



United States Department of the Interior



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In Reply Refer to:
2024-0046266

April 3, 2024
Sent-Electronically

Ciara Fisher
Planner III
County of Yuba
915 8th Street, Suite 123
Marysville, CA 95901
cfisher@co.yuba.ca.us

Subject: Informal Consultation on the Proposed County of Yuba Roadside Fuel Reduction Project, Yuba County, California

Dear Ciara Fisher,

This letter is in response to the County of Yuba's (County) January 24, 2024, request for concurrence from the U.S. Fish and Wildlife Service (Service) that the proposed County of Yuba Roadside Fuel Reduction Project (proposed project) may affect, but is not likely to adversely affect the threatened California red-legged frog (*Rana draytonii*; red-legged frog), California red-legged frog Critical Habitat Unit YUB-1 (critical habitat), the threatened Layne's butterweed (*Packera layneae*; butterweed), and the endangered Pine Hill flannelbush (*Fremontodendron decumbens*; flannelbush). The County has also requested to conference on the proposed threatened California spotted owl (*Strix occidentalis*; owl). The proposed project is located along various county roads within the northeast half of Yuba County, California. The County applied for funding from the U.S. Department of Housing and Urban Development (HUD) to finance the proposed project. HUD has granted authority in writing to the County to conduct Section 7 consultation on their behalf. This response is provided under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), and in accordance with the implementing regulations pertaining to interagency cooperation (50 CFR 402).

We have reviewed the proposed project, including: (1) the January 24, 2024 request from the County for informal consultation; (2) the August 15, 2023, *Biological Resources Assessment for the Yuba County Roadside Fuel Reduction Project* (biological assessment) and attachments; (3) the *Environmental Assessment Determinations and Compliance Findings for HUD-assisted Projects 24 CFR Part 58* (EA Determinations); (4) the January 26, 2024, *Requested*

Supplemental Materials in response to Hagerty Consulting High Level Environmental Review Yuba County Roadside Fuel Reduction Project (Requested Supplemental Materials); and (5) the best available science on the species and their habitats.

The proposed project area encompasses 45.7 centerline miles of rural roads in the forested portions of the Sierra Nevada foothills and includes 18 road segments serving a total of seven at-risk communities. The County is proposing to perform roadside fuel reduction to create fuel breaks along county roadways, reduce spread of fire to structures and other natural resources, allow access for fire-fighting equipment, and to provide safe evacuation routes for residents. At present, tree canopies extend over roadways and vegetation encroaches edges of roadways, allowing fires to easily cross while impeding ingress and egress to at-risk communities. The proposed project activities include the removal of herbaceous and shrub vegetation, sapling trees with a diameter at breast height (DBH) of less than 4 inches, and limbs up to 12 feet high on trees with a DBH of more than 4 inches located 10-12 feet of the roadways within the county right-of-way (ROW). All removed vegetation will be chipped and left in place with the use of masticators, chainsaws, and hand trimmers on existing ROW staging areas. A complete description of the proposed project and activities is provided in the biological assessment on page 1, the EA Determinations on page 2, and the Requested Supplemental Materials on page 3, including equipment and methods that will be used.

California Red-Legged Frog

The proposed project does occur within suitable red-legged frog habitat and within proximity to red-legged frog occurrences, therefore conservation measures will be implemented to minimize or eliminate potential adverse effects. Aquatic features that contain suitable red-legged frog habitat where red-legged frogs are most likely to be found are being excluded from the work areas (these areas can be found within *Attachment D: Aquatic Resource Avoidance Maps*). Prior to the start of construction, a worker environmental awareness program will be prepared that includes species identification, procedures for encounters, life history descriptions, habitat requirements, and more. A red-legged frog-qualified biologist will present the information to all personnel working in the proposed project area prior to the start of proposed project activities. Additionally, if red-legged frog is observed during proposed project activities, proposed project activities will be immediately halted within 100 feet of the observation and the red-legged frog will be allowed to leave on its own volition. For a full description of conservation measures, see pages 17-18 of the biological assessment.

At present, there is only one known occurrence of red-legged frog within or in proximity to the proposed project area, located in two overgrown spring-fed tailings ponds (~7.5 acres) where Oregon Hill Road intersects Little Oregon Creek. It was estimated that there were 1-6 adult individuals present and previously, genetic data was taken from this population. This area has been excluded from the project as an avoidance area to avoid potential adverse effects to red-legged frogs. It is expected that effects to red-legged frog is highly unlikely as effects are minimized and/or eliminated by the implementation of these conservation measures, including these avoidance areas.

After reviewing all available information, the Service concurs with your determination that the proposed project *may affect, but is not likely to adversely affect* the red-legged frog. In particular,

the implementation of aquatic resource avoidance areas where the frogs are most likely to occur, as well as a 100-foot buffer for observed red-legged frogs during proposed project activities make effects from proposed project activities to red-legged frog insignificant and/or discountable. Therefore, unless new information reveals effects of the proposed action that may affect the red-legged frog in a manner or to an extent not considered, or a new species is listed or critical habitat is designated that may be affected by the proposed action, no further action pursuant to the Act is necessary.

California Red-Legged Frog Critical Habitat

There are three primary constituent elements (PCEs) of critical habitat for the red-legged frog which include suitable aquatic breeding and non-breeding habitat (PCE 1), associated uplands (PCE 2), and suitable dispersal habitat connecting suitable aquatic habitat (PCE3). PCE 1 is essential for providing space, food, and cover needed to sustain eggs, tadpoles, metamorphosing juveniles, nonbreeding subadults, and breeding and non-breeding adults. It consists of still or slow-moving freshwater bodies that are available year-round and have a minimum depth of 8 inches. PCE 2 is essential to maintain the integrity of red-legged frog aquatic habitat by providing the conditions essential for providing food, water, nutrients, and protection from disturbance necessary for normal behavior, and provide shelter to red-legged frogs inhabiting upland areas adjacent to suitable aquatic habitat. It consists of all upland areas within 500 feet of the edge of suitable aquatic habitat. PCE 3 is essential as it provides connectivity among red-legged frog aquatic habitat and associated upland patches. It consists of all upland and wetland habitat free of barriers that connects two or more patches of suitable aquatic habitat within 1.25 miles of one another. If less than two patches of suitable aquatic habitat are present or none are present within 1.25 miles, it is not considered critical habitat. Barriers include heavily traveled roads, moderate to high density urban or industrial developments, and large reservoirs and areas where barriers to dispersal occur would not be considered critical habitat. For a full description of the PCEs of critical habitat for red-legged frog, see pages 12835-12836 in the March 17, 2010, *Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for the California Red-Legged Frog*, final rule in the Federal Register, 75 FR 12816.

The proposed project is located within part of the designated California Red-Legged Frog Critical Habitat Unit YUB-1, Little Oregon Creek. The project has been designed to avoid frog habitat, and conservation measures will be implemented to minimize and/or eliminate potential effects to critical habitat. Proposed project activities will occur in approximately 7.4 acres of designated critical habitat Unit YUB-1 located just west of New Bullards Bar Reservoir.

This section of Unit YUB-1 contains PCEs for the designated critical habitat including aquatic breeding and non-breeding habitat, upland habitat, and dispersal habitat. In areas containing aquatic breeding and non-breeding habitat, the aquatic resources avoidance area measures will be implemented per the *Attachment D: Aquatic Resource Avoidance Maps* to avoid effects of the proposed project activities to these PCEs. By design, this project is a roadside hazard project, which will be occurring directly adjacent to roadways. PCE 3, dispersal habitat, is considered not present when PCEs 1 or 2 are not present, and only occurs in areas without barriers, such as roads or development.

Additionally, areas of upland and dispersal habitat (PCEs 2 and 3) are not expected to be affected by proposed project activities as the integrated design features, including no tree felling of trees greater than four inches in DBH, vegetation clearing only within 10-12 feet of the road, and chipping and leaving the trimmed vegetation, minimize and/or eliminate potential effects to critical habitat. By leaving the chipped and/or trimmed vegetation, additional upland habitat structural features such as moist leaf litter and organic debris will become available to improve critical habitat. A full description of the conservation measures can be found within the biological assessment, pages 1 and 17-18, and within the EA Determinations, page 2.

After reviewing all available information, the Service concurs with your determination that the proposed project *may affect, but is not likely to adversely affect* designated California Red-Legged Frog Critical Habitat Unit YUB-1, Little Oregon Creek. In particular, the implementation of aquatic resources avoidance areas, only removal of shrubby vegetation and no tree removal, and chipping and leaving of trimmed vegetation make effects to critical habitat from proposed project activities insignificant and/or discountable and may have to potential to improve critical habitat with the introduction of upland habitat structural features. Therefore, unless new information reveals effects of the proposed action that may affect designated critical habitat in a manner or to an extent not considered, or a new species is listed or critical habitat is designated that may be affected by the proposed action, no further action pursuant to the Act is necessary.

California Spotted Owl

The proposed project occurs within and adjacent to owl occurrences and potential owl habitat, therefore conservation measures will be implemented to minimize or eliminate potential effects to owls. Work will be completed October – February to avoid disturbance to owls during nesting season. If it is necessary to work during owl nesting season, then Disturbance-Only Project surveys according to the Service's 2012 northern spotted owl survey protocol shall be conducted by a qualified biologist. Disturbance-only project surveys include a 1-year six-visit survey that covers all owl habitat within 0.25 mile from the study area. For a full description of conservation measures that will be followed, see the biological assessment, page 18.

There are 15 documented occurrences of the owl in the last ten years located within 0.25 mile of the proposed project area. These occurrences are primarily located upon U.S. Forest Service managed lands on the Tahoe and Plumas National Forests, though some occur on private property including Sierra Pacific Industries land. Four of those occurrences were identified as pairs, one of which had young present at the respective time of the documentation, though no nest was detected. There is one known occurrence within the immediate action area, located 0.06 miles from the road, that was detected in 2014 with an adult pair but no young. No other nesting sites have been documented in the last ten years within 0.25 miles of the proposed area.

As the proposed project area includes known occurrences and a single known potential nesting site for the owl, there is a possibility that proposed project activities may cause noise disturbance to the owl and affect nesting activity. While the use of mechanical equipment and vegetation management has the potential to affect the owl and nesting activity through noise disturbance, the implementation of a limited operating period from October to February to protect the owl and nesting activity from disturbance during nesting season. Because the proposed project occurs so

close to county roads and would only be removing very small diameter material (4 inches DBH or less), and within 10-12 feet of the road, owl habitat is not expected to be affected by proposed activities.

After reviewing all available information, the Service concurs with your determination that the proposed project *may affect, but is not likely to adversely affect* the owl. In particular, the limited operating period of October to February and use of Disturbance-Only Project Surveys if work is required during nesting season make effects from proposed project activities to owl insignificant and/or discountable. Therefore, unless new information reveals effects of the proposed action that may affect the owl in a manner or to an extent not considered, or a new species is listed or critical habitat is designated that may be affected by the proposed action, no further action pursuant to the Act is necessary.

Layne's Butterweed

The proposed project occurs within the butterweed's habitat and in proximity to butterweed occurrences, therefore conservation measures will be implemented to avoid potential effects. Focused surveys within the proposed project area will be performed to protocol prior to construction and conducted by a qualified biologist during the appropriate phenological stage for the butterweed (April-August). The proposed project will avoid any currently documented or newly found butterweed occurrences by establishing and clearly marking avoidance zones that include the extent of the butterweed individuals plus a minimum 50-foot buffer, unless otherwise determined by a qualified biologist. For a full description of conservation measures that will be followed, see the biological assessment, page 17.

There are two documented occurrences of butterweed located near the proposed project area. Both occurrences (located in the Challenge-Brownsville work area) are made up of about 200 ramets collectively. These occurrences, located ~0.66 and ~0.9 miles from the proposed project area, span approximately 2.6 and 7.3 acres within the Ponderosa Park and Community Center just north of the Brownsville Airport and the area just west of the Recology Yuba-Sutter Transfer Station.

While vegetation management and clearing has the potential to remove, trample, or bury butterweed, the distance from known occurrences and the implementation of marked avoidance zones minimizes and/or eliminates threats from proposed project activities to these known occurrences. Additionally, should any other occurrences of the butterweed be found during surveys, individuals and occurrences shall be marked for avoidance, minimizing and/or eliminating the potential threats to additional occurrences not yet known.

After reviewing all available information, the Service concurs with your determination that the proposed project *may affect, but is not likely to adversely affect* the butterweed. In particular, the distance of proposed project activities from occurrences (≥ 0.66 miles) and implementation of avoidance buffers of 50 feet surrounding the butterweed make effects from proposed project activities to the butterweed insignificant and/or discountable. Therefore, unless new information reveals effects of the proposed action that may affect butterweed in a manner or to an extent not considered, or a new species is listed or critical habitat is designated that may be affected by the proposed action, no further action pursuant to the Act is necessary.

Pine Hill Flannelbush

The proposed project does occur within the flannelbush's habitat and in proximity to flannelbush occurrences, therefore conservation measures will be implemented to eliminate potential effects. Focused surveys within the proposed project area will be performed to protocol prior to construction and conducted by a qualified biologist during the appropriate phenological stage for the flannelbush (April-July). The proposed project will avoid any currently documented or newly found flannelbush occurrences by establishing and clearly marking avoidance zones that include the extent of the flannelbush individuals plus a minimum 50-foot buffer, unless otherwise determined by a qualified biologist. For a full description of conservation measures that will be followed, see the biological assessment, page 17.

There are two documented occurrences of the flannelbush located near the proposed project area. The first occurrence (located in the Challenge-Brownsville work area) is made up of about 10 individuals and it is unconfirmed whether this population is actually the flannelbush or California flannelbush. This occurrence, located ~0.93 miles from the proposed project area, spans approximately 17.11 acres along and within the Recology Yuba-Sutter Transfer Station and was damaged in 1983 during the expansion of the dump. The second occurrence (located near Lake Francis) is made up of about four large individuals and was genetically confirmed to be the flannelbush in 2017. This occurrence, located ~1.5 mile from the proposed project area, spans approximately 16.74 acres along Marysville Road.

While road and trail maintenance has the potential to remove, trample, and destroy the flannelbush, the distance of occurrences from the proposed project area (at least 0.9 miles) minimizes and/or eliminates threats from proposed project activities to these known occurrences. Additionally, should any other occurrences of the flannelbush be found during surveys, individuals and occurrences shall be marked for avoidance, minimizing and/or eliminating the potential threats to additional occurrences not yet known.

After reviewing all available information, the Service concurs with your determination that the proposed project *may affect, but is not likely to adversely affect* the flannelbush. In particular, the distance of proposed project activities from occurrences (>0.9 miles) and implementation of avoidance buffers of 50 feet surrounding the flannelbush make effects from proposed project activities to the flannelbush insignificant and/or discountable. Therefore, unless new information reveals effects of the proposed action that may affect the flannelbush in a manner or to an extent not considered, or a new species is listed or critical habitat is designated that may be affected by the proposed action, no further action pursuant to the Act is necessary.

If you have any questions regarding this correspondence for the proposed County of Yuba Roadside Fuel Reduction Project, please contact Taylor Hubbard, Fish and Wildlife Biologist, (taylor_hubbard@fws.gov) at (916) 414-6737 or me, Michelle Havens, the Northern Sierra Division Supervisor (michelle_havens@fws.gov) at (916) 978-4308 or at the letterhead address.

Sincerely,

Michelle Havens
Northern Sierra Division Supervisor