climate Innovation SCH No. 2024090194
Craig Weightman, CDFW Bay Delta Region - Craig.Weightman@wildlife.ca.gov

REFERENCES

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