



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



June 12, 2019

Governor's Office of Planning & Research

**JUNE 12 2019**

## STATE CLEARINGHOUSE

Ms. Traci Tesconi  
Sonoma County  
Permit and Resource Management Department  
50 Ventura Avenue  
Santa Rosa, CA 95403

Subject: UPC17-0090 Cannabis Use Permit, Mitigated Negative Declaration,  
SCH #2019059051, City of Penngrove, Sonoma County

Dear Ms. Tesconi:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from Sonoma County for the UPC17-0090 Cannabis Use Permit (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.

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 and Game Code, §§ 711.7, subd. (a) and 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 AND ENVIRONMENTAL SETTING

The Project site is located at 2275 Roberts Road, City of Penngrove, Sonoma County. The parcel is located in a broad alluvial fan below a mountain front. The southernmost portion of the parcel drains to Lichau Creek, which is a tributary to the Petaluma River, and located in the San Francisco Bay watershed. The other portion of the site is located in the Laguna de Santa Rosa watershed, which drains into the Russian River.

Historically, the entire Project site was likely to be a complex of wet meadows and vernal pool complexes before it was ultimately drained for farmland. The site is dominated by non-native grasslands that were converted to farmland. The southern portion of the site contains an unnamed tributary to Roberts Creek, which leads to Lichau Creek.

The proposed Project involves cultivating cannabis within a proposed greenhouse that includes a 10,000-square-foot canopy area (with a 3,690-square-foot storage and drying facility), a proposed 10,000-square-foot canopy area of outdoor cultivation, and a proposed 5,000-square-foot canopy indoor cultivation area. The listed proposed structures will be built within open grassland area on the property. The indoor cultivation area will be located within pre-existing building footprints. The water source for irrigation will be an existing on-site 247-foot deep well located southwest of the existing residence. The applicant will also use a rainwater catchment system collecting rooftop water as a supplemental irrigation source. There is no proposed work on the on-site unnamed tributary.

## **REGULATORY REQUIREMENTS**

### *California Endangered Species Act*

The California Endangered Species Act (CESA) prohibits unauthorized take of candidate, threatened, and endangered species. Therefore, if "take" of species listed under CESA that cannot be avoided either during Project activities or over the life of the Project, a CESA Incidental Take Permit (ITP) must be obtained (pursuant to Fish and Game Code Section 2080 *et seq.*). Issuance of a CESA ITP is subject to CEQA documentation; therefore, the CEQA document should specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the proposed Project will impact any CESA-listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required to obtain a CESA ITP. More information on the CESA permitting process can be found on the CDFW website at <https://www.wildlife.ca.gov/Conservation/CESA>.

### *Lake and Streambed Alteration Agreement*

Notification is required for any activity that will divert or obstruct the natural flow; change or use material from the bed, channel, or bank (which may include associated riparian resources) of a river or stream; or deposit or dispose of material where it may pass into a river, lake or stream. Ephemeral and/or intermittent streams and drainages (that are dry for periods of time or only flow during periods of rainfall), watercourses with a subsurface flow, and floodplains, are also subject to Fish and Game Code Section 1602 Notification requirements; and CDFW may require a Lake and Streambed Alteration (LSA) Agreement, pursuant to Section 1600 *et seq.* of the Fish and Game Code.

Issuance of an LSA Agreement is subject to CEQA. CDFW, as a Responsible Agency under CEQA, will consider the CEQA document for the Project. The CEQA document should identify the potential impacts to the stream or riparian resources and provide adequate avoidance, mitigation, monitoring, and reporting commitments for completion of the agreement. The Project applicant submitted LSA Notification 1600-2018-0044-R3, pursuant to Fish and Game Code §§ 1600 *et seq.*



#### *Additional Fish and Game Code Regulations*

CDFW also has jurisdiction over actions that may result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code Sections protecting birds, their eggs, and nests include 3503 (regarding unlawful take, possession or needless destruction of the nests 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). Fully protected species may not be taken or possessed at any time (Fish and Game Code Section 3511). Migratory birds are also protected under the federal Migratory Bird Treaty Act.

#### **COMMENTS AND RECOMMENDATIONS**

CDFW offers the following comments and recommendations to assist Sonoma County in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Based on the Project's avoidance of significant impacts on biological resources with implementation of mitigation measures, CDFW concludes that an MND is appropriate for the Project.

#### *Congested-headed Hayfield Tarplant*

The proposed Project involves the addition of several new facilities within the open grassland area on the parcel. Rare plants known to occur within two miles of the Project site with the potential to occur in grassland habitat include congested-headed hayfield tarplant (*Hemizonia congesta* ssp. *congesta*), which has a California Rare Plant Rank of 1B.2.<sup>1</sup> The MND states that the study area concluded that congested-headed hayfield tarplant has a moderate potential to occur on the Project site. Grading impacts from construction may impact congested-headed hayfield tarplant or other rare plant species with potential to be present on-site. CDFW recommends that a qualified botanist or plant ecologist conduct full floristic surveys during appropriate blooming season(s) to determine whether sensitive plant species are present, including congested-headed hayfield tarplant. To the maximum extent feasible, the Project should be designed to avoid substantial direct and indirect impacts to congested-headed hayfield tarplant and other rare plant species. If the Project cannot be designed to avoid significant impacts to rare plant species, then the Project applicant should consult with CDFW to determine whether preservation of the proposed area would adequately compensate, or partially compensate, for lost populations on the Project site.

#### **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

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<sup>1</sup> As defined by the California Native Plant Society, "Plants with a California Rare Plant Rank of 1B are rare throughout their range with the majority of them endemic to California." The Threat Rank of 0.2 is assigned to plants that are "[m]oderately threatened in California (20-80% occurrences threatened / moderate degree and immediacy of threat)." For more information, please see: <https://www.cnps.org/rare-plants/cnps-rare-plant-ranks>.

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Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data#44524420-pdf-field-survey-form>. The completed form can be mailed electronically to CNDDDB at the following email address: [cnddb@wildlife.ca.gov](mailto:cnddb@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 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 and Game Code, § 711.4; Pub. Resources Code, § 21089).

## CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist Sonoma County in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Ms. Mia Bianchi, Environmental Scientist, at (707) 428-2068 or [mia.bianchi@wildlife.ca.gov](mailto:mia.bianchi@wildlife.ca.gov); or Ms. Randi Adair, Senior Environmental Scientist (Supervisory), at (707) 576-2786.

Sincerely,

*Michael D. Thomsen* #585 FOR GREGG ERICKSON

Gregg Erickson  
Regional Manager  
Bay Delta Region

cc: Office of Planning and Research, State Clearinghouse, Sacramento