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July 29, 2024

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**Subject: South Central Specific Plan (Plan)
Draft Environmental Impact Report (DEIR)
SCH No. 2019079022**

Dear Sophia Pagoulatos:

The California Department of Fish and Wildlife (CDFW) received a DEIR from the City of Fresno for the Plan pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Plan that may affect California fish and wildlife. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Plan that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under 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. As proposed, for example, projects tiered from the Plan may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of a project tiered from the Plan may result in

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“take” as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

Nesting Birds: CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs and nests include, sections 3503 (regarding unlawful take, possession or needless destruction of the nest or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird).

PROJECT DESCRIPTION SUMMARY

Proponent(s): City of Fresno

Objective: The Plan proposes land use designation changes for certain areas, requiring a General Plan amendment and rezone of the same properties. The changes are proposed primarily to 1) reconcile land use designations with existing conditions, 2) to buffer sensitive uses (e.g., residential areas, Orange Center School) with less intensive uses (e.g., business park instead of industrial), and 3) to provide more opportunities for neighborhood-serving general commercial uses near residential areas. The SCSP would result in substantial reductions in acreage of Heavy Industrial land uses and a modest decrease in Regional Business Park, with corresponding increases in acreage of Business Park, Single-Family Residential, Public, Light Industrial, and General Commercial uses. Growth in the Plan area would be primarily industrial, with smaller amounts of office and retail uses.

Location: The Plan area encompasses 5,567 acres located just south and southeast of downtown Fresno. The Plan area is generally located south of California Avenue, north of American Avenue, and between Fig and Peach Avenues. The area has a range of property types including residential, religious, educational, public, warehouse, and industrial.

Timeframe: Unspecified

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the City of Fresno in adequately identifying and/or mitigating the Plan’s significant, or potentially significant, direct, indirect, and cumulative impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document for this Plan.

The majority (approximately 60.80 percent) of the approximately 5,567-acre Plan area consists of urban (developed) areas containing industrial, commercial, and residential

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development and associated roads and infrastructure. Urban land is dominant near the intersection of State Route (SR) 99 and SR 41 extending southeast along SR 99. Lands along the west, south, and eastern margins of the Plan area are mapped as agricultural land, which comprises approximately 39 percent of the Plan area. Small discontinuous patches of annual grassland (0.21 percent) and lacustrine (ponded) habitat (0.10 percent) are also present throughout the Plan area.

The DEIR acknowledges that the Plan area is within the geographic range of several special-status animal species and proposes specific mitigation measures to reduce impacts to less than significant. CDFW has concerns about the ability of some the proposed mitigation measures to reduce impacts to less than significant and avoid unauthorized take for several special status animal species, including the State threatened Swainson's hawk (*Buteo swainsoni*), the State candidate endangered Crotch's bumble bee (*Bombus crotchii*), and the State species of special concern burrowing owl (*Athene cunicularia*).

Swainson's Hawk

Comment 1: SWHA Pre-construction Surveys

Mitigation Measure 4.4-1e is provided to mitigate for potential impacts to Swainson's hawk (SWHA) from project's tiered from this Plan and states that SWHA pre-construction surveys will be conducted within 14 days before the onset of project activities during the breeding season. CDFW does not concur this measure is sufficient to adequately mitigate for impacts to SWHA and recommends that preconstruction surveys for projects tiered from this Plan be conducted following the survey methodology developed by the SWHA Technical Advisory Committee (TAC) (SWHA TAC 2000). Please note SWHA TAC survey protocol includes early season surveys to assist the project proponent in implementing necessary avoidance and minimization measures, and in identifying active nest sites prior to initiating ground-disturbing activities.

Comment 2: SWHA Buffer Distance and Consultation

Mitigation Measure 4.4-1e also states that SWHA no-disturbance buffers would be ¼-mile for areas in urban development and ½-mile in areas away from urban development. CDFW would like to note that there should not be a differentiation in buffer distance for urban and non-urban nests and recommends that if project activities will take place during the SWHA nesting season (i.e., March 1 through September 15), and active SWHA nests are present, that a minimum ½-mile no-disturbance buffer be delineated and maintained around each nest, regardless of whether it was detected by surveys or observed incidentally. These buffers would remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival, to prevent

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nest abandonment and other take of SWHA. CDFW also recommends that in the event an active SWHA nest is detected for project tiered from this plan, and a ½-mile no-disturbance buffer is not feasible, consultation with CDFW is warranted to discuss how to implement the project and avoid take. If take cannot be avoided, take authorization through the acquisition of an Incidental Take Permit (ITP), pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

Crotch's Bumble Bee

Comment 3: CBB Habitat Assessment and Surveys

The DEIR states within the special status species evaluation table that the Plan area has a low potential for Crotch's bumble bee (CBB) due to lack of sightings recorded on the California Natural Diversity Database (CNDDDB). CDFW does not concur that the entirety of the Plan area has a low potential for CBB and would like to note that CNDDDB is a positive occurrence database only, which can be reliable for determining presence of a species but unreliable as a primary source for concluding absence. As such, CDFW recommends that projects tiered from this Plan conduct a habitat assessment for CBB. If suitable habitat is present, CDFW recommends conducting protocol surveys following the "Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species" (CDFW 2023). If surveys indicate the presence or potential presence of CBB, consultation with the CDFW is recommended for guidance on the development of mitigation measures such as take avoidance, minimization, and mitigation. If take cannot be avoided, then take authorization through acquisition of an ITP, pursuant to Fish and Game Code section 2081, subdivision (b) is necessary to comply with the California Endangered Species Act (CESA).

Burrowing Owl

Comment 4: BUOW Consultation

Mitigation Measure 4.4-1d is provided to mitigate for potential impacts to burrowing owl (BUOW) from project's tiered from this Plan. CDFW concurs with this measure but recommends that, in the event BUOW are detected during surveys and the no-disturbance buffers identified within the 2012 Staff Report on Burrowing Owl Mitigation (CDFG 2012) are unable to be maintained, consultation with the CDFW occur for guidance on the development of mitigation measures such as take avoidance, minimization, and mitigation.

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Editorial Comments and/or Suggestions

California Natural Diversity Database (CNDDDB): Please note that the CNDDDB is populated by voluntary submissions of species detections. As a result, species may be present in locations not depicted in the CNDDDB but where there is suitable habitat and features capable of supporting species. A lack of an occurrence record, or lack of recent occurrence records, in the CNDDDB does not mean that a species is not present. In order to adequately assess any potential Plan-related impacts to biological resources, surveys conducted by a qualified biologist during the appropriate survey period(s) and using the appropriate protocol survey methodology are warranted in order to determine whether or not any special status species are present.

Lake and Streambed Alteration: Activities for future projects tiered from this Plan that substantially change the bed, bank, and channel of any river, stream, or lake are subject to CDFW's regulatory authority pursuant Fish and Game Code section 1600 et seq. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake (including the removal of riparian vegetation); (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral or intermittent as well as those that are perennial and may include those that are highly modified such as canals and retention basins.

CDFW is required to comply with CEQA in the issuance of a Lake or Streambed Alteration Agreement (LSAA); therefore, if the CEQA document for projects tiered from this Plan does not adequately describe the project and its impacts to lakes or streams, a subsequent CEQA analysis may be necessary for LSAA issuance. For information on notification requirements, please refer to CDFW's website (<https://wildlife.ca.gov/Conservation/LSA>) or contact CDFW staff in the Central Region Lake and Streambed Alteration Program at (559) 243-4593.

Nesting birds: CDFW encourages that ground-disturbing activities occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the nesting season (February 1st through September 15th), a project applicant is responsible for ensuring that implementation of the project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Code sections as referenced above.

To evaluate project-related impacts on nesting birds, CDFW recommends that a general habitat assessment for nesting birds be conducted as part of the biological technical studies conducted in support of the CEQA document for projects tiered from this Plan. Depending on the results of that assessment, CDFW further recommends that the CEQA document for projects tiered from this Plan include that a qualified biologist

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conduct a pre-construction survey for active nests no more than 10 days prior to the start of ground or vegetation disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around a project site to identify nests and determine their status. A sufficient area means any area potentially affected, either directly or indirectly, by a project. In addition to direct impacts (i.e., nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. CDFW recommends that a qualified biologist establish a behavioral baseline of all identified nests. Once project activities begin, CDFW recommends having a qualified biologist continuously monitor nests to detect behavioral changes resulting from the project. If behavioral changes occur, CDFW recommends halting the work causing that change and consulting with CDFW for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined the birds have fledged and are no longer reliant upon the nest or on-site parental care for survival. Variance from these no-disturbance buffers is possible when there is a compelling biological or ecological reason to do so, such as when the project site would be concealed from a nest site by topography. CDFW recommends that a qualified wildlife biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

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, Section 21003, subd. (e).) Accordingly, please report any special-status species and natural communities detected during surveys to CNDDDB. The CNDDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. 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://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

Filing Fees

The Plan, 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 Plan approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

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CONCLUSION

CDFW appreciates the opportunity to comment on the DEIR to assist the City of Fresno in identifying and mitigating Plan impacts on biological resources. Questions regarding this letter or further coordination should be directed to Kelley Nelson, Environmental Scientist, at (559) 580-3194 or Kelley.Nelson@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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For Julie A. Vance
Regional Manager

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REFERENCES

California Department of Fish and Game. 2012. Staff report on burrowing owl mitigation. Sacramento, California, USA.

CDFW. 2023. Survey considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species. California Department of Fish and Wildlife, Sacramento, California, USA.

Swainson's hawk technical advisory committee (SWHA TAC). 2000. Recommended timing and methodology for Swainson's hawk nesting surveys in the central valley of California. Swainson's Hawk Technical Advisory Committee.