

**CHAPTER EIGHT: RESOURCE MANAGEMENT AND CONSERVATION**

---

---

Introduction  
Federal, State, and Local Acts  
Conservation Plan  
Permitting Requirements

## **Chapter Eight: Resource Management and Conservation**

### **8.1 INTRODUCTION**

The project applicant will need to comply with all Federal, State, and local laws, regulations, and ordinances with respect to biological resources. Special status species that are determined to be impacted by the proposed project will require mitigation as indicated in the environmental document.

Special status plants and wildlife are those species that are (1) listed as rare, threatened, or endangered by USFWS or CDFG under State or federal endangered species acts (see below), (2) are on formal lists as candidates for listing as threatened or endangered, (3) are on formal lists as species of concern, or (4) are otherwise recognized at the Federal, State, or local level as sensitive. The following section provides information on all applicable legislation and ordinances.

### **8.2 FEDERAL, STATE, AND LOCAL ACTS**

#### **8.2.1 California Environmental Quality Act**

The California Environmental Quality Act (CEQA) requires every significant project to evaluate the impacts of the proposed development on the community and environment. There are at least six objectives of CEQA, including:

1. To disclose to decision makers and the public the significant environmental effects of proposed activities.
2. To identify ways to avoid or reduce environmental damage.
3. To prevent environmental damage by requiring implementation of feasible alternatives or mitigation measures.
4. To disclose to the public reasons for agency approvals of projects with significant environmental effects.
5. To foster interagency coordination.
6. To enhance public participation.

#### ***Environmental Impact Report***

California law defines the Environmental Impact Report (EIR) as a process by which environmental issues are reviewed and processed under CEQA. The EIR will address the six objectives noted above as well look

into various alternatives to the development. These objectives can be summarized into seven direct impact investigations. These are:

1. Direct Impacts,
2. Indirect Impacts,
3. Short-Term Impacts,
4. Long-Term Impacts,
5. Cumulative Impacts,
6. Unavoidable Impacts, and
7. Growth Inducing Impacts.

Specific impacts will be discussed in the EIR and submitted to the City of Stockton under a separate cover. The EIR is a parallel document to the MDP and is supported by information supplied by the developer.

### **8.2.2 Federal and California Endangered Species Acts**

Under the Federal Endangered Species Act (FESA), it is unlawful to “take” any species listed as threatened or endangered. “Take” is defined as to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct.” An activity is defined as a “take” even if it is unintentional or accidental. “Take” provisions under FESA apply only to listed fish and wildlife species under the jurisdiction of the USFWS and/or the National Oceanic & Atmospheric Administration, National Marine Fisheries Service (NOAA Fisheries). Consultation with USFWS or NMFS is required if a project “may affect,” or result in “take” of, a listed species.

When a species is listed, the USFWS and/or NOAA Fisheries, in most cases, must officially designate specific areas as critical habitat for the species. Consultation with USFWS and/or the NMFS is required for projects that include a federal action or federal funding if the project will modify designated critical habitat.

Under the California Endangered Species Act (CESA), it is unlawful to “take” any species listed as rare, threatened, or endangered. “Take” means to “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.” CESA “take” provisions apply to fish, wildlife, and plant species. “Take” may result whenever activities occur in areas that support a listed species. Consultation with CDFG is required if a project will result in “take” of a listed species.

### **8.2.3 Magnuson-Stevens Fishery Conservation and Management Act**

Under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), essential fish habitat (EFH) must be designated in every fishery management plan. EFH includes "...those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity." The MSA requires consultation with NOAA Fisheries for projects that include a federal action or federal funding and may adversely modify EFH.

### **8.2.4 Migratory Bird Treaty Act and California, Department of Fish and Game Code (Breeding Birds)**

The Migratory Bird Treaty Act (MBTA) prohibits actions that will result in "take" of migratory birds, their eggs, feathers, or nests. "Take" is defined in the MBTA to include by any means or in any manner, any attempt at hunting, pursuing, wounding, killing, possessing or transporting any migratory bird, nest, egg, or part thereof.

Migratory birds are also protected, as defined in the MBTA, under Section 3513 of the California Fish and Game Code. In addition, Section 33503 of the California Fish and Game Code prohibits the take, possession, or needless destruction of the nest or eggs of any bird, except as otherwise provided by the California Fish and Game Code or other regulation.

### **8.2.5 Army Corps of Engineers Jurisdictional Waters**

Under Section 404 of the Clean Water Act (CWA), the Army Corps of Engineers (Corps) regulates the discharge of dredged or fill material into waters of the U.S. Waters of the U.S. are those waters that have a connection to interstate commerce, either direct via a tributary system or indirect through a nexus identified in the Corps regulations. In non-tidal waters, the lateral limit of jurisdiction under Section 404 extends to the ordinary high water mark (OHWM) of a waterbody or, where adjacent wetlands are present, beyond the OHWM to the limit of the wetlands. The OHWM is defined as "that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear natural line impressed on the bank, shelving, changes in the character of the soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding area" (33 CFR 328.3). In tidal waters, the lateral limit of jurisdiction extends to the high tidal line (HTL) or, where adjacent wetlands are present, beyond the HTL to the limit of the wetlands.

### ***Wetlands***

Wetlands are defined as “those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for a life in saturated soil conditions.”

### ***Nonwetland Waters***

Nonwetland waters essentially include any body of water, not otherwise exempted, that displays an OHWM.

### **8.2.6 Regional Water Quality Control Board**

Under Section 401 of the CWA, the State Water Resources Control Board must certify all activities requiring a 404 permit. The Regional Water Quality Control Board (RWQCB) regulates these activities and issues water quality certification for those activities requiring a 404 permit. In addition, the RWQCB has authority to regulate the discharge of “waste” into waters of the State pursuant to the Porter-Cologne Water Quality Control Act (P-C).

### **8.2.7 California Department of Fish and Game Jurisdiction (CDFG)**

CDFG, through provisions of Sections 1600-1616 of the State of California Code of Regulations, is empowered to issue agreements for any alteration of a river, stream, or lake where fish or wildlife resources may be substantially adversely affected. Streams (and rivers) are defined by the presence of a channel bed and banks, and the conveyance of at least ephemeral flows. CDFG regulates wetland areas only to the extent that those wetlands are part of a river, stream, or lake as defined by CDFG.

CDFG generally includes, within the jurisdictional limits of streams and lakes, any riparian habitat present. Riparian habitat includes willows, cottonwoods, and other vegetation typically associated with the banks of a stream or lake shoreline. In most situations, wetlands associated with a stream or lake would fall within the limits of riparian habitat. Thus, defining the limits of CDFG jurisdiction based on riparian habitat will automatically include any wetland areas. CDFG has not defined wetlands for jurisdictional purposes. Wetlands not associated with a lake, stream, or other regulated area are generally not subject to CDFG jurisdiction.

### **8.2.8 City of Stockton Heritage Tree Ordinance**

The City of Stockton Heritage Tree Ordinance (City of Stockton Municipal Code, Section 5-039) regulates the removal of heritage trees. Under the City tree ordinance, a heritage tree is defined as any valley oak (*Quercus lobata*), coast live oak (*Quercus agrifolia*), or interior live oak (*Quercus wislizenii*) that is located on public or private property within the limits of the City of Stockton, and which has a trunk diameter of sixteen inches or more, measured at twenty-four inches above actual grade. Any person desiring to remove one or more heritage trees must obtain a permit from the City Department of Parks and Recreation. Any heritage trees removed must be replaced at a 1:1 ratio at the discretion of the City Landscape Architect. The size of the replacement tree will be determined by the City Landscape Architect based on the size of the tree that is removed. If possible, the replacement tree or trees should be planted on the same parcel as the trees that were removed. Otherwise, the replacement tree or trees should be planted in a City park or some other suitable location as determined by the City Landscape Architect.

### **8.2.9 San Joaquin County Multi-Species Habitat Conservation and Open Space Plan**

The San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP), in accordance with ESA Section 10(a)(1)(B) and CESA Section 2081(b) Incidental Take Permits, provides compensation for the conversion of open space to non-open space uses which affect the plant, fish, and wildlife species covered by the SJMSCP. The SJMSCP compensates for conversions of open space for the following activities: urban development, mining, expansion of existing urban boundaries, non-agricultural activities occurring outside of urban boundaries, levee maintenance undertaken by the San Joaquin Area Flood Control Agency, transportation projects, school expansions, non-federal flood control projects, new parks and trails, maintenance of existing facilities for non-federal irrigation district projects, utility installation, maintenance activities, managing preserves, and similar public agency projects. These activities will be undertaken by both public and private individuals and agencies throughout San Joaquin County and within the County's incorporated cities of Escalon, Lathrop, Lodi, Manteca, Ripon, Stockton, and Tracy. Public agencies including Caltrans (for transportation projects) and the San Joaquin Council of Governments (for transportation projects) will also undertake activities which will be covered by the SJMSCP.

The SJMSCP is implemented by SJCOG in coordination with the plan participants.

### **8.3 CONSERVATION PLAN**

#### **8.3.1 Agricultural Lands**

To reduce agricultural/residential land use incompatibilities, the following measures shall be undertaken as part of the Tidewater Crossing Master Development Plan:

- The Developer(s) shall inform and notify prospective buyers in writing, prior to purchase, about existing and on-going agricultural activities in the immediate area in the form of a disclosure statement. The language and format of the notifications will be approved by the Community Development Department and the disclosure statement will be signed by each homeowner.
- The perimeter of the Tidewater Crossing site affected by potential conflicts in land use shall be appropriately buffered by a landscaped open space buffer area, fences, or walls to minimize conflicts between residents, non-residential uses, and adjacent agricultural uses.

#### **8.3.2 Biological Resources**

Preconstruction surveys will be conducted to determine whether special status bird species are nesting within the Plan Area boundaries. If surveys determine that these bird species are nesting, the project proponents will comply with the Habitat Conservation Plan.

### **8.4 PERMITTING REQUIREMENTS**

The following permits may be required for development of Tidewater Crossing. The permitting authority is in parentheses following the name of the permit.

- Deed of Avigation & Hazard Easement (Airport Land Use Commission),
- Flood Plain Letter of Map Revision (Federal Emergency Management Agency),

- Storm Water Discharge Pump Station (Regional Water Quality Control Board, State Lands Commission, and State Reclamation Board),
- Section 401 Permit: NPDES Permit (Regional Water Quality Control Board),
- Streambed Alteration (California Department of Fish and Game),
- Habitat Conservation Plan Amendment (San Joaquin Council of Governments),
- Section 404 Nationwide Permit (US Army Corps of Engineers), and
- Encroachment Permit (State Reclamation Board).