State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Northern Region
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April 18, 2024

Kelsey Marks
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SUBJECT: LASSEN NATIONAL FOREST HAZARD TREE MANAGEMENT PROJECT, STATE CLEARING HOUSE NUMBER 2024030580, LASSEN COUNTY

Dear Kelsey Marks:

The California Department of Fish and Wildlife (CDFW) has reviewed the Honey Lake Resource Conservation District (Lead Agency) Draft Initial Study and Mitigated Negative Declaration (ISMND), for the above-referenced project (Project). CDFW appreciates this opportunity to provide comments on the Project, pursuant to the California Environmental Quality Act (CEQA) Guidelines[1].

CDFW's 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 and G. Code, §§ 711.7, subd. (a) & 1802; Public Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its Trustee Agency 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 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.

CDFW is also submitting comments as a Responsible Agency under CEQA (Public 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 and G. Code, § 2050 et seq.), or state listed rare plants pursuant to the Native Plant Protection Act (NPPA; Fish and G. Code § 1900 et seq.) authorization as provided by the applicable Fish and Game Code will be required.

Project Description

The Project summary, as described in the ISMND, is as follows:

The project will result in up to +/-6,750 acres of treatments to remove hazard trees from National Forest System roads, trails, and facilities. This includes the following actions in the project area:

1. *Identify, fell, and remove hazardous trees up to 1.5 times the tree height striking distance of roads, trails, and facilities; and remove trees already felled during fire suppression or rehabilitation activities along high-use roads (maintenance level 2, 3, 4, and 5 National Forest System roads, county roads, and highways), within and adjacent to developed facilities on National Forest System lands; and fell certain trees along National Forest System trails.*

2. *Maintain roads.*

3. *Use best management practices to minimize or eliminate potential negative effects (See Appendix B - Best Management Practices). Treatments would be prioritized to address the most heavily used roads and the most fire -impacted trees. Implementation would begin with those areas at highest risk due to their location (the primary factor) and the condition of the trees. Most treatment would occur within approximately 2 to 3 years.*

Comments and Recommendations

CDFW finds that most of the proposed Avoidance and Minimization Measures (AMM's) included in the ISMND are adequate for avoiding and minimizing potentially significant impacts to biological resources. However, CDFW offers

the following comments and recommendations to assist the Lead Agency in further minimizing and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife.

Nesting Birds

The Project includes removal of hazard trees (defined as dead and dying trees) and shrubs which may provide suitable nesting habitat for migratory birds, especially cavity nesting birds; however, the ISMND does not include any avoidance and minimization measures to avoid or reduce potentially significant impacts to nesting birds.

Nesting migratory birds, if present, could be directly or indirectly impacted by Project activities. Direct effects include direct mortality from cutting trees containing eggs or young. Indirect effects could include nest abandonment by adults in response to higher-than-ambient noise levels, human encroachment, visual disturbance and/or a reduction in food availability for young birds due to disruption of feeding behavior of adult birds. Including the following avoidance and minimization measure into the final ISMND would ensure that potential impacts to nesting birds are less than significant.

To avoid impacts to all nesting birds and/or raptors protected under Fish & Game Code Sections 3503 and 3503.5 and the federal Migratory Bird Treaty Act, one of the following should be implemented:

a. Construction activities should occur between September 1 and January 31, when birds are not anticipated to be nesting; or

b. If construction activities are to occur during the nesting season, a pre-construction nesting bird survey should be conducted by a qualified biologist to identify any active nests adjacent to the Project area.

Pre-construction surveys should begin prior to sunrise and continue until vegetation and nests have been sufficiently observed. The survey should consider acoustic impacts and line of sight Project disturbances to determine a sufficient survey radius. A nesting bird survey report should be prepared and, at a minimum, the report should include a description of the area surveyed, date and time of the survey, ambient conditions, bird species observed, a description of any active nests observed, any evidence of breeding behaviors (e.g., courtship, carrying nest materials or food, etc.), and a description of any

outstanding conditions that may have impacted the survey results (e.g., weather conditions, excess noise, presence of predators).

If an active nest is located during pre-construction surveys, a non-disturbance buffer should be established around the nest by a qualified biologist in consultation with CDFW and U.S. Fish and Wildlife Service to comply with Fish & Game Code Sections 3503 and 3503.5 and the Migratory Bird Treaty Act. Compliance measures may include, but are not limited to, exclusion buffers, sound-attenuation measures, seasonal work closures based on the known biology and life history of the species identified during the survey, as well as ongoing monitoring by biologists.

Nesting bird surveys should be conducted no more than one week prior to the initiation of construction. If construction activities are delayed or suspended for more than one week after the pre-construction nesting bird survey, the site should be resurveyed.

Bats

While the ISMND offers Mitigation Measure BIO-WILD-6 for the avoidance and protection of bats that may utilize caves or cave-like structures, avoidance and minimization measures are not offered for individual roosting bats. Bats are considered non-game mammals and are afforded protection by state law from take and/or harassment (Fish and Game Code, Section 4150; California Code of Regulations, Section 251.1).

Trees that contain cavities, crevices and/or exfoliated bark have high potential to be used by various bat species. Since this Project includes tree removal and may impact trees with the above-referenced characteristics, a thorough pre-construction survey should be conducted by a qualified biologist to determine if bat roosting features are present prior to tree removal. Trees with potentially suitable roosting features should be clearly marked by a qualified biologist and the following should occur prior to tree removal:

1) To avoid impacts to roosting bats, removal of marked trees 12" diameter at breast height (DBH) or greater should occur only during the following time frames and subject to the following weather conditions, or as otherwise approved/recommended by a qualified biologist:

- Between March 1 (or after evening temperatures rise above 45°F, and/or no more than ½" of rainfall within 24 hours occurs), and April 15; and
- Between September 1 and October 15 (or before evening temperatures fall below 45°F, and/or more than ½" of rainfall within 24 hours occurs).

2) Marked trees greater than 12" DBH shall be removed using a two-step process to allow bats the opportunity to abandon the roost prior to removal. The two-sept removal process is as follows:
    - Day 1: Remove small-diameter trees, brush, and non-habitat features of large trees (branches without cavities, crevices, or exfoliating bark), to encourage bats to vacate. The tree and any suitable branches shall then be left for 24 hours to allow the bats to vacate. Excavators, grinders, or other heavy equipment shall not be used for first day trimming of habitat trees.
    - Day 2: Remove the remainder of the tree. If branches contain suitable bat habitat, set aside, cut the branches off intact and set them upright against trees away from the Project site to allow any bats present to passively escape.

Western Bumble Bee

On September 30, 2022, the California Fish and Game Commission accepted a petition to list western bumble bee (WBB; *Bombus occidentalis*) as endangered under CESA, advancing the species to the candidacy stage of the CESA listing process. Candidate species are granted full protection under CESA during this period. Take of any endangered, threatened, or candidate species that results from the Project is prohibited, except as authorized by State law (Fish & G. Code, §§ 86, 2062, 2067, 2068, 2080, 2085; Cal. Code Regs., tit. 14, § 786.9). Additionally, WBB has a State ranking of S1/S2, of which are imperiled/critically imperiled and extremely rare (often five or fewer populations), and is listed as an invertebrate of conservation priority under the Terrestrial and Vernal Pool Invertebrates of Conservation Priority[2].

Suitable WBB habitat includes areas of woodlands, grasslands and upland scrub that contain requisite habitat elements, such as small mammal burrows. WBB primarily nest in late February through late November in abandoned

[2] https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=149499&inline

underground small mammal burrows, but they may also nest under perennial bunch grasses or thatched annual grasses, under brush piles, in old bird nests, and in dead trees or hollow logs[3,4]. Overwintering sites utilized by WBB mated queens include soft, disturbed soil[5] or under leaf litter or other debris. Post forest-fire environments have been linked to increases in bumble bee probability[6] therefore, ground disturbance and vegetation removal associated with Project implementation has the potential to significantly impact local WBB populations.

Without appropriate avoidance and minimization measures for WBB, direct mortality and potentially significant indirect impacts associated with ground- and vegetation-disturbing activities may occur as a result of the Project. Indirect impacts may include loss of foraging plants, changes in foraging behavior, burrow collapse, nest abandonment, reduced nest success, and a reduction in health and vigor of eggs, young and/or queens.

Due to potentially suitable habitat throughout the Project area and the potential for significant impacts to WBB, CDFW recommends including avoidance and minimization measures for WBB in the ISMND and aligning the measures with survey considerations outlined in the June 2023 Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species[7].

California Endangered Species Act

Please be advised that a CESA Incidental Take Permit[8] must be obtained if the Project has the potential to result in "take" (hunt, pursue, catch, capture, kill, or attempt thereof) 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,

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[3] Williams, P. H., R. W. Thorp, L. L. Richardson, and S .R. Colla. 2014. Bumble bees of North America: An Identification guide. Princeton University Press, Princeton, New Jersey. 208pp.
[4] Hatfield, R., Jepsen, S., Thorp, R., Richardson, L., Colla, S. & Foltz Jordan, S. 2015. Bombus occidentalis. The IUCN Red List of Threatened Species 2015: e.T44937492A46440201. https://dx.doi.org/10.2305/IUCN.UK.2015- 2.RLTS.T44937492A46440201.en.
[5] Goulson, D. 2010. Bumblebees: behaviour, ecology, and conservation. Oxford University Press, New York. 317pp.
[6] Johnson, S. A., Jackson, H. M., Noth, H., & M'Gonigle, L. K. (2023). Positive impact of postfire environment on bumble bees not explained by habitat variables in a remote forested ecosystem. *Ecology and Evolution*, 13, e9743
[7] https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=213150&inline
[8] https://wildlife.ca.gov/Conservation/CESA/Permitting

mitigation measures, and a mitigation monitoring and reporting program. If the Project has the potential to result in take of a CESA-listed species, early consultation is encouraged, as significant modification to the Project may be necessary to minimize and fully mitigate impacts as required by Fish and Game Code Section 2081(b)(2).

Additionally, some avoidance and minimization measures only refer to federally listed and sensitive species, and omit state listed and sensitive species. For example, Mitigation Measure BIO-BOT-2 states "*New Sensitive Plant Discoveries - In the event any new populations of federally threatened, endangered, proposed, and candidate, and State threatened, endangered, and rare (Ranks 1 and 2) plant, lichen or fungi species are discovered during the various phases of the project, the area will be flagged and avoided until a botanist is consulted for mitigation measure applicability*." CDFW recommends including a reference to state listed and sensitive plants species in addition to federally listed and sensitive.

Herbicide Use

The ISMND indicates the use of herbicides for emergent brush and noxious weed treatment. While herbicide can be efficient for control of vegetation, CDFW discourages their use, especially in areas that provide habitat for native pollinators. If CESA-listed bumble bees are found throughout the Project area, CDFW recommends implementing alternatives to herbicide use, as they are outlined in the ISMND.

If herbicides are used, the ISMND should specify specific methods for use to avoid or minimize direct and indirect impacts to bumble bees (i.e., applying herbicides outside of the blooming season). CDFW strongly encourages the preparation and implementation of a weed prevention and control plan. When applying herbicides please consider:

- Following the best management practices described by the Guidance to Protect Habitat from Pesticide Contamination[9].
- Avoid using pesticides marked with the US Environmental Protection Agency's bee hazard icon.
- Avoid spraying pesticides onto any flowering plant.

[9] https://xerces.org/sites/default/files/2019-10/16-024_01_XercesSoc_Guidance-to-Protect-Habitat-from-Pesticides_web.pdf

- Use pesticides with a short residual toxicity to bees; bee pesticide toxicity can be checked via UC ANR's Bee Precaution Database[10].
- Use targeted application instead of broadcast spraying whenever possible.
- Avoid mixtures of pesticides as they are only evaluated in scenarios in which they are not mixed; thus, potentially harmful synergies are unknown.
- All pesticide application must be conducted by a Licensed and Certified Pesticide Applicator and should be used as directed by the manufacturer.

Additional guidance on this topic is provided by the United States Environmental Protection Agency[11] and the California Department of Pesticide Regulation[12].

Erosion Control

The ISMND indicates a need for erosion control. CDFW recommends using erosion control materials (e.g., geotextiles, fiber rolls) only made of loose-weave mesh, such as jute, hemp, coconut (coir) fiber, or other products without welded weaves. Synthetic (plastic or nylon) materials are strongly discouraged and should not be used.

Pre-Construction Surveys

Many of the AMM's listed in the ISMND infer sensitive species will be protected if 'discovered' and/or "occur in high high-quality habitat" but do not indicate targeted or general pre-construction surveys conducted by a biologist specifically for the purpose of detecting sensitive species and/or their habitats. For example, BIO-WILD-9 states "Marten Dens - Maintain a 100-acre buffer from May 1 to July 31 for all active marten den sites." However, there is no mention of pre-construction habitat assessments and/or surveys within the ISMND.

If Pre-construction surveys are planned for certain biological resources, CDFW recommends including such measures as part of the ISMND. If pre-construction surveys are not planned, CDFW recommends including pre-construction surveys and/or assessments, as they are directly correlated with the implementation and success of the avoidance and minimization measures included throughout the ISMND.

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[10] https://ipm.ucanr.edu/bee-precaution-pesticide-ratings/
[11] https://www.epa.gov/pollinator-protection/epa-actions-protect-pollinators
[12] https://www.cdpr.ca.gov/docs/enforce/pollinators/

For the few species in which pre-construction surveys are specifically indicated in the ISMND, such as amphibians, it is unclear what methods will be implemented for pre-construction surveys. CDFW recommends including survey methods for each biological resource. Please visit CDFW's Survey and Monitoring Protocols and Guidelines[13] for accepted survey protocols for some biological resources, including rare plants and amphibians. Acceptable species-specific survey procedures may also be developed in consultation with CDFW and other applicable resource agencies.

Lake and Streambed Alteration

The ISMND indicates the potential for culverts installation and stream crossings, however, does not indicate authorization for potential impacts to bed, bank, or channel. Fish & Game Code Section 1602 requires any person, state or local governmental agency, or public utility to notify CDFW prior to beginning any activity that may do one or more of the following:

1. Substantially divert or obstruct the natural flow of the bed, channel, or bank of any river, stream, or lake; or
2. Substantially change or use any material from the bed, channel, or bank of any river, stream, or lake; or
3. Deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake.

To obtain more information about the 1602 Notification process, please access the Lake and Streambed Alteration Program.

Submitting Data

CEQA requires that information developed in environmental documents is incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Public Resources Code, § 21003, subd. (e).) Accordingly, please report any observation of special status species to the CNDDB. Use this link to access the CNNDB field survey form[14] and this link for additional information on the type of information reported to CNDDB[15].

[13] https://wildlife.ca.gov/Conservation/Survey-Protocols
[14] https://nrm.dfg.ca.gov/fieldSurvey/default.aspx
[15] https://wildlife.ca.gov/Data/CNDDB/Submitting-Data

Future CEQA Consultation

CDFW would like to emphasize that our staff remain available for consultation at every stage of the project development process. CDFW strongly encourages the Lead Agency to continue to consult with CDFW before and during the development of future projects and their equivalent CEQA documents, specifically regarding the analyses of biological resources and the formulation of avoidance, minimization, and mitigation measures for such resources. Engaging with CDFW early-on plays a critical role in allowing our agency to fulfill our mandate to conserve California's valuable fish and wildlife resources and will simultaneously aid the Lead Agency in an efficient and comprehensive CEQA review.

Conclusion

CDFW appreciates the opportunity to comment on the Project to assist the Lead Agency in adequately analyzing and minimizing impacts to biological resources. If you have any questions regarding the information above, or for future CEQA consultation requests, please contact Erika Iacona, Senior Environmental Scientist, by email at R1CEQARedding@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Tina Bartlett
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