State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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November 22, 2021

Mr. Albert Lopez, Planning Director
Alameda County Community Development Department
224 West Winton, Suite 111
Hayward, CA 94544
albert.lopez@acgov.org

Subject: 8588 Tesla Road Cannabis Cultivation Project, Mitigated Negative Declaration, SCH No. 2021100261, Alameda County

Dear Mr. Lopez:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an Initial Study/Mitigated Negative Declaration (IS/MND) from the County of Alameda (County) for the 8588 Tesla Road Cannabis Cultivation (project) pursuant the California Environmental Quality Act (CEQA). The public review period ended November 15, 2021; however, the County granted CDFW a comment period extension until November 23, 2021.

CDFW is therefore submitting comments on the IS/MND to inform the County, as the Lead Agency, of our concerns regarding potentially significant impacts to sensitive resources associated with the proposed project. CDFW is providing these comments and recommendations regarding those activities involved in the project that are within CDFW's area of expertise and relevant to its statutory responsibilities (Fish & G. Code, § 1802), and/or which are required to be approved by CDFW (CEQA Guidelines, §§ 15086, 15096 & 15204).

CDFW ROLE

CDFW is a Trustee Agency with responsibility under CEQA (Pub. Resources Code, § 21000 et seq.) pursuant to CEQA Guidelines § 15386 for commenting on projects that could impact fish, plant, and wildlife resources. CDFW is also considered a Responsible Agency if a project would require discretionary approval, such as permits issued under the California Endangered Species Act (CESA), the Lake and Streambed Alteration (LSA) Program, and other provisions of the Fish and Game Code that afford protection to the State's fish and wildlife trust resources.

PROJECT DESCRIPTION SUMMARY

Proponent: Frank Imhof and James Halter (Applicants)

Description and Location: The project site is located at 8588 Tesla Road, in the City of Livermore, in Alameda County, California 94550; APN: 099A-1625-002-07.

The proposed project consists of the development of a new cannabis facility consisting of 20 hoop house structures. The hoop houses would contain 20,000 square feet (sf) of mature plant canopy and one hoop house with a total of 3,000 sf of immature plant canopy. Each mature canopy hoop house would be 100 feet long and 10 feet wide. The single hoop house for immature canopy would be 100 feet long by 30 feet wide.

Ancillary structures include the construction of four water tanks and other ancillary improvements, including security fencing and lighting, access, and parking. Additionally, the project involves drilling one new well for the purpose of cannabis irrigation.

ENVIRONMENTAL SETTING

Sufficient information regarding the environmental setting is necessary to understand the project, its alternative's (if applicable), and significant impacts on the environment (CEQA Guidelines, §§15125 & 15360). CDFW recommends that the CEQA document prepared for the project provide baseline habitat assessments for special-status plant, fish, and wildlife species located and potentially located within the project area and surrounding lands, including all rare, threatened, or endangered species (CEQA Guidelines, §15380). Threatened, endangered, and other special-status species that are known to occur, or have the potential to occur in or near the project site, include, but are not limited to:

- American badger (*Taxidea taxus*; SSC)
- burrowing owl (*Athene cunicularia*; SSC)
- golden eagle (*Aquila chrysaetos*; SSC)
- loggerhead shrike (*Lanius ludovicianus*; SSC)
- foothill yellow-legged frog (*Rana boylii*; SSC)
- California red-legged frog (*Rana draytonii*; FT, SSC)
- California tiger salamander – central California DPS (Ambystoma californiense; FT, ST)
- alkali milk vetch (*Astragalus tener* var. *tener*; 1B.2)
- big-scale balsamroot (*Balsamorhiza macrolepis*; 1B.2)
- big tar plant (*Blepharizonia plumose*; 1B.1)
- caper-fruited tropidocarpum (*Tropidocarpum capparideum*; 1B.1)

FE = Federally Endangered; FT = Federally Threatened; SE = State Endangered; SFP = State Fully Protected; SSC = State Species of Special Concern; DPS = Distinct Population Segment

California Native Plant Society (CNPS) Plant Ranks

- 1B = Rare, Threatened, or Endangered in California and Elsewhere
- 2A = Presumed Extirpated in California, But Common Elsewhere
- 2B = Rare, Threatened, or Endangered in California, But More Common Elsewhere
- 4 = Of limited distribution or infrequent

CNPS Threat Ranks

- 0.1-Seriously threatened in California (over 80% of occurrences threatened / high degree and immediacy of threat)
- 0.2-Moderately threatened in California (20-80% occurrences threatened / moderate degree and immediacy of threat)
- 0.3-Not very threatened in California (less than 20% of occurrences threatened / low degree and immediacy of threat or no current threats known)

Habitat descriptions and species profiles should include information from multiple sources: aerial imagery, historical and recent survey data, field reconnaissance, scientific literature and reports, and findings from "positive occurrence" databases such as California Natural Diversity Database (CNDDB). Based on the data and information from the habitat assessment, the CEQA document can then adequately assess which special-status species are likely to occur in the Project vicinity. CDFW recommends that prior to project implementation surveys be conducted for special-status species noted in this comment letter with potential to occur, following recommended survey protocols if available. Survey and monitoring protocols and guidelines are available at: https://www.wildlife.ca.gov/Conservation/Survey-Protocols.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the County in adequately identifying and/or mitigating the project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

Comment 1: Lake and Streambed Alteration Notification

Issue: Pursuant to Business and Professions Code 26060. 1(b)(3), every license for cultivation issued by the Department of Cannabis Control (DCC) must comply with Section 1602 of the Fish and Game Code or receive written verification from CDFW that an LSA is not required. There is currently no record of LSA notification on file for this project.

Recommendations: CDFW recommends the Applicant submit an LSA notification for the project pursuant to Fish and Game Code section 1602. CDFW has authority over activities in streams and/or lakes that will divert or obstruct the natural flow; change the bed, channel, or bank (including vegetation associated with the stream or lake) of a river or stream; or use or deposit material from a streambed. CDFW determines whether an LSA Agreement with the applicant is required prior to conducting the proposed activities.

The notification process for cannabis cultivation projects is described on CDFW's website at https://wildlife.ca.gov/Conservation/Cannabis/Permitting.

Comment 2: East Alameda County Conservation Strategy

Issue: The project is located within Conservation Zone 2 in the Arroyo Seco and Upper Arroyo Mocho Watersheds (EACCS Figure 3-1). The IS/MND briefly mentions the East Alameda County Conservation Strategy (EACCS), stating though the project is located in San Joaquin Delta Watershed of Zone 2 of the EACCS, there is no suitable habitat on-site for the mentioned species: California red-legged frog, Central coast steelhead, tricolored blackbird, and/or foothill yellow-legged frog. However, the IS/MND only describes one reconnaissance survey conducted on January 18, 2021 and does not provide sufficient evidence supporting the statement that no special-status species habitat exists on-site. According to the project site description and aerial imagery analysis, it is understood that the site contains potentially suitable habitat for special-status species, including ruderal grassland, trees lining the project site perimeter, and a portion of Arroyo Seco Creek.

None of the biological mitigation measures in the IS/MND require mitigation in the form of habitat conservation despite acknowledging there are several special-status species that may be present in the project area.

Evidence of Significant Impacts: The EACCS (2010) provides a baseline inventory of biological resources and conservation priorities to be utilized by local agencies and resource agencies during project-level planning and environmental permitting. It was designed to convey project-level permitting and environmental compliance of the federal and state endangered species acts, CEQA, the National Environmental Policy Act, and other applicable laws for all projects within the study area with impacts on biological resources. The EACCS was a joint effort including, but not limited to, the cities of Pleasanton, Dublin, and Livermore; Zone 7, Alameda County, East Bay Regional Park District, U.S. Fish and Wildlife Service (USFWS) and CDFW. The EACCS is intended support and streamline the permitting process. EACCS does not create new regulations or change the process by which a project applicant obtains permits for authorization to impact biological resources, but it has, in fact, been accepted as a guidance document by several agencies including USFWS and CDFW.

Several of the species potentially impacted by this project are included as focal species in the EACCS, such as California tiger salamander (*Ambystoma californiense*), California red-legged frog (*Rana draytonii*), western burrowing owl (*Athene cunicularia*), and American badger (*Taxidea taxus*).

Recommendations: To be consistent with the EACCS and to offset permanent habitat loss or conversion, the IS/MND should further analyze habitat availability on-site and, where appropriate, include permanent habitat conservation as an enforceable mitigation measure. CDFW recommends the IS/MND should incorporate appropriate mitigation per the EACCS mitigation guidance sections (Chapter 3), for grassland, California tiger salamander, western burrowing owl, California red-legged frog, and/or American badger in the form of habitat conservation for the loss of species habitat when it cannot be avoided. Additional species-specific recommendations are incorporated below in subsequent comment letter sections.

Comment 3: California Red-legged Frog and Western Spadefoot Toad

Issue: Project activities have the potential to directly and/or indirectly impact western spadefoot, California red-legged frog, and/or their habitat. The CNDDB shows one observation of California red-legged frog approximately 0.94 miles to the east of the project site, located on Arroyo Seco stream (CNDDB, Accessed November 2021). Arroyo Seco intersects this project site. The IS/MND does not evaluate potential significant impacts to these species or their habitat such as presence of burrows within uplands that may be occupied outside of breeding season. Additionally, the IS/MND does not require any compensatory mitigation for the loss of potential habitat on-site for any of these species.

Evidence of Significant Impacts: California red-legged frogs can spend prolonged time in small mammal burrows located in grassland habitat (D'Amore 2007; Tatarian 2008). The USFWS (2010) designates an upper protective buffer limit of one mile. Minimum distances around aquatic habitat should be determined by local known dispersal distances. Western spadefoot toads predominantly prefer grassland habitats. Outside of breeding season, spadefoot toads live in burrows. Due to urban and agricultural development, spadefoot toads have become increasingly opportunistic and will use small puddles of waters, such as small pools near roads, to breed. Therefore, due to the presence of ruderal grasses on-site and its proximate location to species observations, this project site may contain suitable habitat for California red-legged frogs and western spadefoot toads.

Recommendations: Activities that will decrease ground squirrel populations, impede movement, or cause take of California red-legged frogs in uplands are advised to be avoided. CDFW also recommends a qualified biological monitor experienced in the identification and life history of California red-legged frogs be on-site during any removal of existing structures or containers currently in the project Area. Unless USFWS

authorizes relocation, any frogs/toads found on-site must be allowed to leave the area on their own. As stated in Comment 2, the IS/MND should incorporate mitigation consistent with EACCS mitigation guidance sections (Chapter 3) for California red-legged frog. Additionally, appropriate habitat mitigation should be considered for western spadefoot toad.

Comment 4: California Tiger Salamander

Issue: Although not mentioned in the IS/MND, the project site is located within dispersal distance of multiple known California tiger salamander detections. For instance, according to CNDDB/BIOS, there is a detection of California tiger salamander either adjacent to or intercepting the project site surrounding the Arroyo Seco Stream. Additionally, there is an extant California tiger salamander detection approximately 0.60 miles northwest of the project site and one 0.85 miles to the south of the project site (CNDDB Accessed November 2021). California tiger salamander are known to be able to travel 1.3 miles from upland habitat to breeding ponds. The IS/MND as written, does not sufficiently evaluate potential impacts to California tiger salamander or reduce those potential impacts to less-than-significant levels as required by CEQA.

Evidence of Significant Impacts: California tiger salamanders spend a majority of their lives underground in burrows created by fossorial mammals. Some salamanders migrate to and from breeding ponds on rainy nights during the winter and spring. Based on their life history it is highly unlikely a salamander would be found during pre-construction surveys unless the surveys were protocol level and included actions such as, burrow excavation, pitfall traps and drift fencing, as authorized under CESA.

Recommendations: Given the historical and extant California tiger salamander detections within 1.3 miles of the project site, if the project has suitable habitat on-site, the IS/MND should assume presence and the project proponent should apply for and obtain an Incidental Take Permit from CDFW. Mitigation measures to off-set impacts to California tiger salamander habitat should include actions such as preserving off-site habitat through either purchasing California tiger salamander habitat credits at a CDFW approved conservation bank (see https://www.wildlife.ca.gov/Conservation/Planning/Banking/Approved-Banks). Alternatively impacts may be mitigated by placing a conservation easement over CDFW approved lands and funding an endowment for managing the lands for the benefit of California tiger salamander in perpetuity, and preparation and implementation of a long-term management plan.

CDFW advises that the project proponent obtain a CESA Permit (pursuant to Fish and Game Code Section 2080 et seq.) in advance of project implementation if the project will result in take of a CESA listed species. Issuance of a CESA Permit is subject to CEQA documentation; therefore, the CEQA document should specify impacts; mitigation, and should fully describe a mitigation, monitoring and reporting program. As

mentioned above, if the proposed project will impact any CESA-listed species, early consultation is encouraged, as significant modification to the project and mitigation measures may be required in order to obtain a CESA Permit. As stated in Comment 2, the IS/MND should incorporate mitigation consistent with EACCS mitigation guidance sections (Chapter 3) for California tiger salamander. More information on the CESA permitting process and protocol survey procedures can be found on the CDFW website at https://www.wildlife.ca.gov/Conservation/CESA or https://www.wildlife.ca.gov/Conservation/Survey-Protocols.

Comment 5: American Badger

Issue: The IS/MND does not discuss the potential for encountering American badger on the project site. However, this project is within the range of the American badger and includes grassland habitat that may be suitable for American badger. Five extant CNDDB badger occurrences exist approximately 0.9 to 1.1 miles northwest of the project site (CNDDB Accessed November 2021). This information confirms the species has occurred in the vicinity of the project site and could use it and adjacent habitat.

Evidence of Significant Impacts: Badgers range throughout most of California and can dig burrows in a single day; therefore, the species may occupy the project site and adjacent habitat prior to project construction (Brehme et al. 2015). CDFW is concerned the project may result in injury or mortality to adult or young badgers, or burrow abandonment. Therefore, project impacts to American badger would be potentially significant.

Recommendations: To reduce impacts to less-than-significant, CDFW recommends that the IS/MND:

- further analyze the potential for American badger to occur on and adjacent to the project site; and

- include mitigation measures to ensure impacts are reduced to less than-significant. These measures may include a qualified biologist surveying for the species including adjacent habitat prior to construction, avoiding occupied burrows including a sufficient buffer approved by CDFW, and preparing and implementing a CDFW-approved relocation plan if badgers are found on or adjacent to the project site.

Comment 6: Special-Status Plant Surveys

Issue: The IS/MND states that there is no suitable habitat for special-status species. However, there is an extant observation of big-scale balsamroot and caper-fruited tropidocarpum approximately 1.3 miles south of the project site (CNDDB Accessed November 2021). CDFW is concerned the project may result in impacts to special-

status plant species. Therefore, project impacts to special-status plant species would be potentially significant.

Evidence of Significant Impacts: Big-scale balsamroot is a perennial herb that may occur in grassland habitat. According to the IS/MND, only one reconnaissance level survey was conducted in January 2021. Additionally, big-scale balsamroot's blooming period occurs between March through June. The plant may not be identifiable outside of the blooming period and therefore, may have easily been missed during the survey.

Recommendations: A Qualified Biologist should conduct surveys during the appropriate blooming period for all special-status plants that have the potential to occur on the project site prior to the start of construction. Surveys should be conducted following *Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Sensitive Natural Communities*, prepared by CDFW, dated March 20, 2018. The protocol can be found here: https://www.wildlife.ca.gov/Conservation/SurveyProtocols#377281280-plants. If special-status plants are found during surveys, the IS/MND should outline which species of special-status plants will be impacted how the project would be re-designed to avoid, minimize and/or mitigate impacts to those special-status plants. The applicant should provide a copy of the special-status plant survey results to CDFW for review and acceptance.

Comment 7: Migratory Birds and Nesting Raptors

Issues: The IS/MND, p. 34, acknowledges there is habitat for nesting raptors and other migratory species onsite due to the presence of trees bordering the parcel. The IS/MND, p. 31, indicates while there would be no proposed tree removal for the project, site disturbance may occur during the nesting bird season (February 1 through August 31). Avoidance and minimization measure BIO-1 specifies a 300-foot pre-construction survey buffer for raptors and avian species on-site 14 days or less prior to start of construction. However, the document also indicates if there is detection of nesting species, a qualified biologist may set a buffer dependent on species behavior. Therefore, the 300-foot pre-construction survey buffer may not capture all bird species potentially impacted by construction disturbances. The project proponent is responsible for ensuring that the project does not result in any violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes.

Recommendation 1 - **Nesting Birds General**: CDFW recommends the following additional guidance related to nesting bird surveys to incorporate into the IS/MND:

If work will occur during nesting bird season (February 1 through August 31) no more than fourteen (14) days prior to work commencing, including staging, clearing and grubbing, a qualified biologist should survey a 'sufficient' area around the project site to identify any nests that are present and determine their status and an appropriate buffer,

the buffer distance should be determined by the discretion of the qualified biologist on a species-by-species basis. 'Sufficient' in this context means any nest within an area that could potentially be affected by the project. Therefore, it would be appropriate to extend the pre-construction survey limits to ensure all species nests that may be impacted are identified.

Once construction work begins, the survey effort should continue to identify any nest starts established after the work commences. In addition to direct impacts, such as nest destruction, nesting birds might be affected by noise, vibration, odors, lighting, and movement of workers or equipment. Identified active nests should be surveyed for the first 24 hours prior to any construction-related activities to establish a behavioral baseline of the adults and any nestlings. Once work commences, all active nests should continue to be monitored by the qualified biologist to detect any signs of disturbance and behavioral changes as a result of the project. If signs of disturbance and behavioral changes are observed, the biologist should reassess the appropriate buffer to prevent disturbance-related nest failure and subsequent take.

Recommendation 2 - Raptor Nests: A qualified biologist, experienced in raptor behavior, should be assigned to monitor the behavior of any raptors nesting within disturbance distance of project activities. Even within species, disturbance distances can vary according to time of year or geographical location. The qualified biologist should have authority to order the cessation of all project activities within disturbance distance of any raptor nest if the birds exhibit abnormal nesting behavior which may cause reproductive failure (nest abandonment and loss of eggs and/or young). Abnormal nesting behaviors which may cause reproductive harm include, but are not limited to; defensive flights/vocalizations directed towards project personnel, standing up from a brooding position, interrupted feeding patterns, and flying away from the nest. Project activities within line of sight of the nest should not resume until the qualified biologist has consulted with CDFW and both the qualified biologist and CDFW confirm that the bird's behavior has normalized, or the young have left the nest.

Comment 8: Western Burrowing Owl

Issue: The IS/MND does not discuss whether burrowing owls could be present on-site or in the surrounding area. Based on our records, burrowing owls have been documented approximately 0.75 miles from the project site (CNDDB Accessed November 2021). Please be advised that preconstruction/reconnaissance surveys alone are inadequate to determine impacts to western burrowing owl and their habitat. Burrowing owls may also use unnatural features such as debris piles, culverts and pipes for nesting, roosting or cover. This project site contains connected grassland with ruderal grasses. The IS/MND does not discuss whether any burrow habitat was assessed on the parcel. CDFW is concerned the project may result in injury or mortality

to adult or juvenile owls, or burrow abandonment. Therefore, project impacts to western burrowing owl would be potentially significant.

Recommendations: The IS/MND should evaluate whether the parcel contains suitable burrowing habitat for western burrowing owl. Prior to project activities, a habitat assessment should be performed following Appendix C (Habitat Assessment and Reporting Details) of the CDFW Staff Report on Burrowing Owl Mitigation (2012 CDFW Staff Report), which is available at https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843. The habitat assessment should extend at least 150 meters (492 feet) from the Project site boundary and include burrows and burrow surrogates. If suitable burrowing owl habitat is determined to be present, CDFW recommends that surveys be conducted following the methodology described in Appendix D (Breeding and Non-breeding Season Surveys) of the 2012 CDFW Staff Report.

Burrowing owl surveys should be conducted by a qualified CDFW-approved biologist. In accordance with the Staff Report, a minimum of four survey visits should be conducted within 500 feet of the project area during the owl breeding season which is typically between February 1 and August 31. A minimum of three survey visits, at least three weeks apart, should be conducted during the peak nesting period, which is between April 15 and July 15, with at least one visit after June 15. Pre-construction surveys should be conducted no-less-than 14 days prior to the start of construction activities with a final survey conducted within 24 hours prior to ground disturbance.

Please be advised that CDFW does not consider exclusion of burrowing owls or “passive relocation” as a “take” avoidance, minimization or mitigation method, and considers exclusion as a significant impact. The long-term demographic consequences of exclusion techniques have not been thoroughly evaluated, and the survival rate of evicted or excluded owls is unknown. All possible avoidance and minimization measures should be considered before temporary or permanent exclusion and closure of burrows is implemented in order to avoid “take”.

The CEQA document for the project should also include measures to avoid or minimize loss of burrowing owl foraging habitat, and mitigation for loss of habitat that cannot be fully avoided. The EACCS Mitigation Guidance (p. 3-66) for burrowing owl recommends mitigating the loss of habitat by protecting habitat in accordance with the mitigation guidelines outlined in Table 3-10 (BUOW-3) through acquiring parcels, through fee title purchase or conservation easement, where known nesting sites occur or where nesting sites have occurred in the previous three nesting seasons (BUOW-1 and BUOW-2). Additionally, the project applicant could work with the Implementation Committee to fund the implementation of an annual monitoring program in coordination with local conservation groups on all burrowing owl nest colonies on protected lands using monitoring protocols established by the California Burrowing Owl Consortium (1997).

The results of these surveys would be submitted to the CNDDB and the Conservation Strategy database (BUOW-4 and BUOW-5). This would allow for informed avoidance of impacts in the future.

Comment 9: Riparian/Wetlands Setbacks

Issue: The IS/MND (p.12) references County Code 15.36.830, stating "all proposed project facilities are located at a minimum of 20 feet from the top of bank. The proposed project facilities would be located at a minimum of 30 feet from the top of bank. These setbacks are not consistent with state requirements (e.g., State Water Board *Cannabis Cultivation Policy – Principals and Guidelines for Cannabis Cultivation*[1]). The State Water Board Cannabis Policy has a standard of 50-foot minimum buffer for ephemeral watercourses.

Given the unknown variability of site-specific cannabis activities, CDFW is concerned that the proposed setbacks may not be enough to conclude no adverse effects on any special-status aquatic species. The setbacks may not adequately prevent deleterious materials, including wastewater discharge and other pollutants, from entering wetlands and/or streams.

Evidence of Significant Impacts: Wastewater discharge and runoff from cannabis activities, especially water containing pesticides, disinfectants, and/or fertilizers, may enter and alter existing streams or their function and associated riparian habitat on the project site. Wetlands that are hydrologically connected to surface water may transport pollutants and waste material associated with cannabis cultivation.

Riparian buffers help keep pollutants from entering adjacent waters through a combination of processes including dilution, sequestration by plants and microbes, biodegradation, chemical degradation, volatilization, and entrapment within soil particles. As buffer width increases, the effectiveness of removing pollutants from surface water runoff increases (Castelle et al. 1992). There is substantial evidence showing narrow buffers are considerably less effective in minimizing the effects of adjacent development than wider buffers (Castelle et al. 1992, Brosofske et al. 1997, Dong et al. 1998, Kiffney et al. 2003, Moore et al. 2005).

Recommendations: Riparian setbacks should be as protective as or more protective than the State Water Board *Cannabis Cultivation Policy – Principals and Guidelines for Cannabis Cultivation* requirements which prescribes setbacks in Figure 1 below.

[1] https://www.waterboards.ca.gov/water_issues/programs/cannabis/docs/policy/final_cannabis_policy_with_attach_a.pdf

Common Name	Watercourse Class[3]	Distance
Perennial watercourses, waterbodies (e.g. lakes, ponds), or springs[4]	I	150 ft.
Intermittent watercourses or wetlands	II	100 ft.
Ephemeral watercourses	III	50 ft.
Man-made irrigation canals, water supply reservoirs, or hydroelectric canals that support native aquatic species	IV	Established Riparian Vegetation Zone
All other man-made irrigation canals, water supply reservoirs, or hydroelectric canals	IV	N/A

Figure 1. Set-back listed in the State Water Board Cannabis Cultivation Policy – Principals and Guidelines for Cannabis Cultivation.

The County should evaluate each cultivation site individually and reserve the right to require greater setbacks in some cases.

Comment 10: Water Use and Cumulative Impacts

Issue: Cannabis cultivation is often associated with a significant water demand. The project description indicates the sole water source for cannabis irrigation would be a new well. However, the Proposed Site Plan, prepared by Denise Duffy and Associates, dated February 2021, only labels an existing site well. Due to the lack of information on the project related well, CDFW is concerned the project may result in the continued decline of groundwater and the resulting further decline of biological resources that depend on groundwater availability. Increased water use may lower the groundwater table, which could eliminate flows or flow duration in streams, such as the on-site Arroyo Seco Creek. Lowering of the water table may reduce water availability for fish and wildlife. It is also unclear how the project well may interact with surface water resources.

Evidence of Significant Impacts: Cannabis cultivation requires an average of one gallon of water per day per pound of cannabis produced or 6 gallons per plant per day (Bauer et al., 2015). Discussion of cumulative impacts is required by CEQA Guidelines section 15130, which also includes “past, present, and probable future projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the agency....” Increased water use may result in diminishing the biological diversity in watersheds. Increased water diversions and alterations to rivers’ hydrogeomorphology could affect the riparian corridor, and change sedimentation, nutrient loading, water quality, and water availability (Naiman et al. 1993, 2000). The project could also substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of preexisting nearby wells would drop to a level which would not support existing land uses or

planned uses for which permits have been granted). Therefore, CDFW is concerned cumulative impacts from this and future projects in the County on biological resources similar to the proposed project may be considerable, as defined in CEQA Guidelines section 15065(a)(3) and 15064(h)(1).

Recommendations: CDFW recommends that the IS/MND disclose the location of the proposed cannabis irrigation well and incorporate any groundwater extraction/recharge measures that will ensure that the project's use of groundwater will not further result in subsidence of the groundwater table or impacts to surface water flow in Arroyo Seco Creek. Additionally, CDFW recommends the IS/MND analyze site and cumulative impacts to water sources (i.e., local groundwater) based on this, past, and future projects, and that the County require the project to monitor and report water usage. If diversion from the existing or new well could result in substantial diversion of streamflow, CDFW recommends the diversion be included as part of a complete project LSA notification.

Comment 11: Fencing Hazards

Issue: The project may result in the use of open pipes used as fence posts, property line stakes, signs, etc. These structures mimic the natural cavities preferred by various bird species and other wildlife for shelter, nesting, and roosting. Raptor's talons can become entrapped within the bolt holes of metal fence stakes resulting in mortality.

Recommendations: CDFW recommends that all hollow posts and pipes be capped to prevent wildlife entrapment and mortality. Metal fence stakes used on the project site should be plugged with bolts or other plugging materials to avoid this hazard. Further information on this subject may be found at: https://ca.audubon.org/conservation/protect-birds-danger-open-pipes.

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 the CNDDB. The CNNDB field survey form can be found at the following link: https://wildlife.ca.gov/Data/CNDDB/Submitting-Data#44524420-pdf-field-survey-form. 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://wildlife.ca.gov/Data/CNDDB/Plants-and-Animals.

REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a CESA Permit must be obtained if the project has the potential to result in "take" of plants or animals listed under CESA, either during construction or over the life of the project. Issuance of a CESA Permit is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the project will impact CESA listed species, early consultation is encouraged, as significant modification to the project and mitigation measures may be required in order to obtain a CESA Permit.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially restrict the range or reduce the population of a threatened or endangered species. (Pub. Resources Code, §§ 21001, subd. (c), 21083; CEQA Guidelines, §§ 15380, 15064, & 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency's FOC does not eliminate the project proponent's obligation to comply with Fish and Game Code section 2080.

California Endangered Species Act

Please be advised that a CESA Permit must be obtained if the project has the potential to result in "take" of plants or animals listed under CESA, either during construction or over the life of the project. Issuance of a CESA Permit is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the project will impact CESA listed species, early consultation is encouraged, as significant modification to the project and mitigation measures may be required in order to obtain a CESA Permit.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially impact threatened or endangered species (CEQA section 21001(c), 21083, & CEQA Guidelines section 15380, 15064, 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency's FOC does not eliminate the project proponent's obligation to comply with Fish and Game Code section 2080.

Lake and Streambed Alteration Program

Notification is required, pursuant to CDFW's LSA Program (Fish & G. Code section 1600 et. seq.) for any Project-related activities that will substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake or stream. Work within ephemeral streams, washes, watercourses

with a subsurface flow, and floodplains are subject to notification requirements. CDFW, as a Responsible Agency under CEQA, will consider the CEQA document for the project. CDFW may not execute the final LSA Agreement until it has complied with CEQA (Public Resources Code section 21000 et seq.) as the responsible agency.

Nesting Birds

CDFW has jurisdiction over actions that may result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections protecting birds, their eggs, and nests include 3503 (regarding unlawful take, possession or needless destruction of the nests 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 may not be taken or possessed at any time (Fish and Game Code Section 3511). Migratory raptors are also protected under the federal Migratory Bird Treaty Act.

FILING FEES

The project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is 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 IS/MND to assist the County in identifying and mitigating project impacts on biological resources.

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Sincerely,

DocuSigned by:
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692D021D81CA4E7...
Stephanie Fong
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cc: Office of Planning and Research, State Clearinghouse, Sacramento

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