
San Francisco Bay Regional Water Quality Control Board

January 20, 2020

Sent via electronic mail: No hardcopy to follow

Governor's Office of Planning & Research

JAN 21 2020

STATE CLEARINGHOUSE

Alameda County Planning Department
224 West Winton Ave., Suite 111
Hayward, CA 94544

ATTN: Rodrigo Orduña (rodrigo.orduna@acgov.org)

Subject: San Francisco Bay Regional Water Quality Control Board Comments on the *Initial Study and Mitigated Negative Declaration for Oasis Fund Livermore Grow Facility Project, Alameda County, California*
SCH No. 2019129080

Dear Mr. Orduña:

San Francisco Bay Regional Water Quality Control Board (Water Board) staff appreciates the opportunity to review the *Initial Study and Mitigated Negative Declaration for the Oasis Fund Livermore Grow Facility Project, Alameda County, California* (ISMND). The ISMND evaluates the potential environmental impacts associated with constructing and operating the Oasis Fund Grow Facility at 7033 Morgan Territory Road, Livermore, California (Project). The Project purpose is to establish an indoor cannabis cultivation facility. The Project includes development of a 32,000-square foot (sf) greenhouse building, as well as a 5,040-sf processing building, and 26 parking stalls. The Project will be developed within a 98.11-acre property. A private residence currently exists on the property. With the exception of rural, single-family residences to the north, west, and east, the Project site is surrounded by predominately undeveloped land.

Summary

As is discussed below, the ISMND does not accurately describe the extent of Water Board jurisdiction or provide sufficient information to document the Project's compliance with the requirements of the State Water Resources Control Board's Cannabis Policy and Cannabis General Order.

Comment 1.

The information presented in the ISMND is currently insufficient to demonstrate full compliance with the requirements of the Cannabis General Order.

The Project proponent has submitted a Notice of Intent (NOI) to the Water Board for coverage under the State Water Resources Control Board's Cannabis Policy and Cannabis General Order (Order WQ 2019-0001-DWQ), and has been issued a Notice of Applicability (NOA) for enrollment under the Cannabis General Order. Based on the information presented in the ISMND, it is not clear if the Project is in full compliance with the requirements of the Cannabis General Order with respect to the requirements for greenhouse construction and the treatment of cannabis-related wastewaters (See Comment 3, below).

The Cannabis Policy and Cannabis General Order have strict definitions and requirements for facilities that are regulated as indoor growing facilities. A cultivation site is classified as an indoor facility if the greenhouse is a permanent structure with a permanent roof and an impervious floor (e.g., concrete, asphalt, etc.). Please revise the ISMND to provide sufficient detail with respect to greenhouse construction to confirm that the greenhouse will meet the requirements of the Cannabis Policy and Cannabis General Order for an indoor grow facility.

Comment 2.

Section IV, Biological Resources of the ISMND is based on a Biological Evaluation that does not accurately describe Water Board and California Department of Fish and Wildlife (CDFW) jurisdiction.

The *Discussion* subheading in Section IV states that, "The following discussion is based on a Biological Evaluation performed by the ecological consulting firm Live Oak Associates, Inc. for the proposed project (See Appendix B)." Appendix B consists of *Oasis Grow Facility Property, Biological Evaluation, Alameda County, California* (Live Oak Associates, Inc., October 24, 2018). Section 2.4 of this Evaluation includes the following text:

The limit of USACE¹ jurisdiction, as well as that of the RWQCB, over Cayetano Creek determined to be jurisdictional tributary waters is the ordinary high water mark. This creek would also be subject to the jurisdiction of the CDFW which regulates the bed-and-bank of streams, creeks or channels."

The Water Board has regulatory authority over wetlands and waterways under both the federal Clean Water Act (CWA) and the State of California's Porter-Cologne Water Quality Control Act (California Water Code, Division 7). Under the CWA, the Water Board has regulatory authority over actions in waters of the United States, through the issuance of water quality certifications (certifications) under Section 401 of the CWA, which are issued in combination with permits issued by the U.S. Army Corps of Engineers (USACE), under Section 404 of the CWA. When the Water Board issues Section 401 certifications, it simultaneously issues general Waste Discharge

¹ USACE = U.S. Army Corps of Engineers.

Requirements (WDRs) for the project, under the Porter-Cologne Water Quality Control Act. Activities in areas that are outside of the jurisdiction of the USACE (e.g., isolated wetlands, vernal pools, or stream banks above the ordinary high water mark) are regulated by the Water Board, under the authority of the Porter-Cologne Water Quality Control Act. Activities that lie outside of USACE jurisdiction may require the issuance of either individual or general WDRs from the Water Board. In addition, CDFW jurisdiction extends beyond the top of bank to the outer drip line of riparian vegetation present along the top of bank. Please revise the Biological Evaluation to correctly state the extent of Water Board and CDFW jurisdiction.

Under the authority of the Porter-Cologne Water Quality Act, the Water Board has developed, and implements, the *San Francisco Bay Basin Water Quality Control Plan* (Basin Plan), which defines the Beneficial Uses of waters of the State within the San Francisco Bay Region. The Project site includes a reach of Cayetano Creek, which has been assigned the following existing and potential Beneficial Uses in the Basin Plan: the preservation of rare and endangered species, warm freshwater habitat, wildlife habitat, contact water recreation, and non-contact water recreation. Any permit action taken by the Water Board must be consistent with maintaining Beneficial Uses of waters of the State. Therefore, any Project activities that may impact aquatic habitat for foothill yellow-legged frog, California red-legged frog, or western pond turtle may be subject to Water Board jurisdiction. Please revise the Biological Resources discussion in the ISMND to acknowledge that the Water Board has regulatory jurisdiction over impacts to rare and endangered species in Cayetano Creek.

Comment 3.

Section XIX, Utilities and Service Systems, of the ISMND does not provide sufficient information to verify compliance with the requirements of the Cannabis General Order for cannabis-related wastewater.

Text in Section XIX states:

Wastewater treatment for the proposed project would be provided by construction of an on-site septic tank and leach field. The septic system would serve the processing building for use by employees only. According to Chapter 15.18 of the County Code of Ordinances, if the amount of wastewater received by an OWTS exceeds 10,000 gpd, the method of treatment must be submitted for review and approval by the San Francisco RWQCB. Wastewater produced by the project would not exceed 700 gpd, and thus, would not require review by the San Francisco RWQCB.

The proposed project includes construction of a leach field, which would remove contaminants and impurities from the liquid that emerges after anaerobic digestion in a septic tank. The septic system would be subject to the Alameda County Septic System Ordinance per the ACEHD, and would require review by the department prior to approval of the permit. Wastewater would be directed to a leach field, which would filter and purify water. Any additional sludge would be kept in a 5,000-gallon sludge tank which would be hauled off-site every 10 days.

The ISMND discusses generation of domestic wastewater, but does not provide a discussion of the volumes of cannabis-related wastewater that may be generated. Cannabis-related wastewater includes, but is not limited to, tailwater, reverse osmosis reject water, and cleaning wastewater. Per the requirements of the Cannabis Policy and Cannabis General Order, onsite septic systems can only be used for domestic wastewater and cannot be used to treat cannabis-related wastewater. Any cannabis-related wastewater must be hauled off site at this time. Please revise the ISMND to describe management of cannabis-related wastewater in conformance with the requirements of the Cannabis General Order.

Conclusion

The ISMND should be revised to correctly describe Water Board jurisdiction at the Project site and to describe the measures to be used to maintain conformance with the requirements of the Cannabis General Order for indoor grow facilities and for the management of cannabis-related wastewater.

If you have any questions, please contact me at (510) 622-5680, or via e-mail at brian.wines@waterboards.ca.gov.

Sincerely,

Brian Wines
Water Resources Control Engineer
South and East Bay Watershed Section

cc: State Clearinghouse (state.clearinghouse@opr.ca.gov)
CDFW, Marcia Grefsrud (marcia.grefsrud@wildlife.ca.gov)