



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Northern Region
601 Locust Street
Redding, CA 96001
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Governor's Office of Planning & Research

September 14 2021

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STATE CLEARINGHOUSE

Heidi Kunstal, Director
Del Norte County Community Development Department
981 H Street, Suite 110
Crescent City, CA 95531
hkunstal@co.del-norte.ca.us

**SUBJECT: Smith River Alliance Upper Tryon Creek Enhancement Project -
UP2116C (State Clearing House # [2021080391](#))**

Dear Heidi Kunstal:

On August 20, 2021, the California Department of Fish and Wildlife (CDFW) received Del Norte County's (Lead Agency) Mitigated Negative Declaration (MND) for the Smith River Alliance Upper Tryon Creek Enhancement Project (Project) via the State Clearing House. CDFW understands the Lead Agency will accept comments on the Project through September 20, 2021.

As the Trustee for the State's fish and wildlife resources, CDFW has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants and the habitat necessary to sustain their populations. As a Responsible Agency, CDFW administers the California Endangered Species Act and other provisions of the Fish and Game Code that conserve the State's fish and wildlife public trust resources. CDFW offers the following comments and recommendations in our role as Trustee and Responsible Agency pursuant to the California Environmental Quality Act (CEQA; California Pub. Resources Code § 21000 et seq.). CDFW participates in the regulatory process in its roles as Trustee and Responsible Agency to minimize Project impacts and avoid potentially significant environmental impacts by recommending avoidance and minimization measures. These comments are intended to reduce the Projects impacts on public trust resources.

Project Description

The Project is located at 6985 Lake Earl Drive, Fort Dick, Del Norte County, CA, on Assessor Parcel Numbers (APN) 105-020-014, 105-042-001, and 105-042-003. As described in the MND, the Project will restore fish and wildlife habitat along 0.83 miles of Upper Tryon Creek, a tributary to Yontocket Slough and the Smith River Estuary. The project will restore natural channel flow paths, improve fish passage, and enhance riparian habitat on agricultural land in the Smith River Flood Plain.

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CDFW Consultation History

On July 08, 2021, CDFW sent a letter to the Wildlife Conservation Board supporting the Project's application for funding, citing Project benefits to salmonid recovery and riparian habitat consistent with CDFW's Statewide Wildlife Action Plan. CDFW continues to support this Project and offers the following comments to help improve the MND and the feasibility of implementing the Project pursuant to CEQA:

Botanical Resources

The MND states protocol-level special status plant surveys (CDFW 2018) will occur in the future, after completion of CEQA, and if special status plant species are identified at the work site they will be protected and avoided. Based on CDFW review of project site photos, there is likely potential suitable habitat for several rare plant species within the project area. For example, northern clustered sedge (*Carex arcta*) (Rare Plant Rank 2B.2; Heritage rank S1, critically imperiled) occurs in wetland and streamside habitats similar to portions of Tryon Creek reaches within pastureland in the project area. If this or other special status plant species occur in abundance within the project area, or in small amounts at key locations of project design, avoidance of special status plants may not be feasible while accomplishing Project objectives.

Therefore, botanical surveys should be completed prior to completion of the CEQA process so the CEQA document can disclose any impacts to special status plants as well as feasible mitigation measures (**Recommendation 1**). Alternatively, and less preferentially, if botanical surveys are not completed prior to the completion of CEQA, protocol level botanical surveys should be added as an enforceable mitigation measure. This mitigation measure should include feasible compensatory mitigation performance criteria if impacts to special status species are unavoidable and needed to accomplish project objectives.

Nesting Birds

Take of birds and their nests is prohibited by Fish & G. Code sections 2000, 3503, 3503.5. The MND states pre-construction nesting bird surveys will be conducted prior to any riparian vegetation removal, but the MND does not provide details or methods of how this will occur.

CDFW strongly recommends that vegetation removal associated with Project development occur outside the bird nesting season (generally March 15 – August 15 for most species) (**Recommendation 2**). Alternatively, and less preferentially due to a high potential for project delays, if vegetation removal or other project-related activities that could impact nesting birds are scheduled during the nesting season, a mitigation measure should be added specifying that a qualified biologist shall survey for active bird

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nests during the nesting season within seven days prior to the beginning of project-related activities. Surveys should begin prior to sunrise and continue until vegetation and nesting habitat have been sufficiently observed. Surveys results should be submitted to CDFW by email within three business days of completion. The report should include a description of the area surveyed, time and date of surveys, ambient conditions, species observed, active nests observed, evidence of breeding behaviors (e.g., courtship, carrying nesting material or food, etc.), and a description of any outstanding conditions that may have impacted survey results (e.g., weather conditions, excess noise, predators present, etc.). If an active nest is found, the Permittee should implement avoidance measures and buffer distances in consultation with CDFW. If a lapse in project-related work of seven days or longer occurs, the qualified biologist should repeat surveys before project work could resume.

Summary of Recommendations

1. Botanical surveys should be completed prior to completion of the CEQA process so the CEQA document can disclose any impacts to special status plants as well as feasible mitigation measures (**Recommendation 1**).
2. Vegetation removal associated with Project development should occur outside the bird nesting season (generally March 15 – August 15 for most species) (**Recommendation 2**).

CDFW continues to support this Project and we appreciate the opportunity to comment on this MND. If you have any questions or concerns, please contact Environmental Scientist Greg O'Connell by email at gregory.oconnell@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Tina Bartlett
Regional Manager, Northern Region
California Department of Fish and Wildlife

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Citations

CDFW. (2018). Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities. California Department of Fish and Wildlife, Habitat Conservation Branch. Sacramento, CA. Accessed August 13, 2021, at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959>.