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February 12, 2024

Governor's Office of Planning & Research

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Feb 15 2024

STATE CLEARINGHOUSE

**Subject: Pine Mountain Lake Fuel Reduction Project (Project)
Initial Study (IS)/Mitigated Negative Declaration (MND)
SCH No. 2024010405**

Dear Len Nielson:

The California Department of Fish and Wildlife (CDFW) received an Initial Study (IS) and Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from the California Department of Forestry and Fire Protection (CAL FIRE) for the Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines. CDFW had previously commented on this Project, in a letter dated August 25, 2023 (SCH No. 2023070656), at which point the Tuolumne County Resources Conservation District was the lead agency. The Tuolumne County Resources Conservation District withdrew their CEQA document on September 12, 2023. Many of CDFW's comments have been incorporated into the revised IS/MND.

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, we appreciate 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 Guidelines¹ § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection,

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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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 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 Project 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 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 may be required.

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 (Cal. Code of Regs. tit. 14, § 15380), CDFW recommends it be fully considered in the environmental analysis for the Project.

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).

PROJECT DESCRIPTION SUMMARY**Proponent:** CAL FIRE

Objective: The Project proposes to reduce fuel loading and remove ladder fuels to build a sustainable and defensible fuel break, reducing the release of carbon dioxide during wildfire events, and establishing a fire resilient and healthy forest. Project activities will be conducted on approximately 640 acres of Wildland Urban Interface (WUI). Fuel reduction will be conducted in four phases. Phase 1 will consist of the manual and mechanical felling of dead/hazard trees to establish a safe working environment, and the removal of brush, ladder fuels, and suppressed trees primarily using mastication. Phase 2 will consist of hand crews pruning trees one-half the height of the crown or eight to ten feet, whichever is less; this treatment will be conducted in areas too steep, rocky, or sensitive for mechanical treatment. Phase 3 will consist of slash treatment via mastication, in areas machinery is excluded slash will be treated by hand using lop and

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scatter. Phase 4 will consist of herbivory treatment to browse the regeneration vegetation.

Location: The Project is located directly east and adjacent to the Pine Mountain Lake community in Tuolumne County, California. The Project is north of Highway 120, southeast of the Pine Mountain Lake Airport. Elevation ranges from 2,500 to 3,100 feet. The Project is located in Sections 13, 23, 24, 25, and 26 of Township 13 south, Range 16 east, Mount Diablo Baseline and Meridian.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist CAL FIRE 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 prepared for this Project.

There may be special status resources present in and adjacent to the Project area (CDFW 2024). These resources may need to be evaluated and addressed prior to any approvals that would allow ground disturbing activities. CDFW is concerned with potential impacts to special-status species including, but not limited to, the State endangered and federally proposed listed as endangered foothill yellow-legged frog (*Rana boylei*); State Endangered great gray owl (*Strix nebulosa*); the State candidate endangered Crotch's bumble bee (*Bombus crotchii*); and water and riparian resources.

Please note that the California Natural Diversity Database (CNDDDB) is populated by and records 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 in the CNDDDB does not mean a species is not present. In order to adequately assess any potential Project-related impacts to biological resources, surveys conducted by a qualified wildlife biologist/botanist 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 at or near the Project area.

Comments

Herbivory: The IS/MND project description does not include details on the prescribed herbivory included in Phase 4. It is unclear what animals will be used, at what densities, timing, duration, and if enclosure fencing will be installed. The IS/MND only includes the installation of exclusion fencing to protect special status plants, but it is unclear if other exclusion fencing will be installed (e.g. to protect riparian resources). As currently drafted, the IS/MND is not sufficiently clear and detailed to permit CDFW to conduct an adequate and effective review of the potentially significant impacts to biological

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recourses of the herbivory treatment. CDFW recommends the CEQA document prepared for this Project includes a clear and detailed Project description.

State listed species: The IS/MND includes mitigation measures for the special status species listed above, including establishing no disturbance avoidance buffers. For State listed species, if take cannot be avoided, acquisition of an Incidental Take Permit (ITP) for great gray owl, foothill yellow-legged frog, and/or Crotch's bumble bee is necessary prior to Project implementation, pursuant to Fish and Game Code § 2081(b) to comply with CESA. 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.

Nesting birds: CDFW encourages that Project implementation occur outside of the bird nesting season (February 1 through September 15); however, if ground-disturbing or vegetation-disturbing activities must occur during the nesting season, the Project proponent is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes as referenced above.

To evaluate Project-related impacts on nesting birds, CDFW recommends that a habitat assessment for nesting birds be conducted by a qualified biologist. If nesting birds or suitable habitat are identified, CDFW further recommends that focused surveys be conducted at biologically appropriate times during the nesting season. CDFW also recommends that a qualified biologist conduct pre-activity surveys for active nests within 10 days prior to the start of vegetation disturbing activities 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 to identify nests and determine their status. A sufficient area means any area potentially affected by the 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 vegetation removal activities, CDFW recommends that a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once vegetation disturbance begins, 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 that the birds have fledged and are no longer reliant upon the nest or on-site parental care for survival. Variance from

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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 biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

Lake and Streambed Alteration (LSA): The IS/MND Mitigation Measure 12 includes classifying watercourses into different classes and establishing equipment exclusion zones (EEZ) or equipment limitation zones (ELZ) based on the Class of the watercourse. The classification criteria and EEZ/ELZs are similar to those in the Forest Practice Rules (Cal. Code Regs. Tit. §14, 956.5). For Class I and II watercourses an EEZ will be established, and for Class III and IV watercourses an ELZ will be established, and within the EEZ/ELZs vegetation shall not be treated by heavy equipment. Based on the IS/MND, vegetation removal may occur within the EEZ/ELZs by other methods. Depending on the site-specific conditions of each watercourse and proposed activities, vegetation removal activities within the EEZ/ELZs may warrant LSA notification. Project activities that have the potential to substantially change the bed, bank, and channel of streams and associated riparian and wetland habitat that 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. CDFW is required to comply with CEQA in the issuance of a Lake or Streambed Alteration (LSA) Agreement; therefore, if the CEQA document approved for the Project does not adequately describe the Project and its impacts, a subsequent CEQA analysis may be necessary for LSA Agreement issuance. Additional information on notification requirements is available through the Central Region LSA Program at R4LSA@wildlife.ca.gov and the CDFW website: <https://wildlife.ca.gov/Conservation/LSA>.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database that 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 (CNDDDB). The CNDDDB field survey form can be obtained 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:

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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).

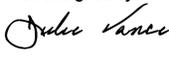
CONCLUSION

CDFW appreciates the opportunity to comment on the IS/MND to assist the Tuolumne County Resources Conservation District in identifying and mitigating Project 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 Margarita Gordus, Senior Environmental Scientist (Specialist), at the address provided on this letterhead, by telephone at (559) 207-6681, or by electronic email at Margarita.Gordus@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Julie A. Vance
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REFERENCES

CDFW. 2024. Biogeographic Information and Observation System (BIOS).
<https://www.wildlife.ca.gov/Data/BIOS>. (Accessed 16 August 2023).