



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



November 09, 2023

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**Subject: City of Clovis Active Transportation Plan Update Project (Plan)  
Recirculated Initial Study (IS)/Negative Declaration (ND)  
SCH No.: 2022020040**

Dear Ryan Burnett:

The California Department of Fish and Wildlife (CDFW) received a recirculated Initial Study (IS)/Negative Declaration (ND) from the City of Clovis for the City of Clovis Active Transportation Plan Update (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, we appreciate 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 the Fish and Game Code. While the comment period may have ended, CDFW would appreciate it if the City would still consider our comments.

### **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 & Game Code, Section 711.7, subd. (a) & 1802; Pub. Resources Code, Section 21070; CEQA Guidelines Section 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., Section 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing

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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, Section 21069; CEQA Guidelines, Section 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, reasonably foreseeable future projects tiered from this Plan may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & Game Code, Section 1600 et seq.). Likewise, to the extent implementation of reasonably foreseeable future projects tiered from this Plan may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & Game Code, Section 2050 et seq.), related authorization as provided by the Fish and Game Code may be required.

## **PLAN DESCRIPTION SUMMARY**

**Proponent:** City of Clovis

**Objective:** The City of Clovis (City) has developed the Active Transportation Plan Update (Plan) with the intent of providing a comprehensive document outlining projects and programs that support walking and bicycling for a variety of trip purposes in the City. The proposed Project is the adoption of the City's Active Transportation Plan Update. Specific development is not being proposed under this Plan and adoption of the Negative Declaration would not authorize any development. The Plan is intended as a guidance document.

This Plan shows that all CEQA environmental findings remained the same between the original Negative Declaration (ND) circulated in February 2022 and the Recirculated ND circulated in September 2023. The Plan goes on to state that the recirculated CEQA documents, and the Project will not result in any significant and unavoidable environmental impacts.

**Location:** The Project area is the City of Clovis, in Fresno County, California

**Timeframe:** Unspecified

## **COMMENTS AND RECOMMENDATIONS**

CDFW offers the following comments and recommendations to assist the City of Clovis 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 CEQA document prepared for this Plan.

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The IS/ND indicates that reasonably foreseeable future projects would be tiered from this Plan. CDFW suggests that the IS/ND be updated to provide an overall cumulative impacts analysis for biological species that could potentially be present and/or negatively impacted by the reasonably foreseeable future projects and their activities that will be tiered from this Plan.

### **COMMENT 1: Protocol Level Surveys**

CDFW did not find any measures included in the IS/ND document indicating the need to consider protocol level surveys that may be needed for future projects tiered from the Plan. While the proposed adoption of the Plan would not result in direct physical changes, future development of project components contained in the Plan could potentially affect protected biological species and/or habitats. Construction and operation of trails, paths, signage, etc. may occur in biologically sensitive areas. Individual projects tiered from the Plan would be subject to site-specific environmental review, at which time the City should identify the potential presence of endangered or listed species.

CDFW recommends for all future projects tiered from this Plan that qualified biologists and/or botanists assist with the scoping effort for projects by conducting additional database searches for potential wildlife, plant, and invertebrate species and rare habitat types, and conduct early consultation with CDFW to help with this identification effort. CDFW then recommends that these qualified individuals perform appropriate reconnaissance, biological, and/or protocol surveys, as appropriate, as part of the biological technical studies conducted in support of the ensuing CEQA documents tiered from this Plan.

### **COMMENT 2: Special-Status Species**

CDFW did not find any special status species information in the IS/ND. Based on aerial imagery and species occurrence records from the California Natural Diversity Database (CNDDDB) (CDFW 2023), the proposed Plan Area is known to and/or has the potential to support special-status species, and these resources need to be evaluated and addressed prior to any approvals that would allow ground-disturbing activities or land use changes. CDFW is concerned regarding potential impacts to special status species including, but not limited to, the State endangered (SE) and Federally endangered (FE) least bell's vireo (*Vireo bellii pusillus*), the State threatened (ST) and federally threatened (FT) California tiger salamander (*Ambystoma californiense*), the ST tri-colored blackbird (*Agelaius tricolor*), the State candidate endangered (SCE) Crotch's bumble bee (*Bombus crotchii*), and State Species of Special Concern (SSC) burrowing owl (*Athene cunicularia*), western pond turtle (*Actinemys marmorata*), and western spadefoot (*Spea hammondi*).

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CDFW recommends that the IS/ND for this Plan include a cumulative impacts analysis of the past, present, and reasonably foreseeable future projects to be implemented within the Plan Area on all special-status biological resources. At a minimum, CDFW recommends that each of the species listed above be included in the cumulative impacts analysis conducted as part of the IS/ND for this Plan with specific recommendations for focused biological surveys conducted by a qualified biologist and appropriate permits acquired for future projects tiered from this Plan.

### **COMMENT 3: Cumulative Impacts**

CDFW did not find any analysis of cumulative impacts during review of the IS/ND for the Plan and therefore has the following recommendation: Given that a Transportation Plan serves primarily as a planning tool and that future project-level CEQA documents are expected to be tiered from it, CDFW recommends that a cumulative impact analysis be conducted for all potential biological resources that will either be significantly or potentially significantly impacted by implementation of this Plan, including those whose impacts are determined to be less than significant with mitigation incorporated or for those resources that are rare or in poor or declining health and will be impacted by the any future project tiered from this Plan, even if those impacts are expected to be relatively small (i.e. less than significant). CDFW recommends cumulative impacts be analyzed using an acceptable methodology to evaluate the impacts of past, present, and reasonably foreseeable future projects on resources and be focused specifically on the resource, not the project. An appropriate resource study area identified and utilized for this analysis is advised. CDFW staff is available for consultation in support of cumulative impacts analyses as a trustee and responsible agency under CEQA.

### **COMMENT 4: California Endangered Species Act**

Reasonably foreseeable future projects tiered from this Plan may be subject to CDFW's regulatory authority pursuant to the California Endangered Species Act (CESA). If species listed under CESA are detected during surveys, consultation with CDFW is warranted to discuss how to implement the Project and avoid "take," or if avoidance is not feasible, to acquire a State Incidental Take Permit (ITP), pursuant to Fish and Game Code section 2081 subdivision (b), prior to any ground disturbing activities. In addition, CDFW advises that mitigation measures for CESA listed species be fully addressed in the CEQA document prepared for any future project tiered from this Plan.

CDFW therefore recommends that the IS/ND for this Plan include information related to these requirements and advises that projects tiered from this Plan retain a qualified biologist to determine if potential impacts to CESA listed species may require the need to obtain a 2081 ITP.

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### **COMMENT 5: Lake or Streambed Alteration Agreement**

According to the information contained on page 3-34 in the IS/ND, the City of Clovis and surrounding area is within three drainages including Dry Creek, Dog Creek, and Redbank Slough.

There are also numerous storm drains in the City and surrounding area draining to approximately 31 retention basins. The City of Clovis' reasonably foreseeable future projects tiered from this Plan may be subject to CDFW's regulatory authority pursuant to Fish and Game Code section 1600 et seq. Fish and Game Code section 1602 requires project proponents 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; or (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 in nature. For additional information on 1602 notification requirements, please contact our staff in the Lake and Streambed Alteration Program at (559) 243-4593 or [R4LSA@wildlife.ca.gov](mailto:R4LSA@wildlife.ca.gov).

CDFW therefore recommends that the IS/ND for this Plan include information related to these requirements of Fish and Game code and advises that projects tiered from this Plan retain a qualified biologist to determine if potential impacts to streams may require the need to notify and potentially obtain a Lake or Streambed Alteration Agreement.

### **COMMENT 6: Botanical Surveys**

CDFW did not find any discussion of botanical surveys in the IS/ND. CDFW recommends that the IS/ND for this Plan include a measure requiring that each project site, for projects implemented within the Plan Area, be surveyed by a qualified botanist for any possible special-status plants following the "Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities" (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>) during biological technical studies completed in support of the future CEQA documents tiered from this Plan. CDFW recommends that the plant surveys be floristic and, if necessary, utilize a known reference site for any special status plants in order to provide a high level of confidence in the effort and results.

If a special status plant is found, CDFW recommends that the special status plant species be avoided whenever possible by delineating and observing a no disturbance buffer of at least 50 feet from the outer edge of the plant population(s) or specific habitat type(s) required by special status plant species. If buffers cannot be maintained, then consultation with CDFW is warranted to determine appropriate minimization and mitigation measures for impacts to special-status plant species. If a State or federally

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listed plant species is identified during botanical surveys, it is recommended that consultation with CDFW and/or the USFWS be conducted to determine permitting needs.

#### **COMMENT 7: Nesting birds**

CDFW did not find any analysis of cumulative impacts on nesting birds in the IS/ND. CDFW recommends that all projects tiered from this Plan occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the breeding season (February 1 through September 15), each future project applicant is responsible for ensuring that implementation of their project does not result in a violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes as referenced above.

To evaluate future project-related impacts on nesting birds, CDFW recommends that a qualified biologist conduct an assessment of nesting habitat during biological surveys in support of each project's CEQA document, and then conduct pre-activity surveys for active nests no more than one week 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 each future project site to identify nests and determine their status. A sufficient area means any area potentially affected by a project. In addition to direct impacts (i.e., nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. Prior to initiation of construction activities, CDFW recommends that a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once construction begins, CDFW recommends having a qualified biologist continuously monitor nests to detect behavioral changes resulting from each future 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 that 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 compelling biological or ecological reason to do so, such as when the construction areas would be concealed from a nest site by topography. CDFW recommends that a qualified biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

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## **COMMENT 8: CEQA Alternatives Analysis**

CDFW recommends that the information and results obtained from the cumulative impacts analysis conducted as part of this Plan's CEQA document be used to develop and modify the Plan's alternatives to avoid and minimize impacts to biological resources to the maximum extent possible. Please note that for all future projects tiered from this Plan, that when efforts to avoid and minimize have been exhausted, remaining impacts to sensitive biological resources may need to be mitigated to reduce impacts to a less than significant level, if feasible.

### **CNDDB**

Please note that the CNDDB is populated by records through voluntary submissions of species detections. As a result, species may be present in locations not depicted in the CNDDB but where there is suitable habitat and features capable of supporting species. A lack of an occurrence record in the CNDDB does not mean a species is not present. All projects tiered from this Plan should adequately assess any potential project-related impacts to biological resources by ensuring biological surveys are conducted by a qualified biologist during the appropriate survey period(s) and using the appropriate protocol survey methodology as warranted in order to determine whether or not any special status species are present at or near the project area.

**Federally Listed Species:** CDFW recommends consulting with USFWS regarding potential impacts to federally listed species including but not limited to the federally endangered least bell's vireo and the federally threatened California tiger salamander. Take under the Federal Endangered Species Act (FESA) is more broadly defined than CESA; take under FESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS in order to comply with FESA is advised well in advance of any future project activities tiered from this Plan.

### **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 any future project surveys to the CNDDB. The CNDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDB/Submitting-Data>. The completed form can be mailed electronically to CNDDB at the following email address:

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[CNDDDB@wildlife.ca.gov](mailto: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

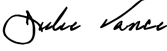
The Plan, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying Plan approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, Section 753.5; Fish & G. Code, Section 711.4; Pub. Resources Code, Section 21089.)

### CONCLUSION

CDFW appreciates the opportunity to comment on the IS/ND to assist the City of Clovis in identifying, analyzing, and mitigating this Plan's impacts on biological resources.

More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>). Please see the enclosed Mitigation Monitoring and Reporting Program (MMRP) table which corresponds with recommended mitigation measures in this comment letter. 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](mailto:Kelley.Nelson@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
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Julie A. Vance  
Regional Manager

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## REFERENCES

California Department of Fish and Wildlife. 2018. Protocols for surveying and evaluating impacts to special status native plant populations and sensitive natural communities. Sacramento, California, USA.

California Department of Fish and Wildlife. 2023. Biogeographic information and observation system [BIOS]. <https://wildlife.ca.gov/Data/BIOS>. Accessed October 9, 2023.