



State of California – Natural Resources Agency  
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GAVIN NEWSOM, Governor  
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Governor's Office of Planning & Research

September 13, 2022

**Sep 13 2022**

## STATE CLEARINGHOUSE

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**Subject: Pacific Gas & Electric (PG&E) Remote Grid Installation Project at  
Whitaker's Forest Research Station (Project)  
MITIGATED NEGATIVE DECLARATION (MND)  
State Clearinghouse No. 2022080290**

Dear Raphael Breines:

The California Department of Fish and Wildlife (CDFW) received a Mitigated Negative Declaration (MND) from University of California, Berkeley (UC Berkeley), as Lead Agency, for the PG&E Remote Grid Installation Project at Whitaker's Forest Research Station (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup> The Project proponent is PG&E.

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project 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 agency environmental review efforts, focusing specifically on

<sup>1</sup> 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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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. Likewise, to the extent implementation of the Project 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.), related authorization as provided by the Fish and Game Code will be required.

**Fully Protected Species:** CDFW has jurisdiction over species of birds, mammals, amphibians, reptiles, and fish designated by statute as “fully protected” pursuant to Fish and Game Code sections 3511, 4700, 5050, and 5515. Take of any fully protected species is prohibited and CDFW cannot authorize their incidental take.

**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 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).

**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 Project.

As a responsible agency, CDFW is responsible for providing, as available, biological expertise during public agency environmental review efforts (e.g., CEQA), focusing specifically on project activities that have the potential to adversely affect fish and wildlife resources. CDFW provides recommendations to identify potential impacts and possible measures to avoid or reduce those impacts.

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** PG&E

**Objective:**

The Project proposes to install a new remote solar micro-grid referred to as a standalone power system (SPS) within Whitaker’s Forest to provide a more consistent and reliable source of power to the existing facility. The Project is located on land characterized by coniferous forest and rural land uses. Large construction equipment

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will be used to prepare the site and to install equipment required for the SPS. The SPS consists of a shipping container on a concrete foundation with 12 solar panels mounted on its roof. The SPS will be contained within a small utility yard, that will be surrounded by a chain-link security fence. Batteries to store the solar-generated power will be mounted inside the shipping container. A new underground conduit will run to the existing facilities (residential structures) to provide electrical service. Access to the Project site is via Forest Service Road 14S75. The approximate Project footprint (inclusive of the SPS and adjacent driveway) is 0.13 acre. The total area of disturbance associated with the Project (inclusive of the site for the SPS as well as the staging area for equipment during construction) is approximately 0.25 acre.

**Location:** The Project site is located within Whitaker's Forest Research Station, approximately 2.57 miles northwest of Wilsonia, in Tulare County, California, along Forest Service Road 14S75. Coordinates for the approximate location of the Project are 36°42.10.8" N, 118°55'58.9" W (36.703006, -118.933025). Two existing residential structures used by UC Berkeley to house researchers during the summer months are located approximately 200 feet to the northwest.

**Timeframe:** Fall 2022 to Summer 2023

## COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the UC Berkeley in adequately identifying and/or mitigating the Project'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 CEQA document.

Aerial imagery of the Project boundary and its surroundings show the area contains undeveloped land that may have suitable habitat for special status species. Based on a review of the Project description, a review of California Natural Diversity Database (CNDDB) records, and the surrounding habitat, several special status species could potentially be impacted by Project activities.

As addressed in the MND, there are many special status resources that may be impacted by the Project. CDFW is concerned with potential impacts to special status species including, but not limited to, the State and federally endangered fisher (*Pekania pennanti*) – southern Sierra Nevada Evolutionary Significant Unit (ESU), the State endangered great gray owl (*Strix nebulosa*), the State endangered and federally threatened Sierra Nevada red fox (*Vulpes vulpes*) – Sierra Nevada Distinct Population Segment (DPS), the State and federally endangered southern mountain yellow-legged frog (*Rana muscosa*), the State threatened and fully-protected wolverine (*Gulo gulo*), grey-leaved violet (*Viola pinetorum* ss. *Grisea*), and pygmy pussypaws (*Calyptridium pygmaeum*). CDFW is also concerned with potential impacts to migratory and

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non-migratory nesting birds, including the State species of special concern northern goshawk (*Accipiter gentilis*).

### **Recommended Mitigation Measure 1: Fisher**

Mitigation Measure BIO-3 states that, "All vegetation removal and construction activities will be scheduled between July 1 and February 28 to avoid the fisher denning season." CDFW agrees that Project activities should not occur during the fisher natal or maternal denning period(s) unless a qualified biologist conducts a stand search for potential natal/maternal denning structures within the area of the spring treatment and within a 0.25-mile buffer.

If Project activities occur during the fisher natal or maternal denning period(s) and potential denning structures are detected during stand searches, CDFW recommends a qualified biologist conduct surveys for denning fisher activity utilizing established protocols for remote camera stations, such as the *United States Forest Service American marten, fisher, lynx, and wolverine: survey methods for their detection* (Zielinski, W.J and T.E. Kucera, 1995). CDFW recommends survey results are submitted to CDFW for review at least ten (10) working days prior to the start of construction. If a potential denning fisher is detected, CDFW recommends Project activities do not commence until after July 31st, unless UC Berkeley consults with CDFW to develop site specific take avoidance measures.

### **Recommended Mitigation Measure 2: Great Gray Owl**

The MND states, "... this species is unlikely to occur within the Project site, as the Project site lacks suitable habitat, which consists of mixed conifer forests near meadows and open areas that are 10 acres or larger."

While meadow habitat and other open areas may be lacking from the immediate Project site, CDFW recommends great gray owl surveys within ½ mile of any project activities as the CNDDDB results indicate that great gray owl may nest in the vicinity of the Project site. If ground-disturbing activities occur during the owl nesting season, CDFW recommends that focused great gray owl surveys be conducted by qualified biologists experienced with the survey protocol for this species prior to the start of ground disturbing activities and suggest following the protocol prepared by Beck and Winter, 2000, for the United States Forest Service. A copy of the great gray owl protocol can be downloaded at:

<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83965&inline>. CDFW recommends a ½ mile full avoidance buffer for any active great gray owl nests if Project-related activities are to occur during the owl nesting season.

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### **Recommended Mitigation Measure 3: Sierra Nevada Red Fox**

The Project site is within the range of suitable habitat for the State threatened Sierra Nevada red fox and this species was not discussed within the MND. CDFW recommends that this species be evaluated for the Project and recommends that the protocol in Appendix B of *Ecology of Red Fox (Vulpes vulpes) in the Lassen Peak Region of California, USA* (Perrine, 2005) be followed and that surveys be conducted accordingly and prior to commencing any Project-related activities. If any active or potential dens are found on the Project site during these surveys, consultation with CDFW would be warranted for guidance on take avoidance, minimization, and mitigation measures. Fully addressing Sierra Nevada red fox in the CEQA document prepared for the Project is advised.

### **Recommended Mitigation Measure 4: Southern Mountain Yellow-legged Frog**

The MND states, "This species lives in creeks and streams that maintain water seasonally or perennially and is usually encountered within a few feet of water. The Project site is 200 feet from the nearest mapped waterway and thus does not provide suitable habitat for this species." As the Project site is located adjacent to an intermittent or perennial stream and the species is known to traverse several hundred meters in upland habitats (Pope and Mathews, 2001), CDFW recommends the Project site be surveyed by a qualified wildlife biologist experienced with this species for the potential presence of this species in advance of ground-disturbing activities. If the species is found, CDFW should be consulted to identify and implement appropriate avoidance and minimization measures to ensure impacts to this species do not occur.

### **Recommended Mitigation Measure 5: Special Status Plant Species**

The MND states that special status plants, including grey-leaved violet and pygmy pussypaws, are unlikely to occur within the Project site as the site has previously been cleared of vegetation and is subject to ongoing human disturbance. CDFW recommends the Project site be surveyed for special status plants by a qualified botanist following the "*Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities*" (CDFG, 2018). This protocol is recommended as there is the potential for multiple special status plant species to occur within or adjacent to the Project site (even though the area may have had continuing human disturbance), including grey-leaved violet and pygmy pussypaws, two species with a California Rare Plant Rank (CRPR) of 1B.2, and special status plant surveys were not documented within the MND. This protocol, which is intended to maximize detectability, includes the identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period. In the absence of protocol-level surveys being performed, additional surveys may be necessary. Further, CDFW recommends

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special status plant species be avoided whenever possible by delineating and observing a no-disturbance buffer of at least 50 feet from the outer edge of the plant population(s) or specific habitat type(s) required by special status plant species. If buffers cannot be maintained, then consultation with the CDFW is warranted to determine appropriate minimization and mitigation measures for impacts to special status plant species. If a State- or federally listed plant species is identified during botanical surveys, it is recommended that consultation with the CDFW and/or the United Fish and Wildlife Service (USFWS) be conducted to determine permitting needs.

### **Recommended Mitigation Measure 6: Nesting Birds**

The MND states that disturbance to nesting birds "...would be avoided through implementation of Mitigation Measure BIO-1, which requires that the Project attempt to avoid the avian nesting season, which typically extends from February 15 to August 31 (this encompasses the nesting season for the special status bird species with potential nesting habitat within or immediately adjacent to the Project site including California spotted owl, northern goshawk, and olive-sided flycatcher). If construction during this season cannot be avoided, then nesting bird surveys would be completed, and any nests found would be protected." Mitigation Measure BIO-1 states, "Surveys would include a 300-foot buffer surrounding the Project area." and "Buffers shall be a minimum of 50 feet for passerines and 300 feet for non-special-status raptors." CDFW does not recognize the buffer distances as appropriate for protection of the species and recommends a 250-foot buffer around active nests of non-listed bird species and a 500 foot no-disturbance buffer around active nests of non-listed raptors.

As such, if ground-disturbing activities occur during the nesting bird season, CDFW recommends that a qualified wildlife biologist conduct pre-activity surveys for active nests no more than 10 days prior to the start of ground 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 work 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, odors, and movement of workers or equipment could also affect nests. Prior to initiation of construction activities, CDFW recommends a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once construction begins, CDFW recommends a qualified biologist continuously monitor nests to detect behavioral changes resulting from the project. If behavioral changes occur, CDFW recommends the work causing that change cease and CDFW consulted for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified wildlife biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250 feet around

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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 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 area would be concealed from a nest site by topography. CDFW recommends that a qualified wildlife biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

### **Editorial Comments and/or Suggestions**

**Federally Listed Species:** CDFW recommends consulting with USFWS regarding potential impacts to federally listed species including but not limited to fisher – Southern Sierra Nevada ESU, Sierra Nevada red fox – Sierra Nevada DPS, and southern mountain yellow-legged frog. Take under 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.

### **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 Project surveys to the CNDDDB. The CNDDDB field survey form can be found at the following link:

<https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be mailed electronically to CNDDDB at the following email address:

CNDDDB@wildlife.ca.gov. 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 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 & G. Code, § 711.4; Pub. Resources Code, § 21089).

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## CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist UC Berkeley in identifying and mitigating Project impacts on biological resources.

If you have any questions, please contact Jeremy Pohlman, Senior Environmental Scientist (Specialist), at the address provided on this letterhead, by telephone at (805) 588-5674 or by electronic mail at [Jeremy.Pohlman@wildlife.ca.gov](mailto:Jeremy.Pohlman@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
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## REFERENCES

Beck, Thomas W. and Winter, Jon. 2000. *Survey protocol for the Great gray owl in the Sierra Nevada of California*. Prepared for the United States Department of Agriculture Forest Service, Pacific Southwest Region. May 2000.

CDFG, 2018. *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities*. California Department of Fish and Game, March 2018.

Perrine, J.D. 2005. *Ecology of Red Fox (Vulpes vulpes) in the Lassen Peak Region of California, USA*. PhD. Dissertation, University of California, Berkeley.

Pope, L.K., Mathews, K.R. 2001. *Movement Ecology and Seasonal Distribution of Mountain Yellow-Legged Frogs, Rana muscosa, in a High-Elevation Sierra Nevada Basin*. American Society of Ichthyologists and Herpetologists, 2001 (3): 787-793.

Zielinski, W. J., and T. E. Kucera. 1995. *American marten, fisher, lynx, and wolverine: survey methods for their detection*. General Technical Report. PSW-GTR-157. Pacific Southwest Research Station, Forest Service, U.S. Department of Agriculture.