

## CHAPTER 7 - RESPONSE TO COMMENTS

### **7.1 - Introduction**

As defined by Section 15050 of the *California Environmental Quality Act (CEQA) Guidelines*, the City of Fresno is serving as “Lead Agency” for the preparation of the Environmental Impact Report (EIR) for the Proposed Regulation and Permitting of Commercial Cannabis Activities (project or proposed project). The Final EIR presents the environmental information and analyses that have been prepared for the proposed project, including comments received addressing the adequacy of the Draft EIR, and responses to those comments. In addition to the responses to comments, clarifications, corrections, or minor revisions have been made to the Draft EIR. The Final EIR which includes the responses to comments, the Draft EIR, and the Mitigation, Monitoring, and Reporting Program, will be used by the Planning Commission and City Council in the decision-making process for the proposed project.

### **7.2 - Environmental Review Process**

A Notice of Preparation (NOP)/Draft EIR (SCH No. 2019070123) was circulated for a 30-day public review period beginning on July 5, 2019 and ending August 5, 2019. A total of six comment letters were received on the NOP. The NOP and comment letters are located in Appendix A, Volume II of this EIR.

A Notice of Availability for the Draft EIR was circulated for a 45-day period beginning April 24, 2020 and ending June 9, 2020. A total of 6 comments were received.

Section 15088 of the *CEQA Guidelines* requires that the lead agency evaluate comments on environmental issues received from persons and agencies that reviewed the Draft EIR and prepare a written response addressing the comments received. The response to comments is contained in this document — Volume III, Chapter 7 of the Draft EIR. Volumes I, II, and III together constitute the Final EIR.

The Fresno Council of Governments – Airport Land Use Commission, discussed the City of Fresno Text Amendment P19-02978, at their regularly scheduled meeting on June 1, 2020, at 2:00 p.m. The item was presented to the Commission by Fresno COG staff. No comments were made by the public or commissioners. Action was taken to approve a finding of consistency for the Project.

### **7.3 - Revisions to the Draft EIR**

The revisions that follow were made to the text of the Draft EIR. Amended text is identified by page number. Additions to the Draft EIR text are shown with underline and text removed from the Draft EIR is shown with ~~striketrough~~. The revisions, as outlined below, fall within the scope of the original project analysis included in the Draft EIR and do not result in an increase to any identified impacts or produce any new impacts. No new significant environmental impact would result from the changes or from a new mitigation measure proposed to be implemented.

Therefore, no significant revisions have been made which would require recirculation of the Draft EIR pursuant to *CEQA Guidelines* Section 15088.5 (Recirculation of an EIR Prior to Certification).

### Page 3-28

#### ***OTHER RESPONSIBLE AGENCIES***

Future activities related to cannabis businesses may require consideration and approval from a variety of agencies, who will be CEQA responsible or trustee agencies in this environmental process. The specific responsible agencies may vary, depending upon the nature of the planned activity, location and the resources impacted by cultivation, manufacturing, distribution, testing, and retail activities. A preliminary list of potentially responsible and trustee agencies is provided below.

- California Department of Fish and Wildlife (CDFW)
- California Bureau of Cannabis Control (~~CalCannabis~~BCC)
- California Department of Food and Agriculture (CDFA)
- CalCannabis Cultivation Licensing (CalCannabis)
- San Joaquin Valley Air Pollution Control District (SJVAPCD)
- California Department of Public Health (CDPH)
- Central Valley Regional Water Quality Control Board (RWQCB)
- California Department of Transportation (CalTrans)
- California Department of Equalization
- California Department of Justice
- California Franchise Tax Board
- California Environmental Protection Agency

### Page 4.1-6 (Aesthetics)

#### ***CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE***

The Cannabis Cultivation Program requires the following regulations, per California Code of Regulations, Title 3:

#### ***§8304 – General Environmental Protection Measures***

All licensees shall comply with all of the following environmental protection measures:

(c) All outdoor lighting used for security purposes shall be shielded and downward facing;

(g) Mixed-light license types of all tiers and sizes shall ensure that lights used for cultivation are shielded from sunset to sunrise to avoid nighttime glare.

**Page 4.1-18 (Aesthetics)**

The Final PEIR for CalCannabis Cultivation Licensing, completed by the California Department of Food and Agriculture (California Department of Food and Agriculture, 2017), concluded a less-than-significant impact to light and glare for indoor cultivation facilities. The PEIR, similar to the EIR, bases its conclusions on the fact that the vast majority of ~~commercial~~ these cannabis businesses would be located in commercial or industrial settings, which would not have viewer groups (e.g., residences) that would be substantially adversely affected by nighttime lighting. ~~And~~ Adherence to Section 15-2015 of the existing Development Code would reduce the operational lighting from any new commercial cannabis operations. ¶The issuance of licenses is contingent upon commercial cannabis sites meeting the City's requirements related to zoning and land use compatibility, including requirements for outdoor lighting to be downward facing and/or shielded.

**Page 4.3-27 (Air Quality)**

**MM 4.3-1:** Prior to issuance of a grading or building permit or conditional use permit, individual project applicants shall submit written documentation of project compliance with applicable State and federal air pollution control laws and regulations. The project applicant shall also comply with applicable rules and regulations of the San Joaquin Valley Air Pollution Control District during construction and during operations of cannabis facilities.

Any cannabis project under the jurisdiction of the City's program that has impacts to air quality that are determined to be *significant and unavoidable* will either mitigate such emissions to *less than significant* or enter into a VERA with the San Joaquin Valley APCD to mitigate such project to a level that is determined to be *less than significant*.

**Page 4.3-33 (Air Quality)**

Odor impacts are assessed in Impact 4.3-54. Operational odor impacts associated with ~~an~~ unmitigated ~~potential subsequent~~ cannabis. ~~The~~ cultivation facilities are known to be a source of odorous compounds. However, requirements that include the installation of exhaust air filtration systems that would prohibit odors generated inside a facility from being detected outside would reduce potential impacts. Even without setbacks for all cannabis businesses, proper implementation of these regulations will eliminate odors from all cannabis businesses. With implementation of Mitigation Measure MM 4.3-5 requiring an Odor Management Control Plan to be submitted to the City, the Project would not result in other emissions, including odors, that would adversely affect substantial persons. Therefore, it is anticipated that the Project would not result in a cumulatively considerable contribution to odors, and cumulative impacts would be less than significant.

**Page 4.4-23 (Biological Resources)**

**CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE**

The Cannabis Cultivation Program requires the following regulations, per California Code of Regulations, Title 3:

**§8102 – Annual License Application Requirements**

(p) For all cultivator license types except Processor, evidence of enrollment in an order or waiver of waste discharge requirements with the State Water Resources Control Board or the appropriate Regional Water Quality Control Board. Acceptable documentation for evidence of enrollment can be a Notice of Applicability letter. Acceptable documentation for a Processor that enrollment is not necessary can be a Notice of Non-Applicability;

(v) Identification of all of the following applicable water sources used for cultivation activities and the applicable supplemental information for each source pursuant to section 8107 of this chapter:

(1) A retail water supplier;

(2) A groundwater well;

(3) A rainwater catchment system;

(4) A diversion from a surface waterbody or an underground stream flowing in a known and definite channel.

**§8304 – General Environmental Protection Measures**

All licensees shall comply with all of the following environmental protection measures:

(a) Compliance with section 13149 of the Water Code as implemented by the State Water Resources Control Board, Regional Water Quality Control Boards, or California Department of Fish and Wildlife;

(b) Compliance with any conditions requested by the California Department of Fish and Wildlife or the State Water Resources Control Board under section 26060.1(b)(1) of the Business and Professions Code;

(c) All outdoor lighting used for security purposes shall be shielded and downward facing;

(g) Mixed-light license types of all tiers and sizes shall ensure that lights used for cultivation are shielded from sunset to sunrise to avoid nighttime glare.

**§8216 – License Issuance in an Impacted Watershed**

If the State Water Resources Control Board or the Department of Fish and Wildlife notifies the department in writing that cannabis cultivation is causing significant adverse impacts on the environment in a watershed or other geographic area pursuant to section 26069, subdivision (c)(1), of the Business and Professions Code, the department shall not issue new licenses or increase the total number of plant identifiers within that watershed or area while the moratorium is in effect.

#### §8306 – Generator Requirements

(a) For the purposes of this section, “generator” is defined as a stationary or portable compression ignition engine pursuant to title 17, division 3, chapter 1, subchapter 7.5, section 93115.4 of the California Code of Regulations.

(b) Licensees using generators rated at fifty (50) horsepower and greater shall demonstrate compliance with either, as applicable, the Airborne Toxic Control Measure for stationary engines pursuant to title 17, division 3, chapter 1, subchapter 7.5, sections 93115 through 93115.15 of the California Code of Regulations, or the Airborne Toxic Control Measure for portable engines pursuant to title 17, division 3, chapter 1, subchapter 7.5, sections 93116 through 93116.5 of the California Code of Regulations. Compliance shall be demonstrated by providing a copy of one of the following to the department upon request:

(1) For portable engines, a Portable Equipment Registration Certificate provided by the California Air Resources Board; or

(2) For portable or stationary engines, a Permit to Operate, or other proof of engine registration, obtained from the Local Air District with jurisdiction over the licensed premises.

(c) Licensees using generators rated below fifty (50) horsepower shall comply with the following by 2023:

(1) Either (A) or (B):

(A) Meet the “emergency” definition for portable engines in title 17, division 3, chapter 1, subchapter 7.5, sections 93116.2(a)(12) of the California Code of Regulations, or the “emergency use” definition for stationary engines in title 17, division 3, chapter 1, subchapter 7.5, section 93115.4(a)(30); or

(B) Operate eighty (80) hours or less in a calendar year; and

(2) Either (A) or (B):

(A) Meet Tier 3 with Level 3 diesel particulate filter requirements pursuant to title 13, division 3, chapter 14, sections 2700 through 2711 of the California Code of Regulations;

(B) Meet Tier 4, or current engine requirements if more stringent, pursuant to title 40, chapter I, subchapter U, part 1039, subpart B, section 1039.101 of the Code of Federal Regulations.

(d) All generators shall be equipped with non-resettable hour-meters. If a generator does not come equipped with a non-resettable hour-meter an after-market non-resettable hour-meter shall be installed.

#### **Page 4.4-35 (Biological Resources)**

**MM 4.4-8:** Prior to construction activities on any undeveloped parcel, all personnel shall attend a Worker Environmental Awareness Training (WEAT). The WEAT shall be developed and conducted by a qualified biologist.

1. The program shall include information on the life history of all of the special-status species determined herein to have potential to occur onsite, including migratory birds, ~~and raptors,~~ and California tiger salamander.
2. The program shall discuss each species' legal protection, status, the definition of "take" under the Endangered Species Act, measures the Project operator must implement to protect the species, reporting requirements, specific measures that each worker shall employ to avoid take of wildlife species, and penalties for violation of the State and Federal ESAs.
3. The program shall provide information on how and where to bring injured wildlife for treatment in the case any animals are injured on the Project site, and how to document wildlife mortalities and injuries.
4. An attendance form signed by each worker indicating that environmental training has been completed will be kept on record. A copy of the sign-in sheet shall be submitted to The City of Fresno Planning and Development Department.

#### **Page 4.5-17 (Cultural Resources)**

##### **CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE**

The Cannabis Cultivation Program requires the following regulations, per California Code of Regulations, Title 3:

##### **§8304 – General Environmental Protection Measures**

All licensees shall comply with all of the following environmental protection measures:

(d) Immediately halt cultivation activities and implement section 7050.5 of the Health and Safety Code if human remains are discovered;

**Page 4.6-9 (Energy)**

The Cannabis Cultivation Program requires the following regulations, per California Code of Regulations, Title 3:

§8102 – Annual License Application Requirements

(s) For indoor and mixed-light license types, identification of all power sources for cultivation activities, including but not limited to, illumination, heating, cooling, and ventilation;

§8305 – Renewable Energy Requirements

Beginning January 1, 2023, all indoor, tier 2 mixed-light license types of all sizes, and nurseries using indoor or tier 2 mixed-light techniques, shall ensure that electrical power used for commercial cannabis activity meets the average electricity greenhouse gas emissions intensity required by their local utility provider pursuant to the California Renewables Portfolio Standard Program, division 1, part 1, chapter 2.3, article 16 (commencing with section 399.11) of the Public Utilities Code. As evidence of meeting the standard, licensees shall comply with the following:

(a) If a licensee's average weighted greenhouse gas emission intensity as provided in section 8203(g)(4) is greater than the local utility provider's greenhouse gas emission intensity, the licensee shall provide evidence of carbon offsets from any of the following sources to cover the excess in carbon emissions from the previous annual licensed period:

(1) Voluntary greenhouse gas offset credits purchased from any of the following recognized and reputable voluntary carbon registries:

(A) American Carbon Registry;

(B) Climate Action Reserve;

(C) Verified Carbon Standard.

(2) Offsets purchased from any other source are subject to verification and approval by the Department.

(b) New licensees, without a record of weighted greenhouse gas emissions intensity from the previous calendar year, shall report the average weighted greenhouse gas emissions intensity, as provided in section 8203(g)(4), used during their licensed period at the time of license renewal. If a licensee's average weighted greenhouse gas emissions intensity is greater than the local utility provider's greenhouse gas emissions intensity for the most recent calendar year, the licensee shall provide evidence of carbon offsets or allowances to cover the excess in carbon emissions from any of the sources provided in subsection (a).

§8306 – Generator Requirements

(a) For the purposes of this section, “generator” is defined as a stationary or portable compression ignition engine pursuant to title 17, division 3, chapter 1, subchapter 7.5, section 93115.4 of the California Code of Regulations.

(b) Licensees using generators rated at fifty (50) horsepower and greater shall demonstrate compliance with either, as applicable, the Airborne Toxic Control Measure for stationary engines pursuant to title 17, division 3, chapter 1, subchapter 7.5, sections 93115 through 93115.15 of the California Code of Regulations, or the Airborne Toxic Control Measure for portable engines pursuant to title 17, division 3, chapter 1, subchapter 7.5, sections 93116 through 93116.5 of the California Code of Regulations. Compliance shall be demonstrated by providing a copy of one of the following to the department upon request:

(1) For portable engines, a Portable Equipment Registration Certificate provided by the California Air Resources Board; or

(2) For portable or stationary engines, a Permit to Operate, or other proof of engine registration, obtained from the Local Air District with jurisdiction over the licensed premises.

(c) Licensees using generators rated below fifty (50) horsepower shall comply with the following by 2023:

(1) Either (A) or (B):

(A) Meet the “emergency” definition for portable engines in title 17, division 3, chapter 1, subchapter 7.5, sections 93116.2(a)(12) of the California Code of Regulations, or the “emergency use” definition for stationary engines in title 17, division 3, chapter 1, subchapter 7.5, section 93115.4(a)(30); or

(B) Operate eighty (80) hours or less in a calendar year; and

(2) Either (A) or (B):

(A) Meet Tier 3 with Level 3 diesel particulate filter requirements pursuant to title 13, division 3, chapter 14, sections 2700 through 2711 of the California Code of Regulations;

(B) Meet Tier 4, or current engine requirements if more stringent, pursuant to title 40, chapter I, subchapter U, part 1039, subpart B, section 1039.101 of the Code of Federal Regulations.

(d) All generators shall be equipped with non-resettable hour-meters. If a generator does not come equipped with a non-resettable hour-meter an after-market non-resettable hour-meter shall be installed.



From indoor cultivation alone, there could be a substantial drain on the capacity of energy suppliers if no conservation measures were implemented, or onsite electrical generation utilized. However, the Project requires that all applicable federal, State, and local requirements and BMPs would be incorporated into construction of new or modified structures. According to ~~the Bureau of Cannabis Control~~ CDFA, beginning in 2023, all State cultivation licensees will be required to comply with the average electricity greenhouse-gas-emissions intensity required by local utility providers. PG&E will establish this baseline to be used by commercial cannabis businesses in Fresno. Additionally, in 2022, licensees will be required to provide details regarding energy use and sources. CCR Title 3, Div. 8, Chapter 1, Section 8305 (Renewable Energy Requirements) states the following requirements for indoor cannabis facilities:

**Page 4.6-17 and 18**

**MM 4.6-1:** Beginning in 2022, within 15 days of submitting an application for renewal of a cultivation license to ~~the Bureau of Cannabis Control~~ CDFA, the project proponent of any conditional use permit, for a cannabis related business (cultivation only), shall provide written documentation to the City of Fresno of compliance with State requirements of CCR Title 3, Div. 8, Chapter 1, Section 8203 (g). Written documentation shall include the following information:

1. Total electricity supplied by local utility provider, name of local utility provider, and greenhouse gas emission intensity per kilowatt hour reported by the utility provider under Section 398.4(c) of the Public Utilities Code for the most recent calendar year available at time of submission;
2. Total electricity supplied by a zero net energy renewable source, as set forth in Section 398.4(h)(5) of the Public Utilities Code, that is not part of a net metering or other utility benefit;
3. Total electricity supplied from other unspecified sources, as defined in 398.2(e) of the Public Utilities Code, and other on-site sources of generation not reported to the local utility provider (e.g., generators, fuel cells) and the greenhouse gas emission intensity from these sources;
4. Average weighted greenhouse gas emission intensity considering all electricity use in subsections (1), (2), and (3).

**Page 4.9-13 (Hazards & Hazardous Materials)**

*BUREAU OF CANNABIS CONTROL*

The Bureau of Cannabis Control (BCC) is part of California's Department of Consumer Affairs. The BCC is responsible for licensing retailers, distributors, testing labs, microbusinesses, and temporary cannabis events.

~~The Bureau is housed within the Department of Consumer Affairs and licenses testing labs, distributors, dispensaries, retailers, and microbusinesses. CCR Title 16, Division 42, Chapter 1, Section 5054 provides requirements for these uses applicable to Destruction of Cannabis Goods~~

~~PRIOR TO DISPOSAL:~~

~~**CALCANNABIS CULTIVATION LICENSING (CALCANNABIS)**~~

~~CalCannabis is housed within the Department of Food and Agriculture and licenses cannabis cultivators, nurseries, and processors. CCR Title 3, Division 8, Chapter 1, Section 8307 (Pesticide Use Requirements) includes a requirement that all licensees comply with all pesticide laws and regulations enforced by the Department of Pesticide Regulation. CCR Title 3, Division 8, Chapter 1, Section 8308 (Cannabis Waste Management) includes requirements applicable to all licensees regarding the disposal of cannabis waste and hazardous waste and mandates compliance with applicable State laws.~~

~~**MANUFACTURED CANNABIS SAFETY BRANCH (MCSB)**~~

~~The California Department of Public Health's Manufactured Cannabis Safety Branch (MCSB) is responsible for licensing and regulation of commercial cannabis manufacturing in California. MCSB is housed within the Department of Public Health and licenses manufacturers of cannabis products, including those products meant to be consumed, inhaled, or used topically. Manufactured cannabis safety regulations, which include waste management and disposal requirements, are found at CCR Title 17, Division 1, Chapter 13, Section 40100 et seq. Waste management requirements are found at Section 40290. Among other requirements, licensees are required to have a written cannabis waste management plan and must dispose of all waste, including cannabis waste, in accordance with the Public Resources Code.~~

~~**CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE**~~

~~CalCannabis Cultivation Licensing is a division of CDFA. It is responsible for licensing and regulating commercial cannabis cultivators in California. CalCannabis also manages the state's track-and-trace system, which tracks all commercial cannabis and cannabis products from cultivation to sale.~~

~~CDFA is responsible not only for licensing, but also 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).~~

~~On January 16, 2019, California's three state cannabis licensing authorities (CDFA, BCC, and OMCS) announced that the Office of Administrative Law (OAL) officially approved state regulations for cannabis businesses across the supply chain. CDFA's regulations implement MAUCRSA with respect to the regulation, licensure, and enforcement of cannabis cultivation activities. Cannabis may not be cultivated for commercial purposes without a license from the state, and cultivators are required to comply with all CDFA regulations related to cannabis cultivation.~~

~~The Cannabis Cultivation Program requires the following regulations, per California Code of Regulations, Title 3:~~

§8106 – Cultivation Plan Requirements

(a) The cultivation plan for each Specialty Cottage, Specialty, Small, and Medium licenses shall include all of the following:

(3) A pest management plan which shall include, but not be limited to, the following:

(A) Product name and active ingredient(s) of all pesticides to be applied to cannabis during any stage of plant growth;

(B) Integrated pest management protocols, including chemical, biological, and cultural methods the applicant anticipates using to control or prevent the introduction of pests on the cultivation site; and

(C) A signed attestation that states the applicant shall contact the appropriate County Agricultural Commissioner regarding requirements for legal use of pesticides on cannabis prior to using any of the active ingredients or products included in the pest management plan and shall comply with all pesticide laws.

§8307 – Pesticide Use Requirements

(a) Licensees shall comply with all pesticide laws and regulations enforced by the Department of Pesticide Regulation.

(b) For all pesticides that are exempt from registration requirements, licensees shall comply with all pesticide laws and regulations enforced by the Department of Pesticide regulation and with the following pesticide application and storage protocols:

(1) Comply with all pesticide label directions;

(2) Store chemicals in a secure building or shed to prevent access by wildlife;

(3) Contain any chemical leaks and immediately clean up any spills;

(4) Apply the minimum amount of product necessary to control the target pest;

(5) Prevent offsite drift;

(6) Do not apply pesticides when pollinators are present;

(7) Do not allow drift to flowering plants attractive to pollinators;

(8) Do not spray directly to surface water or allow pesticide product to drift to surface water. Spray only when wind is blowing away from surface water bodies;

(9) Do not apply pesticides when they may reach surface water or groundwater; and

(10) Only use properly labeled pesticides. If no label is available consult the Department of Pesticide Regulation.

#### §8102 – Annual License Application Requirements

(p) For all cultivator license types except Processor, evidence of enrollment in an order or waiver of waste discharge requirements with the State Water Resources Control Board or the appropriate Regional Water Quality Control Board. Acceptable documentation for evidence of enrollment can be a Notice of Applicability letter. Acceptable documentation for a Processor that enrollment is not necessary can be a Notice of Non-Applicability;

(q) Evidence that the applicant has conducted a hazardous materials record search of the EnviroStor database for the proposed premises. If hazardous sites were encountered, the applicant shall provide documentation of protocols implemented to protect employee health and safety;

(v) Identification of all of the following applicable water sources used for cultivation activities and the applicable supplemental information for each source pursuant to section 8107 of this chapter:

(1) A retail water supplier;

(2) A groundwater well;

(3) A rainwater catchment system;

(4) A diversion from a surface waterbody or an underground stream flowing in a known and definite channel.

#### §8304 – General Environmental Protection Measures

All licensees shall comply with all of the following environmental protection measures:

(a) Compliance with section 13149 of the Water Code as implemented by the State Water Resources Control Board, Regional Water Quality Control Boards, or California Department of Fish and Wildlife;

(b) Compliance with any conditions requested by the California Department of Fish and Wildlife or the State Water Resources Control Board under section 26060.1(b)(1) of the Business and Professions Code;

#### **Page 4.10-14 and 15 (Hydrology & Groundwater)**

### ***Cannabis Cultivation Regulation***

Pursuant to the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), the SWRCB and RWQCBs are developing a regulatory program to protect waters of the State from harmful activities that could result from cannabis cultivation. As stated above, SWRCB and the nine RWQCBs are the primary agencies tasked with water regulation and water quality protection; therefore, ~~while CDFA is the lead agency for this PEIR,~~ potential water quality and related impacts from cannabis cultivation remain under the water agencies' primary jurisdiction. SWRCB's and RWQCB's regulatory program would prohibit waste discharges from cannabis-related agricultural practices, land clearing, and grading activities in rural areas and forests. SWRCB adopted a general order on October 17, 2017, regarding waste discharge requirements for cannabis cultivation operations. Cultivators whose operations occupy and/or disturb areas above a certain threshold and/or are within certain designated setbacks or above certain slope designations must apply for coverage under the SWRCB's order for waste discharge. At the same time, SWRCB adopted a Cannabis Cultivation Policy that outlines policies for water quality and water rights including flow and gaging requirements, waste discharge requirements, exemptions, and enforcement. The SWRCB's guidance will apply to cannabis cultivation sites statewide.

#### **Page 4.10-18 (Hydrology & Groundwater)**

### ***Water Rights Administration for Cannabis Cultivation***

~~MAUCRSA contains provisions that are directly relevant to SWRCB's water rights permit process. For example, Section 26060.1(b) of the Business and Professions Code requires that SWRCB, in accordance with Section 13149 of the California Water Code and in consultation with the California Department of Fish and Wildlife (CDFW) and CDFA, shall ensure that individual and cumulative effects of water diversion associated with cultivation of cannabis do not affect the instream flows needed for fish spawning, migration, and rearing or the flows needed to maintain natural flow variability. California Water Code Section 13149 goes on to describe that this is to be accomplished through adoption of principles and guidelines for diversion and use of water for cannabis cultivation in areas where cannabis cultivation may have the potential to substantially affect instream flows. The principles and guidelines adopted in October 2017 by the SWRCB address topics such as instream flow objectives, limits on diversions, and requirements for screening of diversions and elimination of barriers to fish passage. The principles and guidelines include requirements that apply to groundwater extraction where it may affect surface flows. SWRCB, CDFW, and CDFA are actively coordinating on the development and implementation of the principles and guidelines.~~

~~As part of this, under MAUCRSA, applicants proposing to divert surface water must possess a valid water right. Specifically, an application for a license issued by CDFA will be required to identify at least one of the following water sources:~~

- ~~● Retail water supplier;~~
- ~~● Groundwater well;~~

- ~~Rainwater catchment system; or~~
- ~~Diversion from a surface water body or underground stream flowing in a known and definite channel.~~

~~CDFA's regulations will describe the supplemental information requirements for water diversions:~~

- ~~A copy of a registration, permit, or license issued under Part 2 (commencing with Section 1200) of Division 2 of the California Water Code that covers the diversion;~~
- ~~A copy of any statements of diversion and use filed with the SWRCB before October 31, 2017 detailing the water diversion and use;~~
- ~~A copy of a statement of water diversion and use, filed with SWRCB before October 31, 2017, demonstrating that the diversion is authorized under a riparian right and that no diversion occurred in any calendar year between January 1, 2010, and January 1, 2017; and~~
- ~~For a water source where the applicant has claimed an exception from the requirement to file a statement of diversion and use, documentation, submitted to SWRCB, establishing that the diversion is subject to subdivision (a), (c), (d), or (e) of Section 5101 of the California Water Code.~~

~~SWRCB issued a notice on May 19, 2017, providing guidance and making available the forms to be filed to meet these requirements.~~

On January 16, 2019, the Office of Administrative Law (OAL) officially approved state regulations for cannabis businesses. CDFA's regulations implement MAUCRSA with respect to the regulation, licensure, and enforcement of cannabis cultivation activities. Specifically, CCR Title 3, §8105 and §8107 regulate water rights administration, including surface water bodies and underground streams.

#### **Page 4.10-25 (Hydrology & Groundwater)**

##### **CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE**

The Cannabis Cultivation Program requires the following regulations, per California Code of Regulations, Title 3:

##### **§8102 – Annual License Application Requirements**

(p) For all cultivator license types except Processor, evidence of enrollment in an order or waiver of waste discharge requirements with the State Water Resources Control Board or the appropriate Regional Water Quality Control Board. Acceptable documentation for evidence of

enrollment can be a Notice of Applicability letter. Acceptable documentation for a Processor that enrollment is not necessary can be a Notice of Non-Applicability;

(v) Identification of all of the following applicable water sources used for cultivation activities and the applicable supplemental information for each source pursuant to section 8107 of this chapter:

(1) A retail water supplier;

(2) A groundwater well;

(3) A rainwater catchment system;

(4) A diversion from a surface waterbody or an underground stream flowing in a known and definite channel.

#### §8304 – General Environmental Protection Measures

All licensees shall comply with all of the following environmental protection measures:

(a) Compliance with section 13149 of the Water Code as implemented by the State Water Resources Control Board, Regional Water Quality Control Boards, or California Department of Fish and Wildlife;

(b) Compliance with any conditions requested by the California Department of Fish and Wildlife or the State Water Resources Control Board under section 26060.1(b)(1) of the Business and Professions Code;

#### §8216 – License Issuance in an Impacted Watershed

If the State Water Resources Control Board or the Department of Fish and Wildlife notifies the department in writing that cannabis cultivation is causing significant adverse impacts on the environment in a watershed or other geographic area pursuant to section 26069, subdivision (c)(1), of the Business and Professions Code, the department shall not issue new licenses or increase the total number of plant identifiers within that watershed or area while the moratorium is in effect.

#### §8107 – Supplement Water Source Information

The following information shall be provided for each water source identified by the applicant:

b) If the water source is a groundwater well:

(1) The groundwater well's geographic location coordinates in either latitude and longitude or the California Coordinate System; and

(2) A copy of the well completion report filed with the Department of Water Resources pursuant to section 13751 of the Water Code. If no well completion report is available, the applicant shall provide evidence from the Department of Water Resources indicating that the Department of Water Resources does not have a record of the well completion report. If no well completion report is available, the State Water Resources Control Board may request additional information about the well.

**Page 4.11-2**

***MEDICAL CANNABIS REGULATION AND SAFETY ACT***

Originally referred to as the Medical Marijuana Regulation and Safety Act but renamed through subsequent amendments, the Medical Cannabis Regulation and Safety Act (MCRSA) consists of three separate bills that were enacted together in September 2015 (AB 266, AB 243, and SB 643). The bills created a comprehensive state licensing system for the commercial cultivation, manufacture, retail sale, transport, distribution, delivery, and testing of medical cannabis. All licenses must be approved by local governments. AB 266 established a new Bureau of Medical Cannabis Regulation under the Department of Consumer Affairs. ~~The Bureau~~ CDFR is tasked with establishing a comprehensive internet system to track licensees and report the movement of commercial cannabis and cannabis products. SB 643 and AB 243 establish the following responsibilities: the California Department of Food and Agriculture is responsible for regulating cultivation; the California Department of Public Health is responsible for developing standards for manufacture, testing, and production and labeling of edibles; the California Department of Pesticide Regulation is responsible for developing pesticide standards; and, the California Department of Fish and Wildlife (CDFW) and State Water Resources Control Board (SWRCB) are responsible for protecting water quality.

**Page 4.13-10 (Noise)**

The Cannabis Cultivation Program requires the following regulations, per California Code of Regulations, Title 3:

§8306 – Generator Requirements

(a) For the purposes of this section, “generator” is defined as a stationary or portable compression ignition engine pursuant to title 17, division 3, chapter 1, subchapter 7.5, section 93115.4 of the California Code of Regulations.

(b) Licensees using generators rated at fifty (50) horsepower and greater shall demonstrate compliance with either, as applicable, the Airborne Toxic Control Measure for stationary engines pursuant to title 17, division 3, chapter 1, subchapter 7.5, sections 93115 through 93115.15 of the California Code of Regulations, or the Airborne Toxic Control Measure for portable engines pursuant to title 17, division 3, chapter 1, subchapter 7.5, sections 93116 through 93116.5 of the California Code of Regulations. Compliance shall be demonstrated by providing a copy of one of the following to the department upon request:



(1) For portable engines, a Portable Equipment Registration Certificate provided by the California Air Resources Board; or

(2) For portable or stationary engines, a Permit to Operate, or other proof of engine registration, obtained from the Local Air District with jurisdiction over the licensed premises.

(c) Licensees using generators rated below fifty (50) horsepower shall comply with the following by 2023:

(1) Either (A) or (B):

(A) Meet the “emergency” definition for portable engines in title 17, division 3, chapter 1, subchapter 7.5, sections 93116.2(a)(12) of the California Code of Regulations, or the “emergency use” definition for stationary engines in title 17, division 3, chapter 1, subchapter 7.5, section 93115.4(a)(30); or

(B) Operate eighty (80) hours or less in a calendar year; and

(2) Either (A) or (B):

(A) Meet Tier 3 with Level 3 diesel particulate filter requirements pursuant to title 13, division 3, chapter 14, sections 2700 through 2711 of the California Code of Regulations;

(B) Meet Tier 4, or current engine requirements if more stringent, pursuant to title 40, chapter I, subchapter U, part 1039, subpart B, section 1039.101 of the Code of Federal Regulations.

(d) All generators shall be equipped with non-resettable hour-meters. If a generator does not come equipped with a non-resettable hour-meter an after-market non-resettable hour-meter shall be installed.

#### **Page 4.19-21 (Utilities)**

The Cannabis Cultivation Program requires the following regulations, per California Code of Regulations, Title 3:

#### §8102 – Annual License Application Requirements

(v) Identification of all of the following applicable water sources used for cultivation activities and the applicable supplemental information for each source pursuant to section 8107 of this chapter:

(1) A retail water supplier;

(2) A groundwater well;

(3) A rainwater catchment system;

(4) A diversion from a surface waterbody or an underground stream flowing in a known and definite channel.

#### §8107 – Supplement Water Source Information

The following information shall be provided for each water source identified by the applicant:

b) If the water source is a groundwater well:

(1) The groundwater well's geographic location coordinates in either latitude and longitude or the California Coordinate System; and

(2) A copy of the well completion report filed with the Department of Water Resources pursuant to section 13751 of the Water Code. If no well completion report is available, the applicant shall provide evidence from the Department of Water Resources indicating that the Department of Water Resources does not have a record of the well completion report. If no well completion report is available, the State Water Resources Control Board may request additional information about the well.

#### §8108 – Cannabis Waste Management Plan

For the purposes of this section, “cannabis waste” is organic waste, as defined in section 42649.8(c) of the Public Resources Code. An applicant's cannabis waste management plan shall identify one or more of the following methods for managing cannabis waste generated on its licensed premises:

(a) On-premises composting of cannabis waste;

(b) Collection and processing of cannabis waste by a local agency, a waste hauler franchised or contracted by a local agency, or a private waste hauler permitted by a local agency;

(c) Self-haul cannabis waste to one or more of the following:

(1) A manned, fully permitted solid waste landfill or transformation facility;

(2) A manned, fully permitted composting facility or manned composting operation;

(3) A manned, fully permitted in-vessel digestion operation;

(4) A manned, fully permitted transfer/processing facility or manned transfer/processing operation; or

(5) A manned, fully permitted chip and grind operation or facility.

(6) A recycling center as defined in title 14, section 17402.5(d) of the California Code of Regulations and that meets the following:

(A) The cannabis waste received shall contain at least ninety (90) percent inorganic material;

(B) The inorganic portion of the cannabis waste is recycled into new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace; and

(C) The organic portion of the cannabis waste shall be sent to a facility or operation identified in subsection (c)(1) through (5).

(d) Reintroduction of cannabis waste back into agricultural operation through on premises organic waste recycling methods, including but not limited to tilling directly into agricultural land and no-till farming.

#### §8308 – Cannabis Waste Management

(c) A licensee shall manage all cannabis waste in compliance with division 30, part 3, chapters 12.8, 12.9, and 13.1 of the Public Resources Code. In addition, licensees are obligated to obtain all required permits, licenses, or other clearances and comply with all orders, laws, regulations, or other requirements of other regulatory agencies, including, but not limited to, local health agencies, regional water quality control boards, air quality management districts, or air pollution control districts, local land use authorities, and fire authorities.

#### **Page 4.15-9 (Public Services)**

##### **SENATE BILL 50**

The Leroy F. Greene School Facilities Act of 1998, or Senate Bill 50 (SB 50), authorizes school districts to levy developer fees to finance the construction or reconstruction of school facilities.

In January ~~2015~~ 2020, the State Allocation Board (SAB) approved maximum Level 1 developer fees at ~~\$0.54~~\$0.66 per square foot of enclosed and covered space in any commercial or industrial development, and ~~\$3.36~~\$4.08 per square foot for residential development (SAB, ~~2014~~2020). These fees are intended to address the increased educational demands on the school district resulting from new development. Public school districts can, however, impose higher fees than those established by the SAB, provided they meet the conditions outlined in the act. Private schools are not eligible for fees collected pursuant to SB 50.

#### **Page 10-1**

Bureau of Cannabis Control. (2019). CCR Title 3, Division 8, Chapter 1. Retrieved from <https://www.cdfa.ca.gov/calcannabis/documents/FinalApprovedRegulationText.pdf>  
[https://www.bcc.ca.gov/law\\_regs/cannabis\\_order\\_of\\_adoption.pdf](https://www.bcc.ca.gov/law_regs/cannabis_order_of_adoption.pdf)

***Response to Comments***

A list of agencies and interested parties who have commented on the Draft EIR is provided below. A copy of each numbered comment letter and a lettered response to each comment are provided following this list.

***7.3.1 - STATE AGENCIES***

Letter 1 – Julie Vance, California Department of Fish and Wildlife (June 8, 2020)

Letter 2 – Lindsay Rains, California Department of Food and Agriculture (June 3, 2020)

***7.3.2 - LOCAL AGENCIES***

Letter 3 – Andrew Nabors, Clovis Unified School District (April 27, 2020)

Letter 4 – Alex Belanger, Fresno Unified School District (May 1, 2020)

Letter 5 – Steve McClain, Central Unified School District (June 1, 2020)

Letter 6 – Arnaud Marjollet, San Joaquin Valley Air Pollution Control District (June 16, 2020)

***Comment Letter 1: Julie Vance, California Department of Fish and Wildlife (June 8, 2020)***



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Central Region  
1234 East Shaw Avenue  
Fresno, California 93710  
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**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



June 8, 2020

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Development and Resource Management Department  
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**Subject: Draft Impact Report (EIR); Text Amendment No. P19-02978 – Evaluating the Proposed Regulation and Permitting of Commercial Cannabis Activities (Project)**  
**SCH No.: 2019070123**

Dear Mr. Trejo:

The California Department of Fish and Wildlife (CDFW) received a Request for Comments from the City of Fresno regarding a draft EIR for Text Amendment No. P19-02978 – Evaluating the Proposed Regulation and Permitting of Commercial Cannabis Activities pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup> CDFW previously submitted comments in a letter dated August 5, 2019 in response to a Notice of Preparation (NOP) for the Project.

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

## **CDFW ROLE**

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection,

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<sup>1</sup> CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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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 is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. For example, as proposed, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq). Likewise, 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 authorization as provided by the Fish and Game Code will be required.

**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).

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## PROJECT DESCRIPTION SUMMARY

**Proponent:** City of Fresno

**Objective:** The City of Fresno is proposing an amendment to Sections 15-2739 and 15-2739.1 of the Fresno Municipal Code, Article 33 to Chapter 9 of the Fresno Municipal Code, and Article 21 to Chapter 12 of the Fresno Municipal Code, relating to adult use and medicinal cannabis retail business and commercial cannabis business.

### *Cultivation, Distribution, and Manufacturing*

- Eight (8) businesses would be permitted inside the Cannabis Innovation Zone, defined as the area bounded by State Route 41, Golden State Blvd., Church Ave., East Ave., and Parallel Ave.
- Eight (8) businesses would be permitted within industrial zoned property within one-half mile of Highway 99 between Shaw and Clinton Aves., or within one (1) mile of Highway 99 north of Shaw and south of Clinton Aves., or within one (1) mile of Highway 180 west of Highway 99. All buildings in which a cultivator, distributor, or manufacturer shall be located no closer than one thousand (1,000) feet from any property boundary containing a residence, school, daycare, or youth center.



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### *Testing Laboratories*

- Testing laboratories may take place in a Commercial, Employment, or Downtown District. There is no limit on how many may be permitted.

### *Cannabis Retailers*

- Twenty-one (21) total possible cannabis retail locations – this includes up to fourteen (14) medicinal and/or adult use cannabis retail locations (two per Council District); with the potential to add seven (7) additional retailers (one additional per Council District) upon Council Resolution.
- Retailers would be restricted to the Downtown Neighborhood (DTN), Downtown General (DTG), Commercial Main Street (CMS), Commercial Community (CC), Commercial Regional (CR), Commercial General (CG), Commercial Highway (CH), Neighborhood Mixed-Use (NMX), Corridor/Center Mixed Use (CMX), or Regional Mixed-Use (RMX) zone districts. In addition, retailers would be required to maintain a minimum distance of 800 feet from any property boundary containing another cannabis retailer, school, daycare center, or youth center (i.e. parks, playgrounds, facilities hosting activities for minors).
- Hours of operation for retailers would be limited to 6:00 a.m. to 10:00 p.m.
- Retail delivery allowed if part of store-front operation.

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### *Cannabis Cultivation*

- The ordinance prohibiting all cultivation does not apply to private residence with six (6) plants or less grown indoors or to any person/property that obtains a Fresno City commercial cannabis business permit.

**Location:** The Project site is within the City limits of Fresno, California in specific locations detailed within the Project description.

**Timeframe:** Unknown

## **COMMENTS AND RECOMMENDATIONS**

In review of the draft EIR, CDFW provides the following comments as the Project area is mainly developed but may contain areas of habitat for the below listed species. The Project area has the potential to support the State and federally listed threatened California tiger salamander (*Ambystoma californiense*), State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*); State listed threatened Swainson's hawk (*Buteo swainsoni*), the State species of special concern burrowing owl (*Athene cunicularia*), western mastiff bat (*Eumops perotis californicus*), and American badger (*Taxidea taxus*). CDFW is concerned that future cultivation, distribution, manufacturing, testing laboratories, and retailer activities could result in impacts to nesting birds and special status species known to occur in the Project area. Therefore, CDFW requests that the EIR fully identify potential impacts to biological resources and

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provide proper avoidance, minimization, and mitigation measures to address potential Project-related impacts to these species. CDFW recommends that additional biological surveys be conducted and that the results of these surveys be used to inform the analysis of impacts to resources and to provision suitable avoidance, minimization, and mitigation measures to reduce impacts to less than significant levels.

CDFW offers the comments and recommendations below to assist the City of Fresno 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.

Project-related activities that result in land conversion may also result in habitat loss for special-status species or fragmentation of sensitive habitat. Loss of habitat to development and agriculture are contributing factors to the decline of special-status species. CDFW recommends new cannabis cultivation sites be restricted to existing facilities, previously developed sites, or existing industrial warehouses.. Furthermore, CDFW recommends distribution, manufacturing, testing laboratories, and cannabis retailers be located in established urban areas.

Mitigation Measures, San Joaquin Kit Fox (SJKF), American Badger, and Burrowing Owl (BUOW) MM 4.4-2. Page 4.4-29.

As currently drafted Mitigation Measure 4.4-2 applies to undeveloped parcels and requires within 14 days and no more than 30 days prior to the start of construction activities a pre-construction clearance survey shall be conducted by a qualified biologist, multiple surveys may be needed, which would be phased with construction of the Project. The measure also includes avoidance buffer zones for burrowing owls (active burrows) as 500 feet for April 1 – October 15 and 100 feet for October – March 31.

CDFW recommends assessing presence/absence of BUOW by having a qualified biologist conduct surveys following the California Burrowing Owl Consortium's (CBOC) "Burrowing Owl Survey Protocol and Mitigation Guidelines" (CBOC, 1993) and CDFW's "Staff Report on Burrowing Owl Mitigation" (CDFG, 2012). CDFW advises that surveys include a 500-foot buffer around the Project area. Please note the guidelines suggest three or more surveillance surveys be conducted during daylight with each visit occurring at least three weeks apart during the peak breeding season (April 15 to July 15), when BUOW are most detectable (CDFG, 2012).

If BUOW are found within the Project area, CDFW recommends implementing no-disturbance buffers, as outlined in the "Staff Report on Burrowing Owl Mitigation" (CDFG, 2012), prior to and during any ground-disturbing activities associated with Project implementation. Specifically, CDFW's Staff Report recommends that impacts to

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occupied burrows be avoided in accordance with the following table unless a qualified biologist approved by CDFW verifies through non-invasive methods that either: 1) the birds have not begun egg laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival.

Location	Time of Year	Level of Disturbance		
		Low	Med	High
Nesting sites	April 1-Aug 15	200 m*	500 m	500 m
Nesting sites	Aug 16-Oct 15	200 m	200 m	500 m
Nesting sites	Oct 16-Mar 31	50 m	100 m	500 m

\* meters (m)

If BUOW are found to occupy the Project site and avoidance is not possible, it is important to note that according to the Staff Report (CDFG, 2012), exclusion is not a take avoidance, minimization, or mitigation method and is considered a potentially significant impact under CEQA. However, if necessary, CDFW recommends that burrow exclusion be conducted by qualified biologists and only during the non-breeding season, before breeding behavior is exhibited and after the burrow is confirmed empty through non-invasive methods, such as surveillance. CDFW recommends replacement of occupied burrows with artificial burrows at a ratio of 1 burrow collapsed to 1 artificial burrow constructed (1:1) as mitigation for the potentially significant impact of evicting BUOW. BUOW may attempt to colonize or re-colonize an area that will be impacted; thus, CDFW recommends ongoing surveillance of the Project site during Project activities, at a rate that is sufficient to detect BUOW if they return.

#### Mitigation Measures, Nesting Birds MM 4.4-4. Page 4.4-32.

As currently drafted MM 4.4-4 applies to undeveloped parcels and states if construction activities must occur during the nesting season (February 15 to August 31), pre-activity nesting bird surveys shall be conducted within seven days prior to the start of construction at the construction site plus a 250-foot buffer for songbirds and a 500-foot buffer for raptors (other than Swainson's hawk). If active nests are found during the survey or at any time during construction of the Project, an avoidance buffer ranging from 50 feet to 350 feet may be required, as determined by a qualified biologist.

The trees, shrubs, and grasses within and in the vicinity of the Project area likely provides nesting habitat for songbirds and raptors. CDFW encourages Project implementation occur during the bird non-nesting season. In addition to direct impacts, such as nest destruction, nests might be affected by noise, vibration, odors, and movement of workers or equipment. If Project activities must occur during the breeding season (February through mid-September), the Project proponent is responsible for

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1-D

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ensuring that implementation of the Project does not result in any violation of the Migratory Bird Treaty Act or relevant Fish and Game Code sections.

CDFW recommends prior to work commencing, including staging, clearing, and grubbing, surveys for active nests should be conducted by a qualified wildlife biologist no more than 10 days prior to Project commencement and that the surveys be conducted in a sufficient area around the work site to identify any nests that are present and to determine their status. A sufficient area means any nest within an area that could potentially be affected by the Project. Identified nests should be continuously surveyed for the first 24 hours prior to any construction-related activities to establish a behavioral baseline. Once work commences, all nests should be continuously monitored to detect any behavioral changes as a result of the Project. If behavioral changes are observed, the work causing that change should cease and CDFW consulted for additional avoidance and minimization measures.

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If active nests are found and a monitor is not feasible, CDFW recommends implementing a minimum 250-foot no-disturbance buffer around active nests of non-listed bird species and a 500-foot no-disturbance buffer around the nests of non-listed raptors until the breeding season has ended, or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival. Variance from these no-disturbance buffers may be implemented when there is compelling biological or ecological reason to do so, such as when the Project area would be concealed from a nest site by topography. Any variance from these buffers is advised to be supported by a qualified wildlife biologist and it is recommended CDFW be notified in advance of implementation of a no-disturbance buffer variance.

#### Mitigation Measures, Swainson's Hawk (SWHA) MM 4.4-6. Page 4.4-33-4.4-34.

As currently drafted MM 4.4-6 applies to undeveloped parcels and states for construction activities conducted during the breeding season (March 1 through August 31), the applicant shall retain a qualified biologist to conduct preconstruction surveys and identify active nests on and within 0.5 mile of the project site to avoid, minimize, and mitigate potential impacts on SWHA nesting adjacent to the project site. If active SWHA nests are found within the nest survey area, the construction contractor shall avoid impacts on such nests by establishing appropriate buffers around active nest sites identified during preconstruction raptor surveys. CDFW guidelines recommend implementation of 0.5-mile-wide buffers for SWHA's nests, but the size of the buffer may be decreased if a qualified biologist and the applicant, in consultation with CDFW, determine that such an adjustment would not be likely to adversely affect the nest.

1-E

CDFW recommends that a qualified wildlife biologist conduct surveys for nesting raptors following the survey methodology developed by the SWHA Technical Advisory

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Committee (SWHA TAC, 2000) prior to ground-disturbing activities that have the potential to result from the Project. If ground-disturbing activities take place during the normal bird breeding season (February 1 through September 15), CDFW recommends that additional pre-construction surveys for active nest be conducted by a qualified biologist no more than 10 days prior to the start of construction.

If an active SWHA nest is found, CDFW recommends implementation of a minimum ½-mile no-disturbance buffer until the breeding season has ended or until a qualified biologist has determined that the young have fledged and are no longer reliant upon the nest or parental care for survival.

CDFW recommends that impacts to known nest trees be avoided at all times of year. The removal of mature trees is a potentially significant impact to nesting birds of prey and CDFW advises mitigation of these impacts. Removal of known nest trees is a potentially significant impact under CEQA and could result in take under CESA. This is especially true with species such as SWHA, which exhibit high nest-site fidelity year after year. Regardless of nesting status, if potential or known SWHA nesting trees are removed, CDFW recommends they be replaced with appropriate native tree species, planted at a ratio of 3:1 (replaced to removed).

If the ½-mile no-disturbance nest buffer is not feasible, consultation with CDFW is warranted and acquisition of a State Incidental Take Permit (ITP) for SWHA may be necessary prior to project implementation, pursuant to Fish and Game Code section 2081 subdivision (b).

Mitigation Measures, Worker Environmental Awareness Training (WEAT) MM 4.4-8. Page 4.4-35.

Mitigation Measure 4.4-8 applies to construction activities on an undeveloped parcel and requires all personnel to attend a WEAT. The program shall include information on the life history of all of the special status species determine herein to have potential to occur onsite, including migratory birds and raptors.

CDFW recommends California tiger salamander be included in the WEAT. The analysis of potential impacts and recommended mitigation measures for California tiger salamander is provided below.

**COMMENT 1: California Tiger Salamander (CTS)**

**Issue:** Recent CTS occurrences have been noted within the Project area (CDFW, 2019). CTS occur from the Central Valley floor near sea level up to approximately 3,940 feet in the Coastal Range (USFWS, 2017). CTS require both aquatic habitat for breeding and upland habitat for refuge where they spend most of their life and

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1-G

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have been observed up to 1.24 miles from potential breeding ponds (USFWS, 2003). Breeding ponds for CTS include natural vernal pools, ponds, livestock ponds, and other modified permanent and ephemeral ponds (USFWS, 2017).

**Specific impact:** Without appropriate avoidance and minimization measures for CTS, potential significant impacts associated with the Project activities could include burrow collapse, inadvertent entrapment, reduced reproductive success, reduction in health and vigor of eggs, larvae and/or young, and direct mortality of individuals.

**Evidence impact would be significant:** The Project area is within the range of CTS and may contain suitable upland and breeding habitat. Decline in CTS populations is attributed to habitat loss and fragmentation; predation from, and competition with invasive species; hybridization; small mammal control; and contaminants (USFWS, 2017). Large tracts of upland habitat, preferably with multiple breeding ponds, are necessary for CTS to persist.

### **Recommended Potentially Feasible Mitigation Measure(s)**

CDFW recommends conducting the following evaluation of the subject parcel and including the following measures in the EIR.

#### **Mitigation Measure 1: Focused CTS Surveys**

Prior to ground-disturbing activities, CDFW recommends that a qualified wildlife biologist assess the Project site and vicinity (i.e. up to 1.3 miles, observed CTS dispersal distance) that contains potentially suitable habitat, to evaluate the potential for CTS. CDFW recommends site assessments follow the USFWS's "Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander" (USFW, 2003). CDFW advises the qualified biologist determine the impacts of Project-related activities to all CTS upland and breeding habitat features within and/or adjacent to the construction footprint.

If the site assessment determines there is suitable habitat present for breeding or refugia on the subject parcel, protocol-level surveys are advised to be conducted in accordance with the Interim Guidance to determine presence or a negative finding for CTS. Please note that CTS surveys may need to be conducted during years with adequate precipitation to be acceptable.

#### **Mitigation Measure 2: CTS Avoidance**

If the site assessment demonstrates upland burrow refugia or breeding wetland habitat features suitable for use by CTS are present within and/or adjacent to the

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Cont.



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Project route footprint, absent protocol level surveys, CDFW advises a minimum 50-foot no-disturbance buffer delineated around all small mammal burrows within suitable habitat. If burrow avoidance is not feasible, consultation with CDFW is warranted to determine if the Project can avoid take.

1-G  
Cont.

### **Mitigation Measure 3: CTS Take Authorization**

If full avoidance is not feasible or protocol-level surveys do not yield a negative finding, acquisition of a State ITP pursuant to Fish and Game Code section 2081 subdivision (b) would be warranted prior to Project implementation to comply with CESA. Alternatively, in the absence of protocol surveys, the applicant can assume presence of CTS within the Project area and obtain a State ITP from CDFW.

**Lake and Streambed Alteration:** CDFW also has regulatory authority with regard to activities occurring in streams, including ephemeral streams, and/or lakes that could adversely affect any fish or wildlife resource, pursuant to Fish and Game Code sections 1600 et seq. Work within or adjacent to stream channels has the potential to result in substantial diversion or obstruction of natural flows; substantial change or use of material from the bed, bank, or channel; deposition of debris, waste, sediment, toxic runoff or other materials into water causing water pollution and degradation of water quality.

If a Project could substantially divert or obstruct the natural flow of any river, stream or lake; substantially change or use any material from the bed, channel, or bank of, any river, stream, or lake; or deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake, notification of Lake or Streambed Alteration to CDFW is required.

1-H

Additionally, Business and Professions Code 26060.1 (b)(3) includes a requirement that California Department of Food and Agriculture cannabis cultivation licensees demonstrate compliance with Fish and Game Code section 1602 through written verification from CDFW. CDFW recommends project proponents for commercial cannabis cultivation submit a Lake and Streambed Alteration Notification to CDFW for the proposed Project prior to initiation of any cultivation activities. As such, CDFW recommends that the City of Fresno EIR inform Project proponents of this responsibility. It is important to note that CDFW is required to comply with CEQA in the issuance or the renewal of a Lake or Streambed Alteration Agreement. Additional information be found here: <https://www.wildlife.ca.gov/Conservation/Cannabis/Permitting>

**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

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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.

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**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 et al., 2009), behavior thermoregulation (Beiswenger, 1977), and migration (Longcore & Rich, 2004). Even aquatic species can be affected; migration of salmonids can be slowed or halted by the presence of artificial lighting (Tabor et al., 2004; Nightingale et al., 2006). Phototaxis, a phenomenon which results in attraction and movement towards light, can disorient, entrap, and temporarily blind wildlife species that experience it (Longcore and Rich, 2004). CDFW recommends CEQA documents address light pollution in the analysis of impacts.

1-J

## ENVIRONMENTAL DATA

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

1-K

## FILING FEES

If it is determined the Project would have an impact on fish and/or wildlife, an assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

1-L



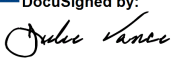
Israel Trejo  
City of Fresno  
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## CONCLUSION

CDFW appreciates the opportunity to comment on the EIR for Text Amendment No. P19-02978 – Evaluating the Proposed Regulation and Permitting of Commercial Cannabis Activities to assist the City of Fresno in identifying and mitigating Project impacts on biological resources.

More information on survey and monitoring protocols for sensitive species can be found at the CDFW's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>). Questions regarding this letter or further coordination should be directed to Kelley Aubushon, Senior Environmental Scientist (Specialist), at the address provided on this letterhead, by telephone at (559) 573-6117, or by email at [kelley.aubushon@wildlife.ca.gov](mailto:kelley.aubushon@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
FA83F09FE08945A...  
Julie A. Vance  
Regional Manager

Attachment A

1-M

Israel Trejo  
City of Fresno  
June 8, 2020  
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## REFERENCES

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**Attachment A**

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE  
RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM  
(MMRP)**

**PROJECT: Text Amendment No. P19-02978 – Evaluating the  
Proposed Regulation and Permitting of Commercial  
Cannabis Activities**

**SCH No.: 2019070123**

<b>RECOMMENDED MITIGATION MEASURE</b>	<b>STATUS/DATE/INITIALS</b>
<i>Before Disturbing Soil or Vegetation</i>	
Mitigation Measure 1: California Tiger Salamander Surveys	
<i>During Construction</i>	
Mitigation Measure 2: California Tiger Salamander Avoidance	
Mitigation Measure 3: California Tiger Salamander Take Authorization	

***Response to Comment Letter 1: Julie Vance, California Department of Fish and Wildlife (June 8, 2020)***

**1-A:** Thank you for your comments. This comment confirms CDFW's receipt of the Draft EIR and notes the CDFW is a Trustee Agency and Responsible Agency under CEQA. The comment details a Project Description Summary. The commenter states that CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds, eggs, or nest sites of any migratory nongame bird. This comment has been noted for the record. See below for further response to potential impacts to nesting birds.

**1-B:** CDFW lists a number of comments and recommendations that relate to the potential for impacts to State and federally listed species including California tiger salamander, San Joaquin kit fox, Swainson's hawk, burrowing owl, western mastiff bat and American badger by further cultivation, distribution, manufacturing, testing laboratories and retailer activities to these species. The DEIR should provide proper avoidance, minimization, and mitigation measure to address potential project-related impacts for these species. CDFW recommends that additional biological surveys be conducted and that the results of these surveys be used to reduce impacts to less than significant levels. In addition, project related activities that result in land conversion may also result in habitat loss. The CDFW recommends new cannabis cultivation sites be restricted to existing facilities, previously developed sites or existing industrial warehouses.

The DEIR states that most of the Project facilities (indoor cultivation, distribution, manufacturing, testing and retailing) would result in modifications to existing structures on previously disturbed sites located within the City limits where minimal suitable habitat exist for most special-status species. No direct or indirect impacts to special-status wildlife species, including nesting birds is expected to occur, or would be expected to occur at less than significant levels with the implementation of Mitigation Measures (MM) that are contained within the DEIR. If any new construction occurs on undeveloped parcels, a pre-construction survey for all special-status species, by a qualified biologist, will occur prior to the proponent granting a grading permit from the City. Mitigation Measures outlined in the DEIR (MM 4.4-1 through MM 4.4-8) are provided to reduce or eliminate Project impacts to California tiger salamander, San Joaquin kit fox, Swainson's hawk, burrowing owl, western mastiff bat, American badger and nesting birds to less than significant levels.

**1-C:** The commenter recommends assessing presence/absence of burrowing owl occupancy by conducting surveys following the California Burrowing Owl Consortium's survey protocol and mitigation guidelines with a 500-foot buffer around the Project area. The commenter suggests that at least three or more surveillance surveys be conducted occurring at least three weeks apart during the peak breeding season. The commenter provides avoidance criteria if nesting sites are confirmed, a set of avoidance setbacks are recommended.

The DEIR contains mitigation measures requiring pre-construction surveys be conducted prior to the start of construction activities at any site where suitable habitat exists. A single survey is all that is necessary to conclude presence/absence of western burrowing owls. As discussed in

response **1-B**, if no burrowing owl are observed, no suitable burrows are present or no sign of habitation (pellets, whitewash, etc.) is observed on site or within the buffer during the pre-construction survey, no further mitigation are warranted. If suitable burrows are identified during the survey, the burrow will be monitored as outlined in MM 4.4-2. If owls are identified not inhabiting the burrow or site, the burrow may be excavated. If the burrows are deemed active, an exclusion zone will be erected at the adopted distances outlined in MM 4.4-2, which are adequate to protect owls within densely populated areas such as the City of Fresno. The CDFW recommended exclusion zones are suggested guidelines and are not applicable to the proposed project.

**1-D:** The commenter states that nesting bird surveys are required during the nesting season prior to construction activities for songbirds, and raptors. Exclusion zones are required dependent upon the species and up to the qualified biologist's discretion if the CDFW is notified in advance. The commenter suggests that nests can be monitored prior to work activities to establish a baseline and the nest can be monitored for the first 24 hours to identify behavioral changes. If changes to the behavior has been determined to be detrimental to nesting success, the CDFW will be consulted for guidance. The commenter recommends a 250-foot buffer for active nests of non-listed species and a 500-foot no disturbance buffer for non-listed raptors (excluding Swainson's hawk) until nesting is deemed complete. The commenter suggests that Project related activities occur during the non-nesting season.

The comment is noted for the record. It is common practice to observe nesting birds for sensitivity during construction monitoring. Many species of birds are acclimated to human presence and noise. Reducing buffer zones for acclimated nesting may be determined by the qualified biologist. Blocking line of sight view, timing or staging of construction activity, and other strategies may be employed to reduce impacts to nesting birds. The City agrees that construction activities conducted outside of the nesting season is optimal for sites that may contain nesting habitat. MM 4.4-4 and 4.4-5 in the DEIR address nesting birds that may occur within the Project sites to reduce impacts to a less than significant level.

**1-E:** The commenter states that if the project occurs during the nesting Swainson's hawk season, surveys to determine nesting activity is required. The commenter states that a 0.5-mile "no construction" buffer should be established if active nests are found. A smaller no construction buffer may require an ITP. The commenter recommends that if any known nest tree requires removal, CDFW recommends they be replaced with appropriate native tree species planted at a ratio of 3:1.

MM 4.4-6 in the DEIR outlines the steps required for Swainson's hawk avoidance and minimization. Most, if not all, of the Project sites will occur on parcels within the City limits in existing facilities where nesting and foraging habitat is not present or is extremely limited. MM 4.4-6 outlined in the DEIR mitigates impacts to nesting Swainson's hawks. These measures mirror the CDFW comment described above and eliminate or limit impacts to a less than significant level. It is not anticipated that any tree removal will be required for any new parcel development.

If trees are to be impacted, the City also requires permitting prior to removal and may mitigate tree replacement. The commenter recommendations have been noted.

**1-F:** The commenter recommends that the California tiger salamander be included in the WEAT.

The comment has been noted and a CTS discussion will be added to the WEAT (MM 4.4-8), as shown below:

**MM 4.4-8:** Prior to construction activities on any undeveloped parcel, all personnel shall attend a Worker Environmental Awareness Training (WEAT). The WEAT shall be developed and conducted by a qualified biologist.

1. The program shall include information on the life history of all of the special-status species determined herein to have potential to occur onsite, including migratory birds, ~~and~~ raptors, and California tiger salamander.
2. The program shall discuss each species' legal protection, status, the definition of "take" under the Endangered Species Act, measures the Project operator must implement to protect the species, reporting requirements, specific measures that each worker shall employ to avoid take of wildlife species, and penalties for violation of the State and Federal ESAs.
3. The program shall provide information on how and where to bring injured wildlife for treatment in the case any animals are injured on the Project site, and how to document wildlife mortalities and injuries.
4. An attendance form signed by each worker indicating that environmental training has been completed will be kept on record. A copy of the sign-in sheet shall be submitted to The City of Fresno Planning and Development Department.

**1-G:** The commenter discusses a recent CTS observation near the Project site and discusses the biological requirements and life history of CTS. If a pre-construction site assessment determines there is suitable habitat present for CTS, which would include large tracts of upland habitat suitable for refugia (small mammal burrows) and wetland habitat features for breeding, within and or adjacent to the project footprint, the commenter recommends focused surveys for CTS in the Project site and vicinity (up to 1.3 miles). If the site contains these features protocol-level surveys are advised to be conducted in accordance with the Interim Guidance to determine presence or a negative finding for CTS.

The DEIR discusses a recorded occurrence of CTS in 2017 near the intersection of West Ashlan Avenue and State Route 99. The record identifies the species as presumed extinct but notes that the individual is likely a remnant of a population that is no longer viable due to habitat loss. The proposed Project sites are limited to very specific locations within the City limits, most of which have already been developed and where the species is highly unlikely to occur. None of the

proposed Project uses would be placed near this 2017 CTS observation. Given that it is highly unlikely that this species would be present at any of the locations where proposed Project facilities could occur, no direct or indirect impacts are anticipated at any of the potential Project site locations. The City does not believe that surveys for CTS are warranted. As stated in response **1-F**, CTS discussion will be added to the WEAT (MM 4.4-8).

**1-H:** The commenter states that the CDFW has regulatory authority with regard to activities occurring in streams, including ephemeral streams, and /or lakes that could adversely affect any fish or wildlife resource, pursuant to Fish and Game Code sections 1600 *et seq.* If a Project could potentially substantially divert or obstruct the natural flow of any river, stream or lake; substantially change or use any material from the bed, channel, or bank of, any river, stream, or lake; or deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake, notification of a Lake or Streambed Alteration Agreement to CDFW is required.

None of the proposed Project sites are located near any water feature, no impacts to such water features will occur, and a CDFW 1600 permit is not warranted.

**1-I:** The commenter states that cannabis water use estimates are not well established, and some cannabis cultivation activities have resulted in lowering of groundwater tables in northern California.

A full Water Supply Assessment was prepared for this Project and was included as Appendix H of Volume II of the DEIR. In addition, water supply resources were discussed in Chapter 4.10 and 4.19 of Volume I. Section 4.10-2 specifically addressed the estimated amount of water use for the proposed Project. The estimated maximum total water demand of the Project is approximately 208.9-acre feet per year, approximately 0.17 percent of the City's current total water demand of 120,067-acre feet per year. This comment does not otherwise raise a substantive issue on the content of the EIR. The comment has been noted for the record and revisions are not necessary.

**1-J:** The commenter states that cannabis cultivation operations can cause disturbances to wildlife from the use of artificial lighting.

The proposed Project would only allow for indoor cannabis cultivation within fully enclosed warehouses. Although lighting will occur within these buildings, potential operators will be required to ensure their buildings are maintained and preclude any openings that would allow for wildlife species to enter the facility. Parking facilities may be lighted, but the lighting of those parking areas will be directional and confined to parking structures consistent with the City of Fresno Municipal Code. This comment does not otherwise raise a substantive issue on the content of the EIR. The comment has been noted for the record and revisions are not necessary.

**1-K:** The commenter provides information on submitting environmental data to the CNDDDB database for use in subsequent environmental documents.

Should any pre-construction surveys yield data on sensitive plant, wildlife species, or natural communities, the qualified biologist for the project will submit the necessary data to the CNDDDB. This comment does not otherwise raise a substantive issue on the content of the EIR. The comment has been noted for the record and revisions are not necessary.

**1-L:** The commenter provides information on filing fees for the Notice of Determination. The City will pay all filing fees necessary, should the Project be approved. This comment does not otherwise raise a substantive issue on the content of the EIR. The comment has been noted for the record and revisions are not necessary.

**1-M:** The commenter thanks the City for allowing the opportunity to comment on the DEIR and provides a web link for additional information on surveys and monitoring protocols for sensitive species. This comment does not otherwise raise a substantive issue on the content of the EIR. The comment has been noted for the record and revisions are not necessary.



***Comment Letter 2: Lindsay Rains, California Department of Food and Agriculture  
(June 3, 2020)***



June 03, 2020

City of Fresno  
Israel Trejo, Supervising Planner  
2600 Fresno Street, Room 3043  
Fresno, CA 93721  
E-mail: [israel.trejo@fresno.gov](mailto:israel.trejo@fresno.gov)

Re: Review of Draft Environmental Impact Report (SCH#2019070123) – City of Fresno Proposed Regulation and Permitting of Commercial Cannabis Activities

Dear Mr. Trejo:

Thank you for providing the California Department of Food and Agriculture (CDFA) CalCannabis Cultivation Licensing Division (CalCannabis) the opportunity to comment on the Draft Environmental Impact Report (EIR) (SCH#2019070123) prepared by the City of Fresno (City) for the Proposed Regulation and Permitting of Commercial Cannabis Activities (Proposed Program).

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, subd. (a)(2).) All commercial cannabis cultivation within California requires a cultivation license from CDFA.

2-A

CDFA certified a Programmatic Environmental Impact Report (PEIR) for its cannabis licensing activities on November 13, 2017. The PEIR provided an evaluation at a statewide level of the types of impacts expected to be caused by cannabis cultivation, including the cumulative impacts that would be expected under the CalCannabis Cultivation Licensing Program.

#### **CEQA Requirements for Annual State Cultivation License Applicants**

Pursuant to state regulations, CDFA requires an annual license applicant to provide evidence of exemption from, or compliance with, CEQA (Cal. Code of Regs., tit.3 §8102(r)). The evidence provided must be one of the following:

2-B

- (1) A signed copy of a project-specific Notice of Determination or Notice of Exemption and a copy of the associated CEQA document, or reference to where it may be located electronically, a project description, and/or any accompanying permitting documentation from the local jurisdiction used for review in determining site specific environmental compliance;
- (2) If an applicant does not have the evidence specified in subsection (1), or if the local jurisdiction did not prepare a CEQA document, the applicant will be responsible for the preparation of an



environmental document in compliance with CEQA that can be approved or certified by [CDFA], unless [CDFA] specifies otherwise.

When the project has been evaluated in a site-specific environmental document previously certified or adopted by the local Lead Agency, CDFA will evaluate the project as a Responsible Agency, as provided in Section 15096 of the CEQA Guidelines. When the local jurisdiction prepares an NOE for a categorical exemption, CDFA will act as the CEQA Lead Agency and conduct an independent verification, as provided in Section 15300 et. seq. of the CEQA Guidelines, as to whether the exemption is appropriate for its purposes. When the local jurisdiction does not act as the Lead Agency (approves the project through a ministerial process), CDFA will assume the role of Lead Agency.

For a complete list of all license requirements please visit: [static.cdca.ca.gov/MCCP/document/CDFA Final Regulation Text 01162019 Clean.pdf](https://static.cdca.ca.gov/MCCP/document/CDFA%20Final%20Regulation%20Text%2001162019%20Clean.pdf).

## General Comments

### 1. CEQA Streamlining

Both the EIR and the proposed ordinance indicate that the City intends to complete site-specific CEQA compliance for individual cultivation projects within the City of Fresno. Section 15-2739 (N)(4) of the draft ordinance states that “[I]and use approvals shall include compliance with all applicable provisions of CEQA.” In addition, the EIR references the requirement for a conditional use permit (CUP) for each cannabis business permit, stating that “[a]ll requests for commercial cannabis businesses will require a Conditional Use Permit discretionary review, and approval by the City Planning Commission.” (p. 4.19-36.) Neither the EIR nor the draft ordinance specify the City’s proposed process for completing CEQA for future cannabis cultivation projects.

CDFA encourages local jurisdictions to use CEQA streamlining options when appropriate, including the use of a Program EIR to cover CEQA review for later activities. Section 15168(c)(4) of the CEQA Guidelines recommends that:

Where the later activities involve site specific operations, the agency should use a written checklist or similar device to document the evaluation of the site and the activity to determine whether the environmental effects of the operation were within the scope of the program EIR.

Therefore, for activities that are covered by the City’s Program EIR, CDFA recommends that the City of Fresno prepare a checklist for each subsequent activity and provide copies to applicants, for inclusion with their applications to CDFA for state cultivation licenses. This would provide the documentation needed by CDFA of the City’s reasoning in concluding that the proposed activity fits within the analysis covered by the program EIR and that subsequent environmental review is not required. CDFA also recommends that the City of Fresno prepare Notices of Determination (NODs) and file them with the State Clearinghouse for activities approved in this manner.

For activities that are not covered by the City’s Program EIR, CDFA recommends that it use one of the following CEQA compliance options available for cultivation projects:

2-B  
Cont.

2-C

- Complete an NOE for any projects where it can be demonstrated that the project would not have the potential for a significant effect on the environment (General Rule Exemption, CEQA Guidelines §15061(b)(3));
- Complete an NOE for any projects qualifying for one or more classes of categorical exemption (CEQA Guidelines §15300 et. seq.);
- Prepare an IS/ND, IS/MND, or EIR that tiers from the City of Fresno EIR (i.e., incorporating by reference the general discussions from the broader EIR and concentrating a later environmental assessment solely on the issues specific to the later project), for projects not qualifying for a categorical exemption.

2-C  
Cont.

## ***2. Significant and Unavoidable Impacts***

The EIR concludes that the Proposed Program will result in certain Significant and Unavoidable direct and cumulative impacts. These include impacts to Air Quality and Greenhouse Gas Emissions. Consequently, when CDFA acts as a Responsible Agency in approving a cultivation license for applicants in the City of Fresno, CDFA will need to evaluate whether there are any feasible alternatives or mitigation measures that would substantially lessen or avoid those significant environmental effects over which CDFA has authority (Cal. Pub. Res. Code §21002.1(b); Cal. Code Regs., tit.14, §15096(g)(2).) Further, if the local EIR identifies significant effects pertaining to the activities that CDFA is responsible for approving, then CDFA must make findings required by Public Resources Code section 21081 and California Code of Regulations title 14, section 15091 and, if needed, must adopt a statement of overriding considerations, as required by California Code of Regulations title 14, section 15093. (Cal. Code Regs., tit.14, §15096(h).) CDFA, therefore, requests that the City provide applicants with supporting information relied upon in the City's findings, for CDFA's subsequent consideration.

2-D

Further, as described above, should the City determine that a cultivation project is eligible for a categorical exemption under CEQA, CDFA will be responsible for independently verifying all documentation upon which the City relied in making such a determination, and making its own determination regarding whether such evidence is adequate for CDFA's purposes of issuing an annual license. As part of this process CDFA will need to determine whether any of the exceptions to the exemption apply to the project, including whether the project would make a considerable contribution to any cumulative environmental impacts, when combined with successive projects of the same type in the same place, over time (14 Cal. Code of Regs. § 15300.2(b)). Therefore, when approving categorical exemptions, CDFA recommends that the City provide such evidence to the applicant, along with the NOE.

## ***3. Authority of State Commercial Cannabis Licensing Agencies***

Several of the comments in the table below refer to inaccuracies in the EIR in its description of the state cannabis licensing agencies, and the roles, responsibilities, and regulations of each agency. The State of California has three separate cannabis licensing authorities: CalCannabis Cultivation Licensing, the Bureau of Cannabis Control, and the Manufactured Cannabis Safety Branch.

2-E

CalCannabis Cultivation Licensing is a division of CDFA. It is responsible for licensing and regulating commercial cannabis cultivators in California. CalCannabis also manages the state's track-and-trace

system, which tracks all commercial cannabis and cannabis products from cultivation to sale. The Bureau of Cannabis Control (BCC) is part of California’s Department of Consumer Affairs. The BCC is responsible for licensing retailers, distributors, testing labs, microbusinesses, and temporary cannabis events. The California Department of Public Health’s Manufactured Cannabis Safety Branch (MCSB) is responsible for licensing and regulation of commercial cannabis manufacturing in California.

2-E  
Cont.

In several instances throughout the EIR, the document incorrectly ascribes the responsibility of one agency to each other, or mischaracterizes the regulations of particular licensing agencies. The EIR would be improved if the document described the responsibilities and regulations for each agency accurately, and ensured that the analysis of potential impacts includes consideration of the regulations that apply to each specific type of cannabis business.

#### **4. References to CalCannabis Cultivation Licensing PEIR**

In several locations throughout the EIR, the document relies on CDFA’s Programmatic Environmental Impact Report (PEIR) as support for the determination that the City of Fresno’s cannabis program would not result in significant impacts. The CDFA PEIR analyzed potential environmental impacts of the statewide cannabis cultivation licensing program regulations. It did not examine impacts that would result from manufacturing, distribution, testing, or retail cannabis businesses, and therefore its conclusions regarding cultivation would not necessarily apply to those other types of cannabis business activities. In order to draw conclusions regarding impacts of manufacturing, distribution, testing, or retail cannabis businesses, the City’s EIR would need to complete a separate analysis examining the impacts of each type of business.

2-F

In addition, in some instances described below, the City’s EIR does not provide adequate analysis to describe how and why the CDFA PEIR supports the City’s determinations related to the City’s cultivation ordinance. CDFA requests that when the City’s EIR cites CDFA’s PEIR, the document clearly describes how the analysis in CDFA’s PEIR has been applied to the analysis of Fresno’s local ordinance, and provide substantial evidence to support impact determinations for the City’s Proposed Program.

#### **5. Need to Acknowledge and Consider CDFA Cannabis Cultivation Regulations**

The EIR should acknowledge that CDFA is responsible not only for licensing, but also 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).

On January 16, 2019, California’s three state cannabis licensing authorities (CDFA, BCC, and OMCS) announced that the Office of Administrative Law (OAL) officially approved state regulations for cannabis businesses across the supply chain. CDFA’s regulations implement MAUCRSA with respect to the regulation, licensure, and enforcement of cannabis cultivation activities. Cannabis may not be cultivated for commercial purposes without a license from the state, and cultivators are required to comply with all CDFA regulations related to cannabis cultivation. The City of Fresno’s EIR should acknowledge these regulations, which provide important information for both local jurisdictions and cannabis cultivation applicants regarding State cultivation requirements generally and measures they include intended to reduce the impacts of cannabis cultivation on the environment. These regulations can be found at California Code of Regulations, title 3, section 8000, et. seq.

2-G

The “Regulatory Setting” sections for resource topics regulated by CDFA should describe the requirements contained in the regulations that pertain to each topic, as well as the protections for resources provided by these regulations. In addition, the impact analysis for each of the following resource topics should consider the effects of state regulations on reducing the severity of impacts resulting from implementation of the Proposed Project.

- **Aesthetics** - CDFA’s regulations pertaining to aesthetics, including requirements related to artificial lighting. (Cal. Code Regs., tit. 3 §§8304(c) and (g).)
- **Air Quality and Greenhouse Gas Emissions** - CDFA’s regulations related to the following requirements:
  - Regulations pertaining to generator use and renewable energy. (Cal. Code Regs., tit. 3 §§8305 and 8306.)
  - Protocols to reduce impacts to air quality resources, including requirements that prohibit burning of cannabis waste. (Cal. Code Regs., tit. 3 §8308.)
- **Biological Resources** - CDFA’s regulations related to the following requirements:
  - Enrollment in an order or waiver of waste discharge requirements with the SWRCB or the appropriate RWQCB. (Cal. Code Regs., tit. 3 §8102(p).)
  - Submit a copy of any final lake or streambed alteration agreement issues by CDFW, or verification that such agreement is not required. (Cal. Code Regs., tit. 3 §8102(v).)
  - Compliance with section 13149 of the Water Code as implemented by the State Water Resources Control Board, Regional Water Quality Control Boards, or California Department of Fish and Wildlife. (Cal. Code Regs., tit. 3 §8304(a).)
  - Compliance with any conditions requested by the California Department of Fish and Wildlife or the State Water Resources Control Board under section 26060.1(b)(I) of the Business and Professions Code. (Cal. Code Regs., tit. 3 §8304(b).)
  - If the SWRCB or CDFW notifies CDFA that cultivation is causing significant adverse impacts on the environment in a watershed or geographic area, CDFA may not issue new licenses. (Cal. Code Regs., tit. 3 §8216.)
  - Restrictions on use of generators. (Cal. Code Regs., tit. 3 §8306.)
  - All outdoor lighting used for security purposes shall be shielded and downward facing and that mixed-light license types of all tiers and sizes shall ensure that lights used for cultivation are shielded from sunset to sunrise to avoid nighttime glare. (Cal. Code Regs., tit. 3 §§8304(c) and (g));

2-G  
Cont.

- **Cultural Resources** - CDFA regulations require that, if cultural resources are unexpectedly discovered during cultivation, the licensee must suspend activities immediately. (Cal. Code Regs., tit. 3 §8304(d).)
- **Hazards and Hazardous Materials** – Comply with CDFA regulations that:
  - Require cultivators to comply with CDPR laws and regulations related to cannabis cultivation. ((Cal. Code Regs., tit. 3 §8307(a).)
  - Contain protections to minimize impacts related to hazards and hazardous materials, including pesticide storage and application requirements (See Cal. Code Regs., tit. 3 §§8106(a)(3) and 8307) and requirements that applicants conduct an EnviroStor search. (Cal. Code Regs., tit. 3 §8102(q).)
  - Contain protocols to reduce potential effects from pesticide use, including compliance with all label requirements, storage of chemicals in a secure building, containment of leaks and spills, application of the minimum amount necessary to control the target pest, and prevention of off-site drift. (Cal. Code Regs., tit. 3 §8307(b).)
  - Require enrollment in an order or waiver of waste discharge requirements with the SWRCB or the appropriate RWQCB. (Cal. Code Regs., tit. 3 §8102(p).)
  - Submit a copy of any final lake or streambed alteration agreement issues by CDFW, or verification that such agreement is not required. (Cal. Code Regs., tit. 3 §8102(v).)
  - Comply with section 13149 of the Water Code as implemented by the State Water Resources Control Board, Regional Water Quality Control Boards, or California Department of Fish and Wildlife. (Cal. Code Regs., tit. 3 §8304(a).)
  - Comply with any conditions requested by the California Department of Fish and Wildlife or the State Water Resources Control Board under section 26060.1(b)(1) of the Business and Professions Code. (Cal. Code Regs., tit. 3 §8304(b).)
- **Hydrology and Water Quality** – Comply with CDFA regulations that:
  - Contain protocols to reduce impacts to hydrology and water quality resources, including some of the requirements listed above.
  - Requires cultivators to provide evidence of enrollment in an order or waiver of waste discharge requirements with the State Water Resources Control Board or the appropriate Regional Water Quality Control Board. (Cal. Code Regs., tit. 3 §8102(p).)
  - Require submission of a copy of any final lake or streambed alteration agreement issues by CDFW, or verification that such agreement is not required. (Cal. Code Regs., tit. 3 §8102(v).)

2-G  
Cont.

- Compliance with section 13149 of the Water Code as implemented by the State Water Resources Control Board, Regional Water Quality Control Boards, or California Department of Fish and Wildlife. (Cal. Code Regs., tit. 3 §8304(a).)
- Compliance with any conditions requested by the California Department of Fish and Wildlife or the State Water Resources Control Board under section 26060.1(b)(I) of the Business and Professions Code. (Cal. Code Regs., tit. 3 §8304(b).)
- Identification of all water sources used for cultivation activities. (Cal. Code Regs., tit. 3 §8102(v).)
- If the SWRCB or CDFW notifies CDFA that cultivation is causing significant adverse impacts on the environment in a watershed or geographic area, CDFA may not issue new licenses. (Cal. Code Regs., tit. 3 §8216.)
- Requires compliance with regulations related to groundwater use. (Cal. Code Regs., tit. 3 §8107(b).)
- **Noise** - CDFA regulations contain protocols to reduce noise impacts, including use of generators. (Cal. Code Regs., tit. 3 §8306.)
- **Utilities and Service Systems** - CDFA's regulations related to the following requirements:
  - Identification of all water sources used for cultivation activities. (Cal. Code Regs., tit. 3 §8102(v).)
  - Compliance with regulations for groundwater use. (Cal. Code Regs., tit. 3 §8107(b).)
  - Compliance with regulations for solid waste management (Cal. Code Regs., tit. 3 §§8108, 8308.)
- **Energy** - CDFA's regulations related to the following requirements:
  - Identification of all power sources used for cultivation activities. (Cal. Code Regs., tit. 3 §8102(s).)
  - Compliance with renewable energy requirements. (Cal. Code Regs., tit. 3 §8305.)
  - Compliance with regulations for generators. (Cal. Code Regs., tit. 3 §8306.)
- **Cumulative Impacts** – See above for individual topics.

2-G  
Cont.

## Specific Comments and Recommendations

In addition to the general comments provide above, CDFA provides a table on the following page with specific comments regarding the analysis provided in the EIR.

2-H



Comment No.	Page No(s).	Resource Topic	EIR Text	CDFA Comments and Recommendations
1	3-27	Entitlements Required/Other Responsible Agencies	California Bureau of Cannabis Control (CalCannabis)	The text incorrectly refers to the Bureau of Cannabis Control as “CalCannabis.” The CalCannabis Cultivation Licensing Division is a division of the California Department of Food and Agriculture (CDFA). The Bureau of Cannabis Control is part of the California Department of Consumer Affairs. The document would be improved if the text was corrected.
2	4.1-18	Aesthetics	The Final PEIR for CalCannabis Cultivation Licensing [...] concluded a less-than-significant impact to light and glare. The PEIR, similar to the Project EIR, bases its conclusions on the fact that the vast majority of commercial cannabis businesses would be located in commercial or industrial settings, which would not have viewer groups (e.g., residences) that would be substantially adversely affected by nighttime lighting.	<p>The text of the City’s EIR mischaracterizes the conclusions of the CDFA PEIR. The CDFA PEIR indicated that the setting of many indoor cultivation facilities would occur in urban areas, and that indoor cultivation operations would take place in enclosed buildings where indoor lighting would not impact daytime or nighttime views. However, the PEIR did not draw any conclusions regarding other cannabis businesses such as testing, distribution, manufacturing, or retail businesses. In addition, the PEIR noted that CDFA regulations contain environmental protection measures that would reduce impacts from security lighting to less than significant levels.</p> <p>The EIR would be improved if it accurately described the conclusions of the CDFA PEIR and if it referenced CDFA’s requirement that all outdoor lighting for security purposes must be shielded and downward facing (Cal. Code Regs., tit. 3 § 8304(c)).</p>

2-H  
Cont.

Comment No.	Page No(s).	Resource Topic	EIR Text	CDFA Comments and Recommendations
3	4.6-13 to 4.6-14	Energy	According to the Bureau of Cannabis Control, beginning in 2023, all State licensees will be required to comply with [...] CCR Title 3, Div. 8, Chapter 1, Section 8305.	The EIR incorrectly identifies the Renewable Energy Requirements in section 8305 as regulations issued and administered by the Bureau of Cannabis Control. These regulations were developed by and are enforced by CDFA and are applicable only to cannabis cultivation businesses. They do not apply to commercial cannabis manufacturing, distribution, testing, or retail sales. The EIR would be improved if it correctly characterized CDFA's regulations and made clear that such regulations apply only to commercial cultivation.
4	4.6-17, 4.8-23	Energy, Greenhouse Gas Emissions	MM 4.6-1: Beginning in 2022, within 15 days of submitting an application for renewal of a cultivation license to the Bureau of Cannabis Control [...]	The Mitigation Measure incorrectly identifies the licensing agency for issuance of state cultivation licenses as the Bureau of Cannabis Control. CDFA is responsible for issuing state cultivation licenses. The EIR and mitigation measure should be corrected.
5	4.10-14	Hydrology and Water Quality	[T]herefore, while CDFA is the lead agency for this PEIR, potential water quality and related impacts from cannabis cultivation remain under the water agencies' primary jurisdiction.	The EIR incorrectly identifies CDFA as the lead agency for the City's EIR. The EIR should be corrected.
6	4.10-18	Hydrology and Water Quality	CDFA's regulations will describe the supplemental information requirements for water diversions [...]	The EIR provides a description of CDFA's regulations for water diversions for cultivation activities. However, the EIR's description does not match the current CDFA regulations. The document would be improved if it correctly described CDFA's regulations

2-H  
Cont.

Comment No.	Page No(s).	Resource Topic	EIR Text	CDFA Comments and Recommendations
				pertaining to water diversions (Cal. Code Regs., tit. 3 §§ 8105(e), 8107).
7	4.10-34	Hydrology and Water Quality	<p>The exact configuration of permits that will be applied for and granted is not known at this time. [...] In order to accurately estimate the total water demand for the proposed Project, the following combination of facilities were used:</p> <ul style="list-style-type: none"> <li>• Eight commercial cannabis licenses would be used for cultivation</li> <li>• Four for manufacturing</li> <li>• Four for distribution</li> <li>• 21 retail businesses (55,000 sq. ft.)</li> <li>• Five testing laboratories (100,000 sq. ft.)</li> </ul>	The document would be improved if it explained the basis for using this combination of facilities to estimate impacts related to water use.
8	4.10-41	Hydrology and Water Quality	The Final PEIR for CalCannabis Cultivation Licensing [...] concluded a less-than-significant impact to Hydrology and Water Quality. These conclusions, similar to those in this project EIR, are based on facts that include - businesses would generally operate indoors and would not have a direct mechanism to affect water quality...	The text of the City's EIR mischaracterizes the conclusions of the CDFA PEIR. While the CDFA PEIR found that the state licensing program would have a less than significant impact on water quality as a result of indoor cultivation activities, the PEIR did not indicate that there would be no mechanism for affecting water quality. In addition, the PEIR's analysis was limited to an analysis of CDFA's licensing program regulations and would not extend to local licensing programs or site-specific projects. The EIR would be improved if it analyzed the potential of indoor cultivation operations permitted under the City of Fresno's Proposed Program to

2-H  
Cont.

Comment No.	Page No(s).	Resource Topic	EIR Text	CDFA Comments and Recommendations
				impact water quality. Also, any impact conclusions in the CDFA PEIR would relate only to commercial cannabis cultivation activities. The PEIR did not examine potential impacts of other types of commercial cannabis businesses.
9	4.11-3	Land Use and Planning	The Bureau is tasked with establishing a comprehensive internet system to track licensees and report the movement of commercial cannabis and cannabis products.	The EIR incorrectly states that the Bureau of Cannabis Control is responsible for administering the statewide track-and-trace system to track the movement of cannabis and cannabis products. CDFA is responsible for administration of the state track-and-trace system for commercial cannabis. The document would be improved if the text was corrected.
10	4.19-32	Utilities and Service Systems	There are three State licensing agencies that provide regulations for cannabis waste. These agencies include: Bureau of Cannabis Control, CalCannabis Cultivation Licensing, and Manufactured Cannabis Safety Branch. Based on these agency regulations, a cannabis cultivator is required to dispose of cannabis waste in one of the following methods...	The EIR cites and lists CDFA's regulations for cannabis waste related to commercial cultivation activities. The EIR would be improved if it described the cannabis regulations for other cannabis business types, and considered these in its analysis of impacts.
11	10-1	Bibliography	Bureau of Cannabis Control. (2019). CCR Title 3, Division 8, Chapter 1. Retrieved from <a href="https://www.cdfa.ca.gov/calcannabi">https://www.cdfa.ca.gov/calcannabi</a>	The EIR incorrectly attributes the cited regulations to the Bureau of Cannabis Control. The regulations cited in this entry are CDFA's CalCannabis Cultivation Licensing regulations. The BCC's cannabis licensing regulations can be found at:

2-H  
Cont.

Comment No.	Page No(s).	Resource Topic	EIR Text	CDFA Comments and Recommendations
			s/documents/FinalApprovedRegulationText.pdf	<a href="https://www.bcc.ca.gov/law_regs/cannabis_order_of_adoption.pdf">https://www.bcc.ca.gov/law_regs/cannabis_order_of_adoption.pdf</a>

2-H  
Cont.

**Conclusion**

CDFA appreciates the opportunity to provide comments on the EIR for the City of Fresno's proposed cannabis program. If you have any questions about our comments or wish to discuss them, please contact Kevin Ponce, Senior Environmental Scientist Supervisor, at (916) 576-4161 or via e-mail at [Kevin.Ponce@cdfa.ca.gov](mailto:Kevin.Ponce@cdfa.ca.gov).

Sincerely,

Lindsay Rains  
Licensing Program Manager

***Response to Comment Letter 2: Lindsay Rains, California Department of Food and Agriculture (June 3, 2020)***

**2-A:** Thank you for your comments. The participation of the California Department of Food & Agriculture in the public review of this document is appreciated. The comment states the California Department of Food & Agriculture – CalCannabis Cultivation Licensing Division (CalCannabis) has reviewed the Draft EIR and has jurisdiction over the issuance of licenses to cultivate, propagate and process commercial cannabis in California. The commenter also states the CDFA certified a Programmatic Environmental Impact Report (PEIR) for its cannabis licensing activities on November 13, 2017. The comment has been noted for the record and revisions are not necessary.

**2-B:** The commenter states that pursuant to State regulations, CDFA requires an annual license applicant to provide evidence of exemption from, or compliance with, CEQA. The commenter also states that when a site-specific environmental document has been previously certified by a Lead Agency, CDFA will evaluate the Project as a Responsible Agency. This comment does not otherwise raise a substantive issue on the content of the EIR. The comment has been noted for the record and revisions are not necessary.

**2-C:** The commenter states the City of Fresno will require a Conditional Use Permit (CUP) for each cannabis related business and that the CUP process is discretionary. The commenter further states that the City should use CEQA streamlining provisions and create a checklist for compliance options. This comment does not otherwise raise a substantive issue on the content of the EIR. The comment has been noted for the record and revisions are not necessary.

**2-D:** The commenter states the proposed Project will result in certain significant and unavoidable direct and cumulative impacts. As part of CDFA's licensing process, CDFA will need to evaluate whether there are any feasible alternatives or mitigation measures that would substantially lessen or avoid significant impacts. The commenter requests the City provide applicants with supporting information relied upon in the City's Findings for CDFA's consideration. CEQA Section 15091 Findings of Fact and 15093 Statement of Overriding Consideration will be presented to the City Council for their consideration. Should the Project be approved and the Final EIR certified, applicants will have the opportunity to provide CDFA with a copy of these documents for their review. The comment has been noted for the record and revisions are not necessary.

**2-E:** The commenter states the DEIR incorrectly identifies or mischaracterizes the responsibilities or regulations of the three separate cannabis licensing authorities of the State. The commenter briefly describes the three agencies as CalCannabis, Bureau of Cannabis Control (BCC) and California Department of Public Health's Manufactured Cannabis Safety Branch (MCSB). The commenter states the table provided in their comment letter further clarifies the roles of these agencies as it pertains to the DEIR. See response **2-H** for revisions made to the DEIR, based on CDFA comments. An updated summary of the roles of the CalCannabis, BCC, and MCSB are provided in the Hazards and Hazardous Waste Section (4.9-13).

**2-F:** The commenter states the DEIR relies on CDFA's Programmatic Environmental Impact Report (PEIR) as support for the determination that the proposed Project would not result in significant impacts. The commenter states the PEIR was for cultivation only and did not examine the impacts of manufacturing, distribution testing and retail businesses. The commenter further states the table provided in the comment letter includes instances where the City should provide substantial evidence to support impact determinations. See response **2-H** for revisions made to the DEIR, based on CDFA comments. The EIR provides adequate independent analysis to reach the conclusions it does, based on the proposed Project. The CDFA EIR was cited to as a resource document and demonstrates consistency in the City's EIR with their analysis.

**2-G:** The commenter states the DEIR should acknowledge that CDFA is responsible for not only licensing, but for regulation of cannabis cultivation and enforcement. The commenter also states the Office of Administrative Law (OAL) officially approved State regulations for cannabis businesses across the supply chain on January 16, 2019 and the City's DEIR should acknowledge these regulations. The commenter states various regulations to be considered in the "Regulatory Setting" sections of individual chapters. See Section 7.3, above, for revisions to the Draft EIR that pertain to these comments.

**2-H:** The commenter provided specific comments in table format regarding clarifications needed to the DEIR. The following responses correspond to the Comment number in the commenters letter:

Response to Comment 1: Page 3-28 of the EIR has been updated to correct agency names. See Section 7.3, above.

Response to Comment 2: Page 4.1-18 of the EIR has been updated to state the CDFA PEIR concluded indoor cultivation facilities would occur in urban areas and that adherence to Fresno municipal codes would reduce glare from proposed commercial cannabis businesses to a less than significant level. See Section 7.3, above.

Response to Comment 3: Page 4.6-14 of the EIR has been updated to correctly identify CDFA regulations regarding commercial cultivation businesses. See Section 7.3, above.

Response to Comment 4: Mitigation Measure 4.6-1 has been clarified to correctly identify CDFA regulations regarding commercial cultivation businesses. See Section 7.3, above.

Response to Comment 5: Page 4.10-14 of the EIR has been updated to clarify the requirements of the water agencies. See Section 7.3, above.

Response to Comment 6: Page 4.6-14 of the EIR has been updated to reflect updated rules and regulations regarding water rights administration for cannabis cultivation. See Section 7.3, above.



Response to Comment 7: As stated on page 4.10-34, the exact configuration of permits that will be applied for and granted is not known at this time. It is reasonable to assume there would be a mix of cultivation, distribution, manufacturing, retail and testing laboratories. The analysis in Impact Section 4.10-2 quantifies the independent water usage for cultivation, manufacturing, distribution, retail and laboratory testing. In order to provide the reader with a reasonable quantity of potential water demand, a likely combination of businesses was selected. Two cultivation facilities could share one manufacturing facility and one distribution facility. Another scenario would be that each independent company would operate their own cultivation, manufacturing and distribution facilities. Since cultivation would be the highest water user, between these facilities, any other combination of facilities would require less water, therefore, due to the restrictions of 16 total commercial cannabis businesses (cultivation, manufacturing, distribution), a reasonable mix of 2 cultivation facilities to 1 manufacturing and distribution facility was used. The comment has been noted for the record and revisions are not necessary.

Response to Comment 8: The commenter states the EIR mischaracterizes the conclusions of the CDFA PEIR regarding water quality. The EIR independently concludes that the Project does not conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan. The EIR, like the CDFA Final PEIR concludes impacts would be less than significant for indoor cultivation activities. Other uses, such as manufacturing, distribution, testing, and retail would all be similar in nature to existing industrial and commercial uses. Additionally, the proposed uses would be subject to local and State regulations, as discussed throughout Chapter 4.10 (Hydrology and Water Quality). The comment has been noted for the record and revisions are not necessary.

Response to Comment 9: Page 4.11-2 of the EIR has been updated to correctly identify CDFA as the agency responsible for administration of the State track-and-trace system. See Section 7.3, above.

Response to Comment 10: The EIR references the State requirements of commercial cannabis cultivators for disposal of cannabis waste. The EIR further concludes that all commercial cannabis businesses (manufacturing, distribution, testing, and retail) who generate four or more cubic yards of commercial solid waste per week must adhere to Mitigation Measure 4.19-3. The comment has been noted for the record and revisions are not necessary.

Response to Comment 11: Page 10-1 of the EIR has been updated to correctly identify BCC cannabis licensing regulations. See Section 7.3, above.

***Comment Letter 3: Andrew Nabors, Clovis Unified School District (April 27, 2020)***

**From:** [Israel Trejo](#)  
**To:** [Christopher Mynk](#)  
**Subject:** FW: Draft EIR - Fresno Cannabis  
**Date:** Wednesday, April 29, 2020 12:04:25 PM  
**Attachments:** [image001.png](#)

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Please see EIR comment below. thanks.

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**From:** Andrew Nabors [mailto:AndrewNabors@clovisusd.k12.ca.us]  
**Sent:** Monday, April 27, 2020 11:13 AM  
**To:** Israel Trejo  
**Subject:** RE: Draft EIR - Fresno Cannabis

**External Email: Use caution with links and attachments**

Good morning,

I noticed on Volume 1 section 4.15-9 it was a little dated with the current fees. See below for the latest information.

The Leroy F. Greene School Facilities Act of 1998, or Senate Bill 50 (SB 50), authorizes school districts to levy developer fees to finance the construction or reconstruction of school facilities. In January 2020, the State Allocation Board (SAB) approved maximum Level 1 developer fees at \$0.66 per square foot of enclosed and covered space in any commercial or industrial development, and \$4.08 per square foot for residential development (SAB, 2014). These fees are intended to address the increased educational demands on the school district resulting from new development. Public school districts can, however, impose higher fees than those established by the SAB, provided they meet the conditions outlined in the act. Private schools are not eligible for fees collected pursuant to SB 50. The payment of school mitigation impact fees authorized by SB 50 is deemed to provide full and complete mitigation of project impacts on school facilities. SB 50 provides that a State or local agency may not deny or refuse to approve the planning, use, or development of real property on the basis of a developer's refusal to provide mitigation in amounts in excess of that established by SB 50.

<https://www.dgs.ca.gov/OPSC/Resources/Page-Content/Office-of-Public-School-Construction-Resources-List-Folder/Annual-Adjustment-to-SFP-Grants-and-Developer-Fee-History>



**Andrew Nabors**  
(559) 327-9264

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**From:** Israel Trejo <Israel.Trejo@fresno.gov>  
**Sent:** Friday, April 24, 2020 3:13 PM  
**To:** Israel Trejo <Israel.Trejo@fresno.gov>  
**Subject:** Draft EIR - Fresno Cannabis

3-A

EXTERNAL MESSAGE - **Think Before You Click**

To All:

Please see attached Notice of Availability relative to the release of the draft environmental impact report for evaluating the proposed regulation and permitting of commercial cannabis activities. Please let me know if you have any questions. Thank you.

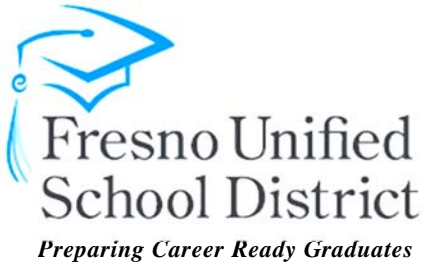
Israel Trejo  
Supervising Planner  
City of Fresno  
621-8044

**RESPONSE TO COMMENT LETTER 3: *Andrew Nabors, Clovis Unified School District (April 27, 2020)***

**3-A:** The commenter states the State Allocation Board (SAB) has approved maximum Level 1 developer fees from \$0.54 to \$0.66 per square foot of enclosed and covered space in any commercial or industrial development, and from \$3.36 to \$4.08 per square foot for residential development.

Revisions to Page 4.15-9 of the EIR have been made to reflect the updated fees, as noted in Section 7.3, above.

***Comment Letter 4: Alex Belanger, Fresno Unified School District (May 1, 2020)***



## BOARD OF EDUCATION

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## SUPERINTENDENT

Robert G. Nelson, Ed.D.

May 1, 2020

Israel Trejo  
Supervising Planner  
City of Fresno  
2600 Fresno Street, Room 3043  
Fresno, CA 93721-3604

**SUBJECT: NOTICE OF AVAILABILITY  
DRAFT ENVIRONMENTAL IMPACT REPORT  
PROPOSED REGULATION AND PERMITTING OF COMMERCIAL CANNABIS ACTIVITIES**

Dear Mr. Trejo,

In response to the City's request for comments on the draft environmental impact report referenced above, Fresno Unified School District (FUSD) has the following comments and concerns.

The City of Fresno is proposing an amendment to Sections 15-2739 and 152739.1 of the Fresno Municipal Code, Article 33 to Chapter 9 of the Fresno Municipal Code, and Article 21 to Chapter 12 of the Fresno Municipal Code, relating to adult use and medicinal cannabis retail business and commercial cannabis business. A total of 21 possible cannabis retail locations could be established at various locations within Fresno Unified School District boundaries.

Per the Draft Environmental Impact Report, "all buildings in which a cultivator, distributor, or manufacturer is located shall be located no closer than 1,000 feet from any property boundary containing a residence, school, daycare, or youth center." In addition, "retailers would be required to maintain a minimum distance of 800 feet from any property boundary containing another cannabis retailer, school, daycare center, or youth center (i.e. parks, playgrounds, facilities hosting activities for minors)." The District **does not support** the proposed sale or distribution of commercial cannabis and has concerns regarding potentially dangerous interaction between our students and the proposed sales. FUSD's response on these projects will be subject to state law as well as municipal code in effect, in addition to the Fresno Police Department's review of proposed projects with regard to the concentration and use of cannabis-related business in close proximity to school sites.

If you have any questions or require additional information regarding our comments and concerns, please contact our office at (559) 457-3066.

Sincerely,

Alex Belanger, Assistant Superintendent  
Facilities Management and Planning

AB:hl

4-A

***Response to Comment Letter 4: Alex Belanger, Fresno Unified School District (May 1, 2020)***

**4-A:** The commenter states Fresno Unified School District does not support the proposed sale or distribution of commercial cannabis.

This comment does not raise a substantive issue on the content of the EIR. The comment has been noted for the record and revisions are not necessary.



***Comment Letter 5: Steve McClain, Central Unified School District (June 1, 2020)***



**CENTRAL UNIFIED SCHOOL DISTRICT**  
4605 North Polk Avenue · Fresno, CA 93722  
Phone: (559) 274-4700 · Fax: (559) 271-8200

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Assistant Superintendent, CBO  
Steve McClain

Directors:  
Alissa Angle, Child Nutrition  
Yolanda Balladares, Fiscal Services  
Jesse Bath, Maintenance, Operations,  
Transportation (MOT)  
Chris Martinez, Technology  
Joseph Martinez, Facility Planning

June 1, 2020

City of Fresno  
Attn: Mr. Israel Trejo, Supervising Planner  
2600 Fresno Street, Room 3043  
Fresno CA 93721

Subject: Comment regarding the City of Fresno's Draft EIR and proposed revision of its Municipal Code Section 15-2739 relating to proposed regulation and permitting of commercial cannabis activities.

Dear Mr. Trejo:

The District is committed to providing a safe and healthy environment for all of its students. There have been numerous studies indicating that cannabis use has harmful effects on adolescents and youth. Marijuana is linked to negative effects on intellectual function and higher rates of mental health disorders. The California Department of Public Health cites research showing that the highest rates of marijuana use among adolescents aged 12 to 17 were in states or jurisdictions that had legalized commercial marijuana. Nationally the perceived risk of harm associated with marijuana use by adolescents is decreasing while the daily use of marijuana is increasing among high school students.

Marijuana is addictive, particularly for youth. Marijuana use is harmful to the developing brain. Students who are frequent marijuana users are less likely to complete high school and graduate from college. Marijuana use is associated with additional health risks such as respiratory illnesses, asthma, and immune system suppression. Users are more likely to attempt suicide than non-users. Marijuana-related traffic deaths are increasing and emergency room admissions for accidental poisoning due to marijuana ingestion by children under the age of 12 is increasing.

Commercialization of marijuana through commercial storefronts would increase its availability and normalize its use, leading to increased negative health consequences, particularly among youth. This will greatly compound the drug and "vaping" problems already existing in our schools. Research has shown that increased availability of these substances results in increased teen use. Allowing marijuana dispensaries in the City of Fresno will make marijuana more accessible to teens and it may end up being brought to school by students whose parents/relatives have marijuana within their homes.

5-A

Today's youth are inundated with advertising targeted to minors advertising vaping and marijuana products. The Central Unified School District remains committed to actively supporting its students with wellness education and counseling to address the harmful effects of cannabis on youth. The District requests that dollars be set aside from tax revenues collected from the operation of cannabis facilities within the City of Fresno and distributed to the Central Unified School District and other school districts to help fund the cost of school programs that provide wellness education and counseling to our students related to cannabis use.

Cont.  
5-A

Sincerely,



Steve McClain  
Assistant Superintendent, CBO

***Response to Comment Letter 5: Steve McClain, Central Unified School District (June 1, 2020)***

**5-A:** The commenter states marijuana use by youth is the highest in states that have legalized commercial sales and use. The commenter states marijuana is addictive to youth and causes harmful health effects. The commenter further states commercialization of cannabis will increase availability and normalize the use. The commenter states the City of Fresno should set aside a portion of tax revenue from the sale of cannabis to help fund school programs to provide wellness education and counseling to students.

The recently adopted Cannabis Retail Business and Commercial Cannabis Business Ordinance, Section 9-3309 (m) (3), contains requirements for all commercial cannabis businesses or cannabis retail businesses to develop City-approved public outreach and education programs geared toward youth organizations and educational institutions. This program will outline the risks of youth use of cannabis and identify resources available to youth related to drugs and drug addiction. Fresno Municipal Code Section 7-1419, requires businesses to pay apportioned share of tax based on proportioned taxed activity carried on in the City. CEQA does not require local agencies to discuss future allocations of tax revenue. In addition, Fresno Municipal Code Section 7-1403 addresses limitations on use of tax revenues. This comment does not otherwise raise a substantive issue on the content of the EIR. The comment has been noted for the record and revisions are not necessary.

***Comment Letter 6: Arnaud Marjollet, San Joaquin Valley Air Pollution Control District  
(June 16, 2020)***

June 16, 2020

Israel Trejo  
City of Fresno  
Planning Department  
2600 Fresno Street, Room 3043  
Fresno, CA 93721

**Project: Draft Environmental Impact Report for Evaluating the Proposed Regulation and Permitting of Commercial Cannabis Activities**

**District CEQA Reference No: 20200346**

Dear Mr. Trejo:

The San Joaquin Valley Unified Air Pollution Control District (District) has reviewed the Draft Environmental Impact Report (EIR) from the City of Fresno (City) for the proposed amendments to the Fresno Municipal Code relating to regulation and permitting of adult and medicinal use cannabis retail businesses and commercial cannabis business. The proposed amendments to the Fresno Municipal Code address cultivation, distribution, manufacturing, testing laboratories, and retailers of commercial cannabis in the City of Fresno (Project). The City currently has a Regulatory Ordinance for Cannabis that was adopted in December of 2018 that includes cannabis requirements for permits, application, operation, and location restrictions. The proposed Project would make the needed changes to the Zoning Ordinance in the Fresno Municipal Code to designate specific property for medicinal cannabis retail business use and commercial cannabis business use. Per the EIR, there are two general eligible sites for future cannabis development projects or activities, one is the designated Cannabis Innovation Zone, defined as the area bounded by State Route 41, Golden State Boulevard, Church Avenue, East Avenue and Parallel Avenue. The second designated area, includes predetermined sites outside of the Cannabis Innovation Zone that are restricted to the Downtown, Commercial Mixed-use, and Industrial Zones, within existing urbanized areas and surrounded by existing commercial and industrial operations.

6-A

**Samir Sheikh**  
Executive Director/Air Pollution Control Officer

**Northern Region**  
4800 Enterprise Way  
Modesto, CA 95356-8718  
Tel: (209) 557-6400 FAX: (209) 557-6475

**Central Region (Main Office)**  
1990 E. Gettysburg Avenue  
Fresno, CA 93726-0244  
Tel: (559) 230-6000 FAX: (559) 230-6061

**Southern Region**  
34946 Flyover Court  
Bakersfield, CA 93308-9725  
Tel: (661) 392-5500 FAX: (661) 392-5585

The District offers the following comments:

### **1) Nuisance Odor from Future Cannabis Development Projects**

The District has reviewed the City's adopted Regulatory Ordinance for Cannabis, which appropriately requires odor control as a condition of approval for cannabis operations. As discussed in the Draft EIR, there is the potential for twenty-one (21) cannabis retailer/dispensary developments with a combined total of 55,000 square feet, sixteen (16) cultivation, distribution, and manufacturing developments with a combined total of 700,000 square feet, and 100,000 square feet of testing laboratories.

While offensive odors rarely cause any physical harm, they can be unpleasant, leading to considerable distress among the public and often resulting in citizen complaints.

6-B

It is important to note that cannabis growing, harvesting or processing operations are known to generate odors with a strong public nuisance potential. The District agrees with the Draft EIR, which appropriately requires an Odor Management and Control Plan (OMCP) for future cannabis operations. As discussed in the Draft EIR, future cannabis development projects would be required to include air filtration systems with odor control as indicated in the Cannabis Ordinance and as part of the OMCP. The District recommends the City require odor control equipment prior to operation, as condition of approval for future cannabis development projects.

The District is available to assist the City with information regarding specific facilities and categories of facilities, and associated odor complaint records.

### **2) Air Quality Permitting for Future Cannabis Development Projects**

Stationary Source emissions include any building, structure, facility, or installation which emits or may emit any affected pollutant directly or as a fugitive emission. District Rule 2010 requires operators of emission sources to obtain an Authority to Construct (ATC) and Permit to Operate (PTO) from the District. District Rule 2201 requires that new and modified stationary sources of emissions mitigate their emissions using best available control technology (BACT).

Cannabis operations are subject to District permits. The District recommends that the future cannabis applicants contact the District prior to the start of facility construction to identify all applicable District rules and regulations that will apply to their cannabis projects. As discussed above, the future cannabis projects are likely to generate odors with a strong public nuisance potential. The odor control devices required to be installed must receive an Authority to Construct (ATC) permit from the District prior to installation and operation.

6-C

Additionally, if future cannabis development projects or activities require the installation of an engine to produce power using an electrical generator, it might be important that you be aware of the very strict state and local regulations that apply to this type of equipment. Furthermore, if it is determined that a permit is required for equipment proposed at the facility, then an ATC permit application must be submitted to the District and construction should not commence prior receiving an ATC permit from the District. District's Small Business Assistance staff can be contacted at (559) 230-5888 to address any questions related to this matter.

The District has created a Cannabis Advisory to provide local public agencies and potential cannabis business operators located in the San Joaquin Valley with guidance regarding the air quality related requirements associated with this activity. For more information and guidance on how District rules and regulations apply to the aforementioned cannabis operations, please refer to the District's Cannabis Advisory at: <https://www.valleyair.org/busind/pto/cannabis-operations.htm>.

### **3) Other District Rules and Regulations for Future Cannabis Development Projects**

Future cannabis development projects may be subject to District Rules and Regulations, including: Regulation VIII (Fugitive PM10 Prohibitions), Rule 4102 (Nuisance), Rule 4601 (Architectural Coatings), Rule 4641 (Cutback, Slow Cure, and Emulsified Asphalt, Paving and Maintenance Operations), and Rule 4702 (Internal Combustion Engines). In the event an existing building will be renovated, partially demolished or removed, the project may be subject to District Rule 4002 (National Emission Standards for Hazardous Air Pollutants). The above list of rules is neither exhaustive nor exclusive. To identify other District rules or regulations that apply to future cannabis development projects or to obtain information about District permit requirements, the applicant can contact District's Small Business Assistance staff at (559) 230-5888. Current District rules can be found online at: [www.valleyair.org/rules/1ruleslist.htm](http://www.valleyair.org/rules/1ruleslist.htm).

Should future cannabis development projects result in at least 1-acre in size, the project proponent shall provide written notification to the District at least 48 hours prior to the project proponents intent to commence any earthmoving activities pursuant to District Rule 8021 (Construction, Demolition, Excavation, Extraction, and Other Earthmoving Activities). Also, should the proposed project result in the disturbance of 5-acres or more, or will include moving, depositing, or relocating more than 2,500 cubic yards per day of bulk materials, the project proponent shall submit to the District a Dust Control Plan pursuant to District Rule 8021 (Construction, Demolition, Excavation, Extraction, and Other Earthmoving Activities). Should you have any questions regarding the written notification or Dust Control Plan requirements, please contact District Compliance staff at (559) 230-6062.



The above list of rules is neither exhaustive nor exclusive. Current District rules can be found online at: [www.valleyair.org/rules/1ruleslist.htm](http://www.valleyair.org/rules/1ruleslist.htm).

To identify other District rules or regulations that apply to this Project or to obtain information about District permit requirements, the applicant is strongly encouraged to contact the District's Small Business Assistance (SBA) Office at (559) 230-5888.

6-C  
Cont.

#### 4) Health Risk Assessment

The Draft EIR did not include a discussion on potential health risk impacts from the Project due to future potential cannabis activities. The discussion should include a Health Risk Screening/Assessment that identifies potential Toxic Air Contaminants (TAC's) impact on surrounding sensitive receptors such as hospitals, daycare centers, schools, work-sites, and residences. TAC's are air pollutants identified by the Office of Environmental Health Hazard Assessment/California Air Resources Board (OEHHA/CARB) (<https://www.arb.ca.gov/toxics/healthval/healthval.htm>) that pose a present or potential hazard to human health. A common source of TACs can be attributed to diesel exhaust emitted from both mobile and stationary sources.

The District recommends the potential cannabis development projects created from the Project be evaluated for potential health impacts to surrounding receptors (on-site and off-site) resulting from operational and multi-year construction TAC emissions.

6-D

- i) The District recommends conducting a screening analysis that includes all sources of emissions. A screening analysis is used to identify projects which may have a significant health impact. A prioritization, using the latest approved California Air Pollution Control Officer's Association (CAPCOA) methodology, is the recommended screening method. A prioritization score of 10 or greater is considered to be significant and a refined Health Risk Assessment (HRA) should be performed.

For your convenience, the District's prioritization calculator can be found at: [http://www.valleyair.org/busind/pto/emission\\_factors/Criteria/Toxics/Utilities/PRIORITIZATION%20RMR%202016.XLS](http://www.valleyair.org/busind/pto/emission_factors/Criteria/Toxics/Utilities/PRIORITIZATION%20RMR%202016.XLS).

- ii) The District recommends a refined HRA for future cannabis projects that result in a prioritization score of 10 or greater. Prior to performing an HRA, it is recommended that the future development project applicants contact the District to review the proposed modeling protocol. A future development project would be considered to have a significant health risk if the HRA demonstrates that the project related health impacts would exceed the District's significance threshold of 20 in a million for carcinogenic risk and 1.0 for the Acute and Chronic Hazard Indices, and would trigger all feasible mitigation measures. The District recommends that future cannabis projects that result in a significant health risk not be approved.

For HRA submittals, please provide the following information electronically to the District for review:

- HRA AERMOD model files
- HARP2 files
- Summary of emissions source locations, emissions rates, and emission factor calculations and methodology.

More information on toxic emission factors, prioritizations and HRAs can be obtained by:

- E-Mailing inquiries to: [hramodeler@valleyair.org](mailto:hramodeler@valleyair.org); or
- Contacting the District by phone for assistance at (559) 230-6000; or
- Visiting the Districts website (Modeling Guidance) at: [http://www.valleyair.org/busind/pto/Tox\\_Resources/AirQualityMonitoring.htm](http://www.valleyair.org/busind/pto/Tox_Resources/AirQualityMonitoring.htm).

## 5) Assembly Bill 617

Assembly Bill (AB) 617 (2017, Garcia) requires the California Air Resources Board (CARB) and air districts to develop and implement Community Emission Reduction Programs (CERPs) in an effort to reduce air pollution exposure in impacted disadvantaged communities. The South Central Fresno area is one of the first Valley communities selected by CARB for investment of additional air quality resources and attention under AB 617.

Developed through an extensive community engagement process and Community Steering Committee, the CERP for the South Central Fresno Community was adopted by the District Governing Board in September 2019 and by the CARB Board in February 2020. The CERP identifies a wide range of measures designed to reduce air pollution and exposure, including a number of strategies to be implemented in partnership between agencies and local organizations. One of the measures identified and prioritized in the CERP includes working collaboratively with the City of Fresno to enhance community participation in land use processes, including working together to ensure more comprehensive opportunities for public input on land use decisions, and better communicating and understanding air quality impacts and potential mitigation.

Recognizing that a portion of the Project consists of the South Central Fresno AB 617 community, the District encourages the City to further assess the emission reductions measures and strategies contained in the CERP, and address them in the Project as appropriate.

6-D  
Cont.

6-E

For more details about the South Central Fresno CERP, please visit the District website at: <http://community.valleyair.org/media/1516/01finalscfresnocerp-9-19-19.pdf>.

6-E  
Cont.

## 6) Voluntary Emissions Reduction Agreement (VERA)

As indicated in the Draft EIR for construction and operation (Table 4.3-7 & 4.3-8), criteria pollutant emissions may result in emissions exceeding the District's CEQA significance thresholds, potentially resulting in a significant impact on air quality from the possible cannabis development projects or activities. The District recommends that the Draft EIR be revised to include a discussion on the feasibility of implementing a Voluntary Emission Reduction Agreement (VERA) for future cannabis development projects.

A VERA is a mitigation measure by which the project proponent provides pound-for-pound mitigation of emissions increases through a process that develops, funds, and implements emission reduction projects, with the District serving a role of administrator of the emissions reduction projects and verifier of the successful mitigation effort. To implement a VERA, the project proponent and the District enter into a contractual agreement in which the project proponent agrees to mitigate Project specific emissions by providing funds for the District's incentives programs. The funds are disbursed by the District in the form of grants for projects that achieve emission reductions. Thus, project-specific regional impacts on air quality can be fully mitigated. Types of emission reduction projects that have been funded in the past include electrification of stationary internal combustion engines (such as agricultural irrigation pumps), replacing old heavy-duty trucks with new, cleaner, more efficient heavy-duty trucks, and replacement of old farm tractors.

6-F

In implementing a VERA, the District verifies the actual emission reductions that have been achieved as a result of completed grant contracts, monitors the emission reduction projects, and ensures the enforceability of achieved reductions. After the project is mitigated, the District certifies to the Lead Agency that the mitigation is completed, providing the Lead Agency with an enforceable mitigation measure demonstrating that project-specific regional emissions have been mitigated to less than significant. To assist the Lead Agency and project proponent in ensuring that the environmental document is compliant with CEQA, the District recommends the Draft EIR includes an assessment of the feasibility of implementing a VERA.

Additional information on implementing a VERA can be obtained by contacting District CEQA staff at by email at [CEQA@valleyair.org](mailto:CEQA@valleyair.org) or by phone at (559) 230-6000.

If you have any questions or require further information, please contact Michael Corder by e-mail at [Michael.corder@valleyair.org](mailto:Michael.corder@valleyair.org) or by phone at (559) 230-5818.

Sincerely,

A handwritten signature in blue ink that reads "f. Arnaud Marjollet". The signature is written in a cursive style with a horizontal line underneath the name.

Arnaud Marjollet  
Director of Permit Services

AM: mc

***Response to Comment Letter 6: Arnaud Marjollet, San Joaquin Valley Air Pollution Control District (June 16, 2020)***

**6-A:** Thank you for your comments. This comment confirms SJVAPCD's receipt of the Draft EIR and notes SJVAPCD's understanding of the proposed Project.

The comment has been noted for the record and revisions are not necessary.

**6-B:** The commenter states cannabis growing, harvesting or processing operations are known to generate odors with a strong public nuisance potential. The commenter states the SJVAPCD is in concurrence with the DEIR's requirements of an odor management and control plan. The commenter recommends the City require odor control equipment prior to operations, as a condition of approval.

The comment has been noted for the record and revisions are not necessary.

**6-C:** The commenter notes that while it is conceivable some large commercial cannabis operations may have equipment that requires permitting under various District Rules such as Rule 2201 (New Source Review) or Rule 4702, (Internal Combustion Engines), it is anticipated the majority of these facilities will not have equipment that is subject to District permitting regulations. It will, however, be incumbent on the owner/operator of each facility to ensure that their operation is in full compliance with all District regulations.

It is noted that Mitigation Measure MM 4.3-1 requires all individual Project applicants to submit written documentation of project compliance with applicable federal and State air quality rules and regulations, as well as, comply with applicable rules and regulations of the SJVAPCD.

**6-D:** The commenter stated the DEIR did not include a discussion of potential health risk impacts from the Project. It was determined while evaluating air quality impacts from the proposed Project that as the specific locations and precise operational information of the various potential facilities could not be determined, health risk impacts for the entire Project could not be quantified. Details such as facility siting, potential receptor identification, specific emissions volumes, and other factors necessary to conduct a screening level evaluation cannot be known until a developer submits an application for a facility permit to the City. The City will require applicants to comply with CEQA to determine the impacts from their facility by completing a review of the air quality impacts including potential health risk issues. Each facility would ascertain its potential Prioritization Score to determine if a full Health Risk Assessment (HRA) is warranted. If a facility scores  $\geq 10$  then an HRA would be completed in order to comply with rules and regulations of the SJVAPCD, as noted in Mitigation Measure MM 4.3-1.

**6-E:** The commenter states that Assembly Bill (AB) 617 requires CARB and air districts to develop and implement Community Emission Reduction Programs (CERPs) to reduce air pollution exposure in impacts disadvantaged communities. The commenter states the South Central Fresno Community CERP was adopted by SJVAPCD in 2019 and CARB in 2020. One of the measures of the CERP was to enhance community participation in land use processes, including

working together to ensure more comprehensive opportunities for public input on land use decisions. The commenter encourages the City to further assess the emission reduction measures and strategies contained in the CERP.

The City has met all public notification requirements of CEQA for this proposed Project. A minimum of three public hearings (One Planning Commission, two City Council Hearings) will be held to discuss the findings of the EIR, in addition to a public scoping meeting that was held during the 30-day Notice of Preparation public review period. The comment has been noted for the record and revisions are not necessary.

**6-F:** The commenter states the District recommends that the DEIR be revised to include a discussion on the feasibility of implementing a Voluntary Emission Reduction Agreement (VERA) for future cannabis development projects. Mitigation Measure MM 4.3-1 has been clarified to include the following language: “Any cannabis project under the jurisdiction of the City’s program that has impacts to air quality that are determined to be *significant and unavoidable* will either mitigate such emissions to *less than significant* or enter into a VERA with the San Joaquin Valley APCD to mitigate such project to a level that is determined to be *less than significant*.” Please see Section 7.3, above.