


DEPARTMENT OF FORESTRY AND FIRE PROTECTION

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August 23, 2023

Lindsay Mattos
 Tuolumne County Resource Conservation District
 81 N. Washington Street, Suite B Sonoma, CA 95370
lindsay@tcrd.org

**Subject: Pine Mountain Lake Fuel Reduction Project
 Mitigated Negative Declaration
 State Clearinghouse No. 2023070656, Tuolumne County**

Dear Lindsay Mattos,

The California Department of Forestry and Fire Protection (CAL FIRE) received the Draft Initial Study-Mitigated Negative Declaration (IS-MND) pertaining to the Pine Mountain Lake Fuel Reduction Project (Project) from the Tuolumne County Resource Conservation District (TCRCD) pursuant to the California Environmental Quality Act (CEQA), and CEQA Guidelines.¹

CAL FIRE appreciates the opportunity to provide comments and recommendations pertaining to fuels reduction treatment activities included in the proposed Project, which was awarded funding through CAL FIRE's California Climate Investments (CCI) 2020-21 Fire Prevention Grants Program grant cycle. CAL FIRE acknowledges Project objectives listed in the Initial Study for the proposed Mitigated Negative Declaration (MND) and supports the intentions of the TCRCD in achieving these objectives, which, in turn, support TCU Strategic Fire Plan objectives for the Pine Mountain Lake Area.

CAL FIRE ROLE

CAL FIRE acts as Responsible Agency² for fuels treatment projects funded through the CCI program, proposed, and conducted on State Responsibility Area (SRA) land. As a Responsible Agency, CAL FIRE is responsible for ensuring that the analysis contained in the lead agency's CEQA document adequately addresses potential impacts to environmental resources that have the potential to occur as a result of the project.

PROJECT

As described in the CEQA Initial Study for the Draft MND, Project objectives are to 1. Build a sustainable and defensible fuel break; 2. Dramatically reduce potential release of high

¹ CEQA is codified in the California Public Resources Code (PRC) § 21000 et seq. "CEQA Guidelines" are constituted in Title 14, California Code of Regulations (CCR), commencing at § 15000.

² As defined under CCR, Title 14, § 15381

levels of CO₂ from wildfire; and 3. Establish a fire resilient and healthy forest. The Project is located in Tuolumne County, adjacent to the community of Pine Mountain Lake, near the city of Groveland. Fuels reduction treatment activities listed in the MND include mechanical mastication and herbivory and are targeted to span approximately 640 acres of Wildland Urban Interface (WUI) ground.

COMMENTS AND RECOMMENDATIONS

There are several issues that CAL FIRE is concerned about and recommends addressing in the document: incomplete project description that does not describe the entire scope of work, biological and cultural resources sections, watercourse protection measures, air quality and greenhouse gas emissions and geology and soils analysis. Please see below for more details.

Project Description and Proposed Treatment Activities

The Project Description included in the IS-MND states that a “variety of methods” will be utilized to reduce fuel loading. The only two treatment methods presented for CEQA analysis in the IS-MND are mastication and herbivory. The final Grant Agreement (20-FP-TCU-0131) for the Project indicates that additional treatment activities, not included in the CEQA analysis, may be employed during the Project. The Grant Agreement describes use of an air curtain burner off-site of the project, as well as thinning of trees. Cultural Resource mitigation measures include language regarding fire line construction, indicating that prescribed burn activities may be planned. Please be advised that any, and all treatment activities (manual, mechanical, and prescribed pile or broadcast burning) intended to be employed during the life of the grant project must be included in the Project Description and impact analyses for the CEQA document prepared for the Project. This should include a complete description of all phases of project planning, implementation, and operation; information necessary to conduct analyses of potential environmental effects related to Project-related activities, as codified under CCR, Title 14, § 15063(a)(1) of the CEQA Guidelines. CAL FIRE recommends inclusion of all proposed treatment types and activities planned, or with potential to be implemented, in the Project Description and impact analyses included in the IS-MND.

Examples:

- Page 5, Regulatory Guidance: “The project will be complete fuels reduction via mechanical methods (i.e., mastication, hand crews, etc.) and prescribed grazing treatments.” *Use of hand crews is typically considered manual treatment and is not described elsewhere in the document related to any impact analysis.*
- Page 7, Project Description: “This project will use a variety of methods to reduce fuel loading and remove ladder fuels...”. “The primary method of fuel reduction will be mastication with a secondary method of herbivory.” *If any other treatment types are planned for implementation, they must be listed and addressed in the CEQA document, regardless of the Project Description in the grant agreement.*
- Tree Removal:
 - Page 23, Mitigation Measure Biological Resources 7: “The PMLFR project will target vegetation removal including oak trees.” “No removals will be over 12 inches diameter...”.
 - Page 24, Mitigation Measure Tribal Cultural Resources 1: “Trees/snags within striking distance will be directionally felled away from sites.”

- The Scope of Work (SOW) for the Grant Agreement states the intention to “...drop 92-97% of the dead trees (all size classes) still standing (an average 5% of dead standing trees will be kept for wildlife habitat).”
 - *Tree falling is not included as a proposed treatment type in the Project Description or CEQA analyses in the IS-MND.*
 - *Please note, the statement “No removals will be over 12 inches diameter...”, presented in the MND (page 23), contradicts the statement included in the SOW for the grant agreement, “...drop 92-97% of the dead trees (all size classes) still standing...”. Specific information regarding removal of live trees vs dead trees should be included in the MND, if in fact, both statements are planned to be implemented operationally.*
- Page 24, Mitigation Measure Tribal Cultural Resources 1:
 - “All cultural site EEZ’s shall be protected through construction of hand and/or tractor fire control lines...”. “Fire control lines shall not be located within the EEZ of a cultural site...” *Prescribed fire (pile or broadcast) is not included as a proposed treatment type in the Project Description or CEQA analyses in the IS-MND.*
 - “Use of heavy equipment within EEZ boundaries may include...” *Other than use of a masticator, use of heavy equipment and associated potential ground disturbance is not included in the Project Description or CEQA analyses in the IS-MND.*

CEQA and Forest Practice Rules

CAL FIRE recommends that all protection and mitigation measures included in the IS-MND are clearly defined and not solely referenced by the FPR’s or any other statutory program. Please define and include all FPR’s that are proposed in the document.

There are multiple protection measures referenced by the California Forest Practice Rules (FPR’s), without specific definition of what the FPR’s entail. The FPR’s are a Certified State Regulatory Program³ and any statutory definitions specific to the FPR’s are not synonymous for use in CEQA documents. For example, reference to Watercourse and Lake Protection Zone (WLPZ) rules, specific to the FPR’s, to provide protection and/or avoidance of impacts to aquatic species or water quality, is not a suitable method to present measures intended to provide resource protection, or to define specific mitigation measures included in an MND. Protection and mitigation measures included for a CEQA document, such as an MND, must be defined and be capable of acting as stand-alone requirements and/or protection measures, not dependent on any other statutory authority or program.

Biological Resources

General Wildlife and Botanical Protection

Multiple protection measures in the MND state that “populations” of detected sensitive species will receive protection from project-related activities. Examples include:

- Mitigation Measure Biological Resource 5: “If any populations of any sensitive plant species are detected, a 50’ no disturbance buffer will be delineated around the extant population.”
- Mitigation Measure Biological Resource 6: “If populations of special status reptiles or mammals are detected, a 50’ no disturbance buffer will be delineated around the location.”

³ Pursuant to CCR, Title 14, § 15251(a) and PRC § 21080.5

Significant effects may potentially occur to sensitive species at the “individual” level, as well as “populations”. Additionally, harm to an individual sensitive species may still result in “take”⁴ of a federal or state listed or Fully Protected species.

CAL FIRE recommends revision of protection measures to include protection of “individual” sensitive species, as well as populations, in the event of a detection.

Bald eagle (*Haliaeetus leucocephalus*)

Mitigation Measure Biological Resources 2 discusses determining occupancy status for bald eagle nests but does not identify a no-disturbance buffer around the nests as it does for California spotted owls (CSO), great gray owls (GGOW), osprey, and northern goshawks (NOGO). The U.S. Fish and Wildlife Service recommends a 660-foot no-disturbance buffer for activities similar to Timber Operations⁵ and Forestry Practices⁶, which fuels reduction activities at the Project elevation typically do. It is also unclear why bald eagles are not included in the CNDDDB findings and species table or species discussion, when they are included in a Mitigation Measure in the MND.

CAL FIRE recommends: 1. Inclusion of bald eagle in the specified active nest protection measures described in Mitigation Measure Biological Resources 2 and the species discussion, if potential nesting habitat for the bald eagle exists in the project or within proximity to the project where it may be impacted; 2. Inclusion of bald eagle in the species table, as the species is included in a CNDDDB 9 quadrangle search.

Osprey (*Pandion haliaetus*)

Mitigation Measure Biological Resources 2 discusses establishing no-disturbance buffers around occupied osprey nests but does not mention who will make determination, and when, of occupancy status for the species, as it does for CSO, GGOW, bald eagle, and NOGO nests. It is not clear why the osprey is included in Mitigation Measure Biological Resources 2 but is not mentioned in the CNDDDB findings and species table or species discussion.

CAL FIRE recommends: 1. Inclusion of osprey in the statement that an RPF or RPF designee will be responsible for determination of occupancy status; 2. Inclusion of osprey in the species table and discussion, if the species is included in the CNDDDB 9 quadrangle report and/or if potential nesting habitat osprey exists in the project or within proximity to the project where it may be impacted.

Great Gray Owl (*Strix nebulosa*)

Mitigation Measure Biological Resources 2 states: “An RPF or RPF designee will determine occupancy status for all CA Spotted owls, Great Grey Owls (GGO), Bald eagles and Goshawks nests *known to occur* within a ¼ mile of proposed project activities prior to starting during the year of disturbance.” The great gray owl discussion, page 34, discloses that an active GGOW nest was detected in the project area in 2023. As indicated in the species table, the GGOW is listed as endangered, pursuant to the California Endangered Species Act (CESA)⁷. Given the propensity for the species to change nest sites on an annual basis, together with their known territorial fidelity, providing protection for “known” nest sites may not be sufficient to avoid impacts to the species and, ultimately, avoid

⁴ As defined under California Fish and Game Code § 86

⁵ California Timber Operations are codified and defined under PRC § 4527

⁶ https://www.fws.gov/sites/default/files/documents/USFWS-California-Great-Basin-bald-eagle-nest-buffer-recommendations-Dec2017_0.pdf

⁷ CCR, Title 14, Chapter 6, §§783.0-787.9; FGC §§ 2050-2115.5

potential “take”, per California Fish and Game Code (FGC) § 86, of a State endangered species.

CAL FIRE recommends that any potential GGOW nesting habitat within the project, or within a ¼ mile of the project where the species could be impacted, is surveyed by a qualified RPF or biologist, during the appropriate species-specific survey period, prior to operations, each year that operations may occur within the critical period.

Mitigation Measure Biological Resource 3 states: “A ¼ mile no work buffer will be placed around the Great Gray Owl nest tree until chicks have fledged.” Immediately following fledging, GGOW chicks are often terrestrial or found on low hanging branches. The height at which fledglings roost above the ground has been found to be directly correlated with the age of the fledgling (i.e., recently fledged chicks will be closer to the ground). Studies have indicated that GGOW fledglings are often incapable of gliding flight and reliant on lower hanging branches and features for approximately 15 days following fledging (Franklin, 1988)⁸. Any vegetation disturbing activities (mechanical or manual) conducted within 15 days following fledging may result in “take” of chicks.

CAL FIRE recommends implementing a 15-day monitoring period, following the last fledging, of chicks that may still be on the ground or low hanging branches around the nest tree to avoid take of young GGOW.

Crotch bumble bee (*Bombus crotchii*)

Crotch bumble bees do not dig, bore, or excavate their nests; rather they use existing cavities. Nesting sites can vary between species of bumble bees and available resources but are often located underground in abandoned rodent nests, or at ground level in tufts of grass, rock piles, cavities of dead trees, or man-made structures⁹. Crotch bumble bees do not construct “hives”, but rather utilize nests.

CAL FIRE recommends replacement of the word “hive” with “nest” in order to accurately analyze potential impacts to the species (i.e. above-ground hive vs. subterranean nest), and to provide a clear operational perspective of where the species may be found.

Foothill yellow-legged frog (*Rana boylei*)

Mitigation Measure Biological Resources 1 states: “Riparian areas (Class II watercourse) will have a minimum 50-foot Equipment Exclusion Zone (EEZ). If foothill yellow-legged frogs are found near or in project area, a 300-foot no work zone will be established.” The species table (page 32) indicates that the project area contains habitat for foothill yellow-legged frog (FYLF). It is not clear, based on information provided in the MND and in the *Rana boylei* discussion (page 33), whether focused surveys were conducted for the species and who will be responsible for identifying species, in the event of a detection. It is also not clear where/how a 300-foot no work zone will be established (i.e. from the high water mark of the entire watercourse within the project).

CAL FIRE recommends inclusion of the following project-specific information regarding FYLF 1. Whether species-specific surveys were conducted for the species; 2. Who will identify amphibians detected on the project and what qualifications they have to identify

⁸ Franklin, Alan, B. 1988. Breeding Biology of the Great Gray Owl in Southeastern Idaho and Northwestern Wyoming. The Condor, Cooper Ornithological Society 90: 689-696.

⁹ Thorp, R. W., S. Jepsen, S. F. Jordan, E. Evans, and S. H. Black. 2010. Petition to list Franklin’s bumble bee as an Endangered Species under the U.S. Endangered Species Act, Submitted by The Xerces Society for Invertebrate Conservation

special status species; 3. Specific and clear operational protection measures in the event a detection is made.

Watercourse Protection

The MND contains protection measures for “Class II” watercourses, as depicted on the PMLFR Watercourse Map, page 21. There is no mention of protection measures for “Class I” watercourses, as depicted on the map. If project-related treatment activities are planned to occur around any watercourses that may impact surface waters of the state or aquatic species, CAL FIRE recommends inclusion of protection measures for those watercourses. See comment above under “CEQA and Forest Practice Rules”, regarding defining “classification” or types of watercourses for identification and/or impact analysis in a CEQA document.

Air Quality and Greenhouse Gas Emissions

The Air Quality discussion mentions “best available control measures” to minimize the short-term impacts of emissions from the project. It is unclear, based on information provided in the MND, what control measures will be utilized. All avoidance and/or minimization measures should be described and clearly defined; their effectiveness in reducing or avoiding potential impacts, supported by substantial evidence, should be presented in the document¹⁰.

The document references quantitative thresholds established by Tuolumne County Air Pollution Control District for evaluating the significance of air quality impacts resulting from a project but does not include any type of quantitative analysis assessing emissions generated by the proposed project. It simply states: “The project’s emissions do not cause or contribute to exceeding state or federal ambient CO emissions, the impacts would be considered less than significant.” Substantial evidence to support this conclusion should be included in the document¹¹.

CAL FIRE recommends inclusion of the following information in the MND, intended to provide substantiation that the project will not cause adverse significant impacts related to Air Quality and Greenhouse Gas Emissions 1. Provide a list of “best available control measures”, as referenced in the MND; 2. Provide some method of qualitative analysis to support the conclusion “The project’s emissions do not cause or contribute to exceeding state or federal ambient CO emissions...” (i.e. project-specific estimated greenhouse gas emission calculations).

Geology and Soils

Per CCR, Title 14, § 15370 mitigation includes avoiding, minimizing, rectifying, reducing, and compensating for project-related impacts. Per PRC § 21002.1 mitigation measures relate to significant impacts. The Geology and Soils discussion states “Significant erosion will be prevented by avoidance of heavy equipment used on steep slopes or near watercourses or saturated soils.” This is a mitigation measure and should be included in the list of mitigation measures and mitigation monitoring and reporting plan (MMRP). It is also not clear what is considered “steep slopes”, in relation to the Project.

CAL FIRE recommends inclusion of the following information in the MND, in order to provide substantiation that the project will not cause adverse significant impacts related to Geology and Soils 1. Clear operational thresholds of “steep slopes”, intended to provide guidance and compliance for operators working on the Project; 2. Geology and Soils

¹⁰ Pursuant to CCR, Title 14, § 15064

¹¹ Pursuant to CCR, Title 14, § 15063 and § 15064

Mitigation Measure(s) describing project-specific avoidance and mitigation activities described in the MND; 3. Geology and Soils mitigation actions incorporated into the MMRP.

Cultural Resources

Cultural Resources section states “An Archaeological Survey Report completed by RPF Will Dorrell and supervised designees Justin Walker and Troy Stull to discuss protection measures and implementation of the proposed protection measures.” Mitigation Monitoring and Reporting Plan identifies responsible party for Mitigation Measure Cultural Resources 1 and 2 and Mitigation Measure Tribal Cultural Resources 1 as “A Registered Professional Forester (RPF) or RPF designee. Must have current Cal Fire certification for archaeological training.”

Cultural resource inventory for this project was not conducted by a qualified professional archaeologist. The CAL FIRE Cultural Resources Surveyor Certificate held by Troy Stull and William Dorrell is valid only for CAL FIRE projects, per CAL FIRE policy and the Memorandum of Understanding between CAL FIRE and the California Office of Historic Preservation (MOU).

“The term CAL FIRE projects, as used here, means any type of project where CAL FIRE is acting as *lead agency* pursuant to the California Environmental Quality Act (CEQA) except for timber harvesting projects subject to the Forest Practice Act and Rules” (Cultural Resources Review Procedures for CAL FIRE Projects, California Department of Forestry and Fire Protection, rev. April 3, 2020. Emphasis added). CAL FIRE’s *Instructions for Completing and Archaeological Records Check Request for a CAL FIRE Project* (2006) states “A “CAL FIRE Project” means any project developed by CAL FIRE, and any project permitted or enabled by CAL FIRE through its *lead agency responsibility* pursuant to the California Environmental Quality Act (CEQA)” (emphasis added). Both of these documents are provided to students at the surveyor class and the issue addressed in both the opening lecture and in the units on pre-field research and regulatory compliance.

The California Historic Resources Information System (CHRIS), operated by OHP, restricts access to sensitive information to users meeting, “at a minimum, either the Secretary of the Interior’s Professional Qualifications Standards, the California State Personnel Board Specification for State Historian II or Associate State Archaeologist, or meets the California Business and Professions Code requirements for a state licensed Landscape Architect, plus additional experience requirements stipulated by the State Historical Resources Commission on July 31, 2009” (https://ohp.parks.ca.gov/?page_id=28066). CAL FIRE’s MOU with OHP allows an exception for “archaeologically trained resource professionals”, as defined in the MOU (Appendix I) working *under the direction of a CDF (CAL FIRE) professional archaeologist with responsibility for oversight*. Stipulation II of the document specifically notes that the Records Check Request form “may only be used for CDF (CAL FIRE) projects.”

While the report may have been reviewed by an independent archaeologist, it does not meet the standards for CAL FIRE.

- The single-sentence project description is inadequate; “Site prep via Mastication and Goat Grazing” explains nothing about the project and its potential impacts to cultural resources. CAL FIRE requires a project description including discussion of all ground disturbing activities (CAL FIRE 2006)¹². The project covers 644 acres of

¹² Instructions for Completing and Archaeological Records Check Request for a CAL FIRE Project (2006)

varying terrain. Where will mechanical mastication take place? How will equipment be transported and staged? How will goats be transported, how will they be contained on site, what portions of the project area will be affected? Where will watering be stationed, how long will they be on site?

- There are several issues with the Native American notification. CAL FIRE's Native American Contact List (NACL) is only valid for CAL FIRE projects; this project should have obtained a project-specific list from the Native American Heritage Commission. The date of the list used is given as June 6, 2023; it is presumed that the one actually used is the January 2023 list. The letter sent on June 6, 2023 names Gary Whitson as the project manager and CAL FIRE contact; while the report lists Zsolt Katay (presuming that "HQ" is referring to CAL FIRE Headquarters). CAL FIRE policy provides Native Americans a 30-day comment period, which is noted in the contact letter, however the report indicates that they closed the comment period on June 20, just fourteen days after the first letter. The report claims a second letter was sent on June 19. It is not included in the package and the comment period is noted to have ended on June 20, the day after it was reportedly sent and likely before it was received or opened.
- The archaeological coverage map is required to have all sites within the Site Survey Area plotted. The archaeological coverage map for the report is inadequate as none of the sites are plotted.
- Sites are not adequately described. Sites should not just be listed but should also include their type, size, and condition based on observations of the sites that occurred during survey.
- The site record for Long Gulch Ranch Arch Site 1 is incomplete. The site record is listed as being 16 pages long, but only 3 pages are present. In addition, there is no Location Map identifying where in the project area the site is located. A location map is required for this type of resource.
- Protection measures are not detailed by site and are inconsistent with the project description. None of them address the specific issues of either mastication or herbivory, which the project description lists as the only activities here.
 - 1) An equipment exclusion zone will be designated at the site. Which site? Sixteen are listed in the results.
 - 2) No tracked equipment will be permitted within this site. Is this referring to masticators or are there other types of equipment proposed? There is no discussion in the project description. Which site?
 - 3) All tree felling occurring within the vicinity of the site will need to be directionally felled away from the site. There is no discussion of felling in the project description. Where will this be occurring, and which sites will be affected?
 - 4) All material needed to be treated within this exclusion zone will be cut by hand and treated outside of the zone. Where is the exclusion zone? What are these treatments? Livestock do not recognize flagging; if grazing has been determined to be an impact on any of these sites, how will animals be excluded?
 - 5) An informational meeting with contractors prior to the start of operations will identify flagged boundaries of sites. Contractors will be made aware of the sites and flagged with red and blue around sites. What will contractors be instructed to do when they encounter these flagged boundaries?

The use of the certificate for outside projects violates CAL FIRE's agreement with OHP as defined in the MOU and could jeopardize the future of the program. While this was undoubtedly an oversight, review of the Archaeological Survey Report by a private archaeologist does not negate that the work was done independently by non-archaeologists, using records they were not qualified to access. Had this been a valid CAL FIRE project, the reviewing CAL FIRE archaeologist would have returned the report for revision based upon the above comments. This project does not meet the requirements of CEQA for the protection of cultural resources.

CEQA Initial Study

Page 2 of the Initial Study, Environmental Factors Potentially Affected, appears to have formatting issues with check boxes not checked or check boxes that appear different than others. CALFIRE recommends correcting formatting issues on this page to provide clear and accurate information regarding the project.

Summary of Findings

Pages 24 and 25 of the MND, which list the Summary of Findings of project-specific analyses of potential effects and significance of effects on the environment, is lacking three Environmental Factors that were included in the CEQA analysis. CAL FIRE recommends inclusion of Agriculture Resources, Air Quality, and Noise Environmental Factors in the appropriate categories (no effect, less than significant impact, potentially significant impact with mitigation), located on pages 24 and 25.

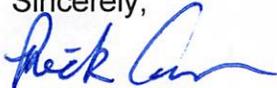
Trustee Agency Consultation

The California Department of Fish and Wildlife (CDFW) acts as "Trustee" agency with regard to fish and wildlife of the state, per CCR, Title 14, § 15386(a). Page 56 of the MND states: "The California Department of Fish and Wildlife (CDFW) was notified by email and provided a description of recommendations." There is no mention of the result of the notification to CDFW or if the project proponent received a response. The "Experts Consulted" list on page 155 states that a CDFW staff was consulted for the project, indicating that correspondence with the Trustee agency occurred. Additionally, it is unclear if Trustee agency notification included disclosure of a State endangered species¹³ (GGOW) actively nesting in the project area.

CAL FIRE recommends inclusion of detailed information regarding correspondence with CDFW, including whether a response was received and any result of "consultation", as listed on page 155.

Thank you once again for the opportunity to comment on the Draft IS-MND for the Pine Mountain Lake Fuel Reduction Project. We look forward to working with you prior to the completion of the Final IS-MND. If you have any questions or comments, please reach out to the local Unit Forester at Tuolumne-Calaveras Unit, Gary Whitson at (209) 754-3831 or by email at Gary.Whitson@fire.ca.gov.

Sincerely,



Rick Carr, RPF 2801
CAL FIRE Southern Region
Regional Natural Resource Manager

¹³ As codified in FGC § 2062

cc: Office of Planning and Research, State Clearinghouse