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**GAVIN NEWSOM, Governor**  
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Via Electronic Mail Only

April 1, 2025

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**Subject: Draft Program Environmental Impact Report for the Socially Equitable Cannabis Program for San Diego County, SCH #2023090330**

Dear Jessica Norton:

The California Department of Fish and Wildlife (CDFW) received a Draft Program Environmental Impact Report (DPEIR) for the Socially Equitable Cannabis Program (SECP or Project) with the County of San Diego (County) as lead agency pursuant to the California Environmental Quality Act (CEQA) (CEQA Guidelines, §§15367, 15051). CDFW supports the regulated cannabis market and seeks to maximize conservation efforts through collaboration with partner agencies. We recognize the challenges in regulating a growing industry in cannabis and appreciate the ongoing working partnership with the County to prepare an environment document and regulatory structure that can most effectively protect and conserve California's natural resources while providing opportunities for growth in local communities.

### **CDFW CEQA 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 (Fish & G. Code, § 1802). For purposes of CEQA, CDFW is directed to provide available biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect State of California (State) fish and wildlife resources.

CDFW is also submitting comments as a Responsible Agency under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, §15381, 15096). CDFW expects that it may need to exercise regulatory authority as provided by the FGC, including lake and streambed alteration (LSA) regulatory authority (Fish & G. Code, § 1600 et seq.). To the extent implementation of the Project as proposed may result in "take", as defined by

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Jessica Norton

April 1, 2025

Page 2 of 34

State law, of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), adopted Natural Community Conservation Plan (Fish & G. Code, § 2800 et seq.) or CESA-listed rare plant pursuant to the Native Plant Protection Act (NPPA; Fish & G. Code, §1900 et seq.), CDFW recommends the Project obtain appropriate authorization under FGC (Fish & G. Code, §§ 2080.1, 2081, 2835). CDFW also administers the Natural Community Conservation Planning (NCCP) program, a California regional habitat conservation planning program (Fish and Game Code 2800 et seq.). The County participates in the NCCP program by implementing its approved Multiple Species Conservation Program (MSCP) South County Subarea Plan (SAP) and Implementing Agreement (IA) under the Subregional Multiple Species Conservation Program (MSCP) and the Fully Signed Third Restated and Amended CDFW and the United States Fish and Wildlife Service (USFWS) for the draft North and East County MSCP Plans (North County Plan, East County Plan) (Planning Agreement; March 2021).

CDFW anticipates using the Final Program Environmental Impact Report (FPEIR) to facilitate implementation of LSA and CESA review for the State's cannabis permitting program. To minimize the need for additional CEQA review when issuing LSA Agreements or Incidental Take Permits (ITPs) under CESA, CDFW recommends the FPEIR fully identify the potential impacts to sensitive plant and animal species, lakes, rivers and streams and wildlife connectivity and provide corresponding avoidance, mitigation, monitoring, and reporting commitments to reduce potential impacts to less than significant for County approvals at the site level and to support CDFW actions for cannabis projects including issuance of Agreements or CESA authorizations (CEQA Guidelines, § 15096, 15381, and 15063).

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** The County of San Diego Planning & Development Services Department

**Objective:** The DPEIR evaluates the environmental impacts associated with the implementation of the Socially Equitable Cannabis Program (SECP); specifically, it analyzes the Regulatory Code and Zoning Ordinance amendments that would allow for adult-use commercial cannabis uses within the unincorporated San Diego County (County). Adoption of the proposed Cannabis Program will require amendments to the Regulatory Code and Zoning Ordinance to establish licensing and operational regulations for a range of cannabis cultivation and noncultivation uses authorized under State law. The amendments to the Zoning Ordinance that are needed to implement Board direction are considered a "Project" under CEQA and must comply with CEQA regulations. The County is considering 5 alternative variations of the Cannabis Program (DEIR Section 1.6.1.6 and Table 1.4), all of which rely on regulatory requirements that would address cannabis activities through land use, zoning, development standards, and licensing. The alternatives vary based on allowed cannabis license types, allowed locations based on zoning, controls on locations, and required buffers from identified sensitive uses.

Outdoor cannabis cultivation is proposed to be only allowed in areas zoned as

Jessica Norton

April 1, 2025

Page 3 of 34

Agriculture (A). Indoor cannabis cultivation and microbusinesses would be allowed in Commercial (C) zoning. Indoor cultivation, microbusiness, processing, packaging, distribution, and retail would be allowed in areas zoned as Manufacturing and Industrial (M). It is CDFW's understanding from the DPEIR and collaboration with the County that microbusiness do not include situations where a warehouse has an outdoor component (e.g., hoop houses) (Section 1.5.1.7).

### ***Proposed Project***

Section 1.6.1.6 Cannabis Program Alternatives identifies Alternative 2, Cannabis Program Consistent with State Requirements, as the Proposed Project. Under Alternative 2, outdoor cultivation will be permitted in Agricultural zones (A70 and A72) through a ministerial permit for crop canopies under 5,000 square feet or an administrative (discretionary) permit for crop canopies over 5,000 square feet. Indoor cultivations and microbusinesses can be permitted in Commercial zones (C35, C36, C37, C38, and C40) and Manufacturing and Industrial zone (M52, M54, M56, and M58). Five existing indoor cannabis cultivations with a maximum 10,000 square feet crop canopy will be grandfathered. Alternative 2 would maintain a 600-foot buffer from areas with State-defined sensitive uses.

**Location:** Unincorporated areas of San Diego County

**Biological Setting:** The County is a regional biodiversity hotspot that is able to provide habitat to support breeding, migration, and good conditions for a high density of sensitive species; over 200 wildlife species occur in the greater San Diego area, many of which are considered sensitive under CEQA (CEQA Guidelines, § 15380). Twenty-six sensitive natural communities are recorded on the California Natural Diversity Database (CNDDDB) as occurring in the County. The Project area contains approximately 56,130 acres of grasslands, vernal pools, meadows, and other herb communities. It also contains roughly 48,503 acres of woodland habitat and 20,443 acres of riparian and bottomland habitat (DEIR Section 2.5.1.1). The SECP area also includes major streams and associated tributaries such as the San Luis Rey River, the San Diego River, and the Santa Margarita River. Agriculture is a prominent land use in the County and is largely concentrated in the northern half of the County, particularly along the San Luis Rey River, and in the communities of Fallbrook, Bonsall, and Del Luz; it also occurs in other areas including Valley Center, San Pasqual Valley, Ramona, Julian, Warner Springs, Alpine, Jamul and Dulzura. Many sensitive fish, plant, and wildlife species are associated with these agricultural areas.

These biological conditions in San Diego County, along with economic development, have driven several cooperative long-term habitat conservation efforts, including the County's adopted MSCP a subregional plan which guides development and conservation within the plan area. The County is also actively developing the draft Plan in collaboration with CDFW and USFWS. The draft East County Plan is scoped to reinstate active planning in 2027. In addition, the County is also in development of the Butterflies Habitat Conservation Plan and have established a draft plan area that spans the majority of unincorporated San Diego County; the plan area for this HCP has not yet

Jessica Norton

April 1, 2025

Page 4 of 34

been finalized. San Diego County contains several large areas of relatively undisturbed wildlife habitat, including Cleveland National Forest, Anza-Borrego Desert State Park, land managed by the Bureau of Land Management (e.g., Carrizo Gorge Wilderness, Sawtooth Mountains Wilderness, Hauser Mountain Wilderness Study Area, Otay Mountain Wilderness), and land managed by CDFW (e.g., Hollenbeck Canyon Wildlife Area, Sycuan Peak Ecological Reserve, Crestridge Ecological Reserve, Canada de San Vicente Ecological Reserve, San Felipe Valley Wildlife Area). These State and federal lands contribute significantly to these existing and future NCCP plan areas and are often located adjacent to agriculture communities supporting connectivity and wildlife movement.

There are many CESA-listed, Fully Protected, and federal Endangered Species Act (ESA)-listed species within the Project area. These include but are not limited to: southwestern willow flycatcher (*Empidonax traillii extimus*); ESA-listed and CESA-listed least Bell's vireo (*Vireo bellii pusillus*); ESA-listed and CESA-listed Stephens' kangaroo rat (*Dipodomys stephensi*); ESA-listed and CESA-candidate southern California steelhead (*Oncorhynchus mykiss irideus*); CESA-listed tricolored blackbird (*Agelaius tricolor*); CESA-listed California jewelflower (*Caulanthus californicus*); CESA-candidate mountain lion (*Puma concolor*); California Fully Protected golden eagle (*Aquila chrysaetos*); CESA-candidate Crotch's bumble bee (*Bombus crotchii*); ESA-listed quino checkerspot butterfly (*Euphydryas Editha quino*), ESA-listed Hermes copper butterfly (*Lycaena hermes*); ESA-listed Braunton's milk-vetch (*Astragalus brauntonii*); ESA-listed and California Species of Special Concern (SSC) arroyo toad (*Anaxyrus californicus*); ESA-listed and SSC California red-legged frog (*Rana draytonii*); ESA-listed and SSC coastal California gnatcatcher (*Polioptila californica californica*); CESA-candidate burrowing owl (*Athene cunicularia*); SSC western pond turtle (*Emys marmorata pallida*); SSC yellow-breasted chat (*Icteria virens*); SSC San Diego desert woodrat (*Neotoma lepida intermedia*); SSC coast horned lizard (*Phrynosoma blainvillii*); SSC western spadefoot (*Spea hammondi*); and, SSC southern California legless lizard (*Anniella stebbinsi*).

**Project History:** The San Diego County Board of Supervisors (Board) initiated the SECP in October 2021 by adopting ordinance amendments to allow the five existing cannabis dispensaries that were in operation in unincorporated areas prior to the County's 2017 prohibition on new medical facilities. On January 27, 2021, the Board provided direction on the allowable cannabis zones, use types and activities with setbacks from State-defined "sensitive uses". On June 15, 2022, the Board provided further direction on an alternative for inclusion in the Project that expands the definition of "sensitive uses," increases setback to 1,000 feet for sensitive uses, and prohibits cannabis billboards within 1,000 feet of sensitive uses.

The Notice of Preparation (NOP) for the DPEIR was received September 15, 2023, and CDFW submitted comments on October 31, 2023. The NOP identified two scoping meetings to solicit input on the Project and scope of analysis to be included in the DPEIR (CCR §§ 15082[a], 15103, 15375). CDFW attended a NOP scoping meeting on October 17, 2023. On March 3, 2025, the County provided a meeting with CDFW to introduce the DPEIR.

Jessica Norton

April 1, 2025

Page 5 of 34

CDFW appreciates the County incorporating many of our NOP comments into the DPEIR including analyzing and addressing impacts to non-covered species, identifying steps for resource agency review of individual projects, and an alternative that expands the definition of sensitive uses to include preserve areas and other biologically sensitive lands.

## **COMMENTS AND RECOMMENDATIONS**

The DPEIR received provides the first-tier analysis for the cannabis ordinance provisions and identifies regulations, rules, and other criteria to for program implementation at the individual level. The DPEIR indicates that “[w]hile the program area is defined, the potential future locations, footprint, and design details of site-specific cultivation and noncultivation activities would be identified during project-specific CEQA analysis...this analysis assumes that development (e.g., buildings, infrastructure, drainage improvements, utilities, cultivation activities) and operation associated with these activities could occur anywhere within the program area (except for aquatic habitats where development would not be possible).” (Program Draft EIR Page 2.5-24).

Moreover, the DPEIR acknowledges that similar environmental impacts can be analyzed and mitigated in similar ways and structures mitigation accordingly in 8.1.2. The cornerstone of programmatic measure 8.1.2 is use of a written checklist/tool to evaluate whether the environmental effects of individual cannabis operations will be within the scope of the PEIR and identifying the steps to determine whether an additional environmental document must be prepared for later activities (CEQA Guidelines, § 15168).

CDFW offers the comments and recommendations below on the DPEIR, including proposed text amendments to the zoning ordinance(s), to assist the County in further developing the SECP and to adequately identify, avoid, and/or mitigate the Project’s significant, or potentially significant, direct, indirect, and cumulative impacts on fish and wildlife (biological) resources, and to ensure regional conservation objectives in the County’s adopted and draft NCCPs would not be eliminated by implementation of the Project. Our current comments focus on the regional analyses in the DPEIR and are intended to improve its use for later individual review. DPEIR comments include: 1) the addition of species to be considered; 2) and clarification of points of collaboration; and 3) mitigation tools available in the review process for later projects. CDFW recommends the FPEIR provide adequate and complete disclosure of the Project’s potential impacts fish wildlife resources (biological resources) including the effects documented by CDFW [Pub. Resources Code, § 21061; CEQA Guidelines, §§ 15003, subd. (i), & 15151, 15063].

### **COMMENT #1: Consistency with NCCPs**

**Issue:** The proposed Project presented in the DPEIR is not fully consistent with habitat conservation plans and NCCPs, specifically the adopted MSCP SAP (CEQA Guidelines, § 15125(d)) and does not provide sufficient information to ensure the

Jessica Norton  
April 1, 2025  
Page 6 of 34

conservation goals and objectives of the draft North and East County plans would not be precluded by implementation of the Project.

**Specific impact:** The DPEIR mitigation measures for project-level compliance with the MSCP SAP may not meet coverage standards for all Covered Species and their habitats. Provisions of the DPEIR may be noncompliant with the County's NCCP Permit and IA, and also proposes activities that may require a major amendment to the MSCP SAP. In addition, proposed activities described in the DPEIR may not be in compliance with the North and East County Plan Planning Agreement.

**Why impact would occur:** The DPEIR proposes to avoid all federally listed species. Measures laid out in Section 8.1.2 Biological Resources of the DPEIR may not provide adequate protection for covered species and proposed covered species in San Diego County. The measures identify potential mitigation not currently available in the MSCP SAP and presents County approval processes that may not be compliant with the MSCP SAP NCCP permit and IA, as well as the North and East County Plan Planning Agreement. Furthermore, as proposed, cannabis activities may not qualify as a Covered Activity under the MSCP SAP.

### Environmental Review

Mitigation Measure M-BI.1-1 indicates that “[a] reconnaissance-level survey for biological resources shall be conducted on the parcel of the cannabis use by a qualified biologist (i.e., familiar with wildlife, plants, and habitats in San Diego County) and approved by the County (i.e., on the County approved CEQA consultant list) prior to any staging or development activities.” Based on the review of the DPEIR mitigation measures, including those in 8.1.2 Biological Resources Bullets 2 and 3, it is unclear when CDFW will be included in the project-level environmental review. CDFW is concerned that the process identified in the DPEIR for environmental review places the most responsibility to the County biologist without significant collaboration with CDFW until too late in the process to provide meaningful feedback, especially where project may occur in areas with significant biological resources.

### Agricultural Exemptions

Mitigation Measure M-BI.1-1 states that “the qualified biologist shall determine whether the project constitutes an agricultural activity (i.e. cultivation) that would be exempt under the San Diego MSCP”. The DPEIR further states, “outdoor cultivation activities would be considered agricultural activities that would be exempt from regulations under the [Biological Mitigation Ordinance], as described in Section 86.503.”

The agricultural exemptions allowed under the SC MCSP include traditional agricultural operations (e.g., orchards, row crops) of up to 2 acres within Preapproved Mitigation Areas and up to 5 acres outside of Preapproved Mitigation Areas to be exemption from mitigation requirements. Proposed cannabis operations under the Proposed Project, and all other Alternatives, have a maximum size of 5,000 square feet (~0.12 acres) of

Jessica Norton  
April 1, 2025  
Page 7 of 34

cultivation area for outdoor grows and 10,000 square feet (~0.23 acres) for indoor cultivation and microbusinesses. While those limitations would keep cannabis cultivation operations relatively small, it presents a greater likelihood that they could be deemed exempt from mitigation requirements. Additional analysis at the site level when specific locations for cultivation are known would be needed for cannabis to be considered a Covered Activity or for it to qualify for the agricultural exemption in MSCP SAP.

### Approved Land Uses and Assumed Conservation of the MSCP SAP

Avoidance, minimization, and mitigation measures and preserve management standards were established in the MSCP SAP based on the land uses and conditions at the time of permit issuance. The Project activities as proposed in the DPEIR were not contemplated in the development of the MSCP SAP and thus the measures therein may be inadequate to offset the impacts that can occur to sensitive species and their supportive habitats. Additional analysis at the site level when specific locations for cultivation are known would be needed for cannabis to be considered a Covered Activity in MSCP SAP.

### In-lieu Fees

Mitigation Measure M-BI.1-2 states that “[i]f species covered under the San Diego MSCP that are not listed under CESA or ESA or are only listed under CESA could occur within the proposed activity footprint of the cannabis use, payment of HCP/NCCP mitigation fees, dependent on the habitat on the project site that will be converted, and implementation of applicable MSCP and Biological Mitigation Ordinance (BMO) habitat-based and species-based mitigation measures are required.” Based on the analysis provided in the DPEIR, it is unclear how the payment of fees would be sufficient to offset impacts resulting from the Project. Furthermore, the adopted MSCP SAP does not currently provide an in-lieu fee option for mitigation, and CDFW does not typically accept in-lieu fees as a substitute for mitigation for sensitive and listed species or impacts to lake, rivers, or streams.

### Covered and Non-covered Species

The DPEIR on page 2.5-24 indicates that “[c]ultivation and noncultivation activities associated with the project would be required to participate in the San Diego County MSCP, including the adopted South County Subarea Plan and future North County and East County Plans, which are under development, as well as the San Diego County Butterflies HCP. Participation in these HCPs includes incorporation of mitigation requirements into project design and payment of applicable mitigation fees. The mitigation measures included in the analysis below are consistent with MSCP mitigation requirements where applicable given the federal status of cannabis activities. The identified mitigation measures are structured to provide appropriate mitigation under the existing conditions wherein cannabis activities cannot be treated as a Covered Activity for federally listed species, as well as under possible future conditions where cannabis activities are legalized by the federal government.”

Jessica Norton

April 1, 2025

Page 8 of 34

Since the MSCP SAP was executed in 1998, some of the measures to cover impacts from agriculture did not contemplate some of the unique aspect of cannabis cultivation (e.g., fencing), and since that time, new species have been listed under CESA. The existing measures in the MSCP SAP are not sufficient to provide coverage for all sensitive species and habitat currently recognized by the State. Multiple species, such as burrowing owl and steelhead, have since been listed under CESA or as SSC by the State and are not adequately addressed in the DPEIR. Additional analysis at the site level when specific locations for cultivation are known would be needed for species impacted by cannabis activities to be considered covered under MSCP SAP.

**Evidence impact may be significant:**

To ensure compliance with the CEQA Guidelines Section 15125(d), the FPEIR shall discuss any inconsistencies between the proposed Project and applicable general plans and regional plans, such as the MSCP SAP, draft North County Plan, and draft East County Plan.

Furthermore, the Planning Agreement outlines an Interim Review Process to ensure that preliminary conservation objectives and preserve options for establishing a viable reserve system or equivalent long-term conservation measures are not precluded and that Project impacts are adequately mitigated. Projects subject to the Interim Review Process are partly defined within the Planning Agreement as projects subject to discretionary permits. The proposed Project includes a ministerial component that would potentially remove a significant portion of land formerly subject to the County's discretionary permitting process and thereby the Interim Review Process. CDFW requests that the FPEIR include a mechanism to provide supplemental analysis for Biological Resources at the site-level to ensure regional conservation objectives of the draft North County and East County plans would not be eliminated by implementation of the Project.

**Recommended Potentially Feasible Mitigation Measure(s):**

**Recommendation #1:** The FPEIR should include a mechanism in 8.1.2 to include CDFW Cannabis Program review and input on individual projects that come under the SECP as early in the process as possible. Prior to the issuance of administrative or ministerial permits, the County should coordinate with CDFW regarding appropriate enforceable measures to address and mitigate for site-specific impacts to biological resources. Coordination should include review of individual written checklists, project-specific site plans, biological assessments, habitat protection plans, wildlife protection plans, tree protection plans, and water use plans. Measures in these plans should be integrated into the County's land use entitlement and business licensing for projects to address site-specific conditions. Of particular concern is the determination in Section 8.1.2 (bullet No. 3) on whether a project in MSCP SAP constitutes an agricultural activity (i.e., cultivation) that would be exempt under the MSCP SAP, whether the project site is located within a PAMA or a Biological Resource Core Area as defined in the MSCP SAP and BMO, and the tier level of vegetation on the project site.



Jessica Norton

April 1, 2025

Page 9 of 34

**Recommendation #2:** The FPEIR should include analysis of direct and indirect impacts to sensitive wildlife (plant and animal) species in the County from implementation of the SECP. The adopted MSCP SAP should be used to guide analysis in the southern part of the County. For non-covered species in MSCP SAP, such as steelhead and Stephens' Kangaroo rat, those species should be analyzed in the FPEIR separately from the MSCP SAP. All wildlife species in the northern and eastern areas of the County should be analyzed independently from MSCP SAP since there are currently no adopted NCCP plans for those areas.

**Recommendation #3:** Based on meetings with the County, it is CDFW's understanding that mitigation measures presented in the DPEIR to address consistency with MSCP SAP, including the BMO, will be applied in the future to North County and East County Plans areas. Until those plans are formally executed, the measures identified in the DPEIR are expected to address impacts to species anticipated to be covered under those future plans until they are adopted. It is unclear from the Project Description and mitigation proposed in 8.1.2 how the BMO, which implements the MSCP SAP, will be applied to cover the entire county. The County should clarify the process for how measures discussed in the MSCP SAP will function in the interim and be applied to the entire County. CDFW notes that the proposed text changes to the zoning ordinance do not include any proposed changes to the BMO. In addition, additional requirements for cannabis use to be considered a Covered Activity in the draft North County and East County Plans may be required as part of that habitat conservation planning process.

**Mitigation Measure #1:** Measures to avoid impacting sensitive wildlife species should be identified in the FPEIR for implementation at the site level. Measures could include the need to conduct site-specific protocol surveys, prepare and implement habitat protection plans, wildlife protection plans, tree protection plans, or water use plans. Where listed species may be impacted, the FPEIR should identify appropriate avoidance and mitigation, including land preservation with funding, to support State and federal permitting that may be needed. The coverage requirements, including avoidance setbacks, for the MSCP SAP should apply to all federally listed species that are covered in all alternatives that allow cultivation. In order to provide adequate coverage for MSCP-covered species, complete site-specific and project-level biological reports should be included as part of the package of materials submitted to the County and resource agencies, such as CDFW, for subsequent review prior to the initiation of a project.

## **COMMENT #2: Fencing**

**Issue:** Fencing needed for cannabis security can result in wildlife mortality, impede wildlife movement throughout the County, and also materially affect species and wildlife connectivity.

**Specific impact:** Fencing required for cannabis uses, if not designed appropriately, can result in direct impacts to wildlife including entrapment and mortality, create barriers to movement, and significantly alter wildlife connectivity at the local and regional level.

Jessica Norton

April 1, 2025

Page 10 of 34

**Why impact would occur:** Fencing can be a hazard to wildlife causing entanglement and mortality (van der Ree 1999, Stuart et al. 2001, Harrington and Conover 2006). Running animals and low-flying birds may not see a wire fence clearly against the landscape. Birds can collide with fences, breaking wings, impaling themselves on barbs, and tangling in wires. Large, low-flying birds such as ducks, geese, cranes, grouse, hawks, and owls are especially vulnerable. Waterfowl can fly into fences that run near or across waterways, and low-flying hawks and owls may careen into fences when swooping in on prey.

As is generally required by most local enforcement agencies, cannabis cultivation operations require the installation of security fencing around cannabis cultivation areas. Security fencing is generally expected to be at least 6 feet high with a solid material covering to obstruct views of the site from the outside. According to mitigation measure M-BI.4-1, to reduce impacts to wildlife to less than significant, “[i]f fencing is required to be greater than 40 inches high for security or logistical purposes, then the fencing shall be high enough to deter wildlife from attempting to jump over (i.e. greater than 8 feet tall).”

In CDFW’s experience in the cannabis industry, cultivation operations often require the installation of security fencing around cannabis cultivation areas. Security fencing is typically at least 6 feet high with a solid material covering to obstruct views of the site from the outside. New cannabis cultivation, whether on a new site or existing agricultural fields, would need to comply with County standards for security fencing, which are typically greater than that of a typical agricultural operation. The additional security required for cannabis agricultural operations may introduce new impediments in the landscape that do not currently exist that directly affect local wildlife in all areas of the County directly through entrapment and/or mortality and indirectly through altering available habitat for movement at the site and regional/NCCP level. This type of fencing for security can cause inadvertent injury and loss of wildlife resulting in a significant impact on fish and wildlife resources.

**Evidence impact would be significant:** The Project may interfere substantially with the movement of wildlife. The Project has the potential to substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels; threaten to eliminate a plant or animal community; or substantially reduce the number or restrict the range of an endangered, rare, or threatened species (CEQA Guidelines, §§ 15065, 15380). As a result, the Project will have a substantial adverse effect, either directly or through habitat modifications, on a species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by CDFW or USFWS.

**Recommended Potentially Feasible Mitigation Measure(s):**

Jessica Norton  
April 1, 2025  
Page 11 of 34

**Recommendation #4:** The FPEIR should analyze impacts from security and other fencing/barriers required for cannabis projects to animal species and wildlife movement/connectivity including effects to MSCP SAP preserve design and connectivity. The FPEIR should include information on the height, length, type of materials, maintenance requirements, and location of fencing that would be needed for cannabis uses in all areas of the County.

**Mitigation Measure #2:** A fencing plan should be provided for each cannabis operation at the site level to demonstrate that wildlife entrapment and mortality and connectivity are mitigated to less than significant. Should any subsequent proposed project occur in a location that has been identified as a MSCP SAP wildlife movement corridor or found to impede the free movement of wildlife, the FPEIR should include mechanisms at the site level to provide compensatory mitigation measures for the Project's significant impacts (direct and/or through habitat modification) to sensitive and special status plants, animals, and habitats. Mitigation measures should emphasize avoidance and minimization of Project-related impacts. For unavoidable impacts, on-site habitat restoration or enhancement should be discussed in detail. If on-site mitigation is not feasible or would not be biologically viable and therefore inadequate to mitigate the loss of biological functions and values, off-site mitigation through habitat creation and/or acquisition and preservation in perpetuity should be addressed. Areas proposed as mitigation lands should be protected in perpetuity with a conservation easement and financial assurance and dedicated to a qualified entity for long-term management and monitoring.

**Mitigation Measure #3:** CDFW recommends the County require a wildlife movement plan for each outdoor cannabis cultivation project in all areas of the County. The wildlife movement plan should identify the specific location and design of any fencing or other barrier associated with cultivation activities, including operational activities, that may impact wildlife movement directly or indirectly. Some design considerations to avoid impacts to special-status species that have the potential to occur on project sites may include fencing design and materials, fencing height, fencing location, gaps in fenced areas, or exclusionary materials. We also recommend frequent monitoring of the fence line to inspect for trapped animals and release any wildlife that may be caught in the perimeter fencing. The wildlife movement plan should be submitted, along with biological reports, to the County and resource agencies, including CDFW, for review and concurrence on a project-to-project basis. For cannabis projects within the MSCP SAP area, should any project occur in a location that has been identified as a wildlife movement corridor or found to impede the free movement of wildlife from project fencing or operations, a boundary line adjustment may be required to mitigate for impacts to wildlife movement.

**Comment #3: Impacts to Southern California Steelhead (*Oncorhynchus mykiss*)**

**Issue:** Several watercourses in the County support southern California steelhead (steelhead), a CESA-listed endangered species that is not covered under the MSCP SAP or planned for coverage in the draft North County or East County Plans. Examples of steelhead streams in San Diego include Santa Margarita, San Luis Rey, and

Jessica Norton  
April 1, 2025  
Page 12 of 34

Sweetwater Rivers (CDFW 2021). CDFW is concerned that the Project could directly or indirectly impact steelhead.

**Specific Impacts:** Project construction and operational activities, including site access and water use, may result in injury or mortality of steelhead, temporary loss of rearing habitat, changes in stream water temperatures, and temporary loss of food sources.

**Why impacts would occur:** Run sizes of southern California DPS steelhead rivers have declined significantly since historical levels (Good et al. 2005, NMFS 2016). Habitat for steelhead has suffered destruction and modification, and anthropogenic activities have reduced the amount of habitat available to steelhead (Boughton et al. 2005). The DPEIR does not analyze the potential effect to steelhead and other aquatic species from water use, diversions, and fish passage (Fish & G. Code, § 5901) associated with site operations and access needed for cannabis cultivation and currently provides no mitigation for steelhead in 8.1.2.

The Project may cause indirect impacts to steelhead from project water use affecting in-stream flows where steelhead occur or temporarily removing riparian vegetation. Riparian vegetation provides habitat for macroinvertebrates which are a food source for steelhead and shading of the creek which sustains lower creek temperatures for steelhead survival. Although the DPEIR addressed and provided measures to minimize impacts to water quality due to increased turbidities, temporary loss of vegetation, and avoiding take of sensitive species, the Project may still impact steelhead from water use, access and site operations. San Luis Rey River is an example where cannabis uses permitted under SECP may have the potential to substantially adversely affect surface flows in the river from water use, site access and site operations on a project and/or cumulative basis (Figure 1).

**Evidence impact would be significant:** The CESA-listed endangered status of southern California steelhead qualifies it as a special status species under CEQA (CEQA Guidelines, §15380). The Project contains structures for stream crossings (culverts and bridges) that could threaten the ability for steelhead to migrate. Per Fish and Game Code section 5901, it is unlawful to construct or maintain in any stream any device or contrivance that prevents, impedes, or tends to prevent or impeded, the passing of fish up and downstream. Per Fish and Game Code section 5937, the owner of any dam shall allow sufficient water at all times to pass through a fishway, or to keep in good condition any fish that may be planted or exists below the dam.

**Recommended Potentially Feasible Mitigation Measure(s):**

**Mitigation Measure #4:** The DPEIR should analyze potential impacts from the Project to steelhead including creation of fish passage barriers from site access, effects to instream flow from water demand and diversions, erosion and sedimentation from site activities and impacts to spawning habitats, changes to water temperature, and effects from use of fertilizers, pesticides, herbicides, and rodenticides to stream areas. In areas of the County where steelhead may be present, a water use plan should be provided for each individual project under the SECP to evaluate potential impacts to instream flow

Jessica Norton  
April 1, 2025  
Page 13 of 34

and submitted the County and CDFW for review. Barriers to fish passage could be evaluated in the wildlife movement plan for each project.

**Mitigation Measure #5:** For projects that may impact steelhead, or any other CESA-listed species that is not covered under a NCCP, County applicants should seek appropriate take authorization from CDFW, and early consultation is encouraged. The requirement to demonstrate that consultation has occurred for this species and appropriate authorization has been obtained from CDFW and provided to the County should be included in individual SECP approvals prior to initiation of the project. CDFW may consider the Lead Agency's CEQA documentation for its CESA-related actions if it adequately analyzes/discloses impacts and mitigation to CESA-listed species. Additional documentation may be required as part of an ITP application for the Project in order for CDFW to adequately develop an accurate take analysis and identify measures that would fully mitigate for take of CESA-listed species.

## **ADDITIONAL COMMENTS**

### **Habitat Classification**

Based on the information provided, CDFW cannot make a conclusion on the environmentally superior alternative without a detailed breakdown of impacts to each habitat classification. Table 2.5.2 Habitat and Land Cover Types in the Program Area indicates that the County has existing datasets for habitat mapping per vegetation alliance according to the Manual of California Vegetation (MCV). It is our understanding that the total acreages of potential impacts are known, as shown in Table 1.4, but they lack further description.

**Recommendation #5:** The DPEIR should include a more robust analysis of impacts by using data presented in Table 1.4 and Table 2.5.2 to identify the acreage of potential impacts to each vegetation classification and habitat type resulting from each of the proposed alternatives. As mentioned in our NOP comment letter, such information could include the amount and location of acreage by community plan area that could be converted to cannabis uses with corresponding loss of habitat and impacts to species using the most recent vegetation and species occurrence data. The analysis of proposed alternatives should be updated to reflect the impacts to habitat in order to help identify the environmentally superior alternative in the final CEQA document.

### **Zoning Ordinance**

**Recommendation #6:** The FPEIR and Zoning Ordinance should incorporate language that is referred to in the associated BMO and Resource Protection Ordinance (RPO). The County's RPO provides special controls on development in all areas of the County to address impacts to wetlands, floodplains, steep slopes, sensitive biological habitats, and prehistoric and historic sites to guarantee the preservation of these sensitive lands. The RPO is important in addressing potential impacts to lake, river and stream areas. For example, the definition of, "sensitive uses" in the Zoning Ordinance should include, "environmentally sensitive lands" as defined by section 86.602 – Definitions. Section

Jessica Norton  
April 1, 2025  
Page 14 of 34

86.604 (Permitted Uses and Development Criteria) provide site design criteria for wetland stream crossings, setbacks and mitigation where impacts cannot be avoided. Appropriate setbacks 1). The DPEIR should clearly identify how BMO and RPO will be used in individual projects. If the BMO is intended to apply Countywide as a mitigation measures, CDFW recommends the avoidance criteria in the BMO and RPO be carried forward into the ordinance amendments.

### **Impacts to Streams**

Mitigation Measure M-BI-2-1 identifies the need for a Lake and Streambed Alteration Agreement (LSAA) Notification, per Fish and Game Code Section 1602, should a site impact the bed, bank, channel, or associated riparian habitat. However, as currently written, the measure may lack further recommendations necessary for a complete LSAA notification package. Business and Professions Code 260.60.1 (Licensed Cultivation Sites) provides that, “the (State) license shall not be effective until the licensee has demonstrated compliance with Section 1602 of the Fish and Game Code or receives written verification from the Department that a streambed alteration agreement is not required.” CDFW recommends the following measures:

**Mitigation Measure #6:** For individual cultivation projects under the SECP, the Project applicant (or “entity”) must provide notification to CDFW pursuant to Fish and Game Code, section 1600 *et seq.* (Business and Professions Code 260.60.1). Based on this notification and other information, CDFW determines whether an LSA Agreement with the applicant is required prior to conducting the proposed activities. Please visit CDFW’s [Lake and Streambed Alteration Program](#) webpage to for information about LSA Notification and online submittal through the Environmental Permit Information Management System (EPIMS) Permitting Portal (CDFW 2021).

**Mitigation Measure #7:** CDFW recommends the submittals for individual SECP projects include a stream delineation and hydrology report to evaluate whether the Project would alter, divert, or impair stream flow and alignment. The hydrology report should include a scour analysis to demonstrate that stream banks and stream bed would not erode under different storm events for proposed conditions both up and downstream of the Project area. The hydrology report should also include an analysis as to whether the placement and installation of staging areas, parking areas, and security fencing would impact the unnamed drainage on site and up and downstream. Also, CDFW requests a hydrological evaluation of any potential scour or erosion at the Project site and downstream due to a 100, 50, 25, 10, 5, and 2-year frequency storm event for existing and proposed conditions to determine how the Project activities may change the hydrology on site.

**Recommendation #7:** CDFW’s issuance of an LSA Agreement for a Project that is subject to CEQA will require CEQA compliance actions by CDFW as a Responsible Agency. As a Responsible Agency, CDFW may consider the CEQA document from the County for the Project. To minimize additional requirements by CDFW pursuant to Fish and Game Code section 1600 *et seq.* and/or under CEQA, the CEQA document should

Jessica Norton  
April 1, 2025  
Page 15 of 34

fully identify the potential impacts to the stream or riparian resources and provide adequate avoidance, mitigation, monitoring, and reporting commitments for issuance of the LSA Agreement. To compensate for any on- and off-site impacts to aquatic and riparian resources, additional mitigation conditioned in any LSA Agreement may include the following: erosion and pollution control measures, avoidance of resources, protective measures for downstream resources, on- and/or off-site habitat creation, enhancement or restoration, and/or protection, and management of mitigation lands in perpetuity.

### **Stream Crossings and Dams**

Construction or maintenance of dams and stream crossings used for cannabis cultivation may cause negative impacts on stream and adjacent upland habitat through the removal of habitat and alteration of on-site hydrology and water quality. Cannabis projects often require crossings over streams and through sensitive habitat to provide access for operations. Crossings can be at-grade, culverts, and bridges to allow access to growing locations, water sources, and other cultivation activities. If not designed properly, site access can create or exacerbate fish passage issues (Fish & G. Code § 5901), alter the flow of streams, erode stream banks, impede wildlife movement, and create scour and increase sedimentation to streams.

**Recommendation #8:** The DPEIR should analyze the potential effect to stream habitat/resources, including steelhead and other aquatic species, from construction and maintenance of stream crossings for site access. Potential impacts include fish passage, wildlife use and movement, wetland vegetation, bank erosion, and stream hydrology.

**Recommendation #9:** The DPEIR should identify the need for each individual SECP project to obtain LSA authorization for stream crossings and include adequate information to support permitting by State and federal agencies. For unavoidable “take” of any listed species (e.g., steelhead, western pond turtle) during construction, submit a CESA ITP. The review process for individual SECP projects should include a required stream delineation and hydrology report to identify the extent of stream resources on-site and to evaluate whether the Project would alter, divert, or impair stream flow and alignment, or otherwise impact stream resources. These reports should be submitted to CDFW for review prior to the initiation of any Project activities. This step would be included as part of the County review process described above in Recommendation #1.

**Recommendation #10:** The DPEIR should include siting/design criteria for individual projects to avoid impacting stream to the maximum extent practicable. Where stream resources cannot be avoided, impacts should be minimized and mitigation in the same watershed if possible. Measures for fish passage should be incorporated into the design of all project crossings to ensure that sufficient in-stream flows are provided, and barriers are not created. All crossings related to cannabis operations should be developed in consultation with an engineer or other appropriate licensed professional for all construction and maintenance of dams and stream crossings to ensure they are constructed to minimize impacts to streams and relevant fish and other wildlife habitats.

Jessica Norton  
April 1, 2025  
Page 16 of 34

**Recommendation #11:** Limiting water use during certain periods of the year (forbearance period) consistent with State regulations should also be included as mitigation.

## **Water Use**

Water use and diversions for cannabis cultivation, especially when clustered along a stretch of a stream or river, can substantially reduce water availability in streams and reduce suitable habitat and movement for species including aquatic and avian wildlife. Sufficient flows are essential for fish passage and breeding habitat for steelhead and other aquatic species.

**Recommendation #12:** The FPEIR should provide a mechanism for analysis of water use from individual cannabis cultivation projects that have potential to impact instream flows and water availability for aquatic-dependent wildlife and habitat including steelhead, sensitive frogs, and other fish and amphibians. CDFW also recommends the County assess the aquatic carrying capacity of watersheds where cannabis would be allowed. The focus of the assessment should be to determine the maximum water use availability from watersheds to maintain adequate water supply for fish and wildlife resources, considering the cumulative demand from existing and future permitted cannabis cultivation projects. The review process for individual SECP projects should include a required water use and hydrology study to evaluate whether the Project would alter, divert, or impair stream flow and alignment, or otherwise impact stream resources. These reports should be submitted to CDFW for review prior to the initiation of any project activities. This step would be included as part of the County review process further described in the section below titled Agency Collaboration.

**Mitigation Measure #8:** CDFW recommends the County require all commercial cannabis cultivation projects disclose all sources of water and expected demand by season and annually. Outdoor projects with water use should include a well completion report, and potentially a hydrologic study by a qualified entity that analyzes potential impacts to in-stream flow from water use. Measures to manage water to protect habitat and wildlife species for each SECP project should include forbearance periods consistent with SWRCB and CDFW requirements.

## **Burrowing Owl**

Mitigation measure M-BI.1-8 for burrowing owls includes guidance provided by the *Staff Report on Burrowing Owl Mitigation* (CDFW 2012), as has been consistently recommended by CDFW. However, as of October 2024 the status of burrowing owls was elevated to candidate species by the Fish & Game Commission due to decreasing population throughout the State.

**Recommendation #13:** Mitigation measures related to burrowing owls may evolve as their status is updated as part of the Petition to List California Populations of the Western Burrowing Owl as Endangered or Threatened under CESA (CBC 2024) to reflect best practices according to the most recent research available. Please be



Jessica Norton  
April 1, 2025  
Page 17 of 34

advised that the 2012 Staff Report on Burrowing Owl Mitigation, and measure identified therein, may be amended as part of the BUOW listing process.

**Mitigation Measure #9:** If take or adverse impacts to burrowing owl cannot be avoided during Project activities or over the life of the Project, the County should require the Project applicant to consult CDFW to determine if a CESA ITP is required, as appropriate.

### **Tricolored Blackbird**

A review of CNDDDB indicates recorded observations of tricolored blackbird, a CESA-listed threatened species, in multiple locations throughout the County. Due to the presence of riparian vegetation and documented occurrence of tricolored blackbirds in the area, the Project has a potential to impact this bird species from the loss of foraging and nesting habitat and indirect effects (noise, lighting, introduction of non-native flora and fauna).

**Mitigation Measure #10:** The DPEIR should contain avoidance measures to tricolored blackbirds in rural areas as recommended in the Department (CDFW 2015). If take of tricolored blackbird would occur from Project construction or operation, CDFW recommends the Project obtain appropriate take authorization under CESA which may include an ITP. The requirement to demonstrate that consultation for this CESA-listed species has occurred and appropriate CDFW authorization has been obtained and provided to the County should be included in individual SECP approvals prior to initiation of the Project. [Impacts to Tricolored Blackbird Breeding Colonies on Agricultural Fields, March 19, 2015](#) (CDFW 2015). If take of tricolored blackbird would occur from Project construction or operation, CDFW recommends the Project obtain appropriate take authorization under CESA which may include an ITP. The requirement to demonstrate that consultation for this CESA-listed species has occurred and appropriate CDFW authorization has been obtained and provided to the County should be included in individual SECP approvals prior to initiation of the Project.

### **Scientific Collecting Permit**

**Mitigation Measure #11:** A scientific collecting permit would be necessary if there is a plan to capture and relocate wildlife. Pursuant to the California Code of Regulations, title 14, section 650, qualified biologist(s) must obtain appropriate handling permits to capture, temporarily possess, and relocated wildlife to avoid harm or mortality in connection with Project-related activities. CDFW has the authority to issue permits for the take or possession of wildlife, including mammals; birds, nests, and eggs; reptiles, amphibians, fish, plants; and invertebrates (Fish & G. Code, §§ 1002, 1002.5, 1003). A Scientific Collecting Permit is required to monitor Project impacts on wildlife resources, as required by environmental documents, permits, or other legal authorizations; and, to capture, temporarily possess, and relocate wildlife to avoid harm or mortality in connection with otherwise lawful activities (Cal. Code Regs., tit. 14, § 650). Please visit CDFW's [Scientific Collection Permits](#) webpage for information

Jessica Norton  
April 1, 2025  
Page 18 of 34

## Public Lands

Section 2.5.3.2 Approach to Analysis of the DPEIR states, “[t]he program does not apply to the incorporated cities; coastal zone; tribal lands; military lands; or to public lands managed by the US Forest Service, the California Department of Parks and Recreation (California State Parks), the US Bureau of Land Management, or CDFW. Impact mechanisms for development under the program could include clearing of native vegetation; tree removal; grading, trenching, or tilling associated with new buildings or outdoor cultivation areas; ground disturbance from construction of storage ponds; installation of irrigation systems, drainage improvements, and water storage; road and building construction; extension of electrical facilities and infrastructure; installation of fencing; and operation of artificial nighttime lighting and generators. Project implementation associated with cultivation and noncultivation activities may include conversion of natural habitats to developed or agricultural land covers” (Program Draft EIR Page 2.5-24). CDFW has multiple ecological reserves, wildlife areas, mitigation banks, conserved land throughout SD County. Many of these locations, such as Rancho Jamul and Ramona Grasslands, may be in proximity to potential cannabis sites and should be documented. Please visit CDFW’s [Lands website](#) (CDFW 2025) for more information. CDFW has concerns that these activities, if located adjacent or proximal to CDFW and other conserved lands, could result in potentially significant impacts from access, pesticide drift, runoff, lighting, fencing and conversion of land.

**Recommendation #14:** CDFW has multiple ecological reserves, wildlife areas, mitigation banks, conserved land throughout SD County. Many of these locations, such as Rancho Jamul and Ramona Grasslands, may be in proximity to potential cannabis sites and should be documented. Please visit CDFW’s [Lands website](#) (CDFW 2025) for more information. All cannabis facilities should be located sufficiently away from CDFW and other public lands to prevent direct and indirect impacts to those lands. Such impacts include impacts from access, pesticide drift, runoff, lighting, fencing and conversion of land. Include mapping of public lands by ownership the project area for each individual operation and ensure that appropriate buffers and setbacks are established to prevent impacts due to proximity.

## Mitigation and Monitoring Reporting Plan

CDFW recommends the Project’s environmental document include mitigation measures recommended in this letter. CDFW has provided comments via a mitigation monitoring and reporting plan to assist in the development of feasible, specific, detailed (i.e., responsible party, timing, specific actions, location), and fully enforceable mitigation measures (CEQA Guidelines, § 15097; Pub. Resources Code, § 21081.6). The County is welcome to coordinate with CDFW to further review and refine the Project’s mitigation measures. Per Public Resources Code section 21081.6(a)(1), CDFW has provided a summary of our suggested mitigation measures and recommendations in the form of an attached Draft Mitigation Monitoring and Reporting Plan (Attachment A). 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

Jessica Norton  
April 1, 2025  
Page 19 of 34

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 website](#) provides direction regarding the types of information that should be reported and allows on-line submittal of field survey forms.

In addition, information on special status native plant populations and sensitive natural communities, should be submitted to CDFW's Vegetation Classification and Mapping Program using the Combined Rapid Assessment and Relevé Form.

The County should ensure data collected for the preparation of the FPEIR is properly submitted.

## **FILING FEES**

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the County and serve to help defray the cost of environmental review by CDFW. Payment of the environmental document filing 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.)

CDFW believes having the appropriate analysis and mitigation in the DPEIR is essential for SECP program implementation to distinguish between individual projects that would not require additional/subsequent review and those that would require additional assessments, and potentially CEQA review, to address sensitive resources and to minimize the environmental impacts of cannabis cultivation. This will allow SECP projects to confidently move forward with licensing under the DCC and ensure compliance with the FGC. Our comments on the DPEIR are intended to identify situations where individual projects should be excluded from any ministerial process unless sufficient information is provided to assure that all impacts to sensitive resources can be avoided, and where unavoidable, can be adequately mitigated to less than significant. CDFW recommends that individual SECP projects, in particular those with outdoor components, be evaluated on a case-by-case basis in coordination with the resource agencies to develop project specific avoidance and mitigation measures for individual projects. CDFW believes the DPEIR, with incorporation our comments and collaboration at the appropriate time of individual project review, would help to facilitate and support SECP implementation for local and State permitting and licensing. CDFW prefers being involved in the County's individual project review as early as possible to maximize resource protection, minimize project cost, and streamline use of documentation for local and State permitting.

CDFW appreciates the opportunity to comment on the DPEIR for the SECP and values working with the County to support the regulation of commercial cannabis cultivation,

Jessica Norton  
April 1, 2025  
Page 20 of 34

and future cannabis grant opportunities, while protecting the fish and wildlife resources held in trust for all Californians. CDFW is available for consultation during all stages of the CEQA process, to share information related to fish and wildlife resources, and discuss potential impacts and proposed mitigation. We look forward to receiving notice of the FPEIR and continuing our partnership with the County. If you have any questions regarding this letter, please contact Environmental Scientist Andrew Valand in the Cannabis Program at (562) 292-6821 or [Andrew.Valand@wildlife.ca.gov](mailto:Andrew.Valand@wildlife.ca.gov).

Sincerely,

DocuSigned by:



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Victoria Tang  
Environmental Program Manager  
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ec:

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Jessica Norton

April 1, 2025

Page 21 of 34

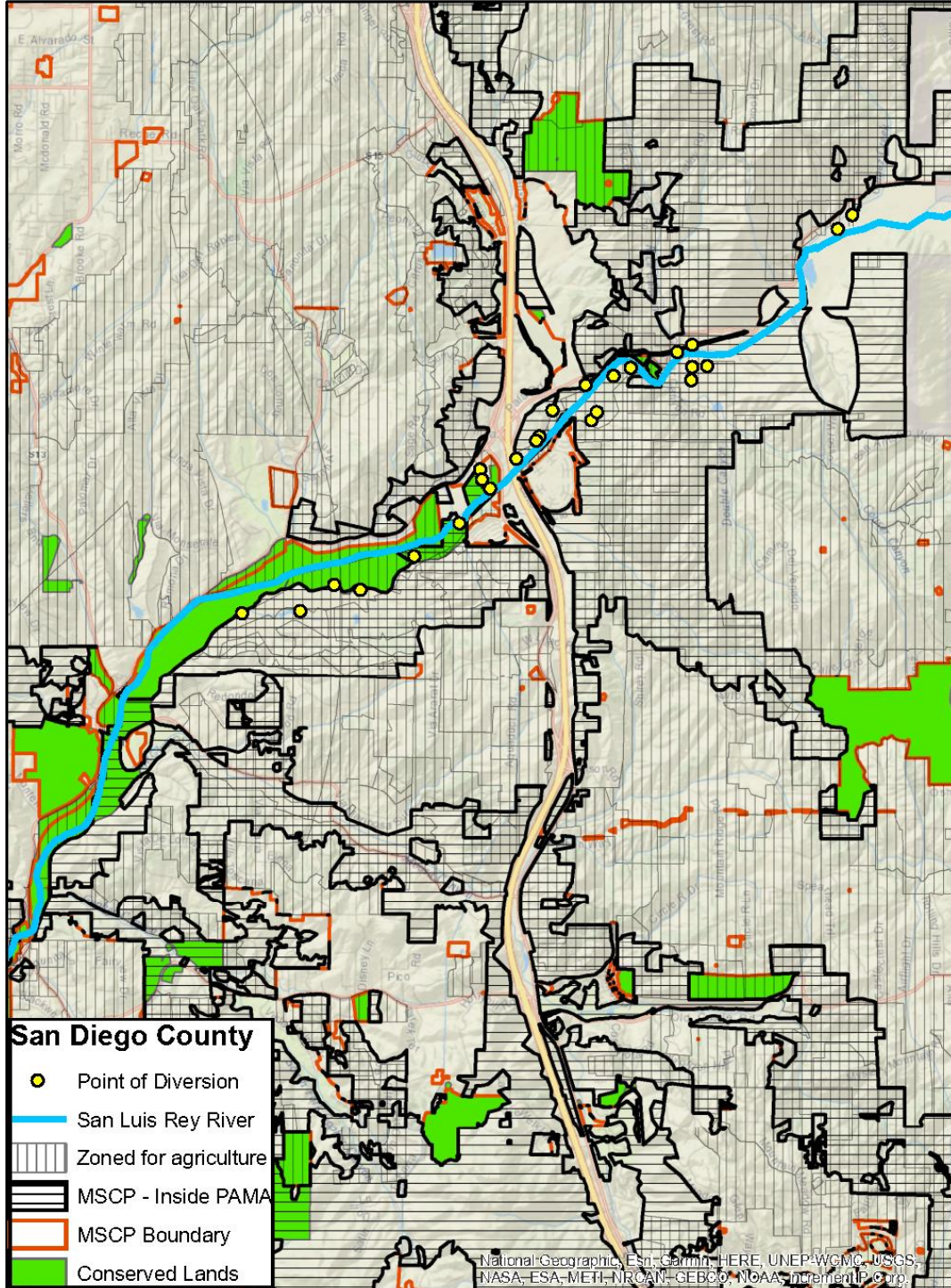


Figure 1. San Luis Rey River – Points of Diversion.

Source: State Water Resources Control Board. 2023. eWRIMS - Electronic Water Rights Information Management System. Available at:

[https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/ewrims/](https://www.waterboards.ca.gov/waterrights/water_issues/programs/ewrims/)

Jessica Norton  
April 1, 2025  
Page 22 of 34

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Jessica Norton

April 1, 2025

Page 23 of 34

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Jessica Norton  
April 1, 2025  
Page 24 of 34

## Attachment 1

### Appendix B

#### Proposed Amendments to the San Diego County Zoning Ordinance and Code of Regulatory Ordinances for Cannabis Uses (October 2024 version)

CDFW recommends the following text be included in the final proposed amendments to the zoning ordinance, which comprises the proposed project under CEQA (State CEQA Guidelines §§ 15378 and 15124).

- Section 1110 (Definitions)
  - The definition for microbusiness should clarify if it could include an outdoor component. For example, an existing warehouse that has an adjacent outdoor (hoop) component within the same premise.
  - Hoop Houses. The definition section and ordinance should address the use of hoop houses if they are anticipated to be used.
  
- Section 6995 (Cannabis Facilities)
  - Item c (conformance with County plans) should reference MSCP, BMO and RPO
  - Items e (development standards) should incorporate the design criteria in the BMO including 86.505 (Project Design Criteria), 85.606 (Habitat Based Mitigation) and 86.507 (Species Based Mitigation)
  - Item e 3 (Location) should include biological minimization measures including BMO 86.505 (Project Design Criteria) and 85.606 (Habitat Based Mitigation) and 86.507 (Species Based Mitigation)
  - Item 4 (Buffer) should acknowledge biological habitat, MSCP pre-approved mitigation areas (PAMA), biological core resources areas (BCRA)s, and lakes, rivers and streams as sensitive uses with corresponding setbacks.
  - Item f (performance standards)
    - 2 (fencing) should specify that wildlife compatible fencing is required in all cases.
    - 5. (water source) should include the annual reporting of usage and use of forbearance if needed to protect the environment. RPO should also be incorporated here.
  - Item g (Activity Specific Standards)
    - 2. Cultivation. This section should incorporate the biological setbacks in the BMO for areas in the County's MSCP SAP. viii (enclosed fencing) should identify the need for wildlife compatible fencing.



Jessica Norton

April 1, 2025

Page 25 of 34

- Item h (permitting requirements). This section should acknowledge that other state approvals/authorization other than DCC include CDFW and Water Boards (BPC § 26060.1).
  - 1 (Cultivation), i. (Outdoor). The criteria for the administrative permit should be expanded to incorporate RPO and BMO siting criteria for the least sensitive portion of the site, avoidance and mitigation.
    - i. Since site specific mapping of biology resources will not occur until the individual project level and it is not known where the exact locations of cultivation would occur at the site level, the determination of whether 5,000 square could be ministerial, considering license may be stacked, should occur in all locations where there could be potential impacts to biological resources.
    - a), the F (floodplain) and W (flood channel) special areas designators should all be included here to indicate site with these designators would require discretionary review.
    - b) existing operations that use water from wells or otherwise would be located adjacent to lakes, rivers or streams should require discretionary review.

Jessica Norton

April 1, 2025

Page 26 of 34

**Attachment 2: Mitigation and Monitoring Reporting Plan**

CDFW recommends the following language to be incorporated into a future environmental document for the Project. A final MMRP shall reflect results following additional plant and wildlife surveys and the Project’s final on and/or off-site mitigation plans.

<b>Biological Resources (BIO)</b>			
<b>Mitigation Measure (MM) or Recommendation (REC)</b>		<b>Timing</b>	<b>Responsible Party</b>
<b>Recommendation REC-1 - Consistency with NCCP</b>	The FPEIR should include a mechanism in 8.1.2 to include CDFW Cannabis Program review and input on individual projects that come under the SECP as early in the process as possible. Prior to the issuance of administrative or ministerial permits, the County should coordinate with CDFW regarding appropriate enforceable measures to address and mitigate for site-specific impacts to biological resources. Coordination should include review of individual written checklists, project-specific site plans, biological assessments, habitat protection plans, wildlife protection plans, tree protection plans, and water use plans. Measures in these plans should be integrated into the County’s land use entitlement and business licensing for projects to address site-specific conditions. Of particular concern is the determination in Section 8.1.2 (bullet No. 3) on whether a project in MSCP SAP constitutes an agricultural activity (i.e., cultivation) that would be exempt under the MSCP SAP, whether the project site is located within a PAMA or a Biological Resource Core Area as defined in the MSCP SAP and BMO, and the tier level of vegetation on the project site.	Prior to Project construction and activities	Lead Agency/ Applicant
<b>Recommendation REC-2 - Consistency with NCCP</b>	The FPEIR should include analysis of direct and indirect impacts to sensitive wildlife (plant and animal) species in the County from implementation of the SECP. The adopted MSCP SAP should be used to guide analysis in the southern part of the County. For non-covered species in MSCP SAP, such as steelhead and Stephens’ Kangaroo rat, those species should be analyzed in the FPEIR separately from the MSCP SAP. All wildlife species in the northern and eastern areas of the County should be analyzed independently from MSCP SAP since there are currently no adopted NCCP plans for those areas.	Prior to Project construction and activities	Lead Agency/ Applicant

Jessica Norton

April 1, 2025

Page 27 of 34

<p><b>Recommendation REC-3 - Consistency with NCCP</b></p>	<p>CDFW recommends the County require a wildlife movement plan for each outdoor cannabis cultivation project in all areas of the County. The wildlife movement plan shall identify the specific location and design of any fencing or other barrier associated with cultivation activities, including operational activities, that may impact wildlife movement directly or indirectly. Some design considerations to avoid impacts to special-status species that have the potential to occur on project sites may include fencing design and materials, fencing height, fencing location, gaps in fenced areas, or exclusionary materials. We also recommend frequent monitoring of the fence line to inspect for trapped animals and release any wildlife that may be caught in the perimeter fencing. The wildlife movement plan shall be submitted, along with biological reports, to the County and resource agencies, including CDFW, for review and concurrence on a project-to-project basis.</p>	<p>Prior to Project construction and activities</p>	<p>Lead Agency/ Applicant</p>
<p><b>Mitigation Measure MM-BIO-1 - Consistency with NCCP</b></p>	<p>Measures to avoid impacting sensitive wildlife species should be identified in the FPEIR for implementation at the site level. Measures could include the need to conduct site-specific protocol surveys, prepare and implement habitat protection plans, wildlife protection plans, tree protection plans, or water use plans. Where listed species may be impacted, the FPEIR should identify appropriate avoidance and mitigation, including land preservation with funding, to support State and federal permitting that may be needed. The coverage requirements, including avoidance setbacks, for the MSCP SAP should apply to all federally listed species that are covered in all alternatives that allow cultivation. In order to provide adequate coverage for MSCP-covered species, complete site-specific and project-level biological reports should be included as part of the package of materials submitted to the County and resource agencies, such as CDFW, for subsequent review prior to the initiation of a project.</p>	<p>Prior to Project construction and activities</p>	<p>Lead Agency/ Applicant</p>
<p><b>Recommendation REC-4 - Fencing</b></p>	<p>The FPEIR should analyze impacts from security and other fencing/barriers required for cannabis projects to animal species and wildlife movement/connectivity including effects to MSCP SAP preserve design and connectivity. The FPEIR should include information on the height, length, type of materials, maintenance requirements, and location of fencing that would be needed for cannabis uses in all areas of the County.</p>	<p>Prior to/During Project construction and activities</p>	<p>Lead Agency/ Applicant</p>

Jessica Norton

April 1, 2025

Page 28 of 34

<p><b>Mitigation Measure MM-BIO-2 - Fencing</b></p>	<p>A fencing plan should be provided for each cannabis operation at the site level to demonstrate that wildlife entrapment and mortality and connectivity are mitigated to less than significant. Should any subsequent proposed project occur in a location that has been identified as a MSCP SAP wildlife movement corridor or found to impede the free movement of wildlife, the FPEIR should include mechanisms at the site level to provide compensatory mitigation measures for the Project's significant impacts (direct and/or through habitat modification) to sensitive and special status plants, animals, and habitats. Mitigation measures should emphasize avoidance and minimization of Project-related impacts. For unavoidable impacts, on-site habitat restoration or enhancement should be discussed in detail. If on-site mitigation is not feasible or would not be biologically viable and therefore inadequate to mitigate the loss of biological functions and values, off-site mitigation through habitat creation and/or acquisition and preservation in perpetuity should be addressed. Areas proposed as mitigation lands should be protected in perpetuity with a conservation easement and financial assurance and dedicated to a qualified entity for long-term management and monitoring.</p>	<p>Prior to Project construction and activities</p>	<p>Lead Agency/ Applicant</p>
<p><b>Mitigation Measure MM-BIO-3 - Fencing</b></p>	<p>CDFW recommends the County require a wildlife movement plan for each outdoor cannabis cultivation project in all areas of the County. The wildlife movement plan should identify the specific location and design of any fencing or other barrier associated with cultivation activities, including operational activities, that may impact wildlife movement directly or indirectly. Some design considerations to avoid impacts to special-status species that have the potential to occur on project sites may include fencing design and materials, fencing height, fencing location, gaps in fenced areas, or exclusionary materials. We also recommend frequent monitoring of the fence line to inspect for trapped animals and release any wildlife that may be caught in the perimeter fencing. The wildlife movement plan should be submitted, along with biological reports, to the County and resource agencies, including CDFW, for review and concurrence on a project-to-project basis. For cannabis projects within the MSCP SAP area, should any project occur in a location that has been identified as a wildlife movement corridor or found to impede the free movement of wildlife from project fencing or</p>	<p>Prior to Project construction and activities</p>	<p>Lead Agency/ Applicant</p>

Jessica Norton

April 1, 2025

Page 29 of 34

	operations, a boundary line adjustment may be required to mitigate for impacts to wildlife movement.		
<b>Mitigation Measure MM-BIO-4 - Impacts to Southern California Steelhead</b>	The DPEIR should analyze potential impacts from the Project to steelhead including creation of fish passage barriers from site access, effects to instream flow from water demand and diversions, erosion and sedimentation from site activities and impacts to spawning habitats, changes to water temperature, and effects from use of fertilizers, pesticides, herbicides, and rodenticides to stream areas. In areas of the County where steelhead may be present, a water use plan should be provided for each individual project under the SECP to evaluate potential impacts to instream flow and submitted the County and CDFW for review. Barriers to fish passage could be evaluated in the wildlife movement plan for each project.	Prior to/During Project construction and activities	Lead Agency/ Applicant
<b>Mitigation Measure MM-BIO-5 - Impacts to Southern California Steelhead</b>	For projects that may impact steelhead, or any other CESA-listed species that is not covered under a NCCP, County applicants should seek appropriate take authorization from CDFW, and early consultation is encouraged. The requirement to demonstrate that consultation has occurred for this species and appropriate authorization has been obtained from CDFW and provided to the County should be included in individual SECP approvals prior to initiation of the project. CDFW may consider the Lead Agency's CEQA documentation for its CESA-related actions if it adequately analyzes/discloses impacts and mitigation to CESA-listed species. Additional documentation may be required as part of an ITP application for the Project in order for CDFW to adequately develop an accurate take analysis and identify measures that would fully mitigate for take of CESA-listed species.	Prior to Project construction and activities	Lead Agency/ Applicant
<b>Recommendation REC-5 - Habitat Classification</b>	The DPEIR should include a more robust analysis of impacts by using data presented in Table 1.4 and Table 2.5.2 to identify the acreage of potential impacts to each vegetation classification and habitat type resulting from each of the proposed alternatives. The analysis of proposed alternatives should be updated to reflect the impacts to habitat in order to help identify the environmentally superior alternative in the final CEQA document.	Prior to Project construction and activities	Lead Agency/ Applicant

Jessica Norton

April 1, 2025

Page 30 of 34

<p><b>Recommendation REC-6 – Zoning Ordinance</b></p>	<p>The FPEIR and Zoning Ordinance should incorporate language that is referred to in the associated BMO and Resource Protection Ordinance (RPO). The County’s RPO provides special controls on development in all areas of the County to address impacts to wetlands, floodplains, steep slopes, sensitive biological habitats, and prehistoric and historic sites to guarantee the preservation of these sensitive lands. The RPO is important in addressing potential impacts to lake, river and stream areas. For example, the definition of, “sensitive uses” in the Zoning Ordinance should include, “environmentally sensitive lands” as defined by section 86.602 – Definitions. Section 86.604 (Permitted Uses and Development Criteria) provide site design criteria for wetland stream crossings, setbacks and mitigation where impacts cannot be avoided. Appropriate setbacks 1). The DPEIR should clearly identify how BMO and RPO will be used in individual projects. If the BMO is intended to apply Countywide as a mitigation measures, CDFW recommends the avoidance criteria in the BMO and RPO be carried forward into the ordinance amendments.</p>	<p>Prior to Project construction and activities</p>	<p>Lead Agency/ Applicant</p>
<p><b>Mitigation Measure MM-BIO-6 – Impacts to Streams</b></p>	<p>For individual cultivation projects under the SECP, the Project applicant (or “entity”) must provide notification to CDFW pursuant to Fish and Game Code, section 1600 et seq. (Business and Professions Code 260.60.1). Based on this notification and other information, CDFW determines whether an LSA Agreement with the applicant is required prior to conducting the proposed activities. Please visit CDFW’s Lake and Streambed Alteration Program webpage to for information about LSA Notification and online submittal through the Environmental Permit Information Management System (EPIMS) Permitting Portal (CDFW 2021).</p>	<p>Prior to Project construction and activities</p>	<p>Lead Agency/ Applicant</p>
<p><b>Mitigation Measure MM-BIO-7 – Impacts to Streams</b></p>	<p>CDFW recommends the submittals for individual SECP projects include a stream delineation and hydrology report to evaluate whether the Project would alter, divert, or impair stream flow and alignment. The hydrology report should include a scour analysis to demonstrate that stream banks and stream bed would not erode under different storm events for proposed conditions both up and downstream of the Project area. The hydrology report should also include an analysis as to whether the placement and installation of staging areas, parking areas, and security fencing would impact the unnamed drainage on site and</p>	<p>Prior to Project construction and activities</p>	<p>Lead Agency/ Applicant</p>

Jessica Norton

April 1, 2025

Page 31 of 34

	up and downstream. Also, CDFW requests a hydrological evaluation of any potential scour or erosion at the Project site and downstream due to a 100, 50, 25, 10, 5, and 2-year frequency storm event for existing and proposed conditions to determine how the Project activities may change the hydrology on site.		
<b>Recommendation REC-7- Impacts to Streams</b>	CDFW’s issuance of an LSA Agreement for a Project that is subject to CEQA will require CEQA compliance actions by CDFW as a Responsible Agency. As a Responsible Agency, CDFW may consider the CEQA document from the County for the Project. To minimize additional requirements by CDFW pursuant to Fish and Game Code section 1600 et seq. and/or under CEQA, the CEQA document should fully identify the potential impacts to the stream or riparian resources and provide adequate avoidance, mitigation, monitoring, and reporting commitments for issuance of the LSA Agreement. To compensate for any on- and off-site impacts to aquatic and riparian resources, additional mitigation conditioned in any LSA Agreement may include the following: erosion and pollution control measures, avoidance of resources, protective measures for downstream resources, on- and/or off-site habitat creation, enhancement or restoration, and/or protection, and management of mitigation lands in perpetuity.	Prior to Project construction and activities	Lead Agency/ Applicant
<b>Recommendation REC-8 – Stream Crossings and Dams</b>	The DPEIR should analyze the potential effect to stream habitat/resources, including steelhead and other aquatic species, from construction and maintenance of stream crossings for site access. Potential impacts include fish passage, wildlife use and movement, wetland vegetation, bank erosion, and stream hydrology.	Prior to Project construction and activities	Lead Agency/ Applicant
<b>Recommendation REC-9 – Stream Crossings and Dams</b>	The DPEIR should identify the need for each individual SECP project to obtain LSA authorization for stream crossings and include adequate information to support permitting by State and federal agencies. For unavoidable “take” of any listed species (e.g., steelhead, western pond turtle) during construction, submit a CESA ITP. The review process for individual SECP projects should include a required stream delineation and hydrology report to identify the extent of stream resources on-site and to evaluate whether the Project would alter, divert, or impair stream flow and alignment, or otherwise impact stream resources. These reports should be submitted to CDFW for review prior to the initiation of any Project activities. This step would be included as part of the County	Prior to Project construction and activities	Lead Agency/ Applicant

Jessica Norton

April 1, 2025

Page 32 of 34

	review process further described in the section below titled Agency Collaboration.		
<b>Recommendation REC-10- Stream Crossings and Dams</b>	The DPEIR should include siting/design criteria for individual projects to avoid impacting stream to the maximum extent practicable. Where stream resources cannot be avoided, impacts should be minimized and mitigation in the same watershed if possible. Measures for fish passage should be incorporated into the design of all project crossings to ensure that sufficient in-stream flows are provided, and barriers are not created. All crossings related to cannabis operations should be developed in consultation with an engineer or other appropriate licensed professional for all construction and maintenance of dams and stream crossings to ensure they are constructed to minimize impacts to streams and relevant fish and other wildlife habitats.	Prior to Project construction and activities	Lead Agency/ Applicant
<b>Recommendation REC-11 - Stream Crossings and Dams</b>	Limiting water use during certain periods of the year (forbearance period) consistent with State regulations should also be included as mitigation.	Prior to Project construction and activities	Lead Agency/ Applicant
<b>Recommendation REC-12 – Water Use</b>	The FPEIR should provide a mechanism for analysis of water use from individual cannabis cultivation projects that have potential to impact instream flows and water availability for aquatic-dependent wildlife and habitat including steelhead, sensitive frogs, and other fish and amphibians. CDFW also recommends the County assess the aquatic carrying capacity of watersheds where cannabis would be allowed. The focus of the assessment should be to determine the maximum water use availability from watersheds to maintain adequate water supply for fish and wildlife resources, considering the cumulative demand from existing and future permitted cannabis cultivation projects. The review process for individual SECP projects should include a required water use and hydrology study to evaluate whether the Project would alter, divert, or impair stream flow and alignment, or otherwise impact stream resources. These reports should be submitted to CDFW for review prior to the initiation of any project activities. This step would be included as part of the County review process further described in the section below titled Agency Collaboration.	Prior to Project construction and activities	Lead Agency/ Applicant



Jessica Norton

April 1, 2025

Page 33 of 34

<p><b>Mitigation Measure MM-BIO-8 - Water Use</b></p>	<p>CDFW recommends the County require all commercial cannabis cultivation projects disclose all sources of water and expected demand by season and annually. Outdoor projects with water use should include a well completion report, and potentially a hydrologic study by a qualified entity that analyzes potential impacts to in-stream flow from water use. Measures to manage water to protect habitat and wildlife species for each SECP project should include forbearance periods consistent with SWRCB and CDFW requirements.</p>	<p>Prior to Project construction and activities</p>	<p>Lead Agency/ Applicant</p>
<p><b>Recommendation REC-13 – Burrowing Owl</b></p>	<p>Mitigation measures related to burrowing owls may evolve as their status is updated as part of the Petition to List California Populations of the Western Burrowing Owl as Endangered or Threatened under CESA (CBC 2024) to reflect best practices according to the most recent research available. Please be advised that the 2012 Staff Report on Burrowing Owl Mitigation, and measure identified therein, may be amended as part of the BUOW listing process.</p>	<p>Prior to Project construction and activities</p>	<p>Lead Agency/ Applicant</p>
<p><b>Mitigation Measure MM-BIO-9 - Burrowing Owl</b></p>	<p>If take or adverse impacts to burrowing owl cannot be avoided during Project activities or over the life of the Project, the County shall require the Project applicant to consult CDFW to determine if a CESA ITP is required, as appropriate.</p>	<p>Prior to Project construction and activities</p>	<p>Lead Agency/ Applicant</p>
<p><b>Mitigation Measure MM-BIO-10 - Tricolored Blackbird</b></p>	<p>The DPEIR should contain avoidance measures to tricolored blackbirds in rural areas as recommended in the Department <a href="#">Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agricultural Fields, March 19, 2015</a> (CDFW 2015). If take of tricolored blackbird would occur from Project construction or operation, CDFW recommends the Project obtain appropriate take authorization under CESA which may include an ITP. The requirement to demonstrate that consultation for this CESA-listed species has occurred and appropriate CDFW authorization has been obtained and provided to the County should be included in individual SECP approvals prior to initiation of the project. Early consultation is encouraged, as significant modification to a Project and mitigation measures may be required to obtain a CESA Permit. Revisions to the Fish and Game Code, effective January 1998, may require that CDFW issue a separate CEQA document for the issuance of an ITP unless the Project CEQA document addresses all Project impacts to CESA-listed</p>	<p>Prior to Project construction and activities</p>	<p>Lead Agency/ Applicant</p>

Jessica Norton

April 1, 2025

Page 34 of 34

	<p>species and specifies a mitigation monitoring and reporting program that will meet the requirements of an ITP.</p>		
<p><b>Mitigation Measure MM-BIO-11 – Scientific Collecting Permit</b></p>	<p>A scientific collecting permit would be necessary if there is a plan to capture and relocate wildlife. Pursuant to the California Code of Regulations, title 14, section 650, qualified biologist(s) must obtain appropriate handling permits to capture, temporarily possess, and relocated wildlife to avoid harm or mortality in connection with Project-related activities. CDFW has the authority to issue permits for the take or possession of wildlife, including mammals; birds, nests, and eggs; reptiles, amphibians, fish, plants; and invertebrates (Fish &amp; G. Code, §§ 1002, 1002.5, 1003). A Scientific Collecting Permit is required to monitor Project impacts on wildlife resources, as required by environmental documents, permits, or other legal authorizations; and, to capture, temporarily possess, and relocate wildlife to avoid harm or mortality in connection with otherwise lawful activities (Cal. Code Regs., tit. 14, § 650). Please visit CDFW’s Scientific Collection Permits webpage for information</p>	<p>Prior to Project construction and activities</p>	<p>Lead Agency/ Applicant</p>
<p><b>Recommendation REC-14 – Public Lands</b></p>	<p>CDFW has multiple ecological reserves, wildlife areas, mitigation banks, conserved land throughout SD County. Many of these locations, such as Rancho Jamul and Ramona Grasslands, may be in proximity to potential cannabis sites and should be documented. Please visit CDFW’s Lands website (CDFW 2025) for more information. All cannabis facilities should be located sufficiently away from CDFW and other public lands to prevent direct and indirect impacts to those lands. Such impacts include impacts from access, pesticide drift, runoff, lighting, fencing and conversion of land. Include mapping of public lands by ownership the project area for each individual operation and ensure that appropriate buffers and setbacks are established to prevent impacts due to proximity.</p>	<p>Prior to Project construction and activities</p>	<p>Lead Agency/ Applicant</p>