



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Inland Deserts Region  
3602 Inland Empire Blvd., Suite C220  
Ontario, CA 91764  
[wildlife.ca.gov](http://wildlife.ca.gov)

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



September 19, 2022  
*Sent via email*

Governor's Office of Planning & Research

**Sep 19 2022**

**STATE CLEARINGHOUSE**

Tim Wheeler, Urban Regional Planner IV  
Riverside County  
4080 Lemon St.  
Riverside, CA 92502

Subject: Initial Study and Mitigated Negative Declaration for Vortex Farms  
Commercial Cannabis Cultivation Facility; State Clearing House No. 2022080376

Dear Mr. Wheeler:

The California Department of Fish and Wildlife (CDFW) received an Initial Study/Mitigated Negative Declaration (IS/MND) from Riverside County (County) for the Vortex Farms Commercial Cannabis Cultivation Facility Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

### **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 & G. 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 projects and related activities that have the potential to adversely affect fish and wildlife resources.

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<sup>1</sup> 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.

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

### **PROJECT DESCRIPTION SUMMARY**

The Project site is located on a 9.2-acre parcel on Assessor's Parcel Number (APN) 470-070-043 in unincorporated Riverside County, California; Latitude 33.64906 N and Longitude -116.93964 W. The Project site is surrounded by a mix of open space and rural residential development. The Project site is bounded by Sage Road to the west and Minto Way to the north. An unnamed mapped ephemeral stream crosses the property from east to west.

The Project proposes to develop a cannabis cultivation facility on 2.42 acres on the western side of the Project site. The Project plan proposes the construction of up to four greenhouses for cultivation and two nursery greenhouses, totaling up to 11,900 sq. ft. A concrete pad for a 12' x 12' bathroom, a removable office trailer, and a partially paved access road would also be developed on site. The remaining 6.78 acres of the site is proposed to be left undeveloped and preserved as open space to be conveyed to the Western Riverside County Regional Conservation Authority (RCA).

**Timeframe:** The Project is expected begin in late 2022 and will be complete in early 2023.

### **COMMENTS AND RECOMMENDATIONS**

CDFW is concerned with the lack of the biological (BIO) mitigation measures (MM) proposed by the County to mitigate potential impacts to biological resources that may occur on-site as well as the level of detail that went into researching possible impacts. CDFW is also concerned that the IS/MND and Biological Report rely on outdated and brief surveys completed in 2019 spanning only three hours of survey effort. CDFW generally considers a biological survey

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valid for one year and thus recommends that new surveys be conducted for the Project site. Additionally, CDFW recommends the IS/MND be revised to consistently reflect the current project description and analysis throughout the document as there were multiple editing errors with references to a previous project (Fuego Farms).

To assist the County in adequately mitigating the Project's potentially significant impacts to biological resources, CDFW offers the comments and recommendations presented below, and in Attachment 1 "Mitigation Monitoring and Reporting Program", pursuant to the CEQA Guidelines, section 15097(f). CDFW requests that the County revise and/or adopt the following mitigation measures prior to finalizing the IS/MND:

Western Riverside Multiple Species Habitat Conservation Plan (MSHCP)

CDFW issued Natural Community Conservation Plan Approval and Take Authorization for the Western Riverside County MSHCP per Section 2800, et seq., of the California Fish and Game Code on June 22, 2004. The MSHCP establishes a multiple species conservation program to minimize and mitigate habitat loss and provides for the incidental take of covered species in association with activities covered under the permit.

Compliance with approved habitat plans, such as the MSHCP, is discussed in CEQA. Specifically, Section 15125(d) of the CEQA Guidelines requires that the CEQA document discuss any inconsistencies between a proposed Project and applicable general plans and regional plans, including habitat conservation plans and natural community conservation plans. An assessment of the impacts to the MSHCP as a result of this Project is necessary to address CEQA requirements.

The proposed Project occurs within the MSHCP area and is subject to the provisions and policies of the MSHCP. To be considered a covered activity, Permittees need to demonstrate that proposed actions are consistent with the MSHCP, the Permits, and the Implementing Agreement. The County of Riverside is the Lead Agency and is signatory to the Implementing Agreement of the MSHCP. To demonstrate consistency with the MSHCP, as part of the CEQA review, the County shall ensure the Project implements the following:

1. Pays Local Development Mitigation Fees and other relevant fees as set forth in Section 8.5 of the MSHCP (Riverside County Ordinance No. 810).

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2. Demonstrates compliance with the policies for 1) compliance with the Urban/Wildlands Interface Guidelines as set forth in Section 6.1.4 of the MSHCP; 2) compliance with the Best Management Practices and the siting, construction, design, operation and maintenance guidelines as set forth in Section 7.0 and Appendix C of the MSHCP.

### Riparian/Riverine

Riparian/Riverine areas are defined by the MSHCP as “lands which contain Habitat dominated by trees, shrubs, persistent emergent, or emergent mosses and lichens, which occur close to, or which depend upon soil moisture from a nearby fresh water source; or areas with freshwater flow during all or a portion of the year.” The IS/MND and Biological Report conclude, and CDFW agrees, that there are Riparian/Riverine resources on the Project site. Thus, all Project activities must comply with Section 6.1.2 of the MSHCP.

The project applicant should record a conservation easement, deed restriction, or equivalent over the avoided area of the riparian resources. To protect the long-term conservation values of the avoided riparian areas, the Project should be conditioned to use an appropriate mechanism such as a conservation easement or deed restriction (added text shown in bold).

**MM BIO-1: Prior to issuance of any grading permit the Project Applicant shall provide to the County documentation that a deed restriction, conservation easement, or other appropriate mechanisms is recorded over the avoided riparian habitat in favor of the RCA to contribute to the MSHCP reserve system.**

### Urban/Wildlands Interface Guidelines

The project site is within Criteria Cell 4991, which is located in Cell Group S, Subunit 5, and therefore, pursuant to the Implementing Agreement, private projects are expected to be designed and implemented in accordance with the Criteria for each Area Plan and all other MSHCP requirements as set forth in the MSHCP Section 6.1.4 and in Section 13.0 of the Implementing Agreement. The Project Site is subject to the Urban/Wildland Interface Guidelines for the MSHCP. Indirect impacts for the Project include noise, lighting, trespass, invasive plants, and possibly toxic materials such as herbicides and pesticides used in cannabis cultivation, landscaping, and maintenance, as well as non-hazardous oils and fuels used during project operations.

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Nighttime lighting has the potential to indirectly affect wildlife use and activity in the Criteria Cell 4991. The MND indicates the use of security lighting and landscape lighting on the Project site in addition to lighting within the cannabis cultivation greenhouse. The MND indicates that lighting on the Project will be consistent with Riverside County Ordinance 655 and Ordinance; however, a lighting plan is not identified as a mitigation measure. The Project should be conditioned to submit a lighting plan to the County for review to ensure appropriate measures are met. The Lighting Plan should include shielded lighting, directing lighting away from sensitive habitats designed to protect species within these areas from direct nighttime lighting. CDFW requests the inclusion of the following new measure in the MND (added text shown in bold):

**MM BIO-2: Light shall not be visible outside of any structure used for cannabis cultivation. Employ blackout curtains where artificial light is used to prevent light escapement. Eliminate all nonessential 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. Ensure that lighting for cultivation activities, landscaping, and security purposes is shielded, cast downward, and does not spill over onto other properties, adjacent habitats, or upward into the night sky (see the International Dark-Sky Association standards at <http://darksky.org/>). Use LED lighting with a correlated color temperature of 3,000 Kelvins or less, properly dispose of hazardous waste, and recycle lighting that contains toxic compounds with a qualified recycler.**

### Nesting Birds

CDFW appreciates the inclusion of nesting bird surveys in the IS/MND but offers the following mitigation measure to clarify that nesting bird surveys are a requirement. CDFW recommends the inclusion of MM BIO-3 in the IS/MND as follows:

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**MM BIO-3: All Project activities on-site shall be conducted outside of the nesting bird season to the maximum extent feasible. If Project activities have the potential to impact nesting birds, a pre-construction survey shall be performed by a qualified biologist to verify the absence of nesting birds. A qualified biologist shall conduct the pre-activity survey within the Project area (including access routes) and a 300- foot buffer surrounding the Project area, no more than two hours prior to initiating Project activities.**

**For all Project activities a nesting bird survey shall be conducted no more than three (3) days prior to any Project activities, including, but not limited to clearing, grubbing, and/or rough grading to ensure birds are not disturbed by on-site activities. All surveys shall be conducted by a qualified biologist. Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. The qualified avian biologist will make every effort to avoid potential nest predation as a result of survey and monitoring efforts. If active nests are found during the pre-construction nesting bird surveys, a qualified biologist shall establish an appropriate nest buffer to be marked on the ground. Nest buffers are species specific and shall be at least 100 feet for passerines and 300 feet for raptors. A smaller or larger buffer may be determined by the qualified biologist familiar with the nesting phenology of the nesting species and based on nest and buffer monitoring results. Established buffers shall remain on site until a qualified biologist determines the young have fledged or the nest is no longer active. Active nests and adequacy of the established buffer distance shall be monitored daily by the qualified biologist until the qualified biologist has determined the young have fledged or the Project has been completed. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance.**

#### Employee Awareness of Wildlife Resources

Part of the Project proponent's responsibility is to educate individuals that will be on-site on the wildlife species that may be present and how to limit impacts to wildlife species in the area. CDFW appreciates that the IS/MND considers developing a Workers Environmental Awareness Program (WEAP) and offers MM BIO-4 to assist in developing the contents of the WEAP:

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**MM BIO-4: A qualified biologist shall conduct an education program for all persons employed or otherwise working on the Project site prior to performing any work on-site (Workers Environmental Awareness Program; WEAP). The WEAP shall consist of a presentation that includes a discussion of the biology of the habitats and species that may be present at the site. The qualified biologist shall also include as part of the WEAP information about the distribution and habitat needs of any special-status species that may be present, legal protections for those species, penalties for violations, and mitigation measures. The WEAP should include, but not be limited to: (1) regulations and requirements associated with the MSHCP, (2) location of and avoidance measures associated with the proposed conserved lands on the Project site, (3) best practices for managing waste and reducing activities that can lead to increased occurrences of opportunistic species and the impacts these species can have on wildlife in the area, and (4) protected species that have the potential to occur on the Project site. Interpretation shall be provided for any non-English speaking workers, and the same instruction shall be provided for any new workers prior to their performing any work on-site.**

#### LSA Notification

Please note that the Department of Cannabis Control (DCC) requires cannabis cultivators to demonstrate compliance with Fish and Game Code section 1602 prior to issuing a cultivation license (Business and Professions Code, § 26060.1). To qualify for an Annual License from DCC, cultivators must have a Lake and Streambed Alteration (LSA) Agreement or written verification from CDFW that one is not needed. Cannabis cultivators may apply online for an LSA Agreement through the Environmental Permit Information Management System (EPIMS) at <https://epims.wildlife.ca.gov> and learn more about permitting at <https://wildlife.ca.gov/Conservation/Cannabis/Permitting>. Therefore, CDFW offers MM BIO-5 below:

**MM BIO-5: Prior to construction and issuance of any grading permit, the Project proponent should obtain written correspondence from the California Department of Fish and Wildlife (CDFW) stating that notification under section 1602 of the Fish and Game Code is not required for the Project, or the Project proponent should obtain a**

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**CDFW-executed Lake and Streambed Alteration Agreement,  
authorizing impacts to Fish and Game Code section 1602 resources  
associated with the Project.**

**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 California Natural Diversity Database (CNDDDB). The CNDDDB online field survey form, along with the types of information reported to CNDDDB, can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>.

**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 requests that the County include in the final IS/MND the suggested mitigation measures (Attachment 1) offered by CDFW to reduce Project impacts.

CDFW appreciates the opportunity to comment on the IS/MND for the Vortex Farms Commercial Cannabis Cultivation Project (SCH No. 2022080376) and hopes our comments assist Riverside County in identifying and mitigating Project impacts on biological resources.

If you should have any questions pertaining to the comments provided in this letter, please contact Kevin Francis, Environmental Scientist at [Kevin.Francis@wildlife.ca.gov](mailto:Kevin.Francis@wildlife.ca.gov).

**ATTACHMENTS**

Attachment 1: MMRP for CDFW-Proposed Mitigation Measures



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Sincerely,

DocuSigned by:

*Alisa Ellsworth*

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Alisa Ellsworth

Environmental Program Manager

ec: Office of Planning and Research, State Clearing House, Sacramento  
[state.clearinghouse@opr.ca.gov](mailto:state.clearinghouse@opr.ca.gov)

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## **ATTACHMENT 1: MITIGATION MONITORING AND REPORTING PROGRAM (MMRP) FOR CDFW-PROPOSED MITIGATION MEASURES**

### PURPOSE OF THE MMRP

The purpose of the MMRP is to ensure compliance with mitigation measures during project implementation. Mitigation measures must be implemented within the time periods indicated in the table below.

### TABLE OF MITIGATION MEASURES

The following items are identified for each mitigation measure: Mitigation Measure, Implementation Schedule, and Responsible Party. The Mitigation Measure column summarizes the mitigation requirements. The Implementation Schedule column shows the date or phase when each mitigation measure will be implemented. The Responsible Party column identifies the person or agency that is primarily responsible for implementing the mitigation measure.

<b>Mitigation Measure (MM) Description</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>
MM BIO-1: Prior to issuance of any grading permit the Project Applicant shall provide to the County documentation that a deed restriction, conservation easement, or other appropriate mechanisms is recorded over the avoided riparian habitat in favor of the RCA to contribute to the MSHCP reserve system.	Prior to commencing ground- or vegetation disturbing activities	Project Proponent
MM BIO-2: Light shall not be visible outside of any structure used for cannabis cultivation. Employ blackout curtains where artificial light is used to prevent light escapement. Eliminate all nonessential 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. Ensure that lighting for cultivation activities, landscaping, and security purposes is shielded, cast downward, and does not spill over onto other properties, adjacent habitats, or upward into the night sky (see	Prior to commencing ground- or vegetation disturbing activities	Project Proponent

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<p>the International Dark-Sky Association standards at <a href="http://darksky.org/">http://darksky.org/</a>). Use LED lighting with a correlated color temperature of 3,000 Kelvins or less, properly dispose of hazardous waste, and recycle lighting that contains toxic compounds with a qualified recycler.</p>		
<p>MM BIO-3: All Project activities on-site shall be conducted outside of the nesting bird season to the maximum extent feasible. If Project activities have the potential to impact nesting birds, a pre-construction survey shall be performed by a qualified biologist to verify the absence of nesting birds. A qualified biologist shall conduct the pre-activity survey within the Project area (including access routes) and a 300- foot buffer surrounding the Project area, no more than two hours prior to initiating Project activities.</p> <p>For all Project activities a nesting bird survey shall be conducted no more than three (3) days prior to any Project activities, including, but not limited to clearing, grubbing, and/or rough grading to ensure birds are not disturbed by on-site activities. All surveys shall be conducted by a qualified biologist. Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. The qualified avian biologist will make every effort to avoid potential nest predation as a result of survey and monitoring efforts. If active nests are found during the pre-construction nesting bird surveys, a qualified biologist shall establish an appropriate nest buffer to be marked on the ground. Nest buffers are species specific and shall be at least 100 feet for passerines and 300 feet for raptors. A smaller or larger buffer may be determined by the qualified biologist familiar with the</p>	<p>Prior to commencing ground- or vegetation disturbing activities</p>	<p>Project Proponent</p>

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<p>nesting phenology of the nesting species and based on nest and buffer monitoring results. Established buffers shall remain on site until a qualified biologist determines the young have fledged or the nest is no longer active. Active nests and adequacy of the established buffer distance shall be monitored daily by the qualified biologist until the qualified biologist has determined the young have fledged or the Project has been completed. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance.</p>		
<p>MM BIO-4: A qualified biologist shall conduct an education program for all persons employed or otherwise working on the Project site prior to performing any work on-site (Workers Environmental Awareness Program; WEAP). The WEAP shall consist of a presentation that includes a discussion of the biology of the habitats and species that may be present at the site. The qualified biologist shall also include as part of the WEAP information about the distribution and habitat needs of any special-status species that may be present, legal protections for those species, penalties for violations, and mitigation measures. The WEAP should include, but not be limited to: (1) regulations and requirements associated with the MSHCP, (2) location of and avoidance measures associated with the proposed conserved lands on the Project site, (3) best practices for managing waste and reducing activities that can lead to increased occurrences of opportunistic species and the impacts these species can have on wildlife in the area, and (4) protected species that have the potential to occur on the Project site. Interpretation shall be provided for any non-English speaking workers, and the</p>	<p>Prior to commencing ground- or vegetation disturbing activities</p>	<p>Project Proponent</p>

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same instruction shall be provided for any new workers prior to their performing any work on-site.		
MM BIO-5: Prior to construction and issuance of any grading permit, the Project proponent should obtain written correspondence from the California Department of Fish and Wildlife (CDFW) stating that notification under section 1602 of the Fish and Game Code is not required for the Project, or the Project proponent should obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.	Prior to commencing ground- or vegetation disturbing activities	Project Proponent