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June 1, 2022

Anna Quenga, Principal Planner
County of Monterey
Housing and Community Development
1441 Schilling Place, 2nd Floor
Salinas, CA 93901
QuengaAV@co.monterey.ca.us

Re: Initial Study/Mitigated Negative Declaration (IS/MND) for Moss Landing Commercial Park LLC (SCH No. 2022050130)

Dear Ms. Quenga:

Thank you for providing the California Department of Cannabis Control (DCC) the opportunity to comment on the Initial Study/Mitigated Negative Declaration (IS/MND) prepared by Monterey County for the proposed Moss Landing Commercial Park LLC project (Proposed Project).

DCC has jurisdiction over the issuance of commercial cannabis business licenses in California. DCC issues licenses to cannabis business facilities, where the local jurisdiction authorizes these activities. (Bus. & Prof. Code, § 26012(a).) All commercial cannabis businesses within the California require a license from DCC. For more information pertaining to commercial cannabis business license requirements, including DCC regulations, please visit: <https://cannabis.ca.gov/resources/rulemaking/>.

DCC expects to be a Responsible Agency for this project under the California Environmental Quality Act (CEQA) because the project would need to obtain one or more annual cannabis business licenses from DCC. In order to ensure that the IS/MND is sufficient for DCC's needs at that time, DCC requests that a copy of the IS/MND, revised to respond to the comments provided in this letter, and a signed Notice of Determination be provided to the applicant, so the applicant can include them with the application package it submits to DCC.

DCC offers the following comments concerning the IS/MND.

General Comments

CEQA Requirements for Annual State Cannabis Business License Applicants

Pursuant to state regulations, DCC requires an annual license applicant to provide evidence of exemption from, or compliance with, California Environmental Quality Act (CEQA) (Cal. Code of Regs., tit.4 § 15010(b)). When the project has been evaluated in a site-specific environmental document previously certified or adopted by the local Lead Agency, DCC will evaluate the project

as a Responsible Agency, as provided in Section 15096 of the CEQA Guidelines. When the local jurisdiction prepares a Notice of Exemption (NOE) for a categorical exemption, DCC 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.

General Comments (GCs) on the IS/MND

DCC offers the following general comments concerning the IS/MND.

GC 1. Scope of IS/MND

The IS/MND does not clearly describe what constitutes the proposed “project” the document intends to analyze and, therefore, it is difficult to understand the scope of the document. The Project Description (p. 4) states:

The project consists of a Coastal Development Permit and General Development Plan to allow the after-the-fact approval for reuse of existing industrial and warehouse structures with commercial cannabis businesses which include cultivation, manufacturing, packaging and distribution.

Then, in the next sentence, the document states that “the project is limited to permitting the change of use within 5 of the 34 existing structures.” The description does not make clear whether the IS/MND is intended to analyze an “after-the-fact” approval that has already taken place, or whether it is for a proposed (i.e., future) project. In addition, the Project Description provides conflicting information about whether the “project” includes the entire facility or only the five structures that would change use.

In addition, the IS/MND indicates that the CEQA baseline includes all industrial and cannabis operations that are currently operating at the Proposed Project site (p. 11). This statement seems to indicate that the scope of the IS/MND is only meant to provide CEQA coverage for the proposed conversion of five warehouses to cannabis cultivation.

However, the remainder of the document is inconsistent regarding the scope of the Proposed Project, as it appears to analyze certain activities that it describes as existing uses (i.e., existing industrial and cannabis cultivation activities), but appears to base its impact conclusions only on new proposed cannabis cultivation activities. In addition, the document indicates that some existing cannabis cultivation sites within the facility are intending to begin manufacturing activities; however, the document does not provide any details regarding the change in use or any analysis of the impacts of proposed changes. (IS/MND, p. 16.)

Please note that CEQA does not provide for “after-the-fact” environmental review of approvals or actions taken by lead agencies; rather, it is intended for “discretionary projects *proposed to be* carried out or approved by public agencies.” (Pub. Res. Code 21080(a), emphasis added.)

The document should clarify what activities are being evaluated by the County and provide a clear analysis of the impacts of those activities. In addition, the IS/MND should clearly describe what action (e.g., permit approval) the County intends to take with regard to such activities.

GC 2. Related CEQA Documents

The IS/MND does not indicate whether any related CEQA documents have been prepared for any work or other approvals that may have already been completed with regard to the facility. The IS/MND (p. 4) states:

In March 2018, the North County Land Use Plan was amended to allow limited commercial cannabis activities within existing industrial buildings at the subject property, the Moss Landing Commercial Park. The Monterey County Coastal Implementation Plan, Part 2, Regulations for Development in the North County Land Use Plan Area, was also amended (Ordinance No. 5299) to specify that limited agricultural uses, including commercial cannabis activities, may be permitted within existing industrial infrastructure at the former Kaiser National Refractories site subject to a Coastal Development Permit (CDP)....

The document does not indicate whether any CEQA documents were prepared for the land use plan or the coastal implementation plan amendments. If any CEQA documents were prepared for these actions, or for any other actions related to the prior conversions of the facilities to cannabis business activities, those documents should be referenced and provided as attachments. In addition, DCC recommends that the County provide such documents to the applicants for licensure of the existing businesses for submittal to DCC.

GC 3. Requirement for Site-Specific CEQA Compliance

The County's IS/MND does not specify how the County intends to comply with CEQA for any of the individual cannabis cultivation projects at the Proposed Project site. While the document provides certain general information about the site, it does not provide a site-specific environmental analysis of the potential impacts of any of the 34 projects discussed in the document.

Instead of describing particular impacts of any specific project, the document makes general statements about the overall impacts that would result from all of the activities at the site, and about incremental changes to impacts as a result of the conversion of five sites from warehouse use to cannabis cultivation. The IS/MND does not clearly describe which impacts are existing, and which impacts are the results of the proposed changes to the use of the site. In addition, as discussed in General Comment 1, some of the operators of existing businesses may also be changing uses, but these uses and the associated impacts are not described.

A project-specific CEQA document, as required by Section 15010(b)), would include disclosure of existing uses of the Proposed Project site, such as existing water and energy usage, number of employees, and number of vehicle trips. Then, a site-specific analysis of the potential impacts of any proposed new uses would include an analysis of the potential environmental impacts of each individual project compared to existing uses. Additionally, the project-specific document would include an analysis of the cumulative impacts of all 34 projects and any additional proposed cannabis business projects in Monterey County. Several comments below relate to the project-

specific information DCC will require in order to process annual license applications for the 34 individual projects.

GC 4. CEQA Streamlining

DCC encourages local jurisdictions to use CEQA streamlining options, when appropriate, including the use of a programmatic CEQA document to cover CEQA review for later activities. If Monterey County intends to rely on the IS/MND for site-specific CEQA compliance for later activities, DCC recommends that the County prepare a separate Notice of Determination (NOD) and file it with the State Clearinghouse for each later activity approved in this manner.

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.

If the County intends to rely on the IS/MND for site-specific CEQA compliance for site-specific cultivation projects, DCC requests the County prepare a checklist for each subsequent activity, pursuant to Section 15168(c)(4), and provide copies to applicants for inclusion with their applications to DCC for state cultivation licenses. This would provide the documentation needed by DCC to support the County's reasoning in concluding that the proposed activity fits within the analysis covered by the County's programmatic IS/MND and that subsequent environmental review is not required.

GC 5. Proposed Project Description

Several of the specific comments in the Specific Comments table below relate to the lack of detail provided in the Project Description, particularly related to Proposed Project operations.

The IS/MND would be improved if it consistently described existing conditions and operations at all of the 34 buildings it intends to include as part of the Proposed Project. The document indicates that 23 of the sites are currently cultivating, processing, manufacturing, and/or distributing cannabis; however, it does not provide details on how long each existing site has cultivated cannabis, the extent of the existing canopy, and/or the types of manufacturing that are taking place on site. Providing a clear and detailed description of existing operations allows DCC to compare new proposed operations to those that have already been established to determine what changes may occur as a result of the Proposed Project.

In addition, the Project Description does not contain basic information regarding the operations and maintenance of the Proposed Project. In order for DCC to use the IS/MND prepared by Monterey County for the purpose of issuing one or more annual cannabis business licenses, the document would need to include details regarding the operation and maintenance of the proposed facilities. For a description of the information that must be included in a project description for a cannabis business, please refer to DCC regulations at California Code of Regulations, title 4,

section 15010(b)(2). In particular, the project description should include information about the following:

- the proposed canopy size of each cultivation operation and the types of operations and cultivation methods that would occur for each operation (e.g., indoor, outdoor, mixed-light);
- the types of heavy equipment that would be used at the cultivation sites;
- the expected number of employees for each cultivation operation;
- hours of operation for all cannabis activities;
- the number of daily trips to and from the site for employee commuting, delivery of materials or supplies, and shipment of product for each operation;
- the amounts of water to be used for each cannabis operation, including any water efficiency equipment that would be used;
- the types of lighting that would be used;
- the types of odor control methods to be employed;
- the types and amounts of hazardous materials that would be used and/or stored on the project sites, including any volatile solvents that may be used for manufacturing activities;
- environmental protection measures that are or would be incorporated into the cannabis operations;
- the amounts of energy expected to be used in operating each project, including a description of any energy management and efficiency features; and
- a list of environmental permits that may be required, including permits from local, regional, and state agencies (e.g., water right permit from State Water Resources Control Board (SWRCB) for diversion of surface waters, proof of enrollment in or exemption from either the SWRCB or Regional Water Quality Control Board program for water quality protection, Lake or Streambed Alteration Agreement from California Department of Fish and Wildlife (CDFW)) and whether these have been obtained.

In addition, the document would be improved if it provided more detail about the nature and scale of any site improvements that would be required for the Proposed Project. This would include any structural and infrastructure improvements, such as water treatment facilities, septic tanks, roadway and parking improvements, and electric upgrades. Without a description of the number or extent of such improvements, it is difficult to discern the extent of any potential resource impacts.

GC 6: AB 52 Compliance

The document should contain a description of the process of complying with Assembly Bill (AB) 52, regarding consultation with Native American tribes, for the Proposed Project. The IS/MND should include a list of the tribes that were contacted, the dates on which such contacts were made, a description of any requests for consultation, and a summary of the results from such consultations.

GC 7: Impact Analysis

Several comments provided in the Specific Comments table below relate to the absence of information or analysis to support impact statements in the document. CEQA requires that Lead Agencies evaluate the environmental impacts of proposed projects and support factual conclusions with substantial evidence, including facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts. (CEQA Guidelines, § 15384(b).) This may include logical arguments, evidence from technical studies, evidence from local knowledge, and information from other expert sources. In general, the IS/MND should provide evidence to support the impact statements for each question in the checklist, including references for the sources of information relied upon to make conclusions.

GC 8: Evaluation of Cumulative Impacts

It is important for CEQA analysis to consider the cumulative impacts of cannabis cultivation in Monterey County. Of particular importance are topics for which the impacts of individual projects may be less than significant, but where individual projects may contribute to a significant cumulative impact. These topics include:

- Impacts of groundwater diversions on the health of the underlying aquifer, including impacts on other users and impacts on stream-related resources connected to the aquifer;
- Impacts related to noise;
- Impacts related to transportation; and
- Impacts related to air quality and objectionable odors.

The IS/MND includes a discussion of cumulative impacts, but it does not identify any other cannabis cultivation projects in Monterey County. Also, if the IS/MND is intended to provide CEQA analysis for only the proposed conversion of five warehouses to cannabis cultivation (see GC 1), the cumulative impacts analysis should include a robust analysis of the cumulative impacts of the project when considered in conjunction with the other 23 cannabis businesses at the Proposed Project site. The IS/MND should acknowledge and analyze the cumulative impacts of other cannabis cultivation projects being processed by the County, and any other reasonably foreseeable projects in Monterey County that could contribute to cumulative impacts similar to those of the Proposed Project.

Specific Comments and Recommendations

In addition to the general comments provided above, DCC provides the following specific comments regarding the analysis in the IS/MND.

Comment No.	Section(s)	Page No(s)	Resource Topic	IS/MND Text	DCC Comments and Recommendations
1	II(A)	4	Project Description (Proposed Site Improvements)	The repurposing of existing industrial structures would involve building and building-infrastructure improvements to allow for the cultivation and processing of cannabis.	When applying for an annual license, applicants will need to submit a site-specific CEQA document that describes all infrastructure improvements that are proposed for that specific project, and analyzes the impacts of such improvements.
2	II(A)	6	Project Description (Wastewater)	Existing and proposed use of septic tanks would result in an overloading of septic tanks 2 and 3. As such, an operation plan demonstrating adequate employee restroom access within 200 feet information would be required to assure long-term, safe, and adequate wastewater service.	The IS/MND would be strengthened if it described the proposed improvements to the septic system and provided an analysis of whether the implementation of such improvements would result in impacts to the environment.
3	II(A)	6	Project Description (Parking)	Parking areas may also include fencing and outdoor storage of equipment and materials.	The IS/MND would be strengthened if it described all proposed improvements to the project site, including fencing and storage structures, and provided an analysis of whether such improvements would result in impacts to the environment.
4	B	10	Surrounding Land Uses and Environmental	On February 26, 2019, the project analyzed under this Initial Study was deemed	The document would be improved if it provided a description of the aspects of the project that have been completed. As noted in GC 1,

Comment No.	Section(s)	Page No(s)	Resource Topic	IS/MND Text	DCC Comments and Recommendations
			Setting (Baseline)	complete and environmental review commenced.	environmental review under CEQA must be completed prior to the approval of a project. CEQA review cannot take place after a project has been completed. Also, if CEQA documents have been completed for previous phases of the project, DCC requests that the County or the applicant provide such documents to DCC.
5	IV(A)(1)	27	Evidence (Aesthetics)	N/A (General Comment)	Page 6 of the IS/MND indicates that the Proposed Project may include fencing and outdoor storage of equipment and materials. The document would be strengthened if it contained an analysis of whether these project elements would result in impacts to aesthetics.
6	IV(A)(1)	27	Evidence (Aesthetics)	N/A (General Comment)	The IS/MND would be improved if it described whether the project improvements would include the addition of security lighting. In addition, the document would be improved if it referenced DCC’s requirement that all outdoor lighting for security purposes must be shielded and downward facing (Cal. Code Regs., tit. 4 § 16304(a)(6)).

Comment No.	Section(s)	Page No(s)	Resource Topic	IS/MND Text	DCC Comments and Recommendations
7	IV(A)(4)	28	Evidence (Biological Resources)	N/A (General Comment)	The document would be more informative if it provided an analysis of whether Proposed Project operations would impact special-status species. This could include an analysis of whether any proposed fencing, outdoor storage of equipment and materials, vehicle traffic, and/or increased outdoor noise or lighting would have impacts on special-status species.
8	IV(A)(13)	29	Evidence (Noise)	The proposed commercial cannabis activities would result in similar noise levels to the baseline conditions.	The IS/MND would be improved if it provided an analysis of whether proposed odor control and/or HVAC systems would create noise impacts above thresholds of significance.
9	IV(A)(20)	31-32	Evidence (Wildfire)	The conversion of existing buildings for commercial cannabis use would not require new infrastructure associated with fire prevention.	If the Proposed Project would include volatile solvent manufacturing, the IS/MND should include analyses of the potential environmental impacts that may result from the use of these substances, including fire hazards. In addition, the analyses should describe and consider any measures the Proposed Project would implement that may lessen or reduce potential impacts.

Comment No.	Section(s)	Page No(s)	Resource Topic	IS/MND Text	DCC Comments and Recommendations
10	VI(3)	37	Air Quality	N/A (General Comment)	The document would be improved if it provided a description or summary of proposed operation equipment that is anticipated to generate air pollutant emissions. This might include generators, manufacturing equipment, ventilation equipment, carbon scrubbers, heavy machinery, and vehicles, including those required for employee commuting and material deliveries. The air quality analysis should include all sources of air quality emissions.
11	VI(9)	51	Hazards and Hazardous Materials	N/A (General Comment)	If the project would include manufacturing using volatile solvents, the IS/MND should provide a description of the volatile substances that would be used in product manufacture, as well as analyses of the potential environmental impacts that may result from the use of these substances. In addition, the analyses should describe and consider any measures the Proposed Project would implement that may lessen or reduce potential impacts.

Comment No.	Section(s)	Page No(s)	Resource Topic	IS/MND Text	DCC Comments and Recommendations
12	VI(9)(a)	54	Hydrology and Water Quality	The Corralitos-Pajaro Valley Groundwater Basin, which serves the project area, is currently in an over-drafted status. The General Development Plan (Source IX: 1) does not propose additional connections to the existing water system.	The IS/MND would be improved if it described the anticipated water use for the Proposed Project and provided an analysis of whether such use would result in a significant impact to water resources.
13	VI(9)(b) and (c)	56	Hydrology and Water Quality	The PSMCSD is an adequate water source to serve the proposed project and the project’s potential water increase of 1.07% would result in a less than significant impacts on coastal resources and the surrounding environment...	The document would be improved if it provided an explanation whether the 1.07% increase is a comparison to existing water uses for the overall project site, or for the PSMCSD. In addition, the document should provide data to support its conclusions regarding water use.
14	VI(9)(e)	57	Hydrology and Water Quality	N/A (General Comment)	The document would be improved if it provided an analysis, supported by data, of how the Proposed Project would comply with the 180/400 Foot Aquifer Subbasin GSP.
15	VI(19)(a)	64-65	Utilities and Service Systems	As proposed, commercial cannabis activities and any related expansion or construction in the 5 existing buildings would have the	The IS/MND does not provide any data regarding the adequacy of the water source that would serve the Proposed Project. Page 54 of the IS/MND indicates that the

Comment No.	Section(s)	Page No(s)	Resource Topic	IS/MND Text	DCC Comments and Recommendations
				<p>potential to increase water usage by approximately 1.07%. Therefore, there is an adequate water source to serve the proposed project and impacts from the proposed water usage increase would be <i>less than significant</i>.</p>	<p>groundwater basin is in overdraft status. The IS/MND would be strengthened if it included this data and provided an analysis of how operation of the Proposed Project may impact water resources. In addition, the document should contain a cumulative impacts analysis that includes an examination of all water use at the project site.</p>
16	VI(19)(b)	67	Utilities and Service Systems	<p>Given that the water bill data itself can vary by 5.6% in demand each month (Source: IX:40), staff believe that this 1.07% proposed increase would be less than significant in impacting the Pajaro/Sunny Mesa CSD’s ability to provide water in normal, dry, and multiple years.</p>	<p>The IS/MND would be strengthened if it included an analysis, supported by data, of whether the Proposed Project would have sufficient water supplies available to serve the project and reasonably foreseeable future development during normal, dry, and multiple dry years.</p>
17	VII(b)	70-71	Mandatory Findings of Significance (Cumulative Impacts)	N/A (General Comment)	<p>The IS/MND would be more informative if it identified all existing and proposed cannabis business operations in the vicinity of the Proposed Project and evaluated whether the Proposed Project would make a considerable contribution to any cumulative</p>

Comment No.	Section(s)	Page No(s)	Resource Topic	IS/MND Text	DCC Comments and Recommendations
					impacts in combination with these other projects. (See GC 8.)

Conclusion

DCC appreciates the opportunity to provide comments on the IS/MND for the Proposed Project. If you have any questions about our comments or wish to discuss them, please contact Kevin Ponce, Senior Environmental Scientist, at (916) 247-1659 or via e-mail at Kevin.Ponce@cannabis.ca.gov.

Sincerely,

Eva Olin
Senior Environmental Scientist



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June 13, 2022

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**Subject: Moss Landing Commercial Park, LLC (PLN160401)
Mitigated Negative Declaration
State Clearing House No. 2022050130**

Dear Ms. Quenga:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to adopt a Mitigated Negative Declaration (MND) that has been prepared by the County of Monterey for the above Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

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. While the comment period may have ended, CDFW would appreciate if you will still consider our comments.

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 & Game Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (*Id.*, § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

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

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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. As proposed, for example, 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 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).

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

Lake and Streambed Alteration: CDFW has regulatory authority with regard to activities occurring in streams and/or lakes that could adversely affect any fish or wildlife resource, pursuant to Fish and Game Code sections 1600 *et seq.* Section 1602 subdivision (a) of the Fish and Game Code requires an entity to notify CDFW before engaging in activities that would substantially change the bed, channel, or bank of a stream or substantially divert or obstruct the natural flow of a stream.

Water Pollution: Pursuant to Fish and Game Code section 5650, it is unlawful to deposit in, permit to pass into, or place where it can pass into "Waters of the State" any substance or material deleterious to fish, plant life, or bird life, including non-native species. It is possible that without mitigation measures, this Project could result in pollution of Waters of the State from storm water runoff or construction-related erosion. Potential impacts to the wildlife resources that utilize watercourses in the Project area include the following: increased sediment input from road or structure runoff; toxic runoff associated with Project-related activities and implementation; and/or impairment of wildlife movement. The Regional Water Quality Control Board and United States Army Corps of Engineers also have jurisdiction regarding discharge and pollution to Waters of the State.

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PROJECT DESCRIPTION SUMMARY

Proponent: Moss Landing Commercial Park, LLC

Objective: The Project Proponent, Moss Landing Commercial Park LLC, proposes the modification of existing industrial and warehouse structures, within the Moss Landing Commercial Park, for use in the cultivation, manufacturing, packaging, and distribution of cannabis. Activities will include building and building infrastructure improvements to five of the existing 34 structures.

Location: The project is located at 7697 California State Route (Highway) 1, Moss Landing, Monterey County, California, 95039; Assessor's Parcel Number: 133-172-013-000.

Timeframe: Unspecified

COMMENTS AND RECOMMENDATIONS

CDFW offers the following recommendations to assist the County of Monterey 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. Based on a review of the Project description, a review of the California Natural Diversity Database (CNDDDB) records, and a review of aerial photographs of the Project area and surround habitat, several special status species could be potentially impacted by Project activities.

In particular, CDFW is concerned regarding potential impacts to resources including special status species resulting from the ground-disturbing development activities and ongoing facilities operation, including but not limited to the State Threatened bank swallow (*Riparia riparia*). (CDFW 2022)

The Project has the potential to impact biological resources. CDFW recommends that the following modifications, or edits be incorporated into the MND, including proposed avoidance, minimization, and compensatory measures prior to its adoption by the County.

Bank Swallow

Bank swallow (BASW) have the potential to occur near the Project site (CDFW 2022). The proposed Project will involve activities near the bank of the Moro Cojo Slough and the Old Salinas River where BASW may potentially nest. Without appropriate avoidance and minimization measures for BASW, potential significant impacts that may result from

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Project activities include: nest abandonment, loss of nest sites, reduced nesting success (loss or reduced health or vigor of eggs or young), and direct mortality. Any take of BASW without appropriate incidental take authorization would be a violation of Fish and Game Code. BASW, historically common in California (Grinnell and Miller 1944), have had a range reduction of approximately 50% since 1900 (CDFG 1988). The main cause of their decline was channelization and stabilization of riverbanks used as nesting habitat as well as other disturbance of this habitat (CDFG 1988). The BASW continues to be threatened by flood and erosion control programs that stabilize banks eliminating them as breeding habitat for the swallow (CDFG 1995).

To evaluate potential impacts to BASW, CDFW recommends conducting the following evaluation of the Project site, incorporating the following mitigation measures into the Initial Study prepared for this Project, and that these measures be made conditions of approval for the Project.

- If ground-disturbing or vegetation-disturbing activities as a result of the Project must occur during the normal bird breeding season (February 1 through August 31), CDFW recommends that the Project site, specifically along the bank of the Moro Cojo Slough located along the southern perimeter of the Project site, be surveyed for BASW by a qualified biologist no more than 10 days prior to the start of Project implementation.
- CDFW recommends a minimum 50-foot no-disturbance buffer be delineated around active nest burrows until the breeding season has ended or until a qualified biologist has determined that the young birds have fledged.
- CDFW recommends that in the event that active BASW nests are detected during surveys, consultation with CDFW is warranted to discuss how to implement the project and avoid take. If take cannot be avoided, take authorization through the issuance of an incidental take permit, pursuant to Fish and Game Code section 2081(b) is necessary to comply with CESA.

Role of Lake and Streambed Alteration (LSA) Program in Cannabis Cultivation Licensing

Business and Professions Code 26060.1 subsection (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 submission of an LSA Notification to CDFW for the proposed Project prior to initiation of any cultivation activities. Cannabis cultivators may apply (notify) online for an LSA Agreement through EPIMS (Environmental Permit Information Management System; <https://epims.wildlife.ca.gov>)

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and learn more about permitting at <https://wildlife.ca.gov/Conservation/Cannabis/Permitting>.

Please note that CDFW has regulatory authority with regard to activities occurring in streams and/or lakes that could adversely affect any fish or wildlife resource. Pursuant to Fish and Game Code sections 1600 et seq., Section 1602 (a) of the Fish and Game Code requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake (including the removal of riparian vegetation); or (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes features that are ephemeral or intermittent as well as those that are perennial. In addition, CDFW is required to comply with CEQA in the issuance of a Lake or Streambed Alteration Agreement. CDFW recommends that staff within the Central Region Cannabis Permitting Program be contacted well in advance of construction so that impacts to streams and associated resources may be analyzed and, if appropriate, avoidance and minimization measures may be proposed.

CDFW recommends that staff within the Central Region Cannabis Permitting Program be contacted well in advance of construction so that impacts to streams and associated resources may be analyzed and, if appropriate, avoidance and minimization measures may be proposed.

Cannabis-Specific Impacts on Biological Resources

There are many impacts to biological resources associated with cannabis cultivation, whether indoor or outdoor cultivation (i.e., pesticides, fertilizers/imported soils, water pollution, groundwater depletion, vegetation clearing, construction and other development in floodplains, fencing, roads, noise, artificial light, dams and stream crossings, water diversions, and pond construction). CDFW recommends that the County of Monterey consider cannabis-specific impacts to biological resources that may result from the Project activities.

Cannabis Water Use

Water use estimates for cannabis plants are not well established in literature and estimates from published and unpublished sources range between 3.8-liters and 56.8-liters per plant per day. Based on research and observations made by CDFW in northern California, cannabis grow sites have significantly impacted streams through water diversions resulting in reduced flows and dewatered streams (Bauer et al. 2015). Groundwater use for clandestine cannabis cultivation activities have resulted in lowering the groundwater water table and have impacted water supplies to streams in northern

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California. CDFW recommends that the CEQA document address the impacts to groundwater and surface water that may occur from Project activities.

Cannabis Lighting Use

Cannabis cultivation operations often use artificial lighting or “mixed-light” techniques in indoor operations to increase yields. If not disposed of properly, these lighting materials pose significant environmental risks because they contain mercury and other toxins (O’Hare et al. 2013). In addition to containing toxic substances, artificial lighting often results in light pollution, which has the potential to significantly and adversely affect fish and wildlife. Night lighting can disrupt the circadian rhythms of many wildlife species. Many species use photoperiod cues for communication (e.g., birdsong; Miller 2006), determining when to begin foraging (Stone et al. 2009), behavioral thermoregulation (Beiswenger 1977), and migration (Longcore and Rich 2004). Phototaxis, a phenomenon that results in attraction and movement toward light or away from light; therefore, wildlife species exposed artificial light may have a negative phototaxis response causing disorientation, entrapment, and temporarily blindness (Longcore and Rich 2004).

CDFW recommends that light should not be visible outside of any structure used for cannabis cultivation. Use blackout curtains where artificial light is used to prevent light escapement. Eliminate all non-essential lighting from cannabis sites and avoid or limit the use of artificial light during the hours of dawn and dusk, as these windows of time are when many wildlife species are most active; and ensuring that lighting for cultivation activities and security purposes is shielded, cast downward, and does not spill over onto other properties or upwards into the night sky (see the International Dark-Sky Association standards at <https://www.darksky.org>). Use LED lighting with a correlated color temperature of 3,000 Kelvins or less, properly dispose of hazardous waste, and recycle all lighting that contains toxic compounds with a qualified recycler.

Pesticides, Including Fungicides, Herbicides, and Rodenticides

Cannabis cultivation sites (whether indoor or outdoor) often use substantial quantities of pesticides, including fungicides, herbicides, insecticides, and rodenticides. Wildlife, including beneficial arthropods, birds, mammals, amphibians, reptiles, and fish, can be poisoned by pesticides after exposure to a toxic dose through ingestion, inhalation, or dermal contact (Fleischli et al. 2004, Pimentel et al. 2005, Berny 2007). They can also experience secondary poisoning through feeding on animals that have been directly exposed to the pesticides. (Even if used indoors, rodenticides may result in secondary poisoning through ingestion of sickened animals that leave the premises or ingestion of lethally poisoned animals disposed of outside.) Nonlethal doses of pesticides can negatively affect wildlife; pesticides can compromise immune systems, cause hormone imbalances, affect reproduction, and alter growth rates of many wildlife species

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(Pimentel et al. 2005, Li and Kawada 2006, Relyea and Diecks 2008, Baldwin et al. 2009). CDFW recommends minimizing use of synthetic pesticides, and, if they are used, to always use them as directed by the manufacturer, including proper storage and disposal. Toxic pesticides should not be used where they may pass into waters of the state, including ephemeral streams, in violation of Fish and Game Code section 5650(6). For details, visit: <https://www.cdpr.ca.gov/docs/cannabis/questions.htm>.

Anticoagulant rodenticides and rodenticides that incorporate “flavorizers” that make the pesticides appetizing to a variety of species should not be used at cultivation sites. (Note that with the passage of AB 1788, signed by the governor on September 29, 2020, the general use of second-generation anticoagulants is now banned in California). Alternatives to toxic rodenticides may be used to control pest populations at and around cultivation sites, including sanitation (removing food sources like pet food, cleaning up refuse, and securing garbage in sealed containers) and physical barriers (e.g., sealing holes in roofs/walls). Snap traps should not be used outdoors as they pose a hazard to non-target wildlife. Sticky or glue traps should be avoided altogether; these pose a hazard to non-target wildlife and result in prolonged/inhumane death. California Department of Pesticide Regulation (DPR) stipulates that pesticides must meet certain criteria to be legal for use on cannabis. For pest management practices visit: <https://www.cdpr.ca.gov/docs/county/cacltrs/penfilters/penf2015/2015atch/attach1502.pdf>.

Impacts of Cannabis Cultivation on Fish and Wildlife Resources

For more information on potential impacts to fish and wildlife resources as a result of cannabis cultivation visit: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=160552&inline>.

Cumulative Impacts: General impacts from Projects include habitat fragmentation, degradation, habitat loss, migration/movement corridor limitations, and potential loss of individuals to the population. The project site has been developed and used for industrial purposes the last 30 years. CDFW agrees that the cumulative impacts of the project will be low to negligible. CDFW recommends the lead agency consider all approved and future projects when determining impact significance to biological resources.

Editorial Comments and Suggestions

Nesting birds

CDFW encourages that Project implementation occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the breeding season (February through mid-September), the Project applicant is

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responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes as referenced above.

To evaluate Project-related impacts on nesting birds, CDFW recommends that a qualified biologist conduct pre-activity surveys for active nests no more than 10 days prior to the start of ground or vegetation disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the Project site to identify nests and determine their status. A sufficient area means any area potentially affected by the Project. In addition to direct impacts (i.e., nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. Prior to initiation of construction activities, CDFW recommends that a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once construction begins, CDFW recommends having a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends halting the work causing that change and consulting with CDFW for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or on-site parental care for survival. Variance from these no-disturbance buffers is possible when there is compelling biological or ecological reason to do so, such as when the construction area would be concealed from a nest site by topography. CDFW recommends that a qualified biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

Biological Surveys

Acceptable species-specific survey procedures should be developed in consultation with CDFW and the U.S. Fish and Wildlife Service, where necessary. For CDFW "Survey and Monitoring Protocols and Guidelines" visit: <https://wildlife.ca.gov/Conservation/Survey-Protocols>. Note that CDFW generally considers biological field assessments for wildlife and plants to be valid for a **one-year** period, except when significant environmental changes occur, such as disturbance resulting from urbanization or wildfire. Surveys should be conducted during wildlife's active season when the wildlife species is most likely to be detected and plant surveys conducted during the species blooming/flowering period. Some aspects of the proposed Project may warrant periodic updated surveys for certain sensitive taxa, particularly if

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the Project is proposed to occur over a protracted time frame, or in phases, or if surveys are completed during periods of drought.

ENVIRONMENTAL DATA

CEQA requires that information developed in Environmental Impact Reports and Negative Declarations be incorporated into a database, which may be used to make subsequent or supplemental environmental determinations (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special status species and natural communities detected during Project surveys to CNDDDB. The CNDDDB field survey form can be found at the following link: <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. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

FILING FEES

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

CONCLUSION

CDFW appreciates the opportunity to comment on the Project to assist the County of Monterey in identifying and mitigating Project impacts on biological resources. Questions regarding this letter or further coordination should be directed to Jackson Powell, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 899-9758, or by email at Jackson.Powell@wildlife.ca.gov.

Sincerely,

DocuSigned by:

96D42C58E092466...

Valerie Cook
Acting Regional Manager

Attachment

ec: State Clearinghouse
state.clearinghouse@opr.ca.gov

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Attachment 1

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

**PROJECT: Moss Landing Commercial Park, LLC
Mitigated Negative Declaration (MND)
Cannabis Cultivation and Manufacturing (Project)
State Clearing House No.: 2022050130**

Mitigation Measure	Status/Date/Initials
<i>Before Disturbing Soil or Vegetation</i>	
Mitigation Measure: Bank Swallow	
• Bank Swallow Assessment	
• Bank Swallow Surveys	
• Bank Swallow Avoidance	
<i>During Construction</i>	
Mitigation Measure: Bank Swallow	
• Bank Swallow Avoidance	

From: [Molly Erickson](#)
To: [Lundquist, Erik 755-5154](#); [Spencer, Craig 755-5233](#); [Ouenga, Anna 755-5175](#)
Cc: [McDougal, Melissa 755-5146](#); [Donlon, Kelly 755-5045](#)
Subject: PLN160401, Moss Landing Community Park project IS/MND
Date: Wednesday, June 15, 2022 4:32:49 PM

[CAUTION: This email originated from outside of the County. Do not click links or open attachments unless you recognize the sender and know the content is safe.]

Good afternoon Erik, Craig and Anna:

My clients Friends, Artists and Neighbors of Elkhorn Slough have asked me to provide initial comments on the proposed IS/MND for the Moss Landing Commercial Park general development permit and after-the-fact Coastal Development Permit.

As a fundamental initial concern, the circulation period of the MND did not meet statutory requirements. The County did not provide the required circulation period because notice was given by the County in a way such that the IS/MND was not and could not have been received by interested parties, including my clients, until well into the 30-day period. That is not adequate notice. I urge you to review the notice made in this case, paying close attention to the date of actual mailing. To make matters worse, the IS/MND was not available online when I looked for it, which is another example of an ongoing problem with the County's Accela database that is intended to provide records to the public. I again urge you to correct the County's public Accela database program to ensure that records are available to the public.

My clients ask the County not to set this matter for hearing until the County has provided a legally adequate circulation period on the CEQA document.

My clients also object to the IS/MND's reliance on representations of square footage because according to the County those representations were made by tenants of the site who are not identified by name, did not provide the information under penalty of perjury, and are not bound to the representations. This reliance is a mistake. The claims made by the tenants and relied on by the County add up to a materially more square footage than the amount claimed by the applicant MLCP. In fact, the project applicant has made this disclaiming statement: "**MLCP has no personal knowledge of the tenant permit applications nor the calculation of such square footages and thus cannot, and is not, making any representations as to the accuracy of such measurements or existence of such square footage.** However, in reliance the [sic] County of Monterey's representations that the total square footage referenced in the above chart is correct and existing...." Case law has made clear that it is improper for the County to rely solely on

the representation of applicants under the circumstances. (See *Save Our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 122.) Here, even worse, the County IS/MND relies on the representations of tenants from which the applicant has distanced itself and expressly disclaimed. The tenant-provided square footage calculation appears throughout the County's IS/MND and is stated as a fact. The County should verify the square footage of all structures through independent means and should circulate a revised CEQA document to reflect the accurate information before the County proceeds with processing the application for a GDP.

My clients join in the concerns and objections identified in the letter from the California Department of Cannabis Control (DCC) and emphasize that the DCC's comments identify fundamental and material problems with the IS/MND, although couched in gentle language. The County should pay careful attention to the comments of the DCC, a responsible state agency.

Please respond. Thank you.

Regards,

Molly

Molly Erickson

STAMP | ERICKSON

tel: 831-373-1214

July 6, 2022

Via email

Erik Lundquist, planning director
Anna Quenga, principal planner
Planning Department
County of Monterey

Subject: Comments by Friends, Artists and Neighbors of Elkhorn Slough on
IS/MND for PLN160401, Moss Landing Commercial Park LLC project

Dear Mr. Lundquist and Ms. Quenga:

These comments supplement and add to the comments provided to you on June 15, 2022 by this office on behalf of Friends, Artists and Neighbors of Elkhorn Slough, known as FANS, on the initial study. Those comments pointed out that the CEQA document must be recirculated because the County's circulation period provided less than 30 days' notice to interested parties and responsible agencies and thus did not comply with CEQA. The comments also objected to the County's reliance on tenants' representations that the property owner has expressly disclaimed.

Additional comments

FANS supports appropriate and sustainable activities at the site. FANS offers these additional comments to assist the County in its further proceedings.

Unfortunately, the CEQA document is overly vague about the current and proposed uses. An important concern is the failure to plan for the entire site, which is the whole point of a General Development Plan. County code section 20.28.030.D directs that "The [general development] plans shall be prepared by the developer and submitted for review and approval prior to or concurrent with approval of any required permits for the development. The plans shall address the long range development and operation of the facilities including physical expansion and new development, operational changes, circulation or transportation improvements, alternative development opportunities, environmental considerations, potential mitigation of adverse environmental impacts and conformance to the policies of the local area plan." Those requirements have not been met.

Instead of reviewing the entire site as required by the code, the initial study states that "The project is limited to permitting the change of use within 5 of the 34 existing structures." That cramped description is inconsistent with the purpose and intent of a General Development Plan. The project description is incomplete because it does not include all uses existing and proposed at the site and does not quantify in a clear and understandable way the existing uses and the proposed uses, and what is

proposed and what is after the fact. This is a General Development Plan for the site and should not be limited as the County has done.

The County code prohibits “new development, change or expansion of use, or physical improvements ... unless such development, use or expansion is found to be in conformance with an approved General Development Plan and amendments thereto where such plan is required.” (§ 20.28.030.B) However, the County has been authorizing permits for new development and physical improvements contrary to the mandates of section 20.28.030.B. The County Accela database contains pages of development permits that the County has authorized in the past few years apparently in violation of the code section. This development has been going on in and around industrial structures at multiple addresses. Oddly, the County has listed the site under at least three or four different addresses, including addresses on Highway One even though there is no access (and no mailbox) on Highway One. It is as if the applicant or the County is trying to hide the activity at the site by assigning it to addresses other than the 11500 Dolan Road address. If Highway One access is proposed, then it should be evaluated in the initial study/MND. Otherwise such access should be prohibited and the site and the County should always use the one address on Dolan Road.

The initial study/MND vaguely references other uses that “would continue.” The GDP does not do what it should, which is identify accurately all the existing uses, all the proposed uses, and the location and the square footage on the site that is dedicated to each of the other kinds of uses such as wetlands. The initial study/MND fails to accurately and completely describe what the “after the fact” permit is for. The Initial study does not clearly state baseline uses and usage by building and size. The Initial study analysis muddles past the point of incomprehensibility the issues of after-the-fact and baseline, and uses past tense and current tense for uses that appear to be proposed rather than existing. For example, “approximately 332,973 square feet) are currently used for cannabis” and “The project’s resulting increase in water usage include the use of cannabis cultivation in 5 additional buildings which total 11,120 square feet of the approximate 332,973 square feet of cannabis activities.”

The initial study/MND refers to a “future” entitlement for a 12 acre solar array: “The GDP includes establishment of a 5-megawatt ground-mounted solar power system on an unidentified 12 acre portion of the property as a potential future use requiring a separate entitlement. As such, environmental impacts relative to this future use would be analyzed through a separate CEQA document.” That approach is inconsistent with CEQA. The whole of the action should be considered in a single document for all anticipated entitlements, as CEQA requires. That development should be part of this initial study/MND and it has not been considered. CEQA requires consideration of the project, which includes the whole of the action (CEQA Guidelines, § 15378(a)) in the CEQA document as does the County code section 20.28.030.D. The term “project” does not refer to each separate government approval. (CEQA Guidelines § 15378(c)). If the Lead Agency needs to grant more than one approval for a project, only one CEQA document should be prepared. If more than one government agency must grant an

approval, only one CEQA document should be prepared. This approach ensures that responsible agencies can rely on the lead agency's CEQA document. If the project is approved by the County, the California Department of Cannabis Control (DCC) as a responsible agency would need to rely on the County's CEQA document and the DCC's comments show that the current initial study is not adequate in many ways.

The initial study/MND makes reference to at least two separate areas of wetlands, one or more areas of iceplant, magnesium piles, and more, it is unclear as to what is where, and what acreage is attributable to which uses and biological resources. The initial study claims that "There are no structures or commercial activity, existing or proposed, within the wetland" and oddly uses the singular term "wetland" when there are at least two areas. The initial study's failure to show the location of the solar array and evaluate it is another problem with the reliability of the quoted claim. There is reference to iceplant covering some of the wetlands, yet there is no condition requiring removal of the iceplant to help restore the wetlands.

The County's draft Moss Landing Community Plan Update has been under way for years and the County is now in process of preparing a Draft EIR for the plan update which is anticipated to be ready this year, according to the County. The draft Plan Update proposes a Special Treatment Area for the "business park" property at section "5.4.8.B. Moss Landing Business Park Special Treatment Area." It includes these requirements:

Moss Landing Business Park Special Treatment Area

The Moss Landing Business Park Special Treatment Area covers the Moss Landing Business Park Property located south of Dolan Road, east of Highway 1, on approximately 182.6 acres and includes a narrow stretch of approximately 7.7 acres of land located between the South Harbor and the west side of Highway 1 (currently consisting of Assessor's Parcel Numbers 133-172-004-000, 133-172-013-000, 133-173-002-000 and 133-173-005-000). The intent of this overlay is to establish the parameters for development of the Moss Landing Business Park, including allowing flexibility in the types of uses allowed while restricting the development intensity of the site.

Development of the site requires the approval of a comprehensive General Development Plan that describes proposed circulation improvements and their location, categories of proposed land uses and their location, and an estimate of potential development intensity for each proposed use. Required General Development Plans should address the coastal-dependent/ coastal-related/ coastal

priority nature of proposed uses (including the use of seawater), potential land use conflicts between different categories of use, and the protection of unique natural resources on and around the site.

The proposed GDP does not comply with the proposed special treatment area. The proposed GDP does not include the entire site, does not establish the parameters for development at the site, does not contain policies that describe the types of uses allowed, and does not restrict the development intensity of the site. The initial study has failed to address this issue. It does not make sense for this GDP to be considered unless it complies, and the County's delay on the Community Plan Update should not compromise good planning.

The applicant's proposed plan states that "The property consists of approximately 188 acres and five Assessor's Parcel Numbers." However, neither the applicant's plan nor the initial study states the five APNs and shows them clearly on a map. The County's draft Moss Landing Community Plan update identifies only four parcels as the "business park" property. The applicant's claim and the County's claim are inconsistent. The County's CEQA document should state clearly the parcel numbers of the property and provide a map that shows each parcel clearly identified and correctly labeled. The initial study/MND makes a reference to a single 3.75 acre "inset" parcel that may or may not be part of the site; this should be clarified. It is not clear whether that "inset" parcel is intended to be part of the GDP and if not, why not.

The initial study/MND makes no reference to the portion of the site that is on the west side of Highway One. That property should be part of a general development plan. Development of this area has been proposed in the past and is reasonably foreseeable, and likely would involve potential operational changes, circulation or transportation improvements, and more, each of which could implicate potential environmental impacts.

The initial study claims that "The Moss Landing Commercial Park General Development Plan (GDP) was prepared in October 2018 (see Appendix A) in accordance with Moss Landing Community Plan Policy 5.5.2.2 and Monterey County Code Section 20.28.030, which requires approval of a GDP prior to the establishment of any development in the Heavy Industrial district if there is no prior approved GDP and if the lot is in excess of one acre. This County claim is materially misleading in several ways. The claim fails to disclose that Appendix A is a proposed plan that was prepared by the applicant rather than the County. The County claim also refers only to the 2018 draft plan, rather than to the proposed plan apparently as amended; the Appendix A includes an undated and unpaginated amendment. The County initial study refers to the proposed "plan" rather than the "proposed plan as amended." The County should revise its CEQA document to clarify which proposal is intended to be referenced as the project at issue. This is important information that is essential to inform the reader. It is even more pertinent because the County in its initial study has departed materially from

the applicant's proposed 2018 plan when the County has claimed that the structures are materially larger in square footage than the applicant has claimed in its proposed plan. The claim that the proposed plan was prepared "in accordance with policy 5.5.2.2 and section 20.28.030 is not accurate because the development has already happened without benefit of a "prior" approved plan as required.

The initial study's discussion under "buildout potential" claims that "The existing 34 structures have an average total of 262 employees." A claim of an average number of current employees is not pertinent to the buildout potential in light of the vacant buildings.

The initial study claims that "Although no development is proposed, it is anticipated that most, if not all, of the existing warehouses would likely require interior remodeling to support the commercial cannabis operations." This initial study in general and this claim in particular fail to acknowledge the development that has been done through the extensive remodeling that the County has already permitted and that is shown in pending applications to the County. These are all part of the whole of the action. The whole of the action includes pending applications and construction that the County has permitted without benefit of planning and CEQA review. This includes the following representative actions that are shown on the County of Monterey's planning department public database for APN 133-172-013-000:

- 17CP01718 is for "Building 28. Construction of a new 13,529 square foot two story building inside an existing metal building." CP is a reference to "construction permit." The County Accela site calls the status "Extended Permit" without explanation, and identifies one of the "licensed professionals" as "Owner Builder." The "CP" in the County project number shows that the County is treating this as a construction permit, instead of a planning permit, even though the project would add square footage. The same treatment is shown in multiple other projects some of which are identified below.
- Pending application 21CP02849 is for "BLDG#27: Construction of a 1,200 square foot addition and a 3,175 square foot interior remodel to an existing commercial metal building."
- PLN210255 is for "A Title Amendment to alter language in Title 10, Section 10.72.010 to allow private or public/private construction and operation of a Desalinization Treatment Facility and a General Development Plan Amendment for the in process PLN160401 General Development Plan, and a Combined Development Permit consisting of: 1) A Coastal Development Permit for fish farming; 2) A Coastal Development Permit for saltwater extraction use; and 3) a Coastal Development Permit for the manufacture of cement."

- 20CP02504 “Record Status” is “Ready to Issue” for “As-built Tenant Improvement to an existing building for a new packing room, new post production room, new production/finishing room, new raw storage inventory in an existing shipping container, new finish storage in an existing shipping container add hand washing sink and three (3) comp. sink. Building # 19.”
- 22CP00324 is an application for “BLDG# 15. Tenant Improvement to include 6,000 square foot build out of an electrical room, and two (2) cultivation rooms within existing warehouse space, and an exterior self-supporting metal entry roof canopy.”
- 21CP00334 is a pending application for “BLDG#20. Interior demolition of wood frame walls / partitions (lower level) and one mezzanine on top of wood frame walls.”
- Application PLN200148 is for “replacement of two industrial buildings” which is new development. A planner has been assigned to the application, according to the County database.
- 17CP02295 is for “Building 3 & 5. Modification of an existing 31,548 sq ft two story metal building to include second floor addition (14,121 sq ft) for a total of 45,669 sq ft.” The County calls it an “expired permit” and it is not clear from the County records whether the development was constructed.
- 20CP02927 is “Ready to Issue” for “Installation of a new 30KW backup diesel generator on a new concrete equipment pad. for AT & T”
- 21CP02654 is for “Work for existing SF05730 commercial cell site to include: installation (1) Generac RD025 25kw diesel generator on new concrete pad” and more. A commercial cellular site is not discussed as an existing use in the initial study.

The applicant’s proposed general development plan does not include additions to the existing structures and the other development described by applications and permits in the County’s files for this site. The initial study does not adequately consider these known developments and foreseeable similar future developments.

The initial study/MND claims to rely on records of five months of water use from 2020 during the cooler months of December through April. The information is unreliable and inadequate and begs the question why all recent water records were not presented. The County should have at least an entire year of water use and present evidence of what occupancy/uses were active during that time. FANS ask the County to inspect, and possibly to copy, the records of the water use that the applicant has presented to the County.

The initial study discussion of water demand is internally inconsistent and several of the claims appear to be inaccurate and unreliable. The initial study claims that the 332,973 sf of cannabis is currently using 20.45 AFY. However, the initial study bases its analysis of the project water demand on an "assumption of 1.0 AFY of water per acre of indoor cultivation." According to the County's assumption of 1.0 AFY, the claimed 332,973 sf of cannabis theoretically should be using 7.64 AFY of water. The theoretical amount of 7.64 AFY is far less than the County's stated current cannabis use of 20.45 AFY. At 1.0 AFY/acre, 20.45 AFY would supply water for 890,802 square feet of cannabis. The County should investigate the inconsistent figures and assumptions, and to provide reliable evidence to the public and the reviewing agencies of the actual square footage of each of the specific uses and the actual water usage at the site. The water demand analysis appears to not account for employee water use.

The water discussion fails to discuss the extremely overdrafted nature of the groundwater supply. The north county subbasin at issue is very seriously overdrafted and water demand for this use should be accurate so that the decision makers can carefully consider the impacts of the proposed entitlements and uses. There is no solution to the overdraft in sight. It is not disputed that the Moss Landing Area will not benefit hydrologically from the Salinas Valley Groundwater Basin projects because the Moss Landing hydrological area is upland from the Salinas Valley projects and there is no distribution system to the Moss Landing area.

The initial study fails to disclose the one or more groundwater wells at the site and the water quality and production of each. This is all part of the on the ground conditions that CEQA requires to be disclosed.

The initial study suffers from errors and inconsistent calculations throughout, sometimes on different pages and sometimes on the same page. The initial study makes inconsistent statements about how many structures are vacant: seven (e.g., p. 57) and eight (e.g., p. 18). Page 18 claims that 8 of the 34 buildings have no employees" then refers twice to the "remaining 28 buildings" even though 34 buildings less 8 buildings is 26 instead of 28. Page 24 refers to "the operations occurring within 27 of the buildings."

The initial study uses materially incorrect words, and at times uses the opposite word of what probably was intended. For example, the initial study states that "existing cannabis operations ... produce approximately 49,945,950 kWh of energy per year." The reader can only guess that the initial study's word "produce" should have been the word "demand." These are not minor mistakes and they permeate the initial study.

The initial study claims that building no. 32 "does not have any employees and therefore does not generate daily trips. This "industrial shop" is currently being used as a designated fire corridor. This building is vacant and will remain vacant in order to be

in compliance with County fire standards." If so, then the GDP should state that as part of the proposed plan.

The initial study makes a claim about "6 warehouse buildings that are not currently occupied." The initial study fails to consider and mitigate the impacts in the foreseeable event that the warehouses would be occupied in the future or would change use. If the six buildings will not be occupied, then the plan should state that or a mitigation should require it.

The imagery presented in the initial study is outdated and potentially misleading. The pre-2015 and the current imagery should be presented to accurately show the previous and current use of the site.

The initial study does not appear to identify all structures. The concerns include:

- Figure 2 does not appear to include identification of building 34.
- Satellite maps show an unidentified structure or structures immediately south of Building 26 that is not identified in the initial study.
- Satellite maps show an unidentified structure or structures to the north of Building 17 that is not identified in the initial study.
- Shipping containers and cargo containers are being used for commercial and industrial purposes. However, they are not identified on the map.
- The guard house is not identified.
- The location of the current or future caretaker unit is not shown.

There are numerous shipping and cargo containers that have been brought onto the site recently. They are visible in satellite photographs. The initial study does not discuss them. They appear to be located around the property including in parking areas. According to County records the applicants want to use the containers for commercial purposes. The County should investigate and disclose the exact number, their use and location, and the square footage of each and whether it is legally at the site. The initial study has not disclosed the square footage of existing built structures as compared to the square footage of the containers and the potential issue of additional containers at the site. It is foreseeable that more would be brought to the site because there appears to be ample room.

The energy use information is not reliable. The applicant should provide to the County the actual records of energy usage from the past five years, which likely would be more accurate than reliance on an average calculated by staff based on limited information from five of the "operators." The initial study improperly focuses on the increase in usage from existing consumption because the environmental issue is the total usage at the site. The records provided have not been attached as exhibits for review by the public as they should have been, and the records are not available on the County's Accela website, as this office has documented. The initial study has not shown its calculations of energy use for the site and the individual uses and it is impossible for FANS to verify them for accuracy. Please provide all records and

calculations which are critical in light of the County code requirements and the state regulations.

The discussion of onsite wastewater disposal systems has typographical errors and mathematical errors that make it incomprehensible. There should be a discussion of a mitigation requirement to connect to a sewage system in the future even though CCSD has available capacity according to CCSD. There is no discussion of the adverse impacts of the current overloaded systems.

The initial study refers to "the portion of the property covered by artificial fill" and to other portions of the property that have duripan as having particular high risk factors for liquefaction and erosion, respectively; however the initial study fails to show on a map where the artificial fill and duripan is located, which is highly pertinent information to the proposed uses and the parameters for future development. This information should be provided along with a map, and the scientific references should be set forth with specificity.

The initial study has not address the project's potential foreseeable impacts on lighting and brightness to the Moss Landing natural and community environment. The site is surrounded by vast agricultural and rural residential areas. The lighting impacts should be mitigated by requiring the installation and use of lighting that limits and shields light sources to prevent on an ongoing basis, to the fullest extent reasonably possible, light pollution experienced off the property and in the night sky. The mitigation should require that no light sources be visible from off the property so that offsite glare is avoided. All exterior lights should be full cutoff light fixtures as defined by the Illuminating Engineering Society of North America. Full cutoff lighting fixtures which means a lighting fixture that projects all of its light in a downward direction, and that emit no upward component of light while providing precise, controlled illumination to a specific area.

The initial study analysis of energy use, water use, wastewater systems, and other impacts does not and should consider the estimated future use based on the modification of existing structures and the addition of more square footage such as interior floors and mezzanines which has enabled and would enable more enclosed growing areas. None of these parameters have been proposed.

The discussion of transportation (e.g., p. 20) is incomprehensible because it muddles existing operations and square footage with proposed. It is impossible to follow the analysis and the conclusions in the initial study.

The initial study relies on an applicant submittal as follows: "The applicant submitted the hazardous material questionnaire to the County Environmental Health Bureau (EHB) Hazardous Materials Management Services on January 18, 2017, that states that the proposed project would not be using any hazardous materials. There would be no use of hazardous materials in quantities of 55 gallons and above for

liquids, 500 lbs. and above for solids and/or 200 cubic feet and above for compressed gases. ... This form was signed by the owner/operator.” The two statements are not consistent: either there is no use of hazardous materials or there is no use in quantities about the amounts described. Which is correct? What if anything has changed in the more than five years since that 2018 submittal? The County should require an affirmative statement now for the GDP application.

The County inconsistent actions show the lack of reliability. On the one hand, the County initial study relied on the January 2018 “owner/operator” statement; however, that same “owner/operator” has expressly disclaimed knowledge of its “tenant permit applications” and the size of its facilities, so the reliability of the “owner/operator” claims are questionable. The owner of the site may or may not be an operator. Exactly what the owner operates at the site should be clearly stated. The information presented in the initial study and County records indicates that the owner is not the operator of the entire facility.

The initial study’s references to “tenant” improvements appear to be inaccurate because according to the County records one or more of the approved permit applications have been or are to be issued to “owner builder.” However, the Moss Landing Commercial Park LLC is the owner and it has expressly disclaimed knowledge of its tenants’ operations and facilities claims, as shown in the undated amendment to the proposed general development plan.

The initial study contains the puzzling statement that "The GDP does not include the proposed employee count for existing warehouses being repurposed for commercial cannabis activities (Building Nos. 21, 22, 23, 30 and 31)." The statement does not make sense; perhaps the reference was intended to be to the *applicant's proposed draft GDP*. The initial study makes this mistake several times when it confuses the applicant's proposal with the General Development Plan entitlement being sought, and the mistakes materially compromise the reliability of the analysis.

The initial study should not use a baseline that includes the unpermitted uses. To do so would not be consistent with the purpose and intent of the California Coastal Act and it would materially underestimate the impacts. Under the circumstances the baseline should be 2015 or earlier when the site was proposed for uses other than heavy industrial. The later cannabis uses were not permitted and not consistent with the land use plan. The County’s failure to enforce at the time and the owner’s delay in making an application are not cognizable reasons for basing an analysis on a later year.

The County Accela database lists at least four different addresses for projects at Assessor’s Parcel Number 133-172-013-000.

1. 11500 DOLAN
2. 7695 HWY 1, MOSS LANDING, CA 95039
3. 7697 HWY 1, MOSS LANDING, CA 95039
4. 7721 HWY 1, MOSS LANDING, CA 95039

At least three addresses are on Highway One despite the fact that the site has no highway access.

The GDP should not be considered until it has complied with the proposed MLCP update policy 5.3.2.F.1 which states that "Development in the heavy industrial designated properties areas shall not be allowed until needed improvements needed to accommodate any such development are made to the Dolan Road and Highway 1 intersection." The project also should be conditioned to prevent all Highway One access consistent with proposed policy 5.3.2.F.2.

The initial study fails to disclose and discuss the applications made to County for additional entitlements at the site.

The County website shows that many permit applications do not identify which of the buildings is proposed for the development that is the subject of the application.

The claim in the initial study that tenant improvements approved to date have been solely for life, health and safety is not accurate as shown by the County records. The County's planning/building database shows that the County has approved permits for APN 133-172-013-000 for a wide variety of development including "new packing room, new post production room, new production/finishing room" (20CP02504), the addition of square footage, mezzanines, exterior coverings and other actions that are not remedial actions for health and safety issues. Even if they were, which they were not, it would mean that the owner knowingly allowed employees to operate in unsafe conditions. The addition of floors to a warehouse space means the addition of square footage which means additional impacts. These issues have not been adequately addressed in the initial study and the proposed plan does not address them.

The initial study's repeated claims that "there is no development being proposed" at the site is not accurate in light of the proposed solar array and the many approved and pending development applications for APN 133-172-013-000.

The County website shows at least two unexplained code enforcement cases at the site: an open case 20CE00250 at 11500 DOLAN and Case No. 17CE00322 at 7697 HWY 1 which the County website says is "closed" with no explanation and no fees paid. No entitlement can be approved by the County while there is an open code enforcement case unless the project would resolve the violation. There is no discussion of this in the initial study and there is no evidence that the proposed general development plan would address and remedy the existing code violation.

The initial study claims that "As part of the operational component, soil erosion could occur from vehicular or pedestrian transport over areas not covered with asphalt. This activity would have a low potential to occur since the site is very well developed" The conclusory statement is not helpful because much of the site is not developed.

There County should require a condition that all transportation to be on asphalt or previously traveled ways, and to prohibit vehicular transportation over and access to all areas that are not part of the central industrial and commercial operations. The roads across the wetlands should be abandoned as mitigation. The roads that loop around the magnesium and that extend to the east of the buildings should be required to be abandoned and no motorized access should be allowed so that the wetlands can recover. The initial study fails to discuss and implement the Moro Cojo Slough Management and Enhancement Plan.

A mitigation should prohibit domestic animals at the site due to the potential and foreseeable predation of birds and other wildlife. The site should be posted with the prohibition. Domestic animals at the site are foreseeable due to the proposed caretaker use, the hundreds of employees, and the 24-hour guard.

A mitigation should prohibit all use, storage, and disposal of rodenticides, herbicides, fungicides, and pesticides at the site outside of the enclosed built structures due to the potential harm to biological resources including birds and the wetlands at and adjacent to the site. The presence of these poisons is foreseeable due to the nature of cannabis operations and the information provided by the County to date.

Initial study source 17 described only as "P-2020-0123-optimized.pdf." Please produce it to FANS promptly. The author of this letter has repeatedly tried to access the County Accela website for this project and gotten blank screens where the records should be available.

Conclusion and offer to meet

The County should not proceed with a public hearing until these issues have been resolved. FANS offers to meet with the County and discuss these issues. FANS notes that the County controls the schedule. FANS does not control the schedule.

FANS appreciates the opportunity to make these comments and urges the County to consider them thoughtfully. Thank you.

Sincerely,
STAMP | ERICKSON
/s/ Molly Erickson
Molly Erickson

c: California Coastal Commission, Central Coast office
California Department of Cannabis Control