



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



May 20, 2020

Governor's Office of Planning & Research

**MAY 22 2020**

**STATE CLEARINGHOUSE**

Eric Hughes  
County of San Luis Obispo  
Department of Planning and Building  
976 Osos Street, Room 200  
San Luis Obispo, California 93408-2040  
[ehughes@co.slo.ca.us](mailto:ehughes@co.slo.ca.us)

**Subject: Finley Minor Use Permit (DRC2018-00016)  
Mitigated Negative Declaration (MND)  
Outdoor Cannabis Cultivation (Project)**

Dear Mr. Hughes:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from San Luis Obispo County for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

Thank you for the opportunity to provide recommendations regarding the activities proposed at the Project area 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 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.

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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.

Eric Hughes  
Conditional Use Permit (DRC2018-00016)  
May 20, 2020  
Page 2

CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). For example, 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.), related authorized as provided by the Fish and Game Code will be required.

In this role, CDFW is responsible for providing, as available, biological expertise during public agency environmental review efforts (i.e., CEQA), focusing specifically on project activities that have the potential to adversely affect fish and wildlife resources. CDFW provides recommendations to identify potential impacts and possible measures to avoid or reduce those impacts.

**Land Conversion:** Project activities that result in land conversion may also result in habitat loss for special status species, migration/movement corridor limitations, or fragmentation of sensitive habitat. Loss of habitat to development and agriculture are contributing factors to the decline of many special status species and game species. CDFW recommends CEQA documents generated for cannabis activities address cumulative impacts of land conversion.

**Cumulative Impacts:** General impacts from Projects include habitat fragmentation, degradation, habitat loss, migration/movement corridor limitations, and potential loss of individuals to the population. Multiple cannabis-related Projects have been proposed throughout San Luis Obispo County with similar impacts to biological resources. CDFW recommends the lead agency consider all approved and future projects when determining impact significance to biological resources.

**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).

**Fully Protected Species:** CDFW has jurisdiction over fully protected species of birds, mammals, amphibians, reptiles, and fish pursuant to Fish and Game Code sections 3511, 4700, 5050, and 5515. Take of any fully protected species is prohibited and CDFW cannot authorize their incidental take.

**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, Chapter 3,

Eric Hughes  
Conditional Use Permit (DRC2018-00016)  
May 20, 2020  
Page 3

§ 15380), CDFW recommends it be fully considered in the environmental analysis for this Project.

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** Brett Finley, Templeton Patient Cooperative

**Objective:** The project applicant is seeking a minor use permit for a phased establishment of 3 acres of outdoor cannabis cultivation, 21,600 square feet of indoor mixed-light cannabis cultivation, and ancillary cannabis processing activities on a 97-acre parcel. The project would result in approximately 4.16 acres of site disturbance including 415 cubic yards of cut and 415 cubic yards of fill to be balanced on-site.

**Location:** The Project will take place at 630 El Pomar Road, Templeton, California; Assessor's Parcel Number (APN) 033-231-026.

**Timeframe:** Unspecified.

## **RECOMMENDATIONS**

CDFW offers the following recommendations to assist San Luis Obispo County in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document.

### **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?**

Review of the California Natural Diversity Database (CNDDB) reveals records for several special-status species within the vicinity of the Project area including, but not limited to, State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*); State Species of Special Concern American badger (*Taxidea taxus*); and the State candidate for listing Crotch bumble bee (*Bombus crotchii*) (CDFW, 2019).

Review of aerial imagery indicates the Project area consists of existing structures, a pond, annual grassland, solar panels, and oaks. The Project area contains habitat with the potential to support special-status species and has the potential to impact biological resources.

Eric Hughes  
Conditional Use Permit (DRC2018-00016)  
May 20, 2020  
Page 4

### **COMMENT 1: Crotch Bumble Bee (CBB)**

**Issue:** On June 28, 2019, the Fish and Game Commission published findings of its decision to advance CBB to candidacy as endangered. Pursuant to Fish and Game Code section 2074.6, CDFW has initiated a status review report to inform the Commission's decision on whether listing of CBB, pursuant to CESA, is warranted. During the candidacy period, consistent with CEQA Guidelines, section 15380, the status of the CBB as an endangered candidate species under CESA (Fish & G. Code, § 2050 et seq.) qualifies it as an endangered, rare, or threatened species under CEQA. It is unlawful to import into California, export out of California or take, possess, purchase, or sell within California, CBB and any part or product thereof, or attempt any of those acts, except as authorized pursuant to CESA. Under Fish and Game Code section 86, take means to hunt, pursue, catch, capture, or kill, or to attempt to hunt, pursue, catch, capture, or kill. Consequently, take of CBB during the status review period is prohibited unless authorization pursuant to CESA is obtained.

CBB have been documented to occur within the vicinity of the Project area (CDFW, 2019). Suitable CBB habitat includes areas of grasslands and upland scrub that contain requisite habitat elements, such as small mammal burrows. CBB primarily nest in late February through late October underground in abandoned small mammal burrows, but may also nest under perennial bunch grasses or thatched annual grasses, under brush piles, in old bird nests, and in dead trees or hollow logs (Williams, Thorp, Richardson, & Colla, 2014; Hatfield, Jepsen, Thorp, Richardson, & Colla, 2015). Overwintering sites utilized by CBB mated queens include soft, disturbed soil (Goulson, 2010), or under leaf litter or other debris (Williams et al., 2014). Therefore, ground disturbance and vegetation removal associated with Project implementation has the potential to significantly impact local CBB populations.

**Specific impact:** Without appropriate avoidance and minimization measures for CBB, potentially significant impacts associated with ground- and vegetation-disturbing activities associated with construction of the Project include loss of foraging plants, changes in foraging behavior, burrow collapse, nest abandonment, reduced nest success, reduced health and vigor of eggs, young and/or queens, in addition to direct mortality in violation of Fish and Game Code.

**Evidence impact is potentially significant:** CBB was once common throughout most of the central and southern California, however, it now appears to be absent from most of it, especially in the central portion of its historic range within California's Central Valley (Hatfield et al., 2014). Analyses by the Xerces Society et al. (2018) suggest there have been sharp declines in relative abundance by 98% and persistence by 80% over the last ten years.

Eric Hughes  
Conditional Use Permit (DRC2018-00016)  
May 20, 2020  
Page 5

### **Recommended Potentially Feasible Mitigation Measure(s)**

To evaluate potential impacts to CBB associated with the Project, CDFW recommends including the following mitigation measure in the MND.

#### **Recommended Mitigation Measure 1: Habitat Assessment**

CDFW recommends that a qualified biologist conduct a habitat assessment in advance of Project implementation to determine if the Project area or its immediate vicinity contains suitable habitat for the species mentioned above.

#### **Recommended Mitigation Measure 2: CBB Take Avoidance**

CDFW recommends that all small mammal burrows and thatched/bunch grasses be avoided by a minimum of 50 feet to avoid take and potentially significant impacts. If the Project area includes brush piles, unmowed/overgrown areas, dead trees, hollow logs, those areas should be avoided by a minimum of 50 feet to avoid take and potentially significant impacts. If ground-disturbing activities will occur during the overwintering period (October through February), consultation with CDFW is warranted to discuss how to implement Project activities and avoid take. Any detection of CBB prior to or during Project implementation warrants consultation with CDFW to discuss how to avoid take.

### **COMMENT 2: State Species of Special Concern American badger**

**Issue:** American badger can occupy a diversity of habitats and requires sufficient food, friable soils, and open, uncultivated ground (Williams, 1986). The subject parcel is within the range of the American badger and has the potential to support habitat elements required by American badger. Therefore, the subject parcel has the potential for the species to be present.

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

**Evidence impact is potentially significant:** Habitat loss is a primary threat to American badger (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.

Eric Hughes  
Conditional Use Permit (DRC2018-00016)  
May 20, 2020  
Page 6

### **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 mitigation measures in the MND.

#### **Mitigation Measure 3: Habitat Assessment**

CDFW recommends that a qualified biologist conduct a habitat assessment in advance of Project implementation to determine if the Project site or its immediate vicinity contains suitable habitat for the species mentioned above.

#### **Mitigation Measure 4: American Badger Surveys**

If suitable habitat is present, CDFW recommends that a qualified biologist conduct focused surveys for American badger and their requisite habitat features to evaluate potential impacts resulting from ground-disturbance.

#### **Mitigation Measure 5: American Badger Avoidance**

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

## **II. Editorial Comments and/or Suggestions**

Mitigation Measure BIO-8, Kit Fox Entrapment Avoidance. During the site-disturbance and/or construction phase for both Phase 1 and 2 of the project development. Page 33.

As drafted, the measure states to prevent entrapment of San Joaquin Kit Fox (SJKF), all excavations, steep-walled holes and trenches in excess of two feet in depth shall be covered at the close of each working day by plywood or similar materials, or provided with one or more escape ramps constructed of earth fill or wooden planks. Trenches shall also be inspected for entrapped kit fox each morning prior to onset of field activities and immediately prior to covering with plywood at the end of each working day. Before such holes or trenches are filled, they shall be thoroughly inspected for entrapped kit fox. Any kit fox so discovered shall be allowed to escape before filed activities resume or be removed from the trench or hole by a qualified biologist and allowed to escape unimpeded.

Take as defined in Fish and Game Code section 86 means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill. Entrapping a State threatened species, such as the SJKF is considered take (Fish & G. Code, § 86). SJKF detection warrants consultation with CDFW to discuss how to implement the Project and avoid take, or if avoidance is not feasible, to acquire a State Incidental Take Permit

Eric Hughes  
Conditional Use Permit (DRC2018-00016)  
May 20, 2020  
Page 7

(ITP), pursuant to Fish and Game Code section 2081(b). Full avoidance measures need to be incorporated into the MND. Mitigation Measure BIO-8 should be amended to include a statement requiring the qualified biologist to have the necessary State and Federal permits authorizing incidental take in order to physically remove an entrapped kit fox.

## **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 CNDDDB. The CNDDDB field survey form can be found at the following link: [http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB\\_FieldSurveyForm.pdf](http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB_FieldSurveyForm.pdf). 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: [http://www.dfg.ca.gov/biogeodata/cnddb/plants\\_and\\_animals.asp](http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp).

## **FILING FEES**

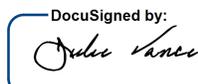
If it is determined that the Project has the potential to impact biological resources, an assessment of filing fees will be necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final (Cal. Code Regs., tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

## **CONCLUSION**

CDFW appreciates the opportunity to comment on the Project to assist San Luis Obispo County in identifying and mitigating Project impacts on biological resources.

Should you have questions regarding this letter or for further coordination, please contact Kelley Aubushon, Senior Environmental Scientist (Specialist), at the address provided on this letterhead, by telephone at (559) 573-6117, or by email at [kelley.aubushon@wildlife.ca.gov](mailto:kelley.aubushon@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
FA83F09FE08945A...  
Julie A. Vance  
Regional Manager

Eric Hughes  
Conditional Use Permit (DRC2018-00016)  
May 20, 2020  
Page 8

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