



State of California - Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Region 1 – Northern  
601 Locust Street  
Redding, CA 96001  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

*EDMUND G. BROWN, Jr., Governor*  
*CHARLTON H. BONHAM, Director*



January 20, 2015

Ms. Marie Jones  
Community Development Director  
City of Fort Bragg  
416 North Franklin Street  
Fort Bragg, CA 95437

**Subject: Notice of Public Hearing and Notice of Intent to Adopt Mitigated  
Negative Declaration (SCH #2014122062)  
Mendocino County, California**

Dear Ms. Jones:

On December 29, 2014, the California Department of Fish and Wildlife received from the State Clearinghouse a Mitigated Negative Declaration (MND) for the proposed Hare Creek Center Project (Project) in Fort Bragg, Mendocino County. The Department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants and their habitat. As a responsible agency, the Department administers the California Endangered Species Act and other provisions of the Fish and Game Code (FGC) that conserve the State's fish and wildlife public trust resources. The Department's primary concerns involving the proposed Project include: (a) a substantial increase in water demand which may impact fish and wildlife and (b) ongoing diversion of water without notification pursuant to FGC section 1602.

The Department provides the following feasible and Project-specific recommendations in our role as a trustee and responsible agency pursuant to the California Environmental Quality Act (California Public Resources Code §21000 et seq.).

### **Project Description**

The proposed Project would include construction and operation of a shopping center consisting of three separate buildings totaling 29,500 square feet of building space on Assessor's Parcels 018-450-40 and 018-450-41. The shopping center would contain a grocery store, three retail spaces, and a restaurant. Associated development would include a new access road, parking lot, pedestrian improvements, utility connections, low-impact development elements, and landscaping.

## **Current Conditions and Increase in Water Demand**

The December 22, 2014 update of the Governor's Drought Task Force states that California is entering the fourth year of one of the most severe droughts on record after several years of rainfall deficits. The Governor declared a drought State of Emergency on January 17, 2014, which remains in effect. The most recent U.S. Drought Monitor map (January 6, 2015) depicts extreme drought conditions in all of Mendocino County despite recent precipitation. The City of Fort Bragg declared a Stage 1 Water Emergency establishing mandatory conservation measures on September 18, 2014, in addition to earlier press releases urging voluntary water conservation. The December 18, 2014 U.S. Seasonal Drought Outlook from the National Oceanic and Atmospheric Administration (NOAA) Climate Prediction Center shows that drought conditions are expected to persist throughout nearly all of California, including Mendocino County, at least through March 31, 2015.

According to the MND, water for the Project would be provided by City of Fort Bragg municipal sources and would increase demand by nearly 2 million gallons. The Department commends the incorporation of low-impact development elements into the Project design, including drought-tolerant landscape plantings, areas of permeable paving and vegetated swales to facilitate groundwater infiltration, and installation of rainwater catchment tanks for landscape irrigation. However, rainwater catchment is only anticipated to offset an estimated 89,000 gallons of the Project's water usage. The MND estimates total additional municipal water usage of 1,846,916 gallons per year.

The MND states that a water supply analysis completed in 2010 *"found that the City could increase water use by 8% over existing water use in a severe drought (such as the 1977 drought) and continue to serve all customers without falling below the 5 million gallon reserve required to maintain adequate pressure in the system for fire flows."* The MND further states that projects using 4.6 percent of this estimated capacity have been approved, with an additional 1 percent anticipated for a project currently in the permitting process. This leaves only 2.4 percent of the City of Fort Bragg's estimated water capacity available. The MND notes that *"[w]ater availability under severe drought conditions is the primary constraint for City utility service for a project of this size"* but does not address current or future drought conditions, quantify potential consequences of drought on the water supply, or disclose potential impacts of increased water diversion on the streams which comprise the source of that supply.

### **Ongoing water diversion**

The municipal water supply for the City of Fort Bragg consists entirely of water diverted from three streams: Noyo River, Newman Gulch (tributary to Noyo River), and Waterfall Gulch (tributary to Hare Creek).

The Noyo River supports three listed salmonid species: coho salmon (*Oncorhynchus kisutch*) is State-listed as "endangered" and federally-listed as "threatened"; steelhead trout (*O. mykiss*) and Chinook salmon (*O. tshawytscha*) are federally-listed as "threatened." Hare Creek supports coho salmon and steelhead trout. Populations of these salmonids have undergone a substantial decline in abundance in recent decades. Coho salmon has undergone at least a 70-percent decline in abundance since the 1960s, and is currently at 6 percent to 15 percent of its abundance during the 1940s. These species have been impacted by loss and degradation of habitat, including lack of adequate in-stream flow, high water temperatures due to lack of streamside vegetation, siltation of spawning gravels, and lack of in-stream shelter and pools.

The City of Fort Bragg's diversions are potentially impacting fish and wildlife resources in the Noyo River and Waterfall and Newman gulches during low-flow periods. The Department is concerned that the City of Fort Bragg is diverting up to 50 percent of the stream flow in the Noyo River without adequate measures to ensure fish are not stranded or otherwise harmed (non-compliance with FGC §§5901 and 1600); diverts over 80 percent of Waterfall Gulch stream flow without bypassing sufficient stream flow to maintain public trust resources downstream (pursuant to FGC §5937); and diverts an unknown percentage of Newman Gulch stream flow. The flow in these streams is critical for protecting fish and wildlife resources, and without appropriate bypass flows, impacts to listed and sensitive species, including take of listed salmonids, may occur.

An August 15, 2014 letter from NOAA's National Marine Fisheries Service protesting the City of Fort Bragg's petition for change of an existing water right emphasized this concern. The letter stated that *"[t]he continuation of water diversions from Waterfall Gulch, in the absence of adequate flow bypass conditions, may cause adverse impacts to listed salmonids in Hare Creek by: (a) reducing the amount and quality of rearing habitat downstream; (b) reducing the amount and quality of spawning habitat downstream; and (c) reducing upstream and downstream passage opportunities for adults, juveniles, and smolts. ...In addition, proposed modifications to transport and storage of water have the potential to alter streamflow conditions in the Noyo River watershed via Newman Gulch Reservoir and result in impacts similar to those described above for Hare Creek."*

Despite the assertion in the MND that *"the project will be adequately served by existing water entitlements, sources and storage facilities,"* diversion of additional water has the potential to cause or exacerbate impacts to aquatic resources, particularly during low-flow periods. No substantive mitigation is presented to address current diversion or the proposed increase.

### **Prior Request to Comply with FGC**

Lake or Streambed Alteration Agreements (LSAA) are required for projects, new and ongoing, that substantially divert or obstruct the natural flow of any river, stream, or lake. Over the past four years, the Department has repeatedly requested the City of Fort Bragg enter into a LSAA as the following list indicates:

- July 13, 2011 – In a letter, the Department advised the City of Fort Bragg that the Waterfall Gulch diversion was substantial and required notification pursuant to FGC section 1602.
- November 25, 2013 – In a Pre-harvest Inspection Report for THP 1-13-096 MEN, the Department requested that the City of Fort Bragg provide notification for the diversion from Waterfall Gulch.
- March 3, 2014 – In a letter to the City of Fort Bragg, the Department requested notification pursuant to FGC section 1602 and reiterated the potential impacts to public trust resources from ongoing water diversion.
- July 21, 2014 – In a comment letter to the City of Fort Bragg regarding the MND for the proposed Summers Lane Reservoir, the Department outlined potential impacts, requested notification pursuant to FGC section 1602, and provided additional recommendations to reduce or avoid impacts to aquatic resources.
- August 15, 2014 – In a letter to the State Water Resources Control Board and the City of Fort Bragg regarding the Waterfall Gulch diversion, the Department requested compliance with FGC section 1602 and other regulations to prevent the take of State- and federally-listed species.

As of this date, notification has not been received by the Department. In issuing a LSAA, the Department develops avoidance and minimization measures to address affected fish and wildlife resources, including measures that avoid take of listed salmonids.

Conservation can provide an immediate and positive impact on water supply. In 2009, the State adopted the Water Conservation Act through the passage of Senate Bill X7-7, requiring that California achieve a 20 percent reduction in urban per-capita water use by the end of December 2020. Some municipalities, such as the Sonoma



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County Water Agency, have implemented voluntary but specific and quantifiable water conservation goals. The City of Fort Bragg should develop a long-term water plan including measurable conservation goals consistent with Senate Bill X7-7.

In light of the City of Fort Bragg's current non-compliance with FGC section 1602, potential noncompliance with FGC sections 5901 and 5937, and potential impacts to listed species, the City of Fort Bragg should not approve additional projects or developments with the potential to increase water demand. In addition, a measurable conservation strategy to reduce water usage is warranted. The City of Fort Bragg currently lacks a comprehensive plan to address water use and water shortage concerns especially during drought periods.

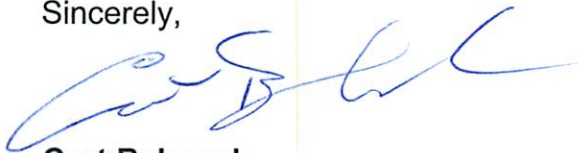
### **Recommendations**

In order to avoid or reduce potential impacts to fish and wildlife resources and their habitats to a less than significant level, the Department recommends the City of Fort Bragg address the following:

1. Pursuant to FGC section 1602, the City of Fort Bragg shall enter into a LSAA for ongoing and future water diversion from all pertinent stream and river sources.
2. The City of Fort Bragg should not approve the Hare Creek Center Project nor additional projects or developments with the potential to increase water demand without adequate bypass flows.
3. The City of Fort Bragg should develop a long-term, comprehensive plan to address water use and water shortage concerns including measureable conservation goals and strategies consistent with Senate Bill X7-7.

If you have questions or comments regarding this matter, please contact Environmental Scientist Angela Liebenberg at (707) 964-4830 or [angela.liebenberg@wildlife.ca.gov](mailto:angela.liebenberg@wildlife.ca.gov).

Sincerely,



**Curt Babcock**  
Environmental Program Manager

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