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



March 3, 2022

**Governor's Office of Planning & Research**

**Mar 04 2022**

Mr. Rob Hickey  
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**STATE CLEARINGHOUSE**

Subject: Oasis Farm Cannabis Project, Initial Study/Mitigated Negative Declaration, SCH No. 2022020002, City of Rio Vista, Solano County

Dear Mr. Hickey:

The California Department of Fish and Wildlife (CDFW) has reviewed the Initial Study/Mitigated Negative Declaration (IS/MND) prepared by the City of Rio Vista for the Oasis Cannabis Farm (Project), located in Solano County. CDFW is submitting comments on the IS/MND regarding potentially significant impacts to biological resources associated with the Project.

**CDFW ROLE**

CDFW is a Trustee Agency with responsibility under the California Environmental Quality Act (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 Native Plant Protection Act, 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:** Oasis Farms, LLC.

**Description and Location:**

The Project site is located at Harvey Felt Court and Poppy House Road, in the City of Rio Vista, Solano County, California. The APN for this site is 178-20-19 on a 3.9-acre parcel.

Project activities include the construction of two buildings for the purpose of cannabis cultivation. Each building would be two-stories with each floor containing 34,726 square-

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feet; therefore, the total building footprint would be 69,452 square-feet on-site. Each two-story building would contain 42,660 square-feet of canopy cultivation for a total area of 85,320 square-feet canopy cultivation. The two buildings would be separated by an approximately 30-foot-wide breezeway with plantings and landscaping.

In addition to the proposed buildings, the Project includes constructing new parking lots on the north and northwesterly sides of the buildings. Building 1 would be served by 74 parking spaces and Building 2 would be served by 80 parking spaces; totaling 154 spaces. A 24-foot-wide driveway would be constructed at each gated entrance of the Buildings 1 and 2 parking lots.

## **COMMENTS AND RECOMMENDATIONS**

CDFW offers the below comments and recommendations to assist the City of Rio Vista in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources, including burrowing owl and Swainson's hawk.

### **Comment 1: Lake or 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 § 1602 of the Fish and Game Code or receive written verification from CDFW that an LSA is not required. Currently CDFW has no record of LSA notification on file for this Project.

**Recommendations:** CDFW recommends the Applicant submit a complete LSA notification for the Project pursuant to Fish and Game Code § 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: Migratory and Nesting Birds**

**Issue:** The IS/MND states that Project site contains no suitable nesting bird habitat. However, according to aerial imagery review, there appears to be a patch of vegetation, including trees approximately 350 feet to the Southeast of the Project site (California Natural Diversity Database (CNDDDB), February 2022). If ground-disturbing or vegetation-disturbing activities occur during the bird breeding season (February through early-September), the Project could cause impacts to nesting birds.

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**Nesting Bird Surveys Recommendation:** If Project-related work is scheduled during the nesting season (typically February 15 to August 30 for small bird species such as passerines; January 15 to September 15 for owls; and February 15 to September 15 for other raptors), a qualified biologist should conduct two surveys for active nests within 14 days prior to the beginning of Project construction, with a final survey conducted within 48 hours prior to construction. Appropriate minimum survey radii surrounding the work area are typically the following: i) 250 feet for passerines; ii) 500 feet for small raptors such as accipiters; and iii) 1,000 feet for larger raptors such as buteos. Surveys should be conducted at the appropriate times of day and during appropriate nesting times.

**Active Nest Buffer Recommendations:** If a qualified biologist documents active nests within the Project area or in nearby surrounding areas, an appropriate buffer between the nest and active construction should be established. The buffer should be clearly marked and maintained until the young have fledged and are foraging independently. Prior to construction, the qualified biologist should conduct baseline monitoring of the nest to characterize “normal” bird behavior and establish a buffer distance which allows the birds to exhibit normal behavior. The qualified biologist should monitor the nesting birds daily during construction activities and increase the buffer if the birds show signs of unusual or distressed behavior (e.g., defensive flights and vocalizations, standing up from a brooding position, and/or flying away from the nest). If buffer establishment is not possible, the qualified biologist should have the authority to cease all construction work in the area until the young have fledged, and the nest is no longer active.

## **Comment 2: Western Burrowing Owl**

**Issue:** The Project site contains grassland with ruderal grasses and is located contiguous with open space, however the Project IS/MND does not discuss whether burrowing owl habitat was assessed on the Project parcel. The IS/MND also does not discuss whether burrowing owls could be present on site or in the surrounding area. According to the CNDDDB, burrowing owls have been documented approximately 2.8 miles to the northwest and 3.1 miles to the west of the Project site (CNDDDB Accessed February 2022).

Please be advised that pre-construction/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. If burrows are present, 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.

**Habitat Assessment for Burrows Recommendation:** 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

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(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.

**Breeding and Non-Breeding Surveys Recommendation:** 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.”

**Recommended Compensatory Mitigation:** If the Project would impact an unoccupied nesting burrowing owl burrow or burrow surrogate (i.e., a burrow known to have been used in the past three years for nesting), or an occupied burrow (where a non-nesting owl would be evicted as described above), the following compensatory habitat mitigation shall be implemented prior to Project construction:

Impacts to each nesting site shall be mitigated by permanent preservation of two occupied nesting sites with appropriate foraging habitat within Solano County, unless otherwise approved by CDFW, through a conservation easement and implementing and funding a long-term management plan in perpetuity. The same requirements shall apply for impacts to non-nesting evicted owl sites. The Project may implement alternative methods for preserving habitat with written acceptance from CDFW.

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### **Comment 3: Swainson's Hawk**

**Issues:** The IS/MND does not assess whether the Project has the potential to impact Swainson's hawk foraging or nesting habitat. Swainson's hawk has been documented within 1.25 miles north and 2.6 miles east of the Project site (CNDDDB, accessed February 2022). The IS/MND states the site currently contains undeveloped ruderal grasslands, but does not comment whether small mammal burrows are present. Additionally, though the Project site itself does not contain trees, there appears to be a patch of vegetation, including trees, approximately 350 feet from the extent of work which may serve as potential Swainson's hawk nesting habitat. The vegetation area was not included in the IS/MND Project setting assessment.

Subsequently, the IS/MND does not incorporate any mitigation if a). the site contains potential Swainson's hawk habitat, and b). significant impacts to Swainson's hawk foraging habitat cannot be avoided.

**Recommendations:** CDFW recommends Project-related disturbance within a minimum of 0.25 miles (and up to 0.5 miles depending on site-specific conditions) of any active Swainson's hawk nest site be reduced or eliminated during the critical phase of the nesting cycle (March 1 through September 15) in order to avoid significant impacts to the hawk. The Project proponent should map Swainson's hawk nesting sites within 0.25 to 0.50 miles of the Project location. If Project activities must be conducted during this critical phase, then appropriate buffers should be established by a qualified biologist. Please refer to the CDFW guidance document on Swainson's hawk on take avoidance, minimization, and mitigation measures that is available at: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83992>.

The IS/MND should include mitigation for potentially significant impacts to Swainson's hawk foraging habitat on the Project site if active nests are found in the Project vicinity. CDFW considers a nest active if has been utilized once in the past five years (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83991&inline>). CDFW recommends mitigation for loss of Swainson's hawk foraging habitat based on the following ratios:

- For Projects within one-mile of an active nest tree, provide one-acre of land for each acre of development authorized (1:1 ratio).
- For Projects within five miles of an active nest tree but greater than one-mile from the nest tree, provide 0.75 acres of land for each acre of development authorized (0.75:1 ratio).

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- For Projects within 10 miles of an active nest tree but greater than 5 miles from an active nest tree, provide 0.5 acres of land for each acre of development authorized (0.5:1 ratio).

#### **Comment 4 - Fencing Hazards**

**Issue:** The Project may result in the use of open pipes used as fence posts, property line stakes, signs, etc. that 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. 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>.

**Recommendation:** CDFW recommends that all hollow posts and pipes be capped to prevent wildlife entrapment and mortality.

#### **ENVIRONMENTAL DATA**

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. [Pub. Resources Code, § 21003, subd. (e)]. Accordingly, please report any special-status species and natural communities detected during Project surveys to CNDDDB. The CNDDDB field survey form can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data#44524420-pdf-field-survey-form>. The completed form can be mailed electronically to CNDDDB at the following email address: [CNDDDB@wildlife.ca.gov](mailto:CNDDDB@wildlife.ca.gov). The types of information reported to CNDDDB can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

#### **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

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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 and Game 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 and Game Code, § 711.4; Pub. Resources Code, § 21089).

### **CONCLUSION**

CDFW appreciates the opportunity to comment on the IS/MND to assist the City of Rio Vista in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Ms. Mia Bianchi, Environmental Scientist, at (707) 210-4531 or

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[mia.bianchi@wildlife.ca.gov](mailto:mia.bianchi@wildlife.ca.gov); or Mr. Wes Stokes, Senior Environmental Scientist (Supervisory), at (707) 339-6066 [wesley.stokes@wildlife.ca.gov](mailto:wesley.stokes@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
*Erin Chappell*  
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Erin Chappell  
Regional Manager  
Bay Delta Region

ec: State Clearinghouse

## REFERENCES

California Department of Fish and Wildlife (CDFW). 2020. California Natural Diversity Database (CNDDDB) Rarefind Electronic database. Sacramento, CA. Search of U.S. Geological Survey 7.5-minute quadrangles Rio Vista. Accessed September 2022.