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# **January 16, 2024 Regular Meeting**

**Item #7a. - Community  
Development Response to  
California Department of  
Fish & Wildlife Comments  
on Apogee Farm General  
Plan Amendment & SP**

# Mono County Community Development Department

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Date: January 16, 2024

To: The Honorable Mono County Board of Supervisors

From: Wendy Sugimura, Director

**RE: RESPONSE TO CALIFORNIA DEPARTMENT OF FISH & WILDLIFE COMMENTS ON APOGEE FARM  
GENERAL PLAN AMENDMENT & SP**

The California Department of Fish and Wildlife (CDFW) submitted a comment letter on the Apogee Farm General Plan Amendment (GPA) and Specific Plan (SP) dated January 10, 2024, which was transmitted to the Board of Supervisors on January 11, 2024. This memorandum provides a response to the CDFW letter for the Board's consideration of the project.

Comment/Topic of Interest	Response
1. Project does not adequately identify or quantify groundwater use or groundwater production limits for the Project. Without an identification of water limits, the Mitigated Negative Declaration (MND) cannot conclusively determine or analyze potential impacts.	<ul style="list-style-type: none"><li>• The project application estimates 600 gallons of water use per day for the cannabis project and identifies usage of an efficient watering system, such as drip irrigation (see Jan. 16, 2024, staff report). If the project is not consistent with this description, then it is out of compliance with the application and environmental analysis, and therefore out of compliance with the SP. For clarity, the Board may wish to add a SP implementation measure (see recommendations section below).</li><li>• The existing residential trailer, although unpermitted, is part of the baseline water use. The accessory dwelling units permitted outright by the SP are required by state law; to not allow them would be in violation of state law. The outright permitted uses in the SP are the same as currently permitted in the existing land use designation of Rural Residential (RR) except "farm labor housing for workers employed at the project site" and "non-commercial composting facilities." For farm labor housing, the number of "workers employed at the project site" is identified as 1-2 seasonal employees in the project description, which represents a de minimus increase in water usage. Farm labor housing for additional employees beyond the project description would be out of compliance with the SP.</li></ul>

	<ul style="list-style-type: none"> <li>• Therefore, the project adequately identifies project water use and other uses that consume water, which were analyzed in the MND and no significant impact was identified.</li> </ul> <p>In addition, the CDFW requested the following project assumptions for the analysis:</p> <ul style="list-style-type: none"> <li>• The project description identifies the maximum allowable cultivation area (8,640 square feet) and the size of the processing facility (1,800 sf). Distribution is the act of transporting the product and is not defined by square footage; however, the project description identifies 36,604 square feet of road.</li> <li>• Type of irrigation is addressed above.</li> <li>• The type of cultivation is identified in the project description and consists initially of outdoor cultivation which will transition to indoor cultivation with a mix of natural and artificial light.</li> </ul>
<p>2. Neither the SP nor 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.</p>	<ul style="list-style-type: none"> <li>• The project description and California Environmental Quality Act (CEQA) analysis indicate groundwater use limits. If the project is not in compliance with these descriptions and analysis, then it is out of compliance with the SP.</li> <li>• Reporting of water use has been addressed: “The cannabis cultivators will maintain daily water use records for five years and make all records available for the State Water Resources Control Board (SWRCB) and California Department of Fish and Wildlife (CDFW) for review, per the Cannabis Cultivation Policy prepared by SWRCB (2019).” See page 18 of the SP.</li> <li>• The CDFW suggests water usage records should be maintained and reported for the life of the project. Although not included in the recommendations below, a condition to maintain water records for the life of the project, rather than the state-required five years, and/or to report the water usage to the CDFW could be added.</li> <li>• Subsequent discretionary approvals have been addressed: Section IV.E. of the SP (p. 24) states that any uses not listed as permitted outright (i.e., discretionary approvals) require a SP Amendment accompanied by the appropriate environmental documentation. To provide additional clarity, the cannabis activities permitted subject to use permit could reference the project description and include the overhead utility line. See the recommendations section below.</li> </ul>
<p>3. MND does not analyze the full breadth, or cumulative impacts that the GPA and SP adoption would have on more water intensive land uses over the property’s existing baseline water uses.</p>	<p>The “water intensive land uses” that the CDFW claims have not been analyzed are unclear. The uses permitted outright under the SP and in the project description have been analyzed. Future discretionary uses not authorized in this approval require a SP Amendment with appropriate CEQA analysis.</p>

<p>4. 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. Recommend a jurisdictional wetland delineation.</p>	<ul style="list-style-type: none"> <li>• The MND analysis acknowledges facultative plant species on eastern portions of the project site and only concludes no wetlands are present based on the reconnaissance-level survey conducted by a qualified biologist. The only element of the project description that may have an impact on a riparian area or waterway is the access road and is addressed by Mitigation Measure (MM) BIO-3, which was revised in response to the CDFW’s recommendations in its August 11, 2022, comment letter. No other project elements are proposed in the riparian or waterway areas, and MM BIO-2 prohibits future development within any streams, riparian habitats, sensitive, natural communities, or other water bodies in the project area. MM BIO-2 was also revised in response to recommendations by the CDFW in its August 11, 2022, letter. Further, Implementation measure 2.a. requires residential and associated ancillary uses to be sited outside of culturally and biologically sensitive areas.</li> <li>• In response to CDFW’s June 8, 2021, comment letter and the concerns raised about Spring Canyon Creek and the ephemeral drainages, Mitigation Measures (MMs) BIO-2 and BIO-3 were included in the MMRP. In its August 11, 2022, comment letter, the CDFW appreciated the inclusion of these MMs and offered minor revisions which were substantially accepted (p. 4 of comment letter), but raised no further concerns. If the CDFW wishes to further revise BIO-2 and BIO-3, then the agency is welcome to submit additional suggested edits for consideration. To date, Mono County has accommodated the specific revisions requested by CDFW to address this topic.</li> </ul>
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Based on the discussion above, the following recommendations are proposed in response to the CDFW comment letter:

1. Add the following SP implementation measure: “Implementation measure 1.f. The project will use an efficient watering system, such as drip-irrigation to minimize the use of water. Daily water usage is estimated to be 600 gallons per day during full operation and daily water use records will be kept for five years.”
2. Modify the “Uses permitted subject to a SP Amendment and Use Permit Equivalent” section to the following (modifications underlined):
  - a. Any uses other than a permitted use or use subject to a Director Review Permit require an amendment to this SP.
  - b. Commercial cannabis activities substantially compliant with the project description and site plan.
  - c. Overhead utility line substantially compliant with the project description.