



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

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



April 15, 2025

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

Subject: **Modesto Urban Area General Plan and Zoning Ordinance (Plan)
Draft Environmental Impact Report (DEIR)
SCH: 2024091127**

Dear Michael Hren:

The California Department of Fish and Wildlife (CDFW) received a DEIR 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 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

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.

Michael Hren, AICP
Principal Planner
April 15, 2025
Page 2

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, the Plan and projects tiered from this Plan 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 Plan 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.), the Plan 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 proposes 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, 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 to the south, the City of Riverbank is located to the northeast, and the unincorporated town of Salida is located northwest.

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

Michael Hren, AICP
Principal Planner
April 15, 2025
Page 3

significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the DEIR prepared for the Plan.

CDFW submitted a Notice of Preparation (NOP) comment letter to the City of Modesto for the Plan on October 28, 2024 (CDFW NOP Letter), with recommended mitigation measures for special-status species that could potentially be impacted by the Plan. The CDFW NOP Letter does not appear to have been acknowledged by the City of Modesto and is not included as an interested agency letter in the Executive Summary for the DEIR. As such, CDFW includes the CDFW NOP Letter as Attachment 1 to this comment letter to provide further background on the comments and recommendations provided below.

The DEIR acknowledges that the Plan area is within the geographic range of special-status species and proposes specific mitigation measures for some species to reduce impacts to less than significant. CDFW has concerns about the ability of some the proposed mitigation measures to reduce potential impacts to less than significant and avoid unauthorized take for special-status species including, but not limited to: the State and federally endangered riparian brush rabbit (*Sylvilagus bachmani riparius*); 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 fully protected white-tailed kite (*Elanus leucurus*); the State candidate western burrowing owl (*Athene cunicularia*) and 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*) and western spadefoot (*Spea hammondi*); 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*), and Sacramento splittail (*Pogonichthys macrolepidotus*); the State species of special concern and federally threatened steelhead-Central Valley DPS (*Oncorhynchus mykiss irideus*); the federally threatened vernal pool fairy shrimp (*Branchinecta lynchi*); and the federally endangered vernal pool tadpole shrimp (*Lepidurus packardii*).

Riparian Brush Rabbit

The Plan area is within the known geographic range of riparian brush rabbit (RBR) and the DEIR notes that the species has no potential to occur within the Plan area. CDFW does not concur that RBR has no potential to occur within the Plan area as there is a

Michael Hren, AICP
Principal Planner
April 15, 2025
Page 4

historical occurrence documented within 3 ½ miles of the Plan area (CDFW 2025) and based on aerial imagery and the information provided in the DEIR, suitable habitat appears to be present along the Stanislaus and Tuolumne riparian corridors. As RBR has the potential to be impacted by projects tiered from the Plan, CDFW recommends that projects tiered from the Plan perform focused habitat assessments and/or focused surveys where appropriate habitat has been identified, immediately prior to the initiation of ground disturbance activities. If RBR presence is detected, consultation with is recommended for guidance on mitigation measures such avoidance, minimization, and mitigation. If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

Swainson's Hawk

The Plan area is within the known geographic range of Swainson's hawk (SWHA) and the DEIR notes that the species has a high potential to occur within the Plan area. Additionally, there is a historical occurrence documented within the Plan area (CDFW 2025). SWPH-4 mitigates for potential significant impacts to the species for projects tiered from this Plan, through the implementation of surveys following the methodology developed by the Swainson's Hawk Technical Advisory Committee (2000). SWPH-4 specifically notes that two pre-construction surveys will be conducted between March 15 – July 31, with the second survey performed within 14 days of project initiation. It further states that, if an active nest is observed, a ¼ mile no-disturbance buffer will be implemented until the nest is deemed no longer active by a qualified biologist. CDFW concurs with these measures but recommends increasing the no-disturbance buffer from ¼ mile to a ½ mile to adequately avoid potential unauthorized take.

Tricolored Blackbird

The Plan area is within the known geographic range of tricolored blackbird (TRBL) and the DEIR notes that the species has a moderate potential to occur within the Plan area. Additionally, there is a historical occurrence documented within 3 miles of the Plan area (CDFW 2025). SWPH-2 and SWPH-3 are provided to mitigate for potential impacts to the species. CDFW would like to note that SWPH-2 and SWPH-3 provide general survey, avoidance, and minimization measures for biological resources, but do not provide species-specific mitigation measures for species such as TRBL. As such, CDFW recommends the following to be incorporated into the DEIR and implemented for projects that are tiered or approved under this Plan.

Recommended Mitigation Measure 1: TRBL Surveys

CDFW recommends that construction be timed to avoid the normal bird breeding season (February 1 through September 15). However, if construction must take place during the breeding season, CDFW recommends that a qualified biologist

Michael Hren, AICP
Principal Planner
April 15, 2025
Page 5

conduct surveys for nesting TRBL no more than 10 days prior to the start of implementation to evaluate presence/absence of TRBL nesting colonies in proximity to project activities and to evaluate potential project-related impacts.

Recommended Mitigation Measure 2: TRBL Avoidance Buffer

If an active TRBL nesting colony is found during the pre-construction surveys, CDFW recommends implementation of a minimum 300-foot no-disturbance buffer around the colony in accordance with CDFW's "Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agricultural Fields in 2015" (CDFW 2015). CDFW recommends that this buffer remain in place until the breeding season has ended or until a qualified biologist has determined that nesting has ceased, the birds have fledged and are no longer reliant upon the colony or parental care for survival. It is important to note that TRBL colonies can expand over time. For this reason, CDFW also recommends conducting pre-construction surveys of an identified nesting colony within 10 days prior to the start of ground or vegetation disturbing activities to reassess the colony's real extent.

Recommended Mitigation Measure 3: TRBL Take Authorization

If a TRBL nesting colony is 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 an ITP, pursuant to Fish and Game Code section 2081 subdivision (b), prior to any ground-disturbing activities.

California Tiger Salamander

The Plan area is within the range of California tiger salamander (CTS) and the DEIR notes that the species has no potential to occur within the Plan area. CDFW does not concur that CTS has no potential to occur within the Plan area (CDFW 2025). Based on aerial imagery, suitable habitat appears present within certain portions of the Plan area such as the storage ponds and canals present throughout the Plan area. As CTS has the potential to be impacted by projects tiered from this Plan, CDFW recommends the following be incorporated into the DEIR and implemented for projects that are tiered or approved under this Plan within areas of suitable CTS habitat.

Recommended Mitigation Measure 4: CTS Protocol Level Surveys

CDFW recommends that a qualified biologist conduct protocol-level surveys in accordance with the USFWS "Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander" (USFWS 2003) at the appropriate time of year to determine the existence and extent of CTS breeding and refugia habitat for projects tiered from this Plan within suitable habitat. The protocol-level surveys for CTS require more than one survey season and are dependent upon sufficient rainfall to complete. As a result, consultation with CDFW and USFWS is recommended well in advance of

Michael Hren, AICP
Principal Planner
April 15, 2025
Page 6

beginning the surveys and prior to any planned vegetation or ground-disturbing activities. CDFW advises that the protocol level survey also include a 100-foot buffer around the project area in all areas that could support CTS. Please be advised that protocol-level survey results are viable for two years after the results are reviewed by CDFW.

Recommended Mitigation Measure 5: CTS Avoidance Buffer

If CTS protocol-level surveys are not conducted, CDFW advises that a minimum 50-foot no-disturbance buffer be delineated around all small mammal burrows in suitable upland refugia habitat within and/or adjacent to potential or known breeding habitat. Further, CDFW recommends potential or known breeding habitat within and/or adjacent to the project area be delineated with a minimum 250-foot no-disturbance buffer. Both upland burrow and wetland breeding no-disturbance buffers are intended to minimize impacts to CTS habitat and avoid take of individuals.

Recommended Mitigation Measure 6: CTS Take Authorization

If through surveys it is determined that CTS are occupying or have the potential to occupy the project area, consultation with CDFW is warranted to determine if the project can avoid take. If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA. As stated above, in the absence of protocol surveys, the applicant can assume presence of CTS within the project area and obtain an ITP from CDFW.

White-Tailed Kite

The Plan area is within the range of white-tailed kite (WTKI) and the DEIR notes that the species has no potential to occur within the Plan area. CDFW does not concur that WTKI has no potential to occur within the Plan area (CDFW 2025) as suitable foraging and nesting habitat, including valley foothill riparian, riverine, wetland, grassland and cropland habitats were documented in the Plan area within the DEIR. As WTKI has the potential to be impacted by projects tiered from this Plan, CDFW recommends the following to be incorporated in the DEIR and implemented for projects that are tiered or approved under this Plan.

Recommended Mitigation Measure 7: WTKI Surveys

CDFW recommends a qualified avian biologist conduct surveys for nesting white-tailed kites prior to beginning project-related activities within the Plan area.

Recommended Mitigation Measure 8: WTKI Avoidance Buffer

CDFW recommends a minimum no-disturbance buffer of ½ mile be delineated around active nests of WTKI until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon

Michael Hren, AICP
Principal Planner
April 15, 2025
Page 7

the nest or parental care for survival. CDFW advises project proponents not to allow reductions in no-disturbance buffer size for WTKI or any fully protected bird species absent a compelling biological or ecological reason to do so. Further consultation with CDFW is warranted to discuss project implementation and take avoidance.

Western Burrowing Owl

CDFW would like to note that the California Fish and Game Commission (FGC) approved western burrowing owl (BUOW) as a potential candidate for listing as a protected species under CESA on October 10, 2024, and published these findings in the California Regulatory Notice Register (Notice Register) on October 25, 2024. As such, BUOW is now a candidate under CESA and receives the same legal protection afforded to an endangered or threatened species (Fish & G. Code, §§ 2074.2 & 2085).

The Plan area is within the known geographic range of BUOW, and the DEIR notes that the species has a moderate potential to occur within the Plan area. Additionally, there is a historical occurrence documented within ¼ mile of the Plan area. SWPH-4 is provided to mitigate for significant impacts to the species through the implementation of a habitat assessment, preconstruction survey, and no-disturbance buffers as outlined in the CDFW 2012 Staff Report on Burrowing Owl Mitigation (2012 Staff Report). CDFW concurs with these measures but doesn't concur with the procedures for passive relocation outlined in SWPH-4, which states that, "Burrowing owls may be passively relocated if the burrowing owls have been determined not to be actively nesting and the burrowing owl exclusion, mitigation, and monitoring plan has been approved by the City and CDFW." CDFW does not support passive relocation without prior take authorization as it can result in unauthorized take of the species. CDFW also recommends the following to be incorporated in the DEIR and implemented for projects that are tiered or approved under this Plan.

Recommended Mitigation Measure 9: BUOW Take Authorization

If a BUOW or known BUOW den (active or inactive) is detected, and the no-disturbance buffers outlined in the 2012 Staff Report on Burrowing Mitigation are not feasible, consultation with CDFW is warranted to discuss how to implement the project and avoid take. CDFW does not recommend passive relocation as it can result in unauthorized take. If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

Crotch's Bumble Bee

The Plan area is within the known geographic range of Crotch's bumble bee (CBB) and the DEIR notes that the species has a moderate potential to occur within the Plan area. Additionally, there is a historical occurrence documented within the Plan area (CDFW

Michael Hren, AICP
Principal Planner
April 15, 2025
Page 8

2025). SWPH-2 and SWPH-3 are provided to mitigate for potential impacts to the species. CDFW would like to note that SWPH-2 and SWPH-3 provide general survey, avoidance, and minimization measures for biological resources, but do not provide species-specific mitigation measures for species such as CBB. As such, CDFW recommends the following to be incorporated into the DEIR and implemented for projects that are tiered or approved under this Plan.

Recommended Mitigation Measure 10: CBB Habitat Assessment

CDFW recommends a qualified biologist conduct a habitat assessment to determine if the project area and the immediate surrounding vicinity contain habitat suitable to support CBB. Potential nesting sites, which include all small mammal burrows, perennial bunch grasses, thatched annual grasses, brush piles, old bird nests, dead trees, and hollow logs would need to be documented as part of the assessment.

Recommended Mitigation Measure 11: CBB Focused Surveys

If potentially suitable habitat is identified, CDFW recommends that a qualified biologist conduct focused surveys for CBB, and their requisite habitat features following the methodology outlined in the Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species (CDFW 2023).

Recommended Mitigation Measure 12: CBB Avoidance Buffer

If CBB is detected, then CDFW recommends that all small mammal burrows and thatched/bunch grasses be avoided by a minimum of 50 feet to avoid take and potentially significant impacts. If ground-disturbing activities will occur during the overwintering period (October through February), consultation with CDFW is warranted to discuss how to implement project activities and avoid take. Any detection of CBB prior to or during project implementation warrants consultation with CDFW to discuss how to avoid take.

Recommended Mitigation Measure 13: CBB Take Authorization

If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

San Joaquin Valley Woodrat

The Plan area is within the known geographic range of San Joaquin Valley woodrat (SJVW) and the DEIR notes that the species has no potential to occur within the Plan area. CDFW does not concur that SJVW has no potential to occur within the Plan area as there is a historical occurrence documented within 3 ½ miles of the Plan area (CDFW 2025) and based on aerial imagery and the information provided in the DEIR, suitable habitat appears present along the Stanislaus and Tuolumne riparian corridors. As SJVW has the potential to be impacted by projects tiered from this Plan, CDFW

Michael Hren, AICP
Principal Planner
April 15, 2025
Page 9

recommends that projects tiered from this Plan perform focused habitat assessments and/or focused surveys where appropriate habitat has been identified, immediately prior to the initiation of ground disturbance activities. If SJVW presence is detected, consultation with is recommended for guidance on mitigation measures such avoidance, minimization, and mitigation. If take cannot be avoided, CDFW recommends consultation with the USFWS to comply with the Federal Endangered Species Act.

Northwestern Pond Turtle

The Plan area is within the known geographic range of northwestern pond turtle (NPT) and the DEIR notes that the species has a moderate potential to occur within the Plan area. Additionally, there is a historical occurrence documented within 8 miles of the Plan area (CDFW 2025) and suitable habitat appears to be present within the Plan area. SWPH-2 and SWPH-3 are provided to mitigate for potential impacts to the species. However, SWPH-2 and SWPH-3 provide general survey, avoidance, and minimization measures for biological resources, but do not provide species-specific mitigation measures for species such as NPT. As such, CDFW recommends the following to be incorporated into the DEIR and implemented for projects that are tiered or approved under this Plan that occur within or adjacent to suitable habitat for the species.

Recommended Mitigation Measure 14: NPT Focused Surveys

CDFW recommends that a qualified biologist conduct focused surveys for NPT within 10 days prior to project activity, and that focused surveys for nests occur during the egg-laying season of March through August.

Recommended Mitigation Measure 15: NPT Avoidance Buffer

CDFW recommends that any NPT nests that are discovered remain undisturbed with a 50-foot no-disturbance buffer maintained around the nest until the eggs have hatched and neonates are no longer in the nest or project areas. If NPT individuals are discovered at the site during surveys or project activities, CDFW recommends that they be allowed to move out of the area of their own volition.

Western Spadefoot

The Plan area is within the known geographic range of western spadefoot (WESP) and the DEIR notes that the species has a low potential to occur within the Plan area. Additionally, there are historical occurrences within 10 miles of the Plan area (CDFW 2025) and suitable habitat appears to be present within the Plan area. SWPH-2 and SWPH-3 are provided to mitigate for potential impacts to the species. However, SWPH-2 and SWPH-3 provide general survey, avoidance, and minimization measures for biological resources, but do not provide species-specific mitigation measures for species such as WESP. As such, CDFW recommends that projects tiered from this Plan perform focused habitat assessments and/or focused surveys where appropriate habitat

Michael Hren, AICP
Principal Planner
April 15, 2025
Page 10

has been identified, immediately prior to the initiation of ground disturbance activities. If WESP presence is detected, consultation with USFWS is recommended for guidance on mitigation measures such avoidance, minimization, and mitigation.

Branchiopods

The Plan area is within the known geographic range of Vernal Pool Fairy Shrimp (VPFS) and Vernal Pool Tadpole Shrimp (VPTS) (collectively, branchiopods) and the DEIR notes that both species have a high potential to occur within the Plan area. Additionally, there are historical occurrences documented within the Plan area (CDFW 2025). SWPH-2 and SWPH-3 are provided to mitigate for potential impacts to the species. However, SWPH-2 and SWPH-3 provide general survey, avoidance, and minimization measures for biological resources, but do not provide species-specific mitigation measures for species such as branchiopods. As such, CDFW recommends the following to be incorporated into the DEIR and implemented for projects that are tiered or approved under this Plan that occur within or adjacent to suitable habitat for the species.

Recommended Mitigation Measure 16: Branchiopod Protocol Level Surveys and Consultation

CDFW recommends that a qualified biologist conduct protocol level surveys in accordance with the USFWS “Survey Guidelines for the Listed Large Branchiopods” (USFWS 2017) the survey season prior to construction. These surveys would need to be conducted at the appropriate time of year to determine the existence and extent of branchiopods. If through surveys it is determined that branchiopods are occupying or have the potential to occupy the project area, coordination with CDFW is recommended well in advance of any planned vegetation or ground-disturbing activities to determine appropriate avoidance and minimization measures including adequate implementation of no-disturbance buffers. Additionally, consultation with USFWS may be necessary to minimize the potential for federal “take” and/or mitigate for potential impacts.

Editorial comments and/or suggestions

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 RBR, SJVW, Central Valley fall-run Chinook salmon-ESU, green sturgeon southern DPS, hardhead, Pacific lamprey, Sacramento hitch, riffle sculpin, Sacramento splittail, and the steelhead-

Michael Hren, AICP
Principal Planner
April 15, 2025
Page 11

Central Valley DPS. These impacts can lead to reduction of habitats including cool water and spawning 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); impacts to water quality, 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 acknowledges that development within the three riparian corridors will follow guidelines in a future Park Master Plan and the current Tuolumne River Regional Park Master Plan. CDFW recommends the DEIR incorporate, and tiered projects establish, sufficient buffer zones between the perimeter of any future projects and the adjacent Stanislaus River, Tuolumne River, and Dry Creek 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 nesting season (February 1st through September 15th), the Plan applicant is responsible for ensuring that implementation of the Plan does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Code sections as referenced above.

CDFW further recommends that a qualified biologist conduct a pre-construction survey 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 the project site to identify nests and determine their status. A sufficient area means any area potentially affected, either directly or indirectly, by the project. In addition to direct impacts (i.e., nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. CDFW recommends that a qualified biologist establish a behavioral baseline of all identified nests. Once project activities begin, 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 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 a compelling biological or ecological reason to do so, such as when the project area/site would be concealed from a nest site

Michael Hren, AICP
Principal Planner
April 15, 2025
Page 12

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: RBR, SJVW, CTS, NPT, VPFS, VPTS, green sturgeon-southern DPS, and steelhead-Central Valley DPS. The federal Endangered Species Act (ESA) is more broadly defined than CESA; take under the 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 the ESA is advised well in advance of any projects tiered from this Plan.

Lake and Stream Alteration: The Plan area resides immediately adjacent to the Stanislaus River and associated riparian habitat along its northern border for over three miles. The Tuolumne River and associated riparian habitat is positioned along the southern border of the Plan area for five miles, and it continues westward through the Plan area for another four miles. Additionally, Dry Creek and associated riparian habitat 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 would be subject to CDFW's regulatory authority pursuant to Fish and Game Code section 1600 et seq. The DEIR states, "Construction and development activities associated with individual future Plans could result in the disturbance or loss of waters of the United States. This includes perennial and intermittent drainages; unnamed drainages; vernal pools; freshwater marshes; and other types of seasonal and perennial wetland communities." The DEIR notes that the City of Modesto General Plan, the Tuolumne River Regional Park (TRRP) Program EIR, and the future Dry Creek Comprehensive Planning District Master Plan would be utilized for the protection of riparian, riverine, and wetland habitats of the Plan area. However, CDFW implementation of all future tiered project activities that substantially change the bed, bank, and channel of any river, stream, or lake are also 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.

CDFW is required to comply with CEQA in the issuance of a Lake or Streambed Alteration Agreement (LSAA); therefore, if the CEQA document approved for the Plan does not adequately describe the Plan and its impacts to lakes or streams, a

Michael Hren, AICP
Principal Planner
April 15, 2025
Page 13

subsequent CEQA analysis may be necessary for LSAA issuance. For information on notification requirements, please refer to CDFW's website (<https://wildlife.ca.gov/Conservation/LSA>) or contact CDFW staff in the Central Region Lake and Streambed Alteration Program at (559) 243-4593.

California Natural Diversity Database: Please note that the California Natural Diversity Database (CNDDDB) is populated by 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, 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 Plan-related impacts to biological resources, 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 Plan surveys to the CNDDDB. 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 Plan approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

Michael Hren, AICP
Principal Planner
April 15, 2025
Page 14

CONCLUSION

CDFW appreciates the opportunity to comment on the DEIR to assist the City of Modesto in identifying and mitigating Plan and tiered project impacts on biological resources. A Mitigation and Monitoring Program (MMRP) (Attachment 2) is included to assist the City of Modesto with incorporating the recommended mitigation measures provided above. 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.

Sincerely,

DocuSigned by:

FA83F09FE08945A...

Julie A. Vance
Regional Manager

ATTACHMENTS

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

Michael Hren, AICP
Principal Planner
April 15, 2025
Page 15

REFERENCES

- Brosofske, K., J. Chen, R. Naiman, and J. Franklin. 1997. Harvesting effects on microclimatic gradients from small streams to uplands in western Washington. *Ecological Applications* 7:1188-1200.
- California Department of Fish and Game. 2012. Staff report on burrowing owl mitigation. California Department of Fish and Game, Sacramento, California, USA
- California Department of Fish and Wildlife. 2015. Staff guidance regarding avoidance of impacts to tricolored blackbird breeding colonies on agricultural fields in 2015. Sacramento, California, USA.
- California Department of Fish and Wildlife. 2023. Survey considerations for California Endangered Species Act (CESA) candidate bumble bee species. Sacramento, California, USA.
- California Department of Fish and Wildlife. 2025. Biogeographic information and observation system (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>. Accessed 03 April 2025.
- Castelle, A., C. Conolly, M. Emers, E. Metz, S. Meyer, M. Witter, S. Mauermann, T. Erickson, and S. Cooke. 1992. Wetlands buffers use and effectiveness. Adolfson Associates, Inc., Shorelands and Coastal Zone Management Program, Washington Department of Ecology, Olympia, WA. Pub. No. 92-10.
- Kiffney, P., J. Richardson, and J. Bull. 2003. Responses of periphyton and insects to experimental manipulation of riparian buffer width along forest streams. *Journal of Applied Ecology* 40:1060-1076.
- Moore, R., D. Spittlehouse, and A. Story. 2005. Riparian microclimate and stream temperature response to forest harvesting: a review. *Journal of the American Water Resources Association* 41:813-834.
- Swainson's hawk technical advisory committee (SWHA TAC). 2000. Recommended timing and methodology for Swainson's hawk nesting surveys in the central valley of California. Swainson's Hawk Technical Advisory Committee.
- U. S. Fish and Wildlife Service. 2003. Interim guidance on site assessment and field surveys for determining presence or a negative finding of the California tiger salamander. Sacramento, California, USA.

Michael Hren, AICP
Principal Planner
April 15, 2025
Page 16

U. S. Fish & Wildlife Service. 2017. Survey guidelines for the listed large branchiopods. Pacific Southwest Region, Sacramento, California, USA. Revised November 2017.



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.

Michael Hren, Principal Planner
City of Modesto, Planning Division
October 28, 2024
Page 2

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.

Michael Hren, Principal Planner
City of Modesto, Planning Division
October 28, 2024
Page 3

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*

Michael Hren, Principal Planner
City of Modesto, Planning Division
October 28, 2024
Page 4

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

Michael Hren, Principal Planner
City of Modesto, Planning Division
October 28, 2024
Page 5

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.

Michael Hren, Principal Planner
City of Modesto, Planning Division
October 28, 2024
Page 6

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

Michael Hren, Principal Planner
City of Modesto, Planning Division
October 28, 2024
Page 7

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

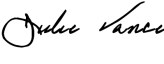
The Plan, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the environmental 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.

Michael Hren, Principal Planner
City of Modesto, Planning Division
October 28, 2024
Page 8

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

Michael Hren, Principal Planner
City of Modesto, Planning Division
October 28, 2024
Page 9

REFERENCES

Brosofske, K., J. Chen, R. Naiman, and J. Franklin. 1997. Harvesting effects on microclimatic gradients from small streams to uplands in western Washington. *Ecological Applications* 7:1188-1200.

California Department of Fish and Wildlife. 2024. Biogeographic information and observation system (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>. Accessed 10 October 2024.

Castelle, A., C. Conolly, M. Emers, E. Metz, S. Meyer, M. Witter, S. Mauermann, T. Erickson, and S. Cooke. 1992. Wetlands buffers use and effectiveness. Adolfson Associates, Inc., Shorelands and Coastal Zone Management Program, Washington Department of Ecology, Olympia, WA. Pub. No. 92-10.

Kiffney, P., J. Richardson, and J. Bull. 2003. Responses of periphyton and insects to experimental manipulation of riparian buffer width along forest streams. *Journal of Applied Ecology* 40:1060-1076.

Moore, R., D. Spittlehouse, and A. Story. 2005. Riparian microclimate and stream temperature response to forest harvesting: a review. *Journal of the American Water Resources Association* 41:813-834.

Attachment 2

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM
(MMRP)**

PROJECT: Modesto Urban Area General Plan and Zoning Ordinance

SCH No.: 2024091127

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Tricolored Blackbird (TRBL)	
Recommended Mitigation Measure 1: TRBL surveys	
Recommended Mitigation Measure 3: TRBL take authorization	
California Tiger Salamander (CTS)	
Recommended Mitigation Measure 4: CTS protocol level surveys	
Recommended Mitigation Measure 6: CTS take authorization	
White-Tailed Kite (WTKI)	
Recommended Mitigation Measure 7: WTKI surveys	
Western Burrowing Owl (BUOW)	
Recommended Mitigation Measure 9: BUOW take authorization	
Crotch's Bumble Bee (CBB)	
Recommended Mitigation Measure 10: CBB habitat assessment	
Recommended Mitigation Measure 11: CBB surveys	
Recommended Mitigation Measure 13: CBB take authorization	
Northwestern Pond Turtle (NPT)	
Recommended Mitigation Measure 14: NPT focused surveys	

Branchiopods (BRA)	
Recommended Mitigation Measure 16: BRA surveys and consultation	
<i>During Construction</i>	
Tricolored Blackbird (TRBL)	
Recommended Mitigation Measure 2: TRBL avoidance buffer	
California Tiger Salamander (CTS)	
Recommended Mitigation Measure 5: CTS avoidance buffer	
White-Tailed Kite (WTK)	
Recommended Mitigation Measure 8: WTK avoidance buffer	
Crotch's Bumble Bee (CBB)	
Recommended Mitigation Measure 12: CBB avoidance buffer	
Northwestern Pond Turtle (NPT)	
Recommended Mitigation Measure 15: NPT avoidance buffer	