



**Planning Department
168 North Edwards Street
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Independence, California, 93526**

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AGENDA ITEM NO.: 9 (Action Item – Public Hearing)

PLANNING COMMISSION MEETING DATE: October 27, 2021

SUBJECT: **Continuation of Violation of Conditional Use Permit (CUP) 2019-01/Shade Grown Farms**

EXECUTIVE SUMMARY

On February 27, 2019, the applicant, Lowell Shade, was approved for a CUP to operate a commercial cannabis cultivation operation located at 140 Agate Street in the community of Stewart Valley (staff report and Notice of Decision attached). The CUP was conditioned with, among other things, a requirement to conform to all applicable provisions of the Inyo County Code and State Regulations. Mr. Shade has failed to meet this condition with regard to building and safety code.

PROJECT INFORMATION.

Supervisory District: 5

Project Applicant: Shade Grown Farms LLC

Property Owner: Lowell Shade

Site Address/ 140 Agate Street, Stewart Valley, CA

Community: Stewart Valley

A.P.N.: 048-540-08

General Plan: Residential Estate (RE)

Zoning: Rural Residential with a 5-acre minimum (RR-5)

Size of Parcel: Approximately 5-acres

Surrounding Land Use:

Location:	Use:	Gen. Plan Designation	Zoning
Site	Residential and horse stables/arena/ greenhouses	Residential Estate (RE)	Rural Residential with a 5-acre minimum (RR-5)
North	Vacant	N/A State of Nevada	N/A State of Nevada
East	Vacant	N/A State of Nevada	N/A State of Nevada
South	Vacant	Residential Estate (RE)	Rural Residential with a 5-acre minimum (RR-5)
West	Vacant	Residential Estate (RE)	Rural Residential with a 5-acre minimum (RR-5)

Staff Recommended Action: **1.) Revoke the Conditional Use Permit (CUP) 2019-01/Shade Grown Farms with the Findings as provided in the staff report and Certify this action is exempt under CEQA.**

Alternatives: 1.) Do not revoke the CUP.
2.) Continue the public hearing to a future date, and provide specific direction to staff regarding what additional information and analysis is needed.

Project Planner: Cathreen Richards

STAFF ANALYSIS

Background and Overview

On February 27, 2019 the Planning Commission, upon the recommendation of staff, approved a CUP for the applicant, Lowell Shade, to operate a commercial cannabis cultivation operation at 140 Agate Drive in the community of Stewart Valley (see map below). The project proposal included growing cannabis plants of a variety of strains as well as processing the mature plants, which entails drying, curing, trimming and packaging at the project site.

This CUP was approved with several conditions of approval, these are:

1. The applicant shall provide adequate water and septic systems, public restrooms, and a plan for pesticide and fertilizer use, storage and removal to the satisfaction of the Inyo County Environmental Health Department prior to any Building Permits being granted. Failure to provide shall also cause revocation of CUP 2019-01/Shade Grown Farms.

2. **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 2019-01/Shade Grown Farms. The County reserves the right to prepare its own defense.

3. Compliance with County Code

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

Mr. Shade was given information regarding the building and environmental health departments' requirements and permitting processes. Since the approval, the environmental health department has verbally agreed that Mr. Shade has changed his operations enough that he meets their conditions and/or that some of those conditions no longer apply.

With regard to Condition #3, it requires compliance with Title 14 the County Building and Safety Code, which incorporates by reference the California Building and Safety Code. Mr. Shade has been advised of this on numerous occasions. Instead of honoring the Conditions of Approval of his CUP, Mr. Shade has erected greenhouses on the property without the benefit of building permits. Electrical and plumbing work has also been conducted without permits. Also, during this time Mr. Shade has been growing cannabis in violation of the terms of his CUP.

Building and safety department staff notified the Planning Department of Mr. Shade's failure to obtain the appropriate permits for his cannabis operations and of the fact that much of the work that has been done on the property has resulted in a dangerous situation, especially with regard to the electrical work. Building and safety staffs have had numerous conversations with Mr. Shade about these issues and have scheduled several inspections with Mr. Shade that were subsequently cancelled by Mr. Shade.

Any failure to meet the Conditions of Approval on a landuse permit, including a CUP, puts it in violation. Mr. Shade has had two years and numerous offers of help and descriptions of what he needs to do to be in compliance, while he has continued to grow cannabis. Staff scheduled and noticed a violation hearing for September 22, 2021. At that time Building and Safety staff notified planning that Mr. Shade was making progress on remedying his violations. Due to this, planning staff recommended that the September 22, 2021 hearing be continued until the October 27th hearing with the understanding that Mr. Shade would continue to make progress. Building and Safety staff recently notified planning that Mr. Shade is no longer making sufficient progress - making this hearing necessary. Staff is again recommending that the Planning Commission revoke the CUP. The revocation of this CUP will also likely result in Mr. Shade losing his County and State cannabis cultivation licenses.

Site Location Map



RECOMMENDATION

Planning Department staff understands the implications of this CUP revocation on Mr. Shade's cannabis business. He has, however, been non-compliant with the Conditions of Approval set forth for the CUP for over 2-years and was given more time after the September 22, 2021 hearing continuance to prove he was serious about remedying his violations. Building and safety staffs have tried during this time to help Mr. Shade with the permitting process to no avail; therefore, staff is recommending that the Planning Commission revoke CUP 2019-01/Shade Grown Farms.

Findings

The Notice of Violation was properly served to Mr. Lowell Shade, as the owner of the property and the permit holder.

[Evidence: Copies of the Notice were sent via US mail and via email on August 11, 2021.]

This hearing was properly noticed.

[Evidence: Notice of the date of his hearing was provided in the Inyo Register and mailed to property owners within 1,500-feet of the project property location on September 11, 2021, which is more than 10 days before the date of this hearing.]

Lowell Shade is in violation of the Conditions of Approval required for CUP 2019-01/Shade Grown Farms.

[Evidence: CUP 2019-01/Shade Grown Farms was approved on February 27, 2019. Mr. Shade has been engaged in commercial cannabis cultivation since the approval without the benefit of proper building, plumbing or electrical permits, which is required by Condition #3 of CUP 2019-01/Shade Grown Farms.]

This action is Exempt from CEQA under 15321- Enforcement Actions by Regulatory Agencies.

ATTACHMENTS

- Staff Report
- Notice of Decision



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AGENDA ITEM NO.: 10 (Action Item – Public Hearing)

PLANNING COMMISSION MEETING DATE: February 27, 2019

SUBJECT: Conditional Use Permit (CUP) 2019-01/Shade Grown Farms

EXECUTIVE SUMMARY

The applicant has applied for a CUP to operate a commercial cannabis cultivation operation located at 140 Agate Street in the community of Stewart Valley. The applicant has been approved by the Board of Supervisors for a Cannabis Cultivation, under 5,000-square-foot Business License (Attached).

PROJECT INFORMATION.

Supervisory District: 5

Project Applicant: Shade Grown Farms LLC

Property Owner: Lowell Shade

Site Address/ 140 Agate Street, Stewart Valley, CA

Community: Stewart Valley

A.P.N.: 048-540-08

General Plan: Residential Estate (RE)

Zoning: Rural Residential with a 5-acre minimum (RR-5)

Size of Parcel: Approximately 5-acres

Surrounding Land Use:

Location:	Use:	Gen. Plan Designation	Zoning
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South	Vacant	Residential Estate (RE)	Rural Residential with a 5-acre minimum (RR-5)
West	Vacant	Residential Estate (RE)	Rural Residential with a 5-acre minimum (RR-5)

Staff Recommended Action: **1.) Approve the Conditional Use Permit (CUP) 2019-01/Shade Grown Farms with the Findings and Conditions as provided in the staff report and Certify it is exempt 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: Cathreen Richards

STAFF ANALYSIS

Background and Overview

The applicant applied for a CUP to operate a commercial cannabis cultivation operation, located at 140 Agate Drive in the community of Stewart Valley. This establishment will grow cannabis plants of a variety of strains. The mature plants will also be dried, cured, trimmed and packaged at the project site. The property is zoned RR-5.0 which allows for commercial cannabis cultivation with a CUP. The surrounding area is vacant and zoned RR, with the exception of north and east, which is located in the State of Nevada, but is also vacant. The proposed location is not within 600-feet of a school, daycare, park or library; and therefore, is not prohibited by state or county exclusion areas.

The property proposed for Shade Grown Farms was previously used as rodeo grounds. It is developed and highly disturbed. There is a single-family home where the owner/grower will reside. Currently there are 6 greenhouses located on the property. Three of these greenhouses are proposed to be updated, improved for cannabis cultivation, and permitted through the County Building and Safety Department. Each is approximately 3,000-square-feet and can accommodate about 3,000 plants.

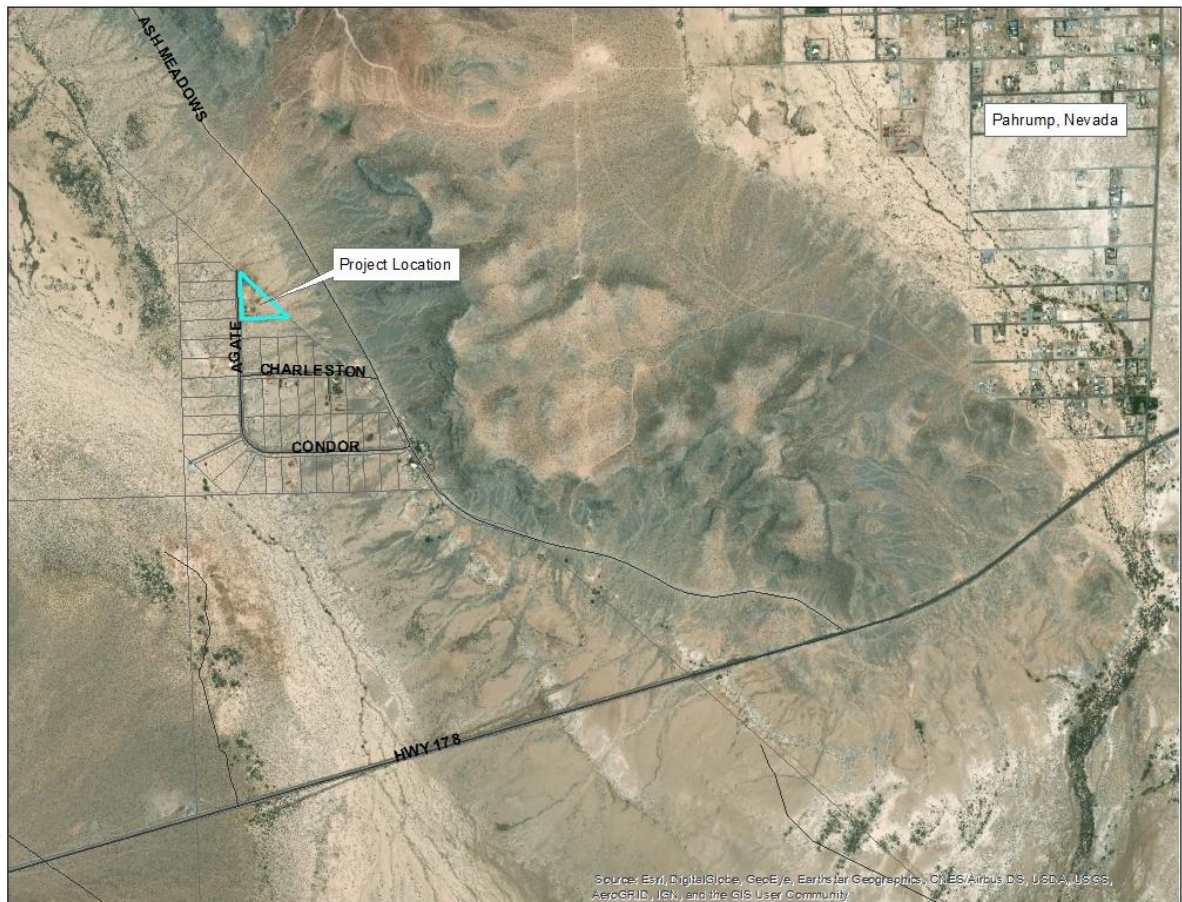
The applicant states that the proposed cultivation operation will require 1,000-1,500 gallons of water per week, through metered drip lines. This amount of water use is minimal and is similar to what a second residential dwelling (accessory dwelling unit)

would use, which is a principle permitted use in the RR zone. The average California household water use is 85-gallons per person. Even a small household of 2-people would use a comparable amount - close to 1,200-gallons per week.

Transport of the packaged product will happen at the end of the harvest season. A transportation company will pick up product from the site. The applicant estimates that at first there will be a weekly pickup and they could have up to approximately 2 to 3 pickups per week as the business grows. This amount of additional traffic on Ash Meadows Road is minimal.

The applicant is currently working with the Environmental Health Department to address water, septic, public restrooms and pesticide and fertilizer use, storage and disposal. The project will be conditioned on the completion of these issues to the satisfaction of the Environmental Health Department.

Site Location Map



Pictures of the Project Property



General Plan Consistency

The goal of this project is to allow for a commercial cannabis cultivation operation. The project is consistent with the General Plan designation of RE as it applies to areas with large lot residential development, in rural areas where the open characteristics of the area are maintained. The RE General Plan designation is compatible with the existing RR zoning designation. It is also compatible with the General Plan's Conservation and Open Space Element's Goal Agriculture (AG) 1.0: Provide and maintain a viable and diverse agriculture industry in Inyo County. The applicant is proposing to grow cannabis to sell. This activity is consistent with Goal AG 1.0 as it provides for a more diverse agriculture industry than is currently present in the County.

Zoning Ordinance Consistency

The RR zoning designation allows for agriculture uses along with residential. Commercial cannabis cultivation is also allowed in the RR zone with a Conditional Use Permit on lots greater than 2.5-acres in Stewart Valley. The applicant has applied for the conditional use permit to operate Shade Grown Farms in compliance with the County's zoning ordinance.

ENVIRONMENTAL REVIEW

Pursuant to the California Environmental Quality Act (CEQA), the proposal is covered by the General Rule 15061(b) (3) that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. This application for a CUP is for a property that is already developed, denuded of vegetation and is highly disturbed; the proposed activities will result in no change to the impact of uses than are possible without the CUP or currently or historically conducted on the property; and, Pursuant to the California Environmental Quality Act (CEQA), potential, subsequent, development to this proposal falls into the Categorical Exemption Class 3 New Construction or Conversion of Small Structures (15303)(a) One single-family residence, or a second dwelling unit in a residential zone. . . . may be constructed or converted under this exemption.

NOTICING & REVIEW

The application for CUP 2019-01/Shade Grown Farms has been reviewed by the appropriate county departments and no issues were reported, other than those being addressed by the applicant with the Environmental Health Department. For a conditional use permit to be approved by the Planning Commission, a Cannabis Business License must be approved prior. Shade Grown Farms was approved for a business license by the Board of Supervisors on December 18, 2018 after a thorough review and scoring by the Commercial Cannabis Permitting Office. This included reviews by the Environmental Health and Sheriff's departments.

CUP 2019-01/Shade Grown Farms was noticed on February 16, 2019 in the Inyo Register and mailed to property owners within 1,500-feet of the project location as required by Inyo County Code 18.78.360(F). No comments have been received by staff to date.

RECOMMENDATION

Planning Department staff recommends the approval of CUP 2019-01/Shade Grown Farms with the following Findings and Conditions of Approval:

FINDINGS

1. The proposed Conditional Use Permit is Exempt by the General Rule 15061(b)(3) and the provisions of the California Environmental Quality Act have been satisfied.

[Evidence: The General Rule 15061(b) (3) states that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. This application for a CUP is for a property that is already developed, denuded of vegetation and is highly disturbed; the proposed activities will result in no change to the impact of uses than are possible without the CUP; or of currently or historically conducted uses and activities on the property; and, Pursuant to the California Environmental Quality Act (CEQA), potential, subsequent, development to this proposal falls into the Categorical Exemption Class 3 New Construction or Conversion of Small Structures (15303)(a) One single-family residence, or a second dwelling unit in a residential zone. . . . may be constructed or converted under this exemption.]

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

[Evidence: The goal of this project is to allow for a commercial cannabis cultivation operation under 5,000-square-foot retail establishment on a parcel of land with a RE General Plan designation. The project is consistent with the General Plan designation of RE as it applies to areas with large lot residential development, in rural areas where the open characteristic of the area are maintained. The RE General Plan designation is compatible with the existing RR zoning designation that is found on the property. It is also compatible with the General Plan's Conservation and Open Space Element's Goal - Agriculture (AG) 1.0 that states: Provide and maintain a viable and diverse agriculture industry in Inyo County. The applicant is proposing to grow cannabis to sell. This activity is consistent with Goal AG 1.0 as it provides for a more diverse agriculture industry than is currently present in the County. Due to these factors, the project is consistent with goals, policies and objectives of the County's General Plan.]

3. The proposed Conditional Use Permit is consistent with the Inyo County Zoning Ordinance, which permits "commercial cannabis cultivation activities" as a conditional use in the RR zone.

[Evidence: The Rural Residential (RR) zoning designation allows for agriculture along with residential as principle permitted uses and also allows for commercial cannabis cultivation with a Conditional Use Permit on lots greater than 2.5-acres in Stewart Valley. The applicant has applied for the conditional use permit to operate Shade Grown Farms in compliance with the County's zoning ordinance.]

and upon approval of the CUP will be consistent with the County's Zoning Ordinance.]

4. The proposed Conditional Use Permit is necessary or desirable.
[Evidence: The General Plan's Conservation and Open Space Element's Goal Agriculture (AG) 1.0 states: Provide and maintain a viable and diverse agriculture industry in Inyo County. The applicant is proposing to grow cannabis to sell. This activity is consistent with Goal AG 1.0 as it provides for a more diverse agriculture industry than is currently present in the County, which is desirable as evidenced by the County's General Plan.]
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 commercial cannabis cultivation establishment to operate in a rural area on a location that is already developed and highly disturbed. It is related to rural, agriculture and open space nature of the area and will not cause impacts on transportation or service facilities in the vicinity as these facilities are already located on and provide access to the property.]
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 a commercial cannabis cultivation establishment to operate in a rural area on a location that is already developed and highly disturbed. This establishment will not change or increase the current level or general type of allowed uses in the vicinity, which is very rural and remote. The proposed security plan for Shade Grown Farms was reviewed by the Sheriff's Department as a business license requirement; therefore, CUP 2019-01/Shade Grown Farms 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: A commercial cannabis cultivation operation in the RR zone requires a conditional use permit per Inyo County Code Section 18.21.040(I) and is therefore necessary for the operation of Shade Grown Farms.]

CONDITIONS OF APPROVAL

1. The applicant shall provide adequate water and septic systems, public restrooms, and a plan for pesticide and fertilizer use, storage and removal to the satisfaction of the Inyo County Environmental Health Department prior to any Building Permits being granted. Failure to provide shall also cause revocation of CUP 2019-01/Shade Grown Farms.

2. 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 2019-01/Shade Grown Farms. The County reserves the right to prepare its own defense.

3. Compliance with County Code

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

ATTACHMENT

- Shade Grown Farms Business License



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NOTICE OF DECISION

March 20, 2019

Lowell Shade
50 Emery Street, Apt #421
Pahrump, NV 89048

SUBJECT: Approval of Conditional Use Permit (CUP) 2019-01/Shade Grown Farms

On February 27, 2019 the Inyo County Planning Commission considered the above action, which allows for a commercial cannabis cultivation operation located at 140 Agate Street in the community of Stewart Valley.

After deliberation, the Planning Commission voted 5-0 to approve the project with the following Findings and Conditions of Approval:

FINDINGS

1. The proposed Conditional Use Permit is Exempt by the General Rule 15061(b)(3) and the provisions of the California Environmental Quality Act have been satisfied.
[Evidence: The General Rule 15061(b) (3) states that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. This application for a CUP is for a property that is already developed, denuded of vegetation and is highly disturbed; the proposed activities will result in no change to the impact of uses than are possible without the CUP; or of currently or historically conducted uses and activities on the property; and, Pursuant to the California Environmental Quality Act (CEQA), potential, subsequent, development to this proposal falls into the Categorical Exemption Class 3 New Construction or Conversion of Small Structures (15303)(a) One single-family residence, or a second dwelling unit in a residential zone. . . . may be constructed or converted under this exemption.]

2. The proposed Conditional Use Permit is consistent with the Inyo County General Plan Land Use designation of Retail Commercial (RC).
[Evidence: The goal of this project is to allow for a commercial cannabis cultivation operation under 5,000-square-foot retail establishment on a parcel of land with a RE General Plan designation. The project is consistent with the General Plan designation of RE as it applies to areas with large lot residential development, in rural areas where the open characteristic of the area are maintained. The RE General Plan designation is compatible with the existing RR zoning designation that is found on the property. It is also compatible with the General Plan's Conservation and Open Space Element's Goal - Agriculture (AG) 1.0 that states: Provide and maintain a viable and diverse agriculture industry in Inyo County. The applicant is proposing to grow cannabis to sell. This activity is consistent with Goal AG 1.0 as it provides for a more diverse agriculture industry than is currently present in the County. Due to these factors, the project is consistent with goals, policies and objectives of the County's General Plan.]
3. The proposed Conditional Use Permit is consistent with the Inyo County Zoning Ordinance, which permits "commercial cannabis cultivation activities" as a conditional use in the RR zone.
[Evidence: The Rural Residential (RR) zoning designation allows for agriculture along with residential as principle permitted uses and also allows for commercial cannabis cultivation with a Conditional Use Permit on lots greater than 2.5-acres in Stewart Valley. The applicant has applied for the conditional use permit to operate Shade Grown Farms in compliance with the County's zoning ordinance. and upon approval of the CUP will be consistent with the County's Zoning Ordinance.]
4. The proposed Conditional Use Permit is necessary or desirable.
[Evidence: The General Plan's Conservation and Open Space Element's Goal Agriculture (AG) 1.0 states: Provide and maintain a viable and diverse agriculture industry in Inyo County. The applicant is proposing to grow cannabis to sell. This activity is consistent with Goal AG 1.0 as it provides for a more diverse agriculture industry than is currently present in the County, which is desirable as evidenced by the County's General Plan.]
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 commercial cannabis cultivation establishment to operate in a rural area on a location that is already developed and highly disturbed. It is related the to rural, agriculture and open space nature of the area and will not cause impacts

on transportation or service facilities in the vicinity as these facilities are already located on and provide access to the property.]

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 a commercial cannabis cultivation establishment to operate in a rural area on a location that is already developed and highly disturbed. This establishment will not change or increase the current level or general type of allowed uses in the vicinity, which is very rural and remote. The proposed security plan for Shade Grown Farms was reviewed by the Sheriff's Department as a business license requirement; therefore, CUP 2019-01/Shade Grown Farms 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: A commercial cannabis cultivation operation in the RR zone requires a conditional use permit per Inyo County Code Section 18.21.040(I) and is therefore necessary for the operation of Shade Grown Farms.]

CONDITIONS OF APPROVAL

1. The applicant shall provide adequate water and septic systems, public restrooms, and a plan for pesticide and fertilizer use, storage and removal to the satisfaction of the Inyo County Environmental Health Department prior to any Building Permits being granted. Failure to provide shall also cause revocation of CUP 2019-01/Shade Grown Farms.

2. **Hold Harmless**

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3. **Compliance with County Code**

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

If there are any questions regarding the above information, please contact the Planning office at (760) 878-0263.

Respectfully,

Cathreen Richards