



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Inland Deserts Region
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



December 3, 2024
Sent via email

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Subject: Ramona Land Development Project
MITIGATED NEGATIVE DECLARATION (MND)
SCH# 2024110071

Dear Yaneli Hernandez:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from City of San Jacinto for the Ramona Land Development Project (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the 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 & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

PROJECT DESCRIPTION SUMMARY

Proponent: Andrew Kotyuk, 5 Points Inc.

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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Objective: Develop the 57-acre Project site as an outdoor cannabis cultivation facility split into two main areas (East Site & West Site). The two main areas of the Project site will be further sub-divided into 9 sub-areas for future individual outdoor cultivation leases. The cultivation areas will include hoop houses and graded roads. The Project also includes off-site improvements, including construction of two asphalt paved driveways. The off-site work area is approximately 6.25 acres.

Location: The Project site is located south of the Ramona Expressway between North Warren Road and Record Road, in the City of San Jacinto, Riverside County. The Project site consists of approximately 57 acres on APNs 430-100-013 and 430-100-002, at Latitude 33.82213 N and Longitude -117.01093 W. Historically the Project site was used for open field farming. APN 430-100-013 remains open field, disturbed by prior farming activities. APN 430-100-002 has been partially developed and contains hoops houses, gravel roads, and chain-link fencing. The Project site is surrounded by existing agricultural operations. Historical imagery of the Project site shows areas of ephemeral ponding that have since been impacted by current development.

Timeframe: The Project is expected to take 3 years and 7 months to complete.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist City of San Jacinto 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. Based on the Project's avoidance of significant impacts on biological resources with implementation of mitigation measures, including those CDFW recommends in Attachment A, CDFW concludes that a Mitigated Negative Declaration is appropriate for the Project.

I. Environmental Setting and Related Impact Shortcoming

Western Riverside County Multiple Species Habitat Conservation Plan

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

The proposed Project occurs within the MSHCP area and is subject to the provisions and policies of the MSHCP. To be considered a covered activity, Permittees need to demonstrate that proposed actions are consistent with the MSHCP, the Permits, and the Implementing Agreement. The City is the Lead Agency and is signatory to the Implementing Agreement of the MSHCP. To demonstrate consistency with the MSHCP, as part of the CEQA review, the City shall ensure the Project pays Local Development Mitigation Fees and other relevant fees as set forth in Section 8.5 of the MSHCP; and demonstrates compliance with: 1) the Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools (Section 6.1.2 of the MSHCP); and 2) the

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policies set forth in Additional Survey Needs and Procedures for burrowing owl (Section 6.3.2 of the MSHCP); and 3) the Best Management Practices and the siting, construction, design, operation and maintenance guidelines as set forth in Section 7.0 and Appendix C of the MSHCP.

Specific Comments

Comment #1: Burrowing Owl (*Athene cunicularia hypugaea*) and MM BIO-1

IS/MND pages 56-57 & 61; Appendix 2.0 pages 17-18

Issue: On October 10, 2024, the California Fish and Game Commission accepted a petition to list Western Burrowing Owl as endangered under CESA, determining the listing “may be warranted” and advancing the species to the candidacy stage of the CESA listing process. The Project may have a significant impact on burrowing owl (*Athene cunicularia hypugaea*) and burrowing owl habitat.

Specific impacts: Project construction and activities may result in injury or mortality of burrowing owl, disrupt natural burrowing owl breeding behavior, and reduce reproductive capacity. Also, the Project may impact breeding, wintering, and foraging habitat for the species. Habitat loss could result in local extirpation of the species and contribute to local, regional, and State-wide declines of burrowing owl.

Why impacts would occur: The MND and Appendix 2.0 identifies that the Project site was evaluated for burrowing owl habitat, and at least three potentially suitable burrows were found. Therefore, focused burrowing owl surveys are required by the MSHCP. Appendix 2.0 provided the burrowing owl survey results; however, those surveys were done in 2022 and CDFW generally only considers species surveys valid for one year.

If burrowing owls have colonized the Project site since the surveys were conducted, they could react to low level disturbances such as surveys, drive by, or minimal ground disturbance/excavation (Environment Canada 2009). Project construction would generate noise and ground vibrations during Project activities. These disturbances could result in burrowing owls abandoning active nests, potentially causing loss of eggs, or developing young, and noise could cause birds to avoid suitable nesting habitat.

Evidence impact would be significant: Habitat loss is a threat to burrowing owls (CDFG, 2012). Burrowing owls are dependent on burrows at all times of the year for survival and/or reproduction, evicting them from nesting, roosting, and satellite burrows may lead to indirect impacts or take. Loss of access to burrows will likely result in varying levels of increased stress on burrowing owls and could depress reproduction, increase predation, increase energetic costs, and introduce risks posed by having to find and compete for available burrows (CDFG, 2012). Burrowing owls are also dependent on adjacent habitat, and forage within 600 meters of nest burrows (Rosenberg and Haley, 2004). As a candidate species, Western Burrowing Owl is granted full protection of a threatened species under CESA. Take is defined in Fish and Game Code section 86 as “hunt, pursue, catch, capture or kill, or attempt to hunt, pursue, catch, capture or kill.” CESA allows CDFW to authorize project proponents to take state-listed threatened, endangered, or candidate species if certain conditions are met. Take must be incidental to an otherwise

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lawful activity. The issuance of a permit cannot jeopardize the continued existence of the species, and the impacts must be minimized and fully mitigated.

Recommended Potentially Feasible Mitigation Measure(s):

Mitigation Measure #1: CDFW appreciates the inclusion of MM BIO-1, however, due to the amount of time that has passed since the initial focused surveys were conducted, CDFW recommends that prior to commencing Project activities, new focused surveys be done to confirm no presence of burrowing owls on the Project site. CDFW requests the City to include the following updated mitigation measures in the MND per below (edits are in strikethrough and **bold**), and also included in Attachment 1 “Mitigation Monitoring and Reporting Program”.

MM BIO-1: Focused burrowing owl surveys shall be conducted by a qualified biologist according to the March 2006 Burrowing Owl Survey Instructions for the Western Riverside County Multiple Species Habitat Conservation Plan Area or the Staff Report on Burrowing Owl Mitigation (CDFG 2012 or most recent version). If burrowing owls are detected during the four (4) focused surveys, the qualified biologist and Project proponent shall prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval prior to commencing Project activities. The Burrowing Owl Protection Plan shall describe proposed avoidance, minimization, and monitoring actions. The Burrowing Owl Protection Plan shall include the number and location of occupied burrow sites, acres of burrowing owl habitat that will be impacted, details of site monitoring, and details on proposed buffers and other avoidance measures if avoidance is proposed. If impacts to occupied burrowing owl habitat or burrow cannot be avoided, the Burrowing Protection Owl Plan shall also describe relocation actions that will be implemented. Proposed implementation of burrow exclusion and closure should only be considered as a last resort, after all other options have been evaluated as exclusion is not in itself an avoidance, minimization, or mitigation method and has the possibility to result in take. If impacts to occupied burrows cannot be avoided, information shall be provided regarding adjacent or nearby suitable habitat available to owls along with proposed relocation actions. The Permittee shall implement the Burrowing Owl Protection Plan following CDFW review and approval.

~~Since the Project has the potential to support burrowing owls inhabiting the site, even though no burrowing owls were identified on the site during the focused surveys, in order to comply with the MSHCP, Two preconstruction burrowing owl surveys will~~ **shall** be conducted **prior to the start of Project activities. The surveys shall follow the methods described in the March 2006 Burrowing Owl Survey Instructions for the Western Riverside County Multiple Species Habitat Conservation Plan Area or the CDFW’s Staff Report on Burrowing Owl Mitigation (CDFW 2012).** Within 30 days, **but no less than 14 days**, prior to initiating ground disturbing activities, the Project Proponent shall retain a qualified biologist to complete a pre-construction avoidance survey, in accordance with the MSHCP guidelines. **Burrowing owls may re-colonize a site after**

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only a few days. Time lapses between Project activities trigger subsequent take avoidance surveys including, but not limited to, a final survey conducted within 24 hours prior to ground disturbance. If the pre-construction surveys ~~is~~ **are** negative and BUOW is confirmed absent, then ground-disturbing activities shall be allowed to commence, and no further mitigation would be required. If BUOWs have colonized the study area prior to initiation of construction, the Project Proponent shall immediately **halt all Project activities. The qualified biologist shall coordinate with** ~~inform RCA and the wildlife agencies (CDFW and USEWS)~~ **and prepare a Burrowing Owl Protection Plan that shall be submitted to CDFW for review and approval prior to commencing Project activities.** A BUOW Protection and Relocation Plan shall be prepared in accordance with CDFW's guidance on burrowing owl protection and relocation prior to initiating ground disturbance.

Comment #2: Nesting Birds MM BIO-2

IS/MND pages 57 & 61

Issue: The Project may have a significant impact on nesting birds, including Species of Special Concern and fully protected species, that are subject to Fish and Game Code section 3513 and the Migratory Bird Treaty Act of 1918.

Specific impact: Project implementation could result in the loss of nesting and/or foraging habitat for passerine and raptor species from the removal of vegetation onsite.

Why impacts would occur: Project activities could result in temporary or long-term loss of suitable nesting and foraging habitats. Construction during the breeding season of nesting birds could potentially result in the incidental loss of breeding success or otherwise lead to nest abandonment. Noise from road use, generators, and heavy equipment may disrupt nesting bird mating calls or songs, which could impact reproductive success (Patricelli and Blickley 2006, Halfwerk et al. 2011). Noise has also been shown to reduce the density of nesting birds (Francis et al. 2009), and songbird abundance and density was significantly reduced in areas with high levels of noise (Bayne et al. 2008). Additionally, noise exceeding 70 dB(A) may affect feather and body growth of young birds (Kleist et al. 2018). In addition to construction activities, residential development and increased human presence on the Project site could contribute to nesting bird impacts.

The timing of the nesting season varies greatly depending on several factors, such as the bird species, weather conditions in any given year, and long-term climate changes (e.g., drought, warming, etc.). CDFW staff have observed that changing climate conditions may result in the nesting bird season occurring earlier and later in the year than historical nesting season dates. CDFW recommends the completion of nesting bird surveys regardless of time of year to ensure compliance with all applicable laws pertaining to nesting and to avoid take of nests.

The duration of a pair to build a nest and incubate eggs varies considerably, therefore, CDFW recommends surveying for nesting behavior and/or nests and construction within three days prior to start of Project construction to ensure all nests on site are identified and to avoid take of nests. Without appropriate species-specific avoidance measures, biological construction monitoring may be ineffective for detecting nesting birds. This may result in Take of nesting birds. Project ground-disturbing activities such as grading and

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grubbing may result in habitat destruction, causing the death or injury of adults, juveniles, eggs, or hatchlings. In addition, the Project may remove habitat by eliminating native vegetation that may support essential foraging and breeding habitat.

Evidence impacts would be significant: It is the Project proponent's responsibility to avoid Take of all nesting birds. Fish and Game Code section 3503 makes it unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto. Fish and Game Code section 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by the rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. § 703 et seq.). Fish and Game Code section 3503.5 makes it unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds of prey) to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by Fish and Game Code or any regulation adopted pursuant thereto. These regulations apply anytime nests or eggs exist on the Project site.

Recommended Potentially Feasible Mitigation Measure(s):

Mitigation Measure #2: CDFW appreciates the inclusion of MM-BIO 2 in the MND. To address the above issues and help the Project applicant avoid unlawfully taking of nesting birds, CDFW requests the City to include the following updated mitigation measures in the MND per below (edits are in strikethrough and **bold**), and also included in Attachment 1 "Mitigation Monitoring and Reporting Program".

MM BIO-2: Preconstruction Surveys for Nesting Birds and Raptors. To prevent direct impacts to nesting birds, including raptors, protected under the federal MBTA and CFG Code Sections 3503, 3503.5, and 3513, the following measures shall be implemented:

Vegetation clearing on the remaining East Site as well as the West Site shall be conducted outside the avian nesting season, which is generally defined as February 1 to August 31. ~~If vegetation clearing must take place during the nesting season~~ **Regardless of the time of year**, a qualified biologist shall perform a preconstruction Nesting Bird Survey no more than ~~seven (7)~~ **three (3)** days prior to vegetation impacts, **including a 500ft buffer around the disturbance footprint to confirm the absence of active nests belonging to migratory birds and raptors afforded protection under the MBTA and CFG Code.** Results of the survey shall be submitted to the City for review and approval prior to initiating impacts during the breeding season. **The Project Applicant shall adhere to the following:**

1. Applicant shall designate a biologist (Designated Biologist) experienced in: identifying local and migratory bird species of special concern; conducting bird surveys using appropriate survey methodology; nesting surveying techniques, recognizing breeding and nesting behaviors, locating nests and breeding territories, and identifying nesting stages and nest success; determining/establishing appropriate avoidance and minimization measures; and monitoring the efficacy of implemented avoidance and minimization measures.

2. Pre-activity field surveys shall be conducted at the appropriate time of day/night, during appropriate weather conditions, no more than 3 days prior to the initiation of

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Project activities. Surveys shall encompass all suitable areas including trees, shrubs, bare ground, burrows, cavities, and structures. Survey duration shall take into consideration the size of the Project site; density, and complexity of the habitat; number of survey participants; survey techniques employed; and shall be sufficient to ensure the data collected is complete and accurate.

If nesting birds are not found within the project site, site preparation and construction activities may begin during the nesting/breeding season. If active bird nests are confirmed to be present during the preconstruction survey, the project biologist shall delineate an appropriate buffer between 100 and 300 feet (500 feet for raptors) around each nest. **The buffer around the nest shall be delineated and flagged, and all Construction activities within the buffer shall not be permitted until nesting behavior has ceased, nests have failed, or young have fledged, as determined by the Qualified Biologist. The biologist shall monitor the nest at the onset of project activities, and at the onset of any changes in such project activities (e.g., increase in number or type of equipment, change in equipment usage, etc.) to determine the efficacy of the buffer. If the biologist determines that such project activities may be causing an adverse effect, alternative avoidance and minimization measures, such as redirecting or rescheduling construction or erecting sound barriers, shall be implemented. If vegetation clearing is not initiated within 72 hours of a negative survey during the nesting season, the nesting survey must be repeated to confirm the absence of nesting birds. Upon completion of the survey and nesting bird monitoring, a report shall be prepared and submitted to City of San Jacinto Planning Division for mitigation monitoring compliance record keeping.** The project biologist may modify the buffer or propose other recommendations in order to minimize disturbance to nesting birds.

Comment #3: Protection of Riparian/Riverine and Vernal Pool Resources (MSHCP Section 6.1.2) MM BIO-3

IS/MND pages 60-62; Appendix 2.0 pages 6-9

The procedures described in the Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools section of the MSHCP Plan (MSHCP Section 6.1.2) are to ensure that the biological functions and values of these areas are maintained throughout the MSHCP Plan Area (including all areas of the Plan located outside the Criteria Area). Additionally, this process helps identify areas to consider for priority acquisition, as well as those functions that may affect downstream values related to Conservation of Covered Species within the MSHCP Conservation Area. The assessment of riparian/riverine and vernal pool resources may be completed as part of the CEQA review process as set forth in Article V of the State CEQA Guidelines. However, the MSHCP identifies that the U.S. Fish and Wildlife Service and CDFW shall be notified in advance of approval of public or private projects of draft determinations for the biologically equivalent or superior determination findings associated with the Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools policies presented in Section 6.1.2 of the MSHCP (MSHCP Section 6.11). Due to the nature of this development being for cannabis cultivation, the MSHCP will only need to notify CDFW. As required by the MSHCP Plan, its Implementation Agreement, and the City's associated take permits from USFWS and CDFW, completion of the DBESP process prior to adoption of the environmental document

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helps to ensure that the Project will be consistent with the MSHCP Plan, and provides public disclosure and transparency during the CEQA process by identifying the Project impacts and mitigation for wetland habitats and species, a requirement of CEQA Guidelines, §§ 15071, subds.(a)-(e).

The MSHCP identifies that assessment of these areas include identification and mapping of riparian/riverine areas and vernal pools. The assessment shall consider species composition, topography/ hydrology, and soil analysis, where appropriate. The documentation for the assessment shall include mapping and a description of the functions and values of the mapped areas with respect to the species identified in Section 6.1.2 of the MSHCP. Factors to be considered include hydrologic regime, flood storage and flood-flow modification, nutrient retention and transformation, sediment trapping and transport, toxicant trapping, public use, wildlife Habitat, and aquatic Habitat.

The MSHCP identifies that for mapped riparian/riverine and vernal pool resources that are not included in the MSHCP conservation area, applicable mitigation under CEQA, shall be imposed by the Permittee (in this case the Lead Agency). Furthermore, the MSHCP identifies that to ensure the standards in Section 6.1.2 are met, the Permittee shall ensure that, through the CEQA process, project applicants develop project alternatives demonstrating efforts that first avoid, and then minimize direct and indirect effects to the wetlands mapped pursuant to Section 6.1.2. If an avoidance alternative is not feasible, a practicable alternative that minimizes direct and indirect effects to riparian/riverine areas and vernal pools and associated functions and values to the greatest extent possible shall be selected. Those impacts that are unavoidable shall be mitigated such that the lost functions and values as they relate to Covered Species are replaced as through the Determination of Biologically Equivalent or Superior Preservation (DBESP) process.

The City is required to ensure the Applicant completes the DBESP process prior to completion of the MND to demonstrate implementation of MSHCP requirements in the CEQA documentation. The Wildlife Agencies appreciate the analysis of impacts provided within the MND and its General Biological Assessment (Appendix 2.0). However, the MSHCP implementation process is not complete, because a DBESP has not been fully reviewed and approved by CDFW. A DBESP has been provided for review and that review is currently ongoing. It is not appropriate for the City to adopt the MND until the DBESP is complete because the City is required to notify the Wildlife Agencies in advance of approval of public and private projects for identified MSHCP activities, such as completion of the DBESP for the riparian/riverine policy (Section 6.11 of the MSHCP).

CDFW requests that the City of San Jacinto complete the DBESP process, and once the DBESP is complete, then update the MND with the riparian/riverine mitigation measures identified in the DBESP. This process would demonstrate the Project's consistency with and the City's implementation of the MSHCP.

Issue: Based on review of material submitted with the MND and review of aerial photography, the Project will be impacting the historical ponding feature onsite which is covered under MSHCP Section 6.1.2

Specific Impact: The removal of hoop houses and restoration of the ponding area to pre-construction state would result in impacts to the ponding feature and the surrounding area. Restoration and rehabilitation of the feature as described would include the following:

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relocation of structures and roads, recontouring the feature, trash removal, and reseeding with smooth tarplant and Coulter’s goldfields.

Why Impact Would Occur: Project-related activities would likely alter drainage patterns and water quality within the pond. Habitat within and adjacent to the pond would also be impacted by Project activities.

Recommended potentially feasible mitigation measure(s):

Mitigation Measure #3: To ensure appropriate mitigation of Project activities, CDFW recommends the inclusion of the following measure in the MND per the edits below (edits are in strikethrough and **bold**), and also included in Attachment 1 “Mitigation Monitoring and Reporting Program”.

MM BIO-3: The project will compensate for impacts to the historical pond feature (identified as Feature 6 on **Figure 9**) through a combination of on-site restoration and/or off-site conservation. The following tasks are proposed to complete the required compensation:

- A Habitat Management and Monitoring Plan (HMMP) will be prepared for the pond area. The HMMP will identify methods for site rehabilitation and maintenance as well as goals/success criteria to restore the pond. Measures in the HMMP will include:
 - Relocation of all structures and roads currently located within the limits of the pond feature to areas outside the limits of the pond.
 - Placement of an additional 25 feet buffer to prevent inadvertent intrusion into the pond.
 - Recontouring of the pond to re-establish the natural contour of the area to a condition similar to that prior to the installation of roads and structures.
 - Trash removal.
 - Reseeding of the pond with ~~smooth tarplant and Coulter’s goldfields~~ **a plant pallet consisting of local, native plants, including narrow endemic plants species, approved by CDFW**, which are the predominant native species in ponding habitat areas on the site.
 - Weed control efforts and performance criteria focused on the most problematic nonnative species.
 - Biological monitoring and reporting.
 - Access control (fencing and signage placement, replacement, and repair)
 - Law enforcement measures.
- To compensate for the ongoing impacts and temporal losses of 2.52 acres of ponded areas, the project will mitigate for these impacts at a **rate determined by the MSHCP and CDFW** ~~minimum of a 0.1:1 ratio (0.2-52 acre)~~ using either or a combination of the options listed below.
 - Option #1: Restore an additional area onsite consistent with and included in the HMMP as discussed above.
 - Options #2: The applicant will purchase credits at an off-site and agency-approved mitigation bank such as Riverpark Mitigation Bank, or other agency-approved mitigation bank.

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Comment #4: Impacts to Aquatic and Riparian Resources; Lake and Streambed Alteration Agreement (LSAA)

IS/MND pages 60-62; Appendix 2.0 pages 6-9 & 24

Issue: Based on review of material submitted with the MND and review of aerial photography, the Project has the potential to impact fish and wildlife resources subject to Fish and Game Code section 1600 et seq.

Specific Impact: The MND identified that the Project would be conducting improvement activities on some of the onsite features, and the project site is hydrologically connected to the San Jacinto River. The Project activities have the potential to impact fish and wildlife resources through the deposition of debris, waste or other materials that could pass into any river, stream, or lake.

Why Impact Would Occur: Project-related activities could potentially alter drainage patterns and water quality within, upstream, and downstream of the Project site, including: volume, velocity, and frequency of existing and post-Project surface flows; polluted runoff; soil erosion and/or sedimentation in streams and water bodies; and post-Project fate of runoff from the Project site.

Evidence Impact Would Be Significant: The Project may substantially adversely affect the existing stream pattern and geomorphologic processes of the Project site through the deposition of debris, waste or other materials that could pass into any river, stream, or lake. Depending on how the Project is designed and constructed, it is likely that the Project applicant will need to notify CDFW per Fish and Game Code section 1602. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may do one or more of the following: substantially divert or obstruct the natural flow of any river, stream or lake; substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or deposit debris, waste or other materials that could pass into any river, stream or lake. Please note that “any river, stream or lake” includes those that are episodic (i.e., those that are dry for periods of time) as well as those that are perennial (i.e., those that flow year-round). This includes ephemeral streams, desert washes, and watercourses with a subsurface flow. Additionally, any person who wishes to cultivate cannabis in the state of California must notify CDFW.

Upon receipt of a complete notification, CDFW determines if the proposed Project activities may substantially adversely affect existing fish and wildlife resources and whether a Lake and Streambed Alteration (LSA) Agreement is required. An LSA Agreement includes measures necessary to protect existing fish and wildlife resources. CDFW may suggest ways to modify the project that would eliminate or reduce harmful impacts to fish and wildlife resources.

CDFW’s issuance of an LSA Agreement is a “project” subject to CEQA (see Pub. Resources Code, § 21065). To facilitate issuance of an LSA Agreement, if necessary, the MND should fully identify the potential impacts to the lake, stream, or riparian resources, and provide adequate avoidance, mitigation, and monitoring and reporting commitments. Early consultation with CDFW is recommended, since modification of the proposed Project may be required to avoid or reduce impacts to fish and wildlife resources. To obtain a Lake

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or Streambed Alteration notification package, please go to
<https://wildlife.ca.gov/Conservation/Environmental-Review/EPIMS>.

Recommended potentially feasible mitigation measure(s):

Mitigation Measure #9: To ensure compliance with Fish and Game Code section 1602 CDFW recommends that the City condition the MND to include a mitigation measure for consultation with CDFW to determine if Fish and Game Code section 1600 et seq. resources may occur within the proposed Project alignment.

CDFW recommends the inclusion of the following measure in the MND also included in Attachment 1 "Mitigation Monitoring and Reporting Program".

MM BIO- 9: Direct and indirect permanent impacts to CDFW jurisdictional non-wetland waters shall be addressed through Section 1602 of the California Fish and Game Code. Prior to the grading of the Project site and prior to the start of Project activities, the Applicant shall notify the California Department of Fish and Wildlife (CDFW) for impacts to Fish and Game Code section 1602 resources and obtain one of the following: a CDFW-executed Streambed Alteration Agreement (SAA) authorizing impacts to Fish and Game Code section 1602 resources associated with the Project, written documentation from CDFW that notification is not required, or written documentation that a Streambed Alteration Agreement is not required.

The notification to CDFW should provide the following information:

1. A stream delineation including the bed, bank and channel;
2. Linear feet and/or acreage of streams and associated natural communities that would be permanently and/or temporarily impacted by the Project. This includes impacts as a result of routine maintenance and fuel modification. Plant community names should be provided based on vegetation association and/or alliance per the Manual of California Vegetation (Sawyer et al 2009);
3. A discussion as to whether impacts on streams within the Project site would impact those streams immediately outside of the Project site where there is hydrologic connectivity. Potential impacts such as changes to drainage pattern, runoff, and sedimentation should be discussed; and
4. A hydrological evaluation of the 100-year storm event to provide information on how water and sediment is conveyed through the Project site.

If an SAA is required, the Applicant shall provide compensatory mitigation at a rate approved by CDFW for impacts to streams and associated natural communities, or at a ratio acceptable to CDFW per an LSA Agreement. Mitigation should occur within the Western Riverside County. Onsite mitigation measures may include the enhancement of existing streams. A conceptual Habitat Mitigation and Monitoring Plan shall be prepared, if necessary, for the enhancement activities, which may include non-native species removal and revegetation followed by periodic monitoring. The plan shall specify the criteria and standards by which the enhancement actions will compensate for impacts of the project on streams.

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ADDITIONAL COMMENTS AND RECOMMENDATIONS

Role of Lake and Streambed Alteration Agreement Program in Cannabis Licensing: The California Department of Cannabis Control (DCC) requires cannabis cultivators to demonstrate compliance with Fish and Game Code section 1602 prior to issuing a cultivation license (Business and Professions Code, § 26060.1). To qualify for an Annual License from DCC, cultivators must have a Lake or Streambed Alteration Agreement (LSA) Agreement or written verification from CDFW that one is not needed. CDFW requires an LSA Agreement when a project activity may substantially adversely affect fish and wildlife resources. LSA Agreements provide actions to avoid and minimize adverse impacts and provide protections to California's fish and wildlife resources. Cannabis cultivators may apply online for an LSA Agreement through the Environmental Permit Information Management System. Cannabis cultivators may learn more about cannabis cultivation permitting at: Cannabis Cultivation Permitting.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

ENVIRONMENTAL DOCUMENT 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 Lead Agency 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.)

CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist the City of San Jacinto in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Kevin Francis, Senior Environmental Scientist Specialist at kevin.francis@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Alisa Ellsworth
Environmental Program Manager

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ec: Office of Planning and Research, State Clearinghouse, Sacramento
State.Clearinghouse@opr.ca.gov

ATTACHMENTS

Attachment A: MMRP for CDFW-Proposed Mitigation Measures

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Attachment A

Draft Mitigation Monitoring and Reporting Program and Draft Recommendations

Draft Mitigation Monitoring and Reporting Program (MMRP)

CDFW provides the following language to be incorporated into the MMRP for the Project.

Biological Resources (BIO)		
Mitigation Measure (MM) Description	Implementation Schedule	Responsible Party
<p>MM BIO-1: Focused burrowing owl surveys shall be conducted by a qualified biologist according to the March 2006 Burrowing Owl Survey Instructions for the Western Riverside County Multiple Species Habitat Conservation Plan Area or the <i>Staff Report on Burrowing Owl Mitigation</i> (CDFG 2012 or most recent version). If burrowing owls are detected during the four (4) focused surveys, the qualified biologist and Project proponent shall prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval prior to commencing Project activities. The Burrowing Owl Protection Plan shall describe proposed avoidance, minimization, and monitoring actions. The Burrowing Owl Protection Plan shall include the number and location of occupied burrow sites, acres of burrowing owl habitat that will be impacted, details of site monitoring, and details on proposed buffers and other avoidance measures if avoidance is proposed. If impacts to occupied burrowing owl habitat or burrow cannot be avoided, the Burrowing Protection Owl Plan shall also describe relocation actions that will be implemented. Proposed implementation of burrow exclusion and closure should only be considered as a last resort, after all other options have been evaluated as exclusion is not in itself an avoidance, minimization, or mitigation method and has the possibility to result in take. If impacts to occupied burrows cannot be avoided, information shall be provided regarding adjacent or nearby suitable habitat available to owls along with proposed relocation actions. The Permittee shall implement the Burrowing Owl Protection Plan following CDFW review and approval.</p> <p>Two preconstruction burrowing owl surveys shall be conducted prior to the start of Project activities. The surveys shall follow the</p>	<p>Prior to commencing ground or vegetation disturbing activities</p>	<p>Project Proponent</p>

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<p>methods described in the March 2006 Burrowing Owl Survey Instructions for the Western Riverside County Multiple Species Habitat Conservation Plan Area or the CDFW’s Staff Report on Burrowing Owl Mitigation (CDFW 2012). Within 30 days, but no less than 14 days, prior to initiating ground disturbing activities, the Project Proponent shall retain a qualified biologist to complete a pre-construction avoidance survey, in accordance with the MSHCP guidelines. Burrowing owls may re-colonize a site after only a few days. Time lapses between Project activities trigger subsequent take avoidance surveys including, but not limited to, a final survey conducted within 24 hours prior to ground disturbance. If the pre-construction surveys are negative and BUOW is confirmed absent, then ground-disturbing activities shall be allowed to commence, and no further mitigation would be required. If BUOWs have colonized the study area prior to initiation of construction, the Project Proponent shall immediately halt all Project activities. The qualified biologist shall coordinate with CDFW and prepare a Burrowing Owl Protection Plan that shall be submitted to CDFW for review and approval prior to commencing Project activities. A BUOW Protection and Relocation Plan shall be prepared in accordance with CDFW’s guidance on burrowing owl protection and relocation prior to initiating ground disturbance.</p>		
<p>MM BIO-2: Preconstruction Surveys for Nesting Birds and Raptors. To prevent direct impacts to nesting birds, including raptors, protected under the federal MBTA and CFG Code Sections 3503, 3503.5, and 3513, the following measures shall be implemented:</p> <p>Vegetation clearing on the remaining East Site as well as the West Site shall be conducted outside the avian nesting season, which is generally defined as February 1 to August 31. Regardless of the time of year, a qualified biologist shall perform a preconstruction Nesting Bird Survey no more than three (3) days prior to vegetation impacts, including a 500ft buffer around the disturbance footprint to confirm the absence of active nests belonging to migratory birds and raptors afforded protection under the MBTA and CFG Code. Results of the survey shall be submitted to the City for review and approval prior to initiating impacts during the breeding season. The Project Applicant shall adhere to the following:</p> <p>1. Applicant shall designate a biologist (Designated Biologist) experienced in: identifying local and migratory bird species of special concern; conducting bird surveys using appropriate survey methodology; nesting surveying techniques, recognizing breeding and nesting behaviors, locating nests and breeding</p>	<p>Prior to commencing ground or vegetation disturbing activities</p>	<p>Project Proponent</p>

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<p>territories, and identifying nesting stages and nest success; determining/establishing appropriate avoidance and minimization measures; and monitoring the efficacy of implemented avoidance and minimization measures.</p> <p>2. Pre-activity field surveys shall be conducted at the appropriate time of day/night, during appropriate weather conditions, no more than 3 days prior to the initiation of Project activities. Surveys shall encompass all suitable areas including trees, shrubs, bare ground, burrows, cavities, and structures. Survey duration shall take into consideration the size of the Project site; density, and complexity of the habitat; number of survey participants; survey techniques employed; and shall be sufficient to ensure the data collected is complete and accurate.</p> <p>If nesting birds are not found within the project site, site preparation and construction activities may begin during the nesting/breeding season. If active bird nests are confirmed to be present during the preconstruction survey, the project biologist shall delineate an appropriate buffer between 100 and 300 feet (500 feet for raptors) around each nest. The buffer around the nest shall be delineated and flagged, and all Construction activities within the buffer shall not be permitted until nesting behavior has ceased, nests have failed, or young have fledged, as determined by the Qualified Biologist. The biologist shall monitor the nest at the onset of project activities, and at the onset of any changes in such project activities (e.g., increase in number or type of equipment, change in equipment usage, etc.) to determine the efficacy of the buffer. If the biologist determines that such project activities may be causing an adverse effect, alternative avoidance and minimization measures, such as redirecting or rescheduling construction or erecting sound barriers, shall be implemented. If vegetation clearing is not initiated within 72 hours of a negative survey during the nesting season, the nesting survey must be repeated to confirm the absence of nesting birds. Upon completion of the survey and nesting bird monitoring, a report shall be prepared and submitted to City of San Jacinto Planning Division for mitigation monitoring compliance record keeping. The project biologist may modify the buffer or propose other recommendations in order to minimize disturbance to nesting birds.</p>		
<p>MM-BIO 3: The project will compensate for impacts to the historical pond feature (identified as Feature 6 on Figure 9) through a combination of on-site restoration and/or off-site conservation. The following tasks are proposed to complete the required compensation:</p> <ul style="list-style-type: none"> • A Habitat Management and Monitoring Plan (HMMP) will 	<p>Prior to commencing ground or vegetation disturbing activities</p>	<p>Project Proponent</p>

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<p>be prepared for the pond area. The HMMP will identify methods for site rehabilitation and maintenance as well as goals/success criteria to restore the pond. Measures in the HMMP will include:</p> <ul style="list-style-type: none"> • Relocation of all structures and roads currently located within the limits of the pond feature to areas outside the limits of the pond. • Placement of an additional 25 feet buffer to prevent inadvertent intrusion into the pond. • Recontouring of the pond to re-establish the natural contour of the area to a condition similar to that prior to the installation of roads and structures. • Trash removal. • Reseeding of the pond with a plant pallet consisting of local, native plants, including narrow endemic plants species, approved by CDFW. • Weed control efforts and performance criteria focused on the most problematic nonnative species. • Biological monitoring and reporting. • Access control (fencing and signage placement, replacement, and repair) • Law enforcement measures. • To compensate for the ongoing impacts and temporal losses of 2.52 acres of ponded areas, the project will mitigate for these impacts at a rate determined by the MSHCP and CDFW using a combination of the options listed below. <ul style="list-style-type: none"> • Option #1: Restore an additional area onsite consistent with and included in the HMMP as discussed above. • Options #2: The applicant will purchase credits at an off-site and agency-approved mitigation bank such as Riverpark Mitigation Bank, or other agency-approved mitigation bank. 		
<p>MM-BIO 9: Direct and indirect permanent impacts to CDFW jurisdictional non-wetland waters shall be addressed through Section 1602 of the California Fish and Game Code. Prior to the grading of the Project site and prior to the start of Project activities, the Applicant shall notify the California Department of Fish and Wildlife (CDFW) for impacts to Fish and Game Code section 1602 resources and obtain one of the following: a CDFW-executed Streambed Alteration Agreement (SAA) authorizing impacts to Fish and Game Code section 1602 resources associated with the Project, written documentation</p>	<p>Prior to commencing ground or vegetation disturbing activities</p>	<p>Project Proponent</p>

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<p>from CDFW that notification is not required, or written documentation that a Streamed Alteration Agreement is not required.</p> <p>The notification to CDFW should provide the following information:</p> <ol style="list-style-type: none">1. A stream delineation including the bed, bank and channel;2. Linear feet and/or acreage of streams and associated natural communities that would be permanently and/or temporarily impacted by the Project. This includes impacts as a result of routine maintenance and fuel modification. Plant community names should be provided based on vegetation association and/or alliance per the Manual of California Vegetation (Sawyer et al 2009);3. A discussion as to whether impacts on streams within the Project site would impact those streams immediately outside of the Project site where there is hydrologic connectivity. Potential impacts such as changes to drainage pattern, runoff, and sedimentation should be discussed; and4. A hydrological evaluation of the 100-year storm event to provide information on how water and sediment is conveyed through the Project site. <p>If an SAA is required, the Applicant shall provide compensatory mitigation at a rate approved by CDFW for impacts to streams and associated natural communities, or at a ratio acceptable to CDFW per an LSA Agreement. Mitigation should occur within the Western Riverside County. Onsite mitigation measures may include the enhancement of existing streams. A conceptual Habitat Mitigation and Monitoring Plan shall be prepared, if necessary, for the enhancement activities, which may include non-native species removal and revegetation followed by periodic monitoring. The plan shall specify the criteria and standards by which the enhancement actions will compensate for impacts of the project on streams.</p>		
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