



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



August 30, 2023

Adrienne Asadoorian, Planner III
City of Fresno
Planning and Development Department
2600 Fresno Street, Room 3065
Fresno, California. 93721
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Subject: Draft Program Environmental Impact Report (PEIR) for the Proposed Southeast Development Area (SEDA) Specific Plan Project (Project) State Clearinghouse Number (SCH No.): 2022020486

Dear Adrienne Asadoorian:

The California Department of Fish and Wildlife (CDFW) received a Program Environmental Impact Report (PEIR) from the City of Fresno for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

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, CDFW appreciates 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 Fish and Game Code. While the comment period may have ended, CDFW would appreciate if you 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 & 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.

¹ 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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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, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of the 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.), 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).

Water Pollution: Pursuant to Fish and Game Code Section 5650, it is unlawful to deposit in, permit to pass into, or place where it can pass into "Waters of the State" any substance or material deleterious to fish, plant life, or bird life, including non-native species. It is possible that without mitigation measures, implementation of the Project could result in pollution of Waters of the State from storm water runoff or Project-related erosion. Potential impacts to the wildlife resources that utilize any aquatic resources within Project limits include the following: increased sediment input from road or structure runoff; and toxic runoff associated with development activities and implementation. The Regional Water Quality Control Board and United States Army Corps of Engineers also have jurisdiction regarding discharge and pollution to Waters of the State.

In this role, CDFW is responsible for providing, as available, biological expertise during public agency environmental review efforts (e.g., CEQA), focusing specifically on Project activities that have the potential to adversely affect fish and wildlife resources. CDFW provides recommendations to identify potential impacts and possible measures to avoid or reduce those impacts.

PROJECT DESCRIPTION SUMMARY

Proponent: City of Fresno

Objective: The proposed Project is a Specific Plan for the Southeast Development Area (SEDA) of Fresno that would provide for increased density and accelerate housing production throughout the Plan Area. The proposed Project has the potential to accommodate approximately 45,000 homes and 37,000 jobs within the 9,000-acre planning area by the year 2050. The proposed Project would link a series of complete communities and mixed-use town centers with a multimodal transportation network.

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Additionally, the proposed Project would include residential districts, employment districts, open space, agriculture, and green infrastructure.

Location: The City of Fresno (City) is located in Fresno County, California, within the San Joaquin Valley. The City is located approximately 200 miles north of Los Angeles and 170 miles south of Sacramento. The City is located on the State Route (SR) 99 corridor and bounded by Madera County to the north, the City of Clovis to the northeast, and unincorporated land and communities to the east, south, and west. The City encompasses approximately 115.18 square miles and has a population of approximately 542,000 people.

The location of the nearly 9,000-acre Plan Area is in the southeast portion of the City and the Plan Area is bounded by the Gould Canal on the north, Highland and McCall Avenues on the east, Minnewawa, Temperance, and Locan Avenues on the west, and Jensen and North Avenues on the south.

Per Google aerial imagery (2023), the proposed Project site currently contains predominantly agricultural crops south of SR 180 with existing residential development to the north and west of the proposed site. Waterways including Fancher Creek Canal, Briggs Canal, Mill Ditch, Gould Canal, and Redbank Slough flow through the Project site. There is also a large pond located immediately northwest of Gould Canal within Project limits. It is just south of East Dakota Avenue and North Thompson Avenue with agricultural fields surrounding it and another ponded area to the west within the Project site.

Project information states that approximately 53% of the vegetation community contains deciduous orchards, approximately 34% contains irrigated row and field crops, approximately 12% of the Project site is urban, and riverine, lacustrine and pasture each comprise less than 1% of the total plan area.

Timeframe: Estimated Build-Out Completion by 2050

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations 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. Editorial comments or other suggestions may also be included to improve the CEQA document.

The proposed Project does not lie within the boundaries of any adopted Habitat Conservation Plan (HCP), Natural Community Conservation Plan (NCCP), or other approved local, regional, or State HCP.

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There are many special-status resources that may utilize the Project site and/or surrounding area, and these resources need to be evaluated and addressed prior to any approvals that would allow ground-disturbing activities. CDFW is concerned regarding potential impacts to special-status species including, but not limited to, the federal threatened (FT) and State threatened (ST) California tiger salamander (*Ambystoma californiense*), the State candidate endangered (CE) Crotch's bumble bee (*Bombus crotchii*), the ST Swainson's hawk (*Buteo swainsoni*) and tricolored blackbird (*Agelaius tricolor*), the FT vernal pool fairy shrimp (*Branchinecta lynchi*), and the State species of special concern (SSC) burrowing owl (*Athene cunicularia*), American badger (*Taxidea taxus*), Northern California legless lizard (*Anniella pulchra*), California glossy snake (*Arizona elegans occidentalis*), coast horned lizard (*Phrynosoma blainvillii*), pallid bat (*Antrozous pallidus*), western mastiff bat (*Eumops perotis*), western pond turtle (*Emys marmorata*), western spadefoot (*Spea hammondi*), California linderiella (*Linderiella occidentalis*) (State Rank S2S3), and listed plants including the federal endangered (FE) and State endangered (SE) California jewelflower (*Caulanthus californicus*) (1B.1) and the California satintail (*Imperata brevifolia*) (2B.1). While this list may not include all special-status species present in the Project area, it does provide a robust source of information as to which species could potentially be impacted.

The primary purpose of a PEIR is to consider all the potential impacts associated with the suite of projects that would eventually tier from the PEIR over time. As such, the PEIR should serve primarily as a planning level Environmental Impact Report and consider, in detail, the cumulative impacts of the past, present, and reasonably foreseeable future action/projects, in this case a Specific Plan for the City of Fresno to accommodate City population growth through 2050, on the environment, and on the species CDFW has identified in this comment letter. CDFW recommends that habitat assessments be conducted in and surrounding all locations for planned work in the PEIR and identify all the potential plant, animal, invertebrate, and fish species that could be present. Then, for those species, CDFW recommends that a robust cumulative impacts analysis be conducted for each biological resource identified herein and that the analysis focus more specifically on each resource, not on the Project, and include avoidance, minimization, and mitigation measures that could be implemented to reduce harm. These measures should include not only project by project measures but large-scale conservation measures to reduce harm. For many species, subsequent protocol level surveys may be required during biological studies conducted in support of the future CEQA documents that will be tiered from this PEIR and, depending on the results, avoidance and minimization measures, permits, and mitigation may be required.

Please note that implementation of certain mitigation measures such as the relocation of listed species would constitute take of listed species under the California Endangered Species Act (CESA), and erecting exclusion fencing could also result in take of listed species under CESA. Such take of any species listed under CESA would be unauthorized if an Incidental Take Permit (ITP) pursuant to Fish and Game Code Section 2081(b) was not acquired in advance of such actions. It is recommended to

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consult with CDFW before any ground-disturbing activities commence and to obtain an ITP if take (including capture related to salvage and relocation) cannot be avoided.

Mitigation Measure BIO-1.4 (Protection of Nesting Birds)

The PEIR lists the appropriate nesting bird season timeframe as February 1 through August, however; CDFW recognizes the nesting bird season as February through mid-September.

Project information states that the proposed Project may result in the removal or alteration of existing trees within the boundaries of the Plan Area. CDFW encourages that Project construction 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), the 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 Codes as referenced above.

To evaluate Project-related impacts on nesting birds, CDFW recommends that a qualified biologist conduct a habitat assessment and analysis of impacts to nesting birds as part of the biological technical studies conducted in support of the CEQA document. Pre-activity surveys for active nests should be conducted, regardless of the initial results, 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. Surveys should cover a sufficient area around the Project site to identify nests and determine their status. A sufficient area means any area potentially affected by the 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 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 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

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advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

EDITORIAL COMMENTS AND/OR SUGGESTIONS

Lake or Streambed Alteration Agreement (LSA Agreement): It is likely that some projects and their activities will be subject to CDFW's regulatory authority pursuant to Fish and Game Code section 1600 et seq. If an LSA Agreement is needed, CDFW is required to comply with CEQA in the issuance or the amendment of an LSA Agreement. Therefore, for efficiency in environmental compliance, we recommend that any potential impacts to lakes or streams that may result from project activities be described, and mitigation for the disturbance be developed as part of the project's CEQA document. This will reduce the need for CDFW to require extensive additional environmental review for an LSA Agreement in the future. If inadequate or no environmental review has occurred for project activities that are subject to notification under Fish and Game Code section 1602, CDFW will not be able to issue the Final LSA Agreement until CEQA analysis for the project is complete. This may lead to considerable project delays.

Cumulative Impacts: CDFW recommends that a cumulative impact analysis be conducted for all biological resources that will either be significantly or potentially significantly impacted by implementation of the project, 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 project, even if those impacts are relatively small (i.e. less than significant). Cumulative impacts should be analyzed using an acceptable methodology to evaluate the impacts of past, present, and reasonably foreseeable future projects on resources and should be focused specifically on the resource, not the project. An appropriate resource study area should be identified and utilized for this analysis. CDFW staff are available for consultation in support of cumulative impacts analyses as a trustee and responsible agency under CEQA.

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 California Natural Diversity Database (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>.

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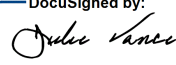
FILING FEES

If it is determined that the Project has the potential to impact biological resources, an assessment of filing fees will be 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 project approval to be operative, vested, and final (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

CDFW appreciates the opportunity to comment on the Project to assist the City of Fresno in identifying and mitigating the Project'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>). If you have any questions, please contact Kelley Nelson, Environmental Scientist, at the address provided on this letterhead or by electronic mail at Kelley.Nelson@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Julie A. Vance
Regional Manager

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LITERATURE CITED

California Department of Fish and Wildlife (CDFW). 2023. Biogeographic Information and Observation System (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>.