



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
1234 East Shaw Avenue
Fresno, California 93710
(559) 243-4005
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



October 28, 2024

Michael Hren, AICP, Principal Planner
City of Modesto, Planning Division
1010 10th Street
Modesto, California 95354
(209) 577-5273
planning@modestogov.com

**Subject: Amendments to the Modesto Urban Area General Plan and Zoning Ordinance (Plan)
Notice of Preparation (NOP)
State Clearinghouse No. 2024091127**

Dear Michael Hren:

The California Department of Fish and Wildlife (CDFW) received a Notice of Preparation (NOP) from the City of Modesto for the Plan 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 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 the 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

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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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 this Plan may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, if 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 & G. Code, § 2050 et seq.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

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 the Plan.

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).

PLAN DESCRIPTION SUMMARY

Proponent: City of Modesto

Objective: The Plan considers amendments to the General Plan and Zoning Ordinance to ratify and conform the land use and zoning designations with the changes adopted in the General Plan's Housing Element.

Location: The Plan Area includes the City of Modesto, in Stanislaus County, in the northern San Joaquin Valley, approximately 95 miles east of San Francisco and 80 miles south of Sacramento. The City of Ceres is located immediately south of the Modesto city limits, the City of Riverbank is located immediately northeast, and the unincorporated town of Salida is located northwest.

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Timeframe: Unknown

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City of Modesto in adequately identifying and/or mitigating the Plan'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 Environmental Impact Report (EIR) prepared for the Plan.

Aerial imagery of the Plan incorporates the City of Modesto, which consists of urban development covering most the landscape with agriculture lands adjacent to these urban areas, as well as areas in the unincorporated areas proximately to the city limits that the City of Modesto deemed appropriate for development as part of the City Growth Strategy. The Modesto City-County airport and an industrial building complex are in the southeast section of the Plan Area. The Tuolumne River and associated riparian habitat are located adjacent to the Plan Area's southern border and Dry Creek is located to the northeast. The community of Salida resides along the northwestern section of the Plan Area and the Stanislaus River and associated riparian habitat are located along the Plan Area's northern border.

Special-Status Species

Based on aerial imagery and species occurrence records from the California Natural Diversity Database (CNDDDB) (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. CDFW is concerned regarding potential impacts to special-status species including, but not limited to, the State and federally endangered riparian brush rabbit (*Sylvilagus bachmani riparius*), the State candidate burrowing owl (*Athene cinicularia*), the State threatened Swainson's hawk (*Buteo swainsoni*) and tricolored blackbird (*Agelaius tricolor*), the State fully protected white-tailed kite (*Elanus leucurus*), the State and federally threatened California tiger salamander (*Ambystoma californiense*), the State candidate Crotch's bumble bee (*Bombus crotchii*), the State species of special concern and federally endangered riparian San Joaquin Valley woodrat (*Neotoma fuscipes riparia*), the State species of special concern and federally proposed threatened northwestern pond turtle (*Actinemys marmorata*), the State species of special concern Central Valley fall-run Chinook salmon-Evolutionary Significant Unit (ESU) (*Oncorhynchus tshawytscha*), the State species of special concern and federally threatened green sturgeon-southern Distinct Population Segment (DPS) (*Acipenser medirostris*), the State species of special concern hardhead (*Mylopharodon conocephalus*), Pacific lamprey (*Tospehnus lentatus*), Sacramento hitch (*Lavinia exilicauda exilicauda*), riffle sculpin (*Cottus gulosus*), Sacramento splittail (*Pogonichthys*

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macrolepidotus), the State species of special concern and federally threatened steelhead-Central Valley DPS (*Oncorhynchus mykiss irideus*), the federally threatened valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*) and vernal pool fairy shrimp (*Branchinecta lynchi*), and the federally endangered vernal pool tadpole shrimp (*Lepidurus packardii*).

Riparian Habitat Proximity: Riparian natural communities along the Stanislaus River on the northern border and the Tuolumne River and Dry Creek 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 the riparian brush rabbit, riparian San Joaquin Valley woodrat, Central Valley fall-run Chinook salmon-ESU, green sturgeon southern DPS, hardhead, Pacific lamprey, Sacramento hitch, riffle sculpin, Sacramento splittail, and the steelhead-Central Valley DPS. 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, Brosofske et al. 1998, Kiffney et al. 2003, Moore et al. 2005). CDFW recommends the Plan establish, and tiered projects incorporate, sufficient buffer zones between the Plan Area perimeter and adjacent Stanislaus River, Tuolumne River, and riparian habitat.

Nesting birds: 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 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

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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.

Federally Listed Species: CDFW recommends consulting with USFWS regarding potential impacts to federally listed species including, but not limited to: riparian brush rabbit, riparian San Joaquin Valley woodrat, California tiger salamander, northwestern pond turtle, valley elderberry longhorn beetle, vernal pool fairy shrimp, vernal pool tadpole shrimp, green sturgeon-southern DPS, and steelhead-Central Valley DPS. 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 project activities tiered from this Plan.

Cumulative Impacts: Given that this NOP and subsequent EIR will serve primarily as a planning level analysis 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 biological resources that will either be significantly or potentially significantly impacted by implementation of the 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 project, even if those impacts are 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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Alternatives Analysis: CDFW recommends that the information and results obtained from the cumulative impacts analysis conducted as part of this Plan's EIR 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.

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). 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 Plan. CDFW therefore recommends that the EIR 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.

Lake and Streambed Alteration: The Plan Area resides immediately adjacent to the Stanislaus River and riparian habitat along its northern border for over three miles. The Tuolumne River and riparian habitat is positioned along the southern border for five miles, and it continues westward through the Plan Area for another four miles. Additionally, Dry Creek branches off the Tuolumne River and travels for six miles in a northwest direction through the Plan Area. Additionally, based on aerial imagery, there are other streams located within the Plan Area that may be subject to CDFW's regulatory authority pursuant to Fish and Game Code section 1600 et seq. For projects tiered from this Plan, 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 in nature. For additional information on notification requirements, please contact our staff in the LSA Program at R4LSA@wildlife.ca.gov.

California Natural Diversity Database: Please note that the CNDDDB is populated by voluntary submissions of species detections. As a result, species may be present in

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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 project-related impacts to biological resources for projects tiered from this Plan, 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.

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 California Natural Diversity Database. The CNDDDB field survey form can be filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. 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

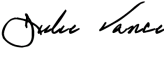
The Plan, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the environmental document filing 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 Modesto in identifying and mitigating Plan 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 John Riedel, Environmental Scientist, at (559) 807-1453 or john.riedel@wildlife.ca.gov.

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Sincerely,

DocuSigned by:

FA83F09FE08945A...
Julie A. Vance
Regional Manager

ec: State Clearinghouse
Governor's Office of Planning and Research
State.Clearinghouse@opr.ca.gov

Maggie Sepulveda
U.S. Fish & Wildlife Service
margaret_sepulveda@fws.gov

Michael Hren
City of Modesto
mhren@modestogov.com

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