



State of California – The Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Ecosystem Conservation Division  
Habitat Conservation Planning Branch  
1010 Riverside Parkway  
West Sacramento, CA 95605  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

**GAVIN NEWSOM**, Governor  
**CHARLTON H. BONHAM**, Director



April 7, 2022

Office of Energy Infrastructure Safety  
California Natural Resources Agency  
715 P Street, 20<sup>th</sup> Floor  
Sacramento, CA 95814

Dear Office of Energy Infrastructure Safety,

Subject: Pacific Gas & Electric Company 2022 Wildfire Mitigation Plan Update

Thank you for the opportunity to provide comments regarding Pacific Gas & Electric Company's (PG&E) 2022 Wildfire Mitigation Plan Update (Plan). The California Department of Fish and Wildlife (CDFW) reviewed the Plan for activities that may affect California's fish and wildlife or may require CDFW approval under the Fish and Game Code.

CDFW is submitting comments per Public Resource Code section 8386, subdivision (d), to inform the Office of Energy Infrastructure Safety about relevant regulations and potentially significant impacts to sensitive fish and wildlife resources associated with vegetation management activities and other activities included in the Plan.

### **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 and G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; Cal. Code Regs., tit. 14, § 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 (Fish and G. Code, § 1802.). Similarly, under the California Environmental Quality Act (CEQA), CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a Responsible Agency under CEQA. (Pub. Resources Code, § 21069; Cal. Code Regs., tit. 14, § 15381.) Many of the Plan's activities can be conducted through use of existing exemptions. However, work conducted under the Plan may still be subject to Fish and Game Code section 1600 et seq. (Lake and Streambed Alteration) or may result in "take", as defined by State law, of any species protected under the California Endangered Species Act (CESA) (Fish & G.

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Code, § 2050 et seq.) Discretionary approvals from CDFW are subject to the requirements of CEQA (Cal. Code Regs., tit. 14, § 15268, subd. (d)). If subsequent project scoping under the Plan identifies elements that may be subject to CDFW's permitting authority, early consultation with CDFW is encouraged. Preparation of CEQA documents to support discretionary actions could lead to extended timeframes for completion of Plan activities.

## **REGULATORY REQUIREMENTS**

### *California Endangered Species Act*

If Plan activities have the potential to result in take of plants or animals listed under CESA (Fish and G. Code, § 2080 et seq.), compliance with CESA is required, either through full avoidance measures or obtaining take coverage through a CESA Incidental Take Permit (ITP). Section 2081, subdivision (b), of the Fish and Game Code allows CDFW to authorize take of species listed as endangered, threatened, or candidate if that take is incidental to otherwise lawful activities and if certain conditions are met. If Plan activities may impact CESA listed species, early consultation with CDFW is encouraged, as modification to Plan activities and mitigation measures may be required to obtain a CESA ITP.

### *Fully Protected Species*

Certain species are Fully Protected and may not be taken or possessed at any time as per Fish and Game Code sections 3511 (birds), 4700 (mammals), 5050 (reptiles and amphibians), and 5515 (fish). The lone exception to these statutes is Fish and Game Code section 2835 which allows the take of Fully Protected species under a Natural Community Conservation Plan (NCCP).

### *Birds*

Fish and Game Code section 3503 makes it unlawful to take, possess, or needlessly destroy the nests or eggs of any bird, while Fish and Game Code section 3503.5 states that no birds-of-prey or their nests and eggs may be taken, possessed, or destroyed. Fish and Game Code section 3513 makes it unlawful to take or possess any migratory nongame bird as designated in the federal Migratory Bird Treaty Act (MBTA) (16 U.S.C. § 703 et seq.), except as provided by rules or regulations adopted by the Secretary of the Interior under the MBTA. Fish and Game Code section 3800 makes it unlawful to take any nongame bird (i.e., bird that is naturally occurring in California that is not a gamebird, migratory game bird, or fully protected bird) except as provided in the Fish and Game Code.

### *Lake and Streambed Alteration*

CDFW requires a notification of Lake or Streambed Alteration (LSA), pursuant to Fish and Game Code section 1600 et. seq., for Plan activities that may substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake, or stream. Work within ephemeral streams, washes,

watercourses with a subsurface flow, and floodplains may also be subject to the requirement to notify.

### *Pollution*

Fish and Game Code sections 5650 and 5652 prohibit the deposition, passage of, or disposal of deleterious materials into the waters of the state, or within 150 feet of the highwater mark of waters of the state. Such materials would include products from vegetation maintenance activities, such as sawdust, shavings, slabs, or edgings, and materials deleterious to fish, plant life, mammals, or bird life, such as gas, oil, and other petroleum-based products, and sediment-laden runoff and erosion from vegetation removal activities if soil stabilization measures are not employed.

## **COMMENTS AND RECOMMENDATIONS**

**Comment: All activities covered under the Plan should be evaluated for potential impacts to the state's fish and wildlife resources to ensure compliance with Fish and Game Code and to ensure all discretionary approvals and permits are obtained prior to commencing Plan activities.**

Based on CDFW's review of the Plan and our authorities listed above, the activities summarized below have the potential to impact sensitive fish and wildlife resources. This list is not inclusive because the Plan does not include detailed information on the specific methods for each activity, where or when activities will occur, best management practices that will be implemented during activities, or an analysis of impacts.

Routine vegetation management and enhanced vegetation management activities that have the potential to impact sensitive fish and wildlife resources:

- Tree removal (hazard and strike trees)
- Vegetation control: radial clearance of vegetation around infrastructure
- Priority tree mitigation
- Dead tree mitigation
- Overhang removal and maintenance
- Emergency response vegetation management (preventative) and vegetation management activities post-fire
- Substation vegetation management (distribution, transmission, and hydro generation)
- Chemical application for vegetation management: herbicides or growth retardants
- On-site mastication, chipping, mulching or other disposal of vegetation materials near waters of the state

Other activities that have the potential to impact sensitive fish and wildlife resources:

- Work to establish or clear staging areas and roads to gain access to worksites
- Overhead electric facility hardening or undergrounding
- Preventative/long duration fire retardant application

- Fuel management, and management of all wood and “slash” from vegetation management activities
- Infrastructure maintenance, replacement, or reinforcement
- Installation of new equipment

PG&E may need to modify Plan activities with implementation of avoidance measures and/or obtain discretionary approval or permits if the activities have the potential to result in:

- Take of CESA listed species or rare plant species (Fish and G. Code, §§ 2080 et seq. & 1900 et seq.)
- Take or possession of fully protected species (Fish and G. Code, §§ 3511, 4700, 5050, 5515)
- Take of, possession of, or needlessly destroying the nest or eggs of any bird (Fish and G. Code, § 3503)
- Take of, possession of, or destroying any bird-of-prey or their nest or eggs (Fish and G. Code, § 3503.5)
- Take or possession of any migratory nongame bird (Fish and G. Code, § 3513)
- Take of any nongame bird (Fish and G. Code, § 3800)
- Substantial diversion or obstruction of the natural flow of any river, stream, or lake (Fish and G. Code, § 1602)
- Substantial change or use of any material from the bed, channel, or bank of, any river, stream, or lake (Fish and G. Code, § 1602)
- Deposition or disposing of debris, waste, or other deleterious materials where it may pass into any river, stream, or lake (Fish and G. Code, § 1602)
- Deposit of deleterious material into waters of the state (Fish and G. Code, §§ 5650 & 5652)

**Recommendation: Early consultation with CDFW by PG&E’s environmental staff and early completion of all documentation necessary for CDFW’s discretionary review of activities covered under the Plan.**

Please note that PG&E’s service area lies within five of CDFW’s regions (Northern, North Central, Bay Delta, Central, and South Coast) and notifications and other permit documentation regarding Plan activities will need to be provided to the appropriate region based on the specific location of the activities to be completed.

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## CONCLUSION

CDFW appreciates the opportunity to comment on PG&E's 2022 Wildfire Mitigation Plan Update to assist PG&E in ensuring Plan activities comply with California Fish and Game Code.

Questions regarding this letter or further coordination should be directed to Jeanette Griffin, Senior Environmental Scientist (Specialist), at (916) 720-1233 or [Jeanette.Griffin@wildlife.ca.gov](mailto:Jeanette.Griffin@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
37E732799B3C452...

Jeff Drongesen  
Chief, Habitat Conservation Planning Branch

### Attachment

- 1) Select California Department of Fish and Wildlife Regulatory Requirements

ec: Julie Vance  
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## Attachment #1

Select California Department of Fish and Wildlife Regulatory Requirements

Regulatory Requirements	Fish and Game Code	If Plan activities have the potential to result in:	Discretionary Approval or Permits Required:
<b>CESA</b>	§§ 2050-2115.5	<ul style="list-style-type: none"> <li>• Take of CESA listed species</li> </ul>	<ul style="list-style-type: none"> <li>• If feasible, full avoidance measures can be implemented to remove potential for take</li> <li>• If full avoidance measures are not feasible, a CESA ITP or equivalent authorization is required</li> <li>• Potential implementation of some avoidance and minimization measures</li> <li>• No required timeline for CDFW review/issuance of permit</li> <li>• Subject to fees</li> </ul>
<b>Fully Protected Species</b>	§§ 3511, 4700, 5050 and 5515	<ul style="list-style-type: none"> <li>• Take or possession of fully protected species</li> </ul>	<ul style="list-style-type: none"> <li>• Only allowed with coverage of NCCP</li> <li>• If no NCCP coverage, requires implementation of full avoidance and minimization measures to remove potential for take or possession</li> </ul>
<b>Birds</b>	§§ 3503, 3503.5, 3513, 3800	<ul style="list-style-type: none"> <li>• Take of, possession of, or needlessly destroying the nest or eggs of any bird</li> <li>• Take of, possession of, or destroying any bird-of-prey or their nest or eggs</li> <li>• Take or possession of any migratory nongame bird</li> <li>• Take of any nongame bird</li> </ul>	<ul style="list-style-type: none"> <li>• Requires implementation of full avoidance and minimization measures to remove potential impacts to birds</li> </ul>
<b>LSA</b>	§ 1600 et seq.	<ul style="list-style-type: none"> <li>• Substantial diversion or obstruction of the natural flow of any river, stream, or lake</li> <li>• Substantial change or use of any material from the bed, channel, or bank of, any river, stream, or lake</li> <li>• Deposition or disposing of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake</li> </ul>	<ul style="list-style-type: none"> <li>• Requires written notification of activity(ies) be submitted to CDFW</li> <li>• Timeline for CDFW review/issuance of permit:</li> <li>• CDFW review of notification: 30 days to determine whether it is complete</li> <li>• Once accepted as complete, CDFW is required to issue LSA within 60 days (if LSA is required for activities)</li> <li>• Subject to fees</li> </ul>
<b>Water Pollution</b>	§ 5650 and 5652	<ul style="list-style-type: none"> <li>• Deposit of deleterious material into waters of the state</li> </ul>	<ul style="list-style-type: none"> <li>• Requires implementation of measures to remove potential for deposit of deleterious material into waters of the state.</li> </ul>