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GAVIN NEWSOM, Governor
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October 24, 2019

Shawn Monk
City Planner
City of California City
21000 Hacienda Boulevard
California City, California 93505

Subject: Cali Dank, APN 302-062-27
Initial Study/Mitigated Negative Declaration (IS/MND)
SCH No. 2019099089

Dear Mr. Monk:

This California Department of Fish and Wildlife's (CDFW) received an IS/MND from the City of California City (California City) for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.[1]

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

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statue 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.

[1] 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.

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 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 & Game Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code may be required.

Water Pollution: Pursuant to Fish and Game Code section 5650, it is unlawful to deposit in, permit to pass into, or place where it can pass into "Waters of the State" any substance or material deleterious to fish, plant life, or bird life, including non-native species. It is possible that without mitigation measures, this Project could result in pollution of Waters of the State from storm water runoff or construction-related erosion. Potential impacts to the wildlife resources that utilize watercourses in the Project site include the following: increased sediment input from road or structure runoff; toxic runoff associated with Project-related activities and implementation; and/or impairment of wildlife movement. The Regional Water Quality Control Board and United States Army Corps of Engineers also have jurisdiction regarding discharge and pollution to Waters of the State.

Unlisted Species: Species of plants and animals need not be officially listed as Endangered, Rare, or Threatened (E, R, or T) on any State or Federal list to be considered E, R, or T under CEQA. If a species can be shown to meet the criteria for E, R, or T as specified in the CEQA Guidelines (Cal. Code Regs., tit.14, Chr 3, § 15380), CDFW recommends it be fully considered in the environmental analysis for this Project.

Bird Protection: CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs and nests include sections 3503 (regarding unlawful take, possession or needless destruction of the nest or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird).

Protected Furbearing Mammals: CDFW has jurisdiction over furbearing mammals pursuant to Title 14, California Code of Regulations, Section 460. This Section states, "Fisher, marten, river otter, desert kit fox and red fox may not be taken at any time"; therefore, CDFW cannot authorize their take.

PROJECT DESCRIPTION SUMMARY

Proponent: Herb Gonzalez

Objective: The proposed Project will consist of the development of the site for cannabis growing, distribution, and manufacturing facilities. Construction will consist of twelve (12) cultivation facilities 5,000 square feet each, two (2) distribution facilities 2,000 square feet each, two (2) manufacturing facilities 2,000 square feet each, two (2) security offices 560 square feet, and twelve (12) 800 amp generators. The facility will be built in phases. Phase I will consist of two (2) cultivation facilities, one (1) distribution facility, one (1) manufacturing facility, one (1) security office, and two (2) 800 amp generators. Phase II will consist of ten (10) cultivation facilities, one (1) distribution facility, one (1) manufacturing facility, one (1) security facility, and ten (10) amp generators.

All construction disturbances will occur within the project footprint except for utility hookups immediately east of Jamison Street. An 8-foot chain link fence will enclose the entire facility. Water will be obtained by connecting to an existing 12-inch line. Electric and sewer will be provided from existing lines. A reverse osmosis system will be in operation for commercial wastewater.

Location: The Project will take place west of the intersection of Jamison Street and Lindbergh Boulevard in California City, California; Assessor's Parcel Number (APN) 302-062-27; Township 32 South, Range 37 East, on a portion of Section 17 of United States Geological Survey (USGS) 7.5-Minute Quadrangle Map Mojave NE M.D.B.M.

Timeframe: Unspecified.

COMMENTS AND RECOMMENDATIONS

CDFW previously provided comments for this Project in a letter dated March 28, 2019, "Proposed Construction and Cannabis Manufacturing, Distribution, and Cultivation on APN 302-062-27-00-2 located in California City, Kern County" (Attachment A).

CDFW offers the following comments and recommendations to assist California City in adequately identifying and/or mitigated the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

Currently, the MND indicates that Project impacts would have no impact or impacts would be less than significant with the implementation of mitigation measures described in the MND. On page 15 in Section IV – Biological Resources subsection a), the MND states "...the project proponent has elected to develop an Incidental Take Permit (ITP) and mitigate for sensitive species habitat that may have developed on the project site in some indeterminate future if grazing was stopped, rainfall were sufficient, and development had not taken place". CDFW understands this measure was proposed by the project proponent to mitigate for impacts to listed species that may occur onsite. However, with the information provided, CDFW is unable to concur that there will be "No Impact" to special status species including the State and federally threatened desert

tortoise (*Gopherus agassizii*) and the State threatened Mohave ground squirrel (*Xerospermophilus mohavensis*). The IS/MND does not state for which species the Incidental Take Permit (ITP) will be obtained. Additionally, no timeframe is given for obtaining the ITP, and it is unclear if pursuing an ITP is conditional on future Project site conditions. Mitigation measures must be fully enforceable through permits conditions, agreements, or other legally binding instruments (CEQA Guidelines § 15126.4, subd. (a)(2)). CDFW recommends changing the measure to include enforceable language regarding when the ITP will be obtained and species to be covered.

For projects within the vicinity of California City, CDFW recommends prior to initiating any vegetation- or ground-disturbing Project activities, that protocol level surveys be conducted for special status species. Protocol level surveys differ from the surveys reported in the Biological Resource Assessment in their timing, methodology, and surveyor qualifications. Specifically, protocol level surveys are designed for maximum detectability of species, must be conducted by qualified biologists during the appropriate survey period(s), have multiple survey days, and must be performed precisely as described in the methodology prior to Project implementation to determine if these species are present and if they could be impacted by the proposed Project. In addition, protocol level survey results are to be submitted to CDFW for review and, depending on the survey, are typically valid for one year from when the surveys are completed. Absent results from protocol level surveys conducted within the last calendar year, CDFW cannot conclude the federally and State threatened desert tortoise (*Gopherus agassizii*); State threatened Mohave ground squirrel (*Xerospermophilus mohavensis*) are absent from your site. **Alternatively, the applicant can forgo protocol-level surveys, assume presence, and acquire an ITP prior to initiating Project implementation as proposed in Section IV – Biological Resources subsection (a).**

Also, the MND did not address impacts to birds, non-listed plants and animals, and the protected furbearing mammal desert kit fox (*Vulpes macrotis* ssp. *macrotis*). Therefore, additional significant impacts may result from Project activities that were not analyzed nor mitigated for.

I. Environmental Setting and Related Impact

Would the Project 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 CDFW or the United States Fish and Wildlife Service (USFWS)?

COMMENT 1: Desert Tortoise

Issue: The MND indicates that impacts to sensitive species, including desert tortoise, are not expected due to lack of sign and/or unsuitable habitat. The Biological Resource Assessment contradicts the MND by proposing multiple

Recommended Protection Measures to minimize Project impacts to desert tortoise. The Biological Resource Assessment also states that the "project is not expected to result in a significant adverse impact to biological resources if the... protection measures are implemented". However, measures from the Biological Resource Assessment were not integrated into the MND as mitigation measures.

The Project site is within the range of desert tortoise and based on aerial imagery the site contains a desert wash and desert scrub habitat which is suitable habitat for desert tortoise (CDFW 2019). Desert tortoise are most common in desert scrub, desert wash, and Joshua tree habitats (CDFW 2018a). The level of survey effort detailed in the Biological Resource Assessment is indicative of a reconnaissance level survey and did not include methodology suggestive of protocol level surveys for desert tortoise. Because of the Project location, habitat onsite, and lack of protocol-level surveys, desert tortoise may have the potential to be onsite and impacted by Project activities.

Specific impact: Potentially significant impacts that may result from Project-related activities include loss of foraging habitat, habitat degradation and fragmentation, burrow destruction, and direct mortality.

Evidence impact is potentially significant: Human impacts to desert tortoise include habitat conversion to agriculture and urban lands, degradation of habitat by off-highway vehicles (OHV), intentional killing of tortoises, and killing by cars and OHV (Doak et al. 1994). Habitat conversion to agriculture results in the loss of habitat and may lead to an increase in the predator raven population, drawdown of water table, introduction of pesticides and other toxic chemicals, and the potential introduction of invasive plants (Boarman 2002). Project activities may result in the loss of potential desert tortoise habitat through conversion, may increase habitat fragmentation, and expand urbanization into the area.

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential Project-related impacts to desert tortoise, CDFW recommends conducting the following evaluation of the Project site and including the following measures in a CEQA document.

Desert Tortoise Surveys

CDFW recommends that a qualified biologist conduct surveys during the appropriate survey period following the protocol contained in "Preparing for any action that may occur within the range of the Mojave desert tortoise (*Gopherus agassizii*)" (USFWS 2010) to determine the potential for desert tortoise to use the Project site and surrounding area. Survey results are advised to be submitted to both CDFW and the

USFWS. Please note desert tortoise surveys are valid for one year and should be conducted within a year of the start of ground-disturbing activities.

Desert Tortoise Take Authorization

If desert tortoise are found within the Project site during preconstruction surveys or construction activities, consultation with CDFW is advised to discuss how to implement the Project and avoid take; or if avoidance is not feasible, to acquire an ITP prior to any ground-disturbing activities, pursuant Fish and Game Code section 2081(b). Alternatively, the applicant can assume presence and acquire an ITP prior to initiating Project implementation as proposed in Section IV – Biological Resources subsection (a).

COMMENT 2: Mohave Ground Squirrel (MGS)

Issue: The Biological Resource Assessment indicates the lack of winterfat and spiny hopsage forage, sheep grazing, distance from core MGS populations, and low rainfall over the last seven years are factors indicating that MGS are not expected to be present onsite.

Based on a study conducted by Leitner and Leitner, winterfat and spiny hopsage appear to be important forage for MGS in the Coso Range (Leitner and Leitner 2017). However, most of the MGS range is south and southeast of the Coso Range (including the Project site) where the elevation and average precipitation is lower and creosote bush scrub is dominant and spiny hopsage and winterfat are relatively uncommon (Leitner and Leitner 2017). As a result, researchers of the study urged caution when generalizing about MGS diet elsewhere in its range (Leitner and Leitner 2017).

Sheep sign was noted onsite. Clarification is not provided on what the sign was, age of the sign, or how often sheep are known to graze on the site. Unknown rodent, black-tailed jackrabbit, and desert cottontail sign were also noted in the Biological Resource Assessment, therefore other species appear to be utilizing the site despite the disturbed condition.

Although the Project site is not adjacent to a core population, there are multiple MGS occurrences within 5 miles of the Project site (CDFW 2019). The California Diversity Database (CNDDB) is limited to occurrences that have been reported and locations where surveyors have access and does not include the entirety of where a species may occur. No sign of MGS was noted onsite during the survey conducted on August 27, 2018. MGS are known to spend seven months of the year (August through February) in underground burrows in estivation (Gustafson 1993). The survey was conducted outside of the prime active season for MGS adults and it is unlikely active MGS sign would have been found.

Rainfall based on the Armstrong Flight Research citation provided appear to be higher than indicated in the Biological Resource Assessment and contain multiple years above the 2.6-inch threshold provided for low reproductivity. Accessed on October 14, 2019, yearly rainfall totals are 2012: 1.48", 2013: 1.93", 2014: 2.49", 2015: 2.64", 2016: 2.87", 2017: 2.69", and 2018: 2.12" (Armstrong Flight Research 2019).

Potential habitat for MGS is land supporting desert shrub vegetation within or adjacent to the geographic range of the species (CDFG 2003). Based on aerial imagery and the photographs attached in the MND, the Project site appears to contain desert shrub habitat and is within the range of MGS (Leitner 2008).

The level of survey effort detailed in the Biological Resource Assessment is indicative of a reconnaissance level survey and did not include methodology suggestive of protocol level surveys for desert tortoise. Because of the Project location, habitat onsite, and lack of protocol-level surveys, MGS may have the potential to be onsite and impacted by Project activities.

Specific impact: Without appropriate avoidance and minimization measures for MGS, potential significant impacts associated with the Project's construction include burrow collapse, inadvertent entrapment, reduced reproductive success, and mortality of individuals.

Evidence impact is potentially significant: Major threats to the MGS are drought, habitat destruction, habitat fragmentation, and habitat degradation (Gustafson 1993). MGS is restricted to a small geographic range and the greatest habitat loss has occurred near desert towns including California City (Gustafson 1993). Natural cycling is anticipated in MGS populations, therefore, the true indicators of the status of the species are the quantity, pattern of distribution, and quality of habitat (Gustafson 1993). Project activities may result in the loss of potential MGS habitat through conversion, may increase habitat fragmentation, and expand urbanization into the area.

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential Project-related impacts to MGS, CDFW recommends conducting the following evaluation of the Project site and including the following measures in a CEQA document.

Mohave Ground Squirrel Surveys

CDFW recommends that a qualified permitted biologist conduct protocol surveys for MGS following the methods described in the "Mohave Ground Squirrel Survey Guidelines" (CDFG 2003) during the appropriate survey season prior to Project

implementation, including any vegetation- or ground-disturbing activities. Please note that guidelines indicate that a visual survey and up to three trapping sessions may need to be conducted (CDFG 2003). Results of the MGS surveys are advised to be submitted to the CDFW. Please note MGS surveys are valid for one year and should be conducted within a year of the start of ground-disturbing activities.

Mohave Ground Squirrel Avoidance

If protocol surveys will not be conducted or if surveys detect MGS, in order to implement full avoidance for MGS, CDFW recommends a 50-foot no-disturbance buffer be employed around all burrows that could be used by MGS.

Mohave Ground Squirrel Take Authorization

If MGS are found within the Project site during protocol surveys, preconstruction surveys, or construction activities, consultation with CDFW is recommended to discuss how to implement the Project and avoid take; or if avoidance is not feasible, to acquire an ITP prior to any ground-disturbing activities, pursuant Fish and Game Code section 2081(b). Alternatively, the applicant can assume presence and acquire an ITP prior to initiating Project implementation as proposed in Section IV – Biological Resources subsection (a).

COMMENT 3: Burrowing Owl (BUOW)

Issue: The Project site is within the range of BUOW and appears to contain suitable habitat based on aerial imagery and photographs included in the MND. Additionally, the Biological Resource Assessment states burrowing owl sign was observed approximately 2,860 feet from the Project site. The level of survey effort detailed in the Biological Resource Assessment is indicative of a reconnaissance level survey and did not include methodology suggestive of protocol level surveys for BUOW. Because of the location, habitat, and the absence of a negative finding through protocol-level surveys, BOUW have the potential occur onsite and may be impacted by Project activities.

Specific impact: Without appropriate avoidance and minimization measures for BUOW, potential significant impacts include nest abandonment, which may result in reduced nesting success such as reduced health or vigor of eggs or young, in addition to direct mortality in violation of the Migratory Bird Treaty Act and Fish and Game Code.

Evidence impact is potentially significant: The Project site is within the range of BUOW and suitable burrow habitat has been noted to be present on or in the vicinity of the Project site. BUOW rely on burrow habitat year round for their survival and reproduction. Threats to BUOW include habitat loss and degradation from

urbanization of farmland, changes in agriculture practices, and loss of open lands (Gervais et al. 2008). In addition, activities including grading, disking, cultivation, earth moving, burrow blockage, heavy equipment compacting of burrows, and disturbance, which may result in harassment of owls at occupied burrows, have the potential to result in take of BUOW (CDFG 2012). Additionally, activities that may impact BUOW populations include eradication of host burrowers, changes in vegetation management, and use of pesticides and rodenticides (CDFG 2012). Therefore, the Project has the potential to significantly impact local BUOW populations. In addition, and as described in CDFW's *"Staff Report on Burrowing Owl Mitigation"* (CDFG 2012), excluding BUOW is considered a potentially significant impact under CEQA.

Recommended Potentially Feasible Mitigation Measure(s

To evaluate potential Project-related impacts to burrowing owl, CDFW recommends conducting the following evaluation of the Project site and including the following measures in a CEQA document.

BUOW Surveys

CDFW recommends assessing presence/absence of BUOW by having a qualified biologist conduct surveys following the California Burrowing Owl Consortium's (CBOC) *"Burrowing Owl Survey Protocol and Mitigation Guidelines"* (CBOC 1993) and CDFW's *Staff Report on Burrowing Owl Mitigation"* (CDFG 2012). CDFW advises that surveys include a 500-foot buffer around the Project site. Please note the guidelines suggest three or more surveys be conducted during the peak breeding season (April 15 to July 15) to determine presence (CDFG 2012).

BUOW Avoidance

CDFW recommends implementing no-disturbance buffers, as outlined in the *"Staff Report on Burrowing Owl Mitigation"* (CDFG 2012), prior to and during any ground-disturbing activities associated with Project implementation. Specifically, CDFW's Staff Report recommends that impacts to occupied burrows be avoided in accordance with the following table unless a qualified biologist approved by CDFW verifies through non-invasive methods that either: 1) the birds have not begun egg laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival.

Location	Time of Year	Level of Disturbance		
		Low	Med	High
Nesting sites	April 1-Aug 15	200 m*	500 m	500 m
Nesting sites	Aug 16-Oct 15	200 m	200 m	500 m
Nesting sites	Oct 16-Mar 31	50 m	100 m	500 m

BUOW Passive Relocation and Mitigation

If BUOW are found to occupy the Project site and avoidance is not possible, it is important to note that according to the Staff Report (CDFG 2012), exclusion is not a take avoidance, minimization, or mitigation method and is considered a potentially significant impact under CEQA. However, if necessary, CDFW recommends that burrow exclusion be conducted by qualified biologists and only during the non-breeding season, before breeding behavior is exhibited and after the burrow is confirmed empty through non-invasive methods, such as surveillance. CDFW recommends replacement of occupied burrows with artificial burrows at a ratio of 1 burrow collapsed to 1 artificial burrow constructed (1:1) as mitigation for the potentially significant impact of evicting BUOW. BUOW may attempt to colonize or re-colonize an area that will be impacted; thus, CDFW recommends ongoing surveillance of the Project site during Project activities, at a rate that is sufficient to detect BUOW if they return.

COMMENT 4: American Badger

Issue: The Project site is within the range of American badger and contains suitable habitat features to support this species. American badger can occupy a diversity of habitats and requires sufficient food, friable soils, and open, uncultivated ground (Williams 1986).

Specific impact: Without appropriate avoidance and minimization measures for American badger, potential significant impacts include den abandonment, which may result in reduced health or vigor of young, in addition to direct mortality.

Evidence impact is potentially significant: The American badger population in California has been declining due to agriculture and urban development (Williams 1986). The Project site is within the range of American badger and suitable habitat may be present on or in the vicinity of the Project site. As a result, Project activities have the potential to significantly impact local populations of American badger.

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential Project-related impacts to American badger, CDFW recommends conducting the following evaluation of the Project site and including the following measures in a CEQA document.

American Badger Surveys

To evaluate potential Project-related impacts to the American badger, CDFW recommends that a qualified biologist conduct focused surveys for American badger and their requisite habitat features, in advance of Project implementation.

American Badger Avoidance

Avoidance whenever possible is encouraged via delineation and observing a 50-foot no-disturbance buffer around dens.

COMMENT 5: Special-Status Plants

Issue: Special-status plant species have the potential to occur on the Project site, including the California rare-plant ranked alkali mariposa-lily (*Calochortus striatus*), Barstow woolly sunflower (*Eriophyllum mohavense*), and white pygmy-poppy (*Canbya candida*) (CDFW 2019). The Biological Resource Assessment survey was conducted on August 27, 2018 which is outside of the blooming period for all three of the above listed species making the plants more difficult to identify. Based on the Project site location and the absence of protocol-level surveys, the Project has the potential to impact these plant species.

Specific impact: Potentially significant impacts to special-status plant species associated with proposed Project activities include inability to survive and reproduce and direct mortality.

Evidence impact is potentially significant: The plant species listed above occur in Mojave Desert scrub (CNPS 2019a-c). As a result, these species have the potential to occur at the Project site. Habitat loss and degradation resulting from urbanization, grazing, trampling, and hydrological alterations and water diversions that result in the lowering of the water table (CNPS 2019a-c).

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential Project-related impacts to special-status plant species, CDFW recommends conducting the following evaluation of the Project site and including the following measures in a CEQA document.

Special-Status Plant Surveys

CDFW recommends that the Project site be surveyed for special-status plants by a qualified botanist following the *"Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities"* (CDFW 2018b). This protocol, which is intended to maximize detectability, includes identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period. In the absence of protocol-level surveys being performed, additional surveys may be necessary.

Special-Status Plant Avoidance

Further, CDFW recommends special-status plant species be avoided whenever possible by delineation and observation of a no-disturbance buffer of at least 50 feet from the outer edge of the plant population(s) or specific habitat type(s) required by special-status plant species. If buffers cannot be maintained, then consultation with CDFW is warranted to determine appropriate minimization and mitigation measures for impacts to special-status plant species.

Special-Status Plant Consultation

If a State listed plant species is identified during botanical surveys, consultation with CDFW is advised to determine permitting needs.

II. Editorial Comments and/or Suggestions

Notification of Lake and Streambed Alteration

Based on aerial imagery and the Biological Resource Assessment site description, an ephemeral stream is present onsite. CDFW has regulatory authority with regard to activities occurring in streams and/or lakes that could adversely affect any fish or wildlife resource, pursuant to Fish and Game Code sections 1600 et seq. Section 1602(a) of the Fish and Game Code requires an entity to notify CDFW before engaging in activities that would substantially change or use any material from the bed, channel, or bank of any stream or substantially divert or obstruct the natural flow of a stream. CDFW agrees with the mitigation measure proposed for Hydrology and Water Quality and recommends coordination with CDFW staff prior to ground-breaking activities that may impact the stream or submit a Lake or Streambed Alteration Notification to determine if the activities proposed within the stream are subject to CDFW's jurisdiction. Please note that CDFW is required to comply with CEQA in the issuance of a Lake or Streambed Alteration Agreement.

Additionally, Business and Professions Code 26060.1 (b)(3) includes a requirement that California Department of Food and Agriculture (CDFA) cannabis cultivation licensees demonstrate compliance with Fish and Game Code section 1602 through written verification from CDFW. CDFW acknowledges that notification EPIMS-06117 was submitted for Phase I and recommends submission of a second Lake and Streambed Alteration Notification for Phase II prior to initiation of any cultivation activities that may impact the stream onsite.

Desert Kit Fox: The proposed Project site is within desert kit fox range and, as stated in the Biological Resource Assessment, two natal desert kit fox dens were previously observed approximately 2,860 feet northwest of the Project site. The desert kit fox is protected under Title 14, California Code of Regulations, Section 460, which prohibits take of the species at any time. CDFW agrees with the recommendation in the

Biological Resource Assessment that that the USFWS "Standardized recommendations for protection of the San Joaquin kit fox prior to or during ground disturbance" (2011) be followed to minimize impacts to desert kit fox. Please note the guidelines indicate pre-activity surveys be conducted by a qualified biologist no less than 14 days and no more than 30 days prior to the beginning of ground disturbance and/or construction activities (USFWS 2011). If any active or potential dens are found on the Project site during surveys, consultation with CDFW would be warranted for guidance on take avoidance measures for the desert kit fox.

Nesting birds: CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs and nests include sections 3503 (regarding unlawful take, possession or needless destruction of the nest or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird).

Habitat within the Project site likely provides nesting habitat for birds. For this reason, CDFW encourages Project implementation occur during the non-nesting bird season. However, if ground-disturbing activities must occur during the breeding season (February through mid-September), the Project applicant is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes as referenced above.

To evaluate Project-related impacts on nesting birds, CDFW recommends that a qualified wildlife biologist conduct pre-activity surveys for active nests no more than 10 days prior to the start of ground disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the work site to identify nests and determine their status. A sufficient area means any area potentially affected by a project. In addition to direct impacts (i.e. nest destruction), noise, vibration, odors, and movement of workers or equipment could also affect nests. Prior to initiation of construction activities, CDFW recommends a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once construction begins, CDFW recommends a qualified biologist continuously monitor nests to detect behavioral changes resulting from the project. If behavioral changes occur, CDFW recommends the work causing that change cease and CDFW consulted for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified wildlife biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival. Variance from these no-disturbance buffers is possible when there is compelling biological or

ecological reason to do so, such as when the construction area would be concealed from a nest site by topography. CDFW recommends that a qualified wildlife biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

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 CNDDB. The CNNDB field survey form can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/Submitting-Data#44524420-pdf-field-survey-form. The completed form can be mailed electronically to CNDDB at the following email address: CNDDB@wildlife.ca.gov. The types of information reported to CNDDB can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/Plants-and-Animals.

FILING FEES

The Project as proposed has the potential to impact biological resources and an assessment of filing fees may be 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 in order for the underlying project approval to be operative, vested, and final (Cal. Code Regs, tit. 14, § 753.5; Fish & Game Code, § 711.4; Pub. Resources Code, § 21089).

CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist the City of California City in identifying and mitigating the Project's impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Benessa Galvan, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 243-8152, or by electronic mail at Benessa.Galvan@wildlife.ca.gov.

Sincerely,

for Julie A. Vance
Regional Manager

Attachment A: Letter dated March 28, 2019

ec: Ray Bransfield
United States Fish and Wildlife Service
ray_bransfield@fws.gov

Literature Cited

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