



Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
North Central Region
1701 Nimbus Road, Suite A
Rancho Cordova, CA 95670-4599
916-358-2900
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Governor's Office of Planning & Research

May 26, 2020

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Brian Garrett
Assistant Vegetation Management Staff Officer
Lake Tahoe Basin Management Unit, USDA Forest Service
35 College Dr.
South Lake Tahoe, CA 96150
brian.garrett@usda.gov

STATE CLEARINGHOUSE

Subject: LAKE TAHOE WEST RESTORATION PROJECT
NOTICE OF PREPARATION OF AN ENVIRONMENTAL IMPACT REPORT
SCH# 2020049022

Dear Mr. Garrett:

The California Department of Fish and Wildlife (CDFW) received and reviewed the Notice of Preparation of an Environmental Impact Report (EIR) from the Lake Tahoe Basin Management Unit, USDA Forest Service (LTBMU); California Tahoe Conservancy (Conservancy); and Tahoe Regional Planning Agency (TRPA) (Collectively, the Lead Agencies) for the Lake Tahoe West Restoration Project (Project) in Placer and El Dorado Counties pursuant the California Environmental Quality Act (CEQA) statute and guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish, wildlife, plants and their habitats. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that may fall under CDFW's regulatory authority.

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 (Fish & G. Code §1802). As a Trustee Agency, CDFW provides 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.

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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CDFW may also act as a **Responsible Agency** under CEQA (Pub. Resources Code §21069; CEQA Guidelines §15381) if the Project requires any discretionary actions from CDFW, such as the execution of a Lake or Streambed Alteration Agreement (Fish & G. Code §1600 *et seq.*) and/or a California Endangered Species Act (CESA) Permit for Incidental Take of Endangered, Threatened, and/or Candidate species (Fish & G. Code §2050 *et seq.*). CDFW also administers the Native Plant Protection Act (Fish and G. Code §1900 *et seq.*), Natural Community Conservation Program (Fish and G. Code §2800 *et seq.*), and other provisions of the Fish and Game Code that afford protection to California's fish and wildlife resources.

PROJECT DESCRIPTION SUMMARY

The Project Area comprises approximately 59,000 acres in Placer and El Dorado Counties, including nearly all the western portion of the Lake Tahoe Basin. The Project Area consists of multiple land ownerships, including 44,270 acres of National Forest System lands managed by the LTBMU, 8,950 acres of state-owned and managed lands, and 5,800 acres of private or local government lands.

The Project proposes to implement a series of restoration treatments and associated activities within the 59,000-acre Project Area including forest thinning, biomass utilization and removal, prescribed burning, forest habitat restoration, reforestation, meadow and aspen restoration, aquatic habitat restoration, stream restoration, road and stream crossing actions. The Project also includes an amendment to TRPA's Code of Ordinances to allow mechanized equipment on slopes up to 50 percent; an amendment to the LTBMU Land and Resource Management Plan (Forest Plan) to allow construction of new permanent roads in Backcountry Management Areas to support future restoration actions; and amendment to the Forest Plan to allow forest restoration treatments within certain Protected Activity Centers; and temporary forest closures during Project activities.

COMMENTS AND RECOMMENDATIONS

CDFW has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of those species (i.e., biological resources). CDFW offers the comments and recommendations presented below to assist the Lead Agencies in adequately identifying and/or mitigating the Project's significant, or potentially significant, impacts on biological resources. CDFW recommends that the forthcoming EIR address the following:

Assessment of Biological Resources

Section 15125(c) of the CEQA Guidelines states that knowledge of the regional setting of a project is critical to the assessment of environmental impacts and that special emphasis should be placed on environmental resources that are rare or unique to the region. To enable CDFW staff to adequately review and comment on the Project, the EIR should include a complete assessment of the flora and fauna within and adjacent to the Project footprint, with emphasis on identifying rare, threatened, endangered, and other sensitive species and their associated habitats. CDFW recommends that the EIR specifically include:

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1. An assessment of all habitat types located within the Project footprint, and a map that identifies the location of each habitat type. CDFW recommends that floristic, alliance- and/or association-based mapping and assessment be completed following *The Manual of California Vegetation*, second edition (Sawyer et al. 2009) where possible. Adjoining habitat areas should also be included in this assessment where site activities could lead to direct or indirect impacts offsite. Habitat mapping at the alliance level will help establish baseline vegetation conditions. The assessment should include discussion and mapping of any sensitive plant communities, alliances, and associations present within the Project Area.
2. A complete inventory of rare, threatened, endangered, and other sensitive species with the potential to occur within the Project footprint and within off-site areas with the potential to be affected, including California Species of Special Concern and California Fully Protected Species (Fish & G. Code §3511) and any other species meeting the CEQA definition of endangered or rare (CEQA Guidelines §15380). The inventory should address seasonal variations in use of the Project area and should not be limited to resident species. CDFW recommends that the California Natural Diversity Database (CNDDDB), as well as previous studies performed in the area, be consulted to assess the potential presence of sensitive species and habitats.

Please note that CDFW's CNDDDB is not exhaustive in terms of the data it houses, nor is it an absence database. Records in the CNDDDB exist only where species have been detected and reported. This means there is a bias in the database towards locations that have had more development pressures, and thus more survey work. A lack of records in a certain area does not mean that no special-status species exist in that area, just that no observations have been submitted to the CNDDDB in that area. CDFW recommends using the CNDDDB to generate a list of special-status species that have been observed in the United States Geologic Survey 7.5-minute quadrangles (USGS quads) within the Project Area, as well as the USGS quads adjacent to the Project Area, as a starting point in determining what species may be present in the area (see Data Use Guidelines at <https://www.wildlife.ca.gov/Data/CNDDDB/Maps-and-Data>).

3. Any other information on the regional setting that is critical to an assessment of environmental impacts, with special emphasis on resources that are rare or unique to the region (CEQA Guidelines § 15125[c]).

Analysis of Direct, Indirect, and Cumulative Impacts to Biological Resources

The EIR should provide a thorough discussion of the Project's potential direct, indirect, and cumulative impacts on biological resources. The threshold of significance for each impact should be defined and the criteria used to determine whether the impacts are significant should be discussed (CEQA Guidelines §15064, subd. (f)). To ensure that Project impacts on biological resources are fully analyzed, the following information should be included in the EIR:

1. A discussion of potential direct impacts such as removal or degradation of habitat; injury to or killing of individual plants and animals; removal of nest trees; etc.

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2. A discussion of potential indirect impacts such as disruption of wildlife behaviors by lighting, noise, vibrations, and/or human activity; increased wildlife-human interactions; increased potential for vehicle strikes; potential for spreading non-native or invasive species or pathogens such as chytrid fungus; environmental impacts of the proposed code amendments beyond the scope of the proposed restoration Project, etc.
3. A cumulative effects analysis developed as described under CEQA Guidelines section 15130. The EIR should discuss the Project's cumulative impacts to natural resources and determine if that contribution would result in a significant impact. The EIR should include a list of present, past, and probable future projects producing related impacts to biological resources or shall include a summary of the projections contained in an adopted local, regional, or statewide plan, that consider conditions contributing to a cumulative effect. The cumulative analysis should include analysis of vegetation and habitat reductions within the area and their potential cumulative effects. Please include all potential direct and indirect Project-related impacts to riparian areas, wetlands, wildlife corridors or wildlife movement areas, aquatic habitats, sensitive species and/or special-status species, open space, and adjacent natural habitats in the cumulative effects analysis.
4. Because a number of proposed actions will impact recreational fishing opportunities, in particular actions to remove introduced trout in order to restore native fish and amphibian species, CDFW recommends the EIR address potential impacts to recreational fishing.

Mitigation Measures for Project Impacts to Biological Resources

The EIR should include appropriate and adequate avoidance, minimization, and/or mitigation measures for all potentially significant impacts that are expected to occur as a result of the implementation and ongoing management of the Project. For individual projects, mitigation must be roughly proportional to the level of impacts, including cumulative impacts, in accordance with the provisions of CEQA (Guidelines §§15126.4(a)(4)(B), 15064, 15065, and 16355). In order for mitigation measures to be effective, they must be specific, enforceable, and feasible actions that will improve environmental conditions. When proposing measures to avoid, minimize, or mitigate impacts, CDFW recommends consideration of the following:

1. *Fully Protected Species*: Several Fully Protected Species (Fish & G. Code § 3511) have the potential to occur within or adjacent to the Project area, including, but not limited to: golden eagle (*Aquila chrysaetos*), American peregrine falcon (*Falco peregrinus anatum*), bald eagle (*Haliaeetus leucocephalus*), and California wolverine (*Gulo gulo*). Fully protected species may not be taken or possessed at any time. Project activities described in the EIR should be designed to completely avoid any fully protected species that have the potential to be present within or adjacent to the Project area. CDFW also recommends that the EIR fully analyze potential adverse impacts to fully protected species due to habitat modification, loss of foraging habitat, and/or interruption of migratory and breeding behaviors. The analysis should

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include a discussion of how the proposed mitigation measures will reduce impacts to fully protected species.

2. *Sensitive Plant Communities*: CDFW considers sensitive plant communities to be imperiled habitats having both local and regional significance. Plant communities, alliances, and associations with a statewide ranking of S-1, S-2, S-3, and S-4 should be considered sensitive and declining at the local and regional level. These ranks can be obtained by querying the CNDDDB and are included in *The Manual of California Vegetation* (Sawyer et al. 2009). The EIR should include measures to protect sensitive plant communities from Project-related direct and indirect impacts.
3. *Habitat Restoration*: CDFW recommends that the EIR include plans for habitat restoration, enhancement, and conservation as mitigation for significant impacts on sensitive species and/or their habitat. If possible, habitat restoration should be located on-site or near enough to the impact area that impacted wildlife populations can benefit from it. However, if on-site mitigation is not feasible or would not be biologically viable, then off-site mitigation through habitat creation and/or acquisition and preservation in perpetuity should be proposed.

The EIR should include measures to perpetually protect the targeted habitat values within mitigation areas from long-term future impacts such as development. CDFW recommends that habitat mitigation areas be protected legally via conservation easement when possible, as the protection afforded by other methods of legal preservation such as deed restrictions is not as strong. Specific issues that should be addressed include restrictions on access, proposed land dedications, long-term monitoring and management programs, control of illegal dumping, water pollution, increased human intrusion, etc.

4. *Habitat Revegetation/Restoration Plans*: Plans for restoration and revegetation should be prepared by persons with expertise in the regional ecosystems and native plant restoration techniques. Plans should identify the assumptions used to develop the proposed restoration strategy. On-site vegetation mapping at the alliance and/or association level should be used to develop appropriate restoration goals and local plant palettes. Reference areas should be identified to help guide restoration efforts. Each plan should include, at a minimum: (a) the location of restoration sites and assessment of appropriate reference sites; (b) the plant species to be used, sources of local propagules, container sizes, and seeding rates; (c) a schematic depicting the mitigation area; (d) a local seed and cuttings and planting schedule; (e) a description of the irrigation methodology; (f) measures to control exotic vegetation on site; (g) specific success criteria; (h) a detailed monitoring program; (i) contingency measures should the success criteria not be met; and (j) identification of the party responsible for meeting the success criteria and providing for conservation of the mitigation site in perpetuity. Monitoring of restoration areas should extend across a sufficient time frame to ensure that the new habitat is established, self-sustaining, and capable of surviving drought.

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CDFW recommends that local onsite propagules from the Project area and nearby vicinity be collected and used for restoration purposes when possible. On-site seed collection should be initiated as early as possible in order to accumulate sufficient propagule material for subsequent use in future years. Restoration objectives should include protecting special habitat elements or re-creating them in areas affected by the Project. Examples may include retention of woody material, logs, snags, rocks, and brush piles.

5. *Nesting Birds*: Nesting and migratory birds are protected by Fish & G. Code §§3503, 3503.5, and 3513. Fish & G. Code §3503 states that it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by the Fish & G. Code or any regulation made pursuant thereto. Fish & G. Code §3503.5 states that it is unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by the Fish & G. Code or any regulation adopted pursuant thereto. Fish & G. Code §3513 states that it is unlawful to take or possess any migratory nongame bird as designated in the federal Migratory Bird Treaty Act.

CDFW recommends that the EIR include specific avoidance and minimization measures to ensure that impacts to nesting birds do not occur. Project-specific avoidance and minimization measures may include, but not be limited to: Project phasing and timing, monitoring of Project-related noise (where applicable), sound walls, and buffers, where appropriate. The EIR should also include specific avoidance and minimization measures that will be implemented should a nest be located within the Project site. If pre-activity surveys are proposed in the EIR, CDFW recommends that they be required no more than three (3) days prior to vegetation clearing or ground disturbance activities, as instances of nesting could be missed if surveys are conducted earlier.

6. *Moving out of Harm's Way*: The Project is anticipated to result in the clearing of natural habitats that support native species. To avoid direct mortality, the lead agency may condition the EIR to require that a qualified biologist with the proper permits be retained to be onsite prior to and during all ground- and habitat-disturbing activities. The qualified biologist with the proper permits may move out of harm's way special-status species or other wildlife of low or limited mobility that would otherwise be injured or killed from Project-related activities. Movement of wildlife out of harm's way should be limited to only those individuals that would otherwise be injured or killed, and individuals should be moved only as far as necessary to ensure their safety. Please note that CDFW does not consider the temporary relocation of on-site wildlife effective mitigation for habitat loss.
7. *Translocation of Species*: CDFW generally does not support the use of relocation, salvage, and/or transplantation as the sole mitigation for impacts to rare, threatened, or endangered species as these efforts are generally experimental in nature and largely unsuccessful.

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8. *Focused Surveys*: Due to the large scope of the Project, it is likely not feasible to include the results of species-specific focused surveys for every special-status plant and animal species that may occur within the Project Area. Therefore, CDFW recommends that the EIR include measures requiring focused surveys for special-status species with the potential to occur within the Project Area prior to starting project activities. Surveys should be completed by a qualified biologist and conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable. Surveys may need to be repeated after significant pauses in Project activities. Survey and monitoring protocols and guidelines are available at: www.wildlife.ca.gov/Conservation/Survey-Protocols. The EIR should also include specific avoidance, minimization, and/or mitigation measures to be implemented to protect special-status species from Project impacts should they be detected.
9. *Aquatic Habitat Restoration Plans*: Due to the scale of the proposed aquatic habitat restoration projects, CDFW recommends the EIR include the Cascade Creek watershed in the analysis. Cascade Creek watershed is smaller, less complex, with less connectivity between fish populations than Eagle Creek and Meeks Creek. It may provide more opportunity to benefit native species during the implementation phase of the Lake Tahoe West Restoration Project. Implementation plans for aquatic habitat restoration should account for the difficulty and uncertainty inherent in fish removal projects. Plans should be prepared by persons with expertise in the regional ecosystems and aquatic habitat restoration techniques and should include references to successfully implemented projects at analog lakes and streams. Plans should identify the assumptions used to develop the proposed restoration strategy and clearly delineate all possible tools and techniques that may be used. On-site fish passage barrier mapping should be used in addition to meadow and wetland delineation to develop appropriate restoration goals and strategies.

California Endangered Species Act

CESA (Fish & G. Code §2050 *et seq.*) prohibits the import, export, sale, and take (Fish & G. Code §86) of state-listed endangered (Fish & G. Code §2062), threatened (Fish & G. Code §2067), and candidate (Fish & G. Code §2068) species without proper authorization. If Project activities have the potential to cause incidental take of state-listed species, a CESA Incidental Take Permit (ITP) may be obtained to provide coverage in the event that take occurs. A CESA ITP may also be obtained to provide coverage for rare and endangered plants listed under the Native Plant Protection Act (Fish & G. Code §1900 *et seq.*).

To issue an ITP, CDFW must demonstrate that the impacts of the authorized take will be minimized and fully mitigated (Fish & G. Code §2081 (b)). To facilitate the issuance of an ITP, if applicable, the EIR should include measures to minimize and fully mitigate the impacts to State-listed species. Please note that mitigation measures that are adequate to reduce impacts to a "less-than significant" level per CEQA requirements may not be enough to minimize and fully mitigate impacts to the extent required for the issue of an ITP. Therefore, CDFW encourages early consultation with staff to determine appropriate measures to facilitate future permitting processes and to engage with the U.S. Fish and

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Wildlife Service to coordinate specific measures if both State and federally listed species may be present within the Project vicinity.

State-listed species with the potential to occur in the area include, but are not limited to: western bumble bee (*Bombus occidentalis*), Sierra Nevada yellow-legged frog (*Rana sierrae*), willow flycatcher (*Empidonax traillii*), great gray owl (*Strix nebulosa*), gray wolf (*Canis lupus*) fisher (*Pekania pennanti*), and Sierra Nevada red fox (*Vulpes vulpes necator*).

Native Plant Protection Act

The Native Plant Protection Act (NPPA) (Fish & G. Code §1900 *et seq.*) prohibits the take or possession of state-listed rare and endangered plants, including any part or product thereof, unless authorized by CDFW or in certain limited circumstances. Take of state-listed rare and/or endangered plants due to Project activities may only be permitted through an ITP or other authorization issued by CDFW pursuant to California Code of Regulations, Title 14, section 786.9 subdivision (b).

Lake and Streambed Alteration Program

The EIR should identify all perennial, intermittent, and ephemeral rivers, streams, lakes, other hydrologically connected aquatic features, and any associated biological resources/habitats present within the entire Project footprint (including access and staging areas). The environmental document should analyze all potential temporary, permanent, direct, indirect and/or cumulative impacts to the above-mentioned features and associated biological resources/habitats that may occur because of the Project. If it is determined that the Project will result in significant impacts to these resources the EIR shall propose appropriate avoidance, minimization and/or mitigation measures to reduce impacts to a less-than-significant level.

Fish & G. Code §1602 requires an entity to notify CDFW prior to commencing any activity that may do one or more of the following: substantially divert or obstruct the natural flow of any river, stream or lake; substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or deposit debris, waste or other materials that could pass into any river, stream or lake. Please note that "any river, stream or lake" includes those that are episodic (i.e., those that are dry for periods of time) as well as those that are perennial (i.e., those that flow year-round). This includes ephemeral streams and watercourses with a subsurface flow. It may also apply to work undertaken within the flood plain of a body of water.

Upon receipt of a complete notification, CDFW determines if the Project activities may substantially adversely affect existing fish and wildlife resources and whether a Lake and Streambed Alteration (LSA) Agreement is required. An LSA Agreement includes measures necessary to protect existing fish and wildlife resources. CDFW may suggest ways to modify the Project that would eliminate or reduce adverse impacts to fish and wildlife resources.

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CDFW's issuance of an LSA Agreement is a "project" subject to CEQA (see Pub. Resources Code 21065). To facilitate issuance of an LSA Agreement, if one is necessary, The EIR should identify all perennial, intermittent, and ephemeral rivers, streams, lakes, other hydrologically connected aquatic features, and any associated biological resources/habitats present within the entire Project footprint (including access and staging areas). The environmental document should analyze all potential temporary, permanent, direct, indirect and/or cumulative impacts to the above-mentioned features and associated biological resources/habitats that may occur because of the Project. If it is determined that the Project will result in significant impacts to these resources the EIR should propose appropriate avoidance, minimization and/or mitigation measures to reduce impacts to a less-than-significant level. To obtain an LSA notification package, please go to <https://www.wildlife.ca.gov/Conservation/LSA/Forms>.

Please note that the fish and wildlife resources that may be impacted by activities subject to Notification under Fish and G. Code §1602 are not synonymous with Waters of the United States as defined by the U.S. Army Corps of Engineers (USACOE), and a wetland delineation prepared for the USACOE may not include all needed information for CDFW to determine the extent of the impacts to fish and wildlife resources. Therefore, CDFW does not recommend relying solely on methods developed specifically for delineating areas subject to other agencies' jurisdiction when mapping lakes, streams, wetlands, floodplains, riparian areas, etc. in preparation for submitting a Notification of an LSA.

ENVIRONMENTAL DATA

It is the policy of the state 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 Project surveys to the California Natural Diversity Database (CNDDB). The CNDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDB/Submitting-Data>. The completed form can be submitted online or mailed electronically to CNDDB at the following email address: CNDDB@wildlife.ca.gov.

FILING FEES

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

CONCLUSION

Pursuant to Public Resources Code sections 21092 and 21092.2, CDFW requests written notification of proposed actions and pending decisions regarding the Project. Written

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notifications may be directed to: California Department of Fish and Wildlife North Central Region, 1701 Nimbus Road, Rancho Cordova, CA 95670.

CDFW appreciates the opportunity to comment on the Notice of Preparation of the EIR for the Lake Tahoe West Restoration Project and recommends that the Lead Agencies address CDFW's comments and concerns in the forthcoming EIR. CDFW personnel are available for consultation regarding biological resources and strategies to minimize impacts.

If you have any questions regarding the comments provided in this letter or wish to schedule a meeting and/or site visit, please contact Gabriele Quillman, Environmental Scientist at (916) 358-2955 or gabriele.quillman@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Jeff Drongesen
Environmental Program Manager

ec: Kelley Barker, kelly.barker@wildlife.ca.gov
Sarah Mussulman, sarah.mussulman@wildlife.ca.gov
Kelsey Vella, kelsey.vella@wildlife.ca.gov
Gabriele Quillman, gabriele.quillman@wildlife.ca.gov
Mitch Lockhart, mitch.lockhart@wildlife.ca.gov
Department of Fish and Wildlife

Office of Planning and Research, State Clearinghouse, Sacramento

Literature Cited

Sawyer, J. O., T. Keeler-Wolf, and J. M. Evens. 2009. A Manual of California Vegetation, 2nd ed. California Native Plant Society Press, Sacramento, California.
<http://vegetation.cnps.org/>