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January 16, 2024 Regular Meeting

**Item #7a. - Department of
Fish and Wildlife's
comments**



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Inland Deserts Region
3602 Inland Empire Boulevard, Suite C-220
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



January 10, 2024

Sent via email: cddcomments@mono.ca.gov
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Secretary of the Planning Commission
PO Box 347
Mammoth Lakes, CA 93546

Board of Supervisors
c/o Queenie Barnard
Clerk of the Board
Bridgeport, CA 923517

Dear Honorable Supervisors Duggan, Gardner, Kreitz, Peters, and Salcido:

Apogee Farms Specific Plan (PROJECT)
MITIGATED NEGATIVE DECLARATION (MND)
SCH# 2021050252

The Department previously commented on the Notice of Preparation (NOP) of an Environmental Impact Report (EIR) for the Apogee Farms Project (Project) in a letter dated June 8, 2021, during the California Environmental Quality Act (CEQA) public comment period. CDFW provided additional comments in a letter dated August 11, 2022, during the CEQA public comment period for the Project's subsequently circulated Initial Study (IS) and Mitigated Negative Declaration (MND). Both the NOP and IS/MND comment periods are associated with the Project's Office of Planning and Research's State Clearinghouse number 2021050252.

The Department is providing the following comments based on the understanding that the Specific Plan (SP) is limited to the Project described in the IS/MND and accompanying Specific Plan, and that any future change or expansion of use (particularly groundwater uses) of the Project, or any other future projects and land uses, will require additional CEQA documentation. If that understanding is accurate, both the MND and the SP should be revised to clearly state the limitations of the SP. Absent that, CDFW recommends that a cumulative analysis is provided identifying all possible future land uses and the associated potential environmental impacts, including potential impacts to groundwater and surface water availability.

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

Conserving California's Wildlife Since 1870

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PROJECT DESCRIPTION SUMMARY

Proponent: Apogee Farms Specific Plan (SP) and General Plan Amendment (GPA)

Objective: The Project proposes a General Plan Amendment (GPA) to change the land use designation of two parcels from Rural Residential (RR) to Specific Plan to construct and operate a commercial cannabis production, processing, and distribution facility. Primary Project activities include the construction and operation of a commercial cannabis production, processing, and distribution facility with the owner/operator living onsite.

Location: The Project site is located at 23555 Highway 6 (west of Highway 6 and south of Highway 120) in the city of Benton, California within Mono County; Latitude 37.78235 N and Longitude -118.46837 W. The Project site comprises approximately 78.45 acres on Assessor's Parcel Numbers (APNs) 025-020-013-000 and 025-040-002-000.

COMMENTS AND RECOMMENDATIONS

In the June 8, 2021, and August 11, 2022, CEQA comment letters, CDFW raised concerns regarding groundwater sustainability, potential impacts to Fish Slough and the Owens Valley groundwater basin, and the potential for the Project to impact stream resources subject to notification pursuant to Fish and Game Code section 1602. The Department remains concerned that the proposed Project does not adequately identify or quantify groundwater water use or groundwater production limits for the Project (e.g., the cannabis cultivation, cannabis processing, and cannabis distribution facilities, and continuance of the previously unpermitted residential use). Additionally, neither the SP or MND specifies how the Project and/or future land uses would be subject to groundwater use limitations and reporting requirements or require subsequent discretionary approvals following the GPA and conversion of RR-40 to the SP land uses. Similarly, the MND does not analyze the full breadth, or cumulative impacts that with the GPA and SP adoption would have on more water intensive land uses over the property's existing baseline water uses. Finally, the Project has not addressed potential impacts to the USGS-mapped ephemeral stream located on the southern portion of the Project Site, as identified in the June 8, 2021, letter.

CDFW has reviewed the County Community Development Department's (County) response to comments for the Project MND. CDFW provides the comments below requesting clarification concerning the remaining matters identified above.

Response to Responses to Comment A2-3

It is unclear how the County analyzed and determined "...the cannabis cultivation would use less water than a single residence and the proposed project water use represents 0.0005 percent of the existing groundwater use in the basin." (MND, p.E-37) or that the "...cannabis facility would require approximately 600 gallons of water per day..." (MND, p. 3-62) without also stating the assumptions made in the County's analysis, and

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limitations placed on the Project including: 1) the maximum allowable cultivation, processing, and distribution areas; 2) the type of irrigation (e.g., drip, broadcast, flood); and, 3) the type of cultivation (e.g., indoor, outdoor, mixed light, or artificial light—though the MND notes that cultivation may be conducted indoors as well as outdoors until full buildout). In addition, while response to comment A2-3 indicates that “Any existing impacts on fish slough as a result of existing water use in the basin is the existing condition and not an impact from the project” (MND, E-37) it is unclear if the cannabis facility’s estimated water needs also include the water needs of the currently unpermitted living quarters that would be sanctioned under the SP. The MND appears inconsistent when calculating water consumption given that the MND sites that the per capita water use in Mono County is 268 gallons per day (MND, p. 3-44) and that the “...allowed residential development including farm labor housing would allow up to 18 people to occupy the area...” (MND, p.3-55). Based on the potentially allowable residency (maximum of 18 people) and a Mono County average daily consumptions rate of 268 gallons, the Project could potentially result in the use of a total of 4,824 gallons of water per day rather than the 600 gallons-per-day identified in the MND.

In addition to detailing the assumptions made in determining the Project’s water use, the Project’s SP and Conditional Use Permit (CUP) should also identify both water use, and groundwater pumping limits for any project (present or future) that would rely on the Specific Plan. The assertion made in the MND (Sections 3.11(b) and 3.20(b), and responses to comment A2-3) that the Project would not impede sustainable groundwater management or result in additional impacts to Fish Slough cannot be ascertained without first identifying appropriate water use limits, adopting them in the SP and CUP, and requiring a monitoring and reporting program (e.g., providing water measuring devices [e.g., water flowmeter] that includes regular reporting for the life of the Project). Absent the SP and CUP adopting water production/pumping limits, and monitoring and reporting requirements, the MND cannot conclusively determine or analyze the potential direct or cumulative impacts the General Plan Amendment, SP, or Project will have on groundwater or nearby water bodies such as Fish Slough, or the Fish Slough Ecological Reserve owned and operated by CDFW.

Response to Responses to Comment A2-4

Neither of the Project’s CEQA documentation (NOP or IS/MND) acknowledges the mapped USGS-mapped ephemeral stream located on the southern portion (Assessor’s Parcel Number 025-020-012-000) of the Project Site (please see CDFW’s NOP letter dated June 8, 2021, for provided mapping). Response to comment A2-4 states that “[a] jurisdictional delineation was not conducted because no wetland vegetation communities occur on the site.” (MND, E-37) However, several plant species, including narrow leaved willow (*Salix exigua*), Mexican rush (*Juncus mexicanus*), sedge (*Carex sp.*), and other species characteristic of wetlands and riparian areas were documented in the focused rare plant survey (Panorama, August 2020). Nevertheless, Fish and Game Code section 1602 is not limited to wetlands, rather it applies to any activity that substantially diverts or obstruct the natural flow of any river, stream, or lake;

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substantially change or use any material from the bed, channel, or bank, or deposit debris, waste or other materials that could pass into any river, stream, or lake. Given the nationally identified southern stream remains absent from the MND, CDFW recommends that a jurisdictional delineation is included in the CEQA documentation to avoid impacts where feasible, disclose and mitigate potentially unavoidable Project impacts, and avoid Project permitting delays.

CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist the Board of Supervisors in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Eric Weiss, Senior Environmental Scientist, Specialist at or eric.weiss@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Alisa Ellsworth

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Alisa Ellsworth
Environmental Program Manager