State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
South Coast Region
3883 Ruffin Road
San Diego, CA 92123
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director

August 14, 2020

John Smith
District Ranger
Los Padres National Forest
1190 East Ojai Avenue
Ojai, CA 93023
Jsmith03@fs.fed.us

Dear Mr. Smith:

Subject: Comments on the proposed Reyes Peak Forest Health and Fuels Reduction Project, Ventura County,

The California Department of Fish and Wildlife (CDFW) reviewed the Reyes Peak Forest Health and Fuels Reduction Project Proposal (Proposal) dated May 8, 2020, prepared by the United States Forest Service (USFS) at the Los Padres National Forest. The Proposal describes the Reyes Peak Forest Health and Fuels Reduction Project (Project).

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. CDFW recognizes the Project's importance to public and firefighter safety and appreciates USFS dedication towards enhancing both. We also appreciate the opportunity to develop and further coordinate on issues of concern to both our two agencies. In light of recent catastrophic wildland fires, and the effect that climate change may have on the frequency, severity, and intensity of future wildland fires, greater collaboration and coordination between our agencies will help us navigate the interface between wildlife conservation and forest management.

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 & Game 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).

PROJECT DESCRIPTION SUMMARY

Proponent: United States Forest Service

Objective: The objective of the Project is to create a variable width shaded fuel break within the Los Padres National Forest along the Pine Mountain ridgeline between highway 33 and Reyes Peak. Existing vegetative cover in the Project area includes 423 acres of mixed conifer stands and 316 acres of chaparral. Primary Project activities may include vegetation alterations through mastication, mechanical thinning, hand thinning, lop and scatter thinning, pile and burn removal, prescribed fire. Suitable cut trees would be made available for public firewood utilization.

Mixed conifer stands through-out the project area would be thinned to a range of 60 to 100 square feet basal area per acre with a target of 80 square feet per acre. High stocking levels, overlapping crown canopies, and a dense understory, contribute to resource competition, leaving trees in the project area at risk to more insect attack. Thinning to this level is intended to reduce competition, remove fuels, improve health on the remaining trees and increase the overall average stand diameter. Outside of the inventoried roadless area, trees would be thinned between less than 1-inch up to 24-inch diameter at breast height class, which is consistent with the Land Management Plan. Trees between the 24-inch and 64-inch diameter at breast height class would be retained unless removal is needed for safety reasons or if the trees are impacted by dwarf mistletoe.

Chaparral shrubs would be reduced by mastication or cutting by hand to meet project objectives and to establish an effective fuel break with preference given to removal of old growth stands chaparral.

Location: Ventura County, California approximately 3 miles south of the community of Camp Scheideck and runs from east to west along Pine Mountain. The legal description for the project is: part of Section 12 in Township 7 North, Range 23 West; parts of Sections 35 and 36 in Township 7 North, Range 24 West; parts of sections 2, 3, 4, 5, 6, 8, 9, 10, & 11 in Township 6 North, Range 23 West; part of sections 1 and 2 in Township 6 North, Range 24 West.

Timeframe: Project start and end dates were not disclosed.

PROJECT APPROVAL PROCESS

In accordance with USFS policies and procedures for compliance with NEPA, USFS is conducting the public notice and scoping requirements for the proposed Project. In carrying out the Project, the USFS intends to rely on two categorical exclusions (CE's) under sections 603 and 605 of the Healthy Forests Restoration Act (HRFA) (HFRA, § 603(c)(2)(A) & (B) & HFRA, & § § 605(c)(2)(A) & (B)). Projects using HRFA section 603 and 605 CE's shall, among other things:

- conduct public notice and scoping for any project or action. (HFRA, § 603(f) & § 603(f));
- consider the best available science (16 United States Code (U.S.C.) 7303 (b)(1)(C));
- develop and implement the project through a collaborative process that includes multiple interested persons representing diverse interests (including state, local, and tribal governments) and is transparent and non-exclusive (U.S.C. 7303(b)(2)(A) & (B)(i)); and,
- Issue a decision memo that shall include a description of the efforts taken by the Agency to meet the collaborative process requirements in (HFRA, § 603(b)(1) & § 605(b)(1)).

If USFS relies upon either of this CEs, the USFS would not prepare an environmental assessment (EA) or environmental impact statement (EIS) for this Project.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the USFS 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 document.

Based on the potential for the Project to have a significant impact on biological resources, CDFW concludes that additional avoidance and minimization and/or mitigation measures are likely appropriate for the Project to avoid or mitigate any potentially significant biological effects and should be addressed in the decision memorandum. CDFW recognizes that additional biological information concerning the project will be developed as the process continues so invites USFS to contact us with any questions about these comments and recommendations via the contact information at this letter's end.

With that in mind, and to further advance the important collaboration between our organizations, CDFW would appreciate USFS providing CDFW clarification as to the procedural steps USFS will take after the comment period closes to consider and respond to comments received, possibly make changes to the Project in response to those comments, and to consider and implement CDFW recommendations described herein.

I. Purpose and Need

COMMENT #: 1

Page # 15-16

Issue: Page 16 of the Proposal's Purpose and Need section states that a fuels reduction would increase the ability to suppress wildfires and protect important infrastructure adjacent to the project. While fuel modifications in the form of defensible space have proven to be an effective method to defend infrastructure (Keeley et al.

2019, Shipyard et al., 2014), the project is located in a remote area outside of the urban wildlife interface approximately 3 miles from the nearest community. Because the Project is located in a relatively undisturbed area with high biological diversity, the indirect and direct impacts to the biological resources at the project site should be fully evaluated in the Proposal in order to determine appropriate avoidance, minimization, or mitigation measures. The Proposal does not adequately analyze the potential for adverse impacts to biological resources that may result from project activities.

Specific impact: The project is located in a remote area with high biological diversity containing a combination of mixed conifer forest and chaparral. Numerous fully protected, threatened or endangered, candidate, and other special status plant and wildlife species are known to occur, or have the potential to occur in or near the Project site. Fuel modification activities may adversely impact the ecosystem directly though removal of existing habitat, or indirectly by providing increased access for human disturbance or introduction of invasive plant species.

Why impact would occur: Fuels targeted for removal include habitat structural features including woody debris, snags, and live vegetation that common and special status species rely on for breeding, nesting, dispersal and foraging. Fuel modification activities will result in loss of these features.

Fuel modification activities may contribute to increases in both population numbers and distribution of invasive plant species. The creation of new fire breaks or fuel modifications zones in remote areas can serve as conduits for the introduction of non-native and invasive plant species into areas that currently may not have weed problems. Additionally, these fire breaks provide vehicular and human access into areas that may have been inaccessible to humans prior to the fire break, thus creating secondary impacts such as renegade trails, trash, illegal collecting of wildlife (e.g., amphibians, reptiles, raptors), poaching, and degradation of areas that were previously pristine wilderness.

Evidence impact would be significant: Habitat loss and invasive plants are a leading cause of native biodiversity loss. Removal of vegetation could result in direct loss of habitat supporting common and special status species who depend on that vegetation for nesting and foraging. Additionally, invasive plant species spread quickly and can displace native plants, prevent native plant growth and reduce native plant species diversity. Unintended introduction of invasive plant species as a result of this project could cause habitat degradation within and adjacent to the project site, impacting the common and special status species who depend on the vegetation as nesting and foraging habitat.

All projects and activities carried out under the proposed CE's (HFRA, § § 603(c)(2)(A) & (B) & HFRA, & § § 605(c)(2)(A) & (B)) shall be consistent with the existing land and resource management plans (HFRA, § § 603(e) HFRA, & 605(e)). The Land Management Plan for the Los Padres National Forest (LMP) LMP Standard 24 (S24) states that the USFS should "*Mitigate impacts of on-going uses and management activities on threatened, endangered, proposed, and candidate species*" (USDA, 2005).

Without additional evaluations of the biological resources at the Project site, undisclosed and unmitigated impacts to these species may occur.

LMP Standard 37 (S37) specifies that when implementing fire management activities, the USFS should "*design and manage fuel treatments to minimize the risk that treated areas will be used by unauthorized motorized and mechanized vehicles. Mitigate impacts where such use does occur*"(USDA, 2005). Fuel modifications may provide increased human and vehicular related disturbances. Without post project actions to monitor and mitigate for these disturbances, the impacts could be significant.

To reduce impacts to less than significant: CDFW recommends the USFS thoroughly analyze the biological impacts of placing the shaded fuel break in a remote, biologically diverse area and evaluate these impacts in context with the net benefits for communities (i.e., natural or anthropogenic). CDFW encourages exploring project alternatives such as creation of defensible space or strategically placed fuel breaks within the urban wildlife interface that may provide communities more protection and reduce the impacts to high quality habitat in relatively undisturbed remote areas.

or

To minimize significant impacts:
To comply with S24 and minimize potentially significant impacts to wildlife, CDFW recommends conducting baseline habitat assessments to determine the suitability of the area to support special status fish and wildlife within and adjacent to the project area. Based on the data and information from the habitat assessment, CDFW recommends that wildlife surveys be conducted for special status species with potential to occur, following recommended survey protocols if available. Survey and monitoring protocols and guidelines are available at: https://www.wildlife.ca.gov/Conservation/Survey-Protocol.

Prior to implementation of the Project, CDFW recommends the USFS consider the site specific topography, specific biology of the species with the potential to be present at the Project site, and proposed fuels management technique to produce project specific design elements that can reduce potential impacts to common and special status fish and wildlife species and their habitats.

To minimize potentially significant impacts from invasive plant introduction, CDFW recommends the USFS complete an assessment of pre-existing conditions on and adjacent to the Project site to note the extent of non-native invasive species likely to provide a seed source in the project area. Where invasive species like Mediterranean annual grasses and forbs are present near proposed treatments, CDFW recommends prescribed fires in intact habitats adjoining areas supporting these species be minimized.

CDFW recommends post-treatment follow-up monitoring at years 1, 5, and 10, to identify and address changed conditions stemming from fuel modification activities. An

adaptive management plan should be developed and funded to effectively control and remove noxious and problematic weeds.

To minimize potentially significant impacts from increased public access to the project site and to maintain compliance with LMP S37, CDFW recommends creating and funding a post-treatment follow-up monitoring plan. The plan should include frequent monitoring activities and adaptive management measures to detect and mitigate for renegade trails, trash and microtrash, illegal collecting of wildlife (e.g., amphibians, reptiles, raptors), poaching, and degradation of biological resources.

II. Proposed Actions

COMMENT #: 2

Proposed Actions, Page # 17-19

Issue: The proposed actions section describes a mixed approach to fuel thinning to achieve the intended vegetation density in the shaded fuel break. The project activities include mastication, mechanical thinning, thinning by hand, lop and scatter treatments, tree pruning, pile and burn, prescribed fire, and hazard tree removal. The Proposal categorizes vegetation as mixed conifer stands or chaparral. Impacts incurred to existing biological resources as a result of project activities may vary depending on fuel treatment and specific vegetation alliance. The Proposal does not provide specifics on vegetative alliances or an analysis on potential impacts from each fuel treatment type.

Specific impact: Vegetative type classifications included in the Proposal (mixed conifer forest and chaparral) lack specificity to identify sensitive natural communities that consist of vegetative alliances and/or associations that are considered rare or unique. Without additional vegetative classification, the project may permanently adversely impact vegetative communities, including rare and or unique species or vegetative alliances and the wildlife species that depend on them.

Why impact would occur: The Proposal describes the project area as 316 acres of chaparral vegetation and 423 acres of mixed conifer forest. Within each vegetative type, there may be multiple distinctive alliances which may respond differently to fuel modification treatments.

Evidence impact would be significant: Chaparral species have adapted a variety of methods for postfire regeneration, including postfire reseeders and postfire resprouters. In obligate reseeders such as *Ceanothus* species (often a keystone genus in chaparral habitats), mature plants are killed by fire and the seed bank is activated by the heat from fire activity, resulting new individuals sprouting. Long fire free periods are required for many species to properly regenerate. When keystone, obligate seeders suffer closely spaced fires, their populations can be replaced with resprouter-dominated chaparral, resulting in a loss in species and structural diversity of the habitat (Zedler et al., 1983).

Increased fire frequency in wind dominated fires has been linked to increasing instances of human or human infrastructure ignition sources (Keeley et al., 2019). As ignition sources become more prevalent due to population increases within Ventura County and the State as a whole, cumulative impacts from increased ignition sources and fuel manipulations to shrublands may result in shortened fire recurrence intervals that cause type conversion or resource loss (Keeley et al., 2019).

To reduce impacts to less than significant: CDFW has worked closely with our local, State, and federal agency partners to develop the Second Edition of *A Manual of California Vegetation* (MCV) to provide a standardized, floristic-based systematic classification and description of vegetation in the State of California (Sawyer et. al, 2009) found online at http://vegetation.cnps.org/.

The method of vegetation classification used in the MCV represents the vegetation classification standards for large-scale vegetation maps adopted by the State. These standards meet the National Vegetation Classification System standards followed by federal agencies. The MCV contains a wealth of specific information on the fire characteristics of numerous vegetation alliances and associations. It includes both life history traits for the principal species which make up a given alliance, and specific fire characteristics of that alliance, where known. The MCV includes extensive scientific literature citations, including references pertinent to fire ecology.

The MCV assigns rankings to vegetation alliances based on the rarity of the vegetative community. CDFW tracks sensitive natural communities and their respective rankings using the MCV alliance and association names for vegetation communities. CDFW considers natural communities with ranks of S1-S3 to be sensitive natural communities. An S3 ranking indicates there are 21-80 occurrences of this community in existence in California, S2 has 6-20 occurrences, and S1 has less than 6 occurrences.

CDFW recommends that vegetation mapping consistent with the MCV be conducted prior to initiation of fuel modification activities in order to identify the extent of common, rare, and unique habitats in need of protection. CDFW recommends that any active fuel modification treatments be consistent with the fire history, frequency and conditions for which the key species comprising these habitats are adapted.

III. Design Elements

COMMENT #: 3

Botanical Resources, Page # 20

Issue: Element number one of the Botanical Resources subsection of the Design Elements section of the Proposal states that prior to project implementation, a review of the USFS sensitive plant species database will be completed to determine occurrence locations. Database searches for sensitive plant species should not be used in lieu of on the ground botanical surveys.

Specific impact: Reliance on database searches may result in undisclosed impacts to sensitive species that go undetected prior to initiation of project activities. The Project may result in substantial adverse direct impacts to special status plant species by removal or trampling during implementation of project activities. Adverse impacts to special status plant species may occur indirectly due to alteration of microclimatic conditions, compaction of topsoil from project activities or project equipment, or introduction of invasive plant species which may outcompete special status plant species.

Why impact would occur: Database searches provide positive occurrence only data, meaning that absence of occurrences could be a result of no survey data being available, or surveys that were conducted in the wrong season or during extreme weather events effecting vegetation composition such as drought. Although these databases provide useful information for determining which species are potentially present on a site and which species-specific surveys should be performed, physical surveys are needed to determine Project site baseline conditions, presence or absence of occurrences, and the extent of occurrences if present.

Evidence impact would be significant: CDFW considers any plant species that is listed under the California Endangered Species Act (CESA) or the Endangered Species Act (ESA), as well as many of the plants listed in the CNPS rare plant inventory, as special status species.

Occurrences of multiple plants ranked 1B in the California Native Plant Society (CNPS) rare plant inventory are documented within or adjacent to the fuel modification area. A CNPS rare plant rank 1B is considered rare, threatened, or endangered in the state of California and elsewhere. Species with documented occurrences and potential to occur within the fuel modification area include pale-yellow layia (*Layia heterotricha*), Abrams' oxytheca (*Acanthoscyphus parishii* var*. abramsii*), Palmer's mariposa-lily (*Calochortus palmeri* var*. palmeri*), Lemmon's jewelflower (*Caulanthus lemmonii*), Davidson's bush-mallow (*Malacothamnus davidsonii*), umbrella larkspur (*Delphinium umbraculorum*), and Tehachapi monardella (*Monardella linoides* ssp*. oblonga*).

The Project may result in substantial adverse impacts to special status plant species by removal or trampling of undetected plants during implementation of Project activities. Adverse impacts to special status plant species may occur indirectly due to alteration of microclimatic conditions, compaction of topsoil from Project activities or Project equipment, or introduction of invasive plant species which may outcompete special status plant species.

Given the limited range and small population sizes of special status plant species within California and elsewhere, population reduction and habitat loss which may result from Project activities would be a significant impact to the unique characteristics of the geographic area in which the Project is proposed (Code of Federal Regulations (CFR) § § 1508.27 (a) & (b)(3)).

To reduce impacts to less than significant: Prior to implementation of the Project activities, CDFW recommends the USFS conduct botanical surveys for special status plant species, including those listed by the California Native Plant Society (http://www.cnps.org/cnps/rareplants/inventory/), during the blooming period for all sensitive plant species potentially occurring within the Project area. Please refer to CDFW protocols for surveying and evaluating impacts to rare plants available at: https://www.wildlife.ca.gov/Conservation/Plants.

If special status plant species are identified within or adjacent to the Project area, CDFW recommends that species specific design elements be developed to avoid impacts to special status plants. Design elements may include avoidance and minimization measures such as: seasonal work periods to avoid blooming season, flagging of no-work buffers, of an appropriate distance to avoid impacts to a specific population, maintaining a biological monitor on site to ensure that design elements are effective at providing the intended protection. If State or federally listed plant species are identified, CDFW recommends consultation with the relevant agency to ensure full avoidance or mitigation.

Recommended Potentially Feasible Mitigation Measure(s):

Mitigation Measure #1: CDFW recommends that any mitigation for impacts to plants that meet the State definition of Rare or Endangered should include specific measurable criteria for success. Monitoring for these species should occur for a sufficient period to allow trends to be analyzed and demonstrate the occurrence is stable over time. No negative trend in plant individuals (counted separately as flowering, seed set and non-flowering individuals), and no positive trend in non-native plant cover should occur over the monitoring period. CDFW recommends a ratio of no less than 2:1 for both the acreage and number of plants impacted.

Mitigation Measure #2: CDFW recommends a Documented Conservation Seed Collection of the impacted rare plant species be deposited at either Santa Barbara Botanic Garden or the California Botanic Garden (formerly known as Rancho Santa Ana Botanic Garden). A Documented Conservation Seed Collection is when seed from a special status plant species is collected and stored as part of a permanent genetic collection in a protected location. This collection preserves the genome, and any unique alleles that are present in any given occurrence, for future study and reintroduction projects.

Funding should be provided to maintain the collection, as well as conduct periodic germination and viability tests, in perpetuity. Documented conservation collections (long-term storage) are important for conserving rare, gene pool representative germplasm designated for long-term storage to provide protection against extinction and as a source material for future restoration and recovery.

COMMENT #: 4

Wildlife, Page # 23

Issue: The Los Padres National Forest is a documented nesting site for avian species including California condor (*Gymnogyps californianus*), bald eagle (*Haliaeetus leucocephalus*), and the gold eagle (*Aquila chrysaetos*). Element number three under the Wildlife subsection of the Design Elements section of the Proposal describes avoidance measures for known raptor nests. This measure does not adequately analyze Project impacts to nesting birds.

Specific impact: Fuel modifications may result in permanent loss or degradation of nesting sites. Project activities causing visual or audible disturbance to occupied nests may result in nest abandonment.

Why impact would occur: Reliance on historical survey data and/or use of databases such as CNDDB is not sufficient to determine presence or absence of special status species such as California condor, bald eagle, or golden eagle. Without focused pre-Project surveys, take may result from direct disturbance to nesting sites as a result of tree thinning, vegetation mastication, or prescribed burning. Indirect disturbance causing nest abandonment may occur due to noise from mechanical thinning equipment (chainsaws, chippers etc.) or other human activity.

Evidence impact would be significant: The Los Padres National Forest is a documented nesting site for avian species including California condor , bald eagle , and the gold eagle . These species are listed under the CESA (Fish & Game Code, § 2050 et seq.) as endangered and are fully protected species in the State of California and may not be taken or possessed at any time (Fish & Game Code, § 3511).

The California condor, bald eagle, and gold eagle are also listed as endangered under the ESA. ESA Section 9 prohibits take of any fish or wildlife species listed as endangered, including the destruction of habitat that prevents the species' recovery. "Take" is defined as any action or attempt to hunt, harm, harass, pursue, shoot, wound, capture, kill, trap, or collect a species.

The Bald and Golden Eagle Protection Act provides legal protection to bald eagles and golden eagles under federal law. This law prohibits the take, sale, purchase, barter, offer of sale, purchase, or barter, transport, export or import, at any time or in any manner of any bald or golden eagle, alive or dead, or any part, nest, or egg thereof (16 U.S.C. 668–668(d)). The Bald and Golden Eagle Protection Act also defines "take" to include "pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest, or disturb," and includes criminal and civil penalties for violating the statute. USFWS further defines the term "disturb" as agitating or bothering an eagle to a degree that causes or is likely to cause injury, or either a decrease in productivity or nest abandonment by substantially interfering with normal breeding, feeding, or sheltering behavior.

Project activities causing disturbance or take of California condor, bald eagle, and golden eagle would be potentially significant.

To reduce impacts to less than significant:

To reduce the potential for impacts to undetected nests, CDFW recommends conducting baseline habitat assessments to determine the suitability of the area to support California condor, bald eagle, or golden eagle. Based on the data and information from the habitat assessment, CDFW recommends conducting focused, species specific surveys following recommended survey protocols, when available.

The following survey and monitoring protocols are available to assist a qualified biologist in conducting habitat assessments and determining presence and absence within a project site:

- *Protocol for Evaluating Bald Eagle Habitat and Populations in California* (prepared by Garcia & Associates and PG&E, 2004),

- *Interim Golden Eagle Inventory and Monitoring Protocols; and Other Recommendations* (USFWS, 2010)

Survey and monitoring protocols and guidelines are available at: https://www.wildlife.ca.gov/Conservation/Survey-Protocol. If raptor nests are discovered within or adjacent to the Project area, CDFW recommends work be postponed until after the breeding season for these species (January 1-July 1). Additional measures to protect these species, such as avoidance of particular trees that provide nesting habit, should be determined prior to Project initiation. CDFW recommends coordination with the USFWS and encourages coordination with CDFW in order to ensure that measures are adequate to provide full protection to these species.

COMMENT #: 5

Wildlife, Page # 23

Issue: The project will result in habitat modifications to bird nesting habitat; however the Proposal does not include design elements to avoid potential impacts to nesting birds.

Specific Impact: Fuel modification activities may adversely impact the ecosystem though removal of nesting habitat (e.g., trees, snags, shrubs). Use of heavy machinery and powered hand tools to complete removal and mastication may cause noise disturbances to active nests.

Why impact would occur: The relatively undisturbed, remote project area contains a diverse habitat structure (e.g., chaparral and mixed conifer stands) which may provide suitable nesting habitat for both special status and common bird species. Loss and degradation of nesting habitat through habitat removal from fuel modification

activities may lead to population declines on a local level. Vegetation removal during the active nesting season may result in direct removal of nests or nesting habitat and/or nest failure from noise disturbance or other human disturbances.

Evidence Impact would be significant: A metadata analysis of avifauna abundance in North America from 1970-2018 suggests a 29% decline in the abundance of avifauna, noting marked declines in special status and common species (Rosenberg et al., 2019). Fuel modification activities could lead to the direct mortality of sensitive avian species. The loss of occupied habitat could yield a loss of foraging potential, nesting sites, basking sites, or refugia and would constitute a significant impact absent appropriate mitigation. CDFW considers impacts to any CESA-listed, Species of Special Concern (SSC), and ESA-listed species (herein referred to as special status species) a significant direct and cumulative adverse effect without implementing appropriate avoidance and/or mitigation measures.

Native bird species protected by federal regulation under the Migratory Bird Treaty Act (MBTA) which *prohibits any person unless permitted by regulations, to pursue, hunt, take, capture, kill, attempt to take, capture or kill, possess, offer for sale, sell, offer to purchase, delivery for shipment, ship, cause to be shipped, deliver for transportation, transport, cause to be transported, carry, or cause to be carried by any means whatever, receive for shipment, transportation or carriage, or export, at any time, or in any manner, any migratory bird, included in the terms of this Convention…for the protection of migratory birds…or any part, nest, or egg of any such bird* (16 U.S. Code 703). The list of migratory birds protected by the MBTA includes nearly all bird species native to the United States. Thus, it is illegal under the MBTA to directly kill, or destroy a nest of, nearly any bird species. Activities that result in removal or destruction of an active nest (a nest with eggs or young being attended by one or more adults) would violate the MBTA.

To reduce impacts to less than significant: To reduce impacts to nesting birds to less than significant, CDFW recommends limiting Project related activities to outside the nesting season (January 1 to September 15) to avoid impacts to active nests.

or

Recommended Feasible Mitigation Measures:

Mitigation Measure #1: If Project related activities cannot be completed outside of the nesting season, between January 1 through September 15, a qualified biologist shall complete surveys for nesting bird activity within a 500-foot radius of the Project site. The nesting bird surveys shall be conducted at appropriate nesting times and concentrate on potential roosting or perch sites. If any nests of birds of prey are observed (excluding bald eagle, golden eagle, or condor surveys which should follow CDFW recommendations in Comment #4), these nests shall be designated an ecologically sensitive area and protected (while occupied) by a minimum 300-foot minimum avoidance buffers for all non-special status passerine birds and 500-foot minimum avoidance buffer for all special status passerine and raptor species.

Mitigation Measure #2: CDFW recommends the USFS document the presence of any bird species utilizing the project site and include species specific mitigation measures to reduce impacts from loss of nesting habitat below a level of significance, which include identifying replacement nesting habitat. Without specific species presence information, CDFW lacks the ability to recommend appropriate species-specific habitat features to provide meaningful mitigation for impacts to bird nesting habitat.

COMMENT #: 6

Wildlife, Page # 23

Issue: The Proposal does not provide design elements to avoid potential impacts to bat species.

Specific Impact: Bats in southern California can be active year-round, however, all potential breeding species are most active between March 15 and September 15. Each bat species has unique habitat needs, such as specific gap size of cracks and seasonality. Direct impacts via habitat removal, noise, percussive vibration, human disturbance, and direct take would reasonably occur during the Project. Anthropogenic noise can disrupt the communication of bats (Gillam et al., 2007). Noise can also affect predator-prey relationships as many nocturnal animals such as bats and owls primarily use auditory cures (i.e., hearing) to hunt.

Why impact would occur: The Los Padres National Forest provides habitat for several species of bats have the potential to occur onsite; however, surveys were not conducted prior to posting of the Proposal to inform bat usage of the project area and wildlife design elements did not include measures to avoid impacts to these species.

Evidence Impact would be significant: Bats are considered non-game mammals and are afforded protection by State law from take and/or harassment, (Fish and Game Code, § 4150, California Code of Regulations, § 251.1). The Los Padres National Forest is within the species range of, and contains suitable habitat for multiple bat species including the leaf-nosed bat (*Marcotus californicus*), fringed myotis (*Myotis thysanodes*), pallid bat (*Antrozous pallidus*), western mastiff bat (Eumops perotis californicus), Townsend's big-eared bat (*Corynorhinus townsendii*). All the above-mentioned bat species are considered special status species by CDFW and are designated sensitive species by the federal Bureau of Land Management and/or the USFS. CDFW considers project impacts that may cause take and/or harassment to these species, or roosting habitat, as a significant impact.

Recommended Feasible Mitigation Measures:

Mitigation Measure #1: CDFW recommends bat surveys be conducted by a qualified bat specialist to determine bat presence within the proposed fuel modification area and within a 500-foot buffer and analyze the potential significant effects of the proposed Project on the species. CDFW recommends the USFS include the use of acoustic recognition technology to maximize detection of bats and determine species presence.

To avoid the direct loss of bats that could result from fuel modification activities in locations that may provide roosting habitat (winter hibernacula, summer, and maternity), CDFW recommends that the following steps should be implemented:

1. Identify the species of bats present on the site;

2. Determine how and when these species utilize the site and what specific habitat requirements are necessary [(thermal gradients throughout the year, size of crevices, tree types, location of hibernacula/roost (i.e., height and aspect)];

3. Avoid the areas being utilized by bats for hibernacula/roosting; If avoidance is not feasible, a bat specialist should design alternative habitat that is specific to the species of bat being displaced and develop a relocation plan in coordination with CDFW;
4. The bat specialist should document all demolition monitoring activities and prepare a summary report upon completion of tree/rock disturbance and/or building demolition activities. CDFW requests copies of any reports prepared related to bat surveys (e.g., monitoring, demolition);

5. If confirmed occupied or formerly occupied bat roosting/hibernacula and foraging habitat is destroyed, CDFW recommends that habitat of comparable size, function and quality be created or preserved and maintained at a nearby suitable undisturbed area. The bat habitat mitigation should be determined by the bat specialist. If occupied habitat is confirmed in a SCC, consultation with CDFW is encouraged to ensure mitigation is adequate;

6. CDFW recommends that the USFS prepare a monitoring report that describes proposed mitigation habitat, and include performance standards for the use of replacement roosts/hibernacula by the displaced species, as well as provisions to prevent harassment, predation, and disease of relocated bats; and,

7. CDFW recommends post project monitoring for five years following relocation or until performance standards are met, whichever period is longer.

Mitigation Measure #3: Prior to initiation of fuel modification activities, CDFW recommends that temporary nesting/roosting habitat be provided. Nesting structures should be created before the onset of demolition activities during a period bats are active and able to move to the new roosting habitat.

Mitigation Measure #4: CDFW recommends the Project avoid removal of trees or other habitat that the qualified bat specialist identifies with potential to be used by any species of bat. If bats cannot be avoided by Project activities and a bat specialist determines that roosting bats may be present at any time of year, it is preferable to push any tree down using heavy machinery rather than felling the tree with a chainsaw. To ensure the optimum warning for any roosting bats that may still be present, the tree should be pushed lightly two to three times, with a pause of approximately 30 seconds between each nudge to allow bats to become active. The tree should then be pushed

to the ground slowly. The bat specialist should determine the optimal time to disturb occupied bat habitat to maximize bats escaping during low light levels. Downed trees should remain in place until they are inspected by a bat specialist. Trees that are known to be bat roosts should not be sawn-up or mulched immediately. A period of at least 24 hours (preferably 48 hours) should elapse prior to such operations to allow bats to escape.

Comment #7

Issue: The Proposal did not identify the potential for impacts to mountain lion natal dens and foraging habitat. The mountain lion is a specially protected mammal in the State (Fish and Game Code, § 4800). In addition, on April 21, 2020, the California Fish and Game Commission (Commission) accepted a petition to list an evolutionarily significant unit (ESU) of mountain lion in southern and central coastal California as threatened under CESA. As a CESA-candidate, the species is granted full protection under CESA.

Therefore, the Proposal should analyze the potential for mountain lion, which are known to occur in the Project area, to be impacted by fuel modifications and human activity in the Project area.

Specific Impact: Fire breaks provide vehicular and human access into areas that may have been inaccessible to humans prior to the fire break. Fire break may cause potential for secondary impacts to mountain lions such as increased exposure to light and noise, modifications to prey behavior (deer and other mammal species) impacting predator/prey relationships, and increased likelihood of human encounters.

Why impact would occur: The project area consists of a large relatively undisturbed habitat ideal for supporting mountain lion populations. Increased human presence (even temporary) in this area could increase the need for public safety removal and/or vehicle strikes of mountain lions, driving species mortality. Threats to long term population viability include habitat loss and fragmentation through direct anthropogenic actions to modify habitat and ecosystem type conversion resulting in loss of suitable sites for natal dens and foraging habitat.

Evidence impact would be significant: Studies on genetic diversity of Mountain Lion subpopulations throughout the state have identified the Northern and Southern Central Coast populations as critically important for species long-term viability (Gustafson et al. 2018; Gray et al. 2016).

Due to mountain lion's updated status and the regional significance of the existing mountain lion population, decreases in existing mountain lion populations due to Project activities causing direct "take" or as a result of habitat loss or increased human wildlife conflict would be considered significant (CFR § § 1508.27 (a)).

Recommended Potentially Feasible Mitigation Measure (s):
CDFW recommends the USFS implement the following measures to address the

potential to adversely impact, reduce, and modify habitat for the mountain lion, reduce and/or potentially impair the viability of populations of mountain lion, and reduce the number and range of the species.

Mitigation Measure #1: Due to potential habitat within the Project site, within one year prior to Project activities, a qualified biologist familiar with the mountain lion species behavior and life history should conduct surveys in areas that may provide possible habitat for mountain lion to determine the potential presence/absence of the species. Surveys should be conducted when the species is most likely to be detected, during crepuscular periods at dawn and dusk (Pierce and Bleich 2003). CDFW recommends survey results, including negative findings, should be submitted to CDFW prior to initiation of project activities.

Mitigation Measure #2: Two weeks prior to construction activities and once a week during construction activities, a qualified biologist should conduct a survey for mountain lion natal dens. The survey area should include the construction footprint and the area within 2,000 feet (or the limits of the property line) of the Project disturbance boundaries. Should an active natal den be located, the applicant should cease work within 2000 feet and inform CDFW with 24 hours. No vegetation or ground disturbing activities should occur in the 2000-foot buffer until a qualified biologist in consultation with CDFW establishes an appropriate setback from the den that would not adversely affect the successful rearing of the cubs. No construction activities or human intrusion should occur within the established setback until the cubs have been successfully reared or the cats have left the area.

ENVIRONMENTAL DATA

CDFW requests the USFS report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDB). The CNNDB field survey form can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDB_FieldSurveyForm.pdf. The completed form can be mailed electronically to CNDDB at the following email address: CNDDB@wildlife.ca.gov. The types of information reported to CNDDB can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp.

CONCLUSION

CDFW emphasizes its appreciation of the need to advance public as well as firefighter safety, and USFS' efforts to do both. CDFW appreciates the opportunity to comment on the Proposal to assist the USFS in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Audrey Kelly, Environmental Scientist at (562) 430-7882 or Audrey.Kelly@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Erinn Wilson
B6E58CFE24724F5...

Erinn Wilson
Environmental Program Manager

ec: CDFW
Steve Gibson
Audrey Kelly
Susan Howell

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