State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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August 9, 2021

Eric Hughes
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County of San Luis Obispo
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Subject: Vertical Integration Corporation, Minor Use Permit DRC2020-00011 (Project), Site 2
Mitigated Negative Declaration (MND)
SCH Number: 2021060368

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. While the comment period for this Project has passed, CDFW would appreciate if the County of San Luis Obispo would still consider our comments.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statue 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

[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.

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.

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).

Unlisted Species: Species of plants and animals need not be officially listed as Endangered, Rare, or Threatened (E, R, or T) on any State for 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: Vertical Integration Corporation

Objective: The Project proponent is seeking a Minor Use Permit, for cannabis cultivation, resulting in approximately 5.15 acres of site disturbance on a 199-acre parcel. Construction will consist of establishing a 3.75-acre outdoor cannabis cultivation area, a 3,855 square-foot parking area, a 400 square-foot storage container, two 400 square-foot compost areas, and installation of infrastructure and facilities necessary to utilize an existing groundwater well located on the property. The Project has a 3,000-square-foot water treatment and irrigation system consisting of six 100-gallon nutrient

tanks water treatment, two 5,000-gallon blending tanks, and two 10,000-gallon water storage tanks. The Project will also include the installation of a six-foot perimeter chain-link fence around the Project area. Construction will require approximately 107 cubic yards of cut and 81 cubic yards of fill.

Location: 9110 Camatta Creek Road Santa Margarita, California 93453, San Luis Obispo County, Assessor's Parcel Number (APN) 037-371-002, Site 2.

Timeframe: Unspecified.

Editorial Comments and/or Suggestions

Mitigation Measure **BIO-4** SJKF Protection Measures. Page 61-62.

As currently drafted, **BIO-4** states, "*A maximum of 25 mph speed limit shall be required at the project site during project activities"*. CDFW recommends speed limits of 15 mph (or lower) to avoid potential impacts to wildlife.

As currently drafted, **BIO-4** states, "*Any materials or stockpiles that may have had SJKF take up residence shall be surveyed (consistent with pre-construction survey requirements) by a qualified biologist before they are moved."* In addition, **BIO- 4** states, "*During project activities and/or the operation phase, any contractor or employee that inadvertently kills or injures a SJKF or who finds any such animal either dead, injured, or entrapped shall be required to report the incident immediately to the applicant and County. In the event that any observations are made of injured or dead SJKF, the applicant shall immediately notify the USFWS, CDFW, and the County by telephone."* Take as defined in Fish and Game Code section 86 means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill. Entrapping a State threatened species, such as the SJKF is considered take (Fish & G. Code, § 86).

SJKF detection warrants consultation with CDFW to discuss how to implement the Project and avoid take, or if avoidance is not feasible, to acquire a State Incidental Take Permit (ITP), pursuant to Fish and Game Code section 2081(b). Full avoidance measures need to be incorporated into the MND, **BIO- 4** should be amended to include a statement requiring the qualified biologist to have the necessary State and Federal permits authorizing incidental take in order to physically remove an entrapped kit fox. Additionally, the statement "*contractor or employee that inadvertently kills or injures a SJKF*", infers Take and the Project proponent should acquire a State ITP, pursuant to Fish and Game Code section 2081(b) well in advance of initiating any Project related activities.

As currently drafted, **BIO-4** states, "*If potential SJKF dens are identified on site during the pre-construction survey, a qualified biologist shall be on site immediately*

prior to the initiation of project activities to inspect the site and dens for SJKF activity. If a potential den appears to be active or there is sign of SJKF activity on site and within the above-recommended buffers, no work can begin." CDFW recommends at a minimum, if kit fox burrows/dens are found, 'no construction' buffers/exclusion zones shall be established as follows:

- Potential kit fox den/burrow: 50 feet
- Known or active kit fox den: 100 feet
- Kit fox pupping den: 150 feet

Mitigation measure **BIO-7** Nighttime Lighting. Page 63.

CDFW recommends adding to **BIO-7** of the MND the following: Ensure that lighting for cultivation activities and security purposes is shielded, cast downward, and does not spill over onto other properties or upwards into the night sky (see the International Dark-Sky Association standards at https://www.darksky.org. Use LED lighting with a correlated color temperature of 3,000 Kelvins or less, properly dispose of hazardous waste, and recycle all lighting that contains toxic compounds with a qualified recycler.

Mitigation measure **BIO-8** Bat Roost Avoidance. Page 63-64.

As currently drafted, **BIO-8** states, "*A qualified biologist shall conduct a survey before any grading or removal of trees, particularly trees 12 inches in diameter or greater at 4.5 feet above grade with loose bark or other cavities within 48 hours prior to removal of trees*." CDFW recommends that a qualified biologist conduct focused surveys to establish species and seasonal usage. CDFW recommends that individual project areas be assessed for potential to support roosting bats well in advance of Project activities and that pre-activity surveys occur within two weeks prior to the start of work to allow adequate time for exclusionary measure planning and implementation if necessary. Furthermore, CDFW recommends focusing survey methodology, including visual surveys of bats (observation of the presence of bats during the foraging period), inspection of suitable habitat or bat sign (guano), and use of ultrasonic detectors during all dusk emergence and pre-dawn re-entry. To maximize detectability, surveys shall be conducted within one 24-hour period.

Mitigation measure **BIO-10** Pre-Construction Survey for Special-Status Reptiles and Amphibians. Page 65.

As currently drafted, **BIO-10** states, "*If any special-status reptile or amphibian species are discovered during surveys or monitoring, they will be allowed to leave on their own or will be hand-captured by a qualified biologist and relocated to suitable habitat outside the area of impact.*" CDFW recommends, 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.

Biological Surveys: Acceptable species-specific survey procedures should be developed in consultation with CDFW and the U.S. Fish and Wildlife Service, where necessary. For CDFW "Survey and Monitoring Protocols and Guidelines," visit https://wildlife.ca.gov/Conservation/Survey-Protocols. Note that CDFW generally considers biological field assessments for wildlife and plants to be valid for a **one-year** period, except when significant environmental changes occur, such as disturbance resulting from urbanization or wildfire. Surveys should be conducted during wildlife's active season when the wildlife species is most likely to be detected and plant surveys conducted during the species blooming/flowering period. Some aspects of the proposed Project may warrant periodic updated surveys for certain sensitive taxa, particularly if the Project is proposed to occur over a protracted time frame, or in phases, or if surveys are completed during periods of drought.

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.

Cannabis-Specific Impacts on Biological Resources: There are many impacts to biological resources associated with cannabis cultivation, whether indoor or outdoor cultivation (i.e., pesticides, fertilizers/imported soils, water pollution, groundwater depletion, vegetation clearing, construction and other development in floodplains, fencing, roads, noise, artificial light, dams and stream crossings, water diversions, and pond construction). CDFW recommends that the County consider cannabis-specific impacts to biological resources that may result from the Project activities.

Role of Lake and Streambed Alteration (LSA) Program in Cannabis Cultivation Licensing: 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 an LSA Notification to CDFW for the proposed Project prior to initiation of any cultivation activities. Cannabis cultivators may apply (notify) online for an LSA Agreement through EPIMS

(Environmental Permit Information Management System; https://epims.wildlife.ca.gov) and learn more about permitting at https://wildlife.ca.gov/Conservation/Cannabis/Permitting.

Review of aerial imagery and United States Geological Survey 3D Elevation Program indicates that there may be unnamed ephemeral streams, that are tributaries to San Juan Creek, on the property. Please note that CDFW has regulatory authority with regard to activities occurring in streams and/or lakes that could adversely affect any fish or wildlife resource. Pursuant to Fish and Game Code sections 1600 et seq., Section 1602(a) of the Fish and Game Code requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake (including the removal of riparian vegetation); or (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. “Any river, stream, or lake” includes features that are ephemeral or intermittent as well as those that are perennial. In addition, CDFW is required to comply with CEQA in the issuance of a Lake or Streambed Alteration Agreement.

CDFW recommends that staff within the Central Region Cannabis Permitting Program be contacted well in advance of construction so that impacts to streams and associated resources may be analyzed and, if appropriate, avoidance and minimization measures may be proposed.

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.

Pesticides, Including Fungicides, Herbicides, and Rodenticides: Cannabis cultivation sites (whether indoor or outdoor) often use substantial quantities of pesticides, including fungicides, herbicides, insecticides, and rodenticides. Wildlife, including beneficial arthropods, birds, mammals, amphibians, reptiles, and fish, can be poisoned by pesticides after exposure to a toxic dose through ingestion, inhalation, or dermal contact (Fleischli et al. 2004, Pimentel 2005, Berny 2007). They can also experience secondary poisoning through feeding on animals that have been directly exposed to the pesticides. (Even if used indoors, rodenticides may result in secondary poisoning through ingestion of sickened animals that leave the premises or ingestion of lethally poisoned animals disposed of outside.) Nonlethal doses of pesticides can

negatively affect wildlife; pesticides can compromise immune systems, cause hormone imbalances, affect reproduction, and alter growth rates of many wildlife species (Pimentel 2005, Li and Kawada 2006, Relyea and Diecks 2008, Baldwin et al. 2009).

CDFW recommends minimizing use of synthetic pesticides, and, if they are used, to always use them as directed by the manufacturer, including proper storage and disposal. Toxic pesticides should not be used where they may pass into waters of the state, including ephemeral streams, in violation of Fish and Game Code section 5650(6). For details, visit: https://www.cdpr.ca.gov/docs/cannabis/questions.htm

Anticoagulant rodenticides and rodenticides that incorporate “flavorizers” that make the pesticides appetizing to a variety of species should not be used at cultivation sites. (Note that with the passage of AB 1788, signed by the governor on September 29, 2020, the general use of second-generation anticoagulants is now banned in California). Alternatives to toxic rodenticides may be used to control pest populations at and around cultivation sites, including sanitation (removing food sources like pet food, cleaning up refuse, and securing garbage in sealed containers) and physical barriers (e.g., sealing holes in roofs/walls). Snap traps should not be used outdoors as they pose a hazard to non-target wildlife. Sticky or glue traps should be avoided altogether; these pose a hazard to non-target wildlife and result in prolonged/inhumane death. California Department of Pesticide Regulation (DPR) stipulates that pesticides must meet certain criteria to be legal for use on cannabis. For pest management practices, visit: https://www.cdpr.ca.gov/docs/county/cacltrs/penfltrs/penf2015/2015atch/attach1502.pdf.

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

Cumulative Impacts: General impacts from Projects include habitat fragmentation, degradation, habitat loss, migration/movement corridor limitations, and potential loss of individuals to the population. Multiple cannabis-related Projects have been 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.

Impacts of Cannabis Cultivation on Fish and Wildlife Resources: For more information on potential impacts to fish and wildlife resources as a result of cannabis cultivation, visit: https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=160552&inline.

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 CNDDB. The CNDDB field survey form can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/Submitting-Data. The completed form can be mailed electronically to CNDDB at the following email address: CNDDB@wildlife.ca.gov. The types of information reported to CNDDB can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/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:
Julie Vance
FA83F09FE08945A...

Julie A. Vance
Regional Manager

ec: Shannon Dellaquila
California Department of Fish and Wildlife

REFERENCES

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