



DEPARTMENT OF FISH AND WILDLIFE

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GAVIN NEWSOM, Governor
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Governor's Office of Planning & Research

April 1, 2021

March 30, 2021

STATE CLEARINGHOUSE

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

**Subject: Shepard Place Cannabis Facility Project
Mitigated Negative Declaration (MND)
Cannabis Cultivation and Manufacturing (Project)
SCH No. 2020120526**

Dear Mr. Monk:

The California Department of Fish and Wildlife (CDFW) received a Notice of Completion for an MND from 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 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. While the comment period may have passed, CDFW would appreciate if the City of California City will still consider our comments.

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

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.

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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 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.), 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 (e.g., 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.

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 area 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.

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.

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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 of Regs., tit. 14, Chapter 3, § 15380), CDFW recommends it be fully considered in the environmental analysis for this Project.

PROJECT DESCRIPTION SUMMARY

Proponent: City of California City

Objective: The Project proponent is seeking to construct a 14,000 square foot cannabis cultivation and manufacturing facility.

Location: The Project will take place between the parallel roads of Shepard Place and Curtis Place in California City, California; Assessor's Parcel Number 216-162-06-00-2.

Timeframe: Unspecified.

RECOMMENDATIONS

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

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 (CNDDDB) reveals records for several special-status species within the vicinity of the Project area including, but not limited to the State and Federally threatened desert tortoise (*Gopherus agassizii*); the State threatened Mohave Ground Squirrel (*Xerospermophilus mohavensis*); the following State Species of Special Concern: American badger (*Taxidea taxus*); loggerhead shrike (*Lanius ludovicianus*), Le Conte's thrasher (*Toxostoma lecontei*), burrowing owl (*Athene cunicularia*); and the State protected furbearing mammal desert kit fox (*Vulpes macrotis* ssp. *macrotis*). Review of aerial imagery indicates the site has been previously disturbed and is near the California City Airport. The habitat consists of desert land with desert scrub vegetation on portions of the site. An analysis of potential impacts and recommended mitigation measures summarized by species follows below. Recommended additional mitigation measures are summarized in the comments below.

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COMMENT 1: Desert Tortoise

Issue: The Project site is within the range of desert tortoise and appears to contain suitable habitat based on aerial imagery. Desert tortoise are most common in desert scrub, desert wash, and Joshua tree habitats (CDFW, 2018).

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, Kareiva, Kleptka, 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 the MND.

Mitigation Measure 1: Desert Tortoise Surveys

CDFW advises surveys for desert tortoise be conducted by a qualified wildlife biologist who understands the pre-project survey protocol as outlined in "Preparing for any action that may occur within the range of the Mojave desert tortoise (*Gopherus agassizii*)" (USFWS, 2010) and has previous experience surveying for desert tortoise. Survey results are advised to be submitted to both CDFW and the USFWS. According to the protocol, if neither tortoises nor sign are encountered during the action area surveys and the project or any portion of the project is less than or equal to 200 acres, three additional 10-meter belt transects at 200-meter intervals parallel to and/or encircling the project area perimeter should be surveyed. Please note desert tortoise surveys are valid for one year and should be conducted within a year of the start of Project implementation. If conducting surveys is not feasible, the applicant can assume presence and acquire a State Incidental Take Permit (ITP) pursuant Fish and Game Code section 2081 subdivision (b) prior to initiating any vegetation- or ground-disturbing activities.

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Mitigation Measure 2: Desert Tortoise Take Authorization

If desert tortoise are found within the Project area during 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 a State ITP prior to any vegetation- or ground-disturbing activities. Any take of desert tortoise without take authorization would be a violation of Fish and Game Code section 2080.

COMMENT 2: Mohave Ground Squirrel (MGS)

Issue: The Project site is within the range of MGS and based on aerial imagery, the Project site appears to contain suitable habitat for MGS even though it has been stated in the biological assessment that they were not found at the site.

Specific impact: Without appropriate avoidance and minimization measure 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 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 the MND.

Mitigation Measure 3: MGS Surveys

CDFW recommends that a qualified biologist, with appropriate permits, 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. Survey methods include trapping by a qualified biologist up to three times per trapping season. The MGS survey reported in the Report did not follow the methods described in the "Mohave Ground Squirrel Survey Guidelines". Results of the MGS surveys are advised to be submitted to the CDFW.

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

Mitigation Measure 4: MGS Avoidance

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.

Mitigation Measure 5: MGS Take Authorization

If MGS are found within the Project area during 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 a State ITP prior to any ground-disturbing activities. Any take of MGS without take authorization would be a violation of Fish and Game Code section 2080.

COMMENT 3: Burrowing Owl (BUOW)

Issue: BUOW have been documented in areas near the Project site (CDFW, 2019). Desert habitat within the Project area may support small mammal burrows, a requisite habitat feature for BUOW. Habitat both within and surrounding the Project area may also provide suitable foraging habitat for BUOW.

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 area is within the range of BUOW, and suitable burrow habitat may be present on and in the vicinity of the Project area. 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, Rosenberg, Comrack, 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 BOUW 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.

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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 the MND.

Mitigation Measure 6: 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 area. As documented in the Report, only one BUOW survey was conducted on April 1, 2020. According to the "Burrowing Owl Survey Protocol and Mitigation Guidelines" (CBOC, 1993) a complete burrowing owl survey consists of four site visits.

Mitigation Measure 7: BUOW Avoidance

If BUOW are found within the Project area, 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

* meters (m)

Mitigation Measure 8: 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

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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 area 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 area is within the range of American badger and suitable habitat may be present on or in the vicinity of the Project area. 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 the MND.

Mitigation Measure 9: 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.

Mitigation Measure 10: American Badger Avoidance

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

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COMMENT 5: Other State Species of Special Concern

Loggerhead shrike, Le Conte's thrasher

Issue: The subject parcel is within the range of the species mentioned above. These species have been documented to occur in the vicinity of the parcel and vegetation on the site likely supports the habitat elements mentioned above. Therefore, the subject parcel is suitable for occupation or colonization by these species.

Specific impact: Without appropriate avoidance and minimization measures for loggerhead shrike and Le Conte's thrasher potentially significant impacts associated with the Project's construction could include den/burrow abandonment, which may result in reduced health or vigor of eggs and/or young, and/or direct mortality.

Evidence impact is potentially significant: Habitat loss and degradation is a primary threat to the species mentioned above (Williams, 1986 & Thomson et al., 2016). Impacts to grasslands within the Project area has the potential to significantly impact local populations of these species.

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential impacts to these species, CDFW recommends conducting the following evaluation of the subject parcel and its vicinity and implementing the following mitigation measures into the MND.

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.

Mitigation Measure 11: Species of Special Concern Surveys

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

Mitigation Measure 12: Avoidance

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

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COMMENT 6: Pesticide Use

Issue: The Project has the potential to temporarily and permanently impact biological resources through the use of pesticides. The United States Environmental Protection Agency (USEPA) regulates pesticides at the Federal level and the California Department of Pesticide Regulation (DPR) regulates pesticides at the State Level. There are currently no pesticides registered specifically for use directly on cannabis. Based on DPR guidance, the only pesticide products not illegal to use on cannabis are those that contain an active ingredient that is exempt from residue-tolerance requirements and (1) registered and labeled for use that is broad enough to include use on cannabis (i.e., unspecified green plants) or (2) exempt from registration requirements as a minimum risk pesticide under Federal Insecticide, Fungicide, and Rodenticide Act section 25 subdivision (b) and California Code of Regulations, Title 3, section 6147.

Specific impact: Baker (2018) reports the direct effects of pesticides on wildlife include “acute poisoning, immunotoxicity, endocrine disruption, reproductive failure, altered morphology and growth rates, and changes in behavior” (p. 1). Increased anticoagulant rodenticide use has been noted by CDFW staff at clandestine cannabis cultivation sites throughout the State, including the use of illegal rodenticides in endangered species habitat in San Luis Obispo County (D. Hacker, personal communication, March 28, 2017). The use of pesticides, including anticoagulants and their potential for secondary poisoning to native species, is a significant concern. According to Baker (2018), “[p]esticides can indirectly impact wildlife through reduction of food resources and refuges, starvation due to decreased prey availability, hypothermia, and secondary poisoning” (p. 3).

Evidence impact is potentially significant: The Project includes the development of a 2,400 square foot cannabis cultivation and manufacturing facility and does not make clear if pesticides will be used. The Project area contains potentially suitable habitat and features that could support several special-status species. As a result, Project activities have the potential to significantly impact special-status species through the use of pesticides.

Recommended Potentially Feasible Mitigation Measures

CDFW recommends the MND address and fully analyze the use of pesticides, including the risk of secondary poisoning to native species caused by the use of rodenticides. CDFW recommends the MND include a measure that requires the use of herbicides, rodenticides, or fertilizers on the Project area to be restricted to those approved by USEPA and DPR.

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II. Editorial Comments and/or Suggestions

BIO-1 Special-Status Plant Species Avoidance and Minimization Measures, page 33

As currently drafted the measure indicates prior to initial ground disturbance and staging activities in areas of suitable habitat for special status plants, focused surveys shall be completed by a qualified biologist. Surveys shall be conducted in accordance with the most current protocols established by the CDFW, USFWS, and consistent with the County's polices. If special-status plant species, are identified within the proposed development footprint, impacts to these species will be minimized to the extent feasible to avoid impacting 90% of the plants observed.

CDFW recommends that the Project area 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.

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

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: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

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

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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).

If you have any questions, please contact Justin Aulakh, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 691-2191, or by e-mail at Justin.Aulakh@wildlife.ca.gov.

Sincerely,

DocuSigned by:

041A77B10D78486...
Julie A. Vance
Regional Manager

For

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