



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Northern Region
601 Locust Street
Redding, CA 96001
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Governor's Office of Planning & Research

June 28 2021

STATE CLEARINGHOUSE

June 25, 2021

Desmond Johnston
Humboldt County Planning and Building Department
3015 H Street
Eureka, CA 95501
djohnston@co.humboldt.ca.us

Subject: Eel River Produce, LLC - Humboldt County App. No. 16417 (SCH# [2021050545](#))

Dear Desmond Johnston:

The California Department of Fish and Wildlife (CDFW) received from the County of Humboldt (Lead Agency) an Initial Study and Draft Mitigated Negative Declaration (IS/MND), dated April 26, 2021, for the Eel River Produce, LLC's expansion of an existing cannabis cultivation project (Project), in Holmes Flat, Humboldt County, California. CDFW understands the Lead Agency will accept comments on the Project through June 28, 2021.

As the Trustee for the State's fish and wildlife resources, CDFW has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants and the habitat necessary to sustain their populations. As a Responsible Agency, CDFW administers the California Endangered Species Act and other provisions of the Fish and Game Code (FGC) that conserve the State's fish and wildlife public trust resources. CDFW offers the following comments and recommendations in our role as Trustee and Responsible Agency pursuant to the California Environmental Quality Act (CEQA; California Public Resource Code §21000 *et seq.*). CDFW participates in the regulatory process in its roles as Trustee and Responsible Agency to minimize Project impacts and avoid potential significant environmental impacts by recommending avoidance and minimization measures. These comments are intended to reduce the Projects impacts on public trust resources.

Project Description

The Project is located at 1048 Holmes Flat Road on Humboldt County Assessor's Parcel Number (APN) 209-331-002. The Project proposes 1.45 acres of new cannabis cultivation consisting of 53,200 square feet of outdoor light deprivation cannabis in 19 greenhouses, and 10,000 square feet of year-round mixed light cannabis in four greenhouses. Although not included as part of the current proposed Project, this parcel previously received authorization from Humboldt County for 1.61 acres of cannabis cultivation consisting of 60,000 square feet of outdoor cultivation (PLN-13290, PLN-16332, PLN-15674) and 10,000 square feet of nursery facility (PLN-15762). The total

Desmond Johnston
Humboldt County Planning and Building Department
June 25, 2021
Page 2

cultivation at full build-out, existing and proposed, would be 133,200 square feet (3.06 acres).

The Project proposes rainwater catchment stored in hard tanks as the sole source of irrigation water. The IS/MND states annual water use at full build-out for the cultivation areas will be 161,500 gallons. Storage consists of 120,000 gallons in 24 hard tanks, with an additional 50,000 gallons of proposed storage. The Project will be powered by combination of existing Pacific Gas and Electric Company service and a proposed solar array. The Project also requests a Special Permit to reduce the County required 600-foot setback from Humboldt Redwoods State Park.

CDFW Consultation History

On February 18, 2020, CDFW received a Lake or Streambed Alteration (LSA) Notification (1600-2020-0076-R1) for the parcel. The sole LSA project in the Notifications was a water well for domestic use.

On April 30, 2020, CDFW submitted comments on the Project, recommending clarifications on water use, adherence to the 600-foot buffer from Humboldt Redwoods State Park, development buffers from wetlands, adherence to International Dark-Sky Standards, a noise attenuation plan, and waste/pollution impact avoidance measures (Attachment A).

On May 5, 2020, the County responded to CDFW's April 30, 2020 comments (Attachment B).

On June 16, 2021, CDFW Environmental Scientist Greg O'Connell conducted a site visit at the Project location to review the wetland delineation and other onsite conditions.

CDFW Comments on the IS/MND:

Wetlands

The Lead Agency should ensure that wetlands and other aquatic habitats within the Project vicinity are adequately characterized and appropriate development setbacks are in place. Approximately 90 percent of California's historical wetlands have been filled or converted to other uses, with a consequent reduction in the functions and values wetlands provide (CDFW 2014). As a result, the State of California has a wetland "no-net-loss" policy.

The IS/MND contains a wetland delineation report that maps three wetland polygons and an additional "drainage ditch" at test pit #4 that intercepts two ephemeral streams. Some IS/MND sections state a 150-foot setback will occur from wetlands and small

Desmond Johnston
Humboldt County Planning and Building Department
June 25, 2021
Page 3

tributaries (IS/MND section 1.8.5, Biological Resources). However, other sections indicate wetlands and ephemeral streams will observe a 50-foot setback (IS/MND section 1.8.6, Surface Waters and Drainage).

Based on observations during CDFW's June 16, 2021 site visit, wetland #2 and wetland #3 are spring-fed perennial wetlands and should receive 150-foot development setbacks, as required by the County's Streamside Management Area and Wetlands Ordinance (SMAWO). The "drainage ditch" described in the wetland delineation is a seasonal wetland and should receive a 50-foot development setback as required by the SMAWO. Accordingly, seasonal wetland #1 and the ephemeral streams should receive a 50-foot development setback.

In light of these site visit observations, CDFW recommends the Project Site Plan Figure be revised to clearly show these development setbacks (**Recommendation 1**).

Water Use

The IS/MND states 170,000 gallons of water storage will provide all irrigation water needed annually for 3.06 acres of cannabis cultivation. Although prime agricultural soils may facilitate some level of "dry farming" at the Project location, this volume is substantially smaller than CDFW would expect based on comparison with other cultivation sites. A recently proposed Humboldt County cannabis project in the Blocksburg area estimated an average of 2,400 gallons of irrigation water would be used daily for each acre of cannabis cultivation. Given these metrics, irrigation of three acres of cultivation for six months could use a total of 1,296,000 gallons of water annually.

To ensure that sufficient water storage exists, the IS/MND should provide a more thorough analysis of water use needs, including comparisons of actual water use at other existing cultivations sites on similar soils in the Holmes Flat area (**Recommendation 2**).

Development within 100-year floodplain

The Project occurs within the 100-year flood zone of the Eel River. Floodplains, by their nature, are likely to be inundated by high flow events. They also connect streams and rivers to upland habitat and provide an important ecological transition zone (CDFW 2014). New development within the floodplain may result in pollution and debris during a 100-year flood event. CDFW typically recommends avoidance of non-critical infrastructure development within flood plains. It is unclear how the Project will comply with County building code regarding development in flood zones and what specific performance standards will be required (e.g., engineered foundations -vs- bare earth).

Desmond Johnston
Humboldt County Planning and Building Department
June 25, 2021
Page 4

If the County chooses to authorize the Project within the 100-year floodplain, it is appropriate to decommission facilities and restore the area at the end of the Project's life. A mitigation measure to require a Post-Project Reclamation and Restoration Plan should be included in the Project's IS/MND or as a County condition of approval **(Recommendation 3)**. That plan should be implemented if Project activities cease for five years.

Humboldt Redwoods State Park Buffer

The IS/MND Project site plan indicates a proposed 141-foot reduction in the County Commercial Cannabis Land Use Ordinance's 600-foot buffer from Humboldt Redwoods State Park. Humboldt Redwoods State Park provides critical habitat to sensitive wildlife species including, but not limited to, Northern Spotted Owl (*Strix occidentalis caurina*), a threatened species pursuant to both the federal Endangered Species Act (16 U.S.C. § 1531 et seq.) and the California Endangered Species Act (Fish & G. Code, § 2050 et seq.), as well as Marbled Murrelet (*Brachyramphus marmoratus*), a threatened species pursuant to the federal Endangered Species Act (16 U.S.C. § 1531 et seq.) and an endangered species pursuant to the California Endangered Species Act (Fish & G. Code, § 2050 et seq.) This 600-foot buffer was included in the County Ordinance through the public process to prevent additional encroachment on this limited critical habitat, and as an effort to mitigate impacts to biological resources. This buffer protects current habitat conditions within the State Park as well as improved future conditions of State Park lands managed for wildlife habitat. As stated in prior CDFW comments on this Project, we recommend against reducing the 600-foot buffer from Humboldt Redwoods State Park **(Recommendation 4)**.

Restoration Status of RRR Donor Sites

The IS/MND states the Project is relying on the County's retire, remediate, and relocate (RRR) process to retire and remediate cultivation sites on inappropriate or environmentally sensitive sites to environmentally superior sites. A total of four off-parcel RRR donor sites are being utilized for the proposed Project and previously approved projects on this parcel (PLN-13290, PLN-15674, PLN-16332, PLN-16417). The RRR process requires full environmental remediation of the RRR donor sites, however the IS/MND does not appear to demonstrate that remediation has occurred. The IS/MND should disclose and verify the compliance and restoration status of RRR donor sites **(Recommendation 5)**.

Summary of Recommendations

1. The County should ensure that perennial and ephemeral wetlands and streams receive appropriate setbacks as required by the County's SMAWO. The Project Site Plan Figure should be revised to clearly show these setbacks.

Desmond Johnston
Humboldt County Planning and Building Department
June 25, 2021
Page 5

2. To ensure that sufficient water storage exists, the IS/MND should provide a more thorough analysis of water use needs, including comparisons of actual water use at other existing cultivations sites on similar soils in the Holmes Flat area.
3. If the County chooses to authorize the Project within the 100-year floodplain, a mitigation measure to require a Post-Project Reclamation and Restoration Plan should be included in the Project's IS/MND or as a County condition of approval. That plan should be implemented if Project activities cease for five years.
4. The Lead Agency should not permit a reduction in the 600-foot buffer from Humboldt Redwoods State Park required by the County Ordinance.
5. The IS/MND should disclose and verify the compliance and restoration status of RRR donor sites associated with the Project.

We appreciate the opportunity to comment on this IS/MND. If you have any questions please contact Environmental Scientist Greg O'Connell by email at Gregory.OConnell@Wildlife.ca.gov.

Sincerely,

DocuSigned by:

1D82ADE7303A474...

Tina Bartlett

Regional Manager, Northern Region
California Department of Fish and Wildlife

Attachments

- A. CDFW Project Comments, Dated April 30, 2020.
- B. County Response to CDFW Comments, Dated May 5, 2020.

ec:

State Clearinghouse, Office of Planning and Research
state.clearinghouse@opr.ca.gov

Humboldt County Planning Commission Clerk
planningclerk@co.humboldt.ca.us

Mona Dougherty, Senior Water Resource Control Engineer
North Coast Regional Water Quality Control Board
Mona.Dougherty@waterboards.ca.gov

Kasey Sirkin, Lead Biologist
U.S. Army Corps of Engineers
L.K.Sirkin@usace.army.mil

Desmond Johnston
Humboldt County Planning and Building Department
June 25, 2021
Page 6

Rebecca Garwood, Coastal Habitat Conservation Program Manager
California Department of Fish and Wildlife
rebecca.garwood@wildlife.ca.gov

Scott Bauer, Senior Environmental Scientist Supervisor
California Department of Fish and Wildlife
scott.bauer@wildlife.ca.gov

Cheri Sanville, Senior Environmental Scientist Supervisor
California Department of Fish and Wildlife
cheri.sanville@wildlife.ca.gov

Laurie Harnsberger, Management Services Technician
California Department of Fish and Wildlife
laurie.harnsberger@wildlife.ca.gov

Greg O'Connell, Environmental Scientist
California Department of Fish and Wildlife
gregory.oconnell@wildlife.ca.gov

CEQACommentLetters@wildlife.ca.gov

Citations

CDFW. 2014. Development, land use, and climate change impacts on wetland and riparian habitats—A summary of scientifically supported conservation strategies, mitigation measures, and best management practices. Technical Memorandum. California Department of Fish and Wildlife, Northern Region. Redding, CA.

Environmental Laboratory. 1987. Corps of Engineers wetlands delineation manual. Technical Report Y-87-1. Vicksburg, MS: U.S. Army Engineer Waterways Experiment Station.

U.S. Army Corps of Engineers. 2010. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region (Version 2.0), ed. J. S. Wakeley, R. W. Lichvar, and C. V. Noble. ERDC/EL TR-10-3. Vicksburg, MS: U.S. Army Engineer Research and Development Center



California Department of Fish and Wildlife
CEQA: Project Referral Comments

Applicant: Eel River Produce		Date: 4/30/2020
APPS No.: PLN-2019-15762	APN: 209-331-002	DFW CEQA No.: CEQA-2019-0586-R1
<input checked="" type="checkbox"/> New	Proposed: <input checked="" type="checkbox"/> Outdoor (SF): 123,200 <input checked="" type="checkbox"/> Wholesale Nursery (SF): 10,000	

Thank you for referring this application to the California Department of Fish and Wildlife (CDFW) for review and comment.

CDFW offers the following comments on the Project in our role as a Trustee and Responsible Agency pursuant to the California Environmental Quality Act (CEQA; California Public Resource Code Section 21000 *et seq.*). These comments are intended to assist the Lead Agency in making informed decisions early in the planning process.

- Recommend Conditional Approval. Suggested conditions below.

Please provide the following information prior to Project Approval: (*All supplemental information requested shall be provided to the Department concurrently*)

- CDFW is not clear on how the water use estimates were derived or how the amount of water storage proposed will meet the requirements for seasonal water diversion minimization. CDFW requests, prior to Project approval, that the applicant provide further detail on the methods used to estimate water usage.

Please consider the following information and/or requested conditions of Project approval, if approval is granted.

- CDFW recommends against reducing the 600-foot buffer from Redwood State Park. Redwood State Park provides critical habitat to sensitive wildlife species including but not limited to Northern Spotted Owl (*Strix occidentalis caurina*) a threatened species pursuant to the federal Endangered Species Act (16 U.S.C. § 1531 *et seq.*) and threatened pursuant to the California Endangered Species Act (Fish & G. Code, § 2050 *et seq.*) as well as Marbled Murrelet (*Brachyramphus marmoratus*), a threatened species pursuant to the federal Endangered Species Act (16 U.S.C. § 1531 *et seq.*) and endangered pursuant to the California Endangered Species Act (Fish & G. Code, § 2050 *et seq.*) This 600-foot buffer was included in the County Ordinance through the public process to prevent additional encroachment on this limited critical habitat and in an effort to mitigate impacts to biological resources. CDFW requests that the 600-foot buffer from public lands remain intact.
- Perennial wetlands have been identified on the project site, however, the buffer included in the Biological Assessment consists of 50ft from the wetted edge. CDFW recommends a minimum 150ft buffer from perennial wetlands and 50ft from seasonal wetlands measured from the outer edge of the wetland boundary. These areas should be identified as no-disturbance buffers.
- Artificial light pollution may adversely affect fish and wildlife species in the Project vicinity in several ways including but not limited to disruption of circadian rhythms, suppressed immune response, changes in foraging behavior, altered navigation, altered predator-prey relationships, impacts on reproduction, and phototaxis. Adhering to International Dark-Sky Standards, will minimize impacts to sensitive species, potentially affected by this Project. CDFW requests, a Light Attenuation Plan be submitted, approved, and implemented prior to the use of lights as applicable to the Project. International Dark-Sky Standards include but are not limited to the following, 1) light

shall be shielded and downward facing, 2) shall consist of Low Pressure Sodium (LPS) light or low spectrum Light Emitting Diodes (LED) with a color temperature of 3000 kelvins or less and 3) only placed where needed. See: <https://www.darksky.org/our-work/lighting/lighting-for-citizens/lighting-basics/>

- ☒ Human induced noise pollution may adversely affect wildlife species in several ways including abandonment of territory, loss of reproduction, auditory masking (inability to hear important cues and signals in the environment), hindrance to navigation, and physiological impacts such as stress, increased blood pressure, and respiration. To minimize disturbance to wildlife, CDFW requests a Noise Attenuation Plan be developed, approved, and implemented prior to the use of generators and fans as applicable to the Project; noise released shall be no more than 50 decibels measured from 100ft or edge of developed cultivation site, whichever is closer.
- ☒ To minimize the risk of wildlife entrapment, Permittee shall not use any erosion control and/or cultivation materials that contain synthetic (e.g., plastic or nylon) netting, including photo- or biodegradable plastic netting. Geotextiles, fiber rolls, and other erosion control measures shall be made of loose-weave mesh, such as jute, hemp, coconut (coir) fiber, or other products without welded weaves.
- ☒ The environmental impacts of improper waste disposal are significant and well documented. CDFW requests, as a condition of Project approval, that all refuse be contained in wildlife proof storage containers, at all times, and disposed of at an authorized waste management facility.
- ☒ That all imported soil located onsite be fully contained and setback a minimum of 150ft from watercourses and/or wet areas; and that all discarded soil and trash present onsite be removed and properly disposed of at a waste management facility.
- ☒ CDFW requests, as a condition of Project approval, all generators and associated fluids (as applicable to the project) be relocated to stable surfaces with a minimum 150ft buffer from streams (measured horizontally from the outer edge of the riparian or top of bank, whichever is greater).
- ☒ The applicant submitted a Notification of Lake or Streambed Alteration (LSA#: 1600-2020-0076-R1).
- ☒ This project has the potential to affect sensitive fish and wildlife resources such as Northern Spotted Owl (*Strix occidentalis caurina*), Marbled Murrelet (*Brachyramphus marmoratus*), Fisher - West Coast DPS (*Pekania pennanti*), Long-eared Myotis (*Myotis evotis*), Townsend Big-eared Bat (*Corynorhinus townsendi*), Western Red Bat (*Lasiurus blossevillii*), Osprey (*Pandion haliaetus*), Coast Fawn Lily (*Erythronium revolutum*), Maple-leaved Checkerbloom (*Sidalcea malachroides*), Seacoast Ragwort (*Packera bolanderi* var. *bolanderi*), Siskiyou Checkerbloom (*Sidalcea malviflora* ssp. *patula*), Humboldt County Milk-vetch (*Astragalus agnicidus*), Northern Clustered Sedge (*Carex arcta*), Pacific Gilia (*Gilia capitata* ssp. *pacifica*), White-flowered Rein Orchid (*Piperia candida*), Chinook Salmon (*Oncorhynchus tshawytscha*), Coho Salmon (*O. kisutch*), Steelhead Trout (*O. mykiss*), Green Sturgeon (*Acipenser medirostris*), White Sturgeon (*A. transmontanus*), Pacific Lamprey (*Entosphenus tridentatus*), Inland Threespine Stickleback (*Gasterosteus aculeatus microcephalus*), Prickly Sculpin (*Cottus asper* ssp. *1*), Foothill Yellow-legged Frog (*Rana boylei*), Northwestern Salamander (*Ambystoma gracile*), Rough-skinned Newt (*Taricha granulosa*), Northern Red-legged Frog (*Rana aurora*), Western Pond Turtle (*Actinemys marmorata marmorata*), and amphibians, reptiles, aquatic invertebrates, mammals, birds, and other aquatic and riparian species.

Thank you for the opportunity to comment on this Project.

Sincerely,

Scott Bauer
Senior Environmental Scientist Supervisor
California Department of Fish and Wildlife
619 2nd Street
Eureka, CA 95501

From: [Luther, Stephen](#)
To: Bauer, Scott@Wildlife
Cc: [Johnson, Cliff](#); [Ryan, Meghan](#)
Subject: RE: CDFW Referral Eel River Produce 15762
Date: Tuesday, May 05, 2020 2:10:23 PM

Dear Scott,

Thank you for CDFW's referral comments on this project. Please see the response below, and let me know if there are any other issues. I can keep you apprised of the State Parks position and forward the revised Site Plan when available.

1. The Cultivation and Operations Plan estimates: 638 gal/day for full-sun outdoor, 285 gal/day for light dep, and 52 gal/day in the nursery. This equates to 1.22 gal/sf. The cultivation will occur directly in floodplain soil in an area that has a high water table, thus dramatically reducing the irrigation water needed. About 0-5 gal/sf is an accurate estimate for cultivation in this area. Water use will be metered and additional rainwater storage capacity added if needed.
2. The applicant is requesting to reduce the setback from Humboldt Redwoods State Park to 446 feet. Planning staff is in contact with State Parks environmental scientists to determine if the Park has concerns. In response to CDFW comments, the applicant has agreed to locate the full sun outdoor cultivation on the western edge of the property and move the proposed light deprivation hoop houses to the east side of the property. The noise source from fans will be more than 600 feet from critical habitat. The nursery is all outdoor and no supplemental lighting is proposed in the operation. The cultivation project cannot move forward until a pre-project noise survey is completed, and noise from the project cannot result in an increase of more than 3 decibels. Noise cannot exceed 50 decibels measured 100 feet from the source or to the edge of habitat, whichever is closer.
3. A revised Site Plan has been requested for Pacific Watershed Associates to map the observed wetlands #1-3 as documented in the Biological Reconnaissance, Protocol Level Survey, Wetland Delineation and Invasive Species Management Plan prepared by PWA in July 2019. The map will show a 150 foot no-disturbance buffer as measured from the edge of the 3 wetland areas. As noted in that report, the fourth test pit dug in the east-west Class IV ditch did not exhibit wetland hydrology necessary to classify as a 3-parameter wetland, and the 50-foot buffer is appropriate.
4. The applicant is required to adhere to International Dark Sky Standards.
5. See discussion in #2. The power source is 100% renewable grid electricity and no generators are used in the operation.
6. All other items are included as ongoing operational conditions to protect fish and wildlife.

Best,
Stephen

Sent from [Mail](#) for Windows 10