

ACTIONS TO PREVENT THE DESTRUCTION OF AN ACTIVE NEST

(Suggestions apply primarily to California. Laws may vary in other states. For questions, contact your state wildlife enforcement department)

Know the Facts:

- In California, bird protection regulations do not prohibit tree care or tree removal during the nesting season. It is not a crime to prune or remove trees during that period.
- The Migratory Bird Treaty Act as interpreted in California, and other CA state regulations, prohibit damage to nesting birds (even accidental harm), but sometimes what constitutes damage can be a matter of interpretation, and interpretations can vary even among those that enforce them. Currently (since 2018) federal interpretation of the Act is less stringent and allows for 'incidental take' in the course of completing a job, and is not considered an offence. As a general rule, fines are issued only in the most egregious circumstances, and when willful intent to do harm is evident. California regulations clearly state that destroying or harming a nest with eggs or chicks, or taking possession of either, is prohibited by law. It could be argued that exposing a nest to the elements (by removal of protective foliage immediately around the nest), and also working in a tree with an active nest for a protracted period in which a parent is prevented access to the nest to feed or otherwise care for the chicks, could constitute harm to nesting birds should the eggs or chicks die or the nest be destroyed.

Be Prepared:

- Keep this website readily accessible to share with companies: **TreeCareForBirds.com**
- Make a copy of **this document** to hand out.
- Open this link to learn what to do **if you find a baby bird.**
- Retain the following information for reporting willful destruction of nests or related concerns:
- Call California Wildlife Law Enforcement Division, Sacramento: (916) 653 4094.
- Or Contact **CALTIP**: 1 (888) 334 2258) 24 hours a day, 7 days a week. Be prepared to give the fullest possible account of the incident including company name, foreman's name, vehicle license number, type of violation and when and where it occurred. You are not obligated to provide your name however it is highly beneficial to all concerned that you do as it may be necessary to seek further clarification or evidence from you. Your credibility is stronger if you do.
- OR write **fws_tips@fws.gov**. Or CALL: 1(844 397-8477)

Be proactive:

If you know that your city, property manager or Home Owner Association's tree care contractor is scheduled to work in a tree in which there is an active nest, contact the appropriate person/s ahead of time. You can offer to identify the tree by tying colored

tape/ribbon around the trunk. Staples and nails are harmful to trees because the holes they leave allow pests and disease to enter the tree. Using them to affix messages to a living tree is not recommended.

Avoid these actions:

- Initially approaching a crew with loud hostility and threats.
- Exaggerating facts, making statements about which you are uncertain or cannot confirm, or making threats that carry no weight and will not be enforced.

***Spanish to English translations of basic questions and statements can be found at the end of this document.**

If there is an active nest in a tree about to be pruned:

- Note the name of the tree care company.
- Approach seriously but respectfully and request that work in the tree stop immediately while you talk with them.
- Request to speak with the foreman on the site. Get their name.
- Point to the nest location and inform them that bird regulations prohibit disturbance or harm to an active nest; request that the work be postponed until the birds have left the nest or no longer need the nest tree (possibly in 2-3 weeks). If possible, offer to contact them/the company when the birds have left.
- If you are concerned that work in trees immediately adjacent to the nest tree may impact the nest, tell them so, and recommend that a wildlife biologist be consulted. (The TreeCareForbirds.com website has a **list of consulting biologists**)
- Understand that the foreman will likely have to consult their supervisor or client before making a decision.
- If the company is cooperative/helpful, thank them. Get the foreman's contact information before they leave.
- Tell the foreman that you will contact their company to express appreciation of their cooperation. Make the promise only if you intend to do so.

If the company proceeds to destroy a nest (or had already done so):

- If the company appears to plan on destroying the nest, warn them that you will take photos and report them.
- If a nest is destroyed, take photos of it and of workers and the surrounding conditions as needed.
- If nestlings are still alive, contact the **nearest wildlife rehabilitation center** to ask for guidance, or ask the foreman to do so. (Refer to the guidelines provided previously under "Be Prepared." Following those guidelines could make a call unnecessary.)
- Meanwhile, if possible and safe to do so, relocate the birds to a safe, quiet location away from sun and possible predators. Keep children and pets away from the nest.

- If possible, remain attentive to the situation until you know the birds have been appropriately care for.
- Record the reactions of the foreman or crew as accurately as you can. Adhere to facts and observations, avoiding needless subjectivity and speculation. (Your effectiveness may rest on your credibility.)
- Acquire witnesses if you can.
- Report to any of the law enforcement agencies listed above.
- Subsequently describe situation to TreeCareforBirds via:
Gillian.Martin@CavityConservation.com
An attempt will be made to educate the company and reduce future conflicts.

Spanish to English translations:

Please check this tree carefully for bird nests before you start working in it.

Antes de comenzar a trabajar en él árbol, por favor reviselo cuidadosamente para ver si hay nidos de pájaros

I think there are birds nesting in this tree.

Creo que hay pájaros anidando en este árbol.

It is against the law to harm an active bird nest.

Es contra la ley dañar un nido activo de ave.

Please stop working in this tree until I can speak with your office or supervisor.

Por favor deje de trabajar en este árbol hasta que pueda hablar con su oficina o supervisor.