



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Bay Delta Region  
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**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



June 4, 2024

Nhu Nguyen, Planner I  
City of San Jose, Planning Department  
200 East Santa Clara Street, 3<sup>rd</sup> Floor  
San Jose, CA 95113  
[Nhu.Nguyen@sanjoseca.gov](mailto:Nhu.Nguyen@sanjoseca.gov)

Subject: 1000 South De Anza Boulevard Residential Project, Notice of Preparation of a Draft Environmental Impact Report, SCH No. 2024050237, City of San Jose, Santa Clara County

Dear Nhu Nguyen:

The California Department of Fish and Wildlife (CDFW) received a Notice of Preparation (NOP) of a draft Environmental Impact Report (EIR) from the City of San Jose (City) for the 1000 South De Anza Boulevard Residential 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. 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 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 as provided by the Fish and Game Code. The

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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.

Nhu Nguyen  
City of San Jose  
June 4, 2024  
Page 2

Project as proposed 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.

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** City of San Jose Planning Department

**Objective:** The Project includes the demolition of an existing commercial building and surface parking lot and the removal of 19 trees (including 13 ordinance-size trees) for the construction of a 7-story, 99-unit residential building. The Project applicant would reserve 20 percent of the units to be provided at 80 percent of average median income. The building would consist of approximately 36 studios, 46 one-bedroom units, 17 two-bedroom units, 8,714 square feet of common open space, and a 112-stall parking area with mechanical lifts and 8 outdoor guest parking spaces on an approximately 0.72-gross acre lot.

**Location:** 1000 South De Anza Boulevard, City of San Jose. The coordinates for the approximate center of the Project are 37°18'37.3"N latitude 122°01'54.6"W longitude (NAD 83 or WGS 84). The Assessor's Parcel Numbers are 372-26-018.

**Timeframe:** A period of 14 months, to be determined.

## **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.

## **ENVIRONMENTAL SETTING**

The draft EIR should provide sufficient information regarding the environmental setting (“baseline”) to understand the Project, and its alternative's (if applicable), potentially significant impacts on the environment (CEQA Guidelines, §§ 15125 & 15360).

CDFW recommends that the CEQA document prepared for the Project provide baseline habitat assessments for special-status plant, fish and wildlife species located and potentially located within the Project area and surrounding lands, including, but not limited to, all rare, threatened, or endangered species (CEQA Guidelines, § 15380).

The draft 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 see:

Nhu Nguyen  
City of San Jose  
June 4, 2024  
Page 3

<https://wildlife.ca.gov/Data/VegCAMP/NaturalCommunities#sensitive%20natural%20communities>), and any stream or wetland set back distances the City may require.

Fully protected, threatened or endangered, candidate, and other special-status species and sensitive natural communities that are known to occur, or have the potential to occur in or near the Project site, include, but are not limited to those listed in **Attachment 1**.

Habitat descriptions and the potential for species occurrence should include 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, and findings from "positive occurrence" databases such as California Natural Diversity Database (CNDDDB). Based on the data and information from the habitat assessment, the draft EIR should adequately assess which special-status species are likely to occur on or near the Project site, and whether they could be impacted by the Project.

CDFW recommends surveys be conducted for special-status species with potential to occur, following recommended survey protocols if available. The Project will result in the removal of 19 trees which could impact habitat for birds and bats. Survey and monitoring protocols and guidelines are available below and at: <https://www.wildlife.ca.gov/Conservation/Survey-Protocols>.

- Burrowing Owl (*Athene cunicularia*): A qualified biologist shall conduct a habitat assessment for burrowing owl, and surveys if habitat is present. The qualified biologist shall follow the *California Department of Fish and Game (now CDFW) 2012 Staff Report on Burrowing Owl Mitigation (CDFW 2012 Staff Report) habitat assessment and survey methodology* prior to Project activities occurring during the burrowing owl wintering season from September 1 to January 31.
- Swainson's hawk (*Buteo swainsoni*) and white-tailed kite (*Elanus leucurus*): CDFW recommends using the Swainson's Hawk Technical Advisory Committee's *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley* (TAC Report)
- Bats: CDFW recommends the use of survey protocols located at the North American Bat Monitoring Program's Collect Data page, <https://www.nabatmonitoring.org/collect-data>.
- Bumble bee: Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species (<https://wildlife.ca.gov/Conservation/CESA>)

Nhu Nguyen  
City of San Jose  
June 4, 2024  
Page 4

Botanical surveys for special-status plant species, including those with a California Rare Plant Rank (<http://www.cnps.org/cnps/rareplants/inventory/>, CRPR), must be conducted during the blooming period within the Project area and adjacent habitats that may be indirectly impacted by, for example, changes to hydrological conditions, and require the identification of reference populations<sup>2</sup>. CDFW recommends two years of completed botanical survey results and obtaining CDFW's written acceptance of the results. The botanical survey results shall follow CDFW's 2018 Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Sensitive Natural Communities. Please refer to CDFW protocols for surveying and evaluating impacts to special-status plants available at: <https://www.wildlife.ca.gov/Conservation/Plants>.

### **IMPACT ANALYSIS AND MITIGATION MEASURES**

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

- Encroachments into riparian habitats, wetlands or other sensitive areas;
- Potential for impacts to special-status species;
- Loss or modification of breeding, nesting, dispersal and foraging habitat, including vegetation removal, alternation of soils and hydrology, and removal of habitat structural features (e.g., snags, roosts, vegetation overhanging banks);
- Permanent and temporary habitat disturbances associated with ground disturbance, noise, lighting, reflection, air pollution, traffic or human presence; and
- Obstruction of movement corridors, fish passage, or access to water sources and other core habitat features.

The CEQA document should also identify 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 the 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

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<sup>1</sup> CRPR 1B plants are considered rare, threatened, or endangered in California and elsewhere. Further information on CRPR ranks is available in CDFW's Special Vascular Plants, Bryophytes, and Lichens List (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=109383&inline>) and on the California Native Plant Society website (<https://www.cnps.org/rare-plants/california-rare-plant-ranks>).

Nhu Nguyen  
City of San Jose  
June 4, 2024  
Page 5

available habitat for a special-status species – should be considered cumulatively considerable without mitigation to minimize or avoid the impact.

Based on the comprehensive analysis of the direct, indirect, and cumulative impacts of the Project, the CEQA Guidelines direct the Lead Agency to consider and describe all feasible mitigation measures to avoid potentially significant impacts in the draft EIR, and/or mitigate significant impacts of the Project on the environment (CEQA Guidelines, §§ 15021, 15063, 15071, 15126.2, 15126.4 & 15370). This includes a discussion of impact avoidance and minimization measures for special-status species, which are recommended to be developed in early consultation with CDFW, USFWS, and the National Marine Fisheries Service. These measures can then be incorporated as enforceable Project conditions to reduce potential impacts to biological resources to less-than-significant levels.

## **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 the CNDDDB. The CNDDDB field survey form can be filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

## **ENVIRONMENTAL DOCUMENT FILING FEES**

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document 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 environmental document filing fee is required in order for the underlying project approval to be operative, vested, and final. (See: 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 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 Marcus Griswold, Senior Environmental Scientist (Specialist), at (707) 815-6451 or [Marcus.Griswold@wildlife.ca.gov](mailto:Marcus.Griswold@wildlife.ca.gov).

Nhu Nguyen  
City of San Jose  
June 4, 2024  
Page 6

Sincerely,

DocuSigned by:  
*Erin Chappell*  
B77E9A6211EF486  
Erin Chappell  
Regional Manager  
Bay Delta Region

ATTACHMENT 1: Special-Status Species

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2024050237)  
Craig Weightman, CDFW Bay Delta Region – [Craig.Weightman@wildlife.ca.gov](mailto:Craig.Weightman@wildlife.ca.gov)

## REFERENCES

California Department of Fish and Wildlife (CDFW). 2024. Biogeographic Information and Observation System (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>. Accessed April 25, 2024.

Nhu Nguyen  
 City of San Jose  
 June 4, 2024  
 Page 7

### ATTACHMENT 1: Special-Status Species

Species	Status
<b>Fish and Invertebrates</b>	
Crotch's bumble bee ( <i>Bombus crotchii</i> )	State candidate (SC)
<b>Birds</b>	
burrowing owl ( <i>Athene cunicularia</i> )	State Species of Special Concern (SSC)
Cooper's hawk ( <i>Accipiter cooperii</i> )	State Watch List
Swainson's hawk ( <i>Buteo swainsoni</i> )	State Threatened (ST)
white-tailed kite ( <i>Elanus leucurus</i> )	State Fully Protected (FP)
<b>Mammals</b>	
San Francisco dusky-footed woodrat ( <i>Neotoma fuscipes annectens</i> )	SSC
Townsend's big-eared bat ( <i>Corynorhinus townsendii</i> )	SSC
Yuma myotis	Federally Threatened (FT), SSC
<b>Plants</b>	
Santa Clara red ribbons ( <i>Clarkia concinna</i> <i>ssp. automixa</i> )	S3, 4.3
arcuate bush-mallow ( <i>Malacothamnus arcuatus</i> )	S3, 2B.2
woodland woollythreads ( <i>Monolopia gracilens</i> )	S3, 1B.2
Congdon's tarplant ( <i>Centromadia parryi</i> ssp. <i>congdonii</i> )	S2, 1B.1
Loma Prieta hoita ( <i>Hoita strobilina</i> )	S2, 1B.1