State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
1234 East Shaw Avenue
Fresno, California 93710
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director

May 3, 2022

Elizabeth Moreno
County of San Luis Obispo
Department of Planning & Building
976 Osos Street, Room 200
San Luis Obispo, CA 93408-2040
http://www.sloplanning.org

Subject: CannaOrganics LLC (Project)
Mitigated Negative Declaration (MND)
State Clearing House No. 2022030722

Dear Ms. Moreno,

The California Department of Fish and Wildlife (CDFW) received a Notice of Completion for a Mitigated Negative Declaration (MND) for a Minor Use Permit from the County of San Luis Obispo for the above Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.[1]

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code. While the comment period may have ended, CDFW would appreciate if you will still consider our comments.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & Game 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 expertise during public agency environmental review efforts, focusing specifically on

[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.

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 & Game Code, § 1600 et seq.). Likewise, to the extent implementation of the Project may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & Game Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

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).

Lake and Streambed Alteration: 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 subdivision (a) of the Fish and Game Code requires an entity to notify CDFW before engaging in activities that would substantially change the bed, channel, or bank of a stream or substantially divert or obstruct the natural flow of a stream.

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.

PROJECT DESCRIPTION SUMMARY

Proponent: CannaOrganics LLC

Objective: The Project Proponent, CannaOrganics LLC, proposes the construction of a commercial cannabis cultivation and manufacturing facility near the community of Nipomo. The Project will occur over approximately 2.67-acres on a 36.4-acre parcel and will include the construction of four industrial buildings for a total of 39,280-square feet of indoor cannabis cultivation and manufacturing facilities and reduction of a parking lot.

Location: The Project is located at 514 East Tefft Street, approximately 1.5 miles easterly of the 101 freeway and approximately 0.5 miles north of the community of Nipomo, San Luis Obispo County, California, 93444; Assessor's Parcel No. 090-051-042.

Timeframe: Unspecified.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following recommendations to assist the County of San Luis Obispo in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document. Based on a review of the Project description, a review of the California Natural Diversity Database (CNDDB) records, and a review of aerial photographs of the Project area and surround habitat, several special-status species could be potentially impacted by Project activities.

In particular, CDFW is concerned regarding potential impacts to resources including special status species resulting from the ground-disturbing development activities and ongoing facilities operation, including but not limited to the rare plant rank G3T2 Cambria Morning-Glory (*Calystegia subacaulis* subsp. *episcopalis*.)

The Project has the potential to impact biological resources. CDFW recommends that the following modifications, or edits be incorporated into the MND, including proposed avoidance, minimization, and compensatory measures prior to its adoption by the County.

Special Status Plants

While the Project site has been previously disturbed, a review of aerial imagery indicates that there has been some element of stream alteration and riparian vegetation removal, in addition, a special-status plants has been documented to occur within the vicinity of the Project site, Cambria Morning-Glory (*Calystegia subacaulis* subsp. *episcopalis*.). While the Initial Study for the Project indicated that these species were not detected on-site, it is unclear that appropriate survey protocols were followed.

Therefore, the species have the potential to be present on-site and impacted by Project related activities.

Without appropriate avoidance and minimization measures for special status plants, potential significant impacts associated with the future development of the Project site could include inability to reproduce, direct mortality, and habitat modification. The Project site may provide suitable habitat for special status plants. As a result, habitat loss and degradation resulting from ground-disturbing activities have the potential to significantly impact these special status plant species.

To evaluate potential impacts to special status plant species, CDFW recommends conducting the following evaluation of the subject parcel and surrounding areas adjacent to the Project site and implementing the following mitigation measures:

- CDFW recommends that a qualified biologist conduct a habitat assessment in advance of the Project implementation to determine if special-status plant species or their habitats are present on or in the vicinity of the Project and propose appropriate mitigation measures to avoid impacts to those resources.

- If suitable habitat is present, CDFW recommends the Project site and surrounding areas be surveyed for special status plants by a qualified botanist following the "Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities" (CDFW 2018). The CDFW 2018 plant survey protocol specifically states, "*Conduct botanical field surveys in the field at the times of year when plants will be both evident and identifiable. Usually this is during flowering or fruiting. Space botanical field survey visits throughout the growing season to accurately determine what plants exist in the project area. This usually involves multiple visits to the project area* (*e.g.in early, mid, and late-season*) *to capture the floristic diversity at a level necessary to determine if special status plants are present."* This protocol, which is intended to maximize detectability, includes identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period.

- CDFW recommends special-status plant species be avoided whenever possible by delineation and observing a no-disturbance buffer of at least 50-feet from the outer edge of the plant population(s) or specific habitat type(s) required by special status plant species. If buffers cannot be maintained, then consultation with CDFW is warranted to determine appropriate minimization and mitigation measures for impacts to special status plant species.

- If a plant species listed pursuant to CESA or the Native Plant Protection Act is identified during botanical surveys, consultation with CDFW is warranted to

determine if the Project can avoid take. If take cannot be avoided, acquisition of an ITP pursuant to Fish and Game Code section 2081(b) would be required to comply with CESA.

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 a Lake and Streambed Alteration 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.

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-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 City of Nipomo consider cannabis-specific impacts to biological resources that may result from the Project activities.

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.

Cannabis Lighting Use

Cannabis cultivation operations often use artificial lighting or “mixed-light” techniques in indoor operations to increase yields. If not disposed of properly, these lighting materials pose significant environmental risks because they contain mercury and other toxins (O’Hare et al. 2013). In addition to containing toxic substances, artificial lighting often results in light pollution, which has the potential to significantly and adversely affect fish and wildlife. Night lighting can disrupt the circadian rhythms of many wildlife species. Many species use photoperiod cues for communication (e.g., birdsong; Miller 2006), determining when to begin foraging (Stone et al. 2009), behavioral thermoregulation (Beiswenger 1977), and migration (Longcore and Rich 2004). Phototaxis, a phenomenon that results in attraction and movement toward light or away from light; therefore, wildlife species exposed artificial light may have a negative phototaxis response causing disorientation, entrapment, and temporarily blindness (Longcore and Rich 2004).

CDFW recommends that light should not be visible outside of any structure used for cannabis cultivation. Use blackout curtains where artificial light is used to prevent light escapement. Eliminate all non-essential lighting from cannabis sites and avoid or limit the use of artificial light during the hours of dawn and dusk, as these windows of time are when many wildlife species are most active. ensuring 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.

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 et al. 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.

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.

Editorial Comments and Suggestions

Nesting birds

CDFW encourages that Project implementation occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the breeding season (February through mid-September), the Project applicant is

responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes as referenced above.

To evaluate Project-related impacts on nesting birds, CDFW recommends that a qualified biologist conduct pre-activity surveys for active nests no more than 10 days prior to the start of ground or vegetation disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the Project site to identify nests and determine their status. A sufficient area means any area potentially affected by the Project. In addition to direct impacts (i.e., nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. Prior to initiation of construction activities, CDFW recommends that a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once construction begins, CDFW recommends having a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends halting the work causing that change and consulting with CDFW for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or on-site parental care for survival. Variance from these no-disturbance buffers is possible when there is compelling biological or ecological reason to do so, such as when the construction area would be concealed from a nest site by topography. CDFW recommends that a qualified biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

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.

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 filling 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 & Game 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.

Questions regarding this letter or further coordination should be directed to Jackson Powell, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 899-9758, or by email at Jackson.Powell@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Valerie Cook
96D42C58E092466...
Valerie Cook
Acting Regional Manager

ec: State Clearinghouse
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REFERENCES

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Attachment 1

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

PROJECT: CannaOrganics LLC
Mitigated Negative Declaration (MND)
Indoor Cannabis Cultivation and Manufacturing (Project)

Mitigation Measure	**Status/Date/Initials**
Before Disturbing Soil or Vegetation	
Mitigation Measure: Special Status Plants	
• Special Status Plant Habitat Assessment	
• Special Status Plant Surveys	
• Special Status Plant Avoidance	
• Special Status Plant Take Authorization	
During Construction	
• Special Status Plant Avoidance	