

2.4 Biological Resources

<i>Issues (and Supporting Information Sources):</i>	<i>Potentially Significant Impact</i>	<i>Less Than Significant with Mitigation Incorporation</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>
4. BIOLOGICAL RESOURCES— Would the project:				
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Setting

The Proposed Project site is located in Smith River, Del Norte County, California, approximately three and one half miles east of the Pacific Ocean and approximately five miles south of the Oregon border. The site was previously used for a logging mill. Currently the site is a mosaic of pavement, gravel, and grassland interspersed by weedy scrub habitat and trees. The topography is flat and the elevation averages 55 to 75 feet above sea level. U.S. Highway 101 (U.S. 101) borders the western edge of the site. Land west of U.S. 101 is dominated by agriculture with some residential and commercial activity. North and east of the site is Rowdy Creek, which is bordered by a band of riparian vegetation. Mixed hardwood forest is located south and east of the site.

Vegetation types and wildlife habitats were identified using both records and field observations. Environmental Science Associates (ESA) conducted reconnaissance-level field surveys of the Proposed Project site on September 12, 2007, to gather information and verify existing data on vegetation communities, wildlife habitats, and habitat use on and surrounding the site. Habitat types were classified using the California Wildlife Habitat Relationships computer program (CDFG, 2005).

Local Setting

Ruderal

Vegetation surrounding the existing Simonson Substation is best classified as ruderal. Ruderal vegetation is typically comprised of non-native, hardy species. The area in the immediate vicinity of the existing substation does not provide good habitat for any special-status species beyond foraging or for transient individuals. Specific vegetation types surrounding the existing Simonson Substation consists of weedy scrub, dominated by Himalayan blackberry (*Rubus discolor*), pampas grass (*Cortaderia selloana*), and horsetail (*Equisetum arvense*). Red alder (*Alnus rubra*), velvet willow (*Salix sessilifolia*), and fir trees are also present immediately adjacent to the existing substation. No vegetation is present within the fenced area of the existing substation.

Annual grassland

Annual grassland habitats are open grasslands composed primarily of annual plant species. Dramatic differences in physiognomy, both between seasons and between years, are characteristic of this habitat. Introduced annual grasses are the dominant plant species in this habitat. The area east of the Simonson Substation is dominated by annual grasses including ryegrass (*Lolium multiflorum*) and rattlesnake grass (*Briza maxima*). An herb, plantain (*Plantago* sp.), is also co-dominant in this area.

The proposed site for the Morrison Creek Substation is dominated by several non-native grass species including common velvet grass (*Holcus lanatus*), rattlesnake grass, and pampas grass, as well as the native grass, Idaho bentgrass (*Agrostis idahoensis*). Prevalent non-native herbs include bird's foot trefoil (*Lotus corniculatus*), curly dock (*Rumex crispus*), Himalayan blackberry, Queen Anne's lace (*Daucus carota*), and flat sedge (*Cyperus eragrostis*). Planted redwood (*Sequoia sempervirens*) seedlings are scattered throughout the site and several patches of Douglas fir (*Pseudotsuga menziesii*) saplings are also present.

Montane hardwood-conifer

South and east of the former mill site is montane hardwood-conifer habitat. Montane hardwood-conifer contains both conifers and hardwoods, often as a closed forest. At least one third of the trees are typically conifers. The habitat is usually largely devoid of an understory, except following a disturbance event such as a fire or logging. The hill bordering the southeastern edge of the proposed Morrison Creek Substation site contains scattered redwoods and spruce, with a dense understory of big-leaf maple (*Acer macrophyllum*) and alder. The number of conifers on the hill has been reduced due to historical logging.

Valley foothill riparian

Within valley foothill riparian habitat, most trees are winter deciduous. There is typically a subcanopy tree layer as well as an understory shrub layer. Generally, the understory is impenetrable to direct sunlight. Trees are typically cottonwood and willow species. Riparian vegetation adjacent to Rowdy Creek is dominated by red alders with velvet willows and black cottonwoods (*Populus trichocarpa*) sub-dominant. Himalayan blackberry dominates the understory.

Special-Status Species

A number of species with the potential to occur in the project vicinity are protected pursuant to federal and/or State endangered species laws, or have been designated Species of Special Concern by the California Department of Fish and Game (CDFG). In addition, Section 15380(b) of the *California Environmental Quality Act (CEQA) Guidelines* provides a definition of rare, endangered, or threatened species that are not included in any listing.¹ Species recognized under these terms are collectively referred to as “special-status species.” For the purposes of this IS/MND, special-status species include:

- Plant and wildlife species listed as rare, threatened or endangered under the federal or State endangered species acts;
- Species that are candidates for listing under either federal or State law;
- Species formerly designated by the U.S. Fish and Wildlife Service (USFWS) as Species of Concern or by CDFG as Species of Special Concern;
- Species protected by the federal Migratory Bird Treaty Act (16 U.S.C. 703-711);
- Species such as candidate species that may be considered rare or endangered pursuant to Section 15380(b) of the *CEQA Guidelines*.

Appendix C provides a comprehensive list of the special status species that have been documented, or have potential to occur, in suitable habitat within the general study area. This list was derived using the California Natural Diversity Database (CDFG, 2007b), California Native Plant Society Electronic Inventory (CNPS) (CNPS, 2007), and the USFWS (USFWS, 2007). Based on ESA’s review of the biological literature of the region, previous environmental analyses and surveys in the Proposed Project vicinity, and an evaluation of the habitat conditions of the existing and proposed substation sites, many of these species were eliminated from further evaluation because: (1) the Proposed Project site or the immediate area does not provide suitable habitat, or (2) the known range for a particular species is outside of the Proposed Project site and/or the immediate area.

The special status species list presented in Appendix C includes species that occur in the general habitat types that are within or in the vicinity of the Proposed Project site. Species determined to have low potential to occur within the Proposed Project site are listed in Appendix C with the reasoning behind the determination, and are not expected to occur within the Proposed Project site. Species observed or with a moderate to high potential to occur within the Proposed Project site are discussed in detail below.

Special-Status Plants and Animals

Of the special-status plants and animals presented in Appendix C, only four species were determined to have a moderate to high potential to occur within the Proposed Project site.

¹ For example, vascular plants listed as rare or endangered or as List 1 or 2 by the CNPS are considered to meet Section 15380(b).

These special status species include northern harrier (*Circus cyaneus*), loggerhead shrike (*Lanius ludovicianus*), northern red-legged frog (*Rana aurora aurora*), and Pacific gilia (*Gilia capitata* ssp. *pacifica*).

Northern harrier is listed as a California species of concern. This species nests in open areas, on the ground, in thick grass, shrubbery, or other vegetation. Most often nesting occurs in emergent vegetation, wet meadows, or near rivers and lakes. It may also nest in grasslands away from water. The presence of Rowdy Creek less than one quarter of a mile from the Proposed Project site, as well as grassland habitat within the Proposed Project site, provides potential nesting habitat for the northern harrier.

Loggerhead shrike is listed as both a federal and California species of concern. This species prefers open habitats with scattered shrubs, trees, posts, fences, utility lines, or other perches. Nesting occurs in dense brush or trees. Scattered trees and dense brush around the existing Simonson Substation and at the southern edge of the proposed Morrison Creek Substation site provide nesting habitat. Utility lines, scattered trees, and the existing substation provide sites on which to perch.

Northern red-legged frog is listed as a California species of special concern. It is found in humid forests, woodlands, grasslands, and streamsides with plant cover. The species is most common in lowlands or foothills and is frequently found in woods adjacent to streams. Northern red-legged frogs breed in permanent water sources, including lakes, ponds, reservoirs, slow streams, marshes, bogs, and swamps. Although typically found in or near water, this species can be highly terrestrial and sometimes found in damp places far from water. Potential breeding habitat is present in Rowdy Creek. The Proposed Project site's close proximity to Rowdy Creek provides the potential for northern red-legged frogs to disperse into grassland habitat within the site.

Pacific gilia is listed by CNPS as 1B.2 (i.e., fairly endangered in California). Its range stretches from Mendocino County, north into Oregon. The species is found in coastal bluff scrub, chaparral, coastal prairie, and valley and foothill grassland and blooms between April and August. The species is threatened by development and recreational activities. The presence of valley and foothill grassland within the Proposed Project site provides potential habitat for this species. However, the relatively small size of the grassland patch as well as the prevalence of non-native herbs throughout the site limits the potential for occurrence.

Regulatory Context

This section briefly describes federal, State and local regulations, permits, and policies pertaining to biological resources and wetlands as they may apply to the Proposed Project.

Federal

U.S. Army Corps of Engineers and U.S. Environmental Protection Agency Regulation of Waters of the United States, Including Wetlands

The U.S. Army Corps of Engineers (USACE) and the U.S. Environmental Protection Agency (USEPA) regulate the discharge of dredged or fill material into waters of the United States, including wetlands, under Sections 404 and 401 of the Clean Water Act. Projects that would result in the placement of dredged or fill material into waters of the United States require a Section 404 permit from the USACE.² Some classes of fill activities may be authorized under General or Nationwide permits if specific conditions are met. Nationwide permits do not authorize activities that are likely to jeopardize the existence of a Threatened or Endangered species (listed or proposed for listing under the federal Endangered Species Act). In addition to conditions outlined under each Nationwide Permit, project-specific conditions may be required by the USACE as part of the Section 404 permitting process. When a project's activities do not meet the conditions for a Nationwide Permit, an Individual Permit may be issued.

Section 401 of the Clean Water Act requires an applicant for a USACE permit to obtain state certification that the activity associated with the permit will comply with applicable state effluent limitations and water quality standards. In California, water quality certification, or a waiver, must be obtained from the Regional Water Quality Control Board, for both Individual and Nationwide Permits.

The USACE also regulates activities in navigable waters under Section 10 of the Rivers and Harbors Act. The construction of structures, such as tidegates, bridges, or piers, or work that could interfere with navigation, including dredging or stream channelization, may require a Section 10 permit, in addition to a Section 404 permit if the activity involves the discharge of fill.

Finally, the federal government also supports a policy of minimizing "the destruction, loss, or degradation of wetlands." Executive Order 11990 (May 24, 1977) requires that each federal agency take action to minimize the destruction, loss, or degradation of wetlands and to preserve and enhance the natural and beneficial values of wetlands.

² Based on the Supreme Court ruling (SWANCC) concerning the Clean Water Act jurisdiction over isolated waters (January 9, 2001), non-navigable, isolated, intrastate waters based solely on the use of such waters by migratory birds are no longer defined as waters of the United States. Jurisdiction of non-navigable, isolated, intrastate waters may be possible if their use, degradation, or destruction could affect other waters of the United States, or interstate or foreign commerce. Jurisdiction over such other waters are analyzed on a case-by-case basis. Impoundments of waters, tributaries of waters, and wetlands adjacent to waters should be analyzed on a case-by-case basis. A more recent Supreme Court case, *Rapanos v. United States* (2006), also questioned the definition of "waters of the United States" and the scope of federal regulatory jurisdiction over such waters, but left open the question as to whether the Clean Water Act extends to those waters and wetlands that have a 'significant nexus' to navigable waters of the United States, or whether it is limited to waters with a continuous connection. According to the *Rapanos* decision, the Clean Water Act will: 1) Continue to regulate "traditionally navigable waters," including all rivers and other waters that are large enough to be used by boats that transport commerce and any wetlands adjacent to such waters; 2) Continue to regulate "non-navigable tributaries that are relatively permanent and wetlands that are physically connected to these tributaries"; and 3) Continue to regulate based on case-by-case determinations for other tributaries and adjacent wetlands that have certain characteristics that significantly affect traditionally navigable waters (USEPA, 2007).

The term “waters of the United States,” as defined in the Code of Federal Regulations (33 C.F.R. § 328.3[a]; 40 C.F.R. § 230.3[s]), refers to:

1. All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
2. All interstate waters including interstate wetlands;
3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation, or destruction of which could affect interstate or foreign commerce including any such waters:
 - which are or could be used by interstate or foreign travelers for recreational or other purposes; or
 - from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - which are used or could be used for industrial purposes by industries in interstate commerce.
4. All impoundments of waters otherwise defined as waters of the United States under the definition;
5. Tributaries of waters identified in paragraphs (1) through (4);
6. Territorial seas; and
7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (1) through (6).
8. Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area’s status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with USEPA (33 CFR 328.3[a][8]).

Wetlands are ecologically productive habitats that support a rich variety of both plant and animal life. The importance of wetlands has increased due to their value as recharge areas and filters for water supplies and to their widespread filling and destruction to enable urban and agricultural development. In a jurisdictional sense, there are two commonly used definitions of a wetland, one definition adopted by the USACE and a separate definition, originally developed by USFWS, which has been adopted by the agencies in the State of California that have regulatory authority over wetlands. Both definitions are presented below.

Federal Wetland Definition

Wetlands are a subset of “waters of the United States” and receive protection under Section 404 of the Clean Water Act. Wetlands are defined as those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal

circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetland determination under the federal wetland definition adopted by the USACE requires the presence of three factors: (1) wetland hydrology, as defined above under point 2, (2) plants adapted to wet conditions, and (3) soils that are routinely wet or flooded [33 C.F.R. § 328.3(b)].

Federal Endangered Species Act

The USFWS, which has jurisdiction over plants, wildlife, and resident fish, and the National Marine Fisheries Service (NMFS), which has jurisdiction over anadromous fish and marine fish and mammals, oversee the federal Endangered Species Act. Section 7 of the Act mandates that all federal agencies consult with the USFWS and NMFS to ensure that federal agencies actions do not jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat for listed species. Federal agencies are required to consult with the USFWS and NMFS if they determine a “may effect” situation will occur in association with a project. The federal Endangered Species Act prohibits the “take” of any fish or wildlife species listed as Threatened or Endangered, including the destruction of habitat that could hinder species recovery.³

Under Section 9 of the federal Endangered Species Act, the take prohibition applies only to wildlife and fish species. However, Section 9 does prohibit the removal, possession, damage or destruction of any Endangered plant from federal land. Section 9 also prohibits acts to remove, cut, dig up, damage, or destroy an Endangered plant species in nonfederal areas in knowing violation of any state law or in the course of criminal trespass. Candidate species and species that are proposed or under petition for listing receive no protection under Section 9 of the federal Endangered Species Act.

Section 10 of the federal Endangered Species Act requires the issuance of an “incidental take” permit before any public or private action may be taken that would potentially harm, harass, injure, kill, capture, collect, or otherwise hurt any individual of an Endangered or Threatened species. The permit requires preparation and implementation of a habitat conservation plan that would offset the take of individuals that may occur, incidental to implementation of the project by providing for the overall preservation of the affected species through specific mitigation measures.

Federal Migratory Bird Treaty Act

The Migratory Bird Treaty Act states that without a permit issued by the U.S. Department of the Interior, it is unlawful to pursue, hunt, take, capture, or kill any migratory bird.

³ Take is defined as harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, collecting, or attempting to engage in any such conduct.

State

California Environmental Quality Act

The intent of CEQA, under which this IS/MND has been prepared, is to maintain “high-quality ecological systems and the general welfare of the people of the State.” It is the policy of the State to “prevent the elimination of fish or wildlife species due to man’s activities, ensure that fish and wildlife populations do not drop below self-perpetuating levels, and preserve for future generations representations of all plant and animal communities and examples of the major periods of California history.” CEQA forbids public agencies to approve projects that will harm the environment until and unless the agency has adopted all feasible mitigation for that harm. (Public Res. Code section 21002, 21081, subdivision a.).⁴

CEQA requires consultation with CDFG on any project an agency initiates that is not statutorily or categorically exempt from CEQA. The *CEQA Guidelines* (Section 15065a) indicate that impacts to State- and federally listed rare, threatened, or endangered plants or animals are significant. Under Section 15380 of the *CEQA Guidelines*, impacts to other species that meet certain criteria (i.e., it can be shown that the species’ survival in the wild is in jeopardy or it is at risk of becoming endangered in the near future), but are not officially listed may also be considered significant by the lead agency, depending on the applicability of other laws (e.g., Migratory Bird Treaty Act) and the discretion of the agency. For example, CDFG interprets Lists 1A, 1B, and 2 of the California Native Plant Society’s *Inventory of Rare and Endangered Vascular Plants of California* to consist of plants that, in a majority of cases, would qualify for listing as rare, threatened, or endangered. However, the determination of whether an impact is significant is a function of the lead agency, absent the protection of other laws. Projects subject to CEQA review must specifically address potential impacts to listed species and provide mitigation measures if the impact is significant.

California Endangered Species Act

California implemented its own Endangered Species Act in 1984. The State act prohibits the take of Endangered and Threatened species; however, habitat destruction is not included in the State’s definition of take. Section 2090 of California Endangered Species Act requires State agencies to comply with endangered species protection and recovery and to promote conservation of these species. The CDFG administers the act and authorizes take through Section 2081 agreements (except for designated “fully protected species”).

Regarding rare plant species, the California Endangered Species Act defers to the California Native Plant Protection Act of 1977, which prohibits importing of rare and endangered plants into California, taking of rare and endangered plants, and selling of rare and endangered plants. State-listed plants are protected mainly in cases where State agencies are involved in projects under

⁴ CEQA also provides that a project might be approved in spite of residual, unmitigated significant impacts, by adoption of a statement of overriding social and economic considerations in situations where mitigations or alternatives are deemed infeasible.

CEQA. In this case, plants listed as rare under the California Native Plant Protection Act are not protected under the California Endangered Species Act but can be protected under CEQA.

CEQA Guidelines Section 15380

Although threatened and endangered species are protected by specific federal and State statutes, *CEQA Guidelines* section 15380(b) provides that a species not listed on the federal or State list of protected species may be considered rare or endangered if the species can be shown to meet certain specified criteria. These criteria have been modeled after the definition in the federal Endangered Species Act and the section of the California Fish and Game Code dealing with rare or endangered plants or animals. This section was included in the *CEQA Guidelines* primarily to deal with situations in which a public agency is reviewing a project that may have a significant effect on, for example, a "candidate species" that has not yet been listed by either the USFWS or CDFG. Thus, CEQA provides an agency with the ability to protect a species from a project's potential impacts until the respective government agencies have an opportunity to designate the species as protected, if warranted.

California Native Plant Protection Act

State listing of plant species began in 1977 with the passage of the California Native Plant Protection Act (NPPA), which directed CDFG to carry out the legislature's intent to "preserve, protect, and enhance endangered plants in this State." The NPPA gave the California Fish and Game Commission the power to designate native plants as endangered or rare and to require permits for collecting, transporting, or selling such plants. The California Endangered Species Act expanded upon the original NPPA and enhanced legal protection for plants. The California Endangered Species Act established threatened and endangered species categories, and grandfathered all rare animals—but not rare plants—into the act as threatened species. Thus, there are three listing categories for plants in California: rare, threatened, and endangered.

California Fish and Game Code

Under Section 3503 of the California Fish and Game Code, it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by this code or any regulation made pursuant thereto. Section 3503.3 of the California Fish and Game Code prohibits take, possession, or destruction of any birds in the orders Falconiformes (hawks) or Strigiformes (owls), or of their nests and eggs.

Fish and Game Code Sections 3511 birds, 4700 mammals, 5050 reptiles and amphibians, and 5515 fish allow the designation of a species as Fully Protected. This is a greater level of protection than is afforded by the California Endangered Species Act, since such a designation means the listed species cannot be taken at any time.

Special-Status Natural Communities

Special-status natural communities are identified as such by CDFG's Natural Heritage Division and include those that are naturally rare and those whose extent has been greatly diminished

through changes in land use. The California Natural Diversity Database (CNDDDB) tracks 135 such natural communities in the same way that it tracks occurrences of special-status species: information is maintained on each site in terms of its location, extent, habitat quality, level of disturbance, and current protection measures. CDFG is mandated to seek the long-term perpetuation of the areas in which these communities occur. While there is no statewide law that requires protection of all special-status natural communities, CEQA requires consideration of the potential impacts of a project to biological resources of statewide or regional significance.

State Policies and Regulations Regarding Waters of the U.S. and Wetlands

State regulation of activities in waters and wetlands resides primarily with the CDFG and the State Water Resources Control Board (SWRCB). In addition, the California Coastal Commission has review authority for wetland permits within its planning jurisdiction. CDFG provides comment on USACE permit actions under the Fish and Wildlife Coordination Act. CDFG is also authorized under the California Fish and Game Code, Sections 1600-1616, to enter into a Streambed Alteration Agreement with applicants and develop mitigation measures when a proposed project would obstruct the flow or alter the bed, channel, or bank of a river or stream in which there is a fish or wildlife resource, including intermittent and ephemeral streams. The SWRCB, acting through the nine Regional Water Quality Control Boards, must certify that a USACE permit action meets State water quality objectives (Section 401, Clean Water Act).

CDFG has adopted the USFWS definition of wetlands (Cowardin et al., 1979). The federal definition of wetlands requires three wetland identification parameters to be met, whereas the USFWS definition can be satisfied under some circumstances with the presence of only one parameter. Thus, identification of wetlands by CDFG consists of the union of all areas that are periodically inundated or saturated, or in which at least seasonal dominance by hydrophytes may be documented, or in which hydric soils are present. The CDFG does not normally assert jurisdiction over wetlands unless they are subject to Streambed Alteration Agreements (California Fish and Game Code Sections 1600-1616) or they support State-listed endangered species.

Local

Del Norte County General Plan

Certain aspects of the *Del Norte County General Plan* are relevant to the biological analysis portion of this IS/MND. As stated within the General Plan, the County seeks to maintain, and where feasible, enhance the existing quality of all water resources in order to ensure public health and safety and the biological productivity of waters (1.B.1). The County also seeks to protect and maintain existing levels of anadromous fisheries habitat and minimize impact to riparian corridors (1.C). The County has identified “Riparian Vegetation” as an environmentally-sensitive habitat (1.E.12) and will continue to require best management practices to protect streams from the adverse effects resulting from construction activities (1.E.33). Relating to special status species, the County will continue consulting with the CDFG, U.S. Forest Service, and the State and National Park Service to identify and protect rare, threatened, and endangered species as well as any relevant critical habitat (1.E.8-1.E.11) (Del Norte County, 2003).

Biological Resources Impacts and Mitigation Measures

- a) **Affect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service: *Less than significant with mitigation.***

Construction

The northern red-legged frog is found in humid forests, woodlands, grasslands, and streambanks with plant cover. Although typically found in or near water, this species can disperse and occur far from water. The existence of Rowdy Creek near the Proposed Project site provides the potential for northern red-legged frog to occur at the site.

Impact 2.4-1: Construction activities associated with the Proposed Project could result in impacts to the northern red-legged frog, which is a California species of special concern. This impact would be reduced to less than significant with implementation of Mitigation Measure 2.4-1.

Mitigation Measure 2.4-1: To minimize or avoid impacts to the northern red-legged frog, preconstruction surveys for the species should occur throughout the Proposed Project site two weeks or less before removing vegetation or carrying out ground-disturbing activities. Pre-construction surveys shall be carried out by a qualified biologist familiar with northern red-legged frog identification and ecology. These are not intended to be protocol-level surveys but designed to clear an area so that individual northern red-legged frogs are not present within the Proposed Project site prior to the initiation of construction. Once the site is cleared it shall be fenced in such a way as to exclude northern red-legged frog for the duration of proposed construction activities. Methods for pre-construction surveys and site fencing shall be developed prior to the start of construction.

Significance after Mitigation: Less than significant.

All raptors, their nests, and eggs are protected under CDFG Code 3503.5. Migratory birds, their nests, and eggs are protected under the Migratory Bird Treaty Act. In addition, CDFG Code 3503 protects the needless destruction of nests or eggs of most bird species. Increased noise and activity resulting from construction activities could cause nest abandonment and death of young or loss of reproductive potential at active nests located within the Proposed Project area. In addition, grading and removal of trees and shrub vegetation could result in direct losses of nests, eggs, or nestlings. Based on the presence of suitable habitat for nesting at, and adjacent to, the Proposed Project sites, a number of special status bird species of concern should be considered as potentially present and possibly using the area for nesting purposes. The loss of active nests of special-status bird species would be considered a significant impact.

Impact 2.4-2: Construction activities associated with the Proposed Project could result in the direct loss of bird nests, death of young, or loss of reproductive potential at active nests of special status bird species located in the vicinity of the Proposed Project site. This would be a less than significant impact with the implementation of Mitigation Measure 2.4-2.

Mitigation Measure 2.4-2: Direct disturbance, including tree and shrub removal or nest destruction by any other means, or indirect disturbance (e.g., noise, increased human activity in area, etc.) of active nests of raptors and other special-status bird species within or in the vicinity of the proposed Morrison Creek Substation site or in the vicinity of the existing Simonson Substation site shall be avoided in accordance with the following procedures for Pre-Construction Special-Status Avian Surveys and Subsequent Actions. No more than two weeks in advance of any tree or shrub removal or ground-disturbing activity that will commence during the breeding season (i.e., February 1 through July 31), a qualified wildlife biologist shall conduct pre-construction surveys of all potential special-status bird nesting habitat in the vicinity of the planned activity. Pre-construction surveys are not required for construction activities scheduled to occur during the non-breeding season (i.e., August 1 through January 31). Depending on the survey findings, the following actions shall be taken to avoid potential adverse effects on nesting special-status nesting birds:

- If pre-construction surveys indicate that no nests of special-status birds are present or that nests are inactive or potential habitat is unoccupied, no further mitigation shall be required.
- If active nests of special-status birds are found during the surveys, the results of the surveys shall be forwarded to CDFG (as appropriate) and avoidance procedures shall be adopted, as determined necessary by CDFG, on a case-by-case basis. These can include construction buffer areas up to several hundred feet in the case of raptors, relocation of birds, or seasonal avoidance. If buffers are created, a no disturbance buffer zone shall be created around active nests during the breeding season or until a qualified biologist determines that all young have fledged. The size of the buffer zones and types of construction activities restricted within them shall be determined through consultation with the CDFG taking into account factors such as the following:
 - a. Noise and human disturbance levels at the Proposed Project site and the nesting site at the time of the survey and the noise and disturbance expected during the construction activity;
 - b. Distance and amount of vegetation or other screening between the Proposed Project site and the nest; and
 - c. Sensitivity of individual nesting species and behaviors of the nesting birds.
- Construction activities commencing during the non-breeding season and continuing into the breeding season do not require surveys because it is assumed that any breeding birds taking up nests would be acclimated to

Proposed Project-related activities already under way. However, if trees and shrubs are to be removed during the breeding season, the trees and shrubs shall be surveyed for nests prior to their removal, according to the survey and protective action guidelines described in a through c, in the bullet above.

- Nests initiated during construction activities would be presumed to be unaffected by the construction activity, and a buffer zone around such nests would not be necessary.
- Destruction of active nests of special-status birds and overt interference with nesting activities of special-status birds shall be prohibited.

Significance after Mitigation: Less than significant.

Construction of the proposed Morrison Creek Substation would result in the temporary and permanent removal of existing vegetation. The major vegetation types occurring within the Proposed Project site include annual grassland, shrub habitat, and mixed hardwood forest. None of these three vegetation types are listed as sensitive by CDFG or USFWS. No trees are planned for removal associated with the demolition of the Simonson Substation. Construction of the Morrison Creek Substation would result in the loss of multiple redwood seedlings, several red alders, and up to 16 Douglas fir saplings. The permanent loss of this vegetation could locally affect both common and special status wildlife species.

Impact 2.4-3: Activities associated with the construction of the proposed Morrison Creek Substation could detrimentally affect special status species utilizing the site, through the temporary and permanent removal of existing vegetation. This would be a less than significant impact with the implementation of Mitigation Measure 2.4-3.

Mitigation Measure 2.4-3: Areas outside the fenced area of Morrison Creek Substation that will be disturbed by Proposed Project construction activities shall be re-vegetated with native shrubs, trees, and/or grasses. Removal of native trees and shrubs shall be minimized.

Significance after Mitigation: Less than significant.

Operations

Power line and substation structures can benefit raptors and other avian species by providing perching and/or nesting structures. However, these same structures can pose a threat to raptors and other birds through electrocutions or collisions. Electrocution can occur when a bird completes an electric circuit by simultaneously touching two energized

parts or an energized part and a grounded part of the electrical equipment. “Avian-safe” structures are those that provide adequate clearances to accommodate a large bird between energized and/or grounded parts (APLIC and USFWS, 2005). At particular risk are birds with large wingspans, such as golden eagles, red-tailed hawks, osprey, and great horned owls. Other birds such as crows, ravens, magpies, small flocking birds, and wading birds can also be electrocuted. Closely-spaced exposed equipment, such as jumper wires on transformers, can pose an electrocution risk to small birds such as magpies or jays. Tall wading birds, such as herons, egrets, ibis, and storks may also require increased vertical spacing between lines, as they may exceed 40 inches in height.

Impact 2.4-4: The proposed tap line and substation may result in the inadvertent electrocution and collision of raptors and other special status bird species. This impact would be reduced to less than significant with implementation of Mitigation Measure 2.4-4.

Mitigation Measure 2.4-4: The Morrison Creek substation as well as any associated transmission and distribution line configurations should be designed as recommended in the PacifiCorp Bird Management Program Guidelines (PacifiCorp, 2006), or along recommendations provided by the Avian Power Line Interaction Committee. This shall minimize the chance for electrocution of protected raptors and other protected bird species and provide for a reporting system of any incidental bird mortalities resulting from the Morrison Creek Substation and its associated structures.

Significance after Mitigation: Less than significant.

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- b) **Effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or U.S. Fish and Wildlife Service: *No impact.***

Rowdy Creek runs north and east of the Proposed Project site. The creek contains an intact riparian corridor dominated by red alders and Himalayan blackberry with velvet willows and black cottonwoods subdominant. The existing Simonson Substation is approximately 450 feet from Rowdy Creek. The proposed Morrison Creek Substation would be more than 1,000 feet from Rowdy Creek. Construction associated with the Proposed Project is not expected to occur within or impact the riparian habitat or any other sensitive habitat.

- c) **Effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means: *Less than significant.***

No potential jurisdictional wetlands are present at the Proposed Project site; however, Rowdy Creek is located approximately 450 feet from the existing Simonson Substation

and approximately 1,000 feet from the proposed Morrison Creek substation site. Rowdy Creek flows southwest from the project area into Smith River, which flows northwest and empties into the Pacific Ocean. Potential adverse impacts to Rowdy Creek include permanent or temporary fill and/or accidental discharges of fill materials or other deleterious substances during construction. However, PacifiCorp would implement specific erosion control and surface water protection methods for each construction activity conducted as part of the Proposed Project. These control and protection measures, or Best Management Practices (BMPs), are standard in the construction industry and are commonly used to minimize water quality degradation. As discussed in the Regulatory Context discussion of Section 2.8, *Hydrology and Water Quality*, the Proposed Project would be required to comply with the National Pollution Discharge and Elimination (NPDES) Permit and therefore, be required to employ specific BMPs for the protection of surface water. PacifiCorp would be required to provide details as to the design and monitoring of the BMPs in the Storm Water Pollution Prevention Plan (SWPPP), which they would prepare under the NPDES permit requirements. Impacts to federally protected wetlands would be less than significant.

d) Interference with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites: *Less than significant.*

A variety of special status salmonids including coastal cutthroat trout (*Oncorhynchus clarki clarki*), steelhead trout (*Oncorhynchus mykiss irredius*), coho (*Oncorhynchus kisutch*) and chinook salmon (*Oncorhynchus tshawytscha*) all occur in Rowdy Creek. No work within the riparian habitat or in the creek is planned, therefore no direct impacts to fisheries is expected. For potential indirect impacts to the water quality of Rowdy Creek, see discussion d), above. Impacts would be less than significant.

e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance: *Less than significant.*

Del Norte County does not have a tree preservation policy. The *Del Norte General Plan* seeks to protect riparian habitat and anadromous fish habitat. No direct impact to riparian habitat or Rowdy Creek is expected as a result of the Proposed Project. Impacts would be less than significant.

f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan: *No impact.*

There are no adopted Habitat Conservation Plans, Natural Community Conservation Plans, or any other approved local, regional, or State habitat conservation plans that apply to the Proposed Project site. No impacts would occur.

References – Biological Resources

- California Department of Fish and Game (CDFG). 2007a. California Mammalia. Biogeographic Data Branch. Sacramento, California. Available Online:
<http://sibr.com/mammals/mammalSpeciesSort.html>.
- CDFG. 2007b. Wildlife Habitat and Data Analysis Branch, *California Natural Diversity Database*, data request for the Smith River, Hiouchi, Crescent City and High Divide 7.5-minute USGS topographic quadrangles.
- CDFG. 2005. California Interagency Wildlife Task Group. 2005. CWHR version 8.1 personal computer program. Sacramento, CA.
- CaliforniaHerps.com. 2007. California Reptiles and Amphibians. Available Online:
<http://www.californiaherps.com/index.html>.
- California Native Plant Society (CNPS). 2007. Inventory of Rare and Endangered Plants (online edition, v7-07c). California Native Plant Society. Sacramento, CA. Available Online:
<http://www.cnps.org/inventory>.
- Cowardin, L.M., V. Carter, F.C. Golet, and E.T. LaRoe. 1979. Classification of Wetlands and Deepwater Habitats of the United States. U.S. Fish and Wildlife Service, Office of Biological Services, Washington, D.C. Publ. No. FWS/OBS-79/31.
- Del Norte County. 2003. Del Norte County General Plan. Prepared by Del Norte County Community Development Department.
- Avian Power Line Interaction Committee (APLIC) and the U.S. Fish and Wildlife Service. 2005. Avian Protection Plan (APP) Guidelines. Available Online:
<http://www.fws.gov/migratorybirds/issues/APP/AVIAN%20PROTECTION%20PLAN%20FINAL%204%2019%2005.pdf>.
- Galea, F. 2007. Biological Assessment for Proposed Morrison Creek Substation Replacement, PacifiCorp, Smith River, Del Norte County. Galea Wildlife Consulting. Crescent City, California.
- PacifiCorp. 2006. Bird Management Program Guidelines. Portland, Oregon.
- University of Michigan School of Zoology. 2006. Animal Diversity Web. The Regents of University of Michigan. Available Online:
<http://animaldiversity.ummz.umich.edu/site/index.html>.
- U.S. Fish and Wildlife Service (USFWS). 2007. Species List Search Page. Data request for the Smith River, Hiouchi, Crescent City and High Divide 7.5-minute USGS topographic quadrangles. Arcata Fish and Wildlife Office. Arcata, California. Available Online:
<http://www.fws.gov/arcata/specieslist/search.asp>.
- U.S. Environmental Protection Agency (USEPA). 2007. EPA, Army Corps Issue Joint Guidance to Sustain Wetlands Protection under Supreme Court Decision. Press Release. Available Online:
<http://yosemite.epa.gov/opa/admpress.nsf/e87e8bc7fd0c11f1852572a000650c05/e7240f5d30236d2b852572f1005e1809!OpenDocument>.