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October 24, 2024

Eric Hughes
County of San Luis Obispo
Department of Planning and Building
976 Osos Street, Room 300
San Luis Obispo, California 93408
ehughes@co.slo.ca.us

**Subject: Eden's Dreams LLC Minor Use Permit
Draft Mitigated Negative Declaration (MND)
Cannabis Cultivation (Project)
SCH No. 2024100207**

Dear Eric Hughes:

The California Department of Fish and Wildlife (CDFW) received a notice of intent to adopt a MND from San Luis Obispo County for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide recommendations regarding the activities proposed at the Project site that may affect California fish and wildlife. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects on the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under Fish and Game Code.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish and Game 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,

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (*Id.*, § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 *et seq.*). Likewise, to the extent implementation of the Project as proposed may result in take as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & Game Code, § 2050 *et seq.*), related authorized as provided by the Fish and Game Code will be required.

In this role, CDFW is responsible for providing, as available, biological expertise during public agency environmental review efforts (e.g., CEQA), focusing specifically on project activities that have the potential to adversely affect fish and wildlife resources. CDFW provides recommendations to identify potential impacts and possible measures to avoid or reduce those impacts.

Bird Protection: CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs and nests include sections 3503 (regarding unlawful take, possession or needless destruction of the nest or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird).

Lake and Streambed Alteration: CDFW has regulatory authority with regard to activities occurring in streams and/or lakes that could adversely affect any fish or wildlife resource, pursuant to Fish and Game Code sections 1600 *et seq.* Section 1602 subdivision (a) of the Fish and Game Code requires an entity to notify CDFW before engaging in activities that would substantially change the bed, channel, or bank of a stream or substantially divert or obstruct the natural flow of a stream.

Water Pollution: Pursuant to Fish and Game Code section 5650, it is unlawful to deposit in, permit to pass into, or place where it can pass into "Waters of the State" any substance or material deleterious to fish, plant life, or bird life, including non-native species. It is possible that without mitigation measures this Project could result in pollution of Waters of the State from storm water runoff or construction-related erosion. Potential impacts to the wildlife resources that utilize watercourses in the Project site

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include the following: increased sediment input from road or structure runoff; toxic runoff associated with Project-related activities and implementation; and/or impairment of wildlife movement. The Regional Water Quality Control Board and United States Army Corps of Engineers also have jurisdiction regarding discharge and pollution to Waters of the State.

PROJECT DESCRIPTION SUMMARY

Proponent: Eden's Dreams LLC

Objective: The Project proponent is seeking a Minor Use Permit to establish indoor cannabis cultivation, which will occur in two phases. Phase one includes the demolition of an existing 14,000 square-foot arena structure, the construction of 35,500 square-foot of indoor cannabis cultivation, and 980 square-foot of ancillary cannabis processing building. In addition, site development will include construction of an 875 square-foot compost area and a new ADA compliant parking space. Phase two includes the construction of a 9,000 square-foot ancillary building that will include processing space, storage, office space, and a restroom. The Project will result in approximately 1.13 acres of total site disturbance.

Location: The Project will take place at 4337 South El Pomar Road in Templeton, California, 93465; San Luis Obispo County; Assessor's Parcel Number 034-321-003.

Timeframe: Unspecified.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following recommendations to assist San Luis Obispo County in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct, and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document.

In particular, CDFW is concerned regarding potential impacts to resources including special status species resulting from the ground-disturbing development activities and ongoing facilities operation, including but not limited to State Species of Special Concern American badger (*Taxidea taxus*), Townsend's big-eared bat (*Corynorhinus townsendii*), northern California legless lizard (*Anniella pulchra*), and western spadefoot (*Spea hammondi*); and State candidate Crotch's bumble bee (*Bombus crotchii*) (CNDDDB 2024).

The Project has the potential to impact biological resources. CDFW recommends the following modifications, or edits be incorporated into the draft MND, including proposed avoidance and minimization measures prior to its adoption by San Luis Obispo County.

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Western Spadefoot

The Project site is within the known geographic range of western spadefoot (WESP) and there is a documented historical occurrence five miles from the Project site (CDFW 2024). WESP occurs primarily in grasslands, oak woodlands, and coastal sage scrub. Some populations persist for a few years in orchard or vineyard habitats. These habitat features are present within the Project vicinity. The MND does not include an evaluation for WESP. To evaluate potential impacts to WESP, CDFW recommends conducting the following evaluation of the Project parcel and its vicinity and implementing the following mitigation measures.

- **Recommended Mitigation Measure: WESP Habitat Assessment.** A qualified biologist shall conduct a habitat assessment to determine if the Project site and the immediate surrounding vicinity contain habitat suitable to support WESP.
- **Recommended Mitigation Measure: Preconstruction Survey for WESP.** Prior to the start of work, a qualified biologist shall conduct focused surveys with installation of exclusion fencing for western spadefoot and their requisite habitat features if suitable WESP habitat is present within the Project site.
- **Recommended Mitigation Measure: WESP Avoidance.** If burrows, cracks, loose soil areas or other refugia are found to be used by WESP during focused surveys, avoidance whenever possible is encouraged via delineation and observance of a 50-foot no-disturbance buffer around these resources. If WESP are observed on the Project site, Project activities in their immediate vicinity cease, allowing individuals to leave the Project site on their own accord. Alternately, a qualified biologist with appropriate authorization can relocate them to a more suitable location out of harm's way.

Crotch's Bumble Bee

The Project site is within the known historic range of Crotch's bumble bee (CBB). CBB occupy areas of grasslands and upland scrub that contain requisite habitat elements, such as small mammal burrows. CBB primarily nest in late February through late October underground in abandoned small mammal burrows but may also nest under perennial bunch grasses or thatched annual grasses, underbrush piles, in old bird nests, and in dead trees or hollow logs (Williams et al. 2014; Hatfield et al. 2015). Overwintering sites utilized by CBB mated queens include soft, disturbed soil (Goulson 2010), or under leaf litter or other debris (Williams et al. 2014). The Project site and surrounding area could contain suitable CBB habitat; therefore, ground disturbance and vegetation removal associated with Project activities has the potential to impact CBB populations. Without appropriate avoidance and minimization measures for CBB, potential significant impacts associated with the Project's implementation could include burrow collapse, inadvertent entrapment, nest abandonment, reduced reproductive

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success, reduced health and vigor of eggs and young, and direct mortality of individuals.

The draft MND does not include any evaluation for the species. To evaluate potential impacts to CBB, CDFW recommends conducting the following evaluation of the Project parcel and its vicinity and implementing the following mitigation measures.

- **Recommended Mitigation Measure: CBB Habitat Assessment.** A qualified biologist shall conduct a habitat assessment to determine if the Project site and the immediate surrounding vicinity contain habitat suitable to support CBB. Potential nesting sites, which include all small mammal burrows, perennial bunch grasses, thatched annual grasses, brush piles, old bird nests, dead trees, and hollow logs would need to be documented as part of the assessment.
- **Recommended Mitigation Measure: CBB Surveys.** Prior to the start of project activities, a qualified biologist shall conduct focused surveys for CBB and their requisite habitat features following the methodology outlined in the Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species (CDFW 2023).
- **Recommended Mitigation Measure: CBB Avoidance.** If CBB is detected, all small mammal burrows and thatched/bunch grasses be avoided by a minimum of 50 feet to avoid take and potentially significant impacts. If ground-disturbing activities will occur during the overwintering period (October through February), consultation with CDFW is warranted to discuss how to implement Project activities and avoid take. Any detection of CBB prior to or during Project implementation warrants consultation with CDFW to discuss how to avoid take.
- **Recommended Mitigation Measure: CBB Take Authorization.** If take cannot be avoided, CDFW recommends acquiring a State Incidental Take Permit pursuant to Fish and Game Code section 2081(b), prior to initiating ground-disturbing activities.

Cannabis-Specific Impacts on Biological Resources

There are many impacts to biological resources associated with cannabis cultivation, whether indoor or outdoor cultivation (i.e., pesticides, fertilizers/imported soils, water pollution, groundwater depletion, vegetation clearing, construction and other development in floodplains, fencing, roads, noise, artificial light, dams and stream crossings, water diversions, and pond construction). CDFW recommends San Luis Obispo County consider cannabis-specific direct and indirect impacts to biological resources that may result from the Project activities.

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Role of Lake and Streambed Alteration (LSA) Program in Cannabis Cultivation Licensing

Business and Professions Code 26060.1 subsection (b)(3) includes a requirement that Department of Cannabis Control cannabis cultivation licensees demonstrate compliance with Fish and Game Code section 1602 through written verification from CDFW. On September 6, 2019, CDFW received a Standard notification (EPIMS-08318) for the Eden's Dream Project. On November 1, 2019 CDFW determined that notification was not required for the Project activities proposed in the notification and issued a fee refund.

Pursuant to Fish and Game Code sections 1600 et seq., section 1602(a) of the Fish and Game Code requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake (including the removal of riparian vegetation); or (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes features that are ephemeral or intermittent as well as those that are perennial. In addition, CDFW is required to comply with CEQA in the issuance of a Lake or Streambed Alteration Agreement.

The MND identifies two unnamed drainage features on the property. The MND also states no project activities are expected to occur within 50 feet of the existing riparian corridor. Mitigation Measure BIO-1, BIO-2, BIO-4, and BIO-5 are included to protect riparian habitat, require protective fencing along the drip line or critical root zone of the oak woodland present on the property, and reduce sedimentation by implanting Best Management Practices during construction. CDFW supports these measures and recommends they be included in the final MND.

Cannabis Water Use: Water use estimates for cannabis plants are not well established in literature and estimates from published and unpublished sources range between 3.8-liters and 56.8-liters per plant per day. Based on research and observations made by CDFW in northern California, cannabis grow sites have significantly impacted streams through water diversions resulting in reduced flows and dewatered streams (Bauer, S. et al. 2015). Groundwater use for clandestine cannabis cultivation activities have resulted in lowering the groundwater water table and have impacted water supplies to streams in northern California. CDFW recommends the draft MND address the impacts to groundwater and surface water that may occur from Project activities, and to fully describe the water source to be used for the Project.

Cannabis Lighting Use: Cannabis cultivation operations often use artificial lighting or "mixed-light" techniques in indoor operations to increase yields. If not disposed of properly, these lighting materials pose significant environmental risks because they contain mercury and other toxins (O'Hare et al. 2013). In addition to containing toxic

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substances, artificial lighting often results in light pollution, which has the potential to significantly and adversely affect fish and wildlife. Night lighting can disrupt the circadian rhythms of many wildlife species. Many species use photoperiod cues for communication (e.g., birdsong; Miller 2006), determining when to begin foraging (Stone et al. 2009), behavioral thermoregulation (Beiswenger 1977), and migration (Longcore and Rich 2004). Phototaxis is a phenomenon that results in attraction and movement toward light or away from light. Therefore, wildlife species exposed to artificial light may have a negative phototaxis response causing disorientation, entrapment, and temporary blindness (Longcore and Rich 2004).

CDFW recommends that light should not be visible outside of any structure used for cannabis cultivation. Use blackout curtains where artificial light is used to prevent light escapement. Eliminate all non-essential lighting from cannabis sites and avoid or limit the use of artificial light during the hours of dawn and dusk, as these windows of time are when many wildlife species are most active. Ensure that lighting for cultivation activities and security purposes is shielded, cast downward, and does not spill over onto other properties or upwards into the night sky (see the International Dark-Sky Association standards at <https://www.darksky.org>). Use LED lighting with a correlated color temperature of 3,000 Kelvins or less, properly dispose of hazardous waste, and recycle all lighting that contains toxic compounds with a qualified recycler.

Pesticides, Including Fungicides, Herbicides, and Rodenticides: Cannabis cultivation sites (whether indoor or outdoor) often use substantial quantities of pesticides, including fungicides, herbicides, insecticides, and rodenticides. Wildlife, including beneficial arthropods, birds, mammals, amphibians, reptiles, and fish, can be poisoned by pesticides after exposure to a toxic dose through ingestion, inhalation, or dermal contact (Fleischli et al. 2004, Pimentel 2005, Berny 2007). They can also experience secondary poisoning through feeding on animals that have been directly exposed to the pesticides. Even if used indoors, rodenticides may result in secondary poisoning through ingestion of sickened animals that leave the premises or ingestion of lethally poisoned animals disposed of outside. Nonlethal doses of pesticides can negatively affect many wildlife species by compromising their immune systems, causing hormone imbalances, affecting reproduction, and altering their growth rates (Pimentel 2005, Li and Kawada 2006, Relyea and Diecks 2008).

CDFW recommends minimizing use of synthetic pesticides, and, if they are used, to always use them as directed by the manufacturer, including proper storage and disposal. Toxic pesticides should not be used where they may pass into waters of the state, including ephemeral streams, in violation of Fish and Game Code section 5650(6). For details, visit: <https://www.cdpr.ca.gov/docs/cannabis/questions.htm>.

Anticoagulant rodenticides and rodenticides that incorporate “flavorizers” that make the pesticides appetizing to a variety of species should not be used at cultivation sites. (Note that with the passage of AB 1788, signed by the governor on September 29, 2020,

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the general use of second-generation anticoagulants is now banned in California). Alternatives to toxic rodenticides may be used to control pest populations at and around cultivation sites including sanitation (removing food sources like pet food, cleaning up refuse, and securing garbage in sealed containers) and physical barriers (e.g., sealing holes in roofs/walls). Snap traps should not be used outdoors as they pose a hazard to non-target wildlife. Sticky or glue traps should be avoided altogether; these pose a hazard to non-target wildlife and result in a prolonged/inhumane death. California Department of Pesticide Regulation stipulates that pesticides must meet certain criteria to be legal for use on cannabis. For pest management practices visit: <https://www.cdpr.ca.gov/docs/county/cacltrs/penfltrs/penf2015/2015atch/attach1502.pdf>.

Impacts of Cannabis Cultivation on Fish and Wildlife Resources: For more information on potential impacts to fish and wildlife resources as a result of cannabis cultivation visit: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=160552&inline>.

Editorial Comments and Suggestions

Townsend's Big-eared Bat

As currently written, BIO-3a includes conducting surveys for suitable roosting habitat for Townsend's big-eared bats within 100 feet of work areas to determine if bats are utilizing the potential roosts. If bats are detected, a bat exclusion plan shall be developed and submitted to CDFW for approval prior to implementing any exclusion methods. However, CDFW recommends also including general bat avoidance and mitigation measures, including but not limited to, establishing a 100-foot no-disturbance buffer around roost sites and installing new roost sites to be in place prior to the initiation of Project related activities to allow enough time for the bats to relocate.

Nesting Birds

CDFW encourages Project ground-disturbing activities occur during the bird non-nesting season. However, if ground-disturbing activities must occur during the breeding season (February 1st through September 15th), the Project proponent is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes as referenced above.

As currently written, BIO-3b includes conducting pre-construction surveys for nesting birds within one week prior to any construction activities proposed to occur between February 1 and September 15. If active nests are located, they shall be avoided until they have successfully fledged, or the nest is no longer deemed active. The non-disturbance buffer will be based on the species (i.e., 50 feet for common species and at least 250 feet for raptors).

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CDFW recommends BIO-3b be amended to include the following. Surveys will cover a sufficient area around the Project site to identify nests and determine their status. A sufficient area means any area potentially affected by a project. In addition to direct impacts (i.e., nest destruction), noise, vibration, odors, and movement of workers or equipment could also affect nests. Prior to initiation of construction activities, a qualified biologist conducts a survey to establish a behavioral baseline of all identified nests. Once construction begins, a qualified biologist continuously monitors nests to detect behavioral changes resulting from the project. If behavioral changes occur, the work causing that change shall cease and CDFW will be consulted for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified wildlife biologist is not feasible, a minimum no-disturbance buffer of 250-feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined the birds have fledged and are no longer reliant upon the nest or parental care for survival. Variance from these no-disturbance buffers is possible when there is compelling biological or ecological reason to do so, such as when the construction area would be concealed from a nest site by topography. CDFW recommends that a qualified wildlife biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

CDFW concurs with Mitigation Measures BIO-1-6 and believes the measures are protective of oak trees, special-status wildlife, and the two streams on the Project site. CDFW recommends the Mitigation Measures be incorporated into the final MND.

Biological Surveys: Acceptable species-specific survey procedures should be developed in consultation with CDFW and the U.S. Fish and Wildlife Service, where necessary. For CDFW “Survey and Monitoring Protocols and Guidelines” visit <https://wildlife.ca.gov/Conservation/Survey-Protocols>. Note that CDFW generally considers biological field assessments for wildlife and plants to be valid for a **one-year** period, except when significant environmental changes occur, such as disturbance resulting from urbanization or wildfire. Surveys should be conducted during wildlife’s active season when the wildlife species is most likely to be detected, and plant surveys conducted during the species blooming/flowering period. Some aspects of the proposed Project may warrant periodic updated surveys for certain sensitive taxa, particularly if the Project is proposed to occur over a protracted time frame, or in phases, or if surveys are completed during periods of drought.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make

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subsequent or supplemental environmental determinations (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special status species and natural communities detected during Project surveys to CNDDDB. The CNDDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

FILING FEES

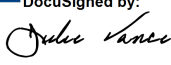
If it is determined that the Project has the potential to impact biological resources, an assessment of filing fees will be necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

CONCLUSION

CDFW appreciates the opportunity to comment on the Project to assist San Luis Obispo County in identifying and mitigating the Project's impacts on biological resources.

Questions regarding this letter, or further coordination should be directed to Loreen Whitfield, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 939-0258, or by email at loreen.whitfield@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Julie A. Vance
Regional Manager

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Attachment 1

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM
(MMRP)**

**PROJECT: Eden’s Dream LLC
Mitigated Negative Declaration (MND)
Cannabis Cultivation (Project)**

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Mitigation Measure: WESP	
• WESP Surveys	
• WESP Avoidance Buffer	
Mitigation Measure: CBB	
• CBB Surveys	
• CBB Avoidance Buffer	
<i>During Construction</i>	
Mitigation Measure: WESP	
• WESP Avoidance Buffer	
Mitigation Measure: CBB	
• CBB Avoidance Buffer	
• CBB Take Authorization	