



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Northern Region
601 Locust Street
Redding, CA 96001
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



November 21, 2022

Governor's Office of Planning & Research

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STATE CLEARING HOUSE

SUBJECT: Review of the Initial Study and Mitigated Negative Declaration for Conditional Use Permit No. P-19-30, APN 020-120-025, Hettenshaw Valley, Trinity County, State Clearinghouse Number 2022100233

Dear Skylar Fisher:

The California Department of Fish and Wildlife (Department) has reviewed the Initial Study and Mitigated Negative Declaration (IS/MND) dated October 12, 2022, for the above referenced project (Project). As a trustee for the State's fish and wildlife resources, the Department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and their habitat. As a responsible agency, the Department administers the California Endangered Species Act and other provisions of the Fish and Game Code that conserve the State's fish and wildlife public trust resources. The Department offers the following comments and recommendations on this Project in our role as a trustee and responsible agency pursuant to the California Environmental Quality Act (CEQA), California Public Resources Code section 21000 et seq.

Project Description

The Project is a proposed conditional use permit to allow for up to one-acre (43,560 square feet of mature canopy) of commercial cannabis cultivation. Currently the parcel has a license for 10,000 square feet of cultivation. The conditional use permit will allow an expansion of up to one-acre of outdoor and/or mixed light canopy under a Type III (medium outdoor) license or multiple Type II (up to 10,000 square feet of mixed-light or outdoor) licenses should the County allow the stacking of licenses in the future. New cultivation may occur within raised beds, parallel rows, and/or individual pots and could utilize full sun cultivation methods, but also has a potential to transition into mixed-light cultivation under the multiple Type II license scenario. Future mixed-light cultivation will use artificial light not to exceed six watts of light per square foot of mature canopy and will use tarps to shield light from exiting the structure.

Comments and Recommendations

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The Department has the following comments and recommendations as they pertain to biological resources.

Greenhouse Gas Emissions

The IS/MND states “All electricity sources used for commercial cannabis cultivation shall be from renewable-compliant sources by conforming to standards consistent with California Code of Regulations (CCR) Title 3, Division 8, Chapter 1, Section 8305 by January 1, 2023.” This section of regulations for the Cannabis Cultivation Program stipulates:

Beginning January 1, 2023, all indoor, tier 2 mixed-light license types of all sizes, and nurseries using indoor or tier 2 mixed-light techniques, shall ensure that electrical power used for commercial cannabis activity meets the average electricity greenhouse gas emissions intensity required by their local utility provider pursuant to the California Renewables Portfolio Standard Program, division 1, part 1, chapter 2.3, article 16 (commencing with section 399.11) of the Public Utilities Code. As evidence of meeting the standard, licensees shall comply with the following:

(a) If a licensee’s average weighted greenhouse gas emission intensity as provided in section 8203(g)(4) is greater than the local utility provider’s greenhouse gas emission intensity, the licensee shall provide evidence of carbon offsets from any of the following sources to cover the excess in carbon emissions from the previous annual licensed period:

(1) Voluntary greenhouse gas offset credits purchased from any of the following recognized and reputable voluntary carbon registries:

- (A) American Carbon Registry;
- (B) Climate Action Reserve;
- (C) Verified Carbon Standard.

(2) Offsets purchased from any other source are subject to verification and approval by the Department.

(b) New licensees, without a record of weighted greenhouse gas emissions intensity from the previous calendar year, shall report the average weighted greenhouse gas emissions intensity, as provided in section 8203(g)(4), used during their licensed period at the time of license renewal. If a licensee’s average weighted greenhouse gas emissions intensity is greater than the local utility provider’s greenhouse gas emissions intensity for the most recent calendar year, the licensee shall provide evidence of carbon offsets or allowances to cover the excess in carbon emissions from any of the sources provided in subsection (a).

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The IS/MND describes how power is supplied by PG&E, with propane being used to heat the immature cultivation area and with emergency backup generators required in the case of power outages. The narrative states “all electricity sources used for commercial cannabis cultivation shall be from renewable-compliant sources” in order to comply with the above section of CCR, but the IS/MND doesn’t explain how the Project will obtain or generate sufficient power from renewable-compliant sources by January 2023.

It is unclear in the impact analysis if the generator and propane use is subject to greenhouse gas reduction mandates for Tier II mixed-light licenses. If these sources of power generation are used throughout the year, even in small amounts, it is unclear if the project will be required to purchase carbon offsets. The Department recommends that the potential increase in electricity demand from the Project be clearly analyzed in the IS/MND should the applicant seek several mixed-light licenses, and explain how the Project will meet the requirements of CCR Title 3, Division 8, Chapter 1, Section 8305.

Wetland Delineation and Riparian Setbacks

A jurisdictional wetland delineation was not conducted on the subject parcel despite the presence of springs, wetlands, streams, and riparian habitat. The IS/MND claims “no jurisdictional wetlands meeting the U.S. Army Corps of Engineers three-parameter criteria were observed in the areas proposed for development”, but it is unclear how this was determined if a formal delineation was not performed and the extent of potential impacts to those features is not necessarily accurate without a formal delineation.

Additionally, the polygon showing the southern area of expansion on Figure 2 is not what is depicted on the “Water Resources” map contained within the Biological Site Assessment. The site plan shown as Figure 2 does not make it clear that the areas containing potential seasonal wetlands are being avoided. Without a formal wetland delineation showing all potential water resources on the site plan, or accurate depictions of existing roads and buildings, the relative distances to nearby water features does not necessarily represent full avoidance of these features, nor demonstrate that appropriate riparian setbacks are being met. Due to the severe declines of wetlands, coupled with ongoing drought conditions, the Department considers impacts to wetlands to be potentially significant and has a “no net loss” policy regarding wetland habitat¹. The Department recommends a wetland delineation using U.S. Fish and Wildlife Service’s “one-parameter” definition of wetland found in the policy, and the site plan amended to incorporate all water features.

The Department strongly discourages disturbance and/or development that has the potential to impact wetlands directly or indirectly. If wetlands are identified and impacts to wetlands are unavoidable, impacts should be quantified as permanent impacts to wetlands and should include an adequate mitigation ratio. According to the

¹ Fish and Game Commission Wetlands Resources Policy; Amended 08/18/05.
<https://fgc.ca.gov/About/Policies/Miscellaneous#Wetlands>

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Department's Wetland Technical Memorandum², numerous studies have shown that wetland mitigation projects often do not meet their required U.S. Army Corps of Engineers permit conditions. Along with the risk of mitigation underperformance or failure, the temporal loss of wetland function from the time of impact to the time a mitigation site is fully functional is also a factor in potentially diminishing the value of compensatory/restored wetlands. For these reasons, the Department recommends that mitigation for the loss of wetlands begin at 3:1 or greater.

Mitigation measures for adverse Project-related impacts to sensitive resources should be developed and thoroughly discussed. Mitigation measures should first emphasize avoidance and reduction of Project impacts.

Lighting

The Department recognizes the adverse effects that artificial lighting has on birds and other nocturnal species such as bats. The effects are numerous and include impacts to singing and foraging behavior, reproductive behavior, navigation, and altered migration patterns. To minimize adverse effects of artificial light on wildlife, the Department recommends that cannabis cultivation avoids artificial lights that are not fully contained within structures such that no light escapes. This will minimize photo-pollution and spillover of light onto adjacent wildlife habitat. The use of tarps does not guarantee that light is prevented from escaping a greenhouse. The Department recommends the following as a mitigation measure or condition of approval:

- A Light Attenuation Plan should be submitted, approved (in consultation the Department), and implemented prior to the use of lights as applicable to the Project; artificial light used for cannabis cultivation operations (including ancillary nurseries) shall be fully contained within structures such that no light escapes (e.g., through automated blackout curtains) between 30 minutes prior to sunset and 30 minutes after sunrise to prevent disruption to crepuscular and nocturnal wildlife. The details of a Light Attenuation Plan would indicate the timing of light use for cultivation including start and end time within a 24-hour period throughout the calendar year and describe how light shields will be engaged/disengaged. Security lighting shall be motion activated and comply with the International Dark-Sky Association standards and Fixture Seal of Approval Program; (<https://www.darksky.org/our-work/lighting/lighting-for-citizens/lighting-basics>). Standards include, but are not limited to the following: 1) light shall be shielded and downward facing, 2) shall consist of Low Pressure Sodium (LPS) light or low spectrum Light Emitting Diodes (LED) with a color temperature of 3000 kelvins or less, and 3) only placed where needed.

² California Department of Fish and Wildlife. 2014. Technical Memorandum. Development, Land Use, and Climate Change Impacts on Wetland and Riparian Habitats – A Summary of Scientifically Supported Conservation Strategies, Mitigation Measures, and Best Management Practices.

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Noise

Human induced noise pollution may adversely affect wildlife species in several ways including abandonment of territory, loss of reproduction, auditory masking (inability to hear important cues and signals in the environment), hindrance to navigation, and physiological impacts such as stress, increased blood pressure, and respiration. The impact analysis for noise only considers sensitive receptors as they relate to human neighbors and noise levels only need to be measured from the property line. The discussion on impacts from potential noise sources do not consider biological resources. The Department recommends that all sound emitting sources used on the premises utilize noise dampening techniques. The Department recommends the following as a mitigation measure or condition of approval:

- A Noise Attenuation Plan should be submitted, approved (in consultation with the Department), and implemented prior to the use of generators and fans as applicable to the Project. Noise released shall be no more than 50 decibels measured from 100 feet from the source or edge of NSO habitat whichever is closer. Details of a Noise Attenuation Plan would describe any secondary containment if incorporated or proposed and the noise dampening techniques used other than secondary containment.

Lake or Streambed Alteration Agreement

The landowner submitted a Notification for Streambed Alteration on February 23, 2018 and received a draft agreement for stream crossing upgrades and improvements to the spring for the diversion of water on the subject parcel. The draft agreement was accepted and signed by the permittee on May 30, 2018. The Department will finalize the agreement with the Notice of Determination published after the approval of the Project.

Other Potential Impacts to Wildlife


The Department recommends the following measures be included as conditions of Project approval or mitigation measures to further reduce potential impacts to wildlife:

- To minimize the risk of wildlife entrapment, synthetic netting (e.g., plastic or nylon) including photo or biodegradable plastic netting for the purpose of cultivation operations (such as plastic trellising) is prohibited.
- Refuse should be contained in wildlife proof storage containers, at all times, and disposed of at an authorized waste management facility.
- All imported soil, including perlite, located onsite be fully contained and setback a minimum of 150 feet from watercourses and/or wetland areas. All discarded soil and trash present onsite be removed and properly disposed of at a waste management facility.

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Thank you for consideration of our comments and recommendations. If you have any questions, please contact Kate Blanchard, Senior Environmental Scientist by e-mail at R1CEQARedding@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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