



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Central Region  
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Fresno, California 93710  
www.wildlife.ca.gov

**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



Governor's Office of Planning & Research

November 12, 2020

**STATE CLEARINGHOUSE**

November 12, 2020

Jeremy Ballard  
Stanislaus County Planning and Community Development  
1010 10<sup>th</sup> Street, Suite 3400  
Modesto, California 95354

**Subject: Early Consultation for Ordinance Amendment Application  
No. PLN2020-0105 - Hemp Cultivation**

Dear Mr. Ballard:

The California Department of Fish and Wildlife (CDFW) has received a referral for early consultation on Stanislaus County (County) Ordinance Amendment Application No. PLN2020-0105 – Hemp (Ordinance) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup> The Ordinance addresses cultivation and processing of hemp in the unincorporated Stanislaus County jurisdiction.

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

As defined in the Ordinance, Section 6.85.030 defines “Hemp cultivation” as any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of hemp, including activities carried out by hemp breeders. For the purposes of this chapter, hemp cultivation shall include cultivation by an established agricultural research institution (EARI) as defined in Section 81000 of the California Food and Agricultural Code. According to Section 6.85.050 D., each hemp cultivation license shall permit the outdoor cultivation of not more than a cumulative total of forty (40) acres of land. Section 6.85.060 A. states each parcel upon which a license application is submitted shall be a minimum of ten acres in size and located in the A-2 (General Agricultural) zoning district but outside of a Local Agency Formation Commission (LAFCO) Sphere of Influence (SOI) of a city or Urban Transition (UT) General Plan designation of the County.

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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.

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## **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).

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** Stanislaus County

**Objective:** Stanislaus County is requesting to amend Chapter 6.85 Hemp Cultivation, of the Stanislaus County Code, and to adopt a permanent ordinance for the cultivation of hemp in the A-2 (General Agriculture) zoning district of the unincorporated areas of Stanislaus County. Hemp cultivation in Stanislaus County has been permitted by a pilot program that was enacted in 2019, extended through 2020, and concludes on May 1, 2021. The County's pilot program limited hemp cultivation to parcels located in the A-2 (General Agriculture) zoning district only when outside a Local Agency Formation Commission (LAFCO) adopted Sphere of Influence of a city, if the parcel is 10 acres or above in size, and no more than 40 acres total will be cultivated. The proposed ordinance amendment will make the pilot program permanent, as well as add requirements for signage, define allowances for on-site processing, and requirements for bonding. This project is being deemed Exempt from the California Environmental Quality Act under CEQA Guidelines Section 15183, Consistency with a General Plan for which an EIR was adopted, and CEQA Guidelines Section 15061 the Common-Sense Exemption.

**Location:** Unincorporated Stanislaus County

## **COMMENTS AND RECOMMENDATIONS**

CDFW is concerned the Ordinance, as drafted, could result in impacts to both unlisted and special status species known to occur in the County. Review of the California Natural Diversity Database (CNDDDB) reveals records for the special status species listed in the Table 1 and 2 (CDFW, 2020). CDFW's recommendations are included below to minimize impacts to fish and wildlife resources and their habitat.

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Table 1 <i>Special Status Species Known to Occur in Stanislaus County.</i>			
Common Name	Scientific Name	State Status	Federal Status
<b>Invertebrates</b>			
Conservancy fairy shrimp	<i>Branchinecta conservatio</i>		endangered
Crotch bumble bee	<i>Bombus crotchii</i>	candidate endangered	
Valley elderberry longhorn beetle	<i>Desmocerus californicus dimorphus</i>		threatened
vernal pool fairy shrimp	<i>Branchinecta lynchi</i>		threatened
vernal pool tadepole shrimp	<i>Lepidurus packardi</i>		endangered
<b>Fish</b>			
hardhead	<i>Mylopharodon conocephalus</i>	SSC	
Steelhead – Central Valley DPS	<i>Oncorhynchus mykiss irideus pop. 11</i>		threatened
Sacramento splittail	<i>Pogonichthys macrolepidotus</i>	SCC	
San Joaquin roach	<i>Lavinia symmetricus ssp. 1</i>	SCC	
<b>Amphibians</b>			
California red-legged frog	<i>Rana draytonii</i>	SSC	threatened
California tiger salamander	<i>Ambystoma californiense</i>	threatened	threatened
foothill yellow-legged frog	<i>Rana boylei</i>	endangered	
western spadefoot	<i>Spea hammondii</i>	SSC	
<b>Reptiles</b>			
Alameda whipsnake	<i>Masticophis lateralis euryxanthus</i>	threatened	threatened
coast horned lizard	<i>Phrynosoma blainvillii</i>	SSC	
Northern California legless lizard	<i>Anniella pulchra</i>	SCC	
San Joaquin coachwhip	<i>Masticophis flagellum ruddocki</i>	SSC	
western pond turtle	<i>Emys marmorata</i>	SSC	
<b>Birds</b>			

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Table 1 <i>Special Status Species Known to Occur in Stanislaus County.</i>			
Common Name	Scientific Name	State Status	Federal Status
bald eagle	<i>Haliaeetus leucocephalus</i>	endangered, FP	
burrowing owl	<i>Athene cunicularia</i>	SSC	
Cackling goose	<i>Branta hutchinsii leucopareia</i>	WL	
California horned lark	<i>Eremophila alpestris actia</i>	WL	
golden eagle	<i>Aquila chrysaetos</i>	FP	
least Bell's vireo	<i>Vireo bellii pusillus</i>	endangered	endangered
loggerhead shrike	<i>Lanius ludovicianus</i>	SSC	
merlin	<i>Falco columbarius</i>	WL	
mountain plover	<i>Charadrius montanus</i>	SSC	
prairie falcon	<i>Falco mexicanus</i>	WL	
Swainson's hawk	<i>Buteo swainsoni</i>	threatened	
tricolored blackbird	<i>Agelaius tricolor</i>	threatened	
western yellow-billed cuckoo	<i>Coccyzus americanus occidentalis</i>	endangered	threatened
yellow-breasted chat	<i>Lcteria virens</i>	SCC	
<b>Mammals</b>			
American badger	<i>Taxidea taxus</i>	SSC	
pallid bat	<i>Antrozous pallidus</i>	SSC	
riparian brush rabbit	<i>Sylvilagus bachmani riparius</i>	endangered	endangered
riparian woodrat	<i>Neotoma fuscipes riparia</i>	SCC	endangered
San Joaquin kit fox	<i>Vulpes macrotis mutica</i>	threatened	endangered
Townsend's big-eared bat	<i>Corynorhius townsendii</i>	SSC	
western mastiff bat	<i>Eumops perotis californicus</i>	SSC	
western red bat	<i>Lasiurus blossevillii</i>	SSC	
Status Definitions <u>State:</u> FP – Fully Protected SSC – Species of Special Concern WL – Watch List			

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Table 2 Special Status Plant Species Known to Occur in Stanislaus County.				
Common Name	Scientific Name	CNPS Status	State Status	Federal Status
Alkali-sink goldfields	<i>Lasthenia chrysantha</i>	1B.1		
beaked clarkia	<i>Clarkia rostrata</i>	1B.3		
big tarplant	<i>Blepharizonia plumosa</i>	1B.1		
California alkali grass	<i>Puccinellia simplex</i>	1B.2		
chaparral harebell	<i>Campanula exigua</i>	1B.2		
Colusa grass	<i>Neostapfia colusana</i>	1B.1	endangered	threatened
Delta button-celery	<i>Eryngium racemosum</i>	1B.1	endangered	
diamond-petaled California poppy	<i>Eschscholzia rhombipetala</i>	1B.1		
dwarf downingia	<i>Downingia pusilla</i>	2B.2		
forked hare-leaf	<i>Lagophylla dichotoma</i>	1B.1		
Greene's tuctoria	<i>Tuctoria greenei</i>	1B.1	rare	endangered
Hairy Orcutt grass	<i>Orcuttia pilosa</i>	1B.1	endangered	endangered
Hall's bush-mallow	<i>Malacothamnus hallii</i>	1B.2		
Hartweg's golden sunburst	<i>Pseudobahia bahiifolia</i>	1B.1	endangered	endangered
heartscale	<i>Atriplex cordulata</i> var. <i>cordulata</i>	1B.2		
Hoover's calycadenia	<i>Calycadenia hooveri</i>	1B.3		
Hoover's cryptantha	<i>Cryptantha hooveri</i>	1A		
Hoover's spurge	<i>Euphorbia hooveri</i>	1B.2		threatened
Hospital Canyon larkspur	<i>Delphinium californicum</i> ssp. <i>interius</i>	1B.2		
Lemmon's jewelflower	<i>Caulanthus lemmonii</i>	1B.2		
lesser saltscale	<i>Atriplex minuscula</i>	1B.1		
Lime Ridge navarretia	<i>Navarretia gowenii</i>	1B.1		
Mariposa cryptantha	<i>Cryptantha mariposae</i>	1B.3		
Mt. Diablo phacella	<i>Phacelia phacelioides</i>	1B.2		
Mt. Hamilton coreopsis	<i>Leptosyne hamiltonii</i>	1B.2		
Mt. Hamilton lomatium	<i>Lomatium observatorium</i>	1B.2		
Mt. Hamilton thistle	<i>Cirsium fontinales</i> var. <i>camplyon</i>	1B.2		

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Table 2 Special Status Plant Species Known to Occur in Stanislaus County.				
Common Name	Scientific Name	CNPS Status	State Status	Federal Status
prairie wedge grass	<i>Sphenopholis obtusata</i>	2B.2		
red-flowered bird's-foot trefoil	<i>Acmispon rubriflorus</i>	1B.1		
San Benito pentachaeta	<i>Pentachaeta exillis ssp. aeolica</i>	1B.2		
San Joaquin Valley Orcutt grass	<i>Orcuttia inaequalis</i>	1B.1	endangered	threatened
Sharsmith's harebell	<i>Campanula sharsmithiae</i>	1B.2		
Sharsmith's onion	<i>Allium sharsmithiae</i>	1B.3		
shining navarretia	<i>Navarretia nigelliformis ssp. radians</i>	1B.2		
spiny-sepaled button-celery	<i>Eryngium spinosepalum</i>	1B.2		
stinkbells	<i>Fritillaria agrestis</i>	4.2		
Stanislaus monkeyflower	<i>Erythranthe marmorata</i>	1B.1		
subtle orache	<i>Atriplex subtilis</i>	1B.2		
succulent owl's-clover	<i>Castilleja campestris var. succulenta</i>	1B.2	endangered	threatened
talus fritillary	<i>Fritillaria falcata</i>	1B.2		
Tracy's eriastrum	<i>Eriastrum tracyi</i>	3.2	rare	
vernal pool smallscale	<i>Atriplex persistens</i>	1B.2		
watery popcornflower	<i>Plagiobothrys verrucosus</i>	2B.1		
Status Definitions California Native Plant Society (CNPS): 1A: Plants presumed extirpated in California and either rare or extinct elsewhere 1B: Plants rare, threatened, or endangered in California and elsewhere 2A: Plants presumed extirpated in California but common elsewhere 2B: Plants rare, threatened, or endangered in California but more common elsewhere 3: Review List: Plants about which more information is needed 4: Watch List: Plants of limited distribution				

**Responsible Agency Authority:** CDFW has regulatory authority over projects that could result in the take of any species listed by the State as threatened or endangered, pursuant to FGC section 2081. If a project could result in take of any species listed as

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threatened or endangered under the California Endangered Species Act (CESA), CDFW may need to issue a State Incidental Take Permit (ITP) for the Project.

Many areas that have been previously farmed, graded, filled, or otherwise disturbed in the County support fish and wildlife resources, including special status species. Even recently and currently cultivated lands can support special status species like California tiger salamander (CTS), Swainson's hawk (SWHA), San Joaquin kit fox, and tricolored blackbird. Pesticides and fertilizers used in cannabis cultivation could decrease fitness or survival of, or cause abnormalities in, CTS, mostly at the larval stage if contaminants drift into breeding pools (Egea-Serrano et al., 2012). Ponds and vernal pools can quickly accumulate these types of pollutants from run-off, making CTS particularly sensitive to pesticide exposure. Concentrated toxins in rodenticide-treated grain placed in ground squirrel burrows could come into direct contact with the permeable skin of CTS (Bolster, 2010). Rodenticides that control small mammal populations would also reduce available burrows, making the habitat no longer suitable for CTS (Laredo et al., 1996). The primary threat to SWHA in California continues to be habitat loss, both nesting and foraging habitat, due to urban development and incompatible agriculture (CDFW, 2016). Current surveys have indicated a smaller population of SWHA occupying a restricted range that includes the core habitat areas of the Central Valley and Great Basin (CDFW, 2016). Noise from road use, generators, and other equipment may be disruptive to hunting SWHA, and exposure to vehicle noise has been shown to increase stress hormone levels in some raptor species (Hayward et al., 2011).

**Land Conversion:** Not all parcels located in the A-2 (General Agriculture) zoning district have been developed. Land conversion may 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. Many parcels meeting the land use categories for hemp cultivation contain outdoor agriculture which can provide habitat for special status species. Some parcels are undeveloped and potentially contain suitable habitat and special status species.

Hemp activities have the potential to reduce the number or restrict the range of endangered, rare, or threatened species (as defined in § 15380 of CEQA) and therefore, impact biological resources. CDFW recommends the County remove hemp cultivation from the ministerial permitting process and require discretionary review for a hemp license, thus prompting the County to determine if the project is exempt under the CEQA. CEQA requires a Mandatory Finding of Significance if a project is likely to substantially impact threatened or endangered species (§§ 21001(c), 21083, Guidelines §§ 15380, 15064, 15065). Impacts must be avoided or mitigated to less than significant levels unless the CEQA Lead Agency makes and supports a Statement of Overriding Consideration (SOC). The CEQA Lead Agency's SOC does not eliminate the Project proponent's obligation to comply with FGC section 2080 and would preclude CDFW

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from utilizing the CEQA document to support State ITP issuance. If the Lead Agency chooses not to mitigate impacts to CESA-listed species to less than significant levels, then CDFW would become CEQA Lead Agency for State ITP issuance, which would result in delays and additional costs to applicants. If there is no CEQA document and the project proponent seeks acquisition of a State ITP, pursuant to FGC section 2081(b), CDFW would become CEQA Lead Agency for State ITP issuance. Furthermore, the issuance of an Exemption or Negative Declaration would preclude CDFW from utilizing the CEQA document to support State ITP issuance. If the Lead Agency proceeds with an Exemption or Negative Declaration, then CDFW would become CEQA Lead Agency for ITP issuance.

**Riparian Habitat, Wetlands, and Watercourses:** CDFW recommends the County include hemp cultivation setbacks of at least 50 feet from the upland extent of riparian vegetation of any watercourse and 100 feet from any wetland. Riparian habitat, wetlands, and watercourses are of extreme importance to a wide variety of plant and wildlife species. Riparian habitat, wetlands, and watercourses are known to exist within the County, including historic seeping from the earth lined canals, shallow first encountered groundwater, and along natural and human made watercourses. CDFW considers projects that impact these resources as significant if they result in a net loss of acreage or habitat value. CDFW has a no-net-loss policy regarding impacts to wetlands. When wetland habitat cannot be avoided, CDFW recommends that impacts to wetlands be compensated with the creation of new habitat, preferably on-site, at a minimum of an acre-for-acre basis. Wetlands that have been inadvertently created by leaks, dams or other structures, or failures in man-made water systems are not exempt from this policy. In addition, CDFW recommends a delineation be conducted for proposed Projects to assess riparian, wetland, and watercourse impacts to guide project proponents in establishing appropriate no-disturbance buffers.

**Enforcement:** The California Department of Food and Agriculture (CDFA) is the licensing authority for the State for commercial cannabis cultivation. CDFA and CDFW are members of a multi-agency task force created to protect the State's resources from the adverse impacts of cannabis cultivation (Fish & G. Code, § 12029). Like cannabis cultivation, hemp cultivation has the potential to affect fish, wildlife, plants, and their habitats. Cannabis inspections have led to violations for water diversions and storage, grading, chemical use, wildlife threats, timber conversion, and public safety. CDFW's Law Enforcement Division (LED) is a critical component of enforcement. CDFW's LED works with cannabis cultivators to bring their facilities into compliance, aids in remediating criminal environmental violations, coordinates with other agencies to remove illegal grows, growers, illegal water impoundments, and extremely toxic chemicals frequently associated with illegal grows, and protects California's unique and diverse natural resources.



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CDFW recommends amending Requirements for issuance of a license Section 6.85.050 G. to read as follows: “By submitting an application for a hemp cultivation license, applicants consent to all inspections **at any time, *without notice*, including crop and/or product testing by agents of the, The California Department of Fish and Wildlife, and the California Department of Food and Agriculture/Weights and Measures or at the discretion of the Agricultural Commissioner.**”

CDFW recommends amending Grounds for Suspension or Revocation Section 6.85.130 to include “Reckless or intentional cultivation of industrial hemp, or cannabis, exceeding the THC content greater than that established under Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code, as they may be amended, or evidence of intent to sell industrial hemp or cannabis that exceeds the established THC content, and may also result in a referral to state or local law enforcement.” as grounds for suspension or revocation of a hemp license.

CDFW appreciates the opportunity to work with County staff and comment on the Ordinance. Questions or further coordination regarding this letter should be directed to Kelley Aubushon, Senior Environmental Scientist (Specialist), at (559) 573-6117 or [kelley.aubushon@wildlife.ca.gov](mailto:kelley.aubushon@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
041A77B10D78486...  
FOR Julie A. Vance  
Regional Manager

ec: Caption Andrew Halverson  
Ryan Mathis  
Sarah Paulson  
James Rosauer  
Matthew Jones  
California Department of Fish and Wildlife

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