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 DEPARTMENT OF FISH AND WILDLIFE  
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**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



September 17, 2021  
*Sent via email*

Governor’s Office of Planning & Research

**September 17 2021**

**STATE CLEARINGHOUSE**

Cindy Semione  
 Planner  
 City of Needles Planning Department  
 817 Third St.  
 Needles, CA 92363

Grow Heights Cannabis Cultivation Facility (Project) Recirculated Initial Study/Mitigated Negative Declaration (IS/MND) SCH# 2019039101

Dear Ms. Semione:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from the City of Needles (City) for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. CDFW appreciates the opportunity to respond to the Recirculated Draft IS/MND. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

**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 & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 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. (*Id.*, § 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related 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; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW’s lake and streambed alteration regulatory

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<sup>1</sup> CEQA is codified in the California Public Resources Code in section 21000 et seq. The “CEQA Guidelines” are found in Title 14 of the California Code of Regulations, commencing with section 15000.

authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in “take” as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** Grow Heights Cannabis Cultivation Facility

**Project Description:** The Recirculated Draft IS/MND proposes to develop a 1.24-acre parcel in the City of Needles for the purpose of cannabis cultivation. Development will include the construction of two metal buildings with a total of 10,589 square feet (sq) of indoor cannabis cultivation space and distribution. The water needs for this Project will be supplied by the City of Needles municipal ground water. A parking lot with space for 40 vehicles as well as a dedicated shipping/receiving bay for each building will be installed. The parking lot will be accessible from North L St. Two driveways will be installed, one primary driveway on North L St. and a second emergency driveway on North K St. The site is currently vacant and free of vegetation. The Project is located in an urban area primarily occupied by single-family residences.

**Location:** The Project lies between North K St. and North L St, south of Spruce St., and north of the BNSF Railway right-of-way in the City of Needles, State of California; Assessor’s Parcel Number 0185-111-84-0000; Latitude 34.84434 N, Longitude -114.61098 W; in the Mohave Valley–Colorado River (HUC 12) subwatershed. To the east of the property lies Ed Parry Park and the Rivers Edge Golf Course.

**Timeframe:** The Recirculated Draft IS/MND gives no timeframe for the construction of the Project other than Phase II will begin within one year of installation of the first structure in Phase I.

## **COMMENTS AND RECOMMENDATIONS**

CDFW offers the comments and recommendations below to assist the City of Needles in adequately identifying and/or mitigating the Project’s significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

In addition to the sections below, CDFW is concerned about the following:

- There is no timeframe provided for the construction of the Project.
- Outside of a cursory query of CNDDDB/BIOS there does not seem to have been a survey of biological resource at the Project site or of the surrounding area. Without a current survey of biological resources, CDFW may not be able fully assess the Project’s impacts.
- The Recirculated Draft IS/MND does not analyze cumulative impacts from the increasing concentration of cannabis projects in the City of Needles and the surrounding area. Cannabis cultivation requires large quantities of water, which can

impact groundwater-dependent species, ecosystems, and cities. CDFW recommends that the Recirculated IS/MND include an analysis of cumulative impacts of cannabis projects on the City of Needles' limited water resources.

- The Recirculated Draft IS/MND lists the California Department of Food and Agriculture (CDFA) as the licensing body for cannabis. Cannabis licensing now falls under the Department of Cannabis Control (DCC) and the CEQA document should reflect that.

## **ASSESSMENT OF IMPACTS ON BIOLOGICAL RESOURCES**

### Nesting Birds

It is the Project proponent's responsibility to comply with all applicable laws related to nesting birds and birds of prey. The Recirculated Draft IS/MND proposes Mitigation Measure (MM) 4.1 (p. 15) requiring nesting bird surveys prior to vegetation clearing or ground disturbance activities. CDFW recommends that pre-construction surveys be completed no more than 3 days prior to vegetation clearing or ground disturbance activities; instances of nesting could be missed if surveys are conducted sooner. Please note that nesting bird surveys must be conducted regardless of the time of year to protect species that may nest outside the peak breeding season, such as raptors and hummingbirds. CDFW appreciates inclusion of Mitigation Measure 4.1 and provides the following revision:

**MM BIO-1: Nesting bird surveys shall be conducted by a qualified avian biologist no more than three (3) days prior to commencing project activities in all suitable areas including trees, shrubs, bare ground, burrows, cavities, and structures, at the appropriate time of day/night, during appropriate weather conditions. Preconstruction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior (e.g., copulation, carrying of food or nest materials, nest building, removal of fecal sacks, flushing suddenly from a typically close range, agitation, aggressive interactions, feigning injury or distraction displays, or other behaviors). The qualified avian biologist will make every effort to avoid potential nest predation as a result of survey and monitoring efforts. If active nests are found during the preconstruction nesting bird surveys, a Nesting Bird Plan (NBP) shall be prepared and implemented by the qualified avian biologist. At a minimum, the NBP shall include guidelines for addressing active nests, establishing buffers, ongoing monitoring, establishment of avoidance and minimization measures, and reporting. The size and location of all buffer zones, if required, shall be based on the nesting species, individual/pair's behavior, nesting stage, nest location, its sensitivity to disturbance, and intensity and duration of the disturbance activity. To avoid impacts to nesting birds, any grubbing or vegetation removal shall occur outside peak breeding season (February 1 through September 1).**

Pursuant to the CEQA Guidelines, section 15097(f), CDFW has prepared a draft mitigation monitoring and reporting program (MMRP) for proposed MM BIO-1. The draft MMRP with MM BIO-1 through MM BIO-4 is enclosed as Attachment 1 at the end of this letter.

Pesticides, Including Fungicides, Herbicides, Insecticides, and Rodenticides

Cannabis cultivation sites (whether indoor or outdoor) often use substantial quantities of pesticides, including fungicides, herbicides, insecticides, and rodenticides. Wildlife, including beneficial arthropods, birds, mammals, amphibians, reptiles, and fish, can be poisoned by pesticides after exposure to a toxic dose through ingestion, inhalation, or dermal contact (Fleischli et al. 2004, Pimentel 2005, Berny 2007). They can also experience secondary poisoning through feeding on animals that have been directly exposed to the pesticides. Even if used indoors, rodenticides may result in secondary poisoning through ingestion of sickened animals that leave the premises or ingestion of lethally poisoned animals that are disposed of outside. Nonlethal doses of pesticides can negatively affect wildlife; for example, pesticides can compromise immune systems, cause hormone imbalances, affect reproduction, and alter growth rates of many wildlife species (Pimentel 2005, Li and Kawada 2006, Relyea and Diecks 2008, Baldwin et al. 2009).

CDFW recommends minimizing use of synthetic pesticides, and, if they are used, to always use them as directed by the manufacturer, including proper storage and disposal. Pursuant to Fish and Game Code section 5650(a)(6), toxic pesticides should not be used where they may pass into waters of the state, including ephemeral streams. Anticoagulant rodenticides and rodenticides that incorporate “flavorizers” that make the pesticides appetizing to a variety of species should not be used at cultivation sites (the passage of AB 1788, signed by the governor on September 29, 2020, banned the general use of second-generation anticoagulants in California). Best management practices may be used to control pest populations at and around cultivation sites, including sanitation (removing food sources such as pet food, cleaning up refuse, and securing garbage in sealed containers) and physical barriers (e.g., sealing holes in roofs and walls). Snap traps should not be used outdoors as they pose a hazard to nontarget wildlife. Sticky or glue traps should be avoided, as these pose a hazard to nontarget wildlife and result in a prolonged/inhumane death. The California Department of Pesticide Regulation (CDPR) stipulates that pesticides must meet certain criteria to be legal for use on cannabis. For details, visit <https://www.cdpr.ca.gov/docs/cannabis/questions.htm> and <https://www.cdpr.ca.gov/docs/county/cacltrs/penfltrs/penf2015/2015atch/attach1502.pdf>.

Section 8 Hazards and Hazardous Materials (p. 23) of the Recirculated Draft IS/MND states that nutrients, pesticides, and fungicides may be used in the cannabis cultivation facilities, therefore CDFW recommends, the inclusion of the following mitigation measure prior to the City adopting the MND:

**MM BIO-2: Prior to construction and issuance of any grading permit, a qualified biologist shall develop a plan, to be approved by the City of Needles, that includes measures to avoid, minimize, or mitigate the impacts of pesticides used in cannabis cultivation, including fungicides, herbicides, insecticides, and rodenticides. The plan should**

**include, but is not limited to, the following elements: (1) Proper use, storage, and disposal of pesticides, in accordance with manufacturers' directions and warnings, (2) Avoidance of pesticide use where toxic runoff may pass into waters of the State, including ephemeral streams, (3) Avoidance of pesticides that cannot be used on cannabis in the state of California, as set forth by the Department of Pesticide Regulation, (4) Avoidance of anticoagulant rodenticides and rodenticides with "flavorizers", (5) Avoidance of sticky/glue traps, and (6) best management practices, such as sanitation (removing food sources such as pet food, cleaning up refuse, and securing garbage in sealed containers) and physical barriers.**

### Artificial Light

Cannabis cultivation operations often use artificial lighting or "mixed-light" techniques in indoor operations to increase yields. If not disposed of properly, these lighting materials pose significant environmental risks because they contain mercury and other toxins (O'Hare et al. 2013). In addition to containing toxic substances, artificial lighting often results in light pollution, which has the potential to significantly and adversely affect fish and wildlife. Night lighting can disrupt the circadian rhythms of many wildlife species. Many species use photoperiod cues for communication (e.g., birdsong; Miller 2006), determining when to begin foraging (Stone et al. 2009), behavioral thermoregulation (Beiswenger 1977), and migration (Longcore and Rich 2004). Phototaxis, a phenomenon that results in attraction and movement toward light, can disorient, entrap, and temporarily blind wildlife species that experience it (Longcore and Rich 2004).

The Recirculated Draft IS/MND indicates that Project activities will involve new sources of artificial light for buildings and security (Section 1 Aesthetics, subsection (d), p 4). Because of the potential for artificial light to impact nocturnal wildlife species and migratory birds that fly at night, CDFW recommends the inclusion of the following mitigation measure prior to the City adopting the MND:

**MM BIO-3: Light shall not be visible outside of any structure used for cannabis cultivation. Blackout curtains shall be installed where artificial light is used to prevent light escapement. Nonessential lighting shall be eliminated from cannabis sites and use of artificial light shall be avoided or limited during the hours of dawn and dusk, when many wildlife species are most active. Lighting for cultivation activities and security purposes shall be shielded, cast downward and toward developed areas, not spill over onto other properties or upward into the night sky (see the International Dark-Sky Association standards at <http://darksky.org/>). Only LED lighting with a correlated color temperature of 3,000 Kelvins or less shall be used. All hazardous waste shall be properly disposed of. Any lighting containing toxic compounds shall be recycled with a qualified recycler.**

## Noise

Construction and operation of the Project may result in a substantial amount of noise through road use, equipment use, and other Project-related activities. Noise may adversely affect wildlife species in several ways and wildlife responses to noise can occur at exposure levels of only 55 to 60 decibels (Barber et al. 2009). (For reference, normal conversation is approximately 60 decibels, and natural ambient noise levels [e.g., forest habitat] are generally measured at less than 50 decibels.) Anthropogenic noise can disrupt the communication of many wildlife species including frogs, birds, and bats (Sun and Narins 2005, Patricelli and Blickley 2006, Gillam and McCracken 2007, Slabbekoorn and Ripmeester 2008). Noise can also affect predator-prey relationships as many nocturnal animals such as bats and owls primarily use auditory cues (i.e., hearing) to hunt. Additionally, many prey species increase their vigilance behavior when exposed to noise because they need to rely more on visual detection of predators when auditory cues may be masked by noise (Rabin et al. 2006, Quinn et al. 2006). Noise has also been shown to reduce the density of nesting birds (Francis et al. 2009) and cause increased stress that results in decreased immune responses (Kight and Swaddle 2011).

The Recirculated Draft IS/MND includes mitigation measures to address noise generated by Project activities (Mitigation Measures 12.1 through 12.5, p 39–40). CDFW also recommends restricting the use of equipment to hours least likely to disrupt wildlife and the surrounding neighborhood (e.g., not at night or in the early morning).

## Role of Lake and Streambed Alteration (LSA) Program in Cannabis Licensing

Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may adversely impact any river, stream, or lake. CDFW's LSA Program should be notified of Project activities prior to construction so that impacts to streams and associated resources may be assessed, and, if appropriate, avoidance and minimization measures may be proposed.

The Department of Cannabis Control (DCC) requires cannabis cultivators to demonstrate compliance with Fish and Game Code section 1602 prior to issuing a cultivation license (Business and Professions Code, § 26060.1). To qualify for an Annual License from CDFA, cultivators must have an LSA Agreement or written verification from CDFW that one is not needed. Cannabis cultivators may apply online for an LSA Agreement through the Environmental Permit Information Management System (EPIMS; <https://epims.wildlife.ca.gov>) and learn more about cannabis cultivation permitting at <https://wildlife.ca.gov/Conservation/Cannabis/Permitting>. CDFW recommends the inclusion of the following mitigation measure prior to the City adopting the MND:

**MM BIO-4: Prior to construction and issuance of any grading permit, written correspondence from CDFW shall be obtained stating that notification under section 1602 of the Fish and Game Code is not required for the Project, or a Lake and Streambed Alteration Agreement shall be executed by CDFW, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.**

## **ASSESSMENT OF IMPACTS ON OTHER RESOURCES**

### Hydrology and Water Quality

The CDFW does not believe that the Recirculated Draft IS/MND fully addresses the Project's impacts to hydrological and water resources during construction and for the life of the Project. Impacts to these resources could directly or indirectly impact local wildlife species, ecosystem function, and City resources. Regarding impacts to surface or ground water quality (Section 9, Hydrology and Water Quality, subsection (b), p 27) the Recirculated Draft IS/MND states that Grow Heights will request a "will serve" letter from the City. Considering that Grow Heights estimates its yearly water usage to be between four and seven acre-feet (1.3 to 2.3 million gallons) per year, CDFW is concerned that the Project's water demands have not already been addressed with the City. Regarding site drainage impacts, the Recirculated Draft IS/MND (Section 9, Hydrology and Water Quality, subsection (c), p 28) states that the Project will be constructed on an area that is virtually flat and not in proximity to any streams. Please note that increasing the impermeable area of the site poses concerns for increased runoff and decreased drainage. Grow Heights should work with the appropriate entities to develop plans to avoid, minimize, and mitigate impacts to hydrological and water resources.

## **ENVIRONMENTAL DATA**

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link:

<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=25739>. The completed form can be mailed electronically to CNDDDB at the following email address: [CNDDDB@wildlife.ca.gov](mailto:CNDDDB@wildlife.ca.gov).

The types of information reported to CNDDDB can be found at the following link:

<https://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

## **FILING FEES**

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW.

Payment of the fee is required for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

## **CONCLUSION**

CDFW appreciates the opportunity to comment on the Recirculated Draft IS/MND for Grow Heights to assist the City of Needles in identifying and mitigating Project impacts on biological resources. CDFW has assessed the Recirculated Draft IS/MND and found that it

Cindy Semione, Planner  
City of Needles  
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does not adequately identify or mitigate for all of this Project's impacts on biological resources. CDFW recommends that prior to the adoption of the MND, the City of Needles revise the document to include a more complete assessment of impacts to biological resources on the Project parcel and adjacent parcels, as well as appropriate avoidance, minimization, and mitigation measures.

CDFW has Cannabis Unit staff who are available to provide guidance on identifying, minimizing, and mitigating impacts to biological resources and any CDFW permitting that will be associated with this Project. If you have questions or would like to set up a meeting with CDFW staff to discuss this letter, please contact Kevin Francis, Environmental Scientist, at [kevin.francis@Wildlife.ca.gov](mailto:kevin.francis@Wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
84FBB8273E4C480...

Alisa Ellsworth  
Environmental Program Manager

### **Attachment 1: MMRP for CDFW-Proposed Mitigation Measures**

ec: Kevin Francis, Environmental Scientist, CDFW  
[kevin.francis@wildlife.ca.gov](mailto:kevin.francis@wildlife.ca.gov)

HCPB CEQA Program, Habitat Conservation Planning Branch  
[CEQAcommentletters@wildlife.ca.gov](mailto:CEQAcommentletters@wildlife.ca.gov)

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**ATTACHMENT 1: MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)**

Mitigation Measure	Schedule	Responsible Party
<p><b>MM BIO-1: Nesting Birds</b>            Nesting bird surveys shall be conducted by a qualified avian biologist no more than three (3) days prior to commencing project activities in all suitable areas including trees, shrubs, bare ground, burrows, cavities, and structures, at the appropriate time of day/night, during appropriate weather conditions. Preconstruction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior (e.g., copulation, carrying of food or nest materials, nest building, removal of fecal sacks, flushing suddenly from a typically close range, agitation, aggressive interactions, feigning injury or distraction displays, or other behaviors). The qualified avian biologist will make every effort to avoid potential nest predation as a result of survey and monitoring efforts. If active nests are found during the preconstruction nesting bird surveys, a Nesting Bird Plan (NBP) shall be prepared and implemented by the qualified avian biologist. At a minimum, the NBP shall include guidelines for addressing active nests, establishing buffers, ongoing monitoring, establishment of avoidance and minimization measures, and reporting. The size and location of all buffer zones, if required, shall be based on the nesting species, individual/pair's behavior, nesting stage, nest location, its sensitivity to disturbance, and intensity and duration of the disturbance activity. To avoid impacts to nesting birds, any grubbing or vegetation removal shall occur outside peak breeding season (February 1 through September 1).</p>	<p>Within 3 days of beginning any vegetation clearing or ground disturbing activities.</p>	<p>City of Needles</p>
<p><b>MM BIO-2: Pesticides</b>            Prior to construction and issuance of any grading permit, a qualified biologist shall develop a plan, to be approved by the City of Needles, that includes measures to avoid, minimize, or mitigate the impacts of pesticides used in cannabis cultivation, including fungicides, herbicides, insecticides, and rodenticides. The plan should include, but is not limited to, the following elements: (1) Proper use, storage, and</p>	<p>Prior to construction and issuance of any grading permit.</p>	<p>City of Needles</p>

<p>disposal of pesticides, in accordance with manufacturers' directions and warnings, (2) Avoidance of pesticide use where toxic runoff may pass into waters of the State, including ephemeral streams, (3) Avoidance of pesticides that cannot be used on cannabis in the state of California, as set forth by the Department of Pesticide Regulation, (4) Avoidance of anticoagulant rodenticides and rodenticides with "flavorizers", (5) Avoidance of sticky/glue traps, and (6) best management practices, such as sanitation (removing food sources such as pet food, cleaning up refuse, and securing garbage in sealed containers) and physical barriers.</p>		
<p><b>MM BIO-3: Artificial Light</b>        Light shall not be visible outside of any structure used for cannabis cultivation. Blackout curtains shall be installed where artificial light is used to prevent light escapement. Nonessential lighting shall be eliminated from cannabis sites and use of artificial light shall be avoided or limited during the hours of dawn and dusk, when many wildlife species are most active. Lighting for cultivation activities and security purposes shall be shielded, cast downward and toward developed areas, not spill over onto other properties or upward into the night sky (see the International Dark-Sky Association standards at <a href="http://darksky.org/">http://darksky.org/</a>). Only LED lighting with a correlated color temperature of 3,000 Kelvins or less shall be used. All hazardous waste shall be properly disposed of. Any lighting containing toxic compounds shall be recycled with a qualified recycler.</p>	<p>Ongoing throughout Project activities.</p>	<p>City of Needles</p>
<p><b>MM BIO-4: LSA Program</b>        Prior to construction and issuance of any grading permit, written correspondence from CDFW shall be obtained stating that notification under section 1602 of the Fish and Game Code is not required for the Project, or a Lake and Streambed Alteration Agreement shall be executed by CDFW, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.</p>	<p>Prior to construction and issuance of any grading permit.</p>	<p>City of Needles</p>