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June 03 2022

June 1, 2022

STATE CLEARINGHOUSE

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San Mateo County, Planning and Building Department
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Subject: 4525 Cloverdale Road Cannabis Cultivation License Applications, Mitigated Negative Declaration Amendment, SCH No. 2022050246, San Mateo County

Dear Delaney L Selvidge:

The California Department of Fish and Wildlife (CDFW) has reviewed the Mitigated Negative Declaration (MND) Amendment (Amendment) prepared by the San Mateo County Planning and Building Department (County) for the 4525 Cloverdale Road Cannabis Cultivation License Applications Amendment (Project), located in San Mateo County. CDFW is submitting comments on the Amendment 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 (e.g., biological 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.

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.

Delaney L Selvidge
San Mateo County, Planning and Building Department
June 1, 2022
Page 2 of 10

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially impact threatened or endangered species (Pub. Resources Code, §§ 21001(c), 21083, and 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, § 2080.

Fully Protected Species

Fully protected species such as San Francisco garter snake (*Thamnophis sirtalis tetrataenia*), may not be taken or possessed at any time (Fish & G. Code, §§ 3511, 4700, 5050, & 5515).

Lake and Streambed Alteration Program

The Project has the potential to impact stream resources including but not limited to Butano Creek. Notification is required, pursuant to CDFW's LSA Program (Fish and Game Code, § 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. CDFW considers work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are generally subject to notification requirements.

CDFW issued a finalized LSA Agreement No. EPIMS-06735-R3 for the Project on February 2, 2021 that includes a water diversion from Butano Creek. **If Project changes such as increase in water diversion, or addition of a stream crossing could impact Butano Creek, any other streams, or associated riparian habitat then those Project changes would be subject to LSA Notification requirements.** CDFW, as a Responsible Agency under CEQA, will consider the CEQA document for the Project. CDFW may not execute a final LSA Agreement until it has complied with CEQA (Public Resources Code § 21000 et seq.) as the Responsible Agency.

Raptors and Other Nesting Birds

CDFW has authority 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 sections 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). Migratory birds are also protected under the federal Migratory Bird Treaty Act.

Delaney L Selvidge
San Mateo County, Planning and Building Department
June 1, 2022
Page 3 of 10

PROJECT DESCRIPTION

The Project is an amendment to the existing MND to evaluate the addition of three operators, resulting in a total of six commercial cannabis cultivators operating at 4525 Cloverdale Road within the Pescadero area of unincorporated San Mateo County. The three additional operators are Serenity Flowers LLC, GH Science, and Whispy Flowers. Serenity Flowers LLC proposes 42,000 square feet (sf) of mixed-light cannabis within existing greenhouses. GH Science proposes 32,000 sf of mixed-light cannabis and 10,000 sf of cannabis nursery. Whispy Flowers proposes 60,000 sf of mixed-light cannabis. The Project also includes the displacement of 140,000 sf of agriculture currently within the greenhouses, with replacement in other areas of the parcel.

ENVIRONMENTAL SETTING AND LOCATION

The Project is located on Oku Flower Farm (Oku Farms) at 4525 Cloverdale Road in unincorporated San Mateo County and within the Cloverdale Road/Stage Road/Pescadero Road County Scenic Corridor. The 27.35-acre parcel is flat, bounded by Butano creek (Creek) to the south, and several large existing greenhouse complexes that contains approximately 45 greenhouses, eight farm labor housing units, and associated storage buildings. Associated roadways, parking areas, bathroom facilities, irrigation systems, and other related infrastructure are already present on the parcel.

Existing fish or wildlife resources the Project could substantially adversely affect include but are not limited to the following: California red-legged frog (*Rana draytonii*), San Francisco garter snake (*Thamnophis sirtalis tetrataenia*), California roach (*Hesperoleucus symmetricus*), steelhead (*Oncorhynchus mykiss irideus* pop. 8), coastal threespine stickleback (*Gasterosteus aculeatus aculeatus*), Coho salmon (*Oncorhynchus kisutch*), roosting bats, nesting birds, and other aquatic and wildlife species, including riparian vegetation.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following 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 biological resources.

COMMENT 1: Riparian encroachment

Issue: Multiple aspects of the Project have the potential to adversely affect Butano Creek and associated fish and wildlife resources from encroachment into the riparian corridor. Cannabis cultivation and encroachment into the riparian corridor can negatively impact sensitive aquatic and riparian species from development too close to the stream channel (insufficient riparian set-backs). Currently proposed locations for new cannabis cultivation included greenhouses that may not meet State Water Resource Control

Delaney L Selvidge
San Mateo County, Planning and Building Department
June 1, 2022
Page 4 of 10

Board (SWRCB) stream set-back requirements (SWRCB 2017) and may not adequately prevent deleterious materials, including wastewater discharge and other pollutants, from entering wetlands and/or streams such as via run-off during winter. Placement of pollution where it can pass into Butano Creek would conflict with provisions of Fish and Game Code sections (e.g., Fish & G. Code sections 5650 and 5652). Therefore, CDFW cannot currently conclude no adverse effects on any special-status aquatic and/or riparian species will occur from the Project.

The Project proposes three new commercial cannabis cultivation operations in locations south of Butano Creek. Although the Amendment states that no riparian vegetation will be removed, it is unclear how access will be provided to cross Butano Creek such as if a bridge or new infrastructure will be built that can prevent riparian vegetation from re-establishing.

Some of the existing greenhouses will be changed to cannabis use but do not have existing riparian setbacks considered protective of stream resources. CDFW understand the change will make the existing greenhouses subject to SWRCB required set-backs identified in the *Cannabis Cultivation Policy – Principals and Guidelines for Cannabis Cultivation*, (SWRCB 2017). The SWRCB Cannabis Policy has a standard of 150-foot minimum buffer for fish bearing perennial watercourses such as Butano Creek

Evidence the impact would be significant: Riparian vegetation provides ecological value to Butano Creek steelhead), and other species, including but not limited to shade to keep cool water temperatures, filtering, turbidity, and production of invertebrate food sources. Wastewater discharge and runoff from cannabis activities, especially water containing pesticides, disinfectants, and/or fertilizers, are well documented to be harmful to streams and associated fish and wildlife resources (see for example, CDFW 2018). 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).

Riparian habitats are importance to watershed integrity because they perform many ecological functions such as enhancing water quality/quantity, supporting biodiversity, habitat connectivity, and flood capacity. Remaining riparian habitat is substantially reduced from historic levels. An estimated 2 to 7 percent of California's habitat remains

Delaney L Selvidge
San Mateo County, Planning and Building Department
June 1, 2022
Page 5 of 10

unconverted to other land uses (Katibah 1984, Dawdy 1989). Development within and adjacent to riparian habitat areas is a principal cause of habitat loss and degradation. Loss and degradation of additional riparian habitat occurs in the context of cumulatively significant losses.

Riparian vegetation improves stream water quality by removing sediment, organic and inorganic nutrients, and toxic materials (Belt and O'Laughlin 1994, Mitsch and Gosselink 2000, USDA 2000, Mayer et al. 2006). 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, Brosfoske et al. 1997, Dong et al. 1998, Kiffney et al. 2003, Moore et al. 2005).

Riparian trees and vegetation, and associated floodplains provide many essential benefits to stream and river fish habitat (Moyle 2002, CDFG 2007). Riparian forests provide thermal protection, shade, and large woody debris. Large woody debris stabilizes substrate, provides shelter and cover from predators, facilitates pool establishment and maintenance, maintains spawning bed integrity, and creates habitat for aquatic invertebrate prey. Riparian areas also provide critical fish habitat in the form of off-channel and back-water winter-rearing sites and floodwater refugia (CDFG 2007).

Riparian habitats also contribute to bank stability and provide flood protection. Development which includes increases in impervious surfaces and installation of stormwater systems and storm drain outfalls can modify natural streamflow patterns by increasing the magnitude and frequency of high flow events and storm flows (Hollis 1975, Konrad and Booth 2005). Riparian habitat and adjacent wetlands and floodplains are critical to lessening these impacts because they store and meter floodwaters, recharge groundwater aquifers, trap sediment, filter pollution, help minimize erosion, lessen peak flow velocities, and protect against storm surges (Mitsch and Gosselink 2000, Tockner et al. 2008). In doing so, they protect adjacent upland, down-stream, and coastal properties from loss and damage during flooding and help maintain surface and groundwater during summer months.

In addition to direct habitat loss, development adjacent to a riparian zone has three principal indirect effects: 1) fragmentation of habitat into smaller, non-contiguous areas of less-functional habitat by structures, roads, driveways, yards and associated facilities; 2) the introduction or increased prevalence of exotic species or species that are habitat generalists, termed "human adapted" or "urban exploiters," and 3) decreases in native

Delaney L Selvidge
 San Mateo County, Planning and Building Department
 June 1, 2022
 Page 6 of 10

species abundance and biodiversity and the loss of “human-sensitive” species that require natural habitats (Davies et al. 2001, Hansen et al. 2005, CDFG 2007).

Recommendation: CDFW recommends that the Project establish and the MND incorporate appropriate riparian set-backs, or buffer zones where development and Project activities are limited.

Riparian setbacks should be as protective as or more protective than the SWRCB *Cannabis Cultivation Policy – Principals and Guidelines for Cannabis Cultivation* requirements as follows:

| 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 |

The County should evaluate each cultivation site individually and reserve the right to require greater setbacks in some cases. CDFW also recommends the Project MND include complete information and associated impacts assessment for any infrastructure proposed to cross Butano Creek such as a bridge. CDFW requests utilizing the design principles outlined in the California Salmonid Stream Habitat Restoration Manual, Part XII (CDFW, 2009) and NOAA Fisheries Service Guidelines for Salmonid Passage at Stream Crossings (National Marine Fisheries Service (NMFS), 2001) into the bridge design. CDFW is available to coordinate with the County to determine appropriate site-specific buffer riparian buffer to limit impacts to sensitive species.

COMMENT 2: San Francisco Garter Snake

Issue: The Project site is within the range of San Francisco garter snake (SFGS), a state and federally listed as endangered species and state Fully Protected species. Construction and maintenance activities in suitable upland SFGS habitat has the potential to result in direct and indirect take to SFGS. Indirect take may occur as a result of upland habitat loss and degraded site suitability for SFGS to complete all stages of their life cycle such as through the construction of roads and loss of habitat through development.

Delaney L Selvidge
San Mateo County, Planning and Building Department
June 1, 2022
Page 7 of 10

Evidence the impact would be significant: Project activities such as grading and vegetation removal, in potentially suitable SFGS habitat have the potential to result in significant impacts to SFGS, including crushing, injuring, or killing SFGS, and could result in a substantial reduction in the SFGS population. SFGS is an endemic snake with a highly limited range in the San Francisco Peninsula. SFGS utilize a variety of habitats including upland sites for basking, rodent burrows for shelter, and low-lying marsh and slow-flowing stream habitat for feeding and reproduction (U.S. Fish and Wildlife Service (USFWS) 1985). In coastal areas, SFGS may hibernate during the winter in small mammal burrows (USFWS 2007). SFGS are threatened by loss of habitat from agricultural, commercial, and urban development, illegal collection by reptile breeders, and decline of their prey species, California red-legged frog (USFWS 2007).

Recommendation: To reduce potential impacts to less-than-significant and avoid take of SFGS, CDFW recommends including the following mitigation measures in the MND.

Recommended Mitigation Measure 1 San Francisco Garter Snake Avoidance: The Project shall be designed to avoid all impacts to SFGS within suitable SFGS habitat including but not limited to wetlands, streams and waterways as well as associated upland habitat capable of providing dens and basking habitat as determined by a qualified biologist, experienced with SFGS, in coordination with CDFW. The MND shall include a report prepared by the qualified biologist detailing habitat survey methodology and a map demarcating any SFGS habitat or individuals occurs in the survey area, including potential burrow refugia. No build buffer zones around wetland and riparian resources shall be incorporated into the Project footprint to avoid impacts to any SFGS habitat. If take of SFGS may occur the project shall not be approved. The lead agency shall coordinate with CDFW to ensure the Project is designed to avoid take of a fully protected species.

Comment 3: California Red-Legged Frog

Issue: The project has the potential to directly and/or indirectly impact California red-legged frog and/or its habitat. The scope of potential Project impacts to California red-legged frog individuals and/or populations is unclear.

Occurrences: There are two known detections of California red-legged frog at the Project site; one located on the former Quarry parcel and one on the eastern parcel where restoration activities will take place (California Natural Diversity Database Accessed May 2022).

Recommendation: The MND should analyze all groundwork activities, such as grading and filling, that may potentially impact California red-legged frog. It should also discuss all potentially significant impacts to California red-legged frog. CDFW recommends early

Delaney L Selvidge
San Mateo County, Planning and Building Department
June 1, 2022
Page 8 of 10

consultation with CDFW and the USFWS to develop appropriate avoidance, minimization, and mitigation measures. Those measures should be specified in the MND to reduce any potentially significant impacts to less-than-significant.

FILING FEES

CDFW anticipates that the Project will have an impact on fish and/or wildlife, and assessment of filing fees is necessary (Fish and Game Code, section 711.4; Pub. Resources Code, section 21089). 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.

Thank you for the opportunity to comment on the Project's Amendment. If you have any questions regarding this letter or for further coordination with CDFW, please contact Mr. Jason Teichman, Environmental Scientist, at Jason.Teichman@wildlife.ca.gov; or Mr. Wesley Stokes, Senior Environmental Scientist (Supervisory), at Wesley.Stokes@wildlife.ca.gov.

Sincerely,

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

ec: State Clearinghouse # 2022050246

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Delaney L Selvidge
San Mateo County, Planning and Building Department
June 1, 2022
Page 9 of 10

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Delaney L Selvidge
San Mateo County, Planning and Building Department
June 1, 2022
Page 10 of 10

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