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AGENDA ITEM NO.: 7 (Action Item – Public Hearing)

PLANNING COMMISSION MEETING DATE: December 1, 2021

SUBJECT: Conditional Use Permit (CUP) 2021-05/ The Tree Farm

EXECUTIVE SUMMARY

The applicant has applied for a CUP for the cultivation of 8.5 acres of cannabis located at 800 Ekenberg Rd. in the community of Sandy Valley in southeast Inyo County.

PROJECT INFORMATION.

Supervisory District: 5

Project Applicant: The Tree Farm, Chris Teutsch, 800 Ekenberg Rd. Tecopa, CA 923

Property Owner: The Holy Land Trust, Chris Teutsch, 800 Ekenberg Rd. Tecopa, CA 92389

Site Address: 800 Ekenberg Rd. Tecopa, CA 92389

Community: Sandy Valley

A.P.N.: 048-350-25

General Plan: Agricultural (A)

Zoning: Open Space with a 40-acre minimum (OS-40)

Size of Parcel: Approximately 40-acres

Surrounding Land Use:

Location:	Use:	Gen. Plan Designation	Zoning
Site	Private Residence / Cattle / Agriculture	Agricultural (A)	Open Space with a 40-acre minimum (OS-40)
North	Vacant / BLM / Private Residence	Agricultural (A)	Open Space with a 40-acre minimum (OS-40)
East	Agriculture	Agricultural (A)	Open Space with a 40-acre minimum (OS-40)
South	Vacant / Private Residence	Agricultural (A)	Open Space with a 40-acre minimum (OS-40)
West	Vacant	Agricultural (A)	Open Space with a 40-acre minimum (OS-40)

Staff Recommended Action:

1.) Approve the Conditional Use Permit (CUP) 2021-05/The Tree Farm and certify the project as a 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:

Cathreen Richards

STAFF ANALYSIS

Background and Overview

The applicant is applying for a CUP to operate a cannabis cultivation business located at 800 Ekenberg Rd. in the community of Sandy Valley. This property is zoned OS-40, which allows for cannabis cultivation with a CUP, and is located in an agricultural area of the County surrounded by other similar agricultural uses. The project includes 8.5-acres of cultivation for cannabis, including 0.5 acres in existing hoop houses on a 40-acre parcel. This property has previously been used to grow cantaloupes and most of the agricultural infrastructure is existing and will be used for cannabis cultivation. Proposed new construction includes (1) 12,500-ft² building for drying and processing. The cultivation will be outdoor, and planted directly in the soil, using only organic products and methods. There will be (3) 108,900-ft² cultivation fields, (9) 2,160-ft² hoop houses, and (1) 780-ft² nursery. The cultivation will occur 300-feet back from each property line, per Inyo County Code. The entire cultivation areas have been previously disturbed, as a result of the previous agricultural uses, and two private residential dwelling units are located on the eastern property boundary.

Water is provided for the cultivation from a pre-existing well and a 25,000-gallon above-ground storage tank. This water tank is also available for fire suppression. The water use (with drip irrigation) will be similar to previous agricultural endeavors with approximately 1.2-million gallons used annually. The proposed project is located in the Mesquite Valley Groundwater Basin, which is ranked “very low” priority under the State Sustainable Groundwater Management Act. The applicant will continue to work with the California Water Resources Control Board (Lahontan) to obtain the appropriate permissions for cannabis cultivation.

Vicinity Map



Site Map



General Plan Consistency

The goal of this project is to allow for a cannabis cultivation operation. The project is consistent with the General Plan designation of Agricultural (A) as it provides for the production of “food or fiber on a regular and sustained basis” with accompanying “agricultural processing facilities.” The (A) General Plan designation is compatible with the existing OS-40 zoning designation. It is also compatible with the General Plan’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. This activity is consistent with Goal AG 1.0, as it provides for a more diverse agriculture land use type than currently exists in the County.

Zoning Ordinance Consistency

The proposed project is a CUP to allow for the commercial cultivation of cannabis. The OS-40 zone allows for commercial cannabis cultivation with a CUP and is required to meet a 300-foot setback requirement. The OS zone, within its purpose statement, states that it is established to: *encourage the protection of mountainous, hilly upland, valley, agricultural, potential agricultural, fragile desert areas, and other mandated lands from fire, erosion, soil destruction, pollution and other detrimental effects of intensive land use activities.* This project will bring more agriculture land use type activities to the county and is proposed to be conducted outdoors, using a drip irrigation system.

ENVIRONMENTAL REVIEW

Conditional Use Permit 2021-05/Tree Farm is a Mitigated Negative Declaration under CEQA. Although this project only includes 8.5-acres of a 40-acre parcel and this area is already disturbed by a similar use (canelope farming), it incorporates several mitigation measures (listed below) as conditions of approval for the issuance of the CUP. These are primarily being imposed by the California Department of Fish and Wildlife to ensure any species in the general vicinity will not be harmed by the project.

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 31, 2021 about the project and the opportunity for consultation on this project. The Tribes notified were as follows: the Twenty-Nine Palms Band of Mission Indians, the Big Pine Paiute Tribe, the Bishop Paiute Tribe, Cabazon Band of the Mission Indians, the Fort Independence Paiute Tribe, Lone Pine Paiute-Shoshone Tribe, the Timbisha Shoshone Tribe, and the Torres Martinez Desert Cahuilla Indians.

None of the Tribes requested consultation.

NOTICING & REVIEW

The application for 2021-05/The Tree Farm has been reviewed by the following County departments: Environmental Health, Public Works, Inyo/Mono Agricultural Commission, and the Southern Inyo Fire District. The Environmental Health Department recommended that any additional sewage needs for the project utilize a new septic tank and leech field

and that if more than 5 service connections are made to their well then they are considered a State Small Water System and to apply for the appropriate permits.

The Southern Inyo Fire District asked what type of fire suppression the applicants have on site. They responded that they have a 25,000-gallon water tank that can be used for fire suppression.

Public review of the CEQA document was noticed in the Inyo Register and submitted to the CEQA Clearinghouse on October 9, 2021. Comments were received from the California Department of Fish and Wildlife. These comments have been addressed and incorporated into the the Conditions of Approval for this CUP. The public hearing date for this CUP was noticed on November 20, 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 comments have been received to date.

RECOMMENDATION

Planning Department staff recommends the approval of CUP 2021-05/Tree Farm, with the following Findings and Conditions of Approval:

FINDINGS

1. The proposed CUP is a Mitigated Negative Declaration under CEQA guidelines and 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 November 12, 2021. Comments were received by CDFW. Conditions have been added to the project addressing CDFW's comments causing the project to have less than significant impacts.]

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

[Evidence: The goal of this project is to allow for the cultivation of cannabis on a parcel of land with an A General Plan designation. The project is consistent with the A designation as it allows the production of "food or fiber on a regular and sustained basis" with accompanying "agricultural processing facilities." The proposed Tree Farm cannabis project would produce canaabis which is an agriculture type use that is compatible with the A General Plan designation. It is also consistent with the General Plan'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. This activity is consistent with Goal AG 1.0, as it provides for a more diverse agriculture industry than currently exists in the County.]

3. The proposed CUP is consistent with the Inyo County Zoning Ordinance, which permits cannabis cultivation activities, as a conditional use, in the OS-40 zone.

[Evidence: The OS-40 zone allows for commercial cannabis cultivation with a CUP as long as the project can meet the 300-foot setback requirement. The Open Space zone, within its purpose statement, says that it is established to: encourage the protection of mountainous, hilly upland, valley, agricultural, potential agricultural, fragile desert areas, and other mandated lands from fire, erosion, soil destruction, pollution and other detrimental effects of intensive land use activities. This project will bring more agriculture type landuse activities to the county and is proposed to be conducted outdoors, using drip irrigation.]

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 long term, and are expected to remain stable throughout the time horizon of this General Plan.' The applicant has stated that the Tree Farm cannabis cultivation project expects to produce plants that will serve both County businesses and others in the State, as inputs to products further down the supply chain. This is a sustainable model, 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 agricultural use. The cannabis cultivation would replace a pre-existing agricultural use (cantalope crops). It is related to the other agricultural activities in the area and will not cause impacts on transportation or service facilities in the vicinity.]
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 CUP is to allow for cannabis cultivation. This agricultural land use type will not change or increase the current level or general type of allowed uses in the Sandy Valley area and the proposed security plan for The Tree Farm was reviewed by the Sheriff's Department as a business license requirement; therefore, it 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 cultivation activities require a conditional use permit per Inyo County Code Section 18.45.030(P) and is therefore necessary for the operation of The Tree Farm.]

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 CUP 2021-05/Tree Farm. 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 the California Building Code. Failure to comply may result in the revocation of this conditional use permit. If the use provided by this conditional use permit is not established within one year of the approval date it will become void.

3. Environmental:

- **Aesthetic:** The owner or his agent will 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.
- **Air Quality:** The owner or his agent will be required to follow best management practices to control for dust and odors. The owner or his agent shall consult with the Great Basin Air Pollution Control District to ensure potential dust and odors from cannabis cultivation do not impact surrounding properties. Evidence of approval from the Great Basin Air Pollution Control District shall be submitted to planning department staff prior to any ground disturbing or building activities.
- **Lahonton Water Board:** The owner or his agent shall obtain all necessary permits and follow all necessary requirements per the Inyo County Environmental Health Department and the Lahonton Waterboard. The applicant shall consult the Inyo County Environmental Health Department and the Lahonton Waterboard and provide evidence of their approval to the planning department prior to any ground breaking and/or building activities to ensure the septic system and existing wells are compliant with all State and County codes. The applicant shall also consult with the Inyo County Environmental Health Department and the Lahontoan Water Board if any pesticides or fertilizers end up being used to ensure that storage and disposal conform with all State and County requirements.

4. California Department of Fish and Wildlife conditions

- **Burrowing Owl Pre-construction Clearance Survey**
No less than 14 days prior to the initiation of any Project activities, including any groundbreaking activities, a qualified biologist shall conduct pre-construction surveys in accordance with the Staff Report on Burrowing Owl

Mitigation (Department of Fish and Game, March 2012). If no burrowing owl(s) are observed on site during the pre-construction survey, a letter shall be prepared by the qualified biologist documenting the results of the survey. The letter shall be submitted to CDFW 72 hours in advance of ground disturbing activities. If burrowing owl(s) are observed on site during the pre-construction survey, areas occupied by burrowing owls shall be avoided. If burrowing owls cannot be avoided by the Project, then: 1) the qualified biologist shall contact California Department of Fish and Wildlife (CDFW) and conduct an impact assessment in accordance with Staff Report on Burrowing Owl Mitigation prior to commencing Project activities to determine appropriate mitigation, including the acquisition and conservation of occupied replacement habitat at no less than a 2:1 ratio; 2) the qualified biologist shall prepare and submit a passive relocation program in accordance with Appendix E (i.e., Example Components for Burrowing Owl Artificial Burrow and Exclusion Plans) of the 2012 Staff Report on Burrowing Owl Mitigation (CDFG 2012) to the CDFW for review/approval prior to the commencement of disturbance activities onsite; and 3) when a qualified biologist determines that burrowing owls are no longer occupying the Project site and passive relocation is complete, construction activities may begin. A final letter report shall be prepared by the qualified biologist documenting the results of the passive relocation. The letter shall be submitted to CDFW.

- Pre-construction Nesting Bird Surveys

If construction occurs during the non-nesting season (typically September 16 through December 31), a pre-construction sweep shall be performed prior to any ground breaking activities to verify absence of nesting birds. If construction activities are scheduled to occur during the nesting season (typically January 1 through September 15), mitigation as described below shall be implemented to avoid potential impacts to birds and their nests.

If construction (including site preparation, staging, or other ground-disturbing activities) or vegetation removal is proposed during the breeding/nesting season for birds (generally, raptor nesting season is January 1 through September 15; and passerine bird nesting season is February 1 through September 1), a qualified biologist shall conduct pre-construction surveys for birds on the Project site, including a 300-foot survey buffer, no more than 3 days prior to the start of ground-disturbing activities in all suitable areas including trees, shrubs, bare ground, burrows, cavities, and structures, at the appropriate time of day/night, during appropriate weather conditions. Pre-construction surveys should focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior (e.g., copulation, carrying of food or nest materials, nest building, removal of fecal sacks, flushing suddenly from atypically close range, agitation, aggressive interactions, feigning injury or distraction displays, or other behaviors). If construction is delayed or suspended for more than 3 days after the survey, the

area shall be resurveyed to re-confirm the presence/absence of any active nests.

If an active nest is located during pre-construction surveys, the United States Fish and Wildlife Service (USFWS) and/or the California Department of Fish and Wildlife (CDFW) (as appropriate per agency regulations) shall be notified regarding the status of the nest. Furthermore, construction activities shall be restricted as necessary to avoid disturbance of the nest until nesting activities have concluded, or the qualified biologist deems disturbance potential to be minimal. Restrictions may include, but are not limited to, establishing exclusion zones (no ingress of personnel or equipment at a minimum radius of 300 feet around an active raptor nest and 100-foot radius around an active non-raptor passerine bird nest) or altering the construction schedule.

A qualified biologist shall delineate the buffer using nest buffer signs, environmentally sensitive area fencing, pin flags, and or flagging tape. The buffer zone shall be maintained around the active nest site(s) until the young have fledged and are foraging independently.

- **American Badger**

A qualified biologist shall visually survey the Project area prior to construction to identify any feature/habitats suitable to support American badger (i.e., burrows, dens). Where an identifiable feature is present, the qualified biologist shall mark the potentially occupied feature for avoidance. If avoidance is infeasible, the qualified biologist shall determine whether the burrow or den is inactive or active. If the burrow or den is inactive, the qualified biologist shall excavate the burrow or den by hand and backfill to prevent reuse by badger.

If American badger is present, applicant shall notify CDFW and applicant should develop an American badger-specific avoidance and relocation plan detailing the protective avoidance and relocation measures to be implemented prior to the commencement of Project activities for CDFW review. The use of rodenticides and herbicides shall be restricted to avoid primary and secondary poisoning of badger.

- **Desert Tortoise Pre-Construction Survey**

A qualified biologist shall conduct a protocol level presence or absence survey within the Project area and 50-foot buffer no more than 48 hours prior to Project activities during desert tortoise active season (April to May or September to October), in accordance with the U.S. Fish and Wildlife Service 2019 desert tortoise survey methodology. The survey shall utilize perpendicular survey routes and 100-percent visual coverage for desert tortoise and their sign. Results of the survey shall be submitted to CDFW. If the survey confirms absence, the qualified biologist shall ensure desert tortoise do not enter the Project area. If the survey confirms presence, the Project proponent shall submit to CDFW for review and approval a desert tortoise-specific avoidance plan detailing the protective avoidance measures to be implemented to ensure complete avoidance of take to desert tortoise. If

complete avoidance cannot be achieved, CDFW recommends Project proponent not undertake Project activities and Project activities be postponed until appropriate authorization (i.e., CESA ITP under Fish and Game Code section 2081) is obtained.

- **Rare Plant Survey**

Prior to Project implementation, and during the appropriate season, the County shall conduct botanical field survey following protocols set forth in the Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018). The surveys shall be conducted by a CDFW-approved botanist(s) experienced in conducting floristic botanical field surveys, knowledgeable of plant taxonomy and plant community ecology and classification, familiar with the plants of the area, including special status and locally significant plants, and familiar with the appropriate state and federal statutes related to plants and plant collecting. The botanical field surveys shall be conducted at the appropriate time of year when plants will both be evident and identifiable (usually, during flowering or fruiting) and, in a manner, which maximizes the likelihood of locating special status plants and sensitive natural communities that may be present. Botanical field surveys shall be conducted floristic in nature, meaning that every plant taxon that occurs in the project area is identified to the taxonomic level necessary to determine rarity and listing status.

If any rare plants or sensitive vegetation communities are identified, the County shall either avoid the occurrence, with an appropriate buffer, or mitigate the loss of the occurrence through the purchase of mitigation credits from a CDFW-approved bank or land acquisition and conservation at a minimum 3:1 (replacement-to-impact) ratio. Note that a higher ratio may be warranted if the proposed mitigation lands are located far away from the Project site (i.e., within a separate watershed) or is not occupied by or available to special status species.

If the Project has the potential to impact a State-listed species, the County should apply for a California Endangered Species Act Incidental Take Permit with the California Department of Fish and Wildlife.

- The applicant shall avoid the mesquite thickets located on the property as indicated in the application.

- **Lake and Streambed Alteration (LSA)**

Prior to construction and issuance of any grading permit, the Project applicant should obtain written correspondence from the California Department of Fish and Wildlife (CDFW) stating that notification under section 1602 of the Fish and Game Code is not required for the Project, or the Project applicant should obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.

