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

May 07 2021

May 5, 2021

STATE CLEARINGHOUSE

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**Subject: White Oak Farms Minor Use Permit, DRC2019-00131 (Project)
Mitigated Negative Declaration (MND)
SCH Number: 2021040185**

Dear Mr. Hughes:

The California Department of Fish and Wildlife (CDFW) received an MND from San Luis Obispo County 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 site 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.

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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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.

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

PROJECT DESCRIPTION SUMMARY

Proponent: White Oak Farms

Objective: The Project proponent is seeking a Minor Use Permit, for cannabis cultivation, resulting in approximately 1.7 acres of site disturbance on a 40.7-acre parcel. Construction will consist of indoor cannabis cultivation within seven greenhouses totaling up to 27,500 square-feet, 2,350 square-foot utility storage, four 12.9-foot by 6.11-foot ground-mounted solar panels, eight-foot perimeter fencing, two 2,500-gallon water storage tanks, and utilizing an existing on-site groundwater well. Additional

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Project activities include demolition of existing barn and 6,558 cubic yards of cut and fill to be balanced on site.

Location: 10150 Bar BB Lane, Arroyo Grande, California 93420 in the Huasna-Lopez sub area of the south county planning area, San Luis Obispo County, APN: 085-012-054.

Timeframe: Unspecified.

RECOMMENDATIONS

CDFW offers the following recommendations to assist the county of San Luis Obispo 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.

COMMENT 1: Lake and Streambed Alteration

Issue: Project site is located within a property containing several ephemeral streams and freshwater ponds. The Project has the potential to temporarily and/or permanently impact these ephemeral streams and freshwater ponds. Activities within or adjacent to streams may be subject to CDFW's lake and streambed alteration regulatory authority, pursuant Fish and Game Code section 1600 et seq.

Specific impact: Project-related activities within or adjacent to lakes or streams have the potential to result in deposition of debris, waste, sediment, toxic runoff, or other deleterious materials into water causing water pollution and degradation of water quality.

Evidence impact is potentially significant: Review of aerial imagery and USGS 3D Elevation Program (3DEP) indicates that there are several unnamed ephemeral streams in close proximity to the Project site. These streams are tributaries to Huasna Creek, located approximately 0.25 miles east of the Project site. Additionally, two freshwater ponds are located 400-feet northwest and southeast of the Project site. Project activities that impact streams or ponds have the potential to impact not only those streams and ponds, but also downstream waters. These activities may be subject to CDFW's lake and streambed alteration regulatory authority.

Although ephemeral streams, such as the ones adjacent to the Project site, are mostly dry, recent studies have shown that biodiversity and habitat values of dryland streams are considerably higher than in the adjacent uplands, transporting and delivering water, and providing linear habitat connectivity and refuge, and concentrating seeds, organic matter, and sediment.

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Ephemeral streams function in the collection of water from rainfall, storage of various amounts of water and sediment, discharge of water as runoff and the transport of sediment. Ephemeral streams also support diverse sites and pathways in which chemical reactions take place and provide habitat for fish and wildlife species. Disruption of stream systems such as these can have significant physical, biological, and chemical impacts that can extend into the adjacent uplands adversely effecting not only the fish and wildlife species dependent on the stream itself, but also the flora and fauna dependent on the adjacent upland habitat for feeding, reproduction, and shelter.

Recommended Potentially Feasible Mitigation Measure(s)

Notification of Lake and Streambed Alteration

Review of aerial imagery and USGS 3D Elevation Program (3DEP) indicates that there are several unnamed ephemeral streams in close proximity to the Project site. These streams are tributaries to Huasna Creek, located approximately 0.25 miles east of the Project site. Additionally, two freshwater ponds are located 400-feet northwest and southeast of the Project site. CDFW has regulatory authority with regard to activities occurring in streams and/or lakes that could adversely affect any fish or wildlife resource, and/or associated riparian habitat pursuant to Fish and Game Code section 1600 et seq. Section 1602 subsection (a) of the Fish and Game Code, which 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 or bank including associated riparian or wetland resources or deposit or dispose of material where it may pass into a river, lake, or stream. Project activities are proposed that may be jurisdictional under Fish and Game Code section 1602. CDFW recommends coordination with CDFW staff prior to ground-breaking activities on-site or submit a Lake or Streambed Alteration Notification to determine if the activities proposed 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 subsection (b)(3) includes a requirement that California Department of Food and Agriculture cannabis cultivation licensees demonstrate compliance with Fish and Game Code section 1602 through written verification from CDFW. CDFW recommends submission of a Lake and Streambed Alteration Notification to CDFW for the proposed Project prior to initiation of any cultivation activities.

II. Editorial Comments and/or Suggestions

Mitigation measure **BIO-2** Biological Monitoring, Page 29

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As currently drafted **BIO-2** bullet 4 states “..., shall *be captured and relocated to nearby suitable habitat by the biologist, as necessary and in compliance with state and federal Endangered Species Act regulations.*” CDFW recommends that if any wildlife species are discovered at the site immediately prior to or during the Project related activities, that they first be allowed to move out of the area on their own volition, if relocation is necessary, individuals shall be captured by a qualified biologist with the appropriate handling permits and relocated to suitable habitat outside of the construction/work area.

Mitigation measure **BIO-3** Pre-Construction Surveys for Special-Status Plant Species, Page 29 and 30

As currently drafted **BIO-3** states “*Individuals that cannot be avoided shall be preserved through seed collection, topsoil salvage, and/or transplanting. Relocation of sensitive species would make impacts to sensitive plant species less than significant.*” CDFW recommends, if a State-listed plant species is identified during botanical surveys, consultation with CDFW is warranted to determine if the Project can avoid take. If State-listed plant species are found to occur on project site and an avoidance is not possible, acquisition of an ITP pursuant to Fish and Game Code section 2081(b) would be required to comply with CESA. Note that take also includes plant relocation or seed collection pursuant to Fish and Game Code section 86.

Mitigation measure **BIO-5** California Red-Legged Frog Surveys and Avoidance, Page 29 and 30

CDFW recommends adding the following to **BIO-5**, surveys will be accordance with the USFWS Revised Guidance on Site Assessment and Field Surveys for the California Red-legged Frog (USFWS 2005).

As currently drafted **BIO- 5** states “*If any life stage of the California red-legged frog or foothill yellow-legged frog is found and these individuals are likely to be killed or injured by work activities, the approved biologist will be allowed sufficient time to move them from the site before work activities begin. The United States Fish and Wildlife Service-approved and CDFW approved biologist shall relocate the California red-legged frogs and/or foothill yellow-legged frogs the shortest distance possible to a location that contains suitable habitat and will not be affected by the activities associated with the project, preferably within the same drainage.*” CDFW recommends that if any California red-legged frogs (CRLF) and/or foothill yellow-legged frog (FYLF) are discovered at the site immediately prior to or during the Project activities, that they first be allowed to move out of the area on their own volition. If relocation is necessary, CRLF individuals shall be captured by a qualified biologist with the appropriate handling permits and relocated to suitable habitat outside of the construction/work area. If FYLF are found to occur on project site and an avoidance is not possible, acquisition of an ITP pursuant to Fish and Game Code section 2081(b) would be required to comply with CESA.

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Mitigation measure **BIO-5 (b)** California Red-Legged Frog Surveys and Avoidance During Ongoing Operations, Page 30

As currently drafted **BIO-5 (b)** states “*Avoid work during the rainy season (November 1 through March 31). If work must occur in the rainy season, no work shall occur during or immediately after rain events of 0.25 inches or greater.*” CDFW recommends adding to the MND that a qualified biologist monitor construction activity daily for CRLF and FYLF.

Mitigation Measure **BIO-8** Western Spadefoot and Western Pond Turtle Surveys and Avoidance, Page 31.

As currently drafted, **BIO-8** states “*.... a qualified biologist shall survey the project site and, if present, capture and relocate any western spadefoot or western pond turtles to suitable habitat outside of proposed disturbance areas.*” CDFW recommends avoidance whenever possible and encourages, via delineation and observation of, a 50-foot no-disturbance buffer from individuals and/or potential burrows of western spadefoot and western pond turtle. Additionally, CDFW recommends that if any western spadefoot and/or western pond turtle are discovered at the site immediately prior to or during Project activities, they be allowed to move out of the area on their own volition. If relocation is necessary, individuals shall be captured by a qualified biologist with the appropriate handling permits and relocated to suitable habitat outside of the construction/work area.

Mitigation measure **BIO-10** Nesting Bird Avoidance, page 31 and 32.

As currently drafted, **BIO-10** states “*.... 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. Construction activities within the established buffer zone will be prohibited until the young have fledged the nest and achieved independence*” CDFW Recommends that if a fully protected raptor species nest, such as white-tailed kite (*Elanus leucurus*), bald eagle (*Haliaeetus leucocephalus*), or golden eagle (*Aquila chrysaetos*) is found within ½ mile of the Project site, implementation of avoidance measures is warranted. CDFW recommends that a qualified wildlife biologist be on-site during all Project-related activities and that a ½-mile no-disturbance buffer be implemented from any nest site. If the ½-mile no disturbance buffer cannot feasibly be implemented, contacting CDFW for assistance with additional avoidance measures is recommended. Fully addressing potential impacts to fully protected raptor species and requiring measurable and enforceable mitigation in the MND is recommended.

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.

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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 implemented and 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.

Cannabis Water Use: Water use estimates for cannabis plants are not well established in literature and estimates from published and unpublished sources range between 3.8-liters and 56.8-liters per plant per day. Based on research and observations made by CDFW in northern California, cannabis grow sites have significantly impacted streams through water diversions resulting in reduced flows and dewatered streams (Bauer, S. et al. 2015). Groundwater use for clandestine cannabis cultivation activities have resulted in lowering the groundwater water table and have impacted water supplies to streams in northern California. CDFW recommends that CEQA document address the impacts to groundwater and surface water that may occur from Project activities.

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.

Light Pollution: Cannabis cultivation operations often use artificial lighting or "mixed-light" techniques in both greenhouse structures as well as indoor operations to increase yields. Night lighting can disrupt the circadian rhythms of many wildlife species. Many species use photoperiod cues for communication (i.e., bird song; Miller, 2006), determining when to begin foraging (Stone et al., 2009), behavior thermoregulation (Beiswenger, 1977), and migration (Longcore & Rich, 2004). Even aquatic species can be affected; migration of salmonids can be slowed or halted by the presence of artificial lighting (Tabor et al., 2004; Nightingale et al., 2006). Phototaxis, a phenomenon which results in attraction and movement towards light, can disorient, entrap, and temporarily blind wildlife species that experience it (Longcore and Rich, 2004). CDFW recommends CEQA documents address light pollution in the analysis of impacts.

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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

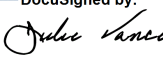
If it is determined that the Project has the potential to impact biological resources, an assessment of filing fees will be necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is 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 the county of San Luis Obispo in identifying and mitigating Project impacts on biological resources.

Should you have questions regarding this letter or for further coordination, please contact Shannon Dellaquila, Senior Environmental Scientist (Specialist), by phone at 559-899-9758 or electronic mail at Shannon.Dellaquila@wildlife.ca.gov.

Sincerely,

DocuSigned by:

FA83F09FE08945A...

Julie A. Vance
Regional Manager

ec: Shannon Dellaquila
California Department of Fish and Wildlife

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