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AGENDA ITEM NO.: 6 (Action Item – Public Hearing)

PLANNING COMMISSION MEETING DATE: September 22, 2021

SUBJECT: Conditional Use Permit (CUP) 2020-06
Pinnacle Cannabis Microbusiness

EXECUTIVE SUMMARY

The applicant has applied for a CUP for a Cannabis microbusiness. The microbusiness use would include indoor cultivation, non-volatile manufacturing, distribution, and non-storefront retail delivery. This project includes (3) 320 ft² storage buildings, (1) 8,400 ft² cultivation greenhouse, (5) 13,000 ft² cultivation greenhouses, (1) 3,000 ft² mother greenhouse, (1) 3,000 ft² metal building for manufacturing non-volatile products, distribution and delivery, (1) 750 ft² metal building for pesticide storage, and (1) 10,000 ft² metal building for storage and processing. The Project is located at 1550 Trona Wildrose Road, near the community of Trona.

PROJECT INFORMATION.

Supervisory District: 5

Project Applicant: James Chester – Pinnacle Cannabis, 9303 Vistoso Way Bakersfield, CA 93312

Property Owner: Andy Kasamis – PO Box 780 Trona, CA 93592

Site Address: 1550 Trona Wildrose Road, Trona, CA 93592

Community: Trona

A.P.N.: 038-300-07

General Plan: General Industrial (GI)

Zoning: General Industrial, 40-acre minimum (M1-40)

Size of Parcel: An approximately 15-acre segment of the 80-acre parcel

Surrounding Land Use:

Location:	Use:	Gen. Plan Designation	Zoning
Site	Vacant	(GI) Light Industrial	(M1) General Industrial & Extractive
North	Vacant	(GI) Light Industrial	Open Space-40 acre minimum (OS-40) & (M1) Gen. Industrial & Extractive
South	Vacant	State & Federal Land (SFL)	Open Space-40 acre minimum (OS-40)
East	Vacant	State & Federal Land (SFL)	Open Space-40 acre minimum (OS-40)
West	Vacant	State & Federal Land (SFL)	Open Space-40 acre minimum (OS-40)

Staff Recommended Action: **1.) Approve the Conditional Use Permit (CUP) 2020-06/Pinnacle and certify the Mitigated Negative Declaration under CEQA.**

Alternatives:

- 1.) Deny the CUP.
- 2.) Approve the CUP with additional Conditions of Approval.
- 3.) Continue the public hearing to a future date, and provide specific direction to staff regarding what additional information and analysis is needed.

Project Planner: Graham Meese

STAFF ANALYSIS

Background and Overview

The applicant has applied for a CUP to operate a cannabis microbusiness located at 1550 Trona Wild Rose Road, north of the community of Trona. The proposed microbusiness license includes indoor cultivation, non-volatile manufacturing, distribution, and non-storefront retail delivery. This project includes (3) 320 ft² storage buildings, (1) 8,400 ft² cultivation greenhouse, (5) 13,000 ft² cultivation greenhouses, (1) 3,000 ft² mother greenhouse, (1) 3,000 ft² metal building for manufacturing non-volatile products, distribution and delivery, (1) 750 ft² metal building for pesticide storage, and (1) 10,000 ft² metal building for storage and processing. There will be approximately 4 acres of disturbance on the 15-acre, northeast section, of APN # 038-300-07. The applicant received their commercial cannabis microbusiness license from the County on February 11, 2020.

The property is zoned General Industrial (M1), which allows for cannabis microbusiness activities with a CUP. This is a remote area of the County that primarily has open, vacant, land with some scattered residential and industrial development. The proposed location is not within 600-feet of a school, daycare, park or, library; and therefore, is not prohibited by state or county cannabis exclusion regulations.

General Plan Consistency

The goal of this project is to permit a cannabis microbusiness for indoor cultivation, non-volatile manufacturing, distribution, and non-storefront retail delivery. The project is consistent with the General Plan designation of General Industrial (GI), since it requires “*manufacturing, processing... and similar compatible uses where there is a potential for nuisance on surrounding land*” (Policy LU-4.2). The cultivation greenhouses are comparable to an industrial park, and the manufacturing and distribution components also align with General Plan designations for General Industrial. Furthermore, this project uses the most recent air, water, and noise pollution standards (Policy LU-4.4), and has direct vehicle access to a publicly maintained roadway with sufficient parking and loading areas on site (Policy LU-4.7). All of these requirements for general industrial uses are outlined in the Inyo County General Plan.

Additionally, *Section 5.2.3-Economic Development Issues* (Inyo County General Plan) states that the County should “promote multiple compatible economic uses of land whenever possible” (pg. 5-5). This type of industrial use is relatively new and supports markets and retail businesses both inside and outside the County. The microbusiness’ cultivated and manufactured products would supply retail businesses in the County, further down the supply chain, which would encourage local and visitor spending within Inyo County.

Zoning Ordinance Consistency

The M1 zoning designation is intended to provide space “for all types of manufacturing, warehousing, and processing, ... provided such activity does not cause pollution of any human or natural resource.” (ICC 18.57.020). The project meets these criteria since the cultivation and manufacturing will have less energy consumed, and less waste produced than a heavier manufacturing use; and, all of the industrial activities will occur indoors. Furthermore, the M1 zone explicitly allows, with a conditional use permit, cannabis microbusiness activities [ICC 18.57.040(L)]. This zone requires 1-parking space for each full-time employee plus guest parking and adequate loading space. There will be five full-time employees and 24 parking spaces, more than the minimum required. The site has adequate space for the loading and unloading of its product and supplies. The project also meets all yard setback requirements. The project is located to the east of an existing junk yard and is otherwise surrounded by vacant state and federal lands.

ENVIRONMENTAL REVIEW

Conditional Use Permit 2020-06/Pinnacle is a Mitigated Negative Declaration under CEQA. This project incorporates several mitigation measures (listed below) as conditions of approval for the issuance of the conditional use permit. Based on the information provided by the applicant, and staff review, Conditional Use Permit 2020-06/Pinnacle

Cannabis does not have the potential to cause environmental impacts that exceed thresholds of significance, either individually or cumulatively.

TRIBAL CONSULTATION

In compliance with AB 52, and Public Resource Code Section 21080.3.1(b), tribes identified as being local to Inyo County, were notified via a certified letter on August 23, 2020, about the project and the opportunity for consultation. The tribes notified were as follows: the Twenty-Nine Palms Band of Mission Indians, Big Pine Paiute Tribe, Bishop Paiute Tribe, Cabazon Band of the Mission Indians, Fort Independence Paiute Tribe, Lone Pine Paiute-Shoshone Tribe, Timbisha Shoshone Tribe, and the Torres Martinez Desert Cahuilla Indians.

None of the Tribes requested consultation.

NOTICING & REVIEW

The application for CUP 2020-06/Pinnacle has been reviewed by the appropriate county departments and comments were received from Environmental Health (see below). This included reviews by the Environmental Health, Treasurer-Tax Collector, Public Works, Building and Safety, and the Inyo/Mono Agricultural Commission.

The Environmental Health Department made comments regarding their drinking water supply, the potential need for a Certified Unified Program Agency (CUPA) hazardous waste permit, sewage/septic system, and solid waste disposal. The applicant has submitted a hazardous materials handling and storage plan and must comply with all County and State Regulations, including applying for a CUPA permit if necessary (see Condition of Approval #4). They also intend to apply for a septic system permit, and the drinking water provided on site will be imported as the existing wells are for irrigation use only.

Public review of the CEQA document was noticed in the Inyo Register and submitted to the State Clearinghouse on July 13, 2021. Comments were received by the California Department of Fish and Wildlife (CDFW), California Department of Toxic Substance Control (DTSC), and the California Department of Cannabis Control (DCC) (Attached). Substantive comments included:

CDFW – CDFW provided both substantive and non-substantive comments. Conditions of Approval have been added to address substantive comments. Since biological surveys already conducted found no special status species on the parcel, as shown on the maps provided in the Phase 1 Biological Report provided and that a large part of the parcel is highly disturbed, the suggested mitigation measures from CDFW have been somewhat adjusted, these include:

- Burrowing Owl - A pre-construction survey shall be conducted no more than 14 days prior to any ground or vegetation disturbing activities, per CDFW's most recent version of the Staff Report on Burrowing Owl Mitigation, and submitted to the Planning Department for review. If burrowing owls are detected during the surveys a relocation plan will be prepared in consultation with and approved by CDFW and US Fish and Wildlife.

- Desert Tortoise - A pre-construction survey shall be conducted no more than 14 days prior to any ground or vegetation disturbing activities, per the US Fish and Wildlife's Desert Tortoise (Mojave Population) Field Manual and submitted to the Planning Department. If tortoises are detected the applicant shall work with CDFW on appropriate mitigation and/or an Incidental Take Permit.
- Desert Kit Fox - A pre-construction survey shall be conducted no more than 14 days prior to any ground or vegetation disturbing activities. and submitted to the Planning Department. If occupied burrows/dens are present project activities shall be immediately halted and the qualified biologist shall notify the Planning Department, CDFW, and USFWS to develop appropriate mitigation and avoidance measures.
- Mojave Ground Squirrel- A pre-construction survey shall be conducted no more than 14 days prior to any ground or vegetation disturbing activities, per CDFW's most recent version of the Staff Report on Mojave Ground Squirrel, and submitted to the Planning Department for review. If Mojave Ground Squirrel presence is detected the applicant shall work with CDFW on appropriate mitigation and/or an Incidental Take Permit.
- Nesting Birds - A pre-construction survey will be conducted for nesting birds, no more than 3-days prior to vegetation clearing or ground disturbance activities, and submitted to the Planning Department. If active nests are found, a Nesting Bird Plan shall be prepared and implemented by a qualified avian biologist, per CDFW requirements, and any grubbing or vegetation removal shall occur outside peak breeding season (March 15 – September 15).
- If any special status wildlife species are identified during the pre-construction surveys, a qualified biologist shall conduct an education program for all persons employed or otherwise working on-site that addresses the particular biology and habitats of the species that are present.
- Special Status Plants – A pre-construction survey will be conducted per CDFW's Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Native Communities, 2018. If any state listed plants are found the applicant shall work with CDFW on appropriate mitigation plans and/or an Incidental Take Permit.
- Artificial Lighting – night time lighting shall be blocked to prevent light escape to mitigate possible effects to wildlife.
- Lake and Streambed Alteration Permit- Prior to construction the applicant shall obtain written correspondence from CDFW stating that notification under section 1602 of the Fish and Game Code is not required for the project.

DTSC- DTSC provided both substantive and non-substantive comments. Conditions of Approval have been added to address substantive comments. The project applicant is required to follow all local, and state law regarding the storage, use, and transport of hazardous materials.

- Potential release of hazardous substances- The applicant shall consult with Inyo County Environmental Health regarding the storage and use of hazardous materials and apply for a Certified Unified Program Agencies (CUPA), if necessary.

- Aerial deposited lead (ADL) soils- Most of the project site has been previously disturbed and is located adjacent to a rural road that does not receive heavy traffic. Prior to ground disturbing activities, the applicant shall work with the County Public Works Department and/or Building and Safety on a grading plan to ensure best management practices are in place.
- Potential Historic Mining Activities- No previous mining activities were identified in the Phase 1 Cultural Report. If former mining operations are discovered in the project area, they will be evaluated using DTSCs 1998 Abandoned Mine Lands Assessment Handbook.

DCC- DCC provided both substantive and non-substantive comments. Conditions of Approval have been added to address substantive comments. The project applicant is applying for a cannabis microbusiness for cultivation, non-volatile manufacturing, distribution, and non-storefront retail delivery.

- Volatile manufacturing is not an approved use under this Conditional Use Permit. If the applicant intends to conduct volatile manufacturing in the future, a separate Conditional Use Permit will be required along with the appropriate County and State licenses.
- The applicant will obtain all appropriate licenses from DCC associated with the approved conditional uses.

The public hearing for this CUP was noticed on September 9, 2021 in the Inyo Register and mailed to property owners within 1,500-feet of the project location as required by 18.78.360(F). No additional comments have been received to date.

RECOMMENDATION

Planning Department staff recommends the approval of Conditional Use Permit No. 2020-06/Pinnacle Farms, with the following Findings and Conditions of Approval:

FINDINGS

1. Based upon the Initial Study and all oral and written comments received, adopt the Mitigated Negative Declaration of Environmental Impact and certify that the provisions of the California Environmental Quality Act have been satisfied.

[Evidence: An Initial Study and Draft Negative Declaration of Environmental Impact were prepared and circulated for public review and comment pursuant to the provisions of the California Environmental Quality Act. The 30-day public comment period ended on August 12, 2021. Comments were received by the California Department of Fish and Wildlife (CDFA), California Department of Cannabis Control (DCC) and California Department of Toxic Substances Control (DTSC). CDFA, DCC, and DTSC provided comments that had potentially significant environmental impacts. Mitigation measures have been added to the project addressing potential impacts to a level of non-significance.]

2. The proposed Conditional Use Permit is consistent with the Inyo County General Plan Land Use designation of General Industrial (GI).

[Evidence: The goal of this project is to permit a cannabis microbusiness for indoor cultivation, non-volatile manufacturing, distribution, and non-storefront retail delivery. The project is consistent with the General Plan designation of General Industrial (GI), since it requires “manufacturing, processing... and similar compatible uses where there is a potential for nuisance on surrounding land” (Policy LU-4.2). The cultivation greenhouses are comparable to an industrial park, and the manufacturing and distribution components also align with General Plan designations for General Industrial. Furthermore, this project uses the most recent air, water, and noise pollution standards (Policy LU-4.4), and has direct vehicle access to a publicly maintained roadway with sufficient parking and loading areas on site (Policy LU-4.7). All of these requirements for general industrial uses are outlined in the Inyo County General Plan.

Additionally, Section 5.2.3-Economic Development Issues (Inyo County General Plan) states that the County should “promote multiple compatible economic uses of land whenever possible” (pg. 5-5). This type of industrial use is relatively new and supports markets and retail businesses both inside and outside the County. The microbusiness’s cultivated and manufactured products would supply retail businesses in the County, further down the supply chain, which would encourage local and visitor spending within Inyo County.]

3. The proposed Conditional Use Permit is consistent with the Inyo County Zoning Ordinance, which permits “cannabis microbusiness”, as a conditional use, in the M1 zone.

[Evidence: The M1 zoning designation is intended to provide space “for all types of manufacturing, warehousing, and processing, ... provided such activity does not cause pollution of any human or natural resource.” (ICC 18.57.020). The project meets these criteria since the cultivation and manufacturing will have less energy consumed, and less waste produced than a heavier manufacturing use; and, all of the industrial activities will occur indoors. Furthermore, the M1 zone explicitly allows, with a conditional use permit, cannabis microbusiness activities [ICC 18.57.040(L)]. This zone requires 1-parking space per each full-time employee plus guest parking and adequate loading space. There will be five full-time employees and 24 parking spaces, more than the minimum required. The site has adequate space for the loading and unloading of its product and supplies. The project also meets all yard setback requirements. The project is located to the east of an existing junk yard and is otherwise surrounded by vacant state and federal lands.]

4. The proposed Conditional Use Permit is necessary or desirable.

[Evidence: The General Plan’s Economic Development Element states: ‘Inyo County’s wealth is...highly dependent on a number of activities that occur throughout the County...including grazing, mining, water transportation, and the growing of crops. These activities are expected to continue in the long term, and are expected to remain stable throughout the time horizon of this General Plan.’ The applicant will be cultivating, manufacturing, and selling cannabis products

that will serve County businesses and consumers, as well as, other markets in the State making this a desirable project with regard to the County's economy.]

5. The proposed Conditional Use Permit is properly related to other uses and transportation and service facilities in the vicinity.

[Evidence: The proposed conditional use permit is for a cannabis microbusiness that includes facilities for cultivation, non-volatile manufacturing, distribution, and non-storefront retail delivery. It will not cause impacts to transportation or service facilities in the vicinity as the project's entrance and exit are accessible via Trona Wildrose Road and it does not create a significant amount of additional people or vehicles in the area. Parking areas will be located on the project parcel and road facilities are already established in the area and provide access to the property. This CUP was reviewed by the County Public Works Department. No issues were identified.]

6. The proposed Conditional Use Permit would not, under all the circumstances of this case, affect adversely the health or safety of persons living or working in the vicinity or be materially detrimental to the public welfare.

[Evidence: The proposed conditional use permit is for the operation of a cannabis microbusiness. This project will not change or increase the current level or general type of allowed uses in the Trona area. The proposed security plan for Pinnacle Farms Cannabis Microbusiness has been reviewed by the Sheriff's Department as a cannabis business license requirement. The project was evaluated by Cal Fire's San Bernardino-Inyo-Mono Unit, which has jurisdiction over the project area. There were no comments or concerns conveyed; therefore, it has been determined that the project will not create impacts on the health or safety of persons living or working in the vicinity or be materially detrimental to the public welfare.]

7. Operating requirements necessitate the Conditional Use Permit for the site.

[Evidence: Cannabis micro-business activities require a CUP per Inyo County Code Section 18.57.040(L) and it is, therefore, necessary for the operation of Pinnacle Farms.]

CONDITIONS OF APPROVAL

1. Hold Harmless

The applicant/developer shall defend, indemnify and hold harmless Inyo County agents, officers, and employees from any claim, action or proceeding against the County or its agents, officers, or employees to attack, set aside, void or annul an approval of the county, its advisory agencies, its appeals board, or legislative body concerning Conditional Use Permit No. CUP 2020-06/Pinnacle Cannabis. The County reserves the right to prepare its own defense.

2. Compliance with County Code

The applicant/developer shall conform to all applicable provisions of Inyo County Code and State regulations including but not limited to building, grading, and public health and safety. If the use provided by this conditional use permit is not established within one year of the approval date it will become void.

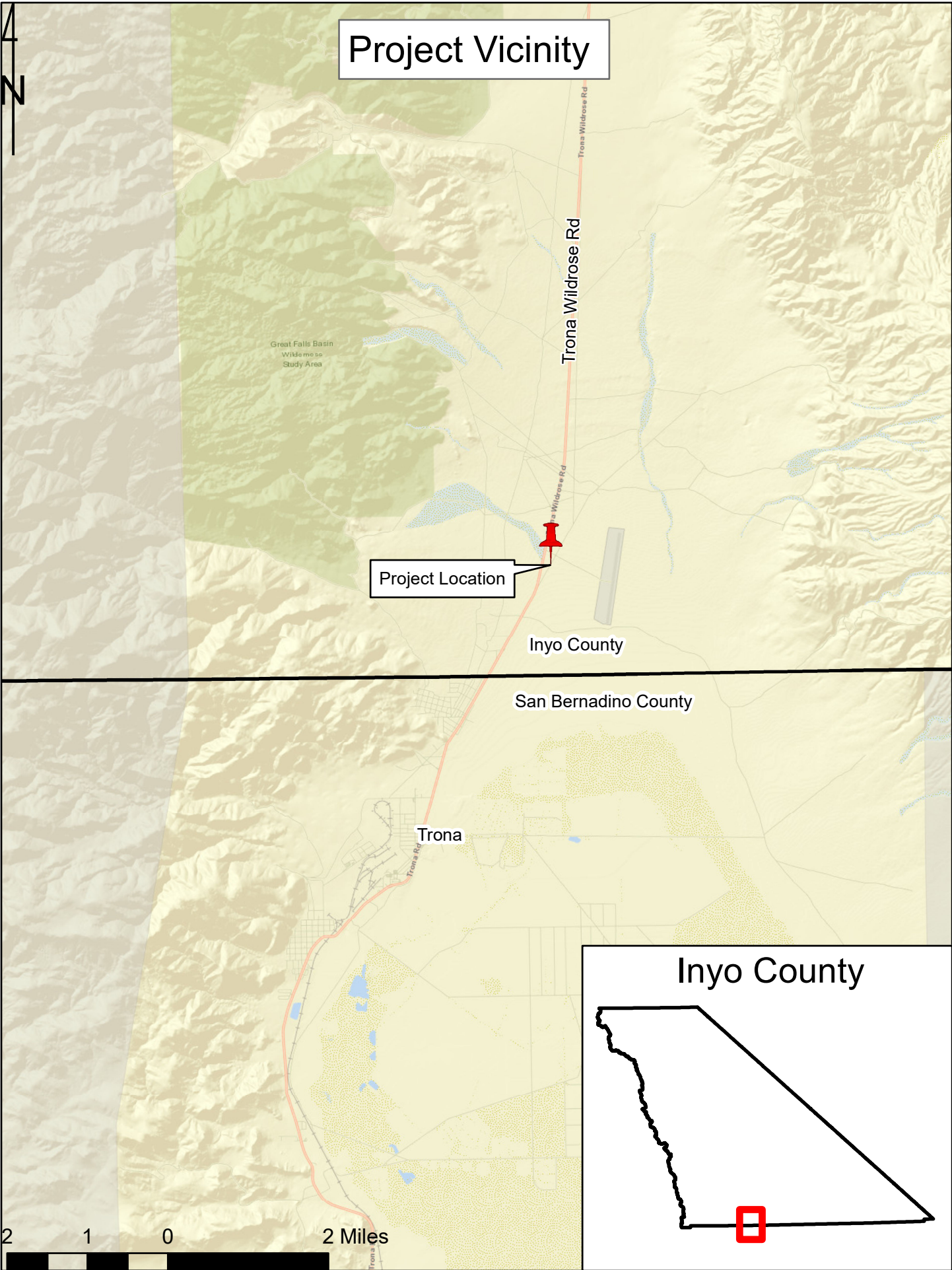
3. Volatile manufacturing shall not be conducted under this Conditional Use Permit. If the applicant intends to conduct volatile manufacturing in the future, a separate Conditional Use Permit shall be required along with all appropriate County and State licenses.
4. The applicant shall consult with the Inyo County Environmental Health Department and follow any regulations provided by them regarding well use and septic development. A Certified Unified Program Agencies (CUPA) permit regulating the storage and use of hazardous materials shall be obtained, if necessary.
5. The applicant shall coordinate with Inyo County's Environmental Health Department, the Inyo County Building and Safety Department, as well as the Regional Water Quality Board, to ensure waste discharge requirements for the project are met.
6. Visual Resources - The applicant shall adhere to Inyo County's General Plan Visual Resources requirement (VIS-1.6-Control of Light & Glare), which requires all outdoor light fixtures including street lighting, externally illuminated signs, advertising displays, and billboards use low-energy, shielded light fixtures which direct light downward (i.e., lighting shall not emit higher than a horizontal level) and are fully shielded.
7. Air Quality - The applicant shall follow best management practices to control for dust and odors & will consult with the Great Basin Air Pollution Control District to minimize potential air quality effects during construction and from the Cannabis crop's VOC emissions (Terpenes).

8. Biological

- Burrowing Owl - A pre-construction survey shall be conducted no more than 14 days prior to any ground or vegetation disturbing activities, per CDFW's most recent version of the Staff Report on Burrowing Owl Mitigation, and submitted to the Planning Department for review. If burrowing owls are detected during the surveys a relocation plan will be prepared in consultation with and approved by CDFW and US Fish and Wildlife.
- Desert Tortoise - A pre-construction survey shall be conducted no more than 14 days prior to any ground or vegetation disturbing activities, per the US Fish and Wildlife's Desert Tortoise (Mojave Population) Field Manual and submitted to the Planning Department. If tortoises are detected the applicant shall work with CDFW on appropriate mitigation and/or an Incidental Take Permit.
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- Special Status Plants – A pre-construction survey shall be conducted per CDFW's Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Native Communities, 2018. If any state-listed plants are found the applicant shall work with CDFW on appropriate mitigation plans and/or an Incidental Take Permit.
- Artificial Lighting (indoor) – night time indoor lighting shall be blocked to prevent light escape to mitigate possible effects to wildlife.
- Lake and Streambed Alteration Permit- Prior to construction the applicant shall obtain written correspondence from CDFW stating that notification under section 1602 of the Fish and Game Code is not required for the project.

- 9. Wastewater** - The applicant shall provide evidence that a proper wastewater plan for the project is in place prior to obtaining a building permit, approved by the County Environmental Health Department. The plan shall show that either:
 1. Wastewater will be collected in a sealed container and hauled for disposal at a permitted facility; or,
 2. Separate regulatory authorization is obtained for onsite disposal of the cannabis wastewater by enrollment under the Small Industrial General Order. Disposal to land is prohibited unless this authorization is obtained.
- 10. Public Works** - Prior to ground disturbing activities, the applicant shall work with the County Public Works Department and/or Building and Safety on a grading plan to ensure best management practices, for proper water drainage that meets all applicable state and federal regulations, are in place.
- 11. Soils**- If former mining operations are discovered in the project area, they shall be evaluated using DTSCs 1998 Abandoned Mine Lands Assessment Handbook.

Project Vicinity



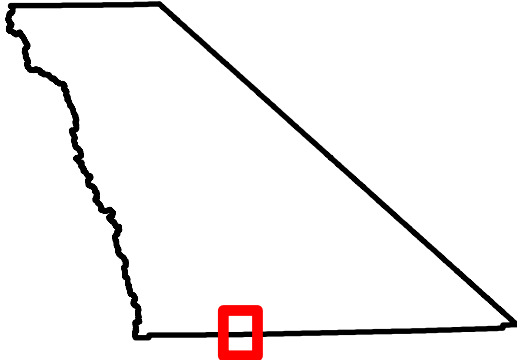
Project Location

Inyo County

San Bernadino County

Trona

Inyo County



2 1 0 2 Miles



Site Map

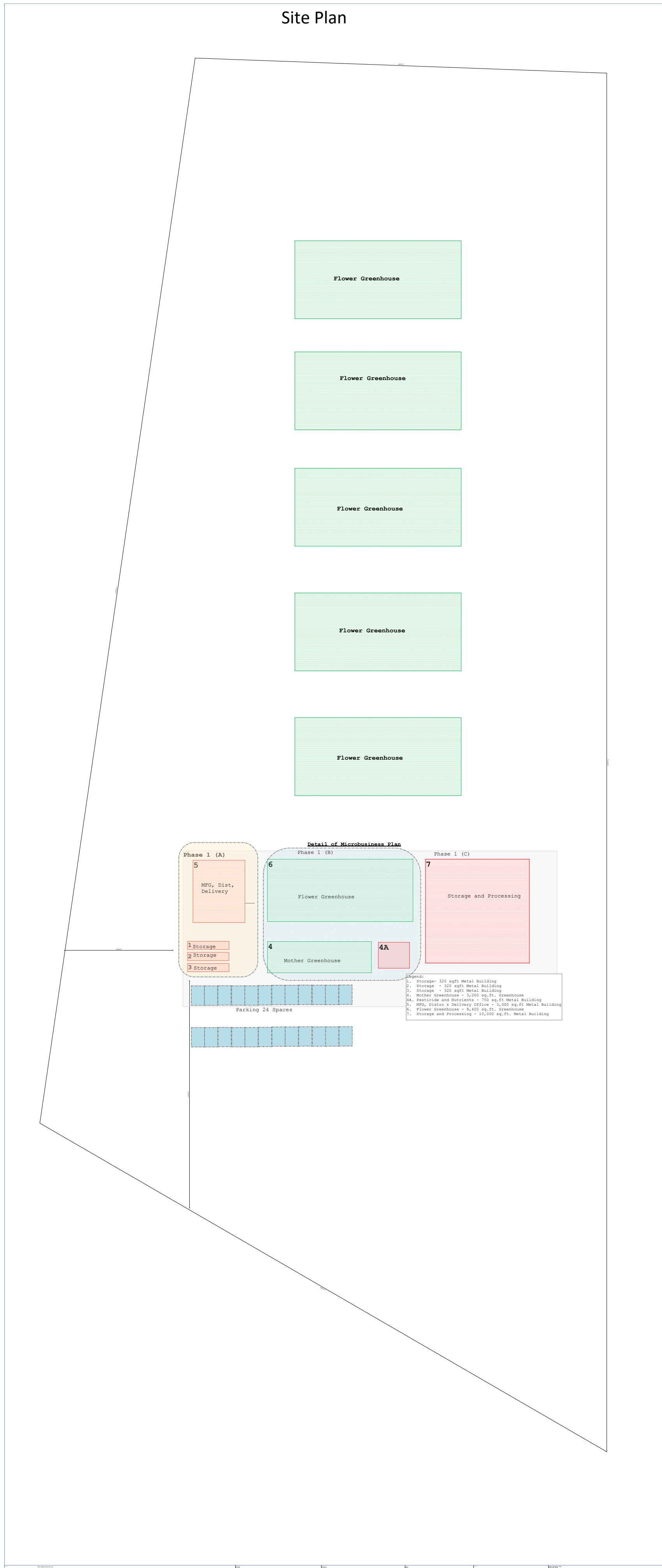
Project Location

Trona Wildrose Rd

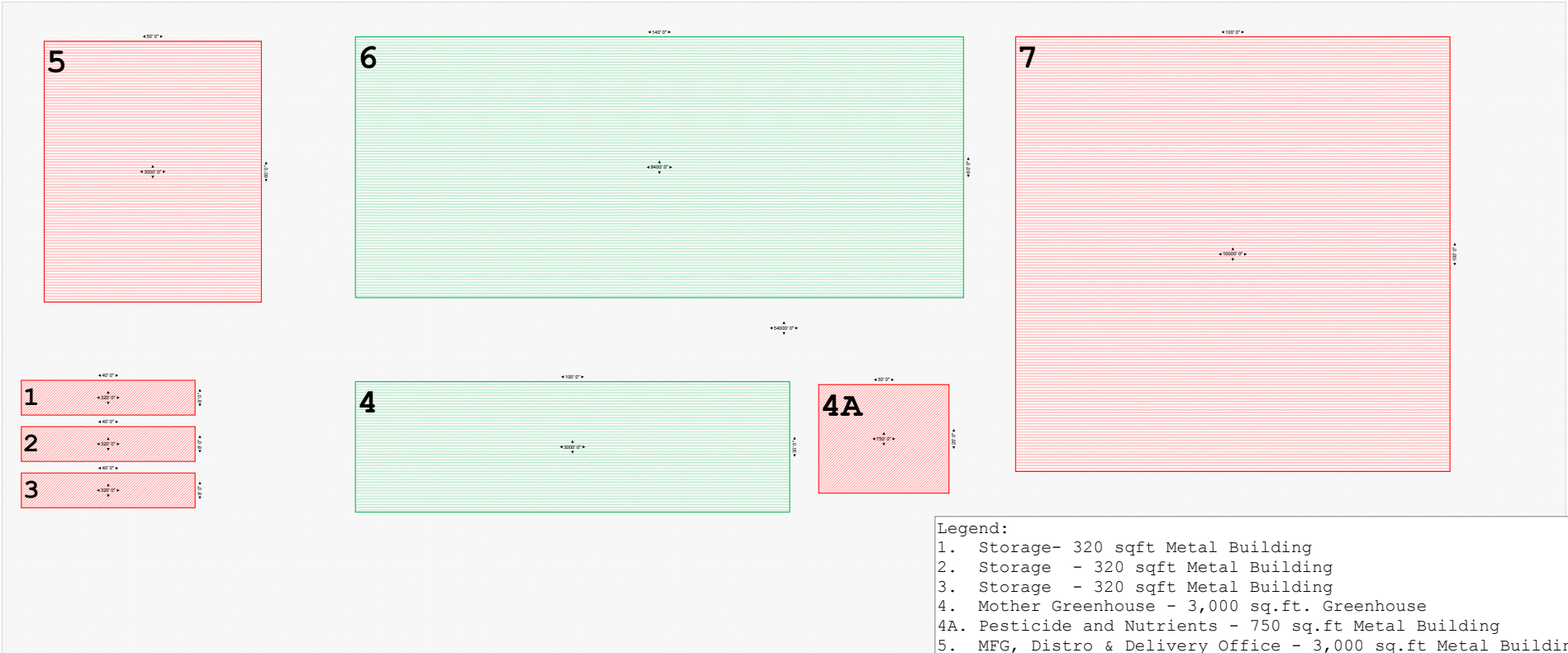
Trona Airport Rd

300 150 0 300 Feet

Site Plan



Detail of Microbusiness Plan



- Legend:**
- 1. Storage- 320 sqft Metal Building
 - 2. Storage - 320 sqft Metal Building
 - 3. Storage - 320 sqft Metal Building
 - 4. Mother Greenhouse - 3,000 sq.ft. Greenhouse
 - 4A. Pesticide and Nutrients - 750 sq.ft Metal Building
 - 5. MFG, Distro & Delivery Office - 3,000 sq.ft Metal Building
 - 6. Flower Greenhouse - 8,400 sq.ft. Greenhouse
 - 7. Storage and Processing - 10,000 sq.ft. Metal Building



August 12, 2021

Inyo County Planning Department
Steve Karamitros
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email: inyoplanning@inyocounty.us

Re: Initial Study/Negative Declaration (IS/ND) for CUP 2020-06; Pinnacle Cannabis (SCH No. 2021070224)

Dear Mr. Karamitros:

Thank you for providing the California Department of Cannabis Control (DCC) the opportunity to comment on the Initial Study/Negative Declaration (IS/ND) prepared by the County of Inyo for the proposed CUP 2020-06; Pinnacle Cannabis project (Proposed Project).

DCC has jurisdiction over the issuance of licenses to cannabis microbusinesses, which engage in at least three of the following activities at one location:

- Cultivation – up to 10,000 total square feet
- Manufacturing – use of non-volatile solvents, mechanical extraction or infusion
- Distribution or distribution transport-only
- Retail – storefront or non-storefront

DCC may issue a license to a microbusiness that meets all licensing requirements, and 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 an annual microbusiness license from DCC. In order to ensure that the IS/ND is sufficient for DCC's needs at that time, DCC requests that a copy of the IS/ND, 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 Inyo County.

DCC offers the following comments concerning the IS/ND.

General Comments (GCs)

GC 1: Proposed Project Description

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

- 1) Description of the size and location of any existing natural features, such as vegetation, water features, and topography of the Proposed Project site.
- 2) Specific information describing the activities within the proposed three 320-square-foot storage buildings, six 10,000-square-foot cultivation greenhouses, 3,000-square-foot mother greenhouse, and two 3,000-square-foot metal buildings for manufacturing volatile and non-volatile products; as well as any other structures that may be existing or constructed as part of the Proposed Project, and any other proposed features (e.g., waste collection areas, employee break and restroom facilities, hazardous materials storage, septic system).
- 3) Descriptions of the distinct phases of the Proposed Project construction and operations. To the extent that these details are reasonably foreseeable, the IS/ND should clarify 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]).
- 4) Description of the proposed canopy size and the cultivation techniques to be used (e.g., indoor outdoor, mixed-light).
- 5) Description of the manufacturing techniques that will be used.
- 6) Specifics on the Proposed Project's operations and routine maintenance. This would include:
 - a. Hours of operation;
 - b. Number of employees, including the estimated number of daily trips to and from the site for employee commuting, delivery of materials or supplies, and shipment of products;
 - c. Any heavy equipment that will be used for cultivation operations, including tractors, forklifts, mowers, etc.;
 - d. Any water efficiency equipment that would be used;
 - e. Utilities that would serve the project; and
 - f. Source(s) and amounts of energy expected to be used in operating the project, including any generators that may be used, as well as any energy management and efficiency features incorporated into the Proposed Project.
 - g. Source(s) and amounts of water expected to be used in operating the project, including any irrigation or other water efficiency features incorporated into the Proposed Project.

- 7) The IS/ND should include local street maps, topographic maps, aerial photographs, site plans, property diagrams, and/or other graphics to show the existing site conditions, the Proposed Project, and the surrounding area. This would allow DCC to understand the general location and surrounding features, as well as to visualize the layout of existing and Proposed Project features. Most importantly, these figures would help document some of the information that is described in the document.

GC 2: Manufacturing Using Volatile Solvents

Under the heading “Project Description,” the first page of the IS/ND states that the project is “for a cannabis microbusiness license, including cultivation, non-volatile manufacturing, distribution, and non-storefront retail delivery.” In the next sentence of the same paragraph, however, it indicates that the project will include two 3,000 ft² metal buildings for “manufacturing *volatile and non-volatile* products.” (Emphasis added.) The IS/ND should clearly specify whether the project includes manufacturing using volatile solvents. If the project will include manufacturing using volatile solvents, a manufacturing license from the DCC will be required in addition to a microbusiness license. In addition, the IS/ND should provide a description of the volatile substances that will be used in product manufacture, and should include analyses of the potential environmental impacts that may result from the use of these substances. In addition, the analyses should describe and consider any measures the Proposed Project will implement that may lessen or reduce potential impacts. In particular, the document should include detailed analyses of impacts related to air quality, hazards and hazardous substances, and greenhouse gas emissions.

GC 3: Acknowledgement of DCC Regulations

The IS/ND does not acknowledge that the Proposed Project requires a microbusiness license from DCC. The IS/ND could be improved if it acknowledged that DCC is responsible for licensing, regulation, and enforcement of commercial cannabis microbusiness activities, as defined in the Medicinal and Adult Use Cannabis Regulation and Safety Act (MAUCRSA) (Bus. & Prof. Code, § 26012(a)). In particular, the IS/ND’s analysis could benefit from discussion of the protections for environmental resources provided by DCC’s cultivation and manufacturing regulations. 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 3 California Code of Regulations §§ 16304(c), 16304(g).)
- Air Quality and Greenhouse Gas Emissions (See §§ 15002(c)(29), 16102(s), 16304(e), 16305, 16306.)
- Biological Resources (See §§ 15501, 16102(w), 16102(dd), 16216, 16304(a-c), 16304(g).)
- Cultural Resources (See § 16304(d).)
- Energy (See §§ 15501, 16102(s), 16305, 16306.)

- Hazards and Hazardous Materials (See §§ 15501, 16102(q), 16106(a)(3), 16304(f), 16307, 17208 - 17216, 17225.)
- Hydrology and Water Quality (See §§ 15501, 16102(p), 16102(v), 16102(w), 16102(dd), 16107(b), 16216, 16304(a) and (b), 16307.)
- Noise (See §§ 16304(e), 16306.)
- Public Services (See §§ 15002(c)(29), 15501, 15044-15047, 17200, 17201, 17202)
- Utilities and Service Systems (See §§ 15501, 16102(s), 16108, 16308.)
- Cumulative Impacts (related to the above topics).

GC 4: Page Numbers

The IS/ND does not include page numbers and/or line numbering. For the purposes of this letter, DCC’s comments have, therefore, referred to sections or headings within the document to provide context. For future CEQA documents, it would be easier to review and provide comments on the IS/ND if page numbers and/or line numbers could be specified.

GC 5: Impact Analysis

Several comments provided in the comment table below relate to the absence of information or support for impact statements in the document. CEQA requires that Lead Agencies evaluate the environmental impacts of proposed projects and support factual conclusions with “substantial evidence.” Substantial evidence includes facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts. In general, the IS/ND would be improved if additional evidence (e.g., regulatory setting, environmental setting, impact analysis and methodology, impact assessment, etc.) was provided to support the impact statements in the checklist, including the sources of information relied upon to make conclusions.

GC 6: Site-Specific Reports and Studies

The IS/ND references certain project-specific plans, studies, and project-specific data, including a Biological Assessment and a Cultural Resources Assessment. In addition, to ensure that DCC has supporting documentation for the IS/ND, 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.

GC 7: Evaluation of Cumulative Impacts

It is important for CEQA analyses to consider the cumulative impacts of cannabis cultivation in Inyo County. 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:

- 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/ND 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 Inyo County that could contribute to cumulative impacts similar to those of the Proposed Project.

Specific Comments and Recommendations

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

Comment No.	Section Nos.	Resource Topic(s)	IS/ND Text	DCC Comments and Recommendations
1	Introduction	Project Description	This project would require (3) 320 ft ² storage buildings, (6) 10,000 ft ² cultivation greenhouses, (1) 3,000 ft ² mother greenhouse, [...]	<p>The Project Description states that six 10,000 square foot cultivation greenhouses and a 3,000 square foot nursery are included in the Proposed Project, but does not indicate the size of the total proposed canopy. The document would be improved if it described the square footage of the cultivation area, including the canopy size, the processing area, and any additional features of the site (see General Comment 1).</p> <p>Please be aware that a microbusiness license may include up to 10,000 total square feet of cultivation area. (Cal. Code Regs., tit. 3 § 15502.) If the Proposed Project would include cultivation activities in excess of 10,000 total square feet, the project would require one or more cultivation licenses from DCC.</p>
2	Appendix G Introduction, Question 10	Other Public Agencies Whose Approval is Required	N/A (General Comment)	The document would be strengthened if it listed DCC as an agency whose approval would be required to operate the Proposed Project. Also, the IS/ND would be improved if it listed all agencies requiring approval and what type of permit is required from each agency listed. This would include the appropriate commercial cannabis licenses from DCC, and a Lake and Streambed Alteration Agreement from California Department of Fish and Wildlife, or a statement that one is not required.

Comment No.	Section Nos.	Resource Topic(s)	IS/ND Text	DCC Comments and Recommendations
3	I(a) and I(b)	Aesthetics	N/A (General Comment)	The document would be improved if it provided a description of all scenic vistas and scenic resources in the vicinity of the Proposed Project and provided an analysis of how and whether the Proposed Project may impact such resources.
4	I(d)	Aesthetics	No, the project is required to meet State regulations and County General Plan policy, related to light and glare; therefore, the project will not affect day or nighttime views.	The IS/ND would be improved if it described County General Plan policies that would apply to light and glare. If the Proposed Project includes mixed-light cultivation, the IS/ND would be strengthened if it referenced DCC's requirements that lights used in mixed-light cultivation activities must be fully shielded from sunset to sunrise to avoid nighttime glare. The document could also cite DCC's requirements that all outdoor lighting for security purposes must be shielded and downward facing. (Cal. Code Regs., tit. 3 §§ 16304(c), 16304(g)). Then, the document should describe how the Proposed Project would comply with these policies and regulations.
5	III(a)	Air Quality	No, there is not an air quality plan for the area in which the project is proposed.	The IS/ND would be improved if it described local, regional, state, and federal air quality standards, and provided a description of any project operations or equipment that may contribute to air emissions, including manufacturing equipment, volatile solvents, generators, ventilation equipment, carbon scrubbers, heavy machinery, and vehicles. The document should provide an analysis of

Comment No.	Section Nos.	Resource Topic(s)	IS/ND Text	DCC Comments and Recommendations
				whether the Proposed Project will meet such standards.
6	III(b)	Air Quality	No, there are not air quality standards being violated in the area for the area in which the project is proposed.	The IS/ND would be improved if it included a list of applicable air quality standards and an analysis of whether project operations would be in compliance with such standards.
7	III(d)	Air Quality	N/A (General Comment)	The document would be strengthened if it described the type and location of sensitive receptors in the vicinity of the Proposed Project, then provided an analysis of how compliance with County Environmental Health Department and State regulations would ensure a less than significant impact for those sensitive receptors. The analysis should include a discussion of whether vehicle travel on dirt roads or paths may result in impacts related to dust and particulate.
8	III(e)	Air Quality	No, little odor is produced when working with cannabis distillate. All extractions will be done in a closed-loop ventilation system, with no gas escaping during the extraction process. Cannabis products will be stored in airtight containers and the project will employ air filtration systems to prevent odor from leaving the buildings. Odors will	The IS/ND would be improved if it provided a description of anticipated odors resulting from cannabis cultivation operations and analyzed whether significant impacts would occur. If cannabis cultivation (or other operational activities) would result in significant impacts related to odor, the document should specify any measures that would mitigate such impacts to less-than-significant levels.

Comment No.	Section Nos.	Resource Topic(s)	IS/ND Text	DCC Comments and Recommendations
			not be detectable outside the business premises.	
9	IV(a)	Biological Resources	Life history and occurrence information for rare species detected during the survey or reported from the region (CDFW 2021a) can be found in the Biological Resources Report.	<p>The IS/ND would be improved if it summarized relevant life history and occurrence information for rare species within the impact analysis discussion. In addition, the document would be strengthened if it specified the parameters for the review of the California Natural Diversity Database (CNDDDB) and the special status species lists maintained by the US Fish and Wildlife Service and the California Department of Fish and Wildlife (e.g., what was the radius specified for the search, what quadrants were searched).</p> <p>In addition, the document would be more informative if it provided the Biological Resources Report used to support impact conclusions of the IS/ND. 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 General Comment 6.)</p>
10	IV(b)	Biological Resources	There is a Riverine habitat, classified as a R4SBC, depicted in Figure 2, running from northwest to southeast through the southern part of the site.	The IS/ND would be strengthened if figures referenced in the impact discussion were provided in the IS/ND.

Comment No.	Section Nos.	Resource Topic(s)	IS/ND Text	DCC Comments and Recommendations
11	IV(d)	Biological Resources	If project construction begins between March 15 and September 15, a qualified biologist shall survey all shrubs and structures within the project site for nesting birds, prior to project activities (including construction and/or site preparation).	If this is intended to be a mitigation measure or condition of approval, it should be specified as such, and the IS/ND should provide an analysis of how such mitigation measures or conditions would reduce impacts to less-than-significant levels.
12	V(b)	Cultural Resources	In the unlikely event an archaeological or cultural resource is discovered on the site during any future development, work shall immediately stop and Inyo County staff shall immediately be notified per Inyo County Code (ICC) Chapter 9.52, Disturbance of Archaeological, Paleontological and Historical Features of the Inyo County Code. Construction activities shall be diverted until the significance of the find is assessed.	If this is intended to be a mitigation measure or condition of approval, it should be specified as such, and the IS/ND should provide an analysis of how the mitigation measures or conditions would reduce impacts to less-than-significant levels.
13	VI(a)	Energy	No, the microbusiness facility will use energy primarily for cultivation and manufacturing uses.	The IS/ND would be improved if it provided an analysis of all equipment that uses energy, including manufacturing equipment, lighting, generators, ventilation

Comment No.	Section Nos.	Resource Topic(s)	IS/ND Text	DCC Comments and Recommendations
				<p>equipment, carbon scrubbers, heavy machinery, and vehicles. The document should provide a description of the energy source(s) that would supply the Proposed Project, and a description of any energy conservation features that may be a part of the Proposed Project.</p> <p>In addition, the document would be strengthened if it described how the Proposed Project would comply with DCC regulations relating to the use of renewable energy in cultivation projects. (Cal. Code Regs., tit. 3 §§ 16203(g), 16305.)</p>
14	VII(b)	Geology and Soils	Future development will require compliance with the California Building Standards that require Best Management Practices to be implemented to minimize erosion and keep all site materials from leaving the site.	The IS/ND would be improved if it explained what is meant by “future development.” If the Proposed Project would be developed in phases, information about the size, activities, and staffing of each phase should be included in the project description. (See General Comment 1.)
15	VIII(a)	Greenhouse Gas Emissions	No, the proposed cannabis cultivation project will not generate greenhouse gas emissions that will have a significant impact. Temporary construction-related emissions will occur, but such dust related impacts will be	The IS/ND would be improved by providing support for this statement. Additionally, operational impacts should be discussed, such as a description of any equipment to be used in manufacturing, cultivation, delivery of materials, and shipment of product from the Proposed Project site. The IS/ND should also identify what threshold of significance is being used to

Comment No.	Section Nos.	Resource Topic(s)	IS/ND Text	DCC Comments and Recommendations
			minimized through best management practices.	make this determination, and analyze whether and how the activities described would fall below the threshold.
16	VIII(b)	Greenhouse Gas Emissions	No, the proposed project will not cause conflicts with a plan, policy or regulation adopted for the purpose of reducing greenhouse gasses.	The IS/ND would be more informative if the plans, policies, and regulations referenced here were listed.
17	IX(a) and (b)	Hazards and Hazardous Materials	N/A (General Comment)	If the Proposed Project would include manufacturing activities using volatile solvents, the IS/ND should describe the solvents that would be used and the measures that would be employed to limit hazards to the public and the environment. Then the document should provide an analysis of whether the use or reasonably foreseeable upset and accident conditions of volatile solvents may cause significant impacts. (See General Comment 2.)
18	IX(f)	Hazards and Hazardous Materials	No, the proposed project will not physically interfere with an adopted emergency plan or emergency evacuation plan.	The IS/ND would be improved if it provided support for this statement.
19	X(b)	Hydrology and Water Quality	No, the project would use 1.2 acre-feet of water annually for cultivation.	The IS/ND would be improved if it provided a source for this figure, or the calculations relied on to determine annual water use for the Proposed Project. In addition, the document indicates that water for the Proposed Project would be

Comment No.	Section Nos.	Resource Topic(s)	IS/ND Text	DCC Comments and Recommendations
				sourced from a well. The document should include well data or other data that supports its conclusion that the Proposed Project would not substantially decrease groundwater supplies.
20	X(b)	Hydrology and Water Quality	The applicant will have to comply with well permit(s) requirements from the County Environmental Health Department and meet all State regulations pertaining to wells and groundwater.	The document would be more informative if it listed and/or described the County's well permit requirements.
21	X(c)(ii)	Hydrology and Water Quality	No, the proposed storm drain system is hydraulically adequate to provide the necessary conveyance of stormwater.	The IS/ND would be improved if it described the proposed storm drain system, including diagrams and/or site plans, and provided an analysis of how the proposed system would ensure there would be no significant impacts due to surface runoff or flooding on- or offsite.
22	X(c)(iii)	Hydrology and Water Quality	N/A (General Comment)	The document would be improved if it described how runoff from cultivation activities would be treated and/or managed to ensure there would be no significant impacts related to agricultural runoff.
23	XIII(a)	Noise	N/A (General Comment)	The document would be improved if it described the sources of noise (e.g., equipment, operation and maintenance activities) expected to occur during project operations and the levels of noise those sources are likely to generate.

Comment No.	Section Nos.	Resource Topic(s)	IS/ND Text	DCC Comments and Recommendations
24	XIV	Population and Housing	N/A (General Comment)	The document would be more informative if it provided an estimate of the number of employees expected to work at the Proposed Project.
25	XV	Public Services	N/A (General Comment)	The IS/ND would be improved by providing support for the conclusions in this section.
26	XIX(b)	Utilities and Service Systems	N/A (General Comment)	The document would be improved if it provided an analysis, supported by data, for whether the Proposed Project would have sufficient water supplies available to serve the project and reasonably foreseeable future development during normal, dry and multiple dry years. (See Specific Comment 16.)
27	XXI(b)	Mandatory Findings of Significance (Cumulative Impacts)	N/A (General Comment)	The IS/ND should identify whether any other cannabis growing operations exist or have been proposed in the vicinity of the Proposed Project, and provide an analysis of whether the Proposed Project would make a considerable contribution to any cumulative impacts from these other projects. (See General Comment 7.)

Conclusion

DCC appreciates the opportunity to provide comments on the IS/NND 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,

Lindsay Rains
Licensing Program Manager



Jared Blumenfeld
Secretary for
Environmental Protection



Department of Toxic Substances Control

Meredith Williams, Ph.D.
Director
8800 Cal Center Drive
Sacramento, California 95826-3200



Gavin Newsom
Governor

July 26, 2021

Mr. Steve Karamitros
Inyo County
168 N. Edwards St.
Independence, CA 93526
SKaramitros@inyocounty.us

NEGATIVE DECLARATION FOR CONDITIONAL USE PERMIT 2020-06/PINNACLE CANNABIS – DATED JULY 13, 2021 (STATE CLEARINGHOUSE NUMBER: 2021070224)

Dear Mr. Karamitros:

The Department of Toxic Substances Control (DTSC) received a Negative Declaration (ND) for Conditional Use Permit 2020-06/Pinnacle Cannabis (Project). The Lead Agency is receiving this notice from DTSC because the Project includes one or more of the following: groundbreaking activities, work in close proximity to a roadway, work in close proximity to mining or suspected mining or former mining activities, presence of site buildings that may require demolition or modifications, importation of backfill soil, and/or work on or in close proximity to an agricultural or former agricultural site.

DTSC recommends that the following issues be evaluated in the ND Hazards and Hazardous Materials section:

1. The ND should acknowledge the potential for historic or future activities on or near the project site to result in the release of hazardous wastes/substances on the project site. In instances in which releases have occurred or may occur, further studies should be carried out to delineate the nature and extent of the contamination, and the potential threat to public health and/or the environment should be evaluated. The ND should also identify the mechanism(s) to initiate any required investigation and/or remediation and the government agency who will be responsible for providing appropriate regulatory oversight.
2. Refiners in the United States started adding lead compounds to gasoline in the 1920s in order to boost octane levels and improve engine performance. This

practice did not officially end until 1992 when lead was banned as a fuel additive in California. Tailpipe emissions from automobiles using leaded gasoline contained lead and resulted in aerially deposited lead (ADL) being deposited in and along roadways throughout the state. ADL-contaminated soils still exist along roadsides and medians and can also be found underneath some existing road surfaces due to past construction activities. Due to the potential for ADL-contaminated soil DTSC, recommends collecting soil samples for lead analysis prior to performing any intrusive activities for the project described in the ND.

3. If any sites within the project area or sites located within the vicinity of the project have been used or are suspected of having been used for mining activities, proper investigation for mine waste should be discussed in the ND. DTSC recommends that any project sites with current and/or former mining operations onsite or in the project site area should be evaluated for mine waste according to DTSC's 1998 [Abandoned Mine Land Mines Preliminary Assessment Handbook](#)
4. If buildings or other structures are to be demolished on any project sites included in the proposed project, surveys should be conducted for the presence of lead-based paints or products, mercury, asbestos containing materials, and polychlorinated biphenyl caulk. Removal, demolition and disposal of any of the above-mentioned chemicals should be conducted in compliance with California environmental regulations and policies. In addition, sampling near current and/or former buildings should be conducted in accordance with DTSC's 2006 [Interim Guidance Evaluation of School Sites with Potential Contamination from Lead Based Paint, Termiticides, and Electrical Transformers](#).
5. If any projects initiated as part of the proposed project require the importation of soil to backfill any excavated areas, proper sampling should be conducted to ensure that the imported soil is free of contamination. DTSC recommends the imported materials be characterized according to [DTSC's 2001 Information Advisory Clean Imported Fill Material](#).
6. If any sites included as part of the proposed project have been used for agricultural, weed abatement or related activities, proper investigation for organochlorinated pesticides should be discussed in the ND. DTSC recommends the current and former agricultural lands be evaluated in accordance with DTSC's 2008 [Interim Guidance for Sampling Agricultural Properties \(Third Revision\)](#).

Mr. Steve Karamitros
July 26, 2021
Page 3

DTSC appreciates the opportunity to comment on the ND. Should you need any assistance with an environmental investigation, please submit a request for [Lead Agency Oversight Application](#). Additional information regarding voluntary agreements with DTSC can be found at [DTSC's Brownfield website](#)..

If you have any questions, please contact me at (916) 255-3710 or via email at Gavin.McCreary@dtsc.ca.gov.

Sincerely,

A handwritten signature in blue ink that reads "Gavin McCreary". The signature is fluid and cursive, with the first name "Gavin" being more prominent than the last name "McCreary".

Gavin McCreary
Project Manager
Site Evaluation and Remediation Unit
Site Mitigation and Restoration Program
Department of Toxic Substances Control

cc: (via email)

Governor's Office of Planning and Research
State Clearinghouse
State.Clearinghouse@opr.ca.gov

Mr. Dave Kereazis
Office of Planning & Environmental Analysis
Department of Toxic Substances Control
Dave.Kereazis@dtsc.ca.gov



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Inland Deserts Region
3602 Inland Empire Blvd. Ste. C-220
Ontario, CA 91762
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



August 9, 2021
Sent via email

Graham Meese
Assistant Planner
Inyo County
168 N. Edwards St.
P.O. Drawer "L"
Independence, CA 93526

Pinnacle Cannabis (Project)
Negative Declaration (ND)
SCH# 2021070224

Dear Mr. Meese:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Negative Declaration (ND) in Inyo County for the Project pursuant 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; CDFW appreciates the opportunity to respond to the Draft ND. 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, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

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

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

Proponent: Pinnacle Growth Inc.

Project Description: The Draft ND proposes the development of a cultivation, processing, distribution, and non-storefront retail delivery facility on approximately 1.5 to 2 acres of a 15-acre segment in the northeast of the 80-acre parcel at Assessor Parcel Number (APN) 038-300-07-00 in Inyo County, CA. The parcel is currently designated for industrial use. The Project will include the construction of three 320 ft² storage buildings, six 10,000 ft² greenhouses for cultivation, one 3,000 ft² mother greenhouse, and two 3,000 ft² metal buildings for manufacturing/processing for a total building area of approximately 69,960 ft². Water for the Project is proposed to come from an existing well on the parcel, which is supplied by groundwater and requires the approval of the Inyo County Environmental Health Department.

Location: The Project is located in Searles Valley, in southern Inyo County, east of Highway 395. The Project parcel is identified as APN 038-300-07 in the Draft ND, which corresponds with the address 1555 Trona Wildrose Road, Trona, CA 93592, Inyo County (APN 038-300-07-00; GPS coordinates: 35.81897, -117.3407). While not explicitly depicted in a figure, the portion of parcel inferred to be developed in the proposed Project lies on the east side of Trona Wildrose Road north of Trona Airport Road. The parcel is surrounded by Bureau of Land Management property that is currently open space to the west, northwest, south, and east. An undeveloped, privately owned parcel lies northeast of the site. The Project parcel falls within the Rattlesnake Canyon (US Geological Survey Hydrologic Unit Code 12) subwatershed, with mapped streams running through the parcel that drain south to Searles Lake. The parcel is located within the Searles Valley Groundwater Basin.

Timeframe: The Draft ND gives no timeframe for the construction of the Project.

COMMENTS AND RECOMMENDATIONS

CDFW has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (i.e., biological resources). CDFW has reviewed the Draft ND and determined that it lacks sufficient detail to determine whether the County has identified and disclosed the Project's impacts (i.e., direct, indirect, and cumulative) to biological resources and whether those impacts are less than significant. CDFW offers the following comments and

recommendations to assist Inyo County in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

- Project location: Please note that the address provided in the NOA and Draft ND ("1550 Trona Wildrose Road") does not correspond to the address associated with the APN provided ("1555 Trona Wildrose Road").
- Incomplete description of Project activities: Key components of the Project description, including the specific location and scope of the Project, have not been included in the Draft ND. The Draft ND indicates the approximate area of the Project—namely, a 15-acre segment of the larger 80-acre parcel—however, it does not indicate where in that 15-acre segment the estimated 1.5 to 2 acres of impacts would occur. The final CEQA document should include a written description and figure accurately illustrating the site layout. In addition, the Draft ND includes no building/construction specifications or description of the cannabis cultivation structures (i.e., "(6) 10,000 ft² cultivation greenhouses, (1) 3,000 ft² mother greenhouse"; p. 1 of Draft ND). To be considered indoor cultivation, a structure should have a permanent roof and walls, as well as an impermeable floor. Cultivation structures that may be opened to the atmosphere will have different impacts on biological resources than completely enclosed structures (e.g., pesticides and artificial light will have greater impacts if structures are not completely enclosed; see the section "Cannabis-Specific Impacts on Biological Resources" below). Specifications are also lacking for the "drainage conveyance" and tank that are proposed to collect cultivation runoff (p. 13 of Draft ND). In addition, no timeframe is provided for the construction of the Project, and details have not been provided regarding Project site access, construction of roads/parking lots on-site, fencing, security lighting, and landscaping. CDFW recommends that the final CEQA document include a complete Project description and analyze the impacts to biological resources.
- Hydrology and CDFW jurisdictional waters: The Draft ND (p. 13) indicates that the area is "virtually flat" and that "there are no streams in the area that will be affected by the increase of impervious surface" created by the Project. However, the location and scope of impervious surfaces resulting from the Project has not been disclosed, so it is not possible to determine whether impacts are less than significant. Multiple mapped streams (including US Geological Survey National Hydrography Dataset [NHD] ephemeral flowlines) cross the parcel at APN 038-300-07-00. These streams are identifiable in aerial imagery, and topographic map contours indicate that they drain southward to Searles Lake. CDFW recommends that the final CEQA document fully disclose the location and scope of construction for the proposed Project and ensure that impacts to streams and biological resources have been analyzed. CDFW jurisdiction extends to all rivers, lakes, and streams, including those that are ephemeral. CDFW's Lake and Streambed Alteration (LSA) Program should be notified (Fish and Game Code section 1602) of cannabis-related Project activities prior to construction so that impacts to streams and associated resources may be assessed to determine whether an LSA Agreement is required. See the section "Role of Lake and Streambed Alteration (LSA) Program in Cannabis Licensing" below.

Assessment of Impacts to Biological Resources

California Endangered Species Act (CESA)

CDFW is responsible for ensuring appropriate conservation of fish and wildlife resources including threatened, endangered, and/or candidate species of plant and animal species, pursuant to CESA. CDFW recommends that an incidental Take Permit (ITP) be obtained if the Project has potential to “take” (California Fish and Game Code Section 86 defines “take” as hunt, pursue, catch, capture, or kill or attempt to hunt, pursue, catch, capture, or kill) state-listed CESA species, either through construction or over the life of the property. CESA ITPs are issued to protect, conserve, enhance, and restore state listed CESA species and their habitats.

Biological Report and Adequacy of Surveys

The Draft ND bases its analysis of impacts to biological resources on a report by Geode Environmental Inc. (April, 2021), which conducted an assessment of the 15-acre segment of the parcel east of Trona Wild Rose Road where development is proposed (Biological Resources Report, p. 5). The Biological Resources Report indicates that a focused survey for desert tortoise (*Gopherus agassizii*; federal threatened species and state threatened/candidate endangered species) was combined with habitat assessments for burrowing owl (*Athene cunicularia*; CDFW Species of Special Concern [SSC]) and Mohave ground squirrel (*Xerospermophilus mohavensis*; state threatened species) on March 2, 2021, from 1015 to 1515 hours. CDFW is concerned that the focused survey for desert tortoise was combined with habitat assessments and that the focused survey/habitat assessments were not conducted at the appropriate time of year to accurately detect the presence of special status wildlife and plant species.

CDFW is not able to fully assess impacts to desert tortoise populations due to the lack of information given in the project description regarding construction plans and details. CDFW is available to consult regarding the timing of the desert tortoise surveys and their limited scope per the 2019 USFWS desert tortoise protocol: “Applicants or surveyors should contact appropriate federal, state and local agencies in the planning process because they may have their own requirements that need to be considered during the approval process for projects. Early coordination with these agencies will allow you to move through the planning process more efficiently.” In addition, the focused survey/habitat assessments involved a 15-acre segment of the 80-acre parcel, which may not be adequate to assess indirect impacts to biological resources on the remainder of the parcel.

CDFW is concerned about the potential for special status species to occur on the parcel and that waiting to assess the site for the presence of special status species until the time of construction will not reduce impacts to less than significant, particularly for species such as burrowing owl, desert tortoise, desert kit fox (*Vulpes macrotis arsipus*; protected as a fur-bearing mammal), Mohave ground squirrel, American badger (*Taxidea taxus*; CDFW Species of Special Concern), and special status plants (see sections below). As a result, CDFW recommends the mitigation measures given below. Deficiencies in the County’s

CEQA documentation can affect later project approval by CDFW in its role as a Responsible Agency.

Burrowing Owl (*Athene cunicularia*)

CDFW is not able to fully assess impacts to burrowing owl populations due to the lack of information given in the project description regarding construction plans and details. The Draft ND states that no evidence of burrowing owls was observed on the site (Biological Resources Report, p. 17). However, given that the ND does not specify the footprint in the Project description, CDFW cannot analyze the Project's potential impacts to burrowing owl. The potential Project impacts to burrowing owl are unknown and may include areas that were not surveyed (e.g., the remainder of APN 038-300-07-00, which may provide artificial burrow substrates). Therefore, CDFW recommends that the County follow the recommendations and guidelines provided in the *Staff Report on Burrowing Owl Mitigation* (CDFW 2012 or most recent version), which specifies that project impact evaluations include the following steps: (1) habitat assessment, (2) surveys, and (3) an impact assessment. The three progressive steps are effective in evaluating whether a project will result in impacts to burrowing owls, and the information gained from the steps will inform any subsequent avoidance and minimization measures. Absent clarification regarding timing, construction methods, and footprint of the Project, CDFW recommends the following mitigation measure including a habitat assessment in the remainder of the parcel, as well as pre-construction surveys:

MM BIO-1: A habitat assessment for burrowing owl shall be conducted in the remainder of parcel in accordance with the *Staff Report on Burrowing Owl Mitigation* (CDFG 2012 or most recent version). If the burrowing owl habitat assessment identifies burrowing owl habitat on site, focused surveys should be conducted according to the *Staff Report on Burrowing Owl Mitigation* (CDFG 2012 or most recent version).

Preconstruction burrowing owl surveys shall be conducted no less than 14 days prior to the start of Project-related activities and within 24 hours prior to ground disturbance, in accordance with the *Staff Report on Burrowing Owl Mitigation* (CDFG 2012 or most recent version). Preconstruction surveys should be performed by a qualified biologist following the recommendations and guidelines provided in the *Staff Report on Burrowing Owl Mitigation*. If the preconstruction surveys confirm occupied burrowing owl habitat, Project activities shall be immediately halted. CDFW shall be notified of burrowing owl survey results within 48 hours of detection. The qualified biologist shall coordinate with USFWS and CDFW to conduct an impact assessment to develop avoidance and minimization measures to be approved by CDFW prior to commencing Project activities.

Pursuant to the CEQA Guidelines, section 15097(f), CDFW has prepared a draft mitigation monitoring and reporting program (MMRP) for proposed MM BIO-1. The draft MMRP with MM BIO-1 through MM BIO-11 is enclosed as Attachment 1 at the end of this letter.

Desert Tortoise (*Gopherus agassizii*)

CDFW is not able to fully assess impacts to desert tortoise populations due to the lack of information given in the project description regarding construction plans and details. A query of the California Natural Diversity Database (CNDDDB) and Biogeographic Information and Observation System (BIOS), including unprocessed data, returned a reported occurrence of desert tortoise approximately 0.7 miles from the Project site. The Draft ND acknowledges the potential for desert tortoise to be found on the Project site but reports that no tortoises or signs of tortoises were present during the focused survey (Biological Resources Report, p. 15). CDFW is concerned that the timing of the March 2021 focused survey, which was combined with other assessments, was insufficient to determine the presence of desert tortoise on the Project site. The Draft ND does not adequately identify impacts to desert tortoise. Chapter 4 of the *Desert Tortoise (Mojave Population) Field Manual* indicates that “surveys should be conducted during the desert tortoise’s most active periods (April through May or September through October)” (USFWS 2009, p. 4–8). CDFW is concerned that waiting until pre-construction surveys to assess whether desert tortoise is on the Project site will not reduce impacts to less than significant. Absent an adequate Project description and clarification of the avoidance and minimization measures proposed, CDFW recommends that prior to commencing Project activities, a focused survey for desert tortoise following the *Desert Tortoise (Mojave Population) Field Manual* should be conducted by a qualified biologist. Absent clarification regarding timing, construction methods, and footprint of the Project, CDFW recommends the following mitigation measure, which includes both focused and pre-construction surveys:

MM BIO-2: Prior to commencing Project activities, a focused survey for desert tortoise shall be conducted by a qualified biologist, according to protocols in chapter 4 of the *Desert Tortoise (Mojave Population) Field Manual* (USFWS 2009 or most recent version), during the species’ most active periods (April through May or September through October). CDFW recommends working with USFWS and CDFW concurrently to ensure a consistent and adequate approach to planning survey work and that biologists retained to complete desert tortoise protocol-level surveys submit their qualifications to CDFW and USFWS prior to initiation of surveys.

No more than 14 calendar days prior to start of Project activities, a qualified biologist shall conduct pre-construction surveys for desert tortoise as described in the USFWS *Desert Tortoise (Mojave Population) Field Manual* (USFWS 2009 or most recent version). Pre-construction surveys shall be completed using perpendicular survey routes within the Project area and 50-foot buffer zone. Pre-construction surveys cannot be combined with other surveys conducted for other species while using the same personnel. Project activities cannot start until two negative results from consecutive surveys using perpendicular survey routes for desert tortoise are documented. Should desert tortoise presence be confirmed during the survey, the qualified biologist shall immediately notify CDFW and USFWS to determine appropriate avoidance and minimization measures.

Desert Kit Fox (*Vulpes macrotis arsipus*)

CDFW is not able to fully assess impacts to desert kit fox populations due to the lack of information given in the project description regarding construction plans and details. Desert kit fox is protected as a fur-bearing mammal under Title 14 of the California Code of Regulations (Chap. 5, § 460) and may not be taken at any time. While no desert kit foxes were observed on the Project site according to the Draft ND (Biological Resources Report, p. 17), a previously inhabited kit fox den was reported 550 ft north of the site. Because desert kit fox has high fidelity to natal dens, it is crucial to adequately assess whether desert kit fox is present on the Project site well in advance of commencing Project activities. If desert kit fox is found on-site during breeding season, it could delay Project activities until appropriate vegetation and construction buffers can be established on the Project site. Absent clarification regarding timing, construction methods, and footprint of the Project, CDFW recommends pre-construction surveys for desert kit fox as follows:

MM BIO-3: No more than 14 days prior to the beginning of ground disturbance and/or Project activities, a qualified biologist shall conduct pre-construction surveys to determine if potential desert kit fox burrows/dens are present in the Project area. Pre-construction surveys should include 100-percent visual coverage of the Project area and cannot be combined with other surveys conducted for other species while using the same personnel. If the pre-construction surveys confirm occupied desert kit fox habitat, Project activities shall be immediately halted, and the qualified biologist shall notify CDFW and USFWS to develop avoidance, minimization, and mitigation measures. No disturbance of active dens shall take place when juvenile desert kit fox may be present and dependent on parental care.

Mohave Ground Squirrel (*Xerospermophilus mohavensis*)

CDFW is not able to fully assess impacts to Mohave ground squirrel populations due to the lack of information given in the project description regarding construction plans and details. The Draft ND indicates that no suitable habitat for Mohave ground squirrel was observed on the Project site (Biological Resources Report, p. 18). However, Mohave ground squirrel has been reported in the vicinity of the Project site, as near a 1.1 mile. Because the site is surrounded by open desert, and because CDFW's California Wildlife Habitat Relationship model indicates the Project site is within habitat that is of medium quality for Mojave ground squirrel, CDFW recommends that pre-construction surveys be conducted. No focused Mohave ground squirrel surveys were conducted on the Project site. CDFW recommends that a focused, species-specific survey, conducted by a qualified biologist, using the *Mohave Ground Squirrel Survey Guidelines* (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83975&inline>), be completed at the appropriate time of year and time of day when Mojave ground squirrel is active or otherwise identifiable. Absent clarification regarding timing, construction methods, and footprint of the Project, CDFW recommends the following mitigation measure be added to the final CEQA document:

MM-BIO 4: Prior to commencement of Project activities, focused surveys should be conducted by a qualified biologist, at the appropriate time of year and time of day

when Mohave ground squirrel is active or otherwise identifiable, according to the protocols in the *Mohave Ground Squirrel Survey Guidelines* (CDFG, 2010 or most recent version). Should Mohave ground squirrel presence be confirmed during the survey, Project activities shall be immediately halted, and the qualified biologist shall notify CDFW.

Preconstruction surveys following the *Mohave Ground Squirrel Survey Guidelines* (CDFG, 2010 or most recent version) shall be performed by a qualified biologist authorized by a Memorandum of Understanding issued by CDFW. The preconstruction surveys shall cover the Project area and a 50-foot buffer zone. Should Mohave ground squirrel presence be confirmed during the survey, the qualified biologist shall notify CDFW and the Project proponent shall obtain an ITP for Mohave ground squirrel prior to the start of Project activities.

Nesting Birds

CDFW is not able to fully assess impacts to nesting bird populations due to the lack of information given in the project description regarding construction plans and details. It is the Project proponent's responsibility to comply with all applicable laws related to nesting birds and birds of prey. Fish and Game Code sections 3503, 3503.5, and 3513 afford protective measures as follows: section 3503 states that it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto. Fish and Game Code section 3503.5 makes it unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by Fish and Game Code or any regulation adopted pursuant thereto. Fish and Game Code section 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. § 703 et seq.).

CDFW is concerned about impacts to nesting birds from vegetation removal on the Project site and from construction (e.g., noise/disturbance). Although the Draft ND addresses the need for nesting bird surveys, the timing and scope of are insufficient. CDFW recommends the revised document include specific avoidance and minimization measures to ensure that impacts to nesting birds do not occur. Project-specific avoidance and minimization measures may include, but are not limited to, Project phasing and timing (avoiding peak breeding season), monitoring of Project-related noise (where applicable), sound walls, and buffers, where appropriate. CDFW recommends that pre-construction surveys be conducted as a mitigation measure and that they be completed no more than 3 days prior to vegetation clearing or ground disturbance activities; instances of nesting could be missed if surveys are conducted sooner. Note that nesting bird surveys must be conducted regardless of the time of year to protect species that may nest outside the peak breeding season, such as raptors and hummingbirds. Absent clarification regarding timing, construction methods, and footprint of the Project, CDFW recommends the following mitigation measure:

MM BIO-5: Regardless of the time of year, nesting bird surveys shall be conducted by a qualified avian biologist no more than three (3) days prior to vegetation

clearing or ground disturbance activities. Preconstruction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. The qualified avian biologist will make every effort to avoid potential nest predation as a result of survey and monitoring efforts. If active nests are found during the preconstruction nesting bird surveys, a Nesting Bird Plan (NBP) shall be prepared and implemented by the qualified avian biologist. At a minimum, the NBP shall include guidelines for addressing active nests, establishing buffers, ongoing monitoring, establishment of avoidance and minimization measures, and reporting. The size and location of all buffer zones, if required, shall be based on the nesting species, individual/pair's behavior, nesting stage, nest location, its sensitivity to disturbance, and intensity and duration of the disturbance activity. To avoid impacts to nesting birds, any grubbing or vegetation removal shall occur outside peak breeding season.

Special Status Plants

CDFW is not able to fully assess impacts to special status plants in the area due to the lack of information given in the project description regarding construction plans and details. The final CEQA document should include measures to fully avoid and otherwise protect special status plant species from Project-related direct and indirect impacts. Plants constituting California Rare Plant Ranks 1A, 1B, 2A, and 2B generally meet the criteria of a CESA-listed species and should be considered as an endangered, rare, or threatened species for the purposes of CEQA analysis. CDFW's *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities* (2018 or most recent version;

<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>) states, "The failure to locate a known special status plant occurrence during one field season does not constitute evidence that this plant occurrence no longer exists at this location, particularly if adverse conditions are present." Absent clarification regarding timing, construction methods, and footprint of the Project, CDFW recommends the following mitigation measure:

MM BIO-6: A focused plant survey shall be conducted by a qualified biologist for rare plants prior to commencing Project activities when most plant species would be identifiable. The survey should follow CDFW's *Protocols for Surveying and Evaluating Impacts to Special Status Species Native Plant Populations and Natural Communities (CDFW 2018 or most recent version)*, and survey results should report any additional special status plant species found to be present in the Project area. Should any special status plants be present in the Project area, a qualified restoration specialist shall assess whether perennial species may be successfully transplanted to an appropriate natural site or whether on-site or off-site conservation is warranted to mitigate Project impacts. If successful transplantation of perennial species is determined by a qualified restoration specialist, the receiver site shall be identified, and transplantation shall occur at the appropriate time of year. Additionally, the qualified restoration specialist shall perform seed collection and dispersal from special status annual plant species to a natural site as a conservation strategy to minimize and mitigate Project impacts. If these measures are implemented, monitoring of plant populations shall be conducted annually for 5 years to assess the mitigation's effectiveness.

The performance standard for mitigation shall be no net reduction in the size or viability of the local population.

Minimizing Impacts to Other Species

According to the Draft ND (Biological Resources Report, p. 14), 12 wildlife species, including special status species American badger (*Taxidea taxus*) and desert kit fox (*Vulpes macrotis arsipus*), were detected on or near the Project site. Because of the potential for these and other species to occur on-site, CDFW recommends inclusion of the following mitigation measure:

MM BIO-7: A qualified biologist shall be on-site prior to and during all ground- and habitat-disturbing activities to move out of harm's way wildlife that would otherwise be injured or killed from Project-related activities. Movement of wildlife out of harm's way should be limited to only those individuals that would otherwise be injured or killed, and individuals should be moved only as far as necessary to ensure their safety. Measures shall be taken to prevent wildlife from re-entering the Project site. Only biologists authorized by a Memorandum of Understanding issued by CDFW shall move CESA-listed species.

Employee Awareness of Wildlife Resources

CDFW is concerned that because the Project area is bordered by open desert, Project development will bring biological hazards common to urban-wildland interface areas. Waste management must be a priority as accessible waste can encourage opportunistic species such as rats, ravens, and coyotes to become more prevalent, posing a substantial predation hazard to wildlife. Predators like ravens and coyotes are both known to prey on desert tortoise and other sensitive species. Waste management plans should include waste receptacles with closing, lockable lids and a waste removal schedule that does not allow for excess waste to accrue. Increased traffic may also pose a hazard to species in the form of vehicle-animal collisions which often lead to the death of the animal. For slow moving species like desert tortoise, busy roads or driveways in their territory can have a significant impact on populations.

Project activities, including construction and routine work for the life of the Project, will affect local wildlife. Part of the Project proponent's responsibility is to educate individuals that will be on-site, whether they are employees or contractors, on the wildlife species that may be present and how to limit impacts to wildlife species in the area. CDFW recommends that the following Employee Education Program be added to the final CEQA document as a mitigation measure:

MM BIO-8: 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 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 Employee 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, desert tortoise, desert kit fox, American badger, Mohave ground squirrel, rare and sensitive plants, and nesting birds. 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.

Cannabis-Specific Impacts on Biological Resources

CDFW recommends that the County consider cannabis-specific impacts to biological resources that may result from the Project activities.

Pesticides, Including Fungicides, Herbicides, Insecticides, and Rodenticides

Cannabis cultivation sites (whether indoor or outdoor) often use substantial quantities of pesticides, including fungicides, herbicides, insecticides, and rodenticides. Wildlife, including beneficial arthropods, birds, mammals, amphibians, reptiles, and fish, can be poisoned by pesticides after exposure to a toxic dose through ingestion, inhalation, or dermal contact (Fleischli et al. 2004, Pimentel 2005, Berny 2007). They can also experience secondary poisoning through feeding on animals that have been directly exposed to the pesticides. Even if used indoors, rodenticides may result in secondary poisoning through ingestion of sickened animals that leave the premises or ingestion of lethally poisoned animals that are disposed of outside. Nonlethal doses of pesticides can negatively affect wildlife; pesticides can compromise immune systems, cause hormone imbalances, affect reproduction, and alter growth rates of many wildlife species (Pimentel 2005, Li and Kawada 2006, Relyea and Diecks 2008, Baldwin et al. 2009).

CDFW recommends minimizing use of synthetic pesticides, and, if they are used, to always use them as directed by the manufacturer, including proper storage and disposal. Toxic pesticides should not be used where they may pass into waters of the state, including ephemeral streams, in violation of Fish and Game Code section 5650(a)(6). Anticoagulant rodenticides and rodenticides that incorporate “flavorizers” that make the pesticides appetizing to a variety of species should not be used at cultivation sites (the passage of AB 1788, signed by the governor on September 29, 2020, banned the general use of second-generation anticoagulants in California). Alternatives to toxic rodenticides may be used to control pest populations at and around cultivation sites, including sanitation (removing food sources such as pet food, cleaning up refuse, and securing garbage in sealed containers) and physical barriers (e.g., sealing holes in roofs and walls). Snap traps should not be used outdoors as they pose a hazard to nontarget wildlife. Sticky or glue traps should be avoided, as these pose a hazard to nontarget wildlife and result in a prolonged/inhumane death. The California Department of Pesticide Regulation (CDPR) stipulates that pesticides must meet certain criteria to be legal for use on cannabis. For details, visit <https://www.cdpr.ca.gov/docs/cannabis/questions.htm> and <https://www.cdpr.ca.gov/docs/county/cacltrs/penfltrs/penf2015/2015atch/attach1502.pdf>.

The Draft ND (pp. 13, 14) states that pesticides, herbicides, and fungicides may be used in the cannabis cultivation facilities (i.e., greenhouses that have not been fully described in the Draft ND) and stored on-site. CDFW recommends the following mitigation measure focused on avoiding impacts to biological resources:

MM BIO-9: Prior to construction and issuance of any grading permit, Inyo County shall develop a plan with measures to avoid, minimize, or mitigate the impacts of pesticides used in cannabis cultivation, including fungicides, herbicides, insecticides, and rodenticides. The plan should include, but is not limited to, the following elements: (1) Proper use, storage, and disposal of pesticides, in accordance with manufacturers' directions and warnings. (2) Avoidance of pesticide use where toxic runoff may pass into waters of the State, including ephemeral streams. (3) Avoidance of pesticides that cannot be used on cannabis in the state of California, as set forth by the Department of Pesticide Regulation. (4) Avoidance of anticoagulant rodenticides and rodenticides with "flavorizers". (5) Avoidance of sticky/glue traps. (6) Inclusion of alternatives to toxic rodenticides, such as sanitation (removing food sources such as pet food, cleaning up refuse, and securing garbage in sealed containers) and physical barriers.

Artificial Light

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

The Draft ND indicates that Project activities will involve new sources of artificial light for buildings. Because of the potential for artificial light to impact nocturnal wildlife species and migratory birds that fly at night, CDFW recommends the following mitigation measure:

MM BIO-10: Light shall not be visible outside of any structure used for cannabis cultivation. Employ blackout curtains where artificial light is used to prevent light escapement. Eliminate all nonessential lighting from cannabis sites and avoid or limit the use of artificial light during the hours of dawn and dusk when many wildlife species are most active. Ensure that lighting for cultivation activities and security purposes is shielded, cast downward and toward developed areas, and does not spill over onto other properties or upward into the night sky (see the International Dark-Sky Association standards at <http://darksky.org/>). Use LED lighting with a correlated color temperature of 3,000 Kelvins or less, properly

dispose of hazardous waste, and recycle lighting that contains toxic compounds with a qualified recycler.

Noise

Construction and operation of cannabis facilities may result in a substantial amount of noise through road use, equipment, and other project-related activities. This may adversely affect wildlife species in several ways as wildlife responses to noise can occur at exposure levels of only 55 to 60 decibels (Barber et al. 2009). (For reference, normal conversation is approximately 60 decibels, and natural ambient noise levels [e.g., forest habitat] are generally measured at less than 50 decibels.) Anthropogenic noise can disrupt the communication of many wildlife species including frogs, birds, and bats (Sun and Narins 2005, Patricelli and Blickley 2006, Gillam and McCracken 2007, Slabbekoorn and Ripmeester 2008). Noise can also affect predator-prey relationships as many nocturnal animals such as bats and owls primarily use auditory cues (i.e., hearing) to hunt. Additionally, many prey species increase their vigilance behavior when exposed to noise because they need to rely more on visual detection of predators when auditory cues may be masked by noise (Rabin et al. 2006, Quinn et al. 2017). Noise has also been shown to reduce the density of nesting birds (Francis et al. 2009) and cause increased stress that results in decreased immune responses (Kight and Swaddle 2011).

The Draft ND indicates that the Project activities will include “construction related noise from grading activities, engine noise from trucks, and building construction” (p. 15). CDFW recommends the following: Consider use of noise suppression devices such as mufflers or enclosures for generators. Restrict use of equipment to hours least likely to disrupt wildlife (e.g., not at night or in early morning). Do not use generators except for temporary use in emergencies. Power to sites can be provided by solar PV (photovoltaic) systems, cogeneration systems (natural gas generator), small micro-hydroelectric systems, or small wind turbine systems. Consider use of noise suppression devices such as mufflers or enclosure for generators. Sounds generated from any means must be below the 55–60 dB range within 50 feet from the source.

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

CDFW is not able to fully assess impacts to streams on the site due to the lack of information given in the project description regarding construction plans and details. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may adversely impact any river, stream, or lake. Multiple mapped streams (including US Geological Survey National Hydrography Dataset [NHD] ephemeral flowlines) cross the parcel at APN 038-300-07-00. CDFW’s LSA Program should be notified of Project activities prior to construction so that impacts to streams and associated resources may be assessed, and, if appropriate, avoidance and minimization measures may be proposed.

The Department of 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 LSA Agreement or written verification from CDFW that one is not

needed. Cannabis cultivators may apply online for an LSA Agreement through the Environmental Permit Information Management System (EPIMS; <https://epims.wildlife.ca.gov>) and learn more about cannabis cultivation permitting at <https://wildlife.ca.gov/Conservation/Cannabis/Permitting>. CDFW recommends the following mitigation measure:

MM BIO-11: Prior to construction and issuance of any grading permit, the Project Sponsor shall obtain written correspondence from CDFW stating that notification under section 1602 of the Fish and Game Code is not required for the Project, or the Project Sponsor should obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.

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 filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

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 for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

CONCLUSION

CDFW appreciates the opportunity to comment on the Draft ND for Pinnacle Cannabis to assist Inyo County in identifying and mitigating Project impacts on biological resources. CDFW has assessed the Draft ND and found that it does not adequately describe the Project; as a result, CDFW is not able to determine if the County has identified and analyzed impacts on biological resources or whether those impacts are less than significant. Deficiencies in the County's CEQA documentation can affect later project approval by CDFW in its role as a Responsible Agency. CDFW recommends that prior to the adoption of the final CEQA document, Inyo County revise the document to include a complete description of the specific location and scope of the Project and analysis of impacts to biological resources that includes appropriate avoidance, minimization, and mitigation measures.

Graham Meese, Assistant Planner

August 9, 2021

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CDFW has Cannabis Unit staff who are available to provide guidance on identifying, minimizing, and mitigating impacts to biological resources and any CDFW permitting that will be associated with this project. If you have questions or would like to set up a meeting with CDFW staff to discuss this letter, please contact Kevin Francis, Environmental Scientist, at kevin.francis@Wildlife.ca.gov.

Sincerely,

DocuSigned by:
Alisa Ellsworth
84FBB8273E4C480...

Alisa Ellsworth
Environmental Program Manager

Attachment 1: MMRP for CDFW-Proposed Mitigation Measures

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ATTACHMENT 1: MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

Mitigation Measure	Schedule	Responsible Party
<p>MM BIO-1: Burrowing Owls A habitat assessment for burrowing owl shall be conducted in the remainder of parcel in accordance with the Staff Report on Burrowing Owl Mitigation (CDFG 2012 or most recent version). If the burrowing owl habitat assessment identifies burrowing owl habitat on site, focused surveys should be conducted</p>	<p>Preconstruction surveys: No more than 14 days prior to any ground- or vegetation-disturbing Project activities</p>	<p>Inyo County</p>

<p>according to the Staff Report on Burrowing Owl Mitigation (CDFG 2012 or most recent version).</p> <p>Preconstruction burrowing owl surveys shall be conducted no less than 14 days prior to the start of Project-related activities and within 24 hours prior to ground disturbance, in accordance with the Staff Report on Burrowing Owl Mitigation (CDFG 2012 or most recent version). Preconstruction surveys should be performed by a qualified biologist following the recommendations and guidelines provided in the Staff Report on Burrowing Owl Mitigation. If the preconstruction surveys confirm occupied burrowing owl habitat, Project activities shall be immediately halted. CDFW shall be notified of burrowing owl survey results within 48 hours of detection. The qualified biologist shall coordinate with USFWS and CDFW to conduct an impact assessment to develop avoidance and minimization measures to be approved by CDFW prior to commencing Project activities.</p>		
<p>MM BIO-2: Desert Tortoise Prior to commencing Project activities, a focused survey for desert tortoise shall be conducted by a qualified biologist, according to protocols in chapter 4 of the Desert Tortoise (Mojave Population) Field Manual (USFWS 2009 or most recent version), during the species' most active periods (April through May or September through October). CDFW recommends working with USFWS and CDFW concurrently to ensure a consistent and adequate approach to planning survey work and that biologists retained to complete desert tortoise protocol-level surveys submit their qualifications to CDFW and USFWS prior to initiation of surveys.</p> <p>No more than 14 calendar days prior to start of Project activities, a qualified biologist shall conduct pre-construction surveys for desert tortoise as described in the USFWS Desert Tortoise (Mojave Population) Field Manual (USFWS 2009 or most recent version). Pre-construction surveys shall be completed using perpendicular survey routes within the Project area and 50-foot buffer zone. Pre-construction surveys cannot be combined with other surveys conducted for other species while using the same personnel. Project activities cannot start until two negative results from</p>	<p>No more than 14 days prior to beginning any Project activities. Ongoing throughout Project activities.</p>	<p>Inyo County</p>

<p>consecutive surveys using perpendicular survey routes for desert tortoise are documented. Should desert tortoise presence be confirmed during the survey, the qualified biologist shall immediately notify CDFW and USFWS to determine appropriate avoidance and minimization measures.</p>		
<p>MM BIO-3: Desert Kit Fox No more than 14 days prior to the beginning of ground disturbance and/or Project activities, a qualified biologist shall conduct pre-construction surveys to determine if potential desert kit fox burrows/dens are present in the Project area. Pre-construction surveys should include 100-percent visual coverage of the Project area and cannot be combined with other surveys conducted for other species while using the same personnel. If the pre-construction surveys confirm occupied desert kit fox habitat, Project activities shall be immediately halted, and the qualified biologist shall notify CDFW and USFWS to develop avoidance, minimization, and mitigation measures. No disturbance of active dens shall take place when juvenile desert kit fox may be present and dependent on parental care.</p>	<p>No more than 14 days prior to beginning any Project activities.</p>	<p>Inyo County</p>
<p>MM-BIO 4: Mohave Ground Squirrel Prior to commencement of Project activities, focused surveys should be conducted by a qualified biologist, at the appropriate time of year and time of day when Mohave ground squirrel is active or otherwise identifiable, according to the protocols in the Mohave Ground Squirrel Survey Guidelines (CDFG, 2010 or most recent version). Should Mohave ground squirrel presence be confirmed during the survey, Project activities shall be immediately halted, and the qualified biologist shall notify CDFW.</p> <p>Preconstruction surveys following the Mohave Ground Squirrel Survey Guidelines (CDFG, 2010 or most recent version) shall be performed by a qualified biologist authorized by a Memorandum of Understanding issued by CDFW. The preconstruction surveys shall cover the Project area and a 50-foot buffer zone. Should Mohave ground squirrel presence be confirmed during the survey, the qualified biologist shall notify CDFW and the Project proponent shall obtain an ITP for Mohave ground squirrel prior to the start of Project activities.</p>	<p>Prior to construction and issuance of any grading permit. Ongoing throughout Project activities.</p>	<p>Inyo County</p>

<p>MM BIO-5: Nesting Birds Regardless of the time of year, nesting bird surveys shall be conducted by a qualified avian biologist no more than three (3) days prior to vegetation clearing or ground disturbance activities. Preconstruction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. The qualified avian biologist will make every effort to avoid potential nest predation as a result of survey and monitoring efforts. If active nests are found during the preconstruction nesting bird surveys, a Nesting Bird Plan (NBP) shall be prepared and implemented by the qualified avian biologist. At a minimum, the NBP shall include guidelines for addressing active nests, establishing buffers, ongoing monitoring, establishment of avoidance and minimization measures, and reporting. The size and location of all buffer zones, if required, shall be based on the nesting species, individual/pair's behavior, nesting stage, nest location, its sensitivity to disturbance, and intensity and duration of the disturbance activity. To avoid impacts to nesting birds, any grubbing or vegetation removal shall occur outside peak breeding season.</p>	<p>Within 3 days of beginning any vegetation clearing or ground disturbing activities.</p>	<p>Inyo County</p>
<p>MM BIO-6: Special Status Plants A focused plant survey shall be conducted by a qualified biologist for rare plants prior to commencing Project activities when most plant species would be identifiable. The survey should follow CDFW's Protocols for Surveying and Evaluating Impacts to Special Status Species Native Plant Populations and Natural Communities (CDFW 2018 or most recent version), and survey results should report any additional special status plant species found to be present in the Project area. Should any special status plants be present in the Project area, a qualified restoration specialist shall assess whether perennial species may be successfully transplanted to an appropriate natural site or whether on-site or off-site conservation is warranted to mitigate Project impacts. If successful transplantation of perennial species is determined by a qualified restoration specialist, the receiver site shall be identified, and transplantation shall occur at the appropriate time of year. Additionally, the qualified restoration specialist shall perform seed collection and dispersal from special status annual plant species to a natural site as a</p>	<p>Prior to construction and issuance of any grading permit. Ongoing throughout Project activities.</p>	<p>Inyo County</p>

<p>conservation strategy to minimize and mitigate Project impacts. If these measures are implemented, monitoring of plant populations shall be conducted annually for 5 years to assess the mitigation's effectiveness. The performance standard for mitigation shall be no net reduction in the size or viability of the local population.</p>		
<p>MM BIO-7: Minimizing Impacts A qualified biologist shall be on-site prior to and during all ground- and habitat-disturbing activities to move out of harm's way wildlife that would otherwise be injured or killed from Project-related activities. Movement of wildlife out of harm's way should be limited to only those individuals that would otherwise be injured or killed, and individuals should be moved only as far as necessary to ensure their safety. Measures shall be taken to prevent wildlife from re-entering the Project site. Only biologists authorized by a Memorandum of Understanding issued by CDFW shall move CESA-listed species.</p>	<p>Ongoing during Project activities.</p>	<p>Inyo County</p>
<p>MM BIO-8: Employee Education Program 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 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 Employee 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, desert tortoise, desert kit fox, American badger, Mohave ground squirrel, rare and sensitive plants, and nesting birds. 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.</p>	<p>Prior to any person performing work on-site. Ongoing throughout Project activities.</p>	<p>Inyo County</p>

<p>MM BIO-9: Pesticides Prior to construction and issuance of any grading permit, Inyo County shall develop a plan with measures to avoid, minimize, or mitigate the impacts of pesticides used in cannabis cultivation, including fungicides, herbicides, insecticides, and rodenticides. The plan should include, but is not limited to, the following elements: (1) Proper use, storage, and disposal of pesticides, in accordance with manufacturers’ directions and warnings. (2) Avoidance of pesticide use where toxic runoff may pass into waters of the State, including ephemeral streams. (3) Avoidance of pesticides that cannot be used on cannabis in the state of California, as set forth by the Department of Pesticide Regulation. (4) Avoidance of anticoagulant rodenticides and rodenticides with “flavorizers”. (5) Avoidance of sticky/glue traps. (6) Inclusion of alternatives to toxic rodenticides, such as sanitation (removing food sources such as pet food, cleaning up refuse, and securing garbage in sealed containers) and physical barriers.</p>	<p>Prior to construction and issuance of any grading permit.</p>	<p>Inyo County</p>
<p>MM BIO-10: Artificial Light Light shall not be visible outside of any structure used for cannabis cultivation. Employ blackout curtains where artificial light is used to prevent light escapement. Eliminate all nonessential lighting from cannabis sites and avoid or limit the use of artificial light during the hours of dawn and dusk when many wildlife species are most active. Ensure that lighting for cultivation activities and security purposes is shielded, cast downward and toward developed areas, and does not spill over onto other properties or upward into the night sky (see the International Dark-Sky Association standards at http://darksky.org/). Use LED lighting with a correlated color temperature of 3,000 Kelvins or less, properly dispose of hazardous waste, and recycle lighting that contains toxic compounds with a qualified recycler.</p>	<p>Ongoing throughout Project activities.</p>	<p>Inyo County</p>
<p>MM BIO-11: LSA Program Prior to construction and issuance of any grading permit, the Project Sponsor shall obtain written correspondence from CDFW stating that notification under section 1602 of the Fish and Game Code is not required for the Project, or the Project Sponsor should obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and</p>	<p>Prior to construction and issuance of any grading permit.</p>	<p>Inyo County</p>

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Game Code section 1602 resources associated with the Project.		
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