



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Bay Delta Region  
2825 Cordelia Road, Suite 100  
Fairfield, CA 94534  
(707) 428-2002  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

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



Governor's Office of Planning & Research

**Sep 11 2020**

September 11, 2020

## STATE CLEARINGHOUSE

Thai-Chau Le, Environmental Project Manager  
City of San Jose, Department of Planning, Building and Code Enforcement  
200 East Santa Clara Street, 3rd Floor Tower  
San Jose, CA 95113-1905  
[Thai-Chau.Le@sanjoseca.gov](mailto:Thai-Chau.Le@sanjoseca.gov)

Subject: Sunset Mixed-Use Complex Project, Notice of Preparation of a Draft Environmental Impact Report, SCH No. 2020070436, City of San Jose, Santa Clara County

Dear Thai-Chau Le:

The California Department of Fish and Wildlife (CDFW) received the Notice of Preparation (NOP) of a Draft Environmental Impact Report (EIR) from the City of San Jose (City) for the Sunset Mixed Use Complex Project (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 resources. 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 expected to be a Trustee Agency with regards to this Project. As a Trustee Agency, CDFW has a responsibility pursuant to CEQA for commenting on projects that could directly or indirectly impact biological resources. CDFW has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (i.e. biological resources). As a Trustee Agency, CDFW is responsible for providing, as available, biological expertise to review and comment upon environmental documents and impacts arising from project activities (CEQA Guidelines, § 15386; Fish and Game Code, § 1802).

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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 15000.

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## PROJECT DESCRIPTION SUMMARY

**Proponent:** City of San Jose

**Objective:** Within 11.42 acres, the existing buildings will be demolished and there will be construction of a residential and retail building complex with associated parking areas. There will also be a 21,780-square-foot public park constructed.

**Location:** The Project is located on the north side of Alum Rock Avenue between Castlecrest Drive and Jose Figueres Avenue in the City of San Jose, Santa Clara County, CA 95116; APN#s are 481-07-016, 481-07-018, 481-07-019, 481-07-020, 481-07-027, and 481-07-028.

## COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below 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.

The NOP does not specifically state that the proposed Project could potentially result in tree removal. However, upon review of Figure 3 within the NOP, there are a few trees located within the proposed Project site. Trees are also located adjacent to the Project site. Please be advised that both native and non-native trees provide nesting habitat for birds, and habitat value for other wildlife.

CDFW recommends that the following protective measures be included in the draft EIR:

1. **Nesting Bird Surveys:** If Project-related work is scheduled during the nesting season (typically February 15 to August 30 for small bird species such as passerines; January 15 to September 15 for owls; and February 15 to September 15 for other raptors), CDFW recommends that a qualified biologist conduct two surveys for active nests of such birds within 14 days prior to the beginning of Project construction, with a final survey conducted within 48 hours prior to construction. Appropriate minimum survey radii surrounding the work area are typically the following: i) 250 feet for passerines; ii) 500 feet for small raptors such as accipiters; and iii) 1,000 feet for larger raptors such as buteos. Surveys should be conducted at the appropriate times of day and during appropriate nesting times.
2. **Active Nest Buffers:** If the qualified biologist documents active nests within the Project area or in nearby surrounding areas, an appropriate buffer between the nest and active construction should be established. The buffer should be clearly marked and maintained until the young have fledged and are foraging independently. Prior to construction, the qualified biologist should conduct baseline monitoring of the nest to characterize "normal" bird behavior and establish a buffer distance which

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allows the birds to exhibit normal behavior. The qualified biologist should monitor the nesting birds daily during construction activities and increase the buffer if the birds show signs of unusual or distressed behavior (e.g. defensive flights and vocalizations, standing up from a brooding position, and/or flying away from the nest). If buffer establishment is not possible, the qualified biologist or construction foreman should have the authority to cease all construction work in the area until the young have fledged and the nest is no longer active.

## **ENVIRONMENTAL DATA**

CEQA requires that information developed in draft environmental impact reports 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, online field survey form, and contact information for CNDDDB staff can be found at the following link: <https://wildlife.ca.gov/data/CNDDDB/submitting-data>.

## **FILING FEES**

CDFW anticipates that the Project will have an impact on fish and/or wildlife, and assessment of filing fees is necessary (Fish & Game Code, § 711.4; Pub. Resources Code, § 21089). 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.

## **CONCLUSION**

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

Questions regarding this letter or further coordination should be directed to Ms. Kristin Garrison, Environmental Scientist, at (707) 944-5534 or by email at [Kristin.Garrison@wildlife.ca.gov](mailto:Kristin.Garrison@wildlife.ca.gov); or Ms. Brenda Blinn, Senior Environmental Scientist (Supervisory), at (707) 944-5541 or by email at [Brenda.Blinn@wildlife.ca.gov](mailto:Brenda.Blinn@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
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Gregg Erickson  
Regional Manager  
Bay Delta Region

ec: Office of Planning and Research, State Clearinghouse