

Appendix E

Responses to Comments

E. Responses to Comments on the Draft IS/MND

E.1 Overview

The California Environmental Quality Act (CEQA) Guidelines Section 15074 requires a Lead Agency (Mono County Community Development and Planning) to review and consider all comments received on the Draft IS/MND prior to making a determination on a proposed project. The purpose of this Response to Comments document is to provide responses to comments received on the Draft IS/MND, consistent with CEQA requirements. Responses to comments that do not relate to physical changes to the environment are provided for informational purposes only, to assist the County's Board of Supervisors in determining an action on the project.

E.2 Comments Received

Appendix D includes comments received during the circulation of the Draft Initial Study/Mitigated Negative Declaration (IS/MND) prepared for the Apogee Farms Specific Plan, Cannabis Operations Permit, and Conditional Use Permit (project).

The Draft IS/MND was circulated for a 31-day public review period that began on July 15, 2022 and ended on August 15, 2022. The Mono County Community Development Department (County) received a total of three written comment letters during the public review period. Written comment letters are listed in Table E-1. Responses to written comments are provided in Section E.3.

Table E-1 Letter Number and Commenter

Letter Number	Name of Commenter	Affiliation
1	Lindsay Rains	California Department of Cannabis Control
2	Alisa Ellsworth	California Department of Fish and Wildlife
3	Sherry Lisius	U.S. Bureau of Land Management

The comment letters and responses follow. The comment letters have been numbered sequentially and each separate issue raised by the commenter has been assigned a number. The responses to each comment identify first the number of the comment letter, and then the number assigned to each issue (for example, Response 1-1 indicates that the response is for the first issue raised in comment Letter 1).

APPENDIX E - RESPONSES TO COMMENTS

Where appropriate, in response to the comments received, the text of the IS/MND has been revised. All changes are provided in the Final IS/MND. Text additions are indicated by underlined text. Deleted text is indicated by the use of ~~striketrough-text~~. The changes are summarized in this section, where appropriate.

E.3 Responses to Comments

Letter 1: Lindsay Rains, California Department of Cannabis Control



Department of
Cannabis Control
CALIFORNIA

Letter A1

Gavin Newsom
Governor

Nicole Elliott
Director

August 11, 2022

Michael Draper, Planning Analyst III
Mono County Community Development Department
Planning Division
P.O. Box 347
Mammoth Lakes, CA 93546
cddcomments@mono.ca.gov

Re: Initial Study/Mitigated Negative Declaration (IS/MND) for Apogee Farms General Plan Amendment, Specific Plan, Cannabis Operation Permit and Conditional Use Permit Project (SCH No. 2021050252)

Dear Mr. Draper:

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 the County of Mono for the proposed Apogee Farms project (Proposed Project).

DCC has jurisdiction over the issuance of licenses to cultivate, propagate and process commercial cannabis in California. DCC issues licenses to outdoor, indoor, and mixed-light cannabis cultivators, cannabis nurseries and cannabis processor facilities, where the local jurisdiction authorizes these activities. (Bus. & Prof. Code, § 26012(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 will need to obtain one or more annual cultivation licenses and a distribution license 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. This should apply not only to this Proposed Project, but to all future CEQA documents related to cannabis cultivation applications in Mono County.

Background

Mono County is the Lead Agency on the Proposed Project. Mono County prepared a Notice of Preparation (NOP) and filed it with the State Clearinghouse on May 14, 2021, this can be found on the County's project website at: <https://www.monocounty.ca.gov/planning/page/apogee->

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APPENDIX E - RESPONSES TO COMMENTS

farm-specific-plan-and-mitigated-negative-declaration. The California Department of Food and Agriculture submitted comments to the County regarding the NOP on June 14, 2021.¹ Although this NOP was for a focused EIR, it appears that an EIR was not prepared and an IS/MND was prepared instead. The project description also appears to be the same.

DCC has prepared general and specific comments, below, in response to the County's IS/MND, some of which reiterate the comments that were previously submitted to the County on June 14, 2021.

General Comments (GCs)

GC 1: Proposed Project Description

Certain comments provided in the comment table below relate to providing additional detail regarding the description of the Proposed Project. In general, a more detailed project description would be helpful to DCC. The following information could make the IS/MND more informative if included in the Project Description:

1. Description of the size and location of any existing natural features, such as vegetation, water features (Spring Canyon Creek), and topography of the Proposed Project site.
2. Detailed description of operational activities that would occur within the described cultivation, processing, and distribution facilities, as well as any other structures that may be existing on the Project site;
3. Description of facility operations and maintenance including:
 - a. Hours of operation;
 - b. Any heavy equipment that will be used for cultivation operations, including tractors, forklifts, mowers, etc.; and
 - c. Any water efficiency equipment that would be used;

A1-1

GC 2: Phasing

The Project Description indicates that the Proposed Project would be constructed in three distinct phases. To the extent that these details are reasonably foreseeable, the IS/MND would be strengthened if it clarified how and/or whether corresponding operations would vary across phases of the project (e.g., variations in the number of employees hired, vehicle trips, equipment usage, and/or requirements for physical resources [e.g., water, energy]). DCC assumes that the IS/MND evaluates Proposed Project operations and maintenance activities as they are anticipated at full buildout (e.g., when all project phases have been completed). The IS/MND would be improved if the County clearly confirmed (or clarified) this assumption.

A1-2

¹ On July 12, 2021, CDFA merged with the other state cannabis business licensing agencies, the Bureau of Cannabis Control and the Office of Manufactured Cannabis Safety, to form a new single state department, the California Department of Cannabis Control.

APPENDIX E - RESPONSES TO COMMENTS

GC 3: Acknowledgement of DCC Regulations

The IS/MND acknowledges that the Proposed Project requires cultivation licenses from DCC. The IS/MND could be improved if it acknowledged that DCC is responsible for licensing, regulation, and enforcement of commercial cultivation activities, as defined in the Medicinal and Adult Use Cannabis Regulation and Safety Act (MAUCRSA) and DCC regulations related to cannabis cultivation (Bus. & Prof. Code, § 26102(a)). Additionally, the IS/MND's analysis could benefit from discussion of the protections for environmental resources provided by DCC's cultivation and distribution regulations. In particular, the impact analysis for each of the following resource topics could be further supported by a discussion of the effects of state regulations on reducing the severity of impacts for each applicable topic:

- Aesthetics (See 4 California Code of Regulations §16304(a).)
- Air Quality and Greenhouse Gas Emissions (See §§ 15020(f); 16304(e); 16305; 16306.)
- Biological Resources (See §§ 15006(i); 15011(a)(11); 16304(a-c); 16304(g).)
- Cultural Resources (See § 16304(d).)
- Energy (See §§ 15006(i)(6); 15011(a)(5); 15020(f); 16305; 16306.)
- Hazards and Hazardous Materials (See §§ 15006(i)(5)(c); 15011(a)(4); 15011(a)(12); 16304(f); 16307; 16310.)
- Hydrology and Water Quality (See §§ 15006(i); 15011(a)(3); 15011(a)(7); 15011(a)(11); 16216; 16304(a); 16304(b); 16307; 16310.)
- Noise (See §§ 16304(e); 16306.)
- Public Services (See §§ 15011(a)(10); 15036; 15042.)
- Utilities and Service Systems (See §§ 16309; 17223.)
- Wildfire (See § 15011(a)(10).)
- Cumulative Impacts (related to the above topics)

A1-3

GC 4: Site-Specific Reports and Studies

The IS/MND references certain project-specific plans, studies, and project-specific data, including a Biological Survey, Cultural Resources records search, and an Archaeological Survey. To ensure that DCC has supporting documentation for the IS/MND, DCC requests that the County advise applicants to provide copies of all project-specific plans and supporting documentation with their state application package(s) for any annual cannabis business license(s) to DCC.

A1-4

GC 5: Evaluation of Cumulative Impacts

It is important for CEQA analysis to consider the cumulative impacts of cannabis cultivation in Mono County as a whole, whether projects are existing or proposed. Of particular importance are topics for which the impacts of individual projects may be less than significant, but where individual projects may make a considerable contribution to a significant cumulative impact. These topics include, but are not limited to:

A1-5

APPENDIX E - RESPONSES TO COMMENTS

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

The IS/MND would be improved by acknowledging and analyzing the potential for cumulative impacts resulting from the Proposed Project coupled with other cannabis cultivation projects being processed by the County, and any other reasonably foreseeable projects in Mono County that could contribute to cumulative impacts similar to those of the Proposed Project.

Specific Comments and Recommendations

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

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APPENDIX E - RESPONSES TO COMMENTS

Comment No.	Section Nos.	Page No(s).	Resource Topic(s)	IS/MND Text	DCC Comments and Recommendations
1	2.2	2-1	Land Use Designation and Surrounding Land Uses	N/A (General Comment)	The document would be improved if it described both general plan land use designations and zoning designations, as well as existing land uses for the Proposed Project and adjacent properties.
2	2.3	2-1	Access	All project site access roads would be improved to comply with the regulations set forth in Chapter 22 of the County's General Plan, related to fire safety.	The IS/MND would be improved if it explained if the improvement of these roads would include paving or other surfacing.
3	2.4.2	2-7 And 2-10	Commercial Cannabis Cultivation Facility – Use Permit	The greenhouses would be used for indoor cannabis cultivation. And.. Lighting in the greenhouses would be used only to extend the light cycle for vegging ₂ cannabis plants when daylight hours are limited and not sufficient for the growing plants.	The IS/MND would be improved if it clarified whether indoor or mixed-light cultivation techniques would occur inside the proposed greenhouses.
4	2.4.4	2-11	Facility Operation – Cannabis Operation	The cuttings would be transported to cultivation areas	Please note that separate licenses from DCC are required for indoor, outdoor, and mixed-light cultivation activities.

A1-6

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APPENDIX E - RESPONSES TO COMMENTS

Comment No.	Section Nos.	Page No(s).	Resource Topic(s)	IS/MND Text	DCC Comments and Recommendations	
				which may include the outdoor cultivation areas, or to greenhouses for replanting.		
5	2.5	2-13	Agency Jurisdiction and Approvals	N/A (General Comment)	The IS/MND would be more informative if it stated that a distribution license would also be needed from DCC.	A1-10
6	3.2 (c)	3-4	Aesthetics	Downcast, fully shielded lighting, with no light emitted above the horizontal plan would eliminate unnecessary night sky illumination, in accordance with CCR Title 3, §§ 8304(c) and 8304(g), general environmental requirements for cannabis cultivation program.	Please note that DCC regulations have been updated and may be found at California Code of Regulations, title 4, section 15000 et seq.	A1-11
7	3.4 (b)	3-9	Air Quality	Operational emissions would result from energy use to operate the greenhouses and other facilities, vehicle trips to and from the project site, and the proposed back-up generator.	Although much of this information may be included in Appendix B, the IS/MND would be improved if it provided a summary of the sources of the operational emissions that would result from energy use to operate the greenhouses and other facilities (lighting, HVAC, odor control equipment, cultivation equipment, security cameras, etc.).	A1-12

APPENDIX E - RESPONSES TO COMMENTS

Department of Cannabis Control

August 11, 2022 – Comments re Apogee Farms (SCH No. 2021050252) | Page 7

Comment No.	Section Nos.	Page No(s).	Resource Topic(s)	IS/MND Text	DCC Comments and Recommendations
8	3.4 (b)	3-9	Air Quality	Operation of the cannabis facility would comply with the GBUAPCD rules described above, which would require use of control measures to minimize fugitive dust and particulate matter emissions.	The IS/MND would be improved if it addressed anticipated dust and particulate emissions that could result from cannabis cultivation operations and routine maintenance at the project site, including the use of delivery trucks and employee vehicles on dirt and gravel roads.
9	3.5	3-14	Biological Resources	On November 8, 2019, biologist Russell Kokx conducted a reconnaissance-level survey of the 80-acre project site. The reconnaissance survey documented the environmental settings, including vegetative communities, soils, elevations, habitats, and conditions.	The document would be more informative if it provided the Biological Survey used to support impact conclusions of the IS/MND. DCC requests that the County advise applicants to provide copies of all project-specific plans and supporting documentation with their state application package(s) for any annual cannabis business license(s) to DCC. (See GC 4.)
10	3.5 (b)	3-21	Biological Resources	N/A (General Comment)	Mitigation Measure BIO-2 and BIO-3 appear to contradict each other. Mitigation Measure BIO-2 states that there shall be no future development under the Specific Plan within riparian habitats, streams, or sensitive habitats. However, Mitigation Measure BIO-3 requires compensation mitigation for any permanent impacts on riparian habitat

A1-13

A1-14

A1-15

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APPENDIX E - RESPONSES TO COMMENTS

Department of Cannabis Control

August 11, 2022 – Comments re Apogee Farms (SCH No. 2021050252) | Page 8

Comment No.	Section Nos.	Page No(s).	Resource Topic(s)	IS/MND Text	DCC Comments and Recommendations
					<p>because the cannabis facility will require upgrades to the existing access road, which crosses Spring canyon Creek. The document would be improved if it provided an explanation of how these two mitigation measures would be implemented.</p> <p>Furthermore, the stream and riparian habitat impacts from regular operational trips on the access road, as well as any required maintenance of the access road should also be addressed here.</p>
11	3.6 (a)	3-29	Cultural Resources	<p>Mitigation Measure CUL-1: Cultural Resources Preservation and Treatment</p> <p>Exclusion fencing shall be established and maintained around any eligible cultural resources including a 100-foot buffer from the outer limits of any known surface deposits.</p>	<p>Table 3-7 of this IS/MND identifies one “eligible” resource as well as three “potentially eligible” cultural resources. The IS/MND would be improved if this mitigation measure clarified whether it would be applicable to potentially eligible resources, and/or how potentially eligible resources would be managed or avoided as part of the Proposed Project.</p>
12	3.7 (a)	3-33	Energy	<p>During operation of the cannabis facility, the indoor cultivation facility would require the use of special lighting, ventilation, and air conditioning systems. Although the</p>	<p>CEQA does not consider the economic impacts of projects. The IS/MND would be improved if it estimated the amount of energy the Proposed Project would require for operational components such as lighting, HVAC systems, odor control equipment, cameras, pumps, video surveillance. This</p>

A1-16

A1-17

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APPENDIX E - RESPONSES TO COMMENTS

Comment No.	Section Nos.	Page No(s).	Resource Topic(s)	IS/MND Text	DCC Comments and Recommendations
				cannabis facility and some allowable uses may involve substantial energy use, production of commodities would be beneficial to the California economy and outweigh the quantity of energy consumed.	information should then be compared to relevant thresholds of significance. Additionally, the IS/MND would be more informative if it included an analysis of any expected use of the emergency generator.
13	3.7 (b)	3-33	Energy	N/A (General Comment)	The document would be strengthened if it described how the Proposed Project will comply with DCC regulations relating to the use of renewable energy in cultivation projects. (Cal. Code Regs., tit. 4 § 16305.)
14	3.10 (a)	3-41	Hazards and Hazardous Materials	N/A (General Comment)	The IS/MND would be improved if included a description of the storage location and conditions for any pesticides, fertilizers, fuels, and other agricultural chemicals that would be used at the project site.
15	3.10 (a)	3-41	Hydrology and Water Quality	Operation of the cannabis facility would necessitate obtaining coverage under the Cannabis Cultivation General Order (CCGO; Order WQ 2019-0001-DWQ)) from the SWRCB, in accordance with Section 8102(P)	The document would be improved if it described any elements of the Proposed Project that could impact water quality (including wastewater, agricultural runoff, stormwater, and/or use of chemicals or hazardous materials) and provided an analysis of whether those elements would have impacts on water quality.

A1-18

A1-19

A1-20

APPENDIX E - RESPONSES TO COMMENTS

Comment No.	Section Nos.	Page No(s).	Resource Topic(s)	IS/MND Text	DCC Comments and Recommendations
				under Title 3 of the CCR.	
16	3.20 (b)	3-62	Utilities and Service Systems	The use of groundwater for the cannabis facility would not exceed water supplies in the basin during normal, dry, or multiple dry years.	<p>The IS/MND would be improved if it provided data regarding anticipated groundwater supplies during dry and multiple dry years and included an analysis of whether there are sufficient groundwater supplies to serve the Proposed Project and reasonably foreseeable future development during dry and multiple dry years.</p> <p>In addition, the document would be improved if it referenced the state's requirements regarding proposed water sources and groundwater use (Cal. Code Regs. tit.4, §§ 15011(a)(7); 16311).</p>
17	3.20 (b)	3-63	Utilities and Service Systems	The cannabis facility would not generate a substantial volume of solid waste that could not be accommodated at Benton Crossing Landfill, based on the small volume of waste that would be generated from the cannabis facility.	The IS/MND would be strengthened if it quantified the anticipated solid waste generation and described the available disposal streams and also described the capacity of the existing landfill.
18	3.22 (b)	3-67	Mandatory Findings of Significance	N/A (General Comment)	The IS/MND would be more informative if it identified whether any other cannabis growing operations that exist or have been proposed in the vicinity of the Proposed Project, and whether the Proposed Project would make a considerable contribution to

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A1-22

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APPENDIX E - RESPONSES TO COMMENTS

Department of Cannabis Control

August 11, 2022 – Comments re Apogee Farms (SCH No. 2021050252) | Page 11

Comment No.	Section Nos.	Page No(s).	Resource Topic(s)	IS/MND Text	DCC Comments and Recommendations
					any cumulative impacts from these other projects. (See GC 5.)

1

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APPENDIX E - RESPONSES TO COMMENTS

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 Supervisor, at (916) 247-1659 or via e-mail at Kevin.Ponce@cannabis.ca.gov.

Sincerely,

Rains, Lindsay@Cannabis Digitally signed by Rains, Lindsay@Cannabis
Date: 2022.08.11 15:45:46 -07'00'

Lindsay Rains
Licensing Program Manager

APPENDIX E - RESPONSES TO COMMENTS

Response to Comment A1-1

The comment requests additional information in the project description. The requested information is included in the IS/MND as follows:

1. A description of the existing natural features is provided in the Sections 3.5 Biological Resources, 3.8 Geology and Soils, and 3.11 Hydrology and Water Quality of the IS/MND.
2. A description of the operational activities is provided in Section 2.4.4 Facility Operation of the IS/MND. There are no existing structures on the site.
3. A description of facility operations and maintenance including equipment operation and water use is provided in Section 2.4.4 of the IS/MND.

Response to Comment A1-2

The comment requests additional details on the phasing and verification that the IS/MND analyzes the full build out of the project.

The Project Description indicates that the greenhouses may be constructed in up to three phases. The IS/MND analyzes the project operational impacts at full build out.

Response to Comment A1-3

The comment requests additional acknowledgement of DCC regulations throughout the EIR. The County notes that DCC's regulations is separate from the County's land use regulation. The DCC can require additional information in its permit process. References to the DCC permit application requirements are not included in the IS/MND impact analysis as the application itself does not specifically reduce impacts on the environment. The County has added additional references to DCC regulations where they are relevant to the analysis of environmental effects under CEQA. The additional references to DCC regulations incorporated in the IS/MND text are noted below:

- | | |
|-----------|---|
| Page 3-4 | Downcast, fully shielded lighting, with no light emitted above the horizontal plan would eliminate unnecessary night sky illumination, in accordance with CCR Title 3, §§ 8304(c) and 8304(g), general environmental requirements for cannabis cultivation program <u>and CCR §16304 (a)(7) which requires that lights are shielded from sunrise to sunset.</u> |
| Page 3-11 | Generator use would comply with California Air Resources Board and GBUAPCD regulations including acquiring a permit if the generator exceeds 900 brake horsepower and airborne toxic control measures for generators (CCR Title 17 §93115 <u>and CCR Title 4 §16306.</u> |
| Page 3-38 | <u>In addition, the project would need to comply with CCR Title 4 §16305.</u> |
| Page 3-41 | Pesticides that would be used in cultivation operations would be approved for use on cannabis by the State and Inyo-Mono Agricultural Commissioner's office and would comply with Sections 8304(f) and 8307 under Title 3 of the CCR <u>and</u> |

APPENDIX E - RESPONSES TO COMMENTS

[Title 4 §16307](#), related to pesticide use requirements of the cannabis cultivation program.

Page 3-63 All project-related waste would be disposed at permitted solid waste facilities and in accordance with local and State regulations [including CCR Title 4 §17223](#).

Response to Comment A1-4

The comment requests that the County advise applicants to provide copies of project-specific plans and supporting documentation with their state application package. It is noted that the DCC will require additional information in its permit application process. The County does not advise applicants on procedures for compliance with other agencies' regulations. The County has no jurisdiction over DCC's permit process.

Response to Comment A1-5

The comment requests that the County evaluate cumulative impacts of the project in combination with other cannabis cultivation. A cumulative impact analysis is provided in Section 3.22 of the IS/MND. No other cannabis projects are planned or permitted in the same valley as the proposed project. The nearest planned cannabis facility is the Bask Ventures project located in the Sierra Business Park, approximately 20 miles from the proposed facility and would not result in cumulative impacts in combination with the proposed project.

Response to Comment A1-6

The existing and proposed General Plan land use designations are described in Table 2-1. The County's land use designations are the same as its zoning designations.

Response to Comment A1-7

Table 2-3 of the IS/MND states that the access roads would be graveled. Under heading "Roads and Parking" the IS/MND states that the access road would be unpaved.

Response to Comment A1-8

The comment requests clarification on the proposed lighting. Lighting is discussed in the IS/MND under heading "Lighting, Signage, and Fencing". Refer to page 2-8 of the IS/MND.

Response to Comment A1-9

The comment notes that separate licenses for DCC are required for indoor, outdoor, and mixed-light cultivation activities. The comment is noted.

Response to Comment A1-10

The comment notes that a distribution license would also be needed from DCC. The cannabis distribution license was added to Table 2-4 in the Final IS/MND.

Response to Comment A1-11

It is noted that DCC regulations have been updated. A reference to DCC regulations has been added to page 3-4 as noted in response to comment A1-3.

APPENDIX E - RESPONSES TO COMMENTS

Response to Comment A1-12

The comment states the IS/MND would be improved if it included a summary of the sources of operational emissions. The sources of operational emissions are discussed on page 3-9 of the IS/MND and the details of the operational emissions are presented in Table 3-2 and Appendix B.

Response to Comment A1-13

The comment states that the IS/MND would be improved if it addressed anticipated dust and particulate emissions from operations. The operational PM₁₀ and PM_{2.5} emission are presented in Table 3-2 of the IS/MND. Calculations for construction and operational fugitive dust are provided in Appendix B. The project will include placement of gravel on the access road to reduce dust. The total area of grading would be 0.54 acre and the total area of land disturbance during construction would be 1.33 acre. Due to the small size of the area of earth work and disturbance the project would not create substantial dust.

Response to Comment A1-14

The comment requests that the biological survey report be provided with the IS/MND. The results of the reconnaissance biological survey are presented in the Biological Resources section of the IS/MND. The Focused Rare Plant Survey report is provided in Appendix C. See also response to comment A1-4 regarding DCC's separate permit jurisdiction.

Response to Comment A1-15

The comment indicates that Mitigation Measure BIO-2 and BIO-3 contradict each other. Mitigation Measure BIO-2 refers to impacts to the ephemeral stream that would occur through the current cannabis use. Mitigation Measure BIO-3 would apply to future development under the Specific Plan and General Plan Amendment separate from the current cannabis facility proposal. Refer to the impact analysis on pages 3-20 and 3-21 of the IS/MND. Operational trips on the access road would not cause loss of any stream or riparian habitat.

Response to Comment A1-16

The comment states that the IS/MND should clarify whether the cultural resource mitigation applies to eligible and potentially eligible resources. The mitigation has been revised as follows for clarity. The text of Mitigation Measure CUL-1 is revised as follows:

Exclusion fencing shall be established and maintained around any eligible and potentially eligible cultural resources including a 100-foot buffer from the outer limits of any known surface deposits.

Response to Comment A1-17

The comment states that the CEQA document should estimate the energy use of the project. The project's energy use is estimated in Appendix B of the IS/MND. The CEQA Guidelines Appendix G question is whether the project will result in wasteful or inefficient use of energy. The analysis of energy use addresses the Appendix G question.

APPENDIX E - RESPONSES TO COMMENTS

Response to Comment A1-18

The comment suggests that the document would be strengthened if it described how the Proposed Project will comply with DCC regulations for renewable energy. The Energy question in CEQA Guidelines Appendix G does not require evaluation of renewable energy. The County is not responsible for enforcing DCC regulations.

Response to Comment A1-19

The comment suggests the IS/MND should include a description of the storage location for agricultural chemicals. The IS/MND discusses that hazardous materials would be stored in compliance with state and federal laws. A very low volume of agricultural chemicals that would be used for the project. The use and storage of these chemicals is governed by regulations.

Response to Comment A1-20

The comment recommends providing a description of project elements that could impact water quality. The analysis of water quality impacts for both project construction and operation is provided on pages 3-45 and 3-46. The project is a small operation that involves very limited activities that have the potential to impact water quality.

Response to Comment A1-21

The comment requests additional information on groundwater supplies and reference to DCC regulations. The IS/MND provides information on groundwater supplies from the groundwater basin consistent with published documents. The IS/MND provides sufficient information to demonstrate that the basin has significantly more water available than the 0.7 acre-foot required for the project. Given the low volume of water required for the operation, additional information is not required. As stated previously, the County is not in the position of enforcing compliance with DCC regulations.

Response to Comment A1-22

The comment requests quantification of the solid waste generation. The scale of the proposed operation is such that it would not exceed the available landfill capacity. As discussed on page 2-12, the project includes composting of green waste on site to reduce the total waste generation.

Response to Comment A1-23

The comment requests a cumulative impact analysis with other cannabis operations. See response to comment A1-5.

APPENDIX E - RESPONSES TO COMMENTS

Letter 2: Alisa Ellsworth, California Department of Fish and Wildlife

Letter A2



State of California – Natural Resources Agency
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August 11, 2022

Sent via email

Michael Draper, Planning Analyst II
Mono County Department of Community Development
P.O Box 347
1290 Tavern Road
Mammoth Lakes, CA 93546

Subject: Initial Study/Mitigated Negative Declaration
Apogee Farms General Plan Amendment and Cannabis Facility Project
State Clearinghouse No. 2021050252

Dear Mr. Draper:

The California Department of Fish and Wildlife (CDFW) received an Initial Study/Mitigated Negative Declaration (IS/MND) from the County of Mono (County) for the Apogee Farms General Plan Amendment and Cannabis Facility Project (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, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW ROLE

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

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.

Conserving California's Wildlife Since 1870

APPENDIX E - RESPONSES TO COMMENTS

Michael Draper, Planning Analyst II
County of Mono
August 11, 2022
Page 2 of 18

and habitat necessary for biologically sustainable populations of those species. (Id., § 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a Responsible Agency under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. 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 as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

The Project site is located at 23555 Highway 6 (west of Highway 6 and south of Highway 120) in the city of Benton, California within Mono County; Latitude 37.78235 N and Longitude -118.46837 W. The Project proposes the construction and operation of a commercial cannabis production, processing, and distribution facility with the owner/operator living onsite. The Project site comprises approximately 78.45 acres on Assessor's Parcel Numbers (APNs) 025-020-013-000 and 025-040-002-000. The Project also includes a Specific Plan and General Plan Amendment to the Mono County 2015 General Plan Land Use Map to eliminate the existing Rural Residential (RR-40) designation and redesignate the two APNs on the Project site as Agricultural (AG-40).

The processing facility will be a steel structure constructed on a concrete foundation with a maximum height of 20 feet. Three greenhouses will be constructed southeast of the processing facility within the cultivation area and will be used for cannabis cultivation. The greenhouse facility will be made of steel posts and beams with clear plastic walls and ceilings. The total area of cultivation will be less than 10,000 square feet within the fenced 23,400-square-foot cultivation area. An approximately 320-square-foot storage house will be constructed northwest of the greenhouses within the cultivation area with a maximum height of 12 feet. The storage house will be constructed of treated

APPENDIX E - RESPONSES TO COMMENTS

Michael Draper, Planning Analyst II
County of Mono
August 11, 2022
Page 3 of 18

wood with insulation on a concrete foundation. The storage house will be used for storage of water tanks, fertilizers, and other materials related to cannabis cultivation. The Project will include improvements (e.g., widening) to the access road from Highway 6 to meet County standards for ingress and egress. The access road to the cannabis facility and the power line for the cannabis facility will cross Spring Canyon Creek and two other ephemeral drainages on-site.

Timeframe: Unavailable

COMMENTS AND RECOMMENDATIONS:

The IS/MND discloses that a biological database search of several sources, including U.S. Fish and Wildlife Service, California Natural Diversity Database, California Native Plant Society, and National Wetland Inventory was conducted in May 2019 to determine which species had potential to occur onsite. The database search was followed by a reconnaissance-level survey conducted by biologist Russell Kokx on November 8, 2019, to document the environmental settings and to evaluate the potential for special-status species to occur; however, the results and methods of the reconnaissance-level survey were not provided. The IS/MND discloses that the final determination for species with potential to occur was made based upon known or expected occurrences within the area and whether the Project site or immediate vicinity contained suitable habitat. The IS/MND also disclosed that species “whose known distribution, habitat, or elevation range precluded a possible occurrence in the project vicinity” were not given further consideration and those “with relatively low probability for occurrence were retained for further evaluation because of incomplete knowledge about the range and/or habitat of certain species”.

As such, it was determined that a total of fourteen (14) special-status plant species and seven (7) special-status wildlife species had potential to occur onsite and are listed in Table 3-3 of the IS/MND, titled “Special-Status Species with Potential to Occur in the Project Site”. Among the special-status plants determined to have potential to occur included: alkali ivesia (*Ivesia kingii* var. *kingii*; State Rare Plant Rank [SRPR] 2B.2), Inyo County star-tulip (*Calochortus excavates*, SRPR 1B.1), fiddleleaf hawksbeard (*Crepis runcinate*, SRPR 2B.2), Inyo phacelia (*Phacelia inyoensis*, SRPR 1B.2) and dwarf monolepis (*Micromonolepis pusilla*, SRPR 2B.3). Among the special-status wildlife species determined to have potential to occur include Loggerhead Shrike

A2-1

APPENDIX E - RESPONSES TO COMMENTS

Michael Draper, Planning Analyst II
County of Mono
August 11, 2022
Page 4 of 18

(*Lanius ludovicianus*, CDFW Species of Special Concern [SSC]) and Swainson's Hawk (*Buteo swainsonii*, State Threatened).

Focused botanical surveys were then conducted on May 27 and June 17, 2020, and followed *Protocol for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities* (California Department of Fish and Game, 2009), *Guidelines for Conducting and Reporting Botanical Inventories for Federally Listed, Proposed, and Candidate Plants* (U.S. Fish and Wildlife Service, 1996), and *Botanical survey guidelines of the California Native Plant Society* (California Native Plant Society, 2001). The survey methods and results were provided in Appendix C of the IS/MND, and it was reported that no special-status plant species were observed onsite. As such, CDFW appreciates that focused botanical surveys, were appropriately conducted for sensitive plants with potential to occur but is concerned that focused surveys were not conducted for special-status wildlife species with potential to occur onsite, including burrowing owl (*Athene cunicularia*, SSC) and Owens Valley vole (*Microtus californicus vallicola*, SSC). Burrowing owl is widespread throughout California, is associated with agricultural fields such as those adjacent to the Project site and prefers open areas with short vegetation and sparse shrubs, such as that occurring onsite. Owens Valley Vole is found within habitat that includes grasses, sedges, riparian scrub, and waterways (e.g., natural stream courses), which the Project site provides. Further, vole activity in the area surrounding the Project site has been observed by CDFW. Therefore, CDFW recommends conducting pre-construction surveys for burrowing owl and Owens Valley vole as per below in biological (BIO) Mitigation Measure (MM) BIO-4 and MM BIO-6, respectively.

The IS/MND also discloses that the Project site encompasses Spring Canyon Creek and two ephemeral drainages, although no jurisdictional delineation was conducted. The IS/MND states that the access road and the power line for the cannabis facility will impact Spring Canyon Creek and the two ephemeral drainages onsite. As such, CDFW appreciates the inclusion of MM BIO-2 and MM BIO-3 in the IS/MND to mitigate for impacts to riparian habitat and to prevent future development from impacting fish and wildlife resources under the Project's Specific Plan, respectively. CDFW offers minor revisions to MM BIO-2 and MM BIO-3, as per below, to consider Fish and Game Code section 1602, including notification of Lake and Streambed Alteration.

The IS/MND describes that water for the Project, including construction and operation will be sourced from the existing onsite well and estimates that

A2-2

APPENDIX E - RESPONSES TO COMMENTS

Michael Draper, Planning Analyst II
County of Mono
August 11, 2022
Page 5 of 18

groundwater use will be approximately 600 gallons per day. The MND states that because 600 gallons per day is less than the daily average residential water use of 780 gallons per day in Mono County, the Project's water demand will not substantially decrease groundwater supplies. Absent a proper analysis, CDFW cannot agree that the Project will not substantially decrease groundwater supplies and is therefore concerned with the Project's impacts to groundwater and consequently potential impacts to Fish Slough. Fish Slough is considered an Area of Critical Concern by the Bureau of Land Management and supports fourteen (14) special-status plants including the endemic Fish Slough milk-vetch (*Astragalus lentiginosus* var. *piscinensis*, Federally Threatened; SRPR 1B.1: Rare or Endangered in California and elsewhere), and approximately 90% of Owens pupfish (*Cyprinodon radiosus*, Federally and State Endangered). Fish Slough is 100% dependent on groundwater discharge.

According to the IS/MND, the Project site is underlain by the Owens Valley groundwater basin (basin) and is located within the Tri Valley area of the Owens Valley groundwater basin. The basin's Groundwater Sustainability Plan (GSP) developed by the Owens Valley Groundwater Authority (OVGA) discusses that the declines in groundwater elevation in the Tri-Valley area could affect Fish Slough. Although CDFW understands that the GSP or OVGA has no regulatory authority over the Project, CDFW recommends that the Project applicant coordinate with OVGA to develop and implement best management practices and other actions to identify and avoid undesirable conditions in the operation and maintenance of the onsite well and to demonstrate the project will not contribute to cumulative impacts to Fish Slough from groundwater decline at the Project site.

A2-3

Cannabis cultivation and related activities require large quantities of water, which can impact sensitive groundwater-dependent species and ecosystems such as Fish Slough, Owens pupfish, and Fish Slough milk-vetch. Although the IS/MND analyzes impacts of the Project on groundwater liquefaction, it does not properly analyze the potential for the Project to decrease groundwater supplies. CDFW recommends that the final MND include an analysis of impacts of the Project on groundwater supplies and groundwater-dependent species and ecosystems, such as Fish Slough, Owens pupfish, and Fish Slough milk-vetch. The final MND should also include an analysis of cumulative impacts (e.g., groundwater overdraft and degradation of and or loss of habitat). Additionally, per the Cannabis Cultivation Policy (State Water Resources Control Board, February 2019), please note that records of daily water usage for irrigation of cannabis

APPENDIX E - RESPONSES TO COMMENTS

Michael Draper, Planning Analyst II
County of Mono
August 11, 2022
Page 6 of 18

must be maintained for 5 years and readily available for review by the State Water Resources Control Board (SWRCB) and CDFW.

Considering all of the above, CDFW recommends: (1) a jurisdiction delineation be conducted and provided with the final MND and to CDFW via notification of Lake and Streambed Alteration and (2) the revision of MM BIO-1, MM BIO-2, and MM BIO-3 and the adoption of MM BIO-4, MM BIO-5, and MM BIO-6 as per below and also found in Attachment 1 (Mitigation Monitoring and Reporting Program) for adoption in a final IS/MND.

A2-4

Biological Mitigation Measures

Nesting Birds

CDFW appreciates the inclusion of MM BIO-1 to mitigate for impacts to nesting birds and offers the following revisions below (edits are in ~~striketrough~~ and **bold**):

MM BIO-1:

A preconstruction survey shall be performed prior to construction. The following measures shall be implemented:

- Use of heavy equipment, grading, demolition, construction, and/or tree removal, shall avoid the nesting season to the greatest extent feasible.
- ~~If use of heavy equipment, grading, demolition, construction, and/or tree removal are scheduled to occur during the nonbreeding season (September 1 through February 15), no measures are required.~~
- ~~If construction activities occur during the nesting season,~~ **Regardless of the time of year,** a preconstruction survey for active bird nests in the ~~project site~~ shall be conducted on the project site and within 500 feet of the project site by a qualified biologist ~~approved by the County~~ **no more than three (3) calendar days prior to initiating all Project activities. Surveys shall include any potential habitat, including trees, shrubs, the ground, or nearby structures that might be impacted by activities that may cause nest destruction or abandonment.**
 - ~~-If no nesting or breeding behavior is observed, construction may proceed.~~
 - ~~-If an active nest is detected a determination shall be made by a qualified biologist as to whether construction work could affect the active~~

A2-5

APPENDIX E - RESPONSES TO COMMENTS

Michael Draper, Planning Analyst II
County of Mono
August 11, 2022
Page 7 of 18

~~nest. If it is determined that construction would not affect an active nest, work may proceed. If it is determined that construction activities are likely to impair the successful rearing of the young, a 'no-disturbance buffer' in the form of orange mesh Environmentally Sensitive Area (ESA) fencing shall be established around occupied nests to prevent destruction of the nest and to prevent disruption of breeding or rearing behavior. The extent of the 'no-disturbance buffer' shall be no less than 300 feet (500 feet for raptors), a smaller buffer may be determined by a qualified biologist in consultation with CDFW. 'No-disturbance buffers' shall be maintained until the end of the breeding season or until a qualified wildlife biologist has determined that the nestlings have fledged. A qualified wildlife biologist shall inspect the active nest to determine whether construction activities are disturbing to the nesting birds or nestlings. If the qualified wildlife biologist determines that construction activities pose a disturbance to nesting, construction work shall be stopped in the area of the nest, and the 'no-disturbance buffer' expanded.~~

Fish and Game Code Section 1602

CDFW is concerned about the IS/MND's confirmed impacts to Fish and Game Code section 1602 resources from construction and improvements to the access road and installation of power lines for the cannabis facility. Although the IS/MND acknowledges that development within streams onsite could require a Lake and Streambed Alteration Agreement (LSAA), mitigation proposed (i.e., MM BIO-2) does not consider notification of Lake and Streambed Alteration. Please note that the Department for Cannabis Control (DCC) requires cannabis cultivators to demonstrate compliance with Fish and Game Code section 1602 prior to issuing a cultivation license (Business and Professions Code, § 26060.1). To qualify for an Annual License from DCC, cultivators must have an LSAA or written verification from CDFW that one is not needed. Cannabis cultivators may apply online for an LSAA through the Environmental Permit Information Management System (EPIMS) at <https://epims.wildlife.ca.gov> and learn more about permitting at <https://wildlife.ca.gov/Conservation/Cannabis/Permitting>.

Nonetheless, CDFW appreciates the inclusion of MM BIO-2 to mitigate for impacts to riparian habitat onsite. Lamentably, MM BIO-2 does not consider impacts to streambed, bank, or channel and per Fish and Game Code section 1602: "An entity shall not substantially divert or obstruct the natural flow of, or substantially change or use any material from the bed, channel, or bank of any,

A2-6

APPENDIX E - RESPONSES TO COMMENTS

Michael Draper, Planning Analyst II
County of Mono
August 11, 2022
Page 8 of 18

river, stream, or lake...". Thus, CDFW recommends that the final MND include the below revisions to MM BIO-2 to consider notification of Lake and Streambed Alteration pursuant to Fish and Game Code 1602 (edits are in ~~strike through~~ and **bold**):

MM BIO-2:

If construction activities impact riparian habitat **and/or Fish and Game Code section 1602 resources**, the permanent loss of riparian habitat **and/or Fish and Game Code section 1602 resources** shall be compensated **as determined by the California Department of Fish and Wildlife (CDFW) through a Lake and Streambed Alteration Agreement** through ~~on-site enhancement or establishment of riparian habitat~~; **one or more of the following: on-site restoration; purchase of mitigation bank credits from a CDFW-approved mitigation bank; and/or land acquisition, management and conservation in perpetuity, and funding thereof**. Permanent impacts to riparian habitat shall be compensated ~~through enhancement of riparian areas~~ at a minimum 2:1 ratio (~~acres mitigated enhancement: acres impacted~~) **or as determined by CDFW during project analysis after receiving notification for a Lake and Streambed Alteration Agreement or creation of riparian areas at a minimum 2:1 ratio**. All areas of temporary impact will be restored to preconstruction contours and habitat conditions, **as determined by CDFW through a Lake and Streambed Alteration Agreement**. ~~Impacts to riparian habitat are anticipated only as a result from improvements to the access road.~~ The applicant will prepare a habitat mitigation and monitoring plan (**HMMP**) **for restoration of temporary impact areas (mitigation site)** that includes **the below and the HMMP requirements within the Lake and Streambed Alteration Agreement**:

- Baseline conditions within the mitigation site
- Proposed mitigation site conditions
- Mitigation methods (e.g., habitat creation or enhancement)
- Performance standards/success criteria including a minimum of 70% vegetated cover with native riparian vegetation that are the target of the creation and enhancement efforts and less than 3% invasive species cover
- Habitat maintenance including trash removal, invasive weed removal, and repair of any damage to the mitigation site
- Monitoring requirements including annual monitoring during the establishment period. The annual monitoring will include surveys for native vegetation cover, photo documentation at defined photo-monitoring locations, and monitoring for invasive species and any other habitat stressors. Monitoring will be conducted for the first five years or until success criteria are met.

APPENDIX E - RESPONSES TO COMMENTS

Michael Draper, Planning Analyst II
County of Mono
August 11, 2022
Page 9 of 18

Future Impacts to Fish and Wildlife Resources

CDFW appreciates the inclusion of MM BIO-3, which prevents future development from impacting fish and wildlife resources under the Project's Specific Plan and offers the following revisions to consider Fish and Game Code section 1602 (edits are in ~~strikethrough~~ and **bold**):

MM BIO-3

Future development under the Specific Plan would be prohibited within any streams, riparian habitats, sensitive natural communities, or other water bodies in the project area. No future development would occur in the floodplain to protect sensitive natural communities and special-status species. **If any changes to the Specific Plan are made and impacts to Fish and Game Code section 1602 resources are anticipated, the Project proponent shall submit a complete Lake and Streambed Alteration notification through EPIMS as noted above.**

A2-7

Burrowing Owl

CDFW recommends the adoption of MM BIO-4 below to prevent potential impacts to burrowing owl.

MM BIO-4:

Prior to initiating Project activities, a qualified biologist shall conduct at least one survey covering the entire Project area and surrounding 15-meter buffer to identify the presence of suitable burrows and/or burrow surrogates (>11 cm in diameter (height and width) and >150 cm in depth) for burrowing owl and sign of burrowing owl (e.g., pellets, prey remains, whitewash, or decoration, etc.). If suitable burrows and/or sign of burrowing owl is found, a breeding season survey for burrowing owl in accordance with the Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012) shall be conducted by a qualified biologist prior to start of Project activities. If no burrowing owl, active burrowing owl burrows, or sign thereof are found, no further action is necessary. If burrowing owl, active burrowing owl burrows, or sign thereof are found, the qualified biologist shall coordinate with the California Department of Fish and Wildlife (CDFW) to conduct an impact assessment to develop avoidance, minimization, and mitigation measures to be approved by CDFW prior to commencing Project activities and propose mitigation for

A2-8

APPENDIX E - RESPONSES TO COMMENTS

Michael Draper, Planning Analyst II
County of Mono
August 11, 2022
Page 10 of 18

permanent loss of occupied burrow(s) and habitat consistent with the 2012 Staff Report on Burrowing Owl Mitigation.

Employee Awareness of Wildlife Resources

CDFW recommends the adoption of MM BIO-5 below to bring awareness to all persons employed or otherwise working onsite in order to avoid or minimize Project-related impacts to special-status species with potential to occur.

MM BIO-5:

A qualified biologist shall conduct an education program for all persons employed or otherwise working on the Project site prior to performing any work on-site. The education program shall consist of a presentation that includes a discussion of the biology of the habitats and species that may be present at the site. The qualified biologist shall also include as part of the education program information about the distribution and habitat needs of any special-status species that may be present, legal protections for those species, penalties for violations, and mitigation measures. The education program should include, but not be limited to: (1) Best practices for managing waste and reducing activities that can lead to increased occurrences of opportunistic species and the impacts these species can have on wildlife in the area; (2) Protected species that have the potential to occur on the Project site including but not limited to burrowing owl; and (3) The location of Spring Canyon Creek and two ephemeral streams that transect the Project site and the importance of ensuring that no refuse or pollution enters the streambed habitat. Interpretation shall be provided for any non-English speaking workers, and the same instruction shall be provided for any new workers prior to their performing any work on-site.

A2-9

Owens Valley Vole

CDFW recommends the adoption of MM BIO-6 below to avoid potential Project-related impacts to Owens Valley vole.

MM BIO-6:

A California Department of Fish and Wildlife (CDFW)-approved biologist shall conduct trapping surveys within suitable habitat for Owens Valley vole and within a 150-foot buffer from the Project footprint to identify

A2-10

APPENDIX E - RESPONSES TO COMMENTS

Michael Draper, Planning Analyst II
County of Mono
August 11, 2022
Page 11 of 18

presence of Owen's Valley vole following CDFW-approved trapping protocols prior to initiating all Project activities. If presence of Owens Valley vole is confirmed, the Project proponent shall prepare and implement a set of avoidance and minimization measures to protect Owens Valley vole from Project-related impacts and shall provide them to CDFW for review and approval no fewer than 30 days prior to initiating all Project activities. Additionally, if Owen's Valley vole is present, a mitigation proposal shall be developed for the loss of habitat. Mitigation shall be determined by CDFW and may include, but is not limited to land acquisition, management and conservation in perpetuity, and funding thereof. Construction shall not proceed until mitigation is complete or a financial security (e.g., letter of credit) for mitigation measures is provided to CDFW.

ENVIRONMENTAL DATA

CEQA requires that information developed in Environmental Impact Reports and Negative Declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link: [Submitting Data to the CNDDDB \(ca.gov\)](#). 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: [CNDDDB - Plants and Animals \(ca.gov\)](#).

A2-11

FILING FEES

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

A2-12

APPENDIX E - RESPONSES TO COMMENTS

Michael Draper, Planning Analyst II
County of Mono
August 11, 2022
Page 12 of 18

CONCLUSION

CDFW requests that the County include in the final MND the suggested mitigation measures (Attachment 1) offered by CDFW to avoid, minimize, and mitigate Project impacts on California fish and wildlife resources.

CDFW appreciates the opportunity to comment on Apogee Farms General Plan Amendment and Cannabis Facility Project (SCH No. 2021050252) and hopes our comments will assist the County in identifying, avoiding, minimizing, and mitigating Project impacts on fish and wildlife resources.

If you should have any questions pertaining to the comments provided in this letter, please contact Corina Jimenez, Environmental Scientist at Corina.Jimenez@wildlife.ca.gov.

A2-13

ATTACHMENTS

Attachment 1: MMRP for CDFW-Proposed Mitigation Measures

Sincerely,

DocuSigned by:
 for
4D759253408941E...
Alisa Ellsworth
Environmental Program Manager

ec: Office of Planning and Research, State Clearinghouse, Sacramento
state.clearinghouse@opr.ca.gov.

REFERENCES

California Department of Fish and Wildlife. 2018. Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities. Available for download at:
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>

California Department of Fish and Game (CDFG). 2012. Staff report on burrowing owl mitigation. State of California, Natural Resources Agency. Available for download at:
<https://www.wildlife.ca.gov/conservation/surveyprotocols>

APPENDIX E - RESPONSES TO COMMENTS

Michael Draper, Planning Analyst II
County of Mono
August 11, 2022
Page 13 of 18

State Water Resources Control Board. 2019. Cannabis Cultivation Policy.

Available for download at:

https://www.waterboards.ca.gov/water_issues/programs/cannabis/docs/policy/final_cannabis_policy_with_attach_a.pdf

ATTACHMENT 1: MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

PURPOSE OF THE MMRP

The purpose of the MMRP is to ensure compliance with mitigation measures during project implementation. Mitigation measures must be implemented within the time periods indicated in the table below.

A2-14

TABLE OF MITIGATION MEASURES

The following items are identified for each mitigation measure: Mitigation Measure, Implementation Schedule, and Responsible Party. The Mitigation Measure column summarizes the mitigation requirements. The Implementation Schedule column shows the date or phase when each mitigation measure will be implemented. The Responsible Party column identifies the person or agency that is primarily responsible for implementing the mitigation measure.

A2-15

Biological (BIO) Mitigation Measures (MM)	Implementation Schedule	Responsible Party
MM BIO-1: A preconstruction survey shall be performed prior to construction. The following measures shall be implemented: <ul style="list-style-type: none">• Use of heavy equipment, grading, demolition, construction, and/or tree removal, shall avoid the nesting season to the greatest extent feasible.• Regardless of the time of year, a preconstruction survey for active bird nests shall be conducted on the project site and within 500 feet of the project site by a qualified biologist no	Prior to initiating Project activities	Project Proponent

A2-16

APPENDIX E - RESPONSES TO COMMENTS

Michael Draper, Planning Analyst II
County of Mono
August 11, 2022
Page 14 of 18

<p>more than three (3) calendar days prior to initiating all Project activities. Surveys shall include any potential habitat, including trees, shrubs, the ground, or nearby structures that might be impacted by activities that may cause nest destruction or abandonment.</p> <p>-If an active nest is detected a 'no-disturbance buffer' in the form of orange mesh Environmentally Sensitive Area (ESA) fencing shall be established around occupied nests to prevent destruction of the nest and to prevent disruption of breeding or rearing behavior. The extent of the 'no-disturbance buffer' shall be no less than 300 feet (500 feet for raptors), a smaller buffer may be determined by a qualified biologist. 'No-disturbance buffers' shall be maintained until the end of the breeding season or until a qualified wildlife biologist has determined that the nestlings have fledged. A qualified wildlife biologist shall inspect the active nest to determine whether construction activities are disturbing to the nesting birds or nestlings. If the qualified wildlife biologist determines that construction activities pose a disturbance to nesting, construction work shall be stopped in the area of the nest, and the 'no-disturbance buffer' expanded.</p>		
<p>MM BIO-2:</p> <p>If construction activities impact riparian habitat and/or Fish and Game Code section 1602 resources, the permanent loss of riparian habitat and/or Fish and Game Code section 1602 resources shall be compensated as determined by the</p>	<p>Prior to initiating Project activities</p>	<p>Project Proponent</p>

APPENDIX E - RESPONSES TO COMMENTS

Michael Draper, Planning Analyst II
County of Mono
August 11, 2022
Page 15 of 18

<p>California Department of Fish and Wildlife (CDFW) through a Lake and Streambed Alteration Agreement through one or more of the following: on-site restoration; purchase of mitigation bank credits from a CDFW-approved mitigation bank; and/or land acquisition, management and conservation in perpetuity, and funding thereof. Permanent impacts to riparian habitat shall be compensated at a minimum 2:1 ratio (acres mitigated: acres impacted) or as determined by CDFW during project analysis after receiving notification for a Lake and Streambed Alteration Agreement. All areas of temporary impact will be restored to preconstruction contours and habitat conditions, as determined by CDFW through a Lake and Streambed Alteration Agreement. The applicant will prepare a habitat mitigation and monitoring plan (HMMP) for restoration of temporary impact areas (mitigation site) that includes the below and the HMMP requirements within the Lake and Streambed Alteration Agreement:</p> <ul style="list-style-type: none">• Baseline conditions within the mitigation site• Proposed mitigation site conditions• Mitigation methods (e.g., habitat creation or enhancement)• Performance standards/success criteria including a minimum of 70% vegetated cover with native riparian vegetation that are the target of the creation and enhancement efforts and less than 3% invasive species cover• Habitat maintenance including trash removal, invasive weed removal, and repair of any damage to the mitigation site• Monitoring requirements including annual monitoring during the establishment period. The annual monitoring will include surveys for		
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A2-17

APPENDIX E - RESPONSES TO COMMENTS

Michael Draper, Planning Analyst II
County of Mono
August 11, 2022
Page 16 of 18

native vegetation cover, photo documentation at defined photo-monitoring locations, and monitoring for invasive species and any other habitat stressors. Monitoring will be conducted for the first five years or until success criteria are met.		
<p>MM BIO-3:</p> <p>Future development under the Specific Plan would be prohibited within any streams, riparian habitats, sensitive natural communities, or other water bodies in the project area. No future development would occur in the floodplain to protect sensitive natural communities and special-status species. If any changes to the Specific Plan are made and impacts to Fish and Game Code section 1602 resources are anticipated, the Project proponent shall submit a complete Lake and Streambed Alteration notification through EPIMS as noted above.</p>	Prior to initiating Project activities	Project Proponent
<p>MM BIO-4</p> <p>Prior to initiating Project activities, a qualified biologist shall conduct at least one survey covering the entire Project area and surrounding 15-meter buffer to identify the presence of suitable burrows and/or burrow surrogates (>11 cm in diameter (height and width) and >150 cm in depth) for burrowing owl and sign of burrowing owl (e.g., pellets, prey remains, whitewash, or decoration, etc.). If suitable burrows and/or sign of burrowing owl is found, a breeding season survey for burrowing owl in accordance with the Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012) shall be conducted by a qualified biologist prior to start of Project activities. If no burrowing owl, active burrowing owl</p>	Prior to initiating Project activities	Project Proponent

A2-18

A2-19

APPENDIX E - RESPONSES TO COMMENTS

Michael Draper, Planning Analyst II
County of Mono
August 11, 2022
Page 17 of 18

<p>burrows, or sign thereof are found, no further action is necessary. If burrowing owl, active burrowing owl burrows, or sign thereof are found, the qualified biologist shall coordinate with the California Department of Fish and Wildlife (CDFW) to conduct an impact assessment to develop avoidance, minimization, and mitigation measures to be approved by CDFW prior to commencing Project activities and propose mitigation for permanent loss of occupied burrow(s) and habitat consistent with the 2012 Staff Report on Burrowing Owl Mitigation.</p>		
<p>MM BIO-5</p> <p>A qualified biologist shall conduct an education program for all persons employed or otherwise working on the Project site prior to performing any work on-site. The education program shall consist of a presentation that includes a discussion of the biology of the habitats and species that may be present at the site. The qualified biologist shall also include as part of the education program information about the distribution and habitat needs of any special-status species that may be present, legal protections for those species, penalties for violations, and mitigation measures. The education program should include, but not be limited to: (1) Best practices for managing waste and reducing activities that can lead to increased occurrences of opportunistic species and the impacts these species can have on wildlife in the area; (2) Protected species that have the potential to occur on the Project site including but not limited to burrowing owl; and (3) The location of Spring Canyon Creek and two ephemeral streams that transect the Project site and the importance of ensuring that no refuse or pollution enters the streambed habitat. Interpretation shall be provided for any non-</p>	<p>Prior to initiating Project activities</p>	<p>Project Proponent</p>

A2-20

APPENDIX E - RESPONSES TO COMMENTS

Michael Draper, Planning Analyst II
County of Mono
August 11, 2022
Page 18 of 18

English speaking workers, and the same instruction shall be provided for any new workers prior to their performing any work on-site.		
<p>MM BIO-6</p> <p>A California Department of Fish and Wildlife (CDFW)-approved biologist shall conduct trapping surveys within suitable habitat for Owens Valley vole and within a 150-foot buffer from the Project footprint to identify presence of Owen's Valley vole following CDFW-approved trapping protocols prior to initiating all Project activities. If presence of Owens Valley vole is confirmed, the Project proponent shall prepare and implement a set of avoidance and minimization measures to protect Owens Valley vole from Project-related impacts and shall provide them to CDFW for review and approval no fewer than 30 days prior to initiating all Project activities. Additionally, if Owen's Valley vole is present, a mitigation proposal shall be developed for the loss of habitat. Mitigation shall be determined by CDFW and may include, but is not limited to land acquisition, management and conservation in perpetuity, and funding thereof. Construction shall not proceed until mitigation is complete or a financial security (e.g., letter of credit) for mitigation measures is provided to CDFW.</p>	Prior to initiating Project activities	Project Proponent

A2-21

APPENDIX E - RESPONSES TO COMMENTS

Response to Comment A2-1

The comment states that the results and methods of the reconnaissance level survey were not provided in the IS/MND and focused surveys should have been conducted for burrowing owl and Owens Valley vole.

The methods for the reconnaissance survey and survey dates are described under Field Surveys on page 3-14 of the IS/MND. The results of the reconnaissance survey are provided in the Natural Communities descriptions on Pages 3-14 and 3-16 and Figure 3.4-1 of the IS/MND and in the description of Wetlands and Other Water Bodies on page 3-17.

A search of the California Natural Diversity Database (CNDDB) was conducted to identify known occurrences of burrowing owl. No burrowing owl have been recorded within 20 miles of the project. The nearest occurrence of burrowing owl is in Inyo County at a much lower elevation than the project site. Therefore, burrowing owl are not expected to occur on the site. As described in Table 3-3, habitat for Owens Valley vole does not occur on the site. The habitat on site consists of sagebrush scrub and greasewood scrub and does not include meadow or wetland vegetation.

Response to Comment A2-2

The comment notes that California Department of Fish and Wildlife (CDFW) offers minor revisions to BIO-2 and BIO-3. The comment is noted.

Response to Comment A2-3

The comment suggests that the IS/MND does not include a proper analysis of groundwater impacts and that the project applicant coordinate with the Owens Valley Groundwater Authority to develop best management practices. It also suggests that cannabis cultivation requires large quantities of water and will impact fish slough.

The IS/MND discusses groundwater supply and utilizes information from the OVGAS's GSP ~~the OVGA's plans to develop a GSP~~ in Section 3.11(b). The groundwater supply is also addressed in Section 3.20(b). Any existing impacts on fish slough as a result of existing water use in the basin is the existing condition and not an impact from the project. Given that the project cannabis cultivation would use less water than a single residence and the proposed project water use represents 0.0005 percent of the existing groundwater use in the basin, the project cannabis cultivation would not impede sustainable groundwater management.

Response to Comment A2-4

The comment recommends a jurisdictional delineation, revisions to MM BIO-1, BIO-2, and BIO-3 and adoption of additional mitigation measures. A jurisdictional delineation was not conducted because no wetland vegetation communities occur on the site. Spring Creek, an ephemeral creek, is the only potentially jurisdictional resource on the site and the potential impacts on that resource are defined in the IS/MND. CDFW has separate jurisdiction under Section 1600 of Fish and Game Code. Responses to CDFW comments on the mitigation measures are provided below.

APPENDIX E - RESPONSES TO COMMENTS

Response to Comment A2-5

CDFW's suggested text edits to MM BIO-1 are provided in the comment. CDFW's comment about striking the nesting season and striking CDFW approval for the biologist were not accepted. It is standard practice to conduct nesting bird surveys during the nesting season rather than during the winter (when there is snow on the ground in this region). The County is the lead CEQA agency and has the ability to require approval of the biologist. Other edits were accepted as shown below.

Mitigation Measure BIO-1: Nesting Bird Surveys

A preconstruction survey shall be performed prior to construction. The following measures shall be implemented:

- Use of heavy equipment, grading, demolition, construction, and/or tree removal, shall avoid the nesting season to the greatest extent feasible.
- If use of heavy equipment, grading, demolition, construction, and/or tree removal are scheduled to occur during the nonbreeding season (September 1 through February 15), no measures are required.
- If construction activities occur during the nesting season, a pre-construction survey for active bird nests in the project site shall be conducted on the project site and within 500 feet of the project site by a qualified biologist approved by the County
 - If no nesting or breeding behavior is observed, construction may proceed.
 - If an active nest is detected, ~~a determination shall be made by a qualified biologist as to whether construction work could affect the active nest. If it is determined that construction would not affect an active nest, work may proceed. If it is determined that construction activities are likely to impair the successful rearing of the young,~~ a 'no-disturbance buffer' in the form of orange mesh Environmentally Sensitive Area (ESA) fencing shall be established around occupied nests to prevent destruction of the nest and to prevent disruption of breeding or rearing behavior. The extent of the 'no-disturbance buffer' shall be no less than 300 feet (500 feet for raptors), a smaller buffer may be determined by a qualified biologist ~~in consultation with CDFW.~~ 'No-disturbance buffers' shall be maintained until the end of the breeding season or until a qualified wildlife biologist has determined that the nestlings have fledged. A qualified wildlife biologist shall inspect the active nest to determine whether construction activities are disturbing to the nesting birds or nestlings. If the qualified wildlife biologist determines that construction activities pose a disturbance to nesting, construction work shall be stopped in the area of the nest, and the 'no-disturbance buffer' expanded.

Response to Comment A2-6

It is noted that DCC requires cannabis cultivators to demonstrate compliance with Section 1602 of Fish and Game Code. BIO-2 was specifically prepared to address project impacts on Spring Creek from widening of the access road. No other impacts on streams would occur with implementation of MM BIO-3. The County has accepted some of CDFW's comments on MM BIO-2 (renumbered as MM BIO-3). In order to comply with CEQA, the County cannot defer mitigation until a later permit process. MM BIO-2 specifies a minimum level of mitigation that would be provided to address impacts under CEQA. CDFW could require other mitigation or conditions in the 1602 permit.

Mitigation Measure BIO-3: Mitigation for Riparian Habitat and/or Fish and Game Code Section 1602 Resources.

If construction activities impact riparian habitat and/or Fish and Game Code Section 1602 resources, the permanent loss of riparian habitat and/or Fish and Game Code Section 1602 resources shall be compensated through either on-site restoration, purchase of mitigation bank credits from a CDFW approved mitigation bank, and/or land acquisition, management and conservation in perpetuity and funding thereof. ~~enhancement or establishment of riparian habitat~~. Permanent impacts to riparian habitat shall be compensated at a ratio commensurate with the quality of habitat impacted and habitat created and the type of mitigation provided. ~~through enhancement of riparian areas at a minimum 2:1 ratio (enhancement:impact) or creation of riparian areas at a minimum 1:1 ratio.~~ All areas of temporary impact will be restored to preconstruction contours and habitat conditions. The applicant will prepare a habitat mitigation plan that includes:

- Baseline conditions within the mitigation site
- Proposed mitigation site conditions
- Mitigation methods (e.g., habitat creation or enhancement)
- Performance standards/success criteria including a minimum of 70% vegetated cover with native riparian vegetation that are the target of the creation and enhancement efforts and less than 3% invasive species cover
- Habitat maintenance including trash removal, invasive weed removal, and repair of any damage to the mitigation site
- Monitoring requirements including annual monitoring during the establishment period. The annual monitoring will include surveys for native vegetation cover, photo documentation at defined photo-monitoring locations, and monitoring for invasive species and any other habitat stressors. Monitoring will be conducted for the first five years or until success criteria are met.

APPENDIX E - RESPONSES TO COMMENTS

Response to Comment A2-7

CDFW provided comments to MM BIO-3 (renumbered as MM BIO-2) to address future changes to the Specific Plan.

Should future changes to the Specific Plan be required, the County would review those changes in compliance with CEQA and would develop additional mitigation if needed. The mitigation addresses the impacts of the proposed project including the Specific Plan as defined.

Response to Comment A2-8

The comment recommends a mitigation measure to address burrowing owl. As noted in response to comment A2-1, no burrowing owl have been documented within 20 miles. Burrowing owl are not expected to occur due to the habitat conditions on site, high elevation of the site and lack of burrowing owl nearby. Therefore, mitigation for burrowing owl is not required.

Response to Comment A2-9

The comment requests that the County add a mitigation measure for an employee awareness program. As discussed in the IS/MND, the project site does not contain rare plants and the only endangered species that have suitable habitat in the area is loggerhead shrike, a nesting bird. Given that a biologist will conduct pre-construction surveys for nesting birds in MM BIO-1 a significant impact would not occur due to worker behavior. The mitigation is therefore not needed.

Response to Comment A2-10

The comment requests that the County add a mitigation measure for Owen's Valley vole. As discussed in response to comment A2-1, there is no suitable habitat for Owen's Valley vole on the project site. Therefore, there is no need for mitigation for Owen's valley vole as Owen's Valley vole would not occur on the site.

Response to Comment A2-11

The requirements for submitting special-status species data to CNDDDB are noted.

Response to Comment A2-12

CDFW required filing fees for the Notice of Determination are noted.

Response to Comment A2-13

The CDFW's specific comments on the MMRP and mitigation measures are addressed in responses to comments above and below.

Response to Comment A2-14

The purpose of the mitigation monitoring and reporting program (MMRP) are noted.

Response to Comment A2-15

The comment identifies the columns included in the MMRP table.

APPENDIX E - RESPONSES TO COMMENTS

Response to Comment A2-16

The MMRP incorporates the edits to MM BIO-1 provided in response to comment A2-5.

Response to Comment A2-17

The MMRP incorporates the edits to MM BIO-2 (now MM BIO-3) as noted in response to comment A2-6.

Response to Comment A2-18

No changes are made to MM BIO-3 (now MM BIO-2) as discussed in response to comment A2-7.

Response to Comment A2-19

MM BIO-4 is not added to the IS/MND and MMRP as discussed in response to comment A2-8.

Response to Comment A2-20

MM BIO-5 is not added to the IS/MND and MMRP as discussed in response to comment A2-9.

Response to Comment A2-21

MM BIO-6 is not added to the IS/MND and MMRP as discussed in response to comment A2-10.

APPENDIX E - RESPONSES TO COMMENTS

Letter 3: Sherri Lisius, Bureau of Land Management

Letter A3

From: Lisius, Sherri K <slisius@blm.gov>
Sent: Monday, August 1, 2022 2:03 PM
To: Wendy Sugimura; Michael Draper
Cc: Starosta, Jeffrey A
Subject: Apogee Farm

Hello Wendy and Michael,

We have a few thoughts on this proposal.

Because the marijuana is still federally illegal, there can't be any transport of the drug on BLM lands. It seems like it isn't needed but that is just a heads up.

A3-1

Also, they will need to be very careful with land status and should probably have a survey done if there is any question about the land status due to this same issue.

A3-2

What kind of water needs are there? Would there be a new or deeper well? If there is a lot of water pumping associated, there may be concerns about impacts to endangered fish and plants in fish slough.

A3-3

Thanks!

Sherri Lisius
Assistant Field Manager
Bureau of Land Management, California
DOI, Region 10
Bishop, CA
760-872-5022 (Office)

APPENDIX E - RESPONSES TO COMMENTS

Response to Comment A3-1

The project will connect to County roads. No transport on BLM lands is proposed.

Response to Comment A3-2

The project is located on private land subject to County jurisdiction. No federal land would be affected.

Response to Comment A3-3

The project water demand is described on Page 2-12 of the IS/MND. Sections 3.11(b) and 3.20(b) discuss project impact on groundwater supplies. See also response to comment A2-3.