



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

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Governor's Office of Planning & Research

May 31, 2019

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Leslie Hubbard, Deputy Planning Director
Trinity County Planning Department
Post Office Box 2819
Weaverville, CA 96093

STATE CLEARINGHOUSE

Subject: Mitigated Negative Declaration for Hayfork Cannabis Manufacturing Conditional Use Permit and Rezoning Project; Assessor's Parcel Number 017-430-49, State Clearinghouse Number 2019059003, Trinity County

Dear Ms. Hubbard:

The California Department of Fish and Wildlife (Department) has reviewed the Initial Study/Mitigated Negative Declaration (IS/MND) for the above-referenced project (Project). As a trustee for the State's fish and wildlife resources, the Department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants and their habitat. As a responsible agency, the Department administers the California Endangered Species Act (CESA) and other provisions of the Fish and Game Code that conserve the State's fish and wildlife public trust resources. The Department offers the following comments and recommendations on this Project in our role as a trustee and responsible agency pursuant to the California Environmental Quality Act (CEQA), California Public Resources Code section 2100 et seq.

Project Description

The Project seeks approval for several County and State cannabis licenses, including manufacturing, distribution, commercial nursery, and up to one acre of cultivation of mature canopy. The operation proposes to establish a cannabis manufacturing business that would extract cannabidiol from cannabis plants using hydrocarbon extraction in a new steel container housed within a larger steel building on the parcel. This would require a Type 7 manufacturing license (for extraction using a volatile solvent) from the State Department of Public Health. A Conditional Use Permit and approval of a zone change from Agriculture District zoning to Specific Unit Development zoning will be required from the County. The distribution license is integral to the manufacturing portion, as the distribution will involve transportation of raw material to the facility from licensed cultivators and of wholesale and retail cannabis products to other licensed facilities. Distribution activities require a Type 11 license from the Bureau of Cannabis Control and a Conditional Use Permit from the County. The Project will also establish a commercial cannabis nursery in four existing greenhouses on the parcel, totaling 4,608 square feet. This requires a Type 4 license from the State and a Conditional Use Permit from the County. Finally, future development of the project may include expansion of the existing 10,000 square foot canopy of cultivation to allow up to 43,560 square-feet (one acre) of cannabis cultivation. This expansion would occur in outdoor planting beds in addition to the existing area

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occupied within a permitted 12,600 square foot greenhouse. The outdoor beds would later be replaced by greenhouses. The expanded cultivation operation would require a Conditional Use Permit from the County and 3 additional Type 2B licenses from the California Department of Food and Agriculture. The parcel already holds one 10,000 square foot Type 2B cultivation license from both the County and the State. Irrigation and domestic water is proposed to be serviced through an existing domestic well.

Comments and Recommendations

Riparian Setbacks

The narrative discussion in the Biological Resources section of the IS/MND states that the Project would not encroach upon the established 300-foot buffer along Hayfork Creek. This riparian buffer is not mapped on the site plan; however, the 100-foot sanitary setback is mapped. The proposed expanded cultivation area on the southwest side of the parcel appears to contact the 100-foot sanitary setback shown on Figure 2-1. This appears to contradict the "*established minimum 300-foot buffer to the nearest waterbody*" discussed in the IS/MND. New disturbed areas or expansions to the existing cultivation facilities should comply with the setbacks provided in the State Water Resources Control Board Cannabis Cultivation Policy (Policy) (Resolution No. 2017-0063), currently 150 feet from perennial watercourses, as outlined in Attachment A of the Policy. In order to comply with the more protective setbacks in the Policy, the proposed cultivation area and the established greenhouse near the pond should to be a minimum of 150 feet away from the perennial waterbodies, as measured from the bankfull stage. The Department recommends that this 150-foot riparian setback from both Hayfork Creek and the pond be delineated and demonstrated on parcel figures and site plans.

Surface and Groundwater Hydrology

Groundwater discharge may be a significant component of streamflow in Hayfork Creek, and it is important to understand the effects of groundwater pumping on rivers and streams. Alluvial aquifers are often interconnected to surface flow and, depending on geologic and morphologic constraints, can either augment or diminish that flow. Where the groundwater aquifer supplements streamflow, the influx of cold, clean water can be of critical importance to maintaining adequate water temperature and flow volume, especially during summer dry periods. Pumping from these aquifer-stream complexes can lower groundwater levels and interrupt the hyporheic flow between the aquifer and stream. When this happens, streamflow can recede, and water quality degrade to the point where juvenile steelhead and salmon are significantly adversely affected. Adequate site-specific analysis is necessary to avoid these impacts.

The narrative discussion in the Hydrology and Water Quality section of the IS/MND states that the producing strata is a gravel layer located more than 160 feet below the ground surface that the "*California Department of Fish and Wildlife found that the well yield is independent of Hayfork Creek surface flows*". There has been no such determination made by Department staff. The applicant submitted a Notification of Lake or Streambed Alteration (LSA) on December 29, 2017 requesting verification that a Streambed Alteration Agreement

was not required because "*no Waters of the State or fisheries will be impacted*". At that time, the project included five 1,152 square-foot greenhouses, and one 8,600 square-foot greenhouse for a 10,000 square-foot cultivation license, as well as one residential dwelling. A letter was issued to Mr. Davoudian stating that the project as described in the LSA Notification was subject to the LSA Notification requirement, but that no LSA Agreement was needed. The Department is concerned that the well, with a 100-gallon per minute yield, situated on mine tailings adjacent to Hayfork Creek, may be hydrologically connected to the stream. Furthermore, the history of gold mining in this reach has severely altered the geomorphology and underlying geology of the area, and the well may be tapping into alluvial aquifers and impacting surface flows. Without further analysis by a qualified hydrogeologist, the conclusions that the well yield is independent of Hayfork Creek surface flows is not supported by evidence in the IS/MND.

Due to greatly expanded project description from the original LSA Notification, the Department recommends further analysis of proposed water use on stream flow and resources, including an assessment of cumulative effects of other withdrawals in the same watershed. This analysis is critical when cannabis development is proposed within watersheds such as Hayfork Creek and Big Creek, which are inhabited by special-status species such as steelhead trout (*Oncorhynchus mykiss*), Coho Salmon (*Oncorhynchus kisutch*) and foothill yellow-legged frogs (*Rana boylei*).

Flood Flows

The IS/MND states that "*many of the proposed project structures are located within the 100-year floodplain as outlined in the approved FEMA map*". Flood maps were not included with the document, nor is there a discussion of which of the proposed structures are within that mapped floodplain. The e-mail included as Appendix D discusses the coordinates at the location of the greenhouses that have since been built, but does not include coordinates for the expanded cultivation area. The IS/MND should include an analysis of potentially significant impacts resulting from cannabis cultivation within the FEMA 100-year floodplain. The impacts of cannabis cultivation within the floodplain may include potential pollution sources including imported fertilizers, compost, pesticides, and components of potting soils, such as perlite, that could be transported into or captured by surface waters. The conclusion that one single coordinate indicates that the entire project would not impede or redirect flood flows in a manner than would threaten water quality or adjacent land uses is not supported. The Department encourages the County to prohibit cannabis activities within the floodway. If activities within the floodway are approved by the County, minimization measures, such as seasonal restrictions on activities within the floodway, or prohibiting storage or use of pollutants should be adopted to fully avoid the aforementioned pollution sources from entering waters of the state.

Site Expansion and Environmental Data

The Policy requires that prior to commencing any cannabis land development or site expansion activities, the cultivator shall have a qualified biologist identify sensitive plants, wildlife species, or communities at the proposed development site. CEQA requires that information developed in negative declarations be incorporated into a database which may

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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 found at the following link: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=25739>. 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

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

The Department appreciates the opportunity to comment on the IS/MND to assist the Trinity County Planning staff in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Senior Environmental Scientist Kate Blanchard at (530) 225-2239 or by e-mail at Katherine.Blanchard@wildlife.ca.gov.

Sincerely,



Curt Babcock
Habitat Conservation Program Manager

Attachment: Letter dated April 16, 2018

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cc: Leslie Hubbard
Trinity County Planning Department
lhubbard@trinitycounty.org

Cannabis Cultivation Regulatory Program
North Coast Regional Water Quality Control Board
NorthCoast.Cannabis@waterboards.ca.gov

State Clearinghouse
State.clearinghouse@opr.ca.gov

Adam McKannay, Kate Blanchard
California Department of Fish and Wildlife
Adam.McKannay@wildlife.ca.gov, Katherine.Blanchard@wildlife.ca.gov

References

- State Water Resources Control Board General Order WA 2019-0001-DWQ, located at:
https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2019/wqo2019_0001_dwq.pdf
- State Water Resources Control Board Cannabis Cultivation Policy, adopted February 5, 2019 located at:
https://www.waterboards.ca.gov/water_issues/programs/cannabis/docs/policy/final_cannabis_policy_with_attach_a.pdf



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EDMUND G. BROWN JR., Governor
CHARLTON H. BONHAM, Director



Governor's Office of Planning & Research

April 16, 2018

May 31, 2019

STATE CLEARINGHOUSE

Mr. Daniel Davoudian
Post Office Box 485
Hayfork, CA 96041

Dear Mr. Davoudian:

No Lake or Streambed Alteration Agreement Needed, Notification No. 1600-2018-0003-R1, Cannabis Cultivation on Trinity County Assessor's Parcel Number 017-430-49 adjacent to Hayfork Creek

The California Department of Fish and Wildlife (CDFW) has reviewed your Lake or Streambed Alteration Notification (Notification). We have determined that your project is subject to the notification requirement in Fish and Game Code section 1602, including payment of the notification fee.

CDFW has also determined that your project will not substantially adversely affect an existing fish or wildlife resource. As a result, you will not need a Lake or Streambed Alteration Agreement for your project. You are responsible for complying with all applicable local, state, and federal laws in completing your work. A copy of this letter and your notification with all attachments should be available at all times at the work site.

Also note that while you are entitled to complete the project without an Agreement, you are still responsible for complying with other applicable local, state, and federal laws. These include Fish and Game Code sections 5650 and 5652 which make it unlawful to pollute waters of the state. Fish and Game Code section 5650 makes it 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, mammals, or bird life, including, but not limited to gasoline and oil, as well as sediment. Fish and Game Code section 5652 makes it unlawful to deposit in, permit to pass into, or place where it can pass into waters of the state, or to abandon, dispose of, or throw away, within 150 feet of the high water mark of the waters of the state, any garbage, refuse, or waste, among other materials. A person who violates Fish and Game Code sections 1602, 5650, and 5652 in conjunction with the cultivation or production of cannabis is subject to significant penalties or fines. Specifically, CDFW may impose civil penalties administratively against any person found by CDFW to have violated these Fish and Game Code sections in connection with the production or cultivation of cannabis following a complaint and, if requested, a hearing.

Other statutes in the Fish and Game Code that might apply to your activity, include, but not limited to the following sections: 2080 et seq. (species listed as threatened or

endangered, or a candidate for listing under the California Endangered Species Act); 1908 (rare native plants); 3511, 4700, 5050, and 5515 (fully protected species); 3503 (bird nests and eggs); 3503.5 (birds of prey); 5901 (fish passage); 5937 (sufficient water for fish); and 5948 (obstruction of stream), and the requirements set forth in the Forest Practice Act (Pub. Resources Code, § 4511 et seq.) for projects on private timberlands.

Please note that if you change your project so that it differs materially from the project you described in your original notification, you will need to submit a new notification and corresponding fee to CDFW.

Thank you for notifying us of your project. If you have questions regarding this letter, please contact Kate Blanchard, Senior Environmental Scientist, Specialist at (530) 225-2239 or by email at Katherine.blanchard@wildlife.ca.gov.

Sincerely,



Adam McKannay
Interior Cannabis and LSA Permitting Supervisor