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Governor's Office of Planning & Research

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STATE CLEARINGHOUSE

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Subject: Draft Environmental Impact Report for the Trinity County Cannabis Program Project, State Clearinghouse Number 2018122049

Dear Mr. Colbeck:

The California Department of Fish and Wildlife (CDFW) has reviewed the Draft Environmental Impact Report (DEIR) for the Trinity County (County) Cannabis Program Project (Project) (State Clearinghouse Number 2018122049). The DEIR was received by our office on May 31, 2019. CDFW previously provided comments on the Notice of Preparation (NOP) of the DEIR in January 2019. CDFW was pleased to see many of the topics brought to the County's attention in CDFW's NOP letter addressed in the DEIR.

The Project consists of the readoption of the ordinances below that regulate commercial cannabis operations in the unincorporated area of the County. It also includes a proposed amendment to Section 315-843(1)(i), which would increase the Designated Area for cultivation activities from 200 percent to 250 percent:

- cultivation (Ordinance 315-823, 315-829, 315-830, 315-841, and 315-843),
- testing (Ordinance 315-824),
- nurseries (Ordinances 315-826, 315-827, and 315-833),
- distribution (Ordinances 315-828 and 315-834),
- non-storefront retail (Ordinance 315-835),
- microbusiness (Ordinance 315-837), and
- manufacturing (Ordinances 315-838 and 315-842).

CDFW strongly supports efforts to regulate cannabis cultivation to address the numerous and substantial potential environmental impacts. CDFW believes greater regulatory oversight and enforcement by local Lead Agencies can help minimize the environmental impacts of cannabis cultivation. The circulation of the DEIR is a significant achievement in the County's efforts to minimize the impacts of cannabis cultivation on fish and wildlife resources.

Conserving California's Wildlife Since 1870

CDFW Jurisdiction

California Environmental Quality Act (CEQA) 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) 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.

CDFW expects it will need to exercise regulatory authority as provided by the Fish and Game Code and act as a Responsible Agency as part of its consideration and issuance of discretionary approvals, described below (CEQA Guidelines §§ 15082, subd. (a)(1)(A) & 15124, subd. (d)(1)), for cannabis cultivation site activities in the County.

Discretionary Approvals

State Threatened, Endangered, Candidate and Rare Species: CDFW has discretionary authority over activities that could result in the "take¹" of any species listed as candidate, threatened, endangered, or rare species pursuant to the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.) and the Native Plant Protection Act (NPPA) (Fish & G. Code, § 1900 et seq.). CDFW generally considers adverse impacts on CESA- and NPPA-listed species, for the purposes of CEQA, to be significant without mitigation. Take of any CESA- or NPPA-listed species is prohibited except as authorized by State law (Fish & G. Code, §§ 2080 and 2085; Cal. Code Regs., tit. 14, § 786.9, subd. (b).). Consequently, if an individual cannabis-related activity is approved under the Project, including construction, expansion, or operation of any cultivation activity, and it results in take of CESA- or NPPA-listed species, CDFW recommends the cannabis cultivator seek appropriate authorization prior to Project implementation, including site development or expansion. This may include an Incidental Take Permit (ITP) or a Consistency Determination in certain circumstances (Fish & G. Code, §§ 2080.1 and 2081).

Rivers, Lakes, and Streams: An entity may not substantially divert or obstruct the natural flow of; substantially change or use any material from the bed, channel, or bank of; or dispose of any debris, waste, or other material into, any river, stream, or lake unless certain conditions are met. For such activities, the entity must provide written notification to CDFW. Based on the written notification and site-specific

¹ Pursuant to Fish and Game Code section 86, "Take" means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill."

conditions, CDFW will determine if the activity may substantially adversely affect an existing fish or wildlife resource and issue a Lake or Streambed Alteration (LSA) Agreement to the entity that includes reasonable measures necessary to protect the resource (Fish & G. Code, § 1600 et seq.).

Note that CDFW must comply with CEQA prior to issuing a CESA ITP or LSA Agreement. As such, CDFW must consider the County's environmental impact report (EIR). To minimize additional requirements by CDFW and/or under CEQA, the County's EIR should fully disclose potential Project impacts on CESA- or NPPA-listed species and any river, lake, or stream, and provide adequate avoidance, minimization, mitigation, monitoring, and reporting measures for issuance of the ITP or LSA Agreement. Where site-specific impacts are unknown, a Program Environmental Impact Report (PEIR) should disclose that impacts on these resources have not been fully disclosed and an additional environmental document may be required to be tiered from the PEIR (CEQA Guidelines §§ 15152 & 15162.).

Scientific Collecting Permits

Fish and Game Code sections 1002, 1002.5 and 1003 authorize CDFW to issue permits for the take or possession of wildlife, including mammals, birds and the nests and eggs thereof, reptiles, amphibians, fish, certain plants and invertebrates for scientific, educational, and propagation purposes. CDFW currently implements this authority through section 650, Title 14, California Code of Regulations (CCR), by issuing Scientific Collecting Permits (SCP) to take or possess wildlife for such purposes.

Program Environmental Impact Report

As stated in the NOP and DEIR, the document will be used as a Program Environmental Impact Report (PEIR). The County intends to use this PEIR to streamline the environmental review and consideration of future cannabis operation applications. The DEIR indicates that individual applications for commercial cannabis operations under the ordinance will be subject to further site-specific environmental review as applicable under CEQA pursuant to CEQA Guidelines section 15168(c), *Use with Later Activities*. The County may determine that the environmental impacts of an individual application are adequately addressed in the EIR and that no further environmental review is required. However, the County may determine an additional focused environmental review is required for an individual applicant. Preparation of a site-specific environmental review document, such as a negative declaration or mitigated negative declaration, would be required if the County determines the individual application would cause a significant environmental impact that was not examined in the EIR or would substantially increase the severity of a previously identified significant impact (CEQA Guidelines §§ 15162 and 15168(c)).

The DEIR should establish a procedure for determining if subsequent projects are within the scope of the DEIR, if they require additional environmental documentation, and provide a

checklist to document the evaluation of subsequent projects to determine whether the environmental effects of the operation were covered in the program EIR (CEQA Guidelines § 15168) (**Recommendation #1**).

The checklist should be accompanied by enough relevant information and reasonable inferences based on this information to support each conclusion concerning biological resources. For subsequent Project activities that may affect sensitive biological resources, the Lead Agency will prepare a site-specific analysis from which the supporting information would be derived. The checklist should cite the specific portions of the PEIR, including page and section references, containing the analysis of the subsequent Project activities' impacts and significant impacts and indicate whether it incorporates all applicable PEIR mitigation measures. For full disclosure of impacts, the PEIR should encourage the Lead Agency to make the checklist and supporting biological analysis for each subsequent Project activity available for public review.

Prior to determining whether an additional environmental document will be required, it should informally consult with all Responsible and Trustee agencies, including CDFW (Pub. Resources Code § 21080.3).

Note: An example checklist was developed for infill projects and can be found in CEQA Guidelines section 15183.3 and Appendix N. The Department of Conservation used a similar checklist for their Oil and Gas Well Stimulation Project program EIR, available at:
<ftp://ftp.consrv.ca.gov/pub/oil/SB4EIR/EIR/Apx%20D%20Guidelines%20and%20Checklist.pdf>.

Biological Reconnaissance Survey

A significant number of the biological mitigation measures identified in the DEIR require that a Biological Reconnaissance Survey be conducted prior to new cultivation site development or expansion of an existing cultivation site in order to detect special status species or their habitat. The DEIR recognizes that without the Biological Survey many of the impacts to biological resources identified in the DEIR would be considered significant. With the Biological Reconnaissance Survey, and the subsequent avoidance and minimization measures that are triggered if a special-status species or habitat is detected, the DEIR states these impacts would be considered less than significant. The foundation for the Biological Reconnaissance Survey requirement is established in *Mitigation Measure 3.4-1a: Conduct Preapproval Biological Reconnaissance Surveys* which states:

“Prior to approval of any application for commercial cannabis operations or renewal of an existing licensed cultivation site that is planning to expand its Designated Area, a biological reconnaissance survey shall be conducted within the proposed development area by a qualified biologist approved by the County. The qualified biologist shall assess the habitat suitability of the proposed development area for all special-status plant, wildlife species, and sensitive habitats identified as having potential to occur in the county

consistent with Term 10 under Attachment A (General Requirements and Prohibitions) of SWRCB Order WQ 2017-0023-DWQ. The biologist shall provide a letter report to the project applicant and the County with evidence to support a conclusion as to whether special-status species and sensitive habitats are present or are likely to occur within the proposed development area.”

Because all subsequent species- and habitat-specific mitigation measures are reliant upon a thorough and accurate Biological Reconnaissance Survey it is critical that every survey conducted as part of individual project approval meets the standards necessary for identifying the possible presence of all special-status species identified in the DEIR.

While CDFW has worked extensively with the State Water Resources Control Board (SWRCB) on the Order WQ 2017-0023-DWQ (Cannabis Policy) and is fully supportive of the Cannabis Policy and its implementation, Term 10 of Attachment A is generally not specific enough in its guidance to assure all the unique special-status species in the County are consistently detected during Biological Surveys. Term 10 states:

“Prior to commencing any cannabis land development or site expansion activities, the cannabis cultivator shall retain a Qualified Biologist to identify sensitive plant, wildlife species, or communities at the proposed development site. If sensitive plant, wildlife species, or communities are identified, the cannabis cultivator and Qualified Biologist shall consult with CDFW and CAL FIRE to designate a no-disturbance buffer to protect identified sensitive plant, wildlife species, and communities. A copy of the report shall be submitted to the appropriate Regional Water Board.”

CDFW recommends the County adopt more thorough and clear guidance for the requirements of the Biological Reconnaissance Survey (**Recommendation #2**). More substantial guidance on the requirements for the Biological Reconnaissance Survey will assist County, SWRCB/North Coast Regional Water Quality Control Board, and CDFW staff in reviewing and determining the adequacy of each survey. In addition, CDFW, in its role as a Responsible Agency during the issuance of both LSA and CESA permits, many times requires biological surveys be prepared during the application phase of those permits or as compliance with permit measures. In order to prevent duplicate survey efforts by cannabis cultivation applicants trying to meet the needs of multiple agencies, CDFW offers the following specific language to modify Mitigation Measure 3.4-1a (deletions are represented by ~~strikethrough~~ and additions are in **bold**):

Mitigation Measure 3.4-1a: Conduct Preapproval Biological Reconnaissance Surveys

“Prior to approval of any application for commercial cannabis operations or renewal of an existing licensed cultivation site that is planning to expand its

Designated Area, a biological reconnaissance survey shall be conducted within the proposed development area by a qualified biologist approved by the County. The qualified biologist shall assess the habitat suitability of the proposed development area for all special-status plant, wildlife species, and sensitive habitats identified as having potential to occur in the county consistent with ~~Term 10 under Attachment A (General Requirements and Prohibitions) of SWRCB Order WQ 2017-0023-DWQ~~. The biologist shall provide a letter report to the project applicant and the County with evidence to support a conclusion as to whether special-status species and sensitive habitats are present or are likely to occur within the proposed development area."

The assessment area should be in, and surrounding all, areas with potential for disturbance, including construction and ground disturbance areas, staging areas, areas of light and noise impact, areas of fuel modification, ingress and egress routes, and utility routes, and be large enough to encompass areas subject to both direct and indirect Project impacts. At a minimum, the assessment shall include the following information:

- 1. A map depicting the Project boundary, including the proposed or potential disturbance activities and the unique, rare and special-status species and habitats found onsite.**
- 2. A vegetation map that uses the National Vegetation Classification System, for example *A Manual of California Vegetation* (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=86948>), and highlights any special status natural communities. If another vegetation classification system is used, the report should reference the system, provide the reason for its use, and provide a crosswalk to the National Vegetation Classification System.**
- 3. A description of the assessment methodology and any protocols utilized during the assessment.**
- 4. Date/time/weather conditions during the survey(s).**
- 5. A description of whether site conditions during survey days are considered typical for that site or atypical and why that conclusion was made.**
- 6. A description of the natural environment.**
- 7. Determination of the potential for special-status species and habitats to occur within the Project footprint by analyzing various electronic databases including CDFW's California Natural Diversity Database (CNDDDB), as well as those maintained by the U.S. Fish and Wildlife Service and the California Native Plant Society.**
- 8. A list of common and special-status plant and wildlife species as well as habitats present onsite at the time of survey(s).**

9. **A table depicting special-status plant or wildlife species that may or will be impacted by the Project.**
10. **Delineation of waters of the U.S. including other waters such as isolated wetlands and riparian habitats that are onsite or just adjacent to the Project. This delineation should include CDFW's jurisdiction in addition to that of the U.S. Army Corps of Engineers.**
11. **A table depicting the vegetation communities found onsite with their respective acreage and the acreage impacted by the Project (both directly and indirectly).**
12. **A discussion of impacts associated with increased lighting, noise, human activities, changes in drainage patterns, changes in water volume/velocity/quantity/quality, soil erosion and/or sedimentation in streams and water courses on or near the Project, as applicable.**
13. **Recommendations for avoidance or mitigation measures to reduce impacts to less than significant and /or additional focused surveys.**

A thorough description of the regional setting and baseline habitat conditions at a proposed project site is critical to an assessment of potential environmental impacts, as well as development of specific measures to offset such impacts. CDFW's concurrence with the mitigation measures recommended or proposed by the qualified biologist will depend on the level of detail provided in the pre-project Biological Reconnaissance Survey, including a discussion of the methods, results, and level of survey effort.

Adequate information about special status plants and natural communities present in a project area will enable reviewing agencies, such as the County, SWRCB, and CDFW, as well as the public, to effectively assess potential impacts to special status plants of natural communities and will guide the development of subsequent minimization and mitigation measures as identified in the DEIR.

The County should note that while both the CNDDDB and, additionally for plants, the California Native Plant Society's Rare Plant Inventory of Rare, Threatened, and Endangered Plants of California, are both exceptional resources to evaluate the potential for special-status species occurrence information for a specific project, they are both extremely limited due to the lack of data submitted to these databases from private landowners and those they employ. These databases provide useful information for determining which species are potentially present on a site and which species-specific surveys should be performed; however, they are not an appropriate substitute for project-level biological surveys. Biological Surveys that rely entirely on these databases to support broad project-level conclusions should be viewed with skepticism unless field verification has occurred by a qualified biologist.

A common challenge to agencies involved in the regulation of cannabis cultivation has been cannabis land development and/or site expansion activities occurring without the required surveys or local and State permits. While unauthorized site development may directly remove the biological resources once present in the footprint of a cleared

cultivation site, the cultivation site will continue to impact adjacent habitats and the species residing there. For this reason, CDFW recommends a Biological Survey be completed by all new applicants, as well as applicants seeking to expand their site, regardless of existing site conditions (**Recommendation #3**). Applicants should not be allowed to avoid this requirement because the site was developed prior to County authorization. In instances where it is suspected sensitive natural communities or sensitive habitat (such as wetlands, old growth forest, Critical Habitat, etc.) has been cleared by unauthorized site development, CDFW recommends the Biological Survey still be prepared using forensic botany, GIS, comparing/surveying reference locations, reviewing other nearby public surveys, and other techniques.

Qualified Biologist

The DEIR proposes to rely on “qualified biologists” as the primary mechanism to avoid biological impacts and comply with mitigation measures, and for this reason, adequate qualifications, or a process for approving a biologist, should be defined and disclosed in the DEIR. The DEIR should also provide a mechanism allowing the County to disqualify “qualified biologists,” if necessary, for unsatisfactory performance (**Recommendation #4**). CDFW staff are available to assist the County in providing technical assistance when reviewing qualified biologist work products.

Several biological mitigation measures identified in the DEIR identify possible relocation of individual animals (e.g. Measure 3.4-2b – western pond turtle, Measure 3.4-2f – Trinity bristle snail, Measure 3.4-2l – vole, etc). Please note that in many instances, CDFW will not recommend, support, or endorse the relocation of species. When relocation is feasible, the qualified biologist must have in their possession a valid Scientific Collecting Permit (SCP), or in the case of a CESA listed species, an ITP. The County should consider this requirement when considering the qualifications necessary for approving a qualified biologist (**Recommendation #5**).

In addition, CDFW requests a report be provided for any mitigation measure that proposes relocation as a possible action (**Recommendation #6**). The report should be submitted electronically to CDFW within 15 days of any and all collections and relocations made due to development activities. The report should include the following information: location, date, time and duration of the collections; enumeration and identification of species collected; identification of species life stage; identification of capture personnel; release location and time; stream, transport and receiving water temperatures; location, date, and time of release.

Special-Status Plants

Table 3.4-2: *Special-Status Plant Species Known to Occur in Trinity County and Their Potential for Occurrence* (page 3.4-18) does not include California Rare Plant Rank list 3 species. California Rare Plant Ranked plants meet the definitions of CESA and are eligible for State listing (Rank 1, 2, and 3 species). Impacts to species listed as California Rare

Plant Rank 1, 2, and 3 or their habitat should be analyzed during preparation of environmental documents relating to CEQA, as these plants generally meet the definition of Rare or Endangered under CEQA Guidelines section 15125 (c) and/or section 15380. CDFW recommends California Rare Plant Rank 3 species be included in the Final EIR along with an impact analysis. Future Biological Surveys for individual cultivation sites should also consider Rank 3 species (**Recommendation #7**). Additionally, Table 3.4-2 *Special-Status Plant Species Known to Occur in Trinity County and Their Potential for Occurrence*, doesn't contain the potential for occurrence in the table.

Southern Oregon Northern California Coho Salmon

Southern Oregon Northern California Coho Salmon (*Oncorhynchus kisutch*) (SONCC) are listed as threatened under both the federal Endangered Species Act (ESA) and CESA. The 2016 National Marine Fisheries Service (NMFS) 5-Year status review identifies sufficient instream flow as a critical component to protect the species against extinction, urging state governments to exercise their regulatory authority to ensure adequate flows “remain in the rivers by regulating, monitoring, and enforcing water rights and water diversions.” NMFS specifically addresses cannabis cultivation as an increasing contributor to low-flow conditions within the watersheds in which SONCC exist. The *Recovery Strategy for California Coho Salmon* published by CDFW (2004) identifies Sharber Creek, New River, Manzanita Creek, Canyon Creek, Dutch Creek, Little Browns Creek, Weaver Creek, West Weaver Creek, Sidney Gulch, Indian Creek, Grass Valley Creek, Rush Creek, Deadwood Creek in the Trinity River Watershed; and Eltapom Creek, Hayfork Creek, Olsen Creek, and Butter Creek in the South Fork Trinity River watershed as having key SONCC populations that need to be maintained or improved. In the absence of Critical Habitat mapping for this species CDFW recommends a map of these watersheds, as well as key watersheds identified in the NMFS document, be included as a sensitive community or population (**Recommendation #8**).

Northern California Summer Steelhead

Northern California summer steelhead (*Oncorhynchus mykiss irideus*) habitat exists within the County. On June 12, 2019, the California Fish and Game Commission accepted the petition to list the Northern California summer steelhead as endangered under CESA. The preparation of a Status Review has been initiated to determine whether listing as an endangered species is warranted. Based on findings published June 18, 2019, the Northern California summer steelhead is considered a candidate species as defined by section 2068 of the Fish and Game Code. CDFW recommends Northern California summer steelhead be discussed in the Final EIR, including an analysis of potential impacts, and provide specific avoidance, minimization, or mitigation measures to address potential impacts (**Recommendation #9**).

During the Status Review period, Fish and Game Code section 2085 confers full legal protection of an endangered or threatened species on a candidate species. This includes

the general prohibition on “take” of the species, as defined in Fish and Game Code section 86 as to “hunt, pursue, catch, capture or kill” or to attempt to engage in any of these activities.

Upper Klamath-Trinity River Spring Chinook Salmon

Upper Klamath-Trinity River spring Chinook Salmon (*Oncorhynchus tshawytscha*) habitat exists within the County. On February 6, 2019, the California Fish and Game Commission accepted the petition to list the Upper Klamath-Trinity River spring Chinook Salmon as endangered under the California Endangered Species Act. The preparation of a Status Review has been initiated to determine whether listing as an endangered species is warranted. Based on findings published February 12, 2019, the Upper Klamath-Trinity River spring Chinook Salmon is considered a candidate species as defined by section 2068 of the Fish and Game Code. CDFW recommends Upper Klamath-Trinity River spring Chinook Salmon be discussed in the Final EIR, including an analysis of potential impacts, and provide specific avoidance, minimization or mitigation measures to address potential impacts (**Recommendation #10**).

During the Status Review period, Fish and Game Code section 2085 confers full legal protection of an endangered or threatened species on a candidate species. This includes the general prohibition on “take” of the species, as defined in Fish and Game Code section 86 as to “*hunt, pursue, catch, capture or kill*” or to attempt to engage in any of these activities.

Bumble Bees

Crotch bumble bee, Franklin bumble bee, Western bumble bee, and Suckley cuckoo bumble bee (*Bombus crotchii*, *B. franklini*, *B. occidentalis occidentalis*, and *B. suckleyi*, respectively) habitat may exist within the County. On June 12, 2019, the California Fish and Game Commission accepted the petition to list the four bumble bee species as endangered under the California Endangered Species Act. The preparation of a Status Review has been initiated to determine whether listing as an endangered species is warranted. Based on findings published June 18, 2019, the four bumble bee species are considered candidate species as defined by section 2068 of the Fish and Game Code. CDFW recommends that any of the four species with potential to occur in the County be discussed in the Final EIR, including an analysis of potential impacts, and provide specific avoidance, minimization or mitigation measures to address potential impacts (**Recommendation #11**).

During the Status Review period, Fish and Game Code section 2085 confers full legal protection of an endangered or threatened species on a candidate species. This includes the general prohibition on “take” of the species, as defined in Fish and Game Code section 86 as to “*hunt, pursue, catch, capture or kill*” or to attempt to engage in any of these activities.

Gray Wolf

Gray wolf (*Canis lupus*) was determined not likely to occur in the County based upon review of the species range and occurrence records. The DEIR acknowledges the County is within the historic range of this species. The species has occurred in the County's neighboring counties of Shasta and Siskiyou in recent years.

The gray wolf is listed as an endangered species pursuant to both ESA and CESA. Gray wolves were extirpated from California in the 1920s, and little is known about the historical abundance and distribution of wolves in California. As human population and human development have increased dramatically since wolves last occurred here, CDFW remains uncertain about where and how many wolves will establish as they continue to naturally recolonize the State.

No localized wolf activity is currently known from within the County. If gray wolf activity is detected during Biological Surveys, during subsequent Project activities, or if the current CDFW wolf activity map identifies localized wolf activity within or adjacent to a proposed development area, the Project proponent should consult with CDFW (**Recommendation #12**). CDFW will determine if development activities pose any potential impacts to gray wolves, particularly with respect to potential modification or disruption of key pup rearing areas such as dens and rendezvous sites. Typical measures CDFW might recommend to minimize any such impacts include limited operation periods, disturbance buffers, reduced speed and signage on access roads, modification of access routes to avoid key areas, and additional biological monitoring.

Noise and Light Attenuation

The DEIR includes a discussion of the impacts of both noise and light on wildlife species and provides requirements for mitigating the impacts of each. CDFW concurs that the mitigation measures identified in the DEIR may be effective if they are consistently enforced. However, to date, enforcement of light and noise measures has been difficult and is often reliant on the neighboring public to bring violations to the attention of code enforcement personnel. CDFW recommends the County include a mitigation measure in the DEIR that requires applicants proposing to use artificial light or generators for cannabis cultivation to prepare a Noise and Light Attenuation Plan for the County to review and approve (**Recommendation #13**). This would assist County staff in enforcing light and noise standards necessary to protect fish and wildlife resources by providing documentation of the existing lighting and generator infrastructure on each site.

A Noise and Light Attenuation Plan could specify information such as:

- The quantity of generators and/or fans used on the premises and identify the make/model of each;

- Specify the sound rating for each different model of generator and fan (if applicable);
- If secondary containment is currently incorporated and/or proposed, specify the structure design and indicate structure material(s).
- If noise dampening techniques are employed and/or proposed, other than secondary containment, describe methods and materials used.
- Describe type of light element(s) used.
 - Example: LED, Fluorescent, Low Pressure Sodium, Metal Halide, etc.
- Describe rate of energy transfer (watts).
 - Example: 60 Watt
- Describe temperature/light produced (lumens) of the individual light unit (i.e. bulb).
 - Example: 2000 lumens
- Indicate number of light element(s) used.
 - Example: 10 light elements in Greenhouse #1
 -
- Describe fixture (luminaire) make/model and include a minimum of one photograph for each different fixture make/model (if multiple).
- Indicate the timing of light use for cultivation, including start and end time within a 24-hour period, and time of use throughout the calendar year.
 - Example: 6:00 p.m. to 7:00 a.m. April 1 through April 22, and 9:00 p.m. to 6:00 a.m. July 15 through August 5.
- Describe light use for employee visibility (if applicable).

A Noise and Light Attenuation Plan could also specify the actions that are to be undertaken for attenuation, for example:

- Describe type of light shield system (automated and/or manual, exterior and/or interior), describe how light shield(s) will be engaged/disengaged. Describe how light shield system(s) are secured to the structure and/or ground (if applicable).
 - Example: Four staff personnel manually pull tarps at 6:00 p.m. Tarp ends are tied with rope, at 5-foot intervals; rope is secured to 6-inch metal stakes buried in the ground. Tarps are manually removed by four staff personnel at 6:00 a.m., rolled up and secured to the greenhouse.
- Indicate tarp/shield material(s).
 - Example: 5.5 Mil Black and White Poly Film

- Indicate the time that light shielding will be employed for cultivation including start and end time within a 24-hour period and time of use (days/weeks/months) in the calendar year.
 - Example: 5:00 p.m. to 11:00 a.m. March 15 through April 7, and 9:00 p.m. to 2:00 p.m. June 15 through July 7.
- Describe how light shield materials are stored when not in use.

The Noise and Light Attenuation Plan could also include annual photo monitoring of greenhouses during the nighttime and measurements of noise during operation of fans and generators. County staff with this plan available to them would more easily be able to respond to public complaints because they have baseline conditions and disclosed attenuation measures available to them prior to conducting compliance inspections or responding to complaints.

Cultivation in Floodplains

Cultivation of cannabis requires a nitrogen-rich soil environment, and thus, many cultivators use fertilizers and imported soils to increase the nitrogen content of the local soils. Nutrient enrichment can increase the abundance of pests and pathogens, and the use of imported soils can contain invasive plant or animal species that harm native biodiversity. Excess nutrients from fertilizers that run off into watersheds can cause nutrient imbalances that kill fish and other wildlife and decrease the activity of aquatic species. Fertilizer runoff can also cause algae outbreaks, which, when they begin to decay, deplete the water of oxygen, suffocating fish and other aquatic life.

The SWRCB Order WQ 2017-0023-DWQ requires a Nitrogen Management Plan (NMP) only for Tier 2 outdoor commercial cultivation activities, which are sites that disturb an area equal to or greater than 1 acre. The NMP requires applicants to calculate all the nitrogen applied to the cannabis cultivation site (dissolved in irrigation water, originating in soil amendments, and applied fertilizers) and describe procedures to limit excessive fertilizer application. Because cultivation within areas that may be seasonal inundated by water, such as floodplains, increases the risk of nutrient discharge into waterways, CDFW recommends the County require applicants cultivating within a floodplain, regardless of the size of the cultivation area, to prepare and submit a NMP to the County (**Recommendation #14**). The plan's content should be consistent with the plan requirements required by the SWRCB.

Groundwater Monitoring and Adaptive Management

Many sensitive species and habitats are reliant upon groundwater to sustain them, including salmonids, springs, seeps, riparian vegetation, streams, and wetlands. The unsustainable use of groundwater can impact the shallow aquifers and interconnected surface waters on which these sensitive species and habitats depend and may lead to adverse impacts on fish and wildlife. If hydrologic connectivity exists between a terrestrial

or aquatic ecosystem and groundwater, then that ecosystem is a potentially reliant upon groundwater and should be protected from over extraction of groundwater resources that would result in an impact. In order to protect sensitive species and habitats, CDFW recommends that DEIR includes an analysis and consideration of the impact of groundwater withdrawal on "waters of the state" (Water Code § 13050(e)) and sensitive habitats in the management of groundwater (**Recommendation #15**). The following is revised language recommended for Mitigation Measure 3.10-2:

- *As part of the application and license renewal process, applicants shall provide the County with groundwater monitoring data for existing on-site well facilities that documents well production and changes in groundwater levels during each month of the year. Should this monitoring data identify potential drawdown impacts on adjacent well(s), **waters of the state and sensitive habitats**, and indicate a connection to operation of the on-site wells, the cannabis operators, in conjunction with the County, shall develop adaptive management measures to allow for recovery of groundwater levels. Adaptive management measures may include forbearance (e.g., prohibition of groundwater extraction from the months of May to October), water conservation measures, reductions in on-site cannabis cultivation, alteration of the groundwater pumping schedule, or other measures determined appropriate. Adaptive management measures will remain in place until groundwater levels have recovered based on annual monitoring data provided to the County as part of subsequent annual inspections.*

In order to assess and prevent groundwater extraction from impacting waters of the state and sensitive habitats, CDFW recommends that all new wells and existing wells proposed for use with new licenses that may affect surface flow located in the current and future Cannabis Priority Watersheds (SWRCB 2019) be assessed for hydrologic connectivity to surface water by a professional engineer. Wells likely to be impacting surface waters should not be permitted for use in cannabis cultivation in order to protect waters of the state and sensitive habitats (**Recommendation #16**).

If detailed analysis of new and existing wells is not considered feasible, CDFW recommends adding the language identified below to Mitigation Measure 3.10-2 (**Recommendation #17**). The intent of this language is to ensure: (1) information on water use is available to CDFW and SWRCB for monitoring impacts in the Cannabis Priority Watersheds, (2) onsite wells and storage provide sufficient water during peak cannabis water demand, and (3) wells are located outside SWRCB setbacks in order to minimize impacts to nearby streams and wetlands.

- Well productivity reports for each groundwater well on the parcel shall be available to CDFW and SWRCB upon request.
- Cultivators seeking new licenses or license renewal shall clearly demonstrate through analysis of well productivity and site-specific cultivation needs that: (1) the groundwater well(s) used for cannabis irrigation is/are sufficient to meet the need of the operation

during the peak time of use (August 1-September 30); or (2) a combination of well water and water storage are sufficient to meet the need of the operation during the peak time of use. Anticipated water need per plant shall be assumed at 6 gallons per plant per day, the upper estimate of cannabis plant requirement at peak vegetative state, unless applicants can demonstrate measured use that indicates a more appropriate per plant water use.

- Existing and proposed groundwater wells proposed for use in the production of commercial cannabis shall meet the stream setbacks identified in SWRCB Order WQ 2019-0023-DWQ.

Roadway Maintenance

CDFW supports the requirement for roads to be maintained in a manner consistent with the Five Counties Salmonid Conservation Roads Maintenance Manual. However, it is unclear how this measure will be implemented in such areas as Trinity Pines (including, but not limited to, Trinity Pines Drive, Ponderosa Road, Rattlesnake Road, Pine Forest Road, Chrome Mine Road, Westridge Road, etc.) and Barker Valley (including but not limited to Barker Creek Road, Barker Valley Road, North Meadow Lane and South Meadow Lane, etc.) where roads are generally not maintained by the County and are under the ownership of dozens of individual landowners, but the responsibility and maintenance is typically not clear and/or results in road erosion and impacts to streams. In many cases, the aforementioned road networks are in highly degraded condition, poorly designed, and yield sediment laden runoff to impaired waterbodies after each rain event. CDFW recommends the DEIR clarify how multi-owner private dirt road networks like those found in Trinity Pines and Barker Valley will be maintained in order to accommodate commercial cannabis traffic while also minimizing potentially significant cumulative water quality impacts (**Recommendation #18**).

Mitigation Measure Language Changes

CDFW recommends the following changes and modifications to mitigation measures in the DEIR to add clarity or make them more effective. (**Recommendation #19**). Deletions are represented by ~~strikethrough~~ and additions are in **bold**. Existing DEIR measures and bullet points not addressed below are assumed to be left unchanged.

Mitigation Measure 3.1-1a: Screen Cultivation Sites from County Scenic Roadways

Locally appropriate native vegetation should be used whenever planting or revegetation is required.

- *License applications for new cultivation sites and requests for license renewal for sites located within 0.5 mile of a County-designated scenic roadway will provide details on methods to screen the cultivation site from public views along the scenic roadway so that the developed site conditions blends with the existing visual character of the viewshed and does not dominate the view. Screening may be*

accomplished through retention of perimeter trees and other vegetation, revegetation with locally appropriate native vegetation as part of site modification or closure, or other methods determined acceptable to the County. This requirement will not apply to cultivation sites that demonstrate the site is not visible from the scenic roadway. Due to the topography of specific sites, a fence may not be adequate to screen a cultivation site from the roadway. For these sites, perimeter trees and other vegetation shall be used.

Mitigation Measure 3.4-1b: Conduct Special-Status Plant Surveys and Implement Avoidance Measures and Mitigation

Please note that CDFW published a revised *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities* in 2018. A copy of this document may be downloaded here: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959>. CDFW staff are available to support County staff in the review of technical biological documents. Please see the following addition on how reports should be submitted by applicants to CDFW.

- *Prior to commencement of new development related to cannabis activities or the expansion of the Designated Area for existing licensed cultivation sites and during the blooming period for the special-status plant species with potential to occur on the site, a qualified botanist approved by the County shall conduct protocol-level surveys for special-status plants in all proposed disturbance areas following survey methods from CDFW's *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities (CDFW 2009-2018)*.*
- *If special-status plants are not found, the botanist shall document the findings in a letter report to CDFW and the applicant, and no further mitigation will be required. Reports shall be submitted to CDFW via email at R1LSARedding@wildlife.ca.gov and shall include the project applicant's name, address and Assessor's Parcel Number in the Subject line.*

Mitigation Measure 3.4-1c: Implement Measures to Avoid Introduction or Spread of Invasive Plant Species

In order to control and prevent the spread of invasive species, CDFW has the following additions:

- **Only weed-free erosion control materials and mulch shall be used onsite.**
- **Applicants shall monitor annually to ensure successful removal and prevention of new infestations of invasive species.**

Mitigation Measure 3.4-2a: Conduct Preconstruction Surveys for Special-Status Amphibians

CDFW has the following additions the assist the County and qualified biologists in identifying proper amphibian survey protocols:

- *If special-status amphibians or their habitat are detected during the initial biological reconnaissance survey (see Mitigation Measure 3.4-1a) or are determined to be likely to occur, consultation with CDFW shall be initiated to determine whether mitigation measures, such as project design modifications, relocation of the site, relocation of individual animals, or installation of exclusionary fencing, will be necessary and appropriate*

- *Regardless of detection during the initial biological reconnaissance survey, if suitable habitat for special-status amphibians is present within the proposed development area, a qualified biologist approved by the County and familiar with the life cycle of Cascades frog, foothill yellow-legged frog, Pacific tailed frog, southern long-toed salamander, and southern torrent salamander shall conduct preconstruction surveys of proposed new development activities 48 24 hours before new development activities. **Preconstruction surveys for special status amphibians shall follow widely used and accepted standardized protocols that control for habitat type, seasonality, and environmental conditions, including the methods described in Considerations for Conserving the Foothill Yellow-Legged Frog link: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=157562&inline> and Visual Encounter Survey Protocol for Rana Boylii in Lotic Environments link: <https://watershed.ucdavis.edu/files/CWS%20FYLF%20VES%20Survey%20Protocol-Final.pdf>.** Preconstruction surveys for special status amphibian species shall be conducted throughout the proposed construction area and a **at least a 400-foot buffer** around the proposed development area. Surveys shall consist of “**visual encounter**” surveys as well as “walk and turn” surveys of areas beneath surface objects (e.g., rocks, leaf litter, moss mats, coarse woody debris) for salamanders, and visual searches for frogs. Preconstruction surveys shall be conducted within the appropriate season to maximize potential for observation for each species, and appropriate surveys will be conducted for the applicable life stages (i.e., eggs, larvae, adults).*

- *If special-status amphibians are detected during the preconstruction survey, **work on the site shall not commence until the applicant has consulted with CDFW shall be initiated** as described above. Injury to or mortality of special-status amphibians will be avoided by modifying project design, relocating the cultivation site, or relocating individual animals. If impacts to Cascades frog or foothill yellow-legged frog (both listed under CESA) are unavoidable, then the applicant will submit an incidental take permit (ITP) application to CDFW and receive take authorization before commencing development of the cultivation site. Conditions of incidental take authorization may*

include minimization measures to reduce impacts to individual Cascades frogs or foothill yellow-legged frogs, or compensation for loss of the species including but not limited to purchasing credits from a CDFW-approved mitigation bank.

Mitigation Measure 3.4-2b: Conduct Surveys for Western Pond Turtle and Relocate Individuals

Western pond turtle nests are sensitive to disturbance and protection is critical to species propagation. CDFW advises the following additions:

- **Western pond turtles in Northern California are known to concentrate nests in forest glades, therefore; preconstruction surveys should include these important nesting areas if suitable aquatic habitat for western pond turtle is present within or adjacent to the proposed development area. Additionally, western pond turtles are documented to overwinter in nests in Northern California. If western pond turtles are suspected to nest in the project area, or nests are found, nesting areas shall be protected throughout the winter to protect overwintering nestlings.**
- **If relocation of western pond turtles is determined to be necessary, turtles shall be relocated to similar nearby habitat which is free of predators including signs of racoon, coyote, raptors and bullfrog, non-native turtles, and conspecifics which may compete for resources. A report shall be submitted to CDFW within 15 days of relocation documenting the relocation effort.**

Mitigation Measure 3.4-2d: Conduct Northern Spotted Owl Preconstruction Habitat Suitability Surveys and Determine Presence or Absence of the Species

CDFW supports this mitigation measure as described in the DEIR and requests that the County notify CDFW if changes to measures related to Northern Spotted Owl (NSO) are proposed.

The County should note that the *Protocol for Surveying Proposed Management Activities That May Impact Northern Spotted Owls* (USFWS 2012) contains requirements for each surveyors' credentials in Appendix 4: *Recommendations for Spotted Owl Surveyors Credentials and Qualifications*. The County should consider these requirements when approving a qualified biologist for NSO surveys.

CDFW recommends the DEIR clarify whether "new development activities" indicated in the first sentence of the second bullet point of the measure includes both new applications as well as site expansion activities. The DEIR should clarify how this measure would impact proposed site expansion activities within 1.3 miles of an NSO detection. If an applicant were to propose expansion of an existing site and performed an NSO survey during which a detection occurred, would that site be forced to close, or would other minimization measures be afforded to them?

Mitigation Measure 3.4-2e: Conduct Preconstruction Special-Status Nesting Bird Surveys and Establish Protective Buffers

The DEIR identifies yellow-billed cuckoo, a CESA-listed species, in its analysis; however, the County is outside the known range of the species and CDFW does not recommend a protocol level survey effort. Little willow flycatcher is a CESA-listed species, whose range encompasses the County, which warrants a greater survey and habitat protection efforts than currently proposed in the DEIR. Implementation of the following measures would increase the probability to detect the species:

- **If project activities proposed in or adjacent to potential willow flycatcher (WIFL) habitat, which includes willow and alder thickets adjacent to permanent water such as low-gradient streams, ponds, marshes or wet meadows within or adjacent to forested habitat, the applicant shall undertake protocol-level surveys for WIFL prior to any construction or land clearing activities in order to determine if WIFL are present or suitable habitat exists. The survey protocol entitled *A Willow Flycatcher Survey Protocol for California* is available here: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=84019&inline>**
- **If surveys determine the presence of WIFL no operations shall occur during the breeding season (May 1 through August 31) in and within 300 feet of the WIFL habitat where WIFL have been found present. Any operations conducted within or adjacent to suitable WIFL habitat where WIFL have been found shall not damage or destroy willows or other riparian shrubs unless agreed on through consultation with CDFW.**

Mitigation Measure 3.4-2f: Conduct Preconstruction Surveys for Trinity Bristle Snail

Please note that Trinity Bristle Snail (TBS) is difficult to consistently and reliably identify distinctly from other closely related *Monadenia* sp. The most reliable method currently available for positive identification is through genetic testing, which requires killing (take) of the animal. TBS is a CESA-listed Threatened species, and as such take requires an Incidental Take Permit (ITP) from CDFW. Any activity involving handling or relocation of TBS would also require an ITP or other authorization.

TBS requires a relatively narrow set of environmental factors to exist on a given landscape, therefore habitat may be used as a reliable proxy to determine potential for occurrence. In the absence of an ITP or other authorization that could allow for proper identification of TBS, CDFW recommends that any species of *Monadenia* residing in potentially suitable habitat be considered TBS and take should be avoided:

- *Regardless of detection during the initial biological reconnaissance survey, if suitable habitat for Trinity bristle snail is present within the proposed development area, a qualified biologist approved by the County and familiar with the species shall conduct preconstruction surveys of proposed new development activities within the period when*

*the species is the most active (between May and October and between dusk and dawn) prior to new development activities. Preconstruction surveys shall be conducted using a widely used and accepted standardized protocols that control for seasonality and environmental conditions, such as the **Survey Protocol for Survey and Manage Terrestrial Mollusk Species from the Northwest Forest Plan**, available for download here: https://www.blm.gov/or/plans/surveyandmanage/files/11-mollusks_v3_enclosed2.pdf. Surveys shall be conducted throughout the proposed construction area and an appropriate buffer around the proposed development area as determined by the qualified biologist familiar with the species and survey protocols. Surveys shall consist of "walk and turn" surveys of areas beneath surface objects (e.g., rocks, leaf litter, moss mats, coarse woody debris).*

- If Trinity bristle snail **or its habitat** is not detected during the preconstruction survey, then further mitigation is not required.
- *If Trinity bristle snail is detected during the preconstruction survey, then consultation with CDFW shall be initiated as described above. Injury or mortality of this species will be avoided by modifying project design, **or** relocating the cultivation site. ~~or relocating individual animals.~~ If impacts to Trinity bristle snail are unavoidable, then the applicant will submit an ITP application to CDFW and receive authorization prior to commencing development of the cultivation site. Conditions of incidental take authorization may include minimization measures to reduce impacts to individual Trinity bristle snails, or compensation for loss of the species including but not limited to purchasing credits from a CDFW approved mitigation bank.*

Mitigation Measure 3.4-2g: Conduct Preconstruction American Badger Survey and Establish Protective Buffers

A 30-day preconstruction survey period is too long and would have an unreasonably high probability for den occupation in the time between the survey and construction beginning. A survey seven days prior to construction would reduce this probability significantly:

- *Prior to the commencement of construction activities, a qualified wildlife biologist approved by the County shall conduct surveys of the suitable grassland or agricultural habitats slated for conversion within the site to identify any American badger burrows/dens. These surveys shall be conducted not more than ~~30~~ 7 days prior to the start of construction. If occupied burrows are not found, further mitigation shall not be required. If occupied burrows are found, impacts to active badger dens shall be avoided by establishing exclusion zones around all active badger dens, within which construction related activities shall be prohibited until denning activities are complete or the den is abandoned. The qualified biologist shall monitor each den once per week to track the status of the den and to determine when it is no longer occupied.*

Recommendation Summary

1. The DEIR should establish a procedure for determining if each subsequent Project activity is within the scope of the PEIR or requires an additional environmental document, and include the use of a checklist. Each Lead Agency should use the checklist appended to the PEIR and file a Notice of Determination for each subsequent activity.
2. The DEIR should adopt a more thorough and clear mitigation measure for the requirements of the Biological Reconnaissance Survey. CDFW provides language to meet this recommendation
3. A Biological Reconnaissance Survey should be completed by all new applicants, as well as applicants seeking to expand their site, regardless of existing site conditions. Sites cleared without County authorization should still complete a Biological Reconnaissance Survey to assess impacts that may have already occurred as well as impacts to adjacent species and habit.
4. Adequate qualifications for a "qualified biologist," or the process and considerations the County will use when approving a "qualified biologist," should be defined and disclosed in the DEIR. The DEIR should also provide a mechanism allowing the County to disqualify "qualified biologists" if necessary, for unsatisfactory performance.
5. Many of the biological mitigation measures in the DEIR require relocation of fish and wildlife species, which may require a SCP or an ITP, depending on the species and its CESA status. The County should consider the likelihood of having to relocate species and the need for a SCP/ITP when approving a qualified biologist.
6. A report should be submitted to CDFW within 15 days of any and all species collections and relocations made due to site development activities.
7. California Rare Plant Rank 3 species should be included in the Final EIR along with an impact analysis. Biological Reconnaissance Surveys for individual cultivations sites should also consider Rank 3 species.
8. The DEIR should include a map and discussion of Southern Oregon Northern California Coho Salmon (*Oncorhynchus kisutch*) and their occupied and intrinsic watersheds in the County as a sensitive community or population.
9. The DEIR should recognize Northern California summer steelhead (*Oncorhynchus mykiss irideus*) as a candidate species under CESA, analyze potential impacts, and provide specific avoidance, minimization and mitigation measures to address potential impacts.

10. The DEIR should recognize Upper Klamath-Trinity River spring Chinook Salmon (*Oncorhynchus tshawytscha*) as a candidate species under CESA, analyze potential impacts, and provide specific avoidance, minimization and mitigation measures to address potential impacts.
11. The DEIR should recognize the Crotch bumble bee, Franklin bumble bee, Western bumble bee, and Suckley cuckoo bumble bee (*Bombus crotchii*, *B. franklini*, *B. occidentalis occidentalis*, and *B. suckleyi*, respectively) as a candidate species under CESA, analyze potential impacts, and provide specific avoidance, minimization and mitigation measures to address potential impacts.
12. If evidence of Gray wolf (*Canis lupus*) is noted during Biological Reconnaissance Surveys, CDFW should be consulted immediately.
13. The DEIR should include a measure requiring that applicants proposing to use artificial light or generators during cannabis cultivation provide a Noise and Light Attenuation Plan to the County for review and approval. CDFW provides a list of recommended content.
14. The DEIR should require that applicants cultivating within a floodplain, regardless of the size of the cultivation area, prepare and submit a Nitrogen Management Plan to the County.
15. The DEIR should include an analysis and consideration of the impact of groundwater withdrawal on "waters of the state" (Water Code § 13050(e)) and sensitive habitats in the management of groundwater levels.
16. New wells and existing wells proposed for use with new licenses that may affect surface flow and located in the current and future Cannabis Priority Watersheds should be assessed for hydrologic connectivity to surface water by a professional engineer.
17. If detailed analysis of new and existing wells is not considered feasible, Mitigation Measure 3.10-2 should be modified to ensure: (1) information on water use is available to CDFW and SWRCB for monitoring impacts in the Cannabis Priority Watersheds, (2) onsite wells and storage provide sufficient water during peak cannabis water demand, and (3) wells are located outside SWRCB setbacks in order to minimize impacts to nearby streams and wetlands.
18. The DEIR should clarify how multi-owner private dirt road networks will be maintained in order to accommodate commercial cannabis traffic while minimizing the discharge of sediment from these road networks.
19. CDFW recommends making several changes to proposed mitigation measures to make them clearer or more effective.

Filing Fees

CDFW anticipates the Project will have an impact to fish and/or wildlife habitat, and assessment of filing fees is necessary (Pub. Resources Code, § 21089; Fish & G. Code, § 711.4.). 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.

CDFW appreciates the opportunity to comment on the DEIR and looks forward to working with the County to effectively regulate cannabis cultivation and mitigate its environmental impacts. If you have any questions, please contact Adam McKannay, Senior Environmental Scientist (Supervisor), at (530) 225-2124 or adam.mckannay@wildlife.ca.gov.

Sincerely,



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