



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



May 16, 2024

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**Subject: Fresno County Regional Active Transportation Plan (Plan)  
Initial Study (IS)/Negative Declaration (ND)  
SCH No.: 2024040476**

Dear Simran Jhutti:

The California Department of Fish and Wildlife (CDFW) received an Initial Study (IS)/Negative Declaration (ND) from the Fresno Council of Governments (COG) for the Fresno County Regional Active Transportation Plan (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 respectfully requests that the COG 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 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 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.

**Fully Protected Species:** CDFW has jurisdiction over fully protected species of birds, mammals, amphibians, reptiles, and fish, pursuant to Fish and Game Code sections 3511, 4700, 5050, and 5515. Take of any fully protected species was previously prohibited and CDFW was not able to authorize their incidental take. Senate Bill No. 147, which became effective on July 10, 2023, amended Fish and Game Code sections 3511, 4700, 5050, and 5515, and added section 2081.15 to authorize CDFW to issue a permit that authorizes the take of a fully protected species resulting from impacts attributable to the implementation of specified projects, such as a transportation project, including any associated habitat connectivity and wildlife crossing project, undertaken by a state, regional, or local agency, that does not increase highway or street capacity for automobile or truck travel, if certain conditions are satisfied. Fresno County is known to be inhabited by several fully protected species such as blunt nosed leopard lizard, bald eagle, and golden eagle.

**Other Special-Status Species:** Species of plants and animals need not be officially listed as Endangered, Rare, or Threatened on any State or federal list pursuant to CESA and/or the federal Endangered Species Act (ESA) to be considered Endangered, Rare, or Threatened under CEQA. If a species can be shown to meet the criteria specified in the CEQA Guidelines (Cal. Code Regs., tit. 14, Chapter 3, § 15380), it should be fully considered in the environmental analysis for the Plan.

**Bird Protection:** CDFW has jurisdiction over actions that may 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 section 3503 (regarding unlawful take, possession, or needless destruction of the nest or eggs of any bird), section 3503.5 (regarding the take, possession, or destruction of any birds-of-prey or their nests or eggs), and section 3513 (regarding unlawful take of any migratory nongame bird).

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## **PLAN DESCRIPTION SUMMARY**

**Proponent:** Fresno Council of Governments

**Objective:** The Plan is an update to the 2019 Fresno County Regional Active Transportation Plan. It reflects projects that have been newly identified, modified, or completed since the release of the first plan; updated information on disadvantaged communities and safety data; current land use and plans in each city and within Fresno County; and updates to reflect best active transportation planning practices.

The purpose of the Plan is to equip the COG's member agencies (Fresno County and the fifteen incorporated cities of Clovis, Coalinga, Firebaugh, Fowler, Fresno, Huron, Kerman, Kingsburg, Mendota, Orange Cove, Parlier, Reedley, San Joaquin, Sanger, and Selma) with the tools to better compete for funding sources that support ATPs and related projects. The Plan area incorporates Fresno County, and no land designation changes are proposed at this time. In addition, adoption of this CEQA document would not authorize any development.

**Location:** The Plan area is located throughout Fresno County and covers incorporated cities, unincorporated communities, and Fresno County islands.

**Timeframe:** Unspecified

## **COMMENTS AND RECOMMENDATIONS**

CDFW offers the following comments and recommendations to assist the COG's 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.

### **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 CEQA lead should identify the potential presence of endangered or listed species.

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CDFW recommends that for all future projects tiered from this Plan, qualified biologists 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 also recommends that these qualified individuals subsequently 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 (CNDDB) (CDFW 2024), 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 animal species including, but not limited to, the State endangered (SE), State fully protected (FP) and federally endangered (FE) blunt-nosed leopard lizard (*Gambelia sila*), the SE and FE foothill yellow-legged frog – south Sierra Distinct Population Segment (DPS) (*Rana boylei* pop. 5), Fresno kangaroo rat (*Dipodomys nitratooides exilis*), giant kangaroo rat (*Dipodomys ingens*), and least bell's vireo (*Vireo bellii pusillus*); the SE and federally threatened (FT) foothill yellow-legged frog – central coast DPS (*Rana boylei* pop. 4) and western yellow-billed cuckoo (*Coccyzus americanus occidentalis*); the SE and FP bald eagle (*Haliaeetus leucocephalus*); the FP Golden eagle (*Aquila chrysaetos*); the SE willow flycatcher (*Empidonax traillii*); the State candidate endangered Crotch's bumble bee (*Bombus crotchii*) and Temblor legless lizard (*Anniella alexanderae*); the State Threatened (ST) and FE San Joaquin kit fox (*Vulpes macrotis mutica*); the ST and FT California tiger salamander (*Ambystoma californiense* pop. 1) and giant gartersnake (*Thamnophis gigas*); the ST bank swallow (*Riparia riparia*), Nelson's (=San Joaquin) antelope squirrel (*Ammospermophilus nelsoni*), Swainson's hawk (*Buteo swainsoni*), and tricolored blackbird (*Agelaius tricolor*); the FE longhorn fairy shrimp (*Branchinecta longiantenna*) and vernal pool fairy shrimp (*Lepidurus packardii*); the FT vernal pool fairy shrimp (*Branchinecta lynchi*); the State species of special concern (SSC) and FT California red-legged frog (*Rana draytonii*) and steelhead – Central Valley DPS (*Oncorhynchus mykiss irideus* pop. 11); the SSC and federally proposed threatened (PT) western pond turtle (*Emys marmorata*) and western spadefoot (*Spea hammondi*); the SSC American badger (*Taxidea taxus*), burrowing owl (*Athene cunicularia*), California glossy snake (*Arizona elegans occidentalis*), coast horned lizard (*Phrynosoma blainvillii*), hardhead (*Mylopharodon conocephalus*), Le Conte's thrasher (*Toxostoma lecontei*), loggerhead shrike (*Lanius ludovicianus*), long-eared owl (*Asio otus*), mountain plover (*Charadrius montanus*), northern harrier (*Circus hudsonius*), northern legless lizard (*Anniella pulchra*), pallid bat (*Antrozous pallidus*), San Joaquin

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coachwhip (*Masticophis flagellum ruddocki*), short-eared owl (*Asio flammeus*), short-nosed kangaroo rat (*Dipodomys nitratooides brevinasus*), spotted bat (*Euderma maculatum*), two-striped gartersnake (*Thamnophis gigas*), Townsend's big-eared bat (*Corynorhinus townsendii*), Tulare grasshopper mouse (*Onychomys torridus tularensis*), western mastiff bat (*Eumops perotis californicus*), western red bat (*Lasiurus frantzii*), yellow-headed blackbird (*Xanthocephalus xanthocephalus*), and yellow warbler (*Setophaga petechia*).

CDFW is also concerned regarding potential impacts to special-status plant species including, but not limited to, the SE and FE California jewelflower (*Caulanthus californicus*), Hartweg's golden sunburst (*Pseudobahia bahiifolia*), and palmate-bracted bird's-beak (*Chloropyron palmatum*); the SE and FT San Joaquin adobe sunburst (*Pseudobahia peirsonii*), San Joaquin Valley Orcutt grass (*Orcuttia inaequalis*), and succulent owl's-clover (*Castilleja campestris var. succulenta*); the FE San Joaquin woollythreads (*Monolopia congdonii*); and the California Rare Plant Rank (CRPR) 1B.1 and FE Keck's checkerbloom (*Sidalcea keckii*).

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.

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

Reasonably foreseeable future projects tiered from this Plan may be subject to CDFW's regulatory authority pursuant to 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 that is tiered from this Plan.

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

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

Throughout Fresno County there is a wide variety of water features. Project activities 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. It is important to note that if projects tiered from this Plan include activities that require notification and subsequently a Lake or Streambed Alteration (LSA) Agreement, CDFW is required to comply with CEQA in the issuance of the Agreement; therefore, if the CEQA document approved for any project tiered from the Plan does not adequately describe the project and its impacts, a subsequent CEQA analysis may be necessary for LSA Agreement issuance. Additional information on notification requirements is available through the Central Region LSA Program at (559) 243-4593 or [R4LSA@wildlife.ca.gov](mailto:R4LSA@wildlife.ca.gov) and the CDFW website: <https://wildlife.ca.gov/Conservation/LSA>.

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 activities within or adjacent to streams or lakes may require notification to CDFW and potentially a Lake or Streambed Alteration Agreement.

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### **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” (2018) 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 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), the 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 the 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 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

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begins, CDFW recommends having a qualified biologist continuously monitor nests to detect behavioral changes resulting from each project site/area. 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.

#### **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.

#### **CNDDDB**

Please note that the CNDDDB is populated by records through 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 in the CNDDDB 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.



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## **Federally Listed Species**

CDFW recommends consulting with USFWS regarding potential impacts to federally listed species including but not limited to the blunt-nosed leopard lizard, foothill yellow-legged frog – south Sierra DPS, Fresno kangaroo rat, giant kangaroo rat, least bell's vireo, foothill yellow-legged frog – central coast DPS, western yellow-billed cuckoo, San Joaquin kit fox, California tiger salamander, giant garter snake, longhorn fairy shrimp, vernal pool fairy shrimp, vernal pool fairy shrimp, California red-legged frog, steelhead – Central Valley DPS, western pond turtle, western spadefoot, California jewelflower, Hartweg's golden sunburst, palmate-bracted bird's-beak, San Joaquin adobe sunburst, San Joaquin Valley Orcutt grass, succulent owl's-clover, San Joaquin woollythreads, and Keck's checkerbloom. Take under the ESA is more broadly defined than CESA; take under ESA 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 ESA 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 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](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.)

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## CONCLUSION

CDFW appreciates the opportunity to comment on the IS/ND to assist the COG 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>). 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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For Julie A. Vance  
Regional Manager

cc: California Department of Fish and Wildlife  
CESA [R4CESA@wildlife.ca.gov](mailto:R4CESA@wildlife.ca.gov)

State Clearinghouse  
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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. 2024. Biogeographic information and observation system [BIOS]. <https://wildlife.ca.gov/Data/BIOS>. Accessed April 22, 2024.