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October 29, 2024

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**Subject: City of Fresno Vehicle Miles Traveled (VMT) Reduction Program
(Program)
Notice of Preparation (NOP)
SCH No. 2024091129**

Dear Sophia Pagoulatos:

The California Department of Fish and Wildlife (CDFW) received a NOP to prepare a Draft Environmental Impact Report (DEIR) from the City of Fresno for the Program 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 Program that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Program 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 City of Fresno 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, §§ 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

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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, reasonably foreseeable future project's tiered from this Program may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & Game Code, § 1600 et seq.). Likewise, to the extent implementation of reasonably foreseeable future project's tiered from this Program may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & Game Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code may be required.

Unlisted Species: Species of plants and animals need not be officially listed as Endangered, Rare, or Threatened (E, R, or T) on any State or Federal list to be considered E, R, or T under CEQA. If a species can be shown to meet the criteria for E, R, or T, as specified in the CEQA Guidelines section 15380, CDFW recommends it be fully considered in the environmental analysis for projects tiered from this Program.

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).

PROGRAM DESCRIPTION SUMMARY

Proponent: City of Fresno

Objective: The proposed Program aims to establish a VMT Reduction Program with the intent of reducing citywide VMT by establishing mitigation for future development projects in the City of Fresno. The VMT Reduction Program includes two major components that can be applied, individually or in combination, to new development with VMT impacts: an Urban Design Calculator (UDC), which estimates potential VMT reductions for development projects through incorporation of various design elements; and a mitigation fee (supported by a nexus study) and mitigation bank, which would be used to fund VMT reducing projects throughout Fresno. The VMT Reduction Program would identify relevant transportation demand management (TDM) strategies and VMT-reducing projects within the City of Fresno to be funded by mitigation fees from developments that trigger potentially significant VMT impacts under CEQA. Potential VMT-reducing measures may include active transportation improvements, multi-modal

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transportation programs, and improved street connectivity, including bicycle, pedestrian, and transit facilities. The Program intends to streamline the Senate Bill (SB) 743 compliance process for development projects while funding future VMT improvement projects.

Location: The proposed Program will apply to development within the city limits of Fresno.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the City of Fresno in adequately identifying and/or mitigating the Program'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 Program.

The NOP indicates that the DEIR for the Program will consider potential environmental effects of the proposed Program to determine the level of significance of the environmental effects and will analyze these potential effects to the detail necessary to make a determination on the level of significance. The DEIR will also identify and evaluate alternatives to the proposed Program. When a DEIR is prepared, the specifics of mitigation measures may be deferred, provided the lead agency commits to mitigation and establishes performance standards for implementation.

Special-Status Species

Based on aerial imagery and species occurrence records from the California Natural Diversity Database (CNDDDB) (CDFW 2024), the proposed Program 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 associated with the Program that would allow ground-disturbing activities. CDFW is concerned regarding potential impacts to special-status species including, but not limited to:

The State endangered and fully protected bald eagle (*Haliaeetus leucocephalus*), the State and federally endangered least bell's vireo (*Vireo bellii pusillus*), the State endangered and federally threatened succulent owl's clover (*Castilleja campestris* var. *succulenta*), the State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis*), the State threatened Swainson's hawk (*Buteo swainsoni*) and tricolored blackbird (*Agelaius tricolor*), the State and federally threatened California tiger salamander (*Ambystoma californiense*), the State candidate burrowing owl (*Athene cunicularia*) and Crotch's bumble bee (*Bombus crotchii*), the State species of special concern and federally threatened steelhead – Central Valley Distinct Population Segment (DPS) (*Oncorhynchus mykiss irideus* pop. 11), the State species of special

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concern and federally proposed threatened western pond turtle (*Actinemys marmorata*) and western spadefoot (*Spea hammondi*), the federally threatened vernal pool fairy shrimp (*Branchinecta lynchi*), the State species of special concern American badger (*Taxidea taxus*), western mastiff bat (*Eumops perotis californicus*), coast horned lizard (*Phrynosoma blainvillii*), northern California legless lizard (*Anniella pulchra*), and the California Rare Plant Rank (CRPR) 1B.2, Sanford's arrowhead (*Sagittaria sanfordii*), and shining navarretia (*Navarretia nigelliformis ssp. radians*).

Riparian Habitat Proximity: Riparian natural communities along the San Joaquin River and related tributaries within the City of Fresno provide many essential benefits to terrestrial, avian and aquatic species, including, but not limited to thermal protection, cool water refugia, cover, large woody debris, foraging areas, breeding and rearing sites, habitat and connectivity corridors, as well as buffers to sedimentation and runoff from adjacent land uses. Direct and indirect impacts into these habitat types can adversely impact sensitive species including but not limited to bald eagle, least bell's vireo, Swainson's hawk, and steelhead - Central Valley DPS as well the San Joaquin River spring run Chinook salmon population, which is currently being restored through implementation of the San Joaquin River Restoration Project. These impacts can lead to reduction of habitat, reduced reproductive success; reduced health and vigor; nest abandonment; loss of foraging habitat that would reduce nesting success (loss or reduced health or vigor of eggs or young); and introduction of debris and/or deleterious materials into river habitats. Narrow riparian buffers are considerably less effective in minimizing the effects of adjacent development than wider buffers (Castelle et al. 1992, Brososke et al. 1998, Kiffney et al. 2003, Moore et al. 2005). CDFW recommends the Program establish sufficient buffer zones from riparian habitat.

Federally Listed Species

CDFW recommends projects tiered from this Program consult with the U.S. Fish and Wildlife Service (USFWS) on potential impacts to federally listed species. 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 ground disturbing activities.

Cumulative Impacts

Given that a Program 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 the this

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Program, including those impacts that are determined to be less than significant with mitigation incorporated for those resources that are rare or in poor or declining health and will be impacted by any future project, 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.

California Endangered Species Act

Reasonably foreseeable future projects tiered from this Program may be subject to CDFW's regulatory authority pursuant to the California Endangered Species Act (CESA). In the event that 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 the CESA listed species be fully addressed in the CEQA document prepared for any future project tiered from this Program.

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

Lake and Stream Alteration

Reasonably foreseeable future projects tiered from this Program may be subject to CDFW's regulatory authority pursuant to Fish and Game Code section 1600 et seq. 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 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 notification requirements, please contact our staff in the Lake and Streambed Alteration (LSA) Program at (559) 243-4593, or R4LSA@wildlife.ca.gov.

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CDFW therefore recommends that the DEIR for this Program include information related to these requirements of Fish and Game code and advise that projects tiered from this Program that conduct ground disturbing activities retain a qualified biologist to determine if potential impacts to streams may require the need to obtain a 1600 LSA Agreement.

Botanical Surveys

CDFW recommends that the DEIR for this Program include a measure requiring that each project site for projects implemented within the Program area that include ground disturbance activities 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 Program. CDFW recommends that the plant surveys be floristic and, if necessary, utilize known reference sites for special-status plants in order to provide a high level of confidence in the effort and results. 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.

Nesting birds

CDFW recommends that all projects tiered from this Program that include ground disturbance activities occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the breeding season (February 15 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 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 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

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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.

CEQA Alternatives Analysis

CDFW recommends that the information and results obtained from the cumulative impacts analysis conducted as part of this Program's CEQA document be used to develop and modify the Program'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 Program, 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 and records 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 project's tiered from this Program that include activities for ground disturbance should adequately assess any potential project-related impacts to biological resources by ensuring biological surveys are conducted by a qualified wildlife 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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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 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. 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

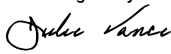
The Program, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order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

CONCLUSION

CDFW appreciates the opportunity to comment on the NOP to assist the City of Fresno in identifying and mitigating this Program'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.

Sincerely,

DocuSigned by:

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Julie A. Vance
Regional Manager

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REFERENCES

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