

Appendix G

No Effect Determination for species under the jurisdiction of the
U.S. Fish and Wildlife Service



**U.S. Department of Housing and Urban
Development**

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Washington, DC 20410
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Gallup and Mesa Affordable Housing Project
No Effect Determination
for species under the jurisdiction of the U.S. Fish and Wildlife
Service

Project Identification/Name	Gallup and Mesa Affordable Housing Project
Responsible Entity	City of San José, California
Preparer	AECOM Technical Services
Month/Year	February 2020



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The U.S. Department of Housing and Urban Development (HUD) is providing financial assistance to Gallup and Mesa, LLC, to construct a mixed-use affordable housing development on a vacant property within a suburban portion of the City of San Jose, Santa Clara County, California. As part of its environmental review for the Proposed Action, HUD has assessed the potential for the Proposed Action to cause adverse effects on Endangered Species Act (ESA) listed species and critical habitats under the jurisdiction of the U.S. Fish and Wildlife Service (USFWS). On the behalf of HUD, the City of San Jose submits this report prepared by AECOM Technical Services in support of HUD's determination that the Proposed Action will have *No Effect* on ESA-listed species or critical habitats under USFWS jurisdiction. The following report describes the Proposed Action and the Action Area, the ESA-listed species potentially occurring in the Action Area, avoidance and minimization measures, and ESA determinations for the Proposed Action.

Action Area

The project site is located at 1171 Mesa Drive and 5647 Gallup Drive in the City of San Jose, Santa Clara County (Figure 1). The Assessor's Parcel Numbers for the project site are 567-52-028 and 567-52-029. The Action Area, the area that may be affected directly or indirectly by the Proposed Action, includes only these parcels as all construction and project-related effects will be contained within the project site on these parcels.

Description of the Proposed Action

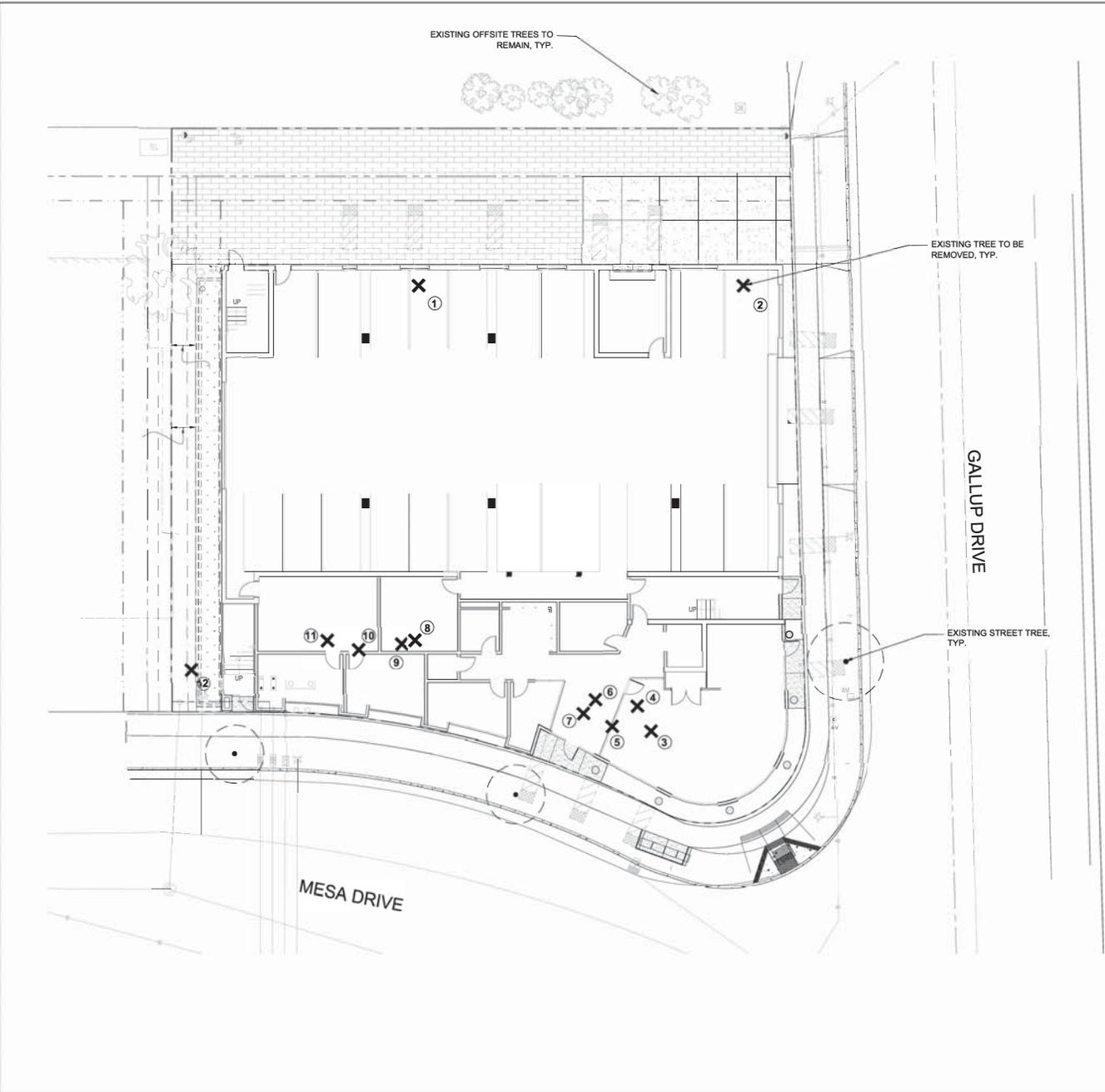
The project applicant proposes to construct a five-story, approximately 55-foot-tall, 41,888 square-foot mixed-use affordable housing development on approximately 0.38 acres (Proposed Action). The existing property is primarily vacant with redwoods onsite, twelve of which would be removed prior to construction (Figure 2). The Proposed Action would include 46 affordable residential units and service areas. Services include a neighborhood room, podium courtyard, residential community room, bike room, property management, mechanical, maintenance, and electrical rooms, mail room, an elevator and stairs. An enclosed ground-floor garage and parallel parking spaces along an alley to the north would provide parking for project residents.

Landscape plans low groundcover in landscaped areas with non-woody plants to allow for fire access. Landscape planting design would use water-conserving plant species that are accustomed to the local climatic conditions. Trees along Gallup Drive and Mesa Drive would remain and additional trees would be planted. Any newly planted trees would be selected in accordance with the City of San Jose's Street Tree Master Plan. Shrub and ground cover would provide a visual separation between the proposed building and adjacent streets. Taller plants would be planted around the building perimeter and in some of the large open space areas. In addition, flowering shrubs and other ground cover plants would create a visually layered appearance. Composted, non-floatable mulch would be used in areas between stormwater treatment plantings.

The Proposed Action would begin construction in November 2020. Construction is anticipated to take approximately 16 months.



Source: AECOM, 2019; ESRI, 2019 (imagery); ESRI, 2016 (roads)



TREE INVENTORY TABLE				
NUMBER	BOTANICAL NAME	ORDINANCE SIZE	DBH	REMOVE
1	SEQUOIA	YES	30"	YES
2	SEQUOIA	YES	50"	YES
3	SEQUOIA	YES	30"	YES
4	SEQUOIA	YES	20"	YES
5	SEQUOIA	YES	36"	YES
6	SEQUOIA	YES	16	YES
7	SEQUOIA	NO	12"	YES
8	SEQUOIA	YES	16"	YES
9	SEQUOIA	YES	18"	YES
10	SEQUOIA	YES	18"	YES
11	SEQUOIA	YES	18"	YES
12	UNKNOWN	NO	12"	YES

TREE REMOVAL NOTES

1. TOTAL **ORDINANCE SIZE NON-NATIVE** TREE TO BE REMOVED: 10
2. TOTAL **NON-ORDINANCE SIZE NON-NATIVE** TREE TO BE REMOVED: 2
3. TREE INVENTORY PROVIDED BY VAN DORN ABED LANDSCAPE ARCHITECTS.
4. ORDINANCE SIZE TREES AS DEFINED BY CITY OF SAN JOSE TREE REMOVAL REQUIREMENTS.

TREE REPLACEMENT NOTES:

1. TREE REPLACEMENT REQUIREMENTS AS DEFINED BY CITY OF SAN JOSE TREE REMOVAL REQUIREMENTS
2. TOTAL REQUIRED NUMBER OF REPLACEMENT TREES: 44 '15-GALLON' OR 22 '24" BOX' (10 AT 4:1 AND 2 AT 2:1)
3. THE REMAINING TREE REPLACEMENTS REQUIRED WILL BE MITIGATED BY PAYING THE OFF-SITE REPLACEMENT FEE
4. SEE SHEET L1.0 FOR NEW TREE LIST

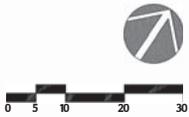


Figure 2



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Existing Conditions

The fenced project site is undeveloped and vacant. There are a sparse number of mature trees among ruderal vegetation. The project site is in the highly developed Hoffman Via Monte residential/commercial neighborhood, 550 feet southeast of Blossom Hill Road and approximately 800 feet west of Almaden Expressway. Approximately 0.40 miles north is California State Route 85, also known as the West Valley Freeway.

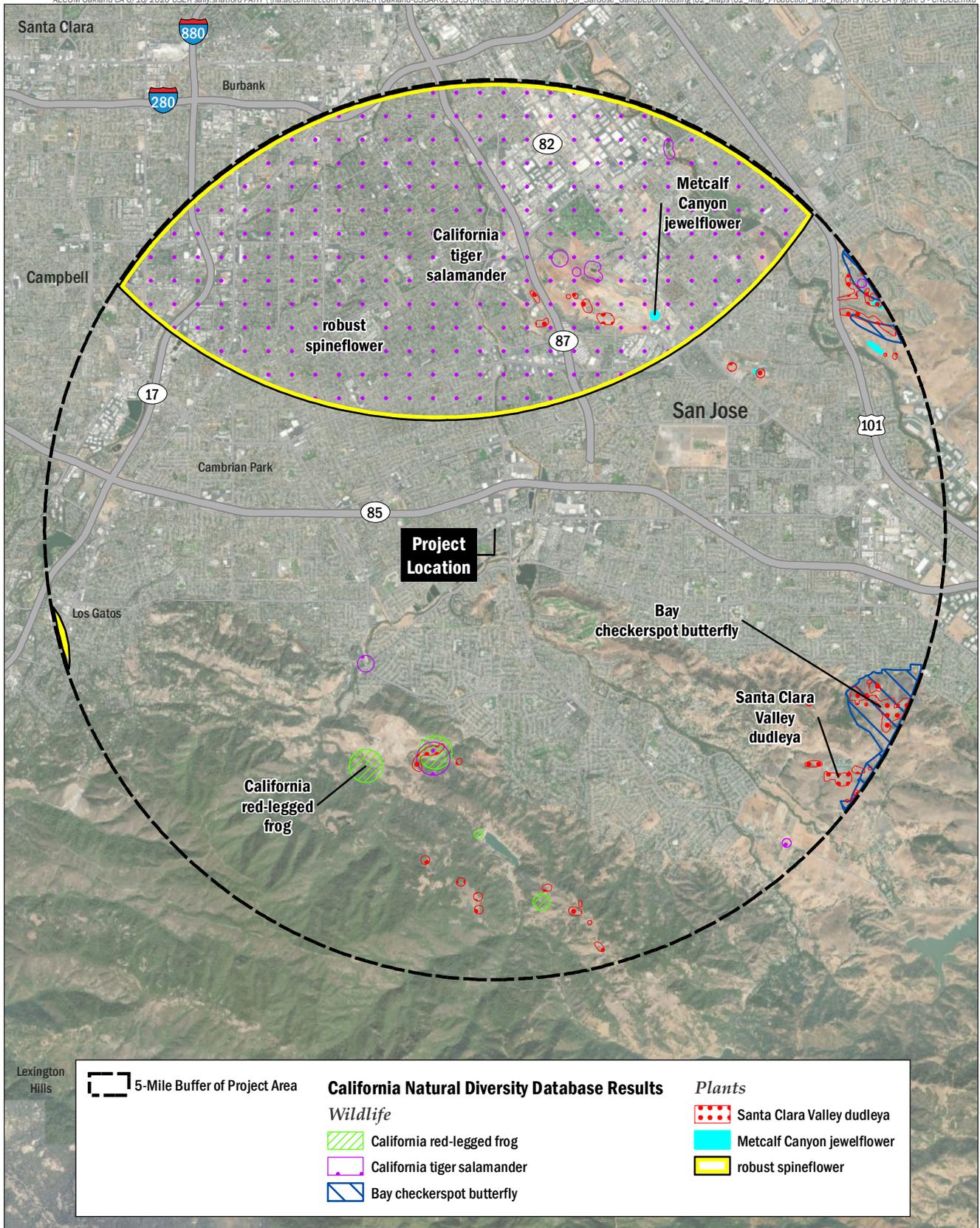
Surrounding land uses include a four-unit apartment building to the west, a former movie theater that has been converted to a church to the north, multi-family apartment complexes to the south, and commercial land uses to the east (Figure 1). Directly across Gallup Drive is a shopping center that includes several stores and restaurants including an Office Max, Pet Food Express, and Whole Foods Market.

Federally-Listed Species and Critical Habitat

To assess the potential for plant and wildlife species and critical habitat listed under the ESA to occur in the Action Area, an official list was generated on February 10, 2020, through the USFWS IPaC web-based system managed by the USFWS Sacramento Field Office (Attachment A) (USFWS 2020). In addition, the California Natural Diversity Database (CNDDDB) was queried for federally listed species occurrences within 5 miles of the Action Area (Figure 3) (CNDDDB 2020). The IPaC official species list and the CNDDDB query generated three plant species and seven wildlife species (Table 1).

Table 1. Federally listed species under USFWS jurisdiction returned in the IPaC official species list and the CNDDDB 5-mile query.

Common Name	Scientific Name	Federal Status
Robust spineflower	<i>Chorizanthe robusta</i> var. <i>robusta</i>	Endangered
Santa Clara Valley dudleya	<i>Dudleya setchellii</i>	Endangered
Metcalf Canyon jewelflower	<i>Streptanthus albidus</i> ssp. <i>Albidus</i>	Endangered
Tidewater goby	<i>Eucyclogobius newberryi</i>	Endangered
Delta smelt	<i>Hypomesus transpacificus</i>	Threatened
California tiger salamander	<i>Ambystoma californiense</i>	Threatened
California red-legged frog	<i>Rana draytonii</i>	Threatened
Marbled murrelet	<i>Brachyramphus marmoratus</i>	Threatened
California least Tern	<i>Sterna antillarum browni</i>	Endangered
Bay checkerspot butterfly	<i>Euphydryas editha bayensis</i>	Threatened



Source: AECOM, 2019; CNDDDB, 2/2019; ESRI

FIGURE 3
California Natural Diversity Database (CNDDDB) Results within 5-Miles of Project Area



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Robust spineflower requires sandy or gravelly soil in chaparral, coastal dune, or coastal scrub habitat and Santa Clara Valley dudleya and Metcalf Canyon jewelflower both require serpentine, rocky soil in valley and foothill grassland habitat (CNPS 2020). These habitats are absent from the Action Area, and the closest recent record (within the last 50 years) of one of these species in the CNDDDB is approximately 2.75 miles away across a dense urban landscape (CNDDDB 2020).

There is no aquatic habitat in the Action Area and it is therefore unsuitable for Delta smelt and tidewater goby.

California red-legged frog and California tiger salamander both require standing bodies of fresh water (e.g., natural and manmade ponds) for breeding and adjacent upland dispersal habitat containing refugia habitat such as small mammal burrows (70 FR 49380, 75 FR 12816).

Although there have been several recent CNDDDB occurrences (within the last 50 years) of both California red-legged frogs and California tiger salamanders within 5 miles of the Action Area (CNDDDB 2020), the habitat within the Action Area is not suitable for either species as it lacks aquatic breeding habitat, suitable upland habitat with refugia, and connectivity to aquatic breeding habitat or suitable upland habitat.

The two bird species returned in the USFWS IPaC query, the marbled murrelet and the California least tern, have very specific nesting habitat requirements. Marbled murrelets nest in old growth or large redwood trees where there is contiguous redwood forest and suitable nesting platforms (CDFW 2005). California least terns nest in open beaches free of vegetation (CDFW 2005). Neither of these habitat types are present in or near the Action Area. The Action Area is, therefore, unsuitable for either of these species.

Bay checkerspot butterfly is restricted to native grassland habitat with serpentine outcrops that support the butterfly's host plants *Plantago erecta*, *Castilleja densiflora*, and *C. exserta* (73 FR 50406). This habitat type is not present in the Action Area. The Action Area is, therefore, unsuitable for Bay checkerspot butterfly.

While the Action Area is within the range of many of the species returned in the USFWS IPaC list and CNDDDB query, the Action Area is in a highly urbanized area of San Jose and lacks connectivity to naturally vegetated areas, parks, or more rural areas. The land in the Action Area itself is not suitable habitat for any of the federally-listed species in the USFWS IPaC list or the CNDDDB query.

The Proposed Action will include standard air quality and stormwater pollution prevention measures to minimize project-related effects to air and water quality.

Potential Effects of the Proposed Action

The Action Area does not provide suitable habitat for any federally listed species under USFWS jurisdiction and therefore the Proposed Action will not have any adverse effects on these species. There is no critical habitat within the Action Area. Therefore, the Proposed Action will not have any adverse effects on critical habitat for those federally listed species.

ESA Determinations

The Proposed Action will have *No Effect* on federally listed species or critical habitats under USFWS jurisdiction.



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References

70 FR 49380. Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the California Tiger Salamander, Central Population. Final Rule. Vol. 70, No. 162. Federal Register 49380. August 23, 2005.

73 FR 50406. Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Bay Checkerspot Butterfly (*Euphydryas editha bayensis*). Final Rule. Vol. 73, No. 166. Federal Register 50406. August 26, 2008.

75 FR 12816. Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for California Red-Legged Frog. Final Rule. Vol. 75, No. 51. Federal Register 12816. March 17, 2010.

CDFW (California Department of Fish and Wildlife). 2005. The Status of Rare, Threatened, and Endangered Plants and Animals of California 2000 – 2004. Available at http://www.dfg.ca.gov/wildlife/nongame/t_e_spp/new_te_rpt.html.

City of San Jose. 2006. Clean Bay Blueprint. Available online at: <https://www.sanjoseca.gov/home/showdocument?id=32791>

CNDDDB (California Natural Diversity Database). 2020. Online database. Data retrieved February 10, 2020 from <https://apps.wildlife.ca.gov/rarefind/view/RareFind.aspx>.

CNPS (California Native Plant Society). 2020. Inventory of Rare and Endangered Plants of California (online edition, v8-03 0.39). Website <http://www.rareplants.cnps.org> [accessed 10 February 2020].

USFWS (U.S. Fish and Wildlife Service). 2020. List of threatened and endangered species that may occur in your proposed project location, and/or may be affected by your proposed project. Consultation Code 08ESMF00-2020-SLI-1004. February 10.

Attachment A

Federally-Listed Species and Critical Habitat



United States Department of the Interior



FISH AND WILDLIFE SERVICE
Sacramento Fish And Wildlife Office
Federal Building
2800 Cottage Way, Room W-2605
Sacramento, CA 95825-1846
Phone: (916) 414-6600 Fax: (916) 414-6713

In Reply Refer To:

February 10, 2020

Consultation Code: 08ESMF00-2020-SLI-1004

Event Code: 08ESMF00-2020-E-03206

Project Name: City of San Jose Gallup/Mesa Drive HUD

Subject: List of threatened and endangered species that may occur in your proposed project location, and/or may be affected by your proposed project

To Whom It May Concern:

The enclosed species list identifies threatened, endangered, proposed and candidate species, as well as proposed and final designated critical habitat, under the jurisdiction of the U.S. Fish and Wildlife Service (Service) that may occur within the boundary of your proposed project and/or may be affected by your proposed project. The species list fulfills the requirements of the Service under section 7(c) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Please follow the link below to see if your proposed project has the potential to affect other species or their habitats under the jurisdiction of the National Marine Fisheries Service:

http://www.nwr.noaa.gov/protected_species/species_list/species_lists.html

New information based on updated surveys, changes in the abundance and distribution of species, changed habitat conditions, or other factors could change this list. Please feel free to contact us if you need more current information or assistance regarding the potential impacts to federally proposed, listed, and candidate species and federally designated and proposed critical habitat. Please note that under 50 CFR 402.12(e) of the regulations implementing section 7 of the Act, the accuracy of this species list should be verified after 90 days. This verification can be completed formally or informally as desired. The Service recommends that verification be completed by visiting the ECOS-IPaC website at regular intervals during project planning and implementation for updates to species lists and information. An updated list may be requested through the ECOS-IPaC system by completing the same process used to receive the enclosed list.

The purpose of the Act is to provide a means whereby threatened and endangered species and the ecosystems upon which they depend may be conserved. Under sections 7(a)(1) and 7(a)(2) of the Act and its implementing regulations (50 CFR 402 *et seq.*), Federal agencies are required to utilize their authorities to carry out programs for the conservation of threatened and endangered species and to determine whether projects may affect threatened and endangered species and/or designated critical habitat.

A Biological Assessment is required for construction projects (or other undertakings having similar physical impacts) that are major Federal actions significantly affecting the quality of the human environment as defined in the National Environmental Policy Act (42 U.S.C. 4332(2)(c)). For projects other than major construction activities, the Service suggests that a biological evaluation similar to a Biological Assessment be prepared to determine whether the project may affect listed or proposed species and/or designated or proposed critical habitat. Recommended contents of a Biological Assessment are described at 50 CFR 402.12.

If a Federal agency determines, based on the Biological Assessment or biological evaluation, that listed species and/or designated critical habitat may be affected by the proposed project, the agency is required to consult with the Service pursuant to 50 CFR 402. In addition, the Service recommends that candidate species, proposed species and proposed critical habitat be addressed within the consultation. More information on the regulations and procedures for section 7 consultation, including the role of permit or license applicants, can be found in the "Endangered Species Consultation Handbook" at:

<http://www.fws.gov/endangered/esa-library/pdf/TOC-GLOS.PDF>

Please be aware that bald and golden eagles are protected under the Bald and Golden Eagle Protection Act (16 U.S.C. 668 *et seq.*), and projects affecting these species may require development of an eagle conservation plan (http://www.fws.gov/windenergy/eagle_guidance.html). Additionally, wind energy projects should follow the wind energy guidelines (<http://www.fws.gov/windenergy/>) for minimizing impacts to migratory birds and bats.

Guidance for minimizing impacts to migratory birds for projects including communications towers (e.g., cellular, digital television, radio, and emergency broadcast) can be found at: <http://www.fws.gov/migratorybirds/CurrentBirdIssues/Hazards/towers/towers.htm>; <http://www.towerkill.com>; and <http://www.fws.gov/migratorybirds/CurrentBirdIssues/Hazards/towers/comtow.html>.

We appreciate your concern for threatened and endangered species. The Service encourages Federal agencies to include conservation of threatened and endangered species into their project planning to further the purposes of the Act. Please include the Consultation Tracking Number in the header of this letter with any request for consultation or correspondence about your project that you submit to our office.

Attachment(s):

- Official Species List

Official Species List

This list is provided pursuant to Section 7 of the Endangered Species Act, and fulfills the requirement for Federal agencies to "request of the Secretary of the Interior information whether any species which is listed or proposed to be listed may be present in the area of a proposed action".

This species list is provided by:

Sacramento Fish And Wildlife Office

Federal Building

2800 Cottage Way, Room W-2605

Sacramento, CA 95825-1846

(916) 414-6600

Project Summary

Consultation Code: 08ESMF00-2020-SLI-1004

Event Code: 08ESMF00-2020-E-03206

Project Name: City of San Jose Gallup/Mesa Drive HUD

Project Type: DEVELOPMENT

Project Description: Housing development

Project Location:

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/place/37.248257486658254N121.87787701556492W>



Counties: Santa Clara, CA

Endangered Species Act Species

There is a total of 10 threatened, endangered, or candidate species on this species list.

Species on this list should be considered in an effects analysis for your project and could include species that exist in another geographic area. For example, certain fish may appear on the species list because a project could affect downstream species.

IPaC does not display listed species or critical habitats under the sole jurisdiction of NOAA Fisheries¹, as USFWS does not have the authority to speak on behalf of NOAA and the Department of Commerce.

See the "Critical habitats" section below for those critical habitats that lie wholly or partially within your project area under this office's jurisdiction. Please contact the designated FWS office if you have questions.

-
1. [NOAA Fisheries](#), also known as the National Marine Fisheries Service (NMFS), is an office of the National Oceanic and Atmospheric Administration within the Department of Commerce.

Birds

NAME	STATUS
California Least Tern <i>Sterna antillarum browni</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/8104	Endangered
Marbled Murrelet <i>Brachyramphus marmoratus</i> Population: U.S.A. (CA, OR, WA) There is final critical habitat for this species. Your location is outside the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/4467	Threatened

Amphibians

NAME	STATUS
California Red-legged Frog <i>Rana draytonii</i> There is final critical habitat for this species. Your location is outside the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/2891 Species survey guidelines: https://ecos.fws.gov/ipac/guideline/survey/population/205/office/11420.pdf	Threatened
California Tiger Salamander <i>Ambystoma californiense</i> Population: U.S.A. (Central CA DPS) There is final critical habitat for this species. Your location is outside the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/2076	Threatened

Fishes

NAME	STATUS
Delta Smelt <i>Hypomesus transpacificus</i> There is final critical habitat for this species. Your location is outside the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/321	Threatened
Tidewater Goby <i>Eucyclogobius newberryi</i> There is final critical habitat for this species. Your location is outside the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/57	Endangered

Insects

NAME	STATUS
Bay Checkerspot Butterfly <i>Euphydryas editha bayensis</i> There is final critical habitat for this species. Your location is outside the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/2320	Threatened

Flowering Plants

NAME	STATUS
Metcalf Canyon Jewelflower <i>Streptanthus albidus ssp. albidus</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/4186	Endangered
Robust Spineflower <i>Chorizanthe robusta var. robusta</i> There is final critical habitat for this species. Your location is outside the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/9287	Endangered
Santa Clara Valley Dudleya <i>Dudleya setchellii</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/3207	Endangered

Critical habitats

THERE ARE NO CRITICAL HABITATS WITHIN YOUR PROJECT AREA UNDER THIS OFFICE'S JURISDICTION.