

California Environmental Quality Act Exemption Applicability Review

Project Name:

Kaweah Fuel Reduction Project
Tulare County, California

CAL FIRE Grant Number: 5GG21187
CAL FIRE Tracking Number: 21-FP-TUU-251

Owner/Applicant:

Tulare County Resource Conservation District
Visalia, CA

Author:

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Clovis, CA

Lead Agency:

Tulare County Resource Conservation District

Date of Preparation:

May 2024



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Contents

1	Project Description.....	1
2	Exemption Applicability	3
2.1	CEQA Subjectivity.....	3
2.2	Exemption Applicability	3
2.2.1	Statutory Exemption Applicability	4
2.2.2	Category Exemption Applicability	6
3	Conclusion.....	9
4	References	10

Figures

Figure 1	Vicinity Map and Project Site.....	2
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1 Project Description

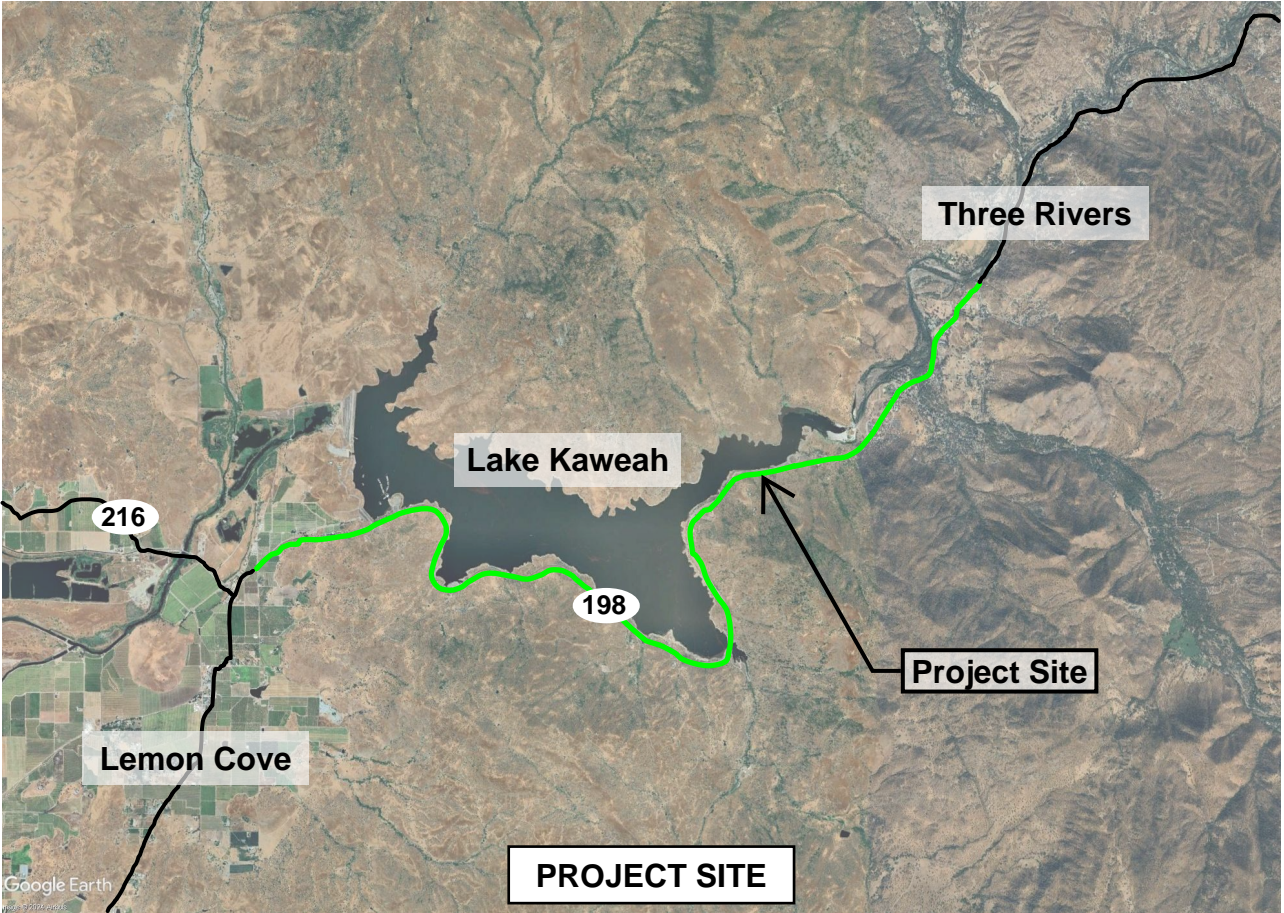
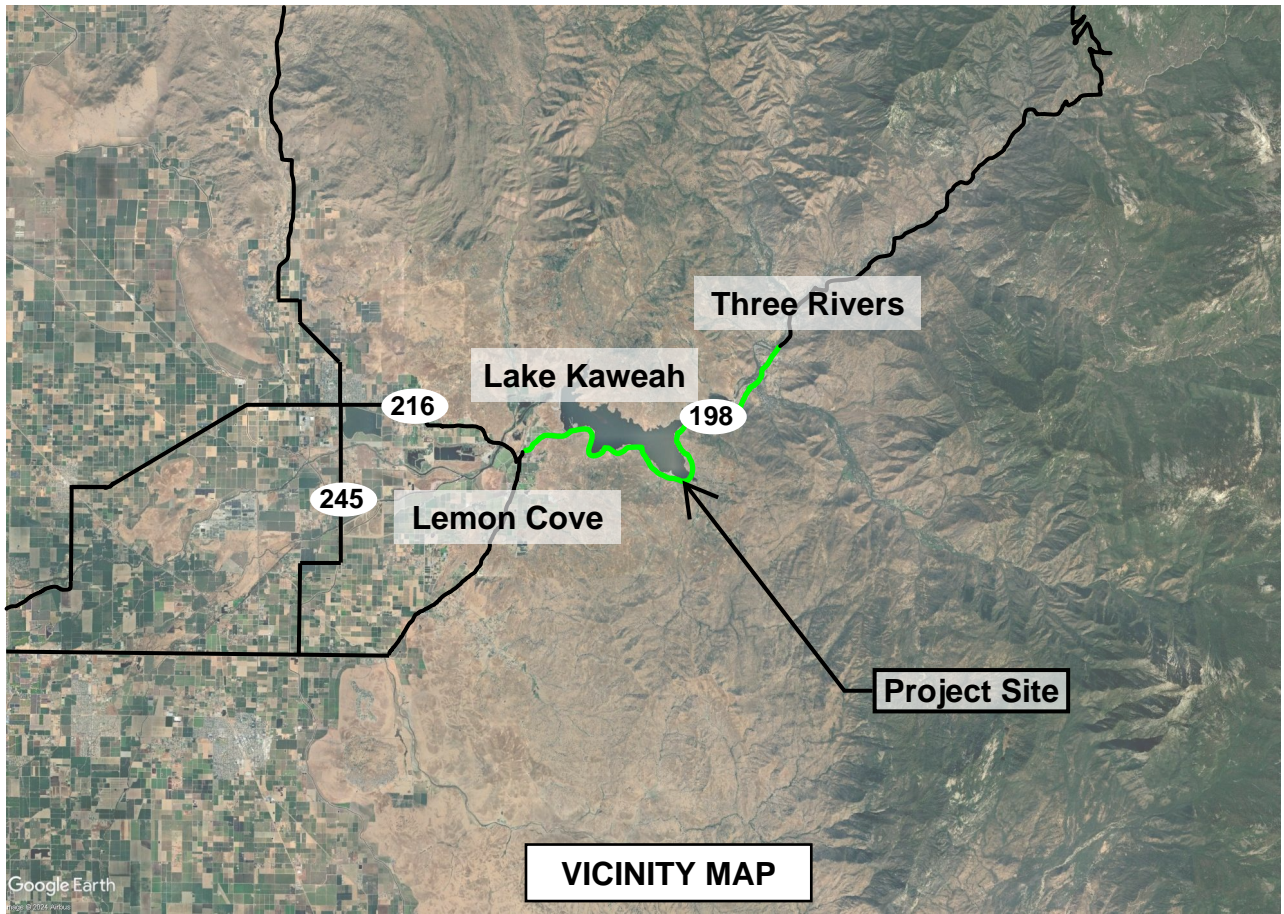
Tulare County Resource Conservation District (TCRCD) proposes the Kaweah Fuel Reduction Project (Project) to reduce fire fuels and improve clearances along State Route (SR) 198, between the communities of Lemon Cove and Three Rivers, and adjacent to the southern side of Lake Kaweah, in Tulare County, California. Figure 1, on the following page, depicts the Vicinity Map and Project Site.

Work would be funded by a grant from the California Department of Forestry and Fire Prevention (CAL FIRE). The Project would create a continuous, unbroken fuel break along SR 198, where fire starts are common and potentially damaging. The proposed 10-mile-long (242 acres) fuel break is immediately adjacent to a densely populated rural community that is directly dependent upon the Project to improve fuel clearances and maximize the effectiveness of area evacuation routes for residents and travelers to Sequoia National Park.

Hand crews would walk the Project site, remove low hanging branches, masticate or chip brush, and spread the mulch. All of the maintenance work would be surface level and no ground or structural disturbances would occur. The Project is expected to be completed in 2024.

The Project requires discretionary approval from public agencies and is therefore subject to the California Environmental Quality Act (CEQA). TCRCD is the primary owner of the Project and will serve as Lead Agency to evaluate potential environmental impacts and adopt findings.

TCRCD, in partnership with CAL FIRE and United States Forest Service (USFS), has performed similar work on a regular basis, and the Project site is considered a high traffic area. Thus, the site has been disturbed multiple times during previous fuel reduction and resource conservation efforts. No new or permanent ground disturbance or changes to environmental resources would occur and no habitats or structures would be affected.



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PROJECT NAME
Kaweah Fuel Reduction

PROJECT NUMBER
24002

DATE
5/17/24

DRAWN BY
JM

SCALE
NOT TO SCALE

LAT/LONG
36.389254, -118.956793

FIGURE 1
VICINITY MAP
AND PROJECT
SITE

2 Exemption Applicability

According to the *California Environmental Quality Act (CEQA) Statute and Guidelines*, lead agencies should begin the CEQA process with a preliminary review to determine whether the activity (Project) is subject to CEQA and assess whether any exemptions apply. (Association of Environmental Professionals, 2024)

2.1 CEQA Subjectivity

An activity is not subject to CEQA if (Association of Environmental Professionals, 2024):

- The activity does not involve the exercise of discretionary powers by a public agency;
- The activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; or
- The activity is not a project as defined in Section 15378.

The Kaweah Fuel Reduction Project (Project) involves the exercise of discretionary powers by a public agency, would result in a physical change in the environment, and is a project as defined in Section 15378 (15378(a)(1): An activity directly undertaken by any public agency including but not limited to public works construction and related activities clearing or grading of land, improvements to existing public structure, etc.). The Project is therefore subject to CEQA.

Once a lead agency has determined that an activity is a project subject to CEQA, a lead agency shall determine whether the project is exempt from CEQA. (Association of Environmental Professionals, 2024)

2.2 Exemption Applicability

A project is exempt from CEQA if (Association of Environmental Professionals, 2024):

- The project is exempt by statute.
- The project is exempt pursuant to a categorical exemption and the application of that categorical exemption is not barred by one of the exceptions.
- The activity is covered by the common sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.
- The project will be rejected or disapproved by a public agency.
- The project is exempt pursuant to the provisions of Article 12.5 (Exemptions for Agricultural Housing, Affordable Housing, and Residential Infill).

The Project is not covered by the “common sense” exemption because it cannot be concluded with certainty, prior to any additional analysis that it could not have a significant effect on the environment. The Project is not expected to be rejected or disapproved by a public agency, and it is not an agricultural

housing, affordable housing, or residential infill project. Remaining exemption types include Statutory and Categorical Exemptions, which are further assessed below.

2.2.1 Statutory Exemption Applicability

Statutory exemptions include those granted by legislature. The exemptions take several forms; some are complete exemptions from CEQA, others apply to only part of the requirements of CEQA, and others apply only to the timing of CEQA compliance. (Association of Environmental Professionals, 2024)

The following statutory exemptions are not applicable because the Project does not include related activities, or for the reasons discussed below:

- Ongoing Project – not approved prior to 1970.
- Feasibility and Planning Studies
- Discharge Requirements
- Timberland Preserves
- Adoption of Coastal Plans and Programs
- General Plan Time Extension
- Financial Assistance to Low or Moderate Income Housing
- Ministerial Project – Project requires discretionary approval from one or more public agencies.
- Projects which are Disapproved – Project is not expected to be disapproved.
- Early Activities Related to Thermal Power Plants
- Olympic Games
- Rates, Toles, Fares, and Charges
- Family Day Care Homes
- Specified Mass Transit Projects
- Transportation Improvement and Congestion Management Programs
- Projects Located Outside California
- Application of Coatings
- Air Quality Permits
- Other Statutory Exemptions (see CEQA Guidelines for full list)
- Housing Needs Allocation
- Pipelines
- Transit Agency Responses to Revenue Shortfalls

The following statutory exemptions are applicable, as discussed below:

- **Emergency Projects:** 15269 (c) includes specific actions necessary to prevent or mitigate an emergency. This does not include long-term projects undertaken for the purpose of preventing or mitigating a situation that has a low probability of occurrence in the short term, but this exclusion does not apply if the anticipated period of time to conduct an environmental review of such a long-term project would create a risk to public health, safety or welfare, or (ii) if activities (such as fire or catastrophic risk mitigation or modifications to improve facility integrity) are proposed for existing facilities in response to an emergency at a similar existing facility. The Project includes fuel reduction for the purpose of reducing wildfire risk. Wildfires have caused widespread damage throughout the State in recent years, and the Project area is overgrown with fuel materials that are overdue for removal. Therefore, the Project includes specific actions necessary to prevent or mitigate an emergency and, regardless of the likelihood of short-term impacts, the period of time to conduct additional environmental review would create a risk to public health, safety and welfare by further delaying the removal of fire fuels.

This statutory exemption is applicable to the Project, and there is well-established precedent for applying this exemption to fuel management activities. However, concerns have been raised by the public on various projects, in some cases resulting in litigation. Concerns appear to have been centered primarily on the loss of cultural and tribal resources, removal of important and/or endangered trees, general overuse of the exemption to cover large and long-term, non-emergency projects, and lack of substantial evidence to demonstrate an emergency condition as defined under CEQA. (California Polytechnic State University, San Luis Obispo, WUI Fire Institute, 2023)

The Project would include surface-level fuel management, by hand crews, in heavy traffic areas. No ground or structural disturbances would occur. Thus, while other projects may have overextended the intended applicability of the exemption, the Project has a minimal chance of resulting in any substantial impacts, and any impacts would be short term and impermanent. No trees would be removed, no grading would occur, and no new or permanent changes would occur to any structures, artifacts, or environmental resources.

Due to the nature of the work, there would be no loss of cultural resources. All of the Project site has been disturbed in previous fuel reduction and resource management activities and the Project is unlikely to cause any new impacts. Biological resources may be affected; however, the impacts would be minimal in any one location and resources would experience a greater impact if wildfires occur as a result of not completing the Project. TCRCD is a resource conservation district and, as such, its task is to protect rather than destroy natural resources.

Regarding the emergency conditions, concerns were related to long-term projects with not enough substantial evidence to demonstrate an immediate emergency condition. The Project is not long term, and thus the concerns are not relevant. Additionally, California wildfires are incorporated into the definition of "emergency". PRC §21060.3 states, "fire is understood to be the type of 'sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services'." While it is possible to argue that wildfire is no longer unexpected in California given the last several years of rampant wildfire, a given wildfire event remains unexpected because it is not possible at the start of a fire season to predict precise ignition events. (California Polytechnic State University, San Luis Obispo, WUI Fire Institute, 2023)

According to the California Public Utilities Commission (CPUC) *High Fire Threat District* map, all of the Project area is designed "High Fire Threat Tier 2". (California Public Utilities Commission,

2024) Additionally, the Project area is long overdue for fuels reduction and any further delay could result in a catastrophic emergency.

2.2.2 Category Exemption Applicability

The CEQA Guidelines includes a list of classes of projects which have been determined not to have a significant effect on the environment and which are therefore categorically exempt from the provisions of CEQA. Because ministerial projects are already exempt, categorical exemptions should be applied only where a project is not ministerial under a public agency's statutes and ordinances. (Association of Environmental Professionals, 2024)

There are six (6) exceptions that disqualify projects from categorical exemption: location, cumulative impact, significant effect, scenic highways, hazardous wastes sites, and historical resources. (Association of Environmental Professionals, 2024)

The following categorical exemptions are not applicable because the Project does not include related activities, or for the reasons discussed below:

- Replacement or Reconstruction
- New Construction or Conversion of Small Structures
- Minor Alterations in Land Use Limitations
- Information Collection
- Actions by Regulatory Agencies for Protection of the Environment
- Inspections
- Loans
- Accessory Structures
- Surplus Government Property Sales
- Acquisition of Lands for Wildlife Conservation Purposes
- Minor Additions to Schools
- Minor Land Divisions
- Transfer of Ownership of Land in Order to Create Parks
- Open Space Contracts or Easements
- Designation of Wilderness Areas
- Annexations of Existing Facilities and Lots for Exempt Facilities
- Changes in Organization of Local Agencies
- Enforcement Actions by Regulatory Agencies
- Education or Training Programs Involving no Physical Changes
- Normal Operations of Facilities for Public Gatherings

- Regulations of Working Conditions
- Transfers of Ownership of Interest in Land to Preserve Existing Natural Conditions and Historical Resources
- Acquisition of Housing for Housing Assistance Programs
- Leasing New Facilities
- Small Hydroelectric Projects at Existing Facilities
- Cogeneration Projects at Existing Facilities
- Minor Actions to Prevent Minimize, Stabilize, Mitigate or Eliminate the Release or Threat of Release of Hazardous Waste or Hazardous Substances
- Historical Resource Restoration/Rehabilitation
- In-Fill Development Projects
- Small Habitat Restoration Projects

The following categorical exemptions are applicable, as discussed below.

- **Existing Facilities**: Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use. The non-exhaustive list of Class 1 projects includes maintenance of existing landscaping, native growth, and water supply reservoirs. While this exemption could apply, and includes maintenance of existing native growth, it is typically used for modifications made directly to structures or facilities, and no precedent was found applying it to fuel management activities near roadways.
- **Minor Alterations to Land**: Class 4 consists of minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees except for forestry or agricultural purposes. The non-exhaustive list of Class 4 projects include fuel management activities within 30 feet of structures to reduce the volume of flammable vegetation, provided that the activities will not result in the taking of endangered, rare, or threatened plant or animal species or significant erosion and sedimentation of surface waters. This exemption shall apply to fuel management activities within 100 feet of a structure if the public agency having fire protection responsibility for the area has determined that 100 feet of fuel clearance is required due to extra hazardous fire conditions. Of the potentially applicable categorical exemptions, this is the most applicable because of the inclusion of fuel management activities. There is well-established precedent for applying this exemption for similar projects throughout the state. Additionally, while “structures” typically means buildings or equipment in everyday vernacular, there is no specific definition and the Project still serves the same intent of maintaining fire breaks around important and risk-prone infrastructure and thus the roadway (SR 198) could reasonably be considered a structure. Regardless, the list of example project types is non-exhaustive and is intended to directly include fuel management activities.
- **Actions by Regulatory Agencies for the Protection of Natural Resources**: Class 7 consists of actions taken by regulatory agencies as authorized by state law or local ordinance to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment. This exemption could apply because the

project owner and Lead Agency is a resource conservation district. Regular fuel management activities are performed for the purposes of protecting public safety and welfare, as well as the conservation and protection of natural resources. However, it is unclear whether TCRCDC is considered a “Regulatory Agency” in this context and no precedent was found applying it to fuel management activities. Thus, other exemptions would be more directly applicable.

3 Conclusion

As described within this CEQA Exemption Applicability Review, several CEQA exemptions potentially apply to the Project including:

- Statutory Exemption 15269 (c) – Emergency Projects
- Categorical Exemption Class 1 – Existing Facilities
- Categorical Exemption Class 4 – Minor Alterations to Land
- Categorical Exemption Class 7 – Actions by Regulatory Agencies for the Protection of Natural Resources

Given the applicability of multiple different exemptions, and the unlikelihood for the Project to cause any significant impacts to environmental resources, the Project should be found exempt from further analysis under CEQA.

Based on a project-specific assessment, the statutory exemption for emergency projects and Class 4 categorical exemption are most directly applicable. The Class 4 categorical exemption is applicable for the ongoing operations of TCRCF fuel management, and the list of examples includes this project type. However, given the imminent threat of wildfire, which is considered an emergency, and how overdue the fuel management activities are to prevent such emergencies, **application of the Statutory Exemption 15269 (c) Emergency Projects is recommended** both for its direct applicability to the Project and to prevent further delay in completing the Project.

4 References

Association of Environmental Professionals. (2024). *2024 California Environmental Quality Act (CEQA) Statute and Guidelines*.

California Polytechnic State University, San Luis Obispo, WUI Fire Institute. (2023). *Analysis of Potential Application of California Environmental Quality Act (CEQA) Exemptions to Investor-Owned Utility Wildfire Mitigation Plans to Accelerate Fire Prevention and Mitigation Efforts*.

California Public Utilities Commission. (2024). *CPUC High Fire Threat District*. Retrieved from <https://capuc.maps.arcgis.com/apps/webappviewer/index.html?id=5bdb921d747a46929d9f00dbdb6d0fa2>.