



State of California – Natural Resources Agency  
 DEPARTMENT OF FISH AND WILDLIFE  
 Northern Region  
 601 Locust Street  
 Redding, CA 96001  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



Governor's Office of Planning & Research

December 7, 2021

**Dec 07 2021**

## STATE CLEARINGHOUSE

Lisa Lozier  
 Deputy Director of Planning  
 Trinity County Planning Department  
 PO Box 2819  
 Weaverville, CA 96093

**Subject: Review of the Mitigated Negative Declaration for the Patton Commercial Cannabis Use Permit (P-18-23), State Clearinghouse Number 2021110119, Trinity County**

Dear Lisa Lozier:

The California Department of Fish and Wildlife (Department) has reviewed the Initial Study/Mitigated Negative Declaration (MND) dated November 2021, for the above-referenced project (Project). As a trustee for the State's fish and wildlife resources, the Department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and their habitat. As a responsible agency, the Department administers the California Endangered Species Act (CESA) and other provisions of the Fish and Game Code (FGC) that conserve the State's fish and wildlife public trust resources. The Department offers the following comments and recommendations on this Project in our role as a trustee and responsible agency pursuant to the California Environmental Quality Act (CEQA), California Public Resources Code section 21000 et seq.

### Project Description

The Project has several components for various commercial cannabis activities, including cultivation, distribution, and nursery retailer. As proposed, the Project is seeking approval "to expand an existing Type 2 "Small Outdoor" commercial cannabis cultivation license, permitted by Trinity County since 2016, into a Type 3 "Medium Outdoor" commercial cannabis cultivation license, as defined in Trinity County Ordinance 315-849, to allow for up to 43,560 square feet (1 acre) of mature canopy split between two contiguous properties (APNs 109-750-13 [Parcel 1] and 019-750-17 [Parcel 2])." The Project would also convert a Type 13 "Transport-Only" license, under identical ownership/licensure, into a "Type 11" Distribution license for up to 500 square feet. The applicant is also seeking approval of a commercial "Nursery" license, which would include the sale of immature cannabis plants, seeds, and auxiliary sales to licensed cultivators and retailers. Finally, the applicant has applied for a variance from the limitations of

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location as required by County Ordinance, to site the cultivation area less than five hundred (500) feet from the adjacent property lines. All of these actions are considered the “proposed project” under a Conditional Use Permit. The Project is located near the community of Peanut, on both sides of Highway 3 and south of Rattlesnake Road. Salt Creek, a perennial anadromous stream runs south to north paralleling Highway 3, both bisecting the Project.

## **Comments and Recommendations**

The Department has the following recommendations and comments as they pertain to biological resources.

### Biological Resource Assessment (BRA)

The methods described in generating a list of potential threatened, endangered, and sensitive species that may be impacted by the Project was created, in part, using the California Natural Diversity Database (CNDDDB) “*out to 1, 5, and 10 miles from the property center*”. A map was generated showing the CNDDDB occurrences of special status species potentially present within 10 miles of the subject property, but the list produced to suggest what species needed further evaluations was limited to a one-mile radius around the subject parcel(s). The CNDDDB is a positive occurrence database and does not predict where something may be found. There are many areas of the state where no surveys have been conducted and therefore there is nothing on the map. That does not mean that there are no special status species present. In order to provide an adequate assessment of special-status species potentially occurring within the Project vicinity, the Department recommends the initial search area for CNDDDB occurrences include the United States Geological Survey (USGS) 7.5-minute topographic quadrangle where the Project is located and all adjoining 7.5-minute topographic quadrangles. The MND does not discuss why areas beyond a 1-mile radius from the Project may have been intentionally excluded from the list for further evaluation. As a reminder, the Department cannot and does not portray the CNDDDB as an exhaustive and comprehensive inventory of all rare species and natural communities statewide and field surveys for the presence or absence of sensitive species is an important obligation.

### Foothill Yellow-Legged Frog/Western Pond Turtle

The BRA states that because there is “*no creek in the construction area*”, there will be no impacts on species of special concern, such as foothill yellow-legged frog (*Rana boylei*) and western pond turtle (*Emys marmorata*). The Department does not concur with these findings.

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Both of these species have historic CNDDDB detections on the subject parcel and habitat for both species exists in and around Salt Creek. The life history account for western pond turtle accessed through the Department's website explains that during the spring or early summer near perennial streams such as Salt Creek, female pond turtles move overland for up to 100 meters (325 feet) to find suitable nesting sites. Nests may be dug in various soil types. Other long-distance movements may be in response to drying of local bodies of water or other factors. Due to construction activities occurring less than 300 feet from Salt Creek, the Department recommends that a qualified biologist, familiar with pond turtle, be present in the construction areas when there is a high probability pond turtle is present (spring and summer). Additionally, western pond turtle exhibits high site fidelity. If found, and relocated to the stream corridor, the likelihood of the pond turtle coming back into the construction zone is high.

Although foothill yellow-legged frog is considered a stream dwelling species, a study from Mendocino County found migration distances ranging from 16 meters to 331 meters from the nearest stream, with an average distance of 71.3 meters (234 feet) (Cook). This report suggests that this species may use upland habitat far more than previously known and are therefore at risk to both direct and indirect impacts from this Project. The Department recommends a qualified biologist conduct pre-construction surveys prior to any ground disturbing activities occurring within 300 feet of Salt Creek and relocate any frogs that may be present within the construction area.

The Department recommends the MND include mitigation measures to protect both of these species of special concern during ground disturbing activities within their respective migration zones.

#### Essential Fish Habitat/Chinook/Steelhead

The BRA states: *There are no creeks or tributary creeks that flow into any critical habitat streams or rivers for anadromous [sic] ocean dwelling fish, as the closest creek-Salt Creek flows into Hayfork Creek but has impoundments on its downstream descent that disallow anadromous [sic] fish from entering its waters.* The Department would like to clarify that the entirety of the Hayfork Creek watershed, including Salt Creek, is considered Chinook salmon Essential Fish Habitat (EFH Mapper). Salt Creek has the ability to support Chinook salmon and steelhead trout with no known barriers to anadromy. The Project may not impact salmonid habitat directly, however there could be indirect impacts from the Project both from initial construction as well as on-going Project related activities. Less permeable surfaces and an increase in traffic may deliver additional runoff and potential pollution towards the stream, but the MND does not analyze the impacts from increased runoff towards the stream. The MND relies on the applicant's enrollment with the State Water Resources Control Board Cannabis General Order to minimize potential stormwater runoff and water

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quality impacts. Enrollment in that General Order does not ensure local oversight or the ability for the Lead Agency to ensure mitigation compliance should the Project cause water quality impacts to this salmonid-bearing stream. A large volume of water is planned to be stored on the parcel in a rain-catchment pond, which may overtop in a storm with unknown consequences. Knowing where storm water will deliver sediment and other pollutants is an important part of project planning. The Department recommends that a condition of approval require vegetated swales or detention basins between the Project footprint and Salt Creek to alleviate potential impacts to water quality.

#### Mitigation Measure BIO-1-Nesting Bird Surveys

The Department agrees with the inclusion of bird nesting surveys if vegetation removal activities cannot occur outside the bird nesting season. In order to avoid impacts to ground nesting birds, the Department requests the inclusion of “*other ground-disturbance activities associated with construction*” within this requirement for pre-construction surveys if work occurs between February 1 and August 31. Please submit the results of the pre-construction surveys (including additional botanical or wildlife pre-construction surveys) electronically to the Department at [R1CEQARedding@wildlife.ca.gov](mailto:R1CEQARedding@wildlife.ca.gov).

#### Lake and Streambed Alteration Notification

If there is additional construction or disturbance to Salt Creek or its associated riparian vegetation, a Lake and Streambed Alteration Agreement will be necessary. For any activity that will divert or obstruct the natural flow, or change the bed, channel, or bank (which includes associated riparian resources) of a river or stream, or use material from a streambed, the Department will require a Lake and Streambed Alteration (LSA) Notification, pursuant to Section 1600 et seq. of the Fish and Game Code, from the applicant. Project activities, which would be subject to LSA Notification requirements, include construction of stormwater features that discharge on or over the streambank and modification of associated riparian resources growing on the bank. Issuance of an LSA Agreement is subject to CEQA. The Department, as a responsible agency under CEQA, will consider the CEQA document for the Project. The CEQA document should fully identify the potential impacts to the stream or riparian resources and provide adequate avoidance, mitigation, monitoring and reporting commitments for completion of the agreement. To obtain information about the LSA notification process or access the Online Permitting Portal (EPIMS), please access our website at <https://www.wildlife.ca.gov/Conservation/LSA>.

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If you have any questions, please contact Kate Blanchard, Senior Environmental Scientist (Specialist), at (530) 225-2239, or by email at [katherine.blanchard@wildlife.ca.gov](mailto:katherine.blanchard@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
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Tina Bartlett, Regional Manager  
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