



July 10, 2019

Governor's Office of Planning & Research

**JULY 11 2019**

**STATE CLEARINGHOUSE**

California Public Utilities Commission  
Attn: Fulton-Fitch Mountain Reconductoring Project  
c/o Aaron Lui, Panorama Environmental, Inc.  
717 Market Street, Suite 650  
San Francisco, CA 94103  
[fulton2fitch@panoramaenv.com](mailto:fulton2fitch@panoramaenv.com)

Subject: Fulton-Fitch Mountain Reconductoring Project, Supplemental Mitigated Negative Declaration, SCH #2017072049, Sonoma County

Dear Mr. Lui:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Supplemental Mitigated Negative Declaration (MND) from the California Public Utilities Commission (CPUC) for the Pacific Gas and Electric Company (PG&E) Fulton-Fitch Mountain Reconductoring Project (Project) pursuant the California Environmental Quality Act (CEQA).

CDFW is submitting comments on the Supplemental MND to inform the CPUC, as the Lead Agency, of our concerns regarding potentially significant impacts to sensitive resources associated with the proposed Project.

**CDFW ROLE**

CDFW is a Trustee Agency with responsibility under CEQA (Pub. Resources Code, § 21000 et seq.) pursuant to CEQA Guidelines section 15386 for commenting on projects that could impact fish, plant, and wildlife resources. CDFW is also considered a Responsible Agency if a project would require discretionary approval, such as a California Endangered Species Act (CESA) Permit, a Lake or Streambed Alteration (LSA) Agreement, or other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources.

**REGULATORY REQUIREMENTS**

*California Endangered Species Act*

Please be advised that a CESA Incidental Take Permit (ITP) must be obtained if the Project has the potential to result in "take" of plants or animals listed under CESA, either during construction or over the life of the Project. Issuance of a CESA Permit is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain a CESA ITP.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially restrict the range or reduce the population of a threatened or endangered species. (Pub. Resources

Code, §§ 21001, subd. (c), 21083; CEQA Guidelines, §§ 15380, 15064, and 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency's FOC does not eliminate the Project proponent's obligation to comply with CESA.

#### *Lake and Streambed Alteration*

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et. seq., for Project activities affecting lakes or streams and associated riparian habitat. Notification is required for any activity that may substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake or stream. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to notification requirements. CDFW will consider the CEQA document for the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement (or ITP) until it has complied with CEQA as a Responsible Agency.

### **PROJECT DESCRIPTION SUMMARY**

**Proponent:** PG&E

**Objective:** Remove and replace (at a nearby location) 21 tubular steel poles (TSPs) that could potentially cause cross-arm failure during reconductoring activities in the 1.8-mile-long Southern Segment of a previously approved 9.9-mile-long reconductoring project.

**Location:** The Project is located between the PG&E Fulton Substation at the intersection of River Road and Interstate 101 (38.497514, -122.761052) and the southwest corner of Shiloh Ranch Regional Park on Faught Road (38.518465, -122.757425). It generally follows Lavell Road and continues along Faught Road in a northerly direction.

**Timeframe:** October 2019 through June 2020 (8 months)

### **COMMENTS AND RECOMMENDATIONS**

CDFW offers the below comments and recommendations to assist the CPUC in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Based on the Project's avoidance of significant impacts on biological resources, in part through implementation of CDFW's below recommendations, CDFW concludes that the proposed Supplemental MND is appropriate for the Project.

#### **Project Description**

Figures 2.2-1 and 2.2-2 do not appear to show the location of TSPs that will be removed. Therefore, it is difficult to identify related impacts to biological resources. CDFW recommends that these figures include the TSP removal locations and an analysis of related impacts to biological resources including mitigation measures as necessary.

## Mitigation Measures

**MANDATORY FINDINGS OF SIGNIFICANCE.** Does the Project have the potential to substantially reduce the number or restrict the range of a rare or endangered plant or animal?

### Comment 1: Mitigation Measure (MM) Biology-4, Page 8

*Issue:* MM Biology-4 may not reduce impacts to foothill yellow-legged frog (FYLF, *Rana boylei*) to less-than-significant.

*Specific impact:* The Project may result in impacts to FYLF including habitat degradation and take as defined under Fish and Game Code, including pursue, catch, capture, or kill.<sup>1</sup> As such, a CESA ITP from CDFW may be warranted (see proposed MM below).

*Why impact would occur:* MM Biology-4 survey requirements for FYLF may have a false negative result; therefore, any frogs on-site could be killed (e.g., crushed) by vehicle and equipment operation, and other Project activities.

The Supplemental MND indicates that the TSP 13 replacement is located within Mark West Creek riparian habitat. This creek is documented to support FYLF including a 2016 California Natural Diversity Database (CNDDB) occurrence record approximately 1.1 miles downstream of the Project and another occurrence record upstream, both well within the species' mobility range. Adjacent uplands including the Project area may provide suitable upland habitat for the frog particularly during the wet season when the Project is proposed to occur. MM Biology-4 survey requirements indicate that only uplands within 10 feet of aquatic habitat would be considered upland habitat for FYLF and surveyed. However, different life stages of FYLF use a variety of habitat types for development, foraging, and overwintering (Thompson et al. 2016). The species utilizes upland habitats adjacent to streams and have been observed 164 feet away from streams under rocks or other refugia (Nussbaum et al. 1983; Thompson et al. 2016; Zweifel 1955). Little information is known about FYLF terrestrial movements and the species may travel farther from streams. Therefore, frogs could be significantly farther than 10 feet from aquatic habitat and be missed by the surveyor. Further, the proposed 24-hour pre-activity survey may not detect all frogs within the work area and are inconsistent with published survey recommendations for the species.

Additionally, MM Biology-4 indicates that a biologist may move FYLF out of harm's way, which would be considered pursue, catch, and capture, and potentially unintentionally kill; these activities require a CESA ITP from CDFW.

*Evidence impact would be significant:* FYLF may be considered a rare species under CEQA (CEQA Guidelines, § 15380) because the species is nearly endemic to California and has been extirpated from a large portion of its historical range, and individual population sizes have declined (Thompson et al. 2016). Additionally, Thompson et al. (2016) designated the species as a Priority 1 species due to the magnitude of threats it is facing. FYLF is also a CESA candidate species.

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<sup>1</sup> Fish and Game Code section 86 defined "take" as hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.

Based on the foregoing, Project impacts would potentially substantially reduce the number and/or restrict the range of FYLF. Additionally, the Project could result in substantial adverse impacts on FYLF as a special-status species, regardless of whether it is considered rare, endangered, or threatened pursuant to CEQA Guidelines section 15380. (CEQA Guidelines, Appendix G). Therefore, Project impacts to FYLF would be potentially significant.

To reduce impacts to less-than-significant, CDFW recommends:

**Recommended Mitigation Measure 1: FYLF surveys**

For any ground work near a creek, CDFW recommends that focused visual encounter surveys be conducted by a qualified biologist during appropriate survey period(s), typically April – October, in areas where potential habitat exists. CDFW should review and accept the survey methodology prior to any surveys. CDFW advises that these surveys generally follow the methodology described in pages 5–7 of “Considerations for Conserving the Foothill Yellow-Legged Frog” including that surveyors adhere to “The Declining Amphibian Task Force Fieldwork Code of Practice” (CDFW 2018). If any life stage of FYLF (adult, metamorph, larvae, egg mass) is found, CDFW recommends consulting with CDFW to develop avoidance measures and evaluate permitting needs.

**Recommended Mitigation Measure 2: Reporting survey results**

Submission of survey results to CDFW is recommended. For negative findings, CDFW recommends that consultation with CDFW include documentation demonstrating FYLF are unlikely to be present in the vicinity of the Project site. Information submitted may include, but is not limited to, a full habitat assessment and survey results. If any life stage of FYLF is detected, consultation with CDFW is advised to determine if take of FYLF can be avoided.

**Recommended Mitigation Measure 3: Take authorization**

CDFW recognizes there may be circumstances where take of FYLF during candidacy may be unavoidable. CDFW may issue an ITP authorizing take of FYLF, pursuant to Fish and Game Code section 2081, subdivision (b). Take authorization is issued only when take is incidental to an otherwise lawful activity, the impacts of the take are minimized and fully mitigated, the applicant ensures there is adequate funding to implement any required measures, and take is not likely to jeopardize the continued existence of the species. Please be advised that CDFW cannot issue an ITP without an approved CEQA document for the Project that analyzes all impacts to FYLF and identifies feasible, measurable avoidance, minimization, and mitigation measures that reduces impacts to less-than-significant.

**Recommended Mitigation Measure 4: Daily inspections**

At the beginning of each work day near suitable habitat, the Project area and nearby vicinity shall be surveyed by a Qualified Biologist, including searching cavities under rocks, within vegetation such as sedges and other clumped vegetation, and under undercut banks. If FYLF or other species listed pursuant to CESA are encountered during Project activities, all work shall cease and CDFW shall immediately be notified. Work shall not proceed without written approval from CDFW. Presence of FYLF may require a CESA ITP before Project activities may resume. If no FYLF or other species listed pursuant to CESA are encountered during the daily inspection, the qualified biologist installing an exclusion fence around the surveyed work area may be appropriate.

**Recommended Mitigation Measure 5: Boot sterilization**

To prevent the spread of diseases and pathogens to amphibian populations such as the chytrid fungus (*Batrachochytrium dendrobabdis*), responsible for amphibian population declines worldwide, all persons entering suitable FYLF habitat shall sterilize boots and any equipment used by scrubbing surfaces with a 70 percent ethanol solution (or sodium hypochlorite 3 to 6 percent) and rinsing clean with sterilized water before entering the creek. Staff shall avoid cleaning equipment in the immediate vicinity of the creek.

**Comment 2: MM Biology-2 and 11, Pages 6, 14, 27, and 50**

*Issue:* MM Biology-2 and 11 may not reduce impacts to Sonoma sunshine (*Blennosperma bakeri*), Sebastopol meadowfoam (*Limnanthes vinculans*), Burke's goldfields (*Lasthenia burkei*), other special-status plants, and wetlands to less-than-significant.

*Specific impact:* The Project may result in impacts to the above plants species and wetlands including habitat degradation and take as defined under Fish and Game Code. As such, a CESA ITP from CDFW may be warranted (see proposed MM below).

*Why impact would occur:* The Supplemental MND indicates that wetlands do not occur within the Project area. However aerial imagery (i.e., Google Earth historic imagery dated March 2016) and the California Aquatic Resource Inventory online mapping tool suggest a wetland occurs at Pull Site-2. Further, should wetlands suitable for listed or other special-status plants occur and be impacted, MM Biology-4 salvage and replanting requirements may not result in a successful population, and the replanted plants may be adversely impacted if not located on protected lands with a conservation easement.

*Evidence impact would be significant:* Sonoma sunshine, Sebastopol meadowfoam, and Burke's goldfields qualify as endangered plants under CEQA because they are listed as endangered under CESA and the federal Endangered Species Act [CEQA Guidelines, § 15380, subds. (c)(1) & (c)(2)]. Furthermore, California Rare Plant Ranks (CRPR) 1 and 2 plants also qualify as rare, threatened, or endangered species under CEQA, and CRPR 3 and 4 plants may qualify. More information is available at: <https://www.cnps.org/rare-plants/cnps-rare-plant-ranks>.

The above listed plants are endemic to California and confined almost entirely to the Santa Rosa Plain. The primary threats are the modification and destruction of suitable habitat due to urbanization, agricultural conversion, and competition with non-native plants. Since 1991, these threats have continued to such an extent that many populations of the listed plants appear to have been extirpated or severely reduced in numbers (U.S. Fish and Wildlife Service (USFWS) 2016).

Based on the foregoing, Project impacts would potentially substantially reduce the number and/or restrict the range of these plants. Therefore, Project impacts to these plants would be potentially significant.

To reduce impacts to less-than-significant, CDFW recommends:

**Recommended Mitigation Measure 6: Special-status plant surveys**

CDFW recommends that the CPUC review wetlands assessments completed for the Project for accuracy. If wetlands supporting listed or other special-status plants may be impacted, CDFW recommends that the CPUC require a protocol floristic survey conducted in accordance with CDFW's *2018 Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Natural Communities* (2018). Pursuant to the protocol, surveys must be conducted during the blooming period for all sensitive plant species potentially occurring within the Project area and require the identification of reference populations. If listed plants may be impacted, species-specific habitat mitigation credits from a CDFW and USFWS approved mitigation or conservation bank should be required to be purchased prior to Project construction at a 3:1 impact to mitigation ratio. Survey and monitoring protocols and guidelines are available at: <https://www.wildlife.ca.gov/Conservation/Survey-Protocols>. The bill(s) of sale and sales receipts shall be provided to the CPUC to document the purchase. Alternatively, habitat creation, enhancement or preservation with a Conservation Easement for listed or other special-status plants may be acceptable mitigation.

CDFW recommends that the CPUC require PG&E to obtain a CESA ITP if take may occur. Fish and Game Code section 1913 subdivision (b) provides an exemption for certain public utility activities provided that a 10-day notice to salvage any plants is provided to CDFW; however, to ensure impacts are mitigated to less-than-significant, the CPUC should also require an ITP as part of its Project approval. CDFW Bay Delta Region staff is available to provide guidance on the ITP application process. The above mitigation requirements must be implemented to reduce impacts to less-than-significant under CEQA. Additionally, mitigation for impacts to suitable habitat for listed plants [and California tiger salamander (*Ambystoma californiense*)] should be consistent with the requirements of the Santa Rosa Plain Conservation Strategy and related Programmatic Biological Opinion regardless of species presence.

***Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by CDFW or USFWS?***

**Comment 3: MM Biology-5, Page 9**

*Issue:* MM Biology-5 may not reduce impacts to burrowing owl (*Athene cunicularia*) to less-than-significant.

*Specific impact:* The Project could result in burrowing owl nest abandonment, loss of young, reduced health and vigor of owlets, injury or mortality of adults, and permanent habitat loss.

*Why impact would occur:* MM Biology-5 survey requirements for special-status and protected migratory birds, which includes burrowing owls, may have a false negative result.

An adult burrowing owl was potentially overwintering approximately 2.8 miles west of the Project site in 2017 according to CNDDDB, and suitable breeding and overwintering habitat appear to occur within and near the Project area, for example at Landing Zone-2 and in agricultural fields adjacent to several of the TSP replacements. The Project may also impact foraging habitat.

*Evidence impact would be significant:* Burrowing owl is a special-status species because it is designated by CDFW as a California Species of Special Concern due to population decline and breeding range retraction. Based on the foregoing, Project impacts would potentially substantially adversely affect burrowing owl. Therefore, Project impacts to burrowing owl would be potentially significant.

To reduce impacts to less-than-significant, CDFW recommends:

**Recommended Mitigation Measure 7: Burrowing owl surveys**

CDFW recommends that a qualified biologist conduct surveys following the CDFW *Staff Report on Burrowing Owl Mitigation* (2012) survey methodology. Surveys should encompass the Project area and a sufficient buffer zone to detect owls nearby that may be impacted. Time lapses between surveys or Project activities should trigger subsequent surveys including but not limited to a final survey within 24 hours prior to ground disturbance. CDFW recommends at least one survey prior to the breeding season so that management steps may be taken to minimize the potential for breeding owls. The qualified biologist should have a minimum of two years of experience implementing the CDFW 2012 survey methodology.

Permanent loss of burrowing owl habitat, including foraging habitat should be mitigated by permanently preserving and managing habitat at a 1:1 ratio. If the Project would impact known breeding sites, mitigation land should also include such sites. Alternatively, the Project proponent should provide another method for preserving breeding sites approved by the Lead Agency in consultation with CDFW.

***Would the Project have a substantial adverse effect on any riparian habitat or sensitive natural community identified in local or regional plans, policies, regulations, or by CDFW or USFWS?***

**Comment 4: MM Biology-7, Page 12**

*Issue:* MM Biology-7 may not reduce impacts to riparian habitat to less-than-significant.

*Specific impact:* The Project would result in the loss of 0.2 acres of riparian habitat along Mark West Creek at TSP 13 and may impact aquatic and riparian habitat at TSPs 2 through 5, 21, and 23 including a temporary bridge installation at TSP 21, and potentially other work areas. These impacts would require an LSA Notification to CDFW prior to Project construction (see below MM).

*Why impact would occur:* MM Biology-7 requirements for on-site revegetation and restoration to achieve similar conditions to adjacent habitat within three years does not account for the temporal habitat loss of three years.

*Evidence impact would be significant:* The Project could substantially adversely affect riparian and associated aquatic habitats by resulting in loss or degradation of this vulnerable habitat type, therefore impacts would be potentially significant.

To reduce impacts to less-than-significant, CDFW recommends:

### **Recommended Mitigation Measure 8: LSA Notification**

CDFW recommends that the CPUC explicitly require an LSA Notification to CDFW for: 1) impacts to Mark West Creek riparian habitat, 2) installation of the temporary bridge over a seasonal stream at TSP 21, and 3) any other impacts to streams, including seasonal and perennial ditches, drainages, and other water conveyances so that CDFW can ensure impacts are reduced to less-than-significant through the issuance of LSA Agreement. The LSA Agreement would likely require preparation of a restoration plan approved by CDFW, and that all removed trees be replaced at the below minimum ratios and performance criteria, among other measures to avoid and minimize impacts. The Supplemental MND should also include the below requirements.

- 1:1 for removed non-native trees
- 3:1 for removed trees with a diameter breast height (dbh) of up to 6 inches
- 6:1 for removed trees with a dbh greater than 6 inches
- 10:1 for removed oak trees (if acorns are used, the minimum ratio shall be 15:1)

Replacement tree plantings shall consist of 5-gallon or greater saplings, unless otherwise approved in writing by CDFW, and locally-collected seeds, stakes, or other suitable nursery stock as appropriate, and shall be native species to the area adapted to the lighting, soil, and hydrological conditions at the replanting site. If acorns are used for oak tree replanting, each planting will include a minimum of three acorns planted at an approximately two-inch depth to minimize predation risk. Large acorns shall be selected for plantings. Replacement oaks shall come from nursery stock grown from locally-sourced acorns, or from acorns gathered locally, preferably from the same watershed in which they are planted.

The applicant shall monitor and maintain, as necessary, all plants for a minimum of five years. At the end of the five years of monitoring, with at least three years without supplemental irrigation, the plantings shall attain:

- at least 80 percent site cover of the treatment area,
- 75 percent survival success (for non-tree species),
- 85 percent survival for all non-oak tree species [including tree-like shrubs such as certain dogwood species (*Cornus* sp.)],
- 85 percent survival for oak species,
- and shall not contain more than 5 percent relative cover of plants listed on Cal-IPC high or moderate lists.

If revegetation survival and/or cover requirements do not meet established goals as determined by CDFW, Permittee is responsible for replacement planting, additional watering, weeding, invasive exotic eradication, or any other practice, to achieve these requirements, unless otherwise approved in writing by CDFW. Replacement plants shall be monitored with the same survival and growth requirements for five years after planting.

### **FILING FEES**

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead

Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying Project approval to be operative, vested, and final. (Cal. Code Regs., tit. 14, § 753.5; Fish and Game Code, § 711.4; Pub. Resources Code, § 21089).

## CONCLUSION

To ensure significant impacts are adequately mitigated to a level less-than-significant, CDFW recommends the feasible mitigation measures described above be incorporated as enforceable conditions into the final CEQA document for the Project. CDFW appreciates the opportunity to comment on the Supplemental MND to assist the CPUC in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Ms. Melanie Day, Senior Environmental Scientist (Specialist), at (707) 428-2092 or [Melanie.Day@wildlife.ca.gov](mailto:Melanie.Day@wildlife.ca.gov); or Ms. Karen Weiss, Senior Environmental Scientist (Supervisory), at (707) 428-2090.

Sincerely,



Gregg Erickson  
Regional Manager  
Bay Delta Region

cc: State Clearinghouse (SCH #2017072049)

## REFERENCES

- California Department of Fish and Wildlife. 2018. Considerations for Conserving the Foothill Yellow-Legged Frog. An electronic copy of this recovery plan is available at: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=157562&inline>
- Nussbaum, R.A., Brodie, E.D. Jr., and R. M. Storm. 1983. Amphibians and reptiles of the Pacific Northwest. Univ. Press of Idaho. 332 pp.
- Thompson et al. 2016. California Amphibian and Reptile Species of Special Concern. University of California Press and California Department of Fish and Wildlife.
- U.S. Fish and Wildlife Service. 2016. Recovery Plan for the Santa Rosa Plain: *Blennosperma bakeri* (Sonoma sunshine); *Lasthenia burkei* (Burke's goldfields); *Limnanthes vincularis* (Sebastopol meadowfoam); California Tiger Salamander Sonoma County Distinct Population Segment (*Ambystoma californiense*). U.S. Fish and Wildlife Service, Pacific Southwest Region, Sacramento, California. vi + 128 pp. An electronic copy of this recovery plan is available at: <http://ecos.fws.gov/speciesProfile/profile/speciesProfile.action?sPCODE=D01T>
- Zweifel, R. G. 1955. Ecology, distribution, and systematics of frogs of the *Rana boylei* group. University of California Publications in Zoology 54 (4):207–292.