



COUNTY OF SAN LUIS OBISPO

DEPARTMENT OF AGRICULTURE / WEIGHTS & MEASURES

Martin Settevendemie, Agricultural Commissioner / Sealer of Weights & Measures

DATE: July 23, 2018
TO: Brandi Cummings, Project Manager
FROM: Lynda L. Auchinachie, Agriculture Department
SUBJECT: Guitierrez Minor Use Permit DRC2018-00103 (2085)

The applicant is requesting a minor use permit to allow for phased development of cannabis cultivation with the first phase consisting of a one-acre outdoor cannabis cultivation site and two approximately 3,000 square foot greenhouse structures; and phase 2 would include two additional greenhouses. The 20-acre project site is located east of Paso Robles within the Agriculture land use category.

The proposal has been reviewed for ordinance and policy consistency as well as potential impacts to on and off-site agricultural resources and operations. The following conditions of approval are recommended:

- Cannabis cultivation grading activities shall be consistent with the conservation practices and standards contained in the USDA Natural Resources Conservation Service (NRCS) Field Office Technical Guide (FOTG). Practices shall not adversely affect slope stability or groundwater recharge and shall prevent off-site drainage and erosion and sedimentation impacts. Erosion and sedimentation control activities shall adhere to the standards in Section 22.52.150C of the Land Use Ordinance.
- Prior to commencing permitted cultivation activities, the applicant shall consult with the Department of Agriculture regarding potential licensing and/or permitting requirements and to determine if an Operator Identification Number (OIN) is needed. An OIN must be obtained prior to any pesticides being used in conjunction with the commercial cultivation of cannabis; "pesticide" is a broad term, which includes insecticides, herbicides, fungicides, rodenticides, etc., as well as organically approved pesticides.
- Parking area associated with the greenhouses should be minimized to protect farmland for agriculture production and the use of pervious and semi pervious surfaces should be maximized to promote groundwater recharge and minimize erosion and sedimentation.
- Throughout the life of the project, best management water conservation practices shall be maintained.

The above comments and recommendations are based on policies in the San Luis Obispo County Agriculture Element, the Conservation and Open Space Element, the Land Use Ordinance, the California Environmental Quality Act (CEQA) and on current departmental objectives to conserve agricultural resources and to provide for public health, safety and welfare, while mitigating negative impacts of development to agriculture.

If you have any questions, please call me at 805.781.5914.

Mindy Fogg

From: Brandi Cummings <bcummings@co.slo.ca.us>
Sent: Friday, July 13, 2018 12:04 PM
To: Rob Mullane; Mindy Fogg
Subject: FW: DRC2018-00103 GUITIERREZ, NORTH COUNTY E-Referral, MINOR USE PERMIT, TEMPLETON

Building comments on Guitierrez.

Best,



Brandi Cummings
Environmental Resource Specialist
Planning & Building, County of San Luis Obispo
Tel: (805) 781-1006
[Website](#) | [Facebook](#) | [Twitter](#) | [Map](#)

From: Michael Stoker
Sent: Monday, July 09, 2018 11:40 AM
To: Brandi Cummings <bcummings@co.slo.ca.us>
Subject: Re: DRC2018-00103 GUITIERREZ, NORTH COUNTY E-Referral, MINOR USE PERMIT, TEMPLETON

Brandi,

Please find buildings recommendations for DRC2018-00103 below. Please let me know if you have any questions.

In regards to this preliminary review, a building permit is required. The drawings specify the work to be completed consists of one 1-acre outdoor cultivation sites, construction of four green houses, a 10,000 gallon water tank, and a 200 gallon propane tank. A California State licensed design professional (Architect/Engineer) shall prepare plans in compliance with current codes adopted by the County of San Luis Obispo (Current version of the California Building Standards Codes and Title 19 of the SLO County Codes at time of permit submittal).

While a thorough plan review will be conducted at the time of the building permit application, the following items are noted to assist design review;

1. A California licensed Architect or Engineer is required to submit the plans for this project per BPC 5536.1.
2. A pre application meeting will be needed prior to submitting for a building permit to answer any questions and / or discuss code related issues.
3. Separate building permits will be required for the separate structure/building located on the site.
4. Please specify the buildings Occupancy Group and Type of Construction on the cover sheet of the plans to coordinate with the California Building Code.
5. Provide a reference on the cover sheet of the plans to the applicable codes.
6. The greenhouses will need to comply with the requirements of CBC Appendix C.
7. Provide plans which clearly show the structural design to verify compliance with the 2016 California Building Code and referenced standards. The plans and supporting calculations will need to be prepared by a California Licensed Design Professional (Architect or Engineer) justifying the structural design.
8. Provide isometric / single line drawings for the electrical, plumbing, and mechanical elements to verify compliance with the current versions of the California Electrical, Plumbing, and Mechanical Codes.
9. The building(s) will need to be provided with fire sprinklers and an alarm system under a separate permit. At the time of the permit application provide plans and calculations showing the design of the system.
10. Provide MSDS sheets listing the types of hazardous materials and the quantities to be stored.
11. If a septic system is going to be installed it will need to comply with Teir 1 of the Onsite Water Treatment System (OWTS) or it will need to be reviewed / permitted by the Regional Water Quality Control Board.

If there is any processing on the site the following items will be applicable as it would change the buildings "Occupancy Group":

12. Please specify the buildings Occupancy Group and Type of Construction on the cover sheet of the plans to coordinate with the California Building Code.
13. Provide an allowable area analysis on the plans to verify compliance with CBC Chapter 5, including Table 503 and sections 504, 506, and 508. Also, provide information stating is the building is using the separated, non-separated, or accessory occupancy method or combination of each per CBC Chapter 5.
14. Any fire resistive walls or ceilings due to occupancy separations will need to be detailed on the plans to comply with the requirements of with CBC, including Chapter 5, 6 and 7. The specific details for the wall construction on the plans will need to reference an approved UL listing or gypsum manual listing.
15. Provide an occupant load and exiting analysis on the plans to verify compliance with CBC, including Chapter 10 for the processing containers, security trailer.
16. The accessibility elements throughout will need to be shown, detailed, and / or noted on the plans to verify compliance with CBC Chapter 11B. (i.e. accessible parking, path of travel, restroom design, access to work areas, etc.)
17. Provide a plumbing fixture analysis on the plans to verify the number of fixtures provided is sufficient for the proposed use and complies with CPC Chapter 4 and Table A and Table 422.

thanks

Michael Stoker, CASp
Building Division Supervisor
(p) 805-781-1543
mstoker@co.slo.ca.us

From: Mail for PL_Referrals Group
Sent: Friday, July 6, 2018 3:45 PM
To: Brandi Cummings
Subject: DRC2018-00103 GUITIERREZ, NORTH COUNTY E-Referral, MINOR USE PERMIT, TEMPLETON

County of San Luis Obispo
Department of Planning & Building

DRC2018-00103 GUITIERREZ, NORTH COUNTY E-Referral, MINOR USE PERMIT, TEMPLETON
APN: 015-053-035

This application was recently filed with the Planning Department for review and approval. Because the proposal may be of interest or concern to your agency or community group, we are notifying you of the availability of a referral on the project.

[DIRECT LINK to GUITIERREZ Referral Package](#)

Link to webpage for all referral packages on new website (07/26/2017 and later):
<http://www.slocounty.ca.gov/Departments/Planning-Building/Forms-Documents/Informational/Planning-Referrals.aspx>

Link to Archive Referrals: <http://archive.slocounty.ca.gov/planning/referrals.htm>

Community Advisory Groups: You will want to contact the applicant and/or agent for the project to request a presentation to your group, or simply to answer questions about the project. The telephone number and address for the applicant/agent are provided in the link below.

Please comment on all issues associated with this project **within 14 days** of receiving this e-mail
(Community Advisory Groups: please respond within 60 days)

Direct your comments to the project manager(s):
Brandi Cummings (805-781-1006 or bcummings@co.slo.ca.us)

Referral Response:

As part of your response to this referral, please answer the following questions:

Are there significant concerns, problems or impacts in your area of review?

If Yes, please describe the impacts along with any recommendations to reduce the impacts in your response.

If your community has a "vision" statement in the Area Plan - does the community feel this project helps to achieve that vision? If No, please describe.

What does the community like or dislike about the project or proposal?

Is the project compatible with surrounding development, does it fit in well with its surroundings? If No, are there changes in the project that would make it fit in better?

Does the community believe the road(s) that provide access to the site is(are) already overcrowded?

Does the community wish to have a trail in this location?

If the proposal is a General Plan Amendment, does the community feel the proposed change would encourage other surrounding properties to intensify, or establish intense uses that would not otherwise occur?

Please feel free to include information or questions other than those listed above. You may also choose to respond that you have no comments regarding the proposal.

Cassidy McSurdy
Administrative Assistant III
County Of San Luis Obispo
Planning & Building
(p) 805-788-2959
cmcsurdy@co.slo.ca.us



Date: July 10, 2018
To: Brandi Cummings, Project Planner
From: Glenn Marshall, Development Services
Subject: Public Works Revised Comments on DRC2018-00103 Guitierrez MUP, Penman Springs Rd., Paso Robles, APN 015-053-035

Thank you for the opportunity to provide information on the proposed subject project. It has been reviewed by several divisions of Public Works, and this represents our consolidated response.

Public Works Comments:

- A. The project is located outside a Flood Hazard area, a Road Improvement Fee area, and a Stormwater Management area.
- B. Applying Santa Barbara County trip rates the project is expected to generate 35 ADT with 4 PHT based on the following:
- 1ac outdoor cultivation (2 trips)
 - 0.5ac greenhouse cultivation (33 trips)
 - No manufacturing (0 trips)
 - No distribution (0 trips)
- Project impacts to County maintained roads are not expected.
- C. The proposed project is within a drainage review area. Drainage plan may be required and will be reviewed at the time of Building Permit submittal by Public Works. The applicant should review Chapter 22.52.110 or 23.05.040 of the Land Use Ordinance prior to future submittal of development permits.
- D. If the project site disturbs 1.0 acre or more the applicant must enroll for coverage under California's Construction General Permit, which may require preparation of a project Stormwater Control Plan even though its located outside a Stormwater Management Area.
- E. The site is within the Salinas Valley Groundwater Basin and is therefore subject to the Sustainable Groundwater Management Act (SGMA). However, the Groundwater Sustainability Agency responsible for overseeing SGMA compliance has not completed the planning efforts that will define the need for any groundwater mitigation requirements. In the interim, consideration of the project's impacts on the groundwater basin should be included in the project's CEQA analysis.

Recommended Project Conditions of Approval:

Access

1. **On-going condition of approval (valid for the life of the project)**, to minimize project related traffic impacts in accordance with the project description, the project permit is restricted as follows:
 - a. One (1) acre maximum outdoor cultivation.
 - b. One half (1/2) acre maximum indoor (greenhouse) cultivation
 - c. Operational hours between 6:00 a.m. to 3:30 p.m., Monday thru Friday
 - d. No other onsite uses permitted including, but not limited to: manufacturing, distribution, retail, tours, events, etc.
2. **Within 30-days of the land use permit approval**, the applicant shall submit to the Department of Public Works an encroachment permit application, plans, fees, and post a cash damage bond to install improvements within the public right-of-way in accordance with County Public Improvement Standards. The plans are to include, as applicable:
 - a. Reconstruct, if necessary, the existing Penman Springs Road driveway approach to current B-1a and A-5 drawings.
3. **Prior to commencing land use permit operations**, all work in the public right-of-way must be constructed or reconstructed to the satisfaction of the Public Works Inspector and in accordance with the County Public Improvement Standards; the project conditions of approval, including any related land use permit conditions; and the approved improvement plans.
4. **Prior to commencing land use permit operations**, the applicant shall provide evidence to the Department of Planning and Building that onsite circulation and pavement structural sections have been designed and shall be constructed in conformance with Cal Fire standards and specifications back to the nearest public maintained roadway.
5. **On-going condition of approval (valid for the life of the project)**, and in accordance with County Code Section 13.08, no activities associated with this permit shall be allowed to occur within the public right-of-way including, but not limited to, project signage; landscaping; agricultural operations; etc. without a valid Encroachment Permit issued by the Department of Public Works.

Drainage

6. **At the time of application for construction permits**, the applicant shall submit complete drainage plans for review and approval in accordance with Section 22.52.110 (Drainage) or 23.05.040 (Drainage) of the Land Use Ordinance.
7. **At the time of application for construction permits**, the applicant shall submit complete erosion and sedimentation control plan for review and approval in accordance with 22.52.120.

G:\Development\DEVSERV Referrals\Land Use Permits\MUP\DRC2018\DRC2018-00103 Gutierrez MUP Paso Robles.docx



CALIFORNIA DEPARTMENT OF
FOOD & AGRICULTURE

October 2, 2019

County of San Luis Obispo
Eric Hughes, Project Manager
976 Osos Street, Room 200
San Luis Obispo, CA 93408-2040

Subject: Initial Study/Mitigated Negative Declaration (SCH#2019099030) –
California Production Services/Choboian Conditional Use Permit (CUP)
DRC2019-00180

Dear Mr. Hughes:

Thank you for providing the California Department of Food and Agriculture (CDFA) CalCannabis Cultivation Licensing Division (CalCannabis) the opportunity to comment on the Initial Study/Mitigated Negative Declaration (IS/MND) (SCH#2019099030) prepared by the County of San Luis Obispo for the proposed California Production Services/Choboian CUP DRC2019-00180 Project (Proposed Project).

CDFA has jurisdiction over the issuance of licenses to cultivate, propagate and process commercial cannabis in California. CDFA issues licenses to outdoor, indoor, and mixed-light cannabis cultivators, cannabis nurseries and cannabis processor facilities, where the local jurisdiction authorizes these activities. (Bus. & Prof. Code, §26012(a)(2).) All commercial cannabis cultivation within California requires a cultivation license from CDFA. For a complete list of all license requirements, including CalCannabis Licensing Program regulations, please visit: [https://static.cdfa.ca.gov/MCCP/document/CDFA%20Final%20Regulation%20Text 01162019 Clean.pdf](https://static.cdfa.ca.gov/MCCP/document/CDFA%20Final%20Regulation%20Text%201162019%20Clean.pdf).

CDFA expects to be a Responsible Agency for this project because the project will need to obtain an annual cultivation license from CDFA. In order to ensure that the IS/MND is sufficient for CDFA's needs at that time, CDFA requests that a copy of the IS/MND, revised to respond to the comments provided in this letter, and a signed Notice of Determination be provided to the applicant, so the applicant can include them with the application package they submit to CDFA. This should apply not only to this Proposed Project, but to all future CEQA documents related to cannabis cultivation applications in the County of San Luis Obispo.



CDFA offers the following comments concerning the IS/MND.

General Comment (GC)

GC 1: Acknowledgement of CDFA Regulations

The IS/MND acknowledges that CDFA is responsible for the licensing of cannabis cultivation. The IS/MND could be more informative by also acknowledging that CDFA is responsible for regulation of cannabis cultivation and enforcement, as defined in the Medicinal and Adult Use Cannabis Regulation and Safety Act (MAUCRSA) and CDFA regulations related to cannabis cultivation (Bus. & Prof. Code, §26102). The IS/MND's analysis would also benefit from discussion of the protections for environmental resources provided by CDFA's regulations. In particular, the impact analysis could be further supported by a discussion of the effects of state regulations on reducing the severity of impacts on the following resource topics:

- Aesthetics (See 3 California Code of Regulations §8304(c); §8304(g).)
- Air Quality and Greenhouse Gas Emissions (See §8102(s); §8304(e); §8305; §8306.)
- Biological Resources (See §8102(w); §8102(dd); §8216; §8304(a-c); §8304(g).)
- Cultural Resources (See §8304(d).)
- Hazards and Hazardous Materials (See §8102(q); §8106(a)(3); §8304(f); §8307.)
- Hydrology and Water Quality (See §8102(p); §8102(v); §8102(w); §8102(dd); §8107(b); §8216; §8304(a and b); §8307.)
- Noise (See §8304(e); §8306.)
- Utilities and Service Systems (See §8102(s); §8108; §8308.)
- Energy (See §8102(s); §8305; §8306.)
- Cumulative Impacts (related to the above topics).

Specific Comments and Recommendations

In addition to the general comment provide above, CDFA provides the following specific comments regarding the analysis in the IS/MND.

Comment No.	Page No(s).	Resource Topic	IS/MND Text	CDFA Comments and Recommendations
1	14	Air Quality	The APCD has also estimated the number of vehicular round trips on an unpaved roadway necessary to exceed the 25 lbs/day threshold of significance for the emission of particulate matter (PM ₁₀). According to the APCD estimates, an unpaved roadway of one mile in length carrying 6.0 round trips would likely exceed the 25 lbs/day PM ₁₀ threshold.	The IS/MND indicates that access to the property would be via paved Penman Springs Road. The proposed operation also appears to contain unpaved access roads to and between hoop houses. The IS/MND would be improved by disclosing whether unpaved access roads would be used during cultivation and processing operations, including the frequency of use and the length of unpaved roadways. The IS/MND would be further improved if it provided an analysis of air quality impacts, such as quantified emissions for determining exceedances with significance thresholds resulting from regular cultivation and processing operations, including vehicle traffic.
2	15	Air Quality	The project is within 1,000 feet of sensitive receptors and the SCCAB is in non-attainment for PM ₁₀ ; therefore, the project would result in a potentially significant impact and standard mitigation measures apply.	The text states that sensitive receptors may include schools, day care centers, hospitals, and nursing homes. The IS/MND would be improved by identifying those specific sensitive receptors in the project vicinity.
3	16	Air Quality	Using the GHG threshold information described in the Setting section, the	The IS/MND would be improved by disclosing anticipated GHG emissions estimates and providing the analysis

Comment No.	Page No(s).	Resource Topic	IS/MND Text	CDFA Comments and Recommendations
			project is expected to generate less than the Bright-Line Threshold stationary source (industrial) projects of 10,000 metric tons of GHG emissions.	supporting a conclusion that the project is expected to generate less than the Bright-Line Threshold.
4	21	Biological Resources	If migratory birds are present at the time of ground disturbing and construction activities, impacts could be significant. Mitigation measures are required to avoid or minimize such impacts (see MM BIO-7).	This statement indicates that impacts will be less than significant with mitigation; however, the "Insignificant Impact" box is checked. The document would be improved if the language and the check box were made consistent.
5	22	Cultural Resources	In compliance with Assembly Bill (AB) 52 Cultural Resources requirements, outreach to four Native American tribes' groups was conducted.	The IS/MND would be more informative if additional information was provided on the AB 52 consultation. Helpful information could include dates that the tribes were contacted and information on whether any tribes, other than the Northern Chumash Tribal Council, responded.
6	28	Noise	With attenuation of noise levels with distance, equipment-related noise levels at the nearest	The IS/MND would be improved if it provided the source and context for use of a 60 dBA threshold.

Comment No.	Page No(s).	Resource Topic	IS/MND Text	CDFA Comments and Recommendations
7	30	Public Services/Utilities/ Energy Usage	sensitive receptor would be well below 60 dBA. The composting area would not allow runoff of water or any waste concentrate, and Best Management Practices (BMP) would be implemented to reduce or eliminate runoff, dust, and odor.	The IS/MND would be improved if it listed or described those BMPs that would be employed for the Proposed Project.
8	39	Mandatory Findings of Significance	N/A (General Comment)	The IS/MND could be improved by identifying any other existing cannabis growing operations, and analyzing whether the Proposed Project would make a considerable contribution to any cumulative impacts from these other projects.
9	41	Project-specific Studies and Other References	In addition, the following project specific information and/or reference materials have been considered as a part of the Initial Study:	In order to ensure that CDFA has supporting documentation for the IS/MND, CDFA requests that a copy of all project-specific studies listed on Page 41 be provided to the applicant so such items can be included with an application package submitted to CDFA.

Conclusion

CDFA appreciates the opportunity to provide comments on the IS/MND for the Proposed Project. If you have any questions about our comments or wish to discuss them, please contact Kevin Ponce, Senior Environmental Scientist Supervisor, at (916) 263-0801 or via e-mail at kevin.ponce@cdfa.ca.gov.

Sincerely,



Lindsay Rains
Licensing Program Manager



State of California – The Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
1234 East Shaw Avenue
Fresno, California 93710
(559) 243-4005
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



RECEIVED

16 OCT 2019

PLANNING & BUILDING

October 10, 2019

Eric Hughes
County of San Luis Obispo
Department of Planning and Building
976 Osos Street, Room 200
San Luis Obispo, California 93408-2040

**Subject: California Production Services/Choboian Conditional Use Permit;
DRC2019-00180 (Formerly Guitierrez MUP DRC2018-00103)
Mitigated Negative Declaration (MND)
Outdoor Cannabis Cultivation (Project)**

Dear Mr. Hughes:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an 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 area 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 & 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.

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.

CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). For example, 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 & G. 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 (i.e., 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.

Land Conversion: Project activities that result in land conversion may also result in habitat loss for special status species, migration/movement corridor limitations, or fragmentation of sensitive habitat. Loss of habitat to development and agriculture are contributing factors to the decline of many special status species and game species. CDFW recommends CEQA documents generated for cannabis activities address cumulative impacts of land conversion.

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 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 that CEQA documents address the impacts to groundwater and surface water that may occur from Project activities.

Light Pollution: Cannabis cultivation operations often use artificial lighting or “mixed-light” techniques in both greenhouse structures as well as indoor operations to increase yields. Night lighting can disrupt the circadian rhythms of many wildlife species. Many species use photoperiod cues for communication (i.e., bird song; Miller, 2006), determining when to begin foraging (Stone, Jones, & Harris, 2009), behavior thermoregulation (Beiswenger, 1977), and migration (Longcore and Rich, 2004). Even aquatic species can be affected; migration of salmonids can be slowed or halted by the presence of artificial lighting (Tabor, Brown, & Luiting, 2004; Nightingale, Longcore, & Simenstad, 2006). Phototaxis, a phenomenon which results in attraction and movement towards light, can disorient, entrap, and temporarily blind wildlife species that experience it (Longcore & Rich, 2004). CDFW recommends CEQA documents address light pollution in the analysis of impacts.

Cumulative Impacts: General impacts from Projects include habitat fragmentation, degradation, habitat loss, migration/movement corridor limitations, and potential loss of individuals to the population. Multiple cannabis related Projects have been proposed throughout San Luis Obispo County with similar impacts to biological resources. CDFW recommends the lead agency consider all approved and future projects when determining impact significance to biological resources.

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 the implementation of mitigation measure BIO-8 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 area 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.

Oak Woodlands: CEQA was amended to include Public Resources Code (PRC) Section 21083.4, which states that a county shall determine whether a project within its jurisdiction may result in a conversion of oak woodlands that will have a significant effect on the environment. If a county determines that there may be a significant effect to oak woodlands, the county shall require appropriate oak woodlands mitigation alternatives to mitigate the significant effect of the conversion of oak woodlands.

Retaining large oak trees (greater than 12 inches in diameter as measured at breast height) on the Project site to the maximum extent possible is recommended during any construction activities. Large, acorn-bearing oak trees are a critical source of food for wintering deer and other wildlife. Location and routing of access roads, utility connections, septic systems and building sites where they will require the minimum amount of disturbance to large oak trees is advised.

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).

Fully Protected Species: CDFW has jurisdiction over fully protected species of birds, mammals, amphibians, reptiles, and fish pursuant to Fish and Game Code sections

3511, 4700, 5050, and 5515. Take of any fully protected species is prohibited and CDFW cannot authorize their incidental take.

Unlisted Species: Species of plants and animals need not be officially listed as Endangered, Rare, or Threatened (E, R, or T) on any State or Federal list to be considered E, R, or T under CEQA. If a species can be shown to meet the criteria for E, R, or T as specified in the CEQA Guidelines (Cal. Code Regs., tit. 14, Chapter 3, § 15380), CDFW recommends it be fully considered in the environmental analysis for this Project.

PROJECT DESCRIPTION SUMMARY

Proponent: Salvador Guittierez

Objective: The Project proponent is seeking a Conditional Use Permit for up to 22,000 square feet of indoor cannabis cultivation and up to two acres of outdoor cannabis cultivation site with setback modifications. Project development includes the construction of eight new greenhouses totaling 22,000 square feet, an 87,120 square feet of hoop structures, and a 3,000-square foot steel building for processing activities.

Project construction and implementation would occur in two phases. Phase One includes development of all outdoor/hoop-house cultivation areas, three of the indoor/greenhouse cultivation areas, an 80-square foot metal office building, an 80-square foot metal safe room, a 320-square foot storage unit, and two temporary structures for the ancillary processing activities. Phase Two would consist of developing the remaining greenhouses and the permanent 3,000-square foot building for ancillary processing activities.

Location: The Project will take place at 1480 Penman Springs Road in Paso Robles, California; Assessor's Parcel Number (APN) 015-053-035.

Timeframe: Unspecified.

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.

I. Environmental Setting and Related Impact

Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by CDFW or the United States Fish and Wildlife Service (USFWS)?

Review of the California Natural Diversity Database (CNDDDB) reveals records for several special-status species within the vicinity of the Project area including, but not limited to State Threatened and federally Endangered San Joaquin kit fox (*Vulpes macrotis mutica*); State fully protected golden eagle (*Aquila chrysaetos*); federally threatened vernal pool fairy shrimp (*Branchinecta lynchi*); State Threatened tricolored blackbird (*Agelaius tricolor*); Species of Special Concern American badger (*Taxidea taxus*), northern California legless lizard (*Anniella pulchra*), and western spadefoot (*Spea hammondi*) (CDFW 2018a). Review of aerial imagery indicates the site has existing structures, trees, disturbed grassland, and a stream to the east. The Project has the potential to impact biological resources. An analysis of potential impacts and recommended mitigation measures summarized by species follows below.

COMMENT 1: Golden Eagle (GOEA)

Issue: GOEA have been documented to occur within 3 miles of the Project area (CDFW 2018a). Suitable nesting habitat includes cliffs of all heights and large trees in open areas for GOEA. Review of aerial imagery indicates that large trees within or adjacent to the Project site could provide suitable nesting habitat for GOEA.

Specific impact: Without appropriate avoidance and minimization measures for GOEA, potentially significant impacts associated with the Project's construction could include nest abandonment, reduced reproductive success, reduced health and vigor of eggs and/or young.

Evidence impact is potentially significant: Threats to GOEA include loss of foraging areas, loss of nesting habitat, and pesticide poisoning (CDFW 2018b). GOEA both show nest site fidelity. Potential suitable nesting habitat for GOEA may occur within or adjacent to the Project site. Therefore, subsequent ground-disturbing activities have the potential to significantly impact GOEA.

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential impacts to GOEA, CDFW recommends conducting the following evaluation of the subject parcel and implementing the following mitigation measures.

Recommended Mitigation Measure 1: GOEA Surveys

CDFW recommends that construction be timed to avoid the eagle breeding season (January 1 through August 31). However, if construction must take place during that time, CDFW recommends that a qualified wildlife biologist conduct surveys for GOEA in accordance with the "USFWS Interim Golden Eagle Inventory and Monitoring Protocols; and Other Recommendations" (USFWS, 2010). Surveys should be conducted prior to the start of implementation to evaluate presence/absence of GOEA in proximity to Project activities and to evaluate potential Project-related impacts.

Recommended Mitigation Measure 2: GOEA Avoidance

If GOEA are found during preconstruction surveys, CDFW recommends implementation of a minimum ½-mile no-disturbance buffer. CDFW advises that this buffer remain in place until the breeding season has ended or until a qualified biologist has determined that nesting has ceased, the birds have fledged, and are no longer reliant upon parental care for survival.

Recommended Mitigation Measure 3: GOEA Take Avoidance

In the event that GOEA are detected during surveys, consultation with CDFW is warranted to discuss how to implement the project and avoid take. Take of any fully protected species is prohibited and CDFW cannot authorize their incidental take.

COMMENT 2: Tricolored blackbird (TRBL)

Issue: TRBL occurrences have been documented within 3 miles of the Project site (CDFW, 2018a). TRBL colonies require suitable nesting habitat, nearby freshwater, and nearby foraging habitat including semi-natural grasslands, agricultural croplands or alkali scrub (Beedy, Hamilton, Messe, Airola, & Pyle, 2017). Habitat both within and surrounding the Project site may provide suitable foraging habitat for TRBL.

Specific impact: Without appropriate avoidance and minimization measures for TRBL, potential significant impacts associated with Project activities include nest and/or colony abandonment, reduced reproductive success, and reduced health and vigor of eggs and/or young.

Evidence impact is potentially significant: The Project site contains elements that have the potential to support TRBL nesting colonies. TRBL aggregate and nest colonially, forming colonies of up to 100,000 nests (Beedy et al., 2017). This species has been steadily declining due to annual breeding losses due to

crop-harvesting activities, insufficient insect resources, and habitat loss due to land conversion for agriculture, rangeland, and urban development (Beedy et al., 2017).

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential Project-related impacts to TRBL, CDFW recommends conducting the following evaluation of the Project site and including the following measures in the MND.

Recommended Mitigation Measure 4: TRBL Surveys

CDFW recommends that Project activities be timed to avoid the typical bird breeding season (February 1 through September 15). However, if Project activities must take place during that time, CDFW recommends that a qualified wildlife biologist conduct surveys for nesting TRBL no more than 10 days prior to the start of implementation to evaluate presence/absence of TRBL nesting colonies in proximity to Project activities and to evaluate potential Project-related impacts.

Recommended Mitigation Measure 5: TRBL Avoidance

If an active TRBL nesting colony is found during preconstruction surveys, CDFW recommends implementation of a minimum 300-foot no-disturbance buffer in accordance with CDFW's "Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agriculture Fields in 2015" (2015). CDFW advises that this buffer remain in place until the breeding season has ended or until a qualified biologist has determined that nesting has ceased, the birds have fledged, and are no longer reliant upon the colony for survival. It is important to note that TRBL colonies can expand over time and for this reason, the colony should be reassessed to determine the extent of the breeding colony within 10 days for Project initiation.

COMMENT 3: Other State Species of Special Concern

Western spadefoot and northern California legless lizard

Issue: Western spadefoot occur in grassland in playas and alkali flats (Thomson, Wright, & Shaffer, 2016). Northern California legless lizard are found primarily in areas with sandy or loose organic soils or where there is plenty of leaf litter (Zeiner, Laudenslayer, Mayer, & White, 1990).

The subject parcel is within the range of both species mentioned above. Both species have been documented to occur in the Project vicinity and the Project area

likely supports the habitat elements mentioned above. Therefore, the subject parcel is suitable for occupation or colonization by these species.

Specific impact: Without appropriate avoidance and minimization measures for western spadefoot and northern California legless lizard potentially significant impacts associated with the Project's construction could include den/burrow abandonment or destruction, which may result in reduced health or vigor of eggs and/or young, and/or direct mortality.

Evidence impact is potentially significant: Habitat loss is a primary threat to both species mentioned above (Zeiner et al., 1990; Thomson et al., 2016). The blue oak woodland and annual grassland areas within the Project area have the potential to significantly impact local populations of these species.

Recommended Potentially Feasible Mitigation Measure

To evaluate potential impacts to these species, CDFW recommends conducting the following evaluation of the subject parcel and its vicinity and implementing the following mitigation measures.

Recommended Mitigation Measure 6: Habitat Assessment

CDFW recommends that a qualified biologist conduct a habitat assessment in advance of Project implementation to determine if the Project area or its immediate vicinity contains suitable habitat for the species mentioned above.

Recommended Mitigation Measure 7: Species of Special Concern Surveys

If suitable habitat is present, CDFW recommends that a qualified biologist conduct focused surveys for each species and their requisite habitat features to evaluate potential impacts resulting from ground-disturbance.

Recommended Mitigation Measure 8: Avoidance

Avoidance whenever possible is encouraged via delineation and observing a 50-foot no-disturbance buffer around burrows and dens.

COMMENT 4: Pesticide Use

Issue: The Project has the potential to temporarily and permanently impact biological resources through the use of pesticides. The United States Environmental Protection Agency (USEPA) regulates pesticides at the Federal level and the California Department of Pesticide Regulation (DPR) regulates pesticides at the

State Level. There are currently no pesticides registered specifically for use directly on cannabis. Based on DPR guidance, the only pesticide products not illegal to use on cannabis are those that contain an active ingredient that is exempt from residue-tolerance requirements and (1) registered and labeled for use that is broad enough to include use on cannabis (i.e., unspecified green plants) or (2) exempt from registration requirements as a minimum risk pesticide under Federal Insecticide, Fungicide, and Rodenticide Act section 25(b) and California Code of Regulations, Title 3, section 6147.

Specific impact: Baker (2018) reports the direct effects of pesticides on wildlife include “acute poisoning, immunotoxicity, endocrine disruption, reproductive failure, altered morphology and growth rates, and changes in behavior” (p. 1). Increased anticoagulant rodenticide use has been noted by CDFW staff at clandestine cannabis cultivation sites throughout the State, including the use of illegal rodenticides in endangered species habitat in San Luis Obispo County (D. Hacker, personal communication, March 28, 2017). The use of pesticides, including anticoagulants and their potential for secondary poisoning to native species, is a significant concern. According to Baker (2018), “[p]esticides can indirectly impact wildlife through reduction of food resources and refuges, starvation due to decreased prey availability, hypothermia, and secondary poisoning” (p. 3).

Evidence impact is potentially significant: The Project includes 87,120 square feet of hoop structures. The Project area contains potentially suitable habitat and features that could support several special-status species. As a result, Project activities have the potential to significantly impact special-status species through the use of pesticides.

Recommended Potentially Feasible Mitigation Measures

CDFW recommends the MND address and fully analyze the use of pesticides, including the risk of secondary poisoning to native species caused by the use of rodenticides. CDFW recommends the MND include a measure that requires the use of herbicides, rodenticides, or fertilizers on the Project area to be restricted to those approved by USEPA and DPR.

II. Editorial Comments and/or Suggestions

Mitigation Measure BIO-2, Spring Botanical Survey, page B-2.

As currently drafted, Mitigation Measure BIO-2 describes completing a spring botanical survey prior to disturbance of any grassland habitat to determine if special-status plant species, including but not limited to, shining navarretia (*Navarretia nigelliformis* subsp. *radians*), are present within proposed work areas. Should special status plants be

identified during spring surveys, the survey report shall include recommendations for avoidance, protection and/or mitigation. CDFW recommends the Project area be surveyed for special status plants by a qualified botanist following the "Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities" (CDFW 2018b). This protocol, which is intended to maximize detectability, includes identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period. CDFW recommends special status plant species be avoided whenever possible by delineation and observing a no-disturbance buffer of at least 50-feet from the outer edge of the plant population(s) or specific habitat type(s) required by special status plant species. If buffers cannot be maintained, then consultation with CDFW is warranted to determine appropriate minimization and mitigation measures for impacts to special status plant species.

Mitigation Measure BIO-5, San Joaquin Kit Fox (SJKF) – Pre-Construction Survey/field monitoring, page B-3.

As currently drafted, Mitigation Measure BIO-5 describes prior to any ground disturbance or on-site construction activities, and within 30 days prior to initiation of site disturbance and/or construction, the biologist shall conduct a pre-activity survey for known or potential kit fox dens. At a minimum, if kit fox burrows/dens are found, 'no construction' buffers/exclusion zones shall be established as follows:

- Potential kit fox den/burrow: 50 feet
- Known or active kit fox den: 100 feet
- Kit fox pupping den: 150 feet

CDFW recommends that a qualified biologist assess presence/absence of SJKF and/or their dens by conducting surveys within 200 feet of the Project area, following the USFWS "Standardized recommendations for protection of the San Joaquin kit fox prior to or during ground disturbance" (USFWS, 2011). Pre-construction surveys are also recommended, and CDFW advises conducting these surveys in all areas of potentially suitable habitat no less than 14 days and no more than 30 days prior to beginning of ground-disturbing activities. If dens are found during surveys, CDFW recommends implementing full avoidance for SJKF by employing no-disturbance buffers, in accordance with USFWS' (2011) recommendations. Specifically, if SJKF are found occupying atypical (i.e. manmade structure) den sites, a 50-foot no-disturbance is recommended around the occupied den structure. If potential dens are found during surveys, CDFW advises implementing a 50-foot no-disturbance buffer around these structures as well. Consultation with CDFW and implementation of a 100-foot no-disturbance buffer around dens that are used or known to have been used at any time in the past by SJKF, are found during pre-construction surveys. If a natal or pupping den is found during surveys, consultation with CDFW is recommended.

Mitigation Measure BIO-7, Nesting Birds, page B-6.

As currently drafted Mitigation Measure BIO-7 describes site preparation, ground disturbance, and construction activities including any tree trimming and vegetation removal shall be conducted outside of the migratory bird nesting season (February 1 through August 31). If such activities cannot be avoided during this period, a County-approved qualified biologist shall conduct a preconstruction nesting bird survey no sooner than 1-4 weeks prior to tree removal activities and shall verify whether migratory birds are nesting in the site. CDFW recommends conducting pre-construction surveys for active bird nests within the limits of the project within two weeks prior to any construction activities proposed to occur between February 15 and August 31. If active nests are located, then all construction work shall be conducted outside a no-disturbance buffer zone to be developed by the project biologist based on the species (i.e., 50-feet for common species and at least 500-feet for raptors and special-status species), slope aspect and surrounding vegetation. CDFW encourages Project implementation occur during the bird non-nesting season. However, if ground-disturbing activities must occur during the breeding season (February through mid-September), the Project applicant 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.

CDFW recommends that a qualified wildlife biologist conduct preconstruction surveys for active nests no more than 10-days prior to the start of ground disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the work 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, CDFW recommends a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once construction begins, CDFW recommends a qualified biologist continuously monitor nests to detect behavioral changes resulting from the project. If behavioral changes occur, CDFW recommends the work causing that change cease and CDFW be consulted for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified wildlife biologist is not feasible, CDFW recommends 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.

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 CNDDDB. The CNDDDB field survey form can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB_FieldSurveyForm.pdf. 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: http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp.

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 Project impacts on biological resources.

Should you have questions regarding this letter or for further coordination please contact Kelley Aubushon, Senior Environmental Scientist (Specialist), at the address provided on this letterhead, by telephone at (559) 243-8153, or by email at kelley.aubushon@wildlife.ca.gov.

Sincerely,



Julie A. Vance
Regional Manager

REFERENCES

- Baker, A. 2018. A review of the potential impacts of cannabis cultivation of fish and wildlife resources. California Department of Fish and Wildlife, Sacramento, California.
- Bauer, S. Olson, J., Cockrill, A., van Hattem, M., Miller, L., Tauzer, M., et al., 2015. Impacts of surface water diversions for marijuana cultivation on aquatic habitat in four northwestern California watersheds. PLoS ONE 10(3): e0120016. doi:10.1371/journal.pone.0120016
- Beedy, E. C., W. J. Hamilton III, R. J. Meese, D. A. Airola, and P. Pyle. 2017. Tricolored Blackbird (*Agelaius tricolor*), version 3.0. in The birds of North America. P. G. Rodewald (Ed.). Cornell Lab of Ornithology, Ithaca, New York, USA. <https://doi.org/10.2173/bna.tribla.03>
- Beiswenger, R. E., 1977. Diet patterns of aggregative behavior in tadpoles of *Bufo americanus*, in relation to light and temperature. Ecology 58:98–108.
- California Department of Fish and Wildlife (CDFW). 2015. California Department of Fish and Wildlife staff guidance regarding avoidance of impacts to tricolored blackbird breeding colonies on agricultural fields in 2015. California Department of Fish and Wildlife, March 19, 2015.
- California Department of Fish and Wildlife (CDFW), 2018a. Biogeographic Information and Observation System (BIOS). 2018 <https://www.wildlife.ca.gov/Data/BIOS>. Accessed September 18, 2019.
- CDFW, 2018b. Protocols for surveying and evaluating impacts to special status native plant populations and sensitive natural communities. state of California, California Natural Resources Agency, Department of Fish and Wildlife. March 20, 2018.
- Longcore, T., and C. Rich, 2004. Ecological light pollution - Review. Frontiers in Ecology and the Environment 2:191–198.
- Miller, M. W., 2006. Apparent effects of light pollution on singing behavior of American robins. The Condor 108:130–139.
- Nightingale, B., T. Longcore, and C. A. Simenstad. 2006. Artificial night lighting and fishes. Pages 257–276 in C. Rich and T. Longcore, editors. Ecological consequences of artificial light at night. Island Press, Washington, D.C., USA.

Stone, E. L., G. Jones, and S. Harris, 2009. Street lighting disturbs commuting bats. *Current Biology* 19:1123–1127. Elsevier Ltd.

Tabor, R. A., G. S. Brown, and V. T. Luiting, 2004. The effect of light intensity on sockeye salmon fry migratory behavior and predation by cottids in the Cedar River, Washington. *North American Journal of Fisheries Management* 24:128–145.

Thomson, R. C., A. N. Wright, and H. B. Shaffer, 2016. California amphibian and reptile species of special concern. California Department of Fish and Wildlife and University of California Press: 186-191.

U.S. Fish and Wildlife Service (USFWS), 2010. Golden eagle inventory and monitoring protocols; and other recommendations. Division of Migratory Bird Management. 31 pp.

USFWS. 2011. Standard recommendations for the protection of the San Joaquin kit fox prior to or during ground disturbance. United States Fish and Wildlife Service, January 2011.

Zeiner, D. C., W. F. Laudenslayer, Jr., K. E. Mayer, and M. White, eds, 1988–1990b. Northern California legless lizard *In* Life history accounts for species in the California Wildlife Habitat Relationships (CWHR) System. California's Wildlife. Vol I-III. California Department of Fish and Game, Sacramento, California.