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Governor's Office of Planning & Research

June 3, 2022

June 03 2022

STATE CLEARINGHOUSE

Ms. Marina Herrera
Sonoma County Permit Sonoma
2550 Ventura Avenue
Santa Rosa, CA 95403
Marina.Herrera@sonoma-county.org

Subject: UPC17-0011 Cannabis Use Permit, Initial Study/Mitigated Negative Declaration, SCH No. 2022050135, City and County of Sonoma

Dear Ms. Herrera:

The California Department of Fish and Wildlife (CDFW) has reviewed the Initial Study/Mitigated Negative Declaration (IS/MND) from the County of Sonoma (County) for the UPC17-0011 Cannabis Use Permit (Project) pursuant the California Environmental Quality Act (CEQA).

CDFW is 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: Nicholas Adan (Applicant)

Description and Location: The Project site is located at 5091 Arnold Drive, in the City and County of Sonoma, California 95476; APN: 142-062-008.

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The proposed Project consists of the development of a new cannabis facility consisting of five total structures: 8,100 square feet of small mixed light cultivation (three greenhouses), 1,300 square feet of propagation (one greenhouse), and a 2,400-square-foot building for cannabis processing, office space, and restrooms. The operation would occupy a total area of approximately 12,592 square feet (0.28 acres) within a 5.25-acre parcel. Additionally, the Project proposal includes a landscaping plan which would include including native, fire-resistant trees and shrubs.

SPECIES POTENTIAL

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:

- California red-legged frog (*Rana draytonii*; FT, SSC)
- Western pond turtle (*Actinemys marmorata*; SSC)
- pallid bat (*Antrozous pallidus*; SSC)
- bank swallow (*Riparia riparia*; ST)
- loggerhead shrike (*Lanius ludovicianus*; SSC)
- San Pablo song sparrow (*Melospiza melodia samuelis*; SSC)
- Swainson's hawk (*Buteo swainsoni*; SSC)
- white-tailed kite (*Elanus leucurus*; SFP)
- big scale balsamroot (*Balsamorhiza macrolepis*; 1B.2)
- congested-headed tarplant (*Hemizonia congesta ssp. congesta*; 1B.2)
- Contra Costa goldfields (*Lasthenia conjugens*; 1B.1, FE)
- Sonoma sunshine (*Blennosperma bakeri*; 1B.1, FE, SE)

FE = Federally Endangered; FT = Federally Threatened; SE = State Endangered; ST = State Threatened; SFP = State Fully Protected; SSC = State Species of Special Concern

California Rare Plant Rank (CRPR)

- 1B = Rare, Threatened, or Endangered in California and Elsewhere

CRPR Threat Ranks

- 0.1-Seriously threatened in California (over 80% of occurrences threatened/high degree and immediacy of threat)

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- 0.2-Moderately threatened in California (20-80% occurrences threatened/moderate degree and immediacy of threat)

COMMENTS AND RECOMMENDATIONS

CDFW offers the below comments and recommendations 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 § 1602 of the Fish and Game Code or receive written verification from CDFW that an LSA Agreement is not required. There is a record of an LSA Self-Certification for this Project site (EPIMS-04030); however, the listed applicant name is different; Richard Sereghy.

Recommendations: CDFW recommends the Applicant review the EPIMS-04030 notification to determine whether the Project has changed from the information used to obtain a self-certification. CDFW records indicate the applicant name no longer matches. Additionally, it is unclear if new Project activities are subject to Fish and Game Code § 1602, particularly with respect to any aquatic features and if the currently proposed greenhouses meet the definition of indoor cultivation. The Project may no longer qualify for a self-certification and a Standard Agreement notification would therefore need to be submitted to CDFW.

Comment 2: Wetland Evaluation

Issues: The IS/MND indicates Sol Ecology, Inc. prepared an addendum assessing the linear water features to determine whether they are wetlands. The IS/MND indicates that the addendum found no evidence of hydrology or hydric soil features, so it does not meet the U.S. Army Corps of Engineers or Regional Water Quality Control Board definition of a wetland in spite of hydrophytic vegetation presence. However, based on aerial imagery review, it appears the adjacent property may contain wetland features connecting to the swale feature on the southern side of the property (California Natural Diversity Database (CNDDDB) Accessed May 2022). Due to this, it is currently unclear if the swale feature onsite contains modified wetland features from prior land use.

Recommendations: The 2017 Biological Assessment and Addendum document (Sol Ecology 2017) should be included as part of the Project MND. Additionally, CDFW recommends conducting further evaluation and providing technical information whether the on-site swale features may be modified wetlands. If evaluated to be modified wetlands, CDFW recommends establishing a protective buffer from these features at least as protective as waterboard requirements.

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Comment 3: California Red-Legged Frog

Issue: The Project has the potential to impact California red-legged frog (CRLF), and/or their habitat. The CNDDDB shows two extant observations of CRLF approximately 1.4 miles to the west of the Project site (CNDDDB, Accessed May 2022). The Project appears located directly adjacent to open space and existing wetland complex features. The IS/MND does not indicate whether suitable CRLF upland or breeding habitat is present on the Project site. Additionally, the IS/MND does not require any compensatory mitigation if there will be loss of CRLF habitat.

Evidence of Significant Impacts: CRLF inhabit uplands outside of their breeding season and can spend prolonged time in small mammal burrows (D'Amore 2007; Tatarian 2008). According to a study conducted by Fellers and Kleeman (2007), radio-tracked CRLF moved an average of 150 meters from aquatic habitat to suitable upland non-breeding areas. However, in this study, the longest travel distance documented was approximately 1.4 kilometers (0.87 miles) between aquatic and upland habitat. Therefore, the U.S. Fish and Wildlife Service (USFWS) recommends minimum buffer distances around aquatic habitat should be determined by local known dispersal distances.

Agriculture presents a threat to CRLF habitat and lifecycle, because of the alteration and degradation of upland dispersal habitat and streams that serve as deposited egg and larval habitat (Lannoo 2005). According to Davidson et. al (2001) and United States Forest Service 2016, the main impacts to CRLF are water development and diversion, climate change, habitat loss (including urbanization and fragmentation), and introduced species.

Recommendations: The Project should be designed to avoid, minimize and mitigate any impacts to CRLF individuals and/or their habitat. Activities that will decrease ground burrowing mammal populations or impede movement should also be avoided. As part of the Project avoidance and minimization measures, a qualified biological monitor experienced in the identification and life history of CRLF should be on-site during any Project activity that can result in impacts to CRLF. Unless USFWS authorizes relocation, any CRLF on-site must not be captured or relocated.

Comment 4: Special-Status Plant Surveys

Issue: The IS/MND states that the Project parcel has the potential for multiple special-status plants to occur on-site, such as: congested-headed hayfield tarplant, Contra Costa goldfields, and Sonoma sunshine. The IS/MND also states that these species would be fully avoided because they will not impact the swale on-site. However, congested headed tarplant may occur within grassland habitat, which is present on-site where cannabis activities are proposed. Additionally, Contra Costa goldfields is

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observed approximately 2.1 miles to the southeast of the Project site (CNDDDB, Accessed May 2022). Although Contra Costa goldfields are often found in vernal pool habitat and swale habitat, they also may occur in other depression areas within grassland habitat. Due to the presence of grassland and swale habitat on-site, Contra Costa goldfields may potentially be present on-site.

Recommendations: A Qualified Biologist shall 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 shall 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 shall 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 shall provide a copy of the special-status plant survey results to the CNDDDB within 30 days of survey completion.

Comment 5: Migratory Birds and Nesting Raptors

Issues: The IS/MND acknowledges there is foraging bird habitat and potential nesting habitat on adjacent parcels that may be impacted by Project disturbance. The IS/MND indicates site disturbance may occur during the nesting bird season (February 1 through August 31). Avoidance and minimization measure BIO-3 specifies a qualified biologist shall conduct a habitat assessment and pre-construction nesting bird and ground nesting species no more than seven (7) days prior to initiation of work and that buffer distance requirements would be species-dependent as determined by the qualified biologist. CDFW agrees with the implementation of these measures. However, CDFW has additional recommendations related to qualified biologist authority and raptor behavior.

Recommendations: In addition to the measure BIO-3 language included, CDFW recommends specifying that a qualified biologist, experienced in raptor behavior, 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 shall 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

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both the qualified biologist and CDFW confirm that the bird's behavior has normalized, or the young have left the nest.

Comment 6: 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 1.6 miles east of the Project site (CNDDDB, accessed May 2022). The IS/MND states the site currently contains undeveloped ruderal grasslands, but does not comment whether mammal burrows are present. Though the Project site itself does not contain trees, there appears to be trees on an adjacent parcel to the east of the site.

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 surveys be conducted according to the Swainson's Hawk Technical Advisory Committee's (TAC) Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley (CDFW, 2010). CDFW strongly recommends that the TAC survey method be strictly followed by starting early in the nesting season (late March to early April) in order to maximize the likelihood of detecting an active nest. Surveys should be conducted within a 0.5-mile radius of the proposed Project area and should be completed for at least the two survey periods immediately prior to initiating any Project-related construction work. Raptor nests may be very difficult to locate during egg-laying or incubation, or chick brooding periods (late April to early June) if earlier surveys have not been conducted. These full-season surveys may assist with Project planning, development of appropriate avoidance, minimization and mitigation measures, and may help avoid any Project delays.

CDFW recommends that 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.

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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).
- 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 7: 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>.

REGULATORY REQUIREMENTS

Lake and Streambed Alteration Agreement

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et. seq., for or any activity that may 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 generally subject to notification requirements. CDFW determines whether an LSA Agreement is required once a complete LSA notification has been submitted. The notification process for cannabis cultivation projects is described on CDFW's website at <https://wildlife.ca.gov/Conservation/Cannabis/Permitting>.

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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.

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.

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 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. The types of information reported to CNDDDB can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

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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.

Questions and coordination pertaining to this letter should be directed to Mia Bianchi, Environmental Scientist, at (707) 210-4531 or Mia.Bianchi@wildlife.ca.gov; or Wes Stokes, Senior Environmental Scientist (Supervisory), at (707) 339-6066 or Wesley.Stokes@wildlife.ca.gov.

Sincerely,

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

cc: State Clearinghouse (SCH No. 2022050135)

California Department of Fish and Wildlife

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REFERENCES

- California Department of Fish and Wildlife (CDFW) 2010. Swainson's Hawk Survey Protocols, Impact Avoidance, and Minimization Measures for Renewable Energy Projects in the Antelope Valley of Los Angeles and Kern Counties, California.
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<http://www.gpo.gov/fdsys/search/citation.result.FR.action?federalRegister.volume=2010&federalRegister.page=12816&publication=FR>