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

PLANNING COMMISSION January 26, 2022
MEETING DATE:

SUBJECT: Variance #2021-05/Nano Farms

EXECUTIVE SUMMARY

An application for a fence height variance for up to 10-feet on a property zoned Open Space (OS) that is located at 377 Rosemary Lane, in the community of Sandy Valley. The applicant is requesting the fence height variance to provide extra security for a cannabis cultivation business located on the property. This project is Categorically Exempt from the provisions of the California Environmental Quality Act (CEQA), under the Class 5 exemption, 15305.

PROJECT INFORMATION.

Supervisory District: 5

Project Applicant: Xavier Marquez – Nano Farms

Property Owner: Rutt Premsrirut – 3993 Howard Hughes Parkway #140, Las Vegas, NV 89169

Site Address/

Community: 377 Rosemary Lane, in the community of Sandy Valley

A.P.N.: 048-350-15

General Plan: Agriculture

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

Size of Parcel: Approximately 160-acres

Surrounding Land Use:

Location	Use	General Plan Designation	Zone
Site	Developed – Cannabis cultivation	Agriculture	Open Space with a 40-acre minimum (OS-40)
North	Vacant/Open space	Agriculture	Open Space with a 40-acre minimum (OS-40)
East	Vacant/Open space	Agriculture	Open Space with a 40-acre minimum (OS-40)
South	Vacant/Open space	Agriculture	Open Space with a 40-acre minimum (OS-40)
West	Vacant/Open space	State and Federal Lands	Open Space with a 40-acre minimum (OS-40)

Staff Recommended Action: **1.) Approve the Variance.**

Alternatives:

- 1.) Deny the Variance.
- 2.) Approve the Variance 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

Variance Request & Site Characteristics

This is an application for a fence height variance for up to 10-feet on a property zoned Open Space (OS) that is located at 377 Rosemary Lane, in the community of Sandy Valley. The applicant, Xavier Marquez, is requesting the fence height variance to provide extra security for a cannabis cultivation business located on the property. The fence will run along the outside perimeter of the entire property.

The applicant was granted a Conditional Use Permit in September 2019 to grown commercial cannabis on the site. At that time, the fence height variance was not applied for and is necessary for extra security around the cannabis cultivation business.

Provision for Variances

The Inyo County Zoning Ordinance states that any variance to the terms of the Zoning Ordinance may be granted if such a variance would *“not be contrary to its general intent or the public interest, where due to special conditions or exceptional characteristics of the property or its location or surroundings, a literal enforcement would result in practical difficulties or unnecessary hardships”* (Section 18.81.040).

Further, the Zoning Ordinance states that the following three Findings must be affirmed in order for any variance to be granted:

1. That there are exceptional circumstances applicable to the property involved, or to the intended use, which do not generally apply to other property in the same district.
2. That the result would not be detrimental to the public welfare, or injurious to property in the vicinity.
3. That the strict application of the regulation sought to be modified would result in practical difficulties or hardships inconsistent with, and not necessary for the attainment of, the general purposes of this title.

In addition to the above Findings specified in the Inyo County Zoning Ordinance, California State Government Code requires the following Findings for any variance:

4. The proposed variance does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which the property is situated.
5. The proposed variance does not authorize a use or activity that is not otherwise expressly authorized by the zoning regulation governing the parcel of property.
6. The proposed variance is consistent with the General Plan.
7. The requirements of the California Environmental Quality Act have been met.

Affirmative variance Findings must describe the special circumstances that act to physically differentiate the project site from its neighbors and make it unique, and thus uniquely justified for a variance; alternatively, negative findings must describe how the project's physical characteristics are not unique or exceptional, and therefore do not justify a variance.

ALL seven of the Findings must be affirmed in order for a variance to be approved.

ENVIRONMENTAL REVIEW

This project is Categorically Exempt from the provisions of the California Environmental Quality Act (CEQA), under the Class 5 exemption, "Minor alterations to land use limitations, such as lot line adjustments, variances, and encroachment permits on land with a slope of less than 20%, which do not result in changes in land use or density."

NOTICING & REVIEW

The application for VAR 2021-05/Nano Farms has been reviewed by the appropriate county departments. No issues were reported by County staff and the applicant is currently working with Building and Safety staff.

The hearing for VAR 2021-05/Nano Farms was noticed on January 15, 2022 in the Inyo Register and mailed to property owners within 1,500-feet of the project location as

required by the Inyo County Code for cannabis related projects. No comments have been received to date.

RECOMMENDATIONS

Findings

Staff has reviewed the application and can find that all seven of the required Findings can be affirmed:

1. That there are exceptional circumstances applicable to the property involved, or to the intended use, which do not generally apply to other property in the same district.

(Affirmative – Evidence: Inyo County Code (ICC) 18.78.160 limits the height of fences, walls and hedges to 6-feet for the rear and side yards and 3.5-feet for the front. Due to the nature of the activities the applicant is conducting at the site (cannabis cultivation), there will be a need for extra security. Land within the County that is designated OS is mostly vacant. Some has agriculture and residential uses. Although, these uses can include valuable assets on some land, especially agriculture equipment, and some that could be considered hazardous, the proposed cannabis cultivation has a higher likelihood of theft than most other agriculture type activities. This factor at this location is unique, and warrants the applicant's need for a higher, and therefore, more effective fence for security purposes.)

2. That the result would not be detrimental to the public welfare, or injurious to property in the vicinity.

(Affirmative – Evidence: A higher fence would be more likely to lessen the potential detriment to the public welfare, as it will provide for a safer cannabis cultivation site, thus a safer situation for the other properties in the Sandy Valley area. The higher fence will likely detour theft, and as such, the current variance request to allow a 10-foot fence is not allowing for activities that are detrimental or injurious to either public welfare or other properties in the vicinity.)

3. That the strict application of the regulation sought to be modified would result in practical difficulties or hardships inconsistent with, and not necessary for the attainment of, the general purposes of this title.

(Affirmative – Evidence: The proposed fence height variance is being requested to keep the project site safe and detour theft. The proposed project area is in a remote location of the County where cannabis is proposed to be grown. The location makes safety and security issues more difficult to address as there are fewer eyes on the property. The strict application of a 6-foot, rear and side yards and 3.5-foot front-yard fence height could create difficulties/hardships for the applicant in keeping the area safe and free from theft. Granting a variance for a 10-foot fence would still allow the general purposes of Title 18.78 of the Zoning Code to be fulfilled, as 18.78.170., allows for exceptions to the height limitations for fencing with a variance; and therefore, granting a variance for protective fencing is within the general purposes of this title.)

4. The proposed variance does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which the property is situated.

(Affirmative – Evidence: *The project site is in a remote location and in the OS zoning designation. Cannabis Cultivation is an allowed conditional use in the OS zone and the applicant was granted a CUP in September 2019. The variance will allow for a higher fence than is allowed by 18.78.160. Any person with property in the OS zone can apply for the same use and the same variance. 18.78.170 allows for exceptions to the height limitations for fencing with a variance; and therefore, granting a variance for this fencing meets general purposes of title 18.78. For these reasons, the requested variance to allow a 10-foot fence cannot be said to constitute a grant of special privileges. It would, instead, allow the property owner the ability to provide for better safety and security at their cannabis cultivation site, which benefits other properties in the vicinity.*)

5. The proposed variance does not authorize a use or activity that is not otherwise expressly authorized by the zoning regulation governing the parcel of property.

(Affirmative – Evidence: *The proposed variance applies to fence height requirements. The proposed cannabis cultivation is permitted as a conditional use in the OS Zone.*)

6. The proposed variance is consistent with the Inyo County General Plan

(Affirmative – Evidence: *The requested variance presents no inconsistencies with the General Plan designation of Agriculture as it allows for agriculture type uses. The project also promotes Goal AG 1.0 that states: Provide and maintain a viable and diverse agriculture industry in Inyo County and Policy AG-1.2 that states: Support and encourage continued agriculture production activities in the County. The cannabis cultivation business is consistent with both Goal 1.0 and Policy 1.2 as it diversifies and maintains an agriculture type production in the County.*)

7. The requirements of the California Environmental Quality Act have been met.

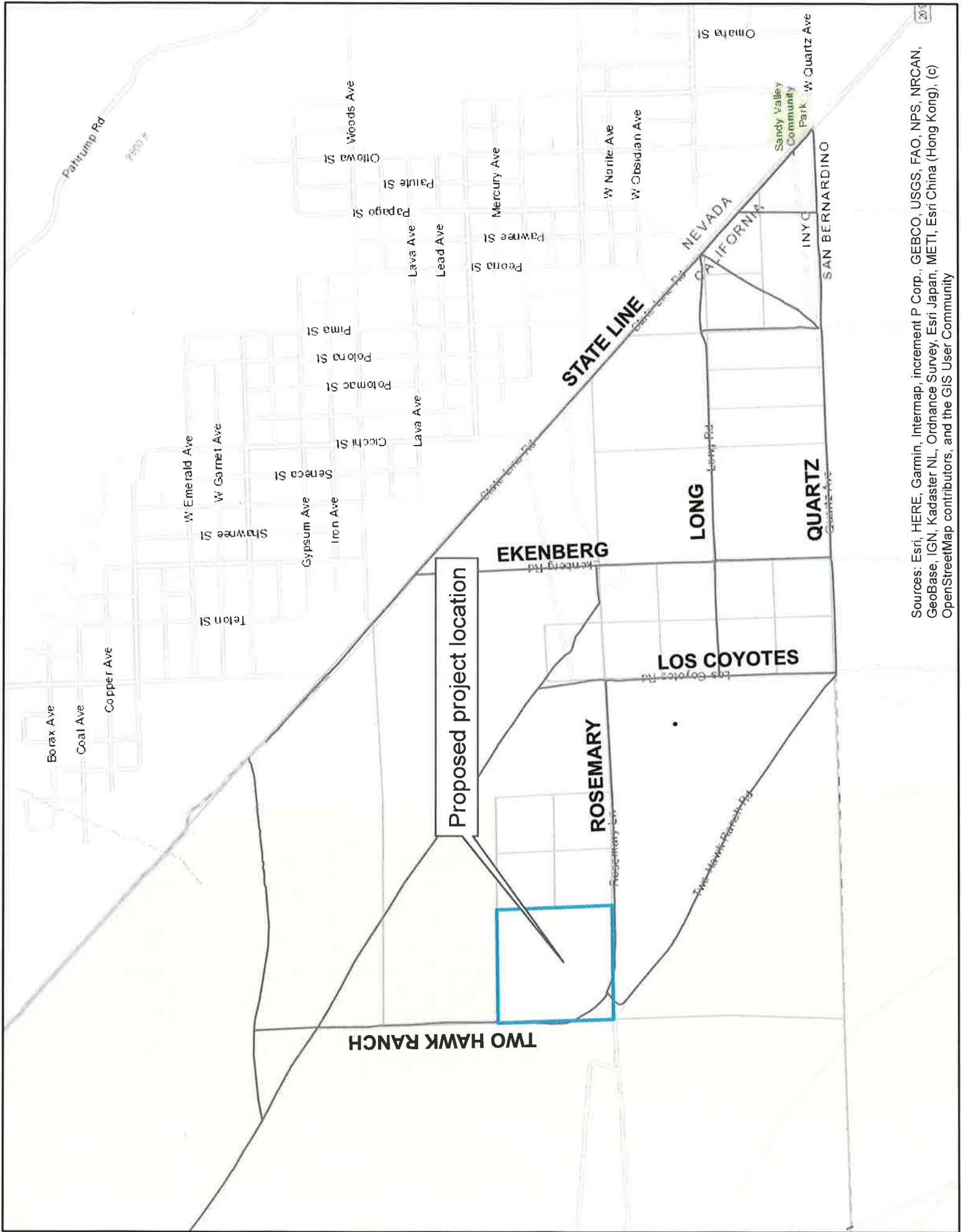
(Affirmative – Evidence: *The requested variance has been determined to be an Exemption under Class 5, 15305 - “Minor alterations to land use limitations, such as lot line adjustments, variances, and encroachment permits on land with a slope of less than 20%, which do not result in changes in land use or density.”*).

Conditions of Approval

- 1.) Hold Harmless: the applicant, landowner, and/or operator shall defend, indemnify and hold harmless Inyo County, its agents, officers and employees from any claim, action, or proceeding against the County, its advisory agencies, appeal boards, or its legislative body concerning Variance #2021-05/Nano Farms or applicant’s failure to comply with conditions of approval.
- 2.) The applicant shall obtain all required permits for all construction pertaining to cannabis cultivation including the fence.

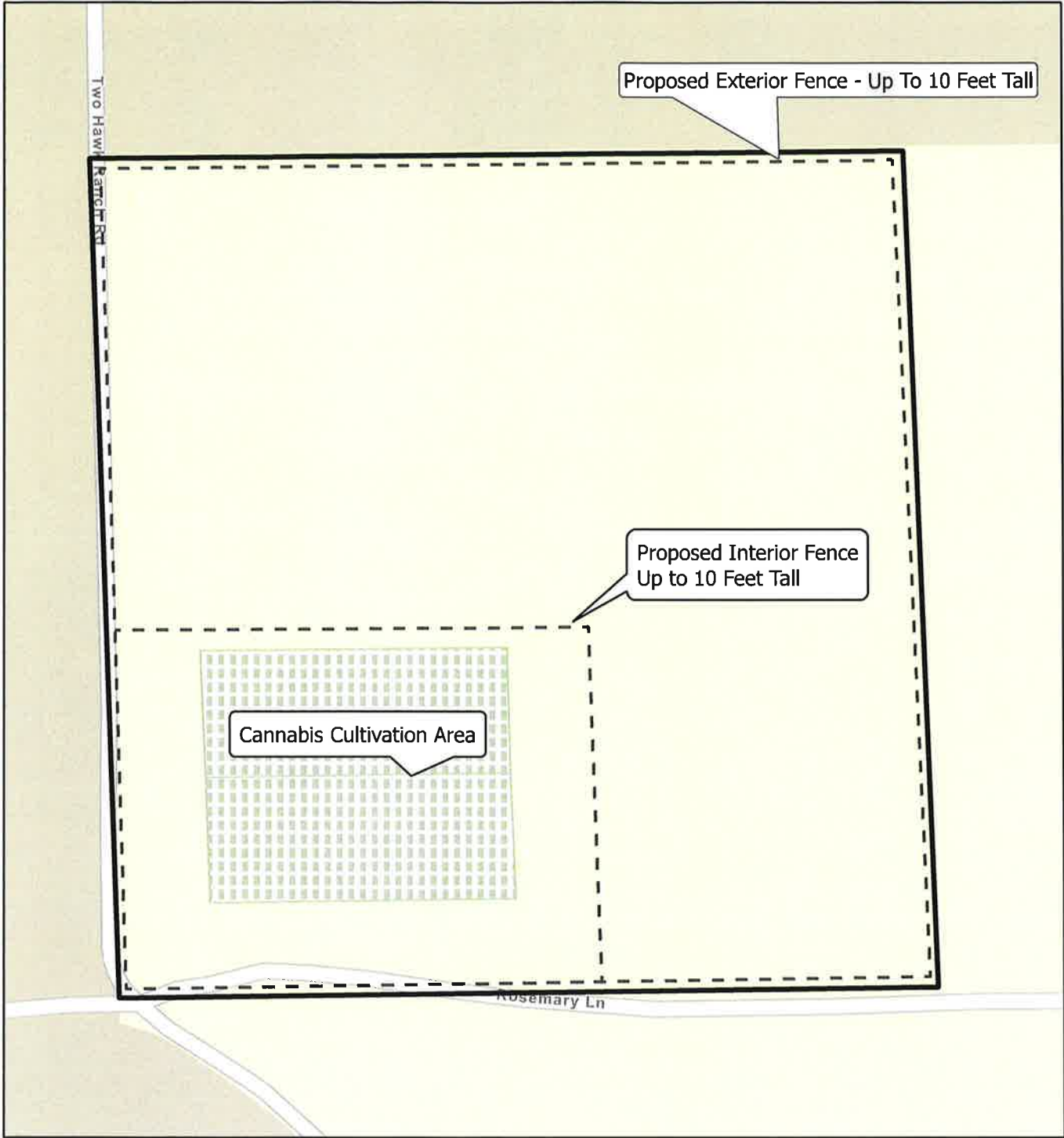
ATTACHMENTS

- Site Map/General Vicinity Map
- Site Plan



Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community

VARIANCE REQUEST

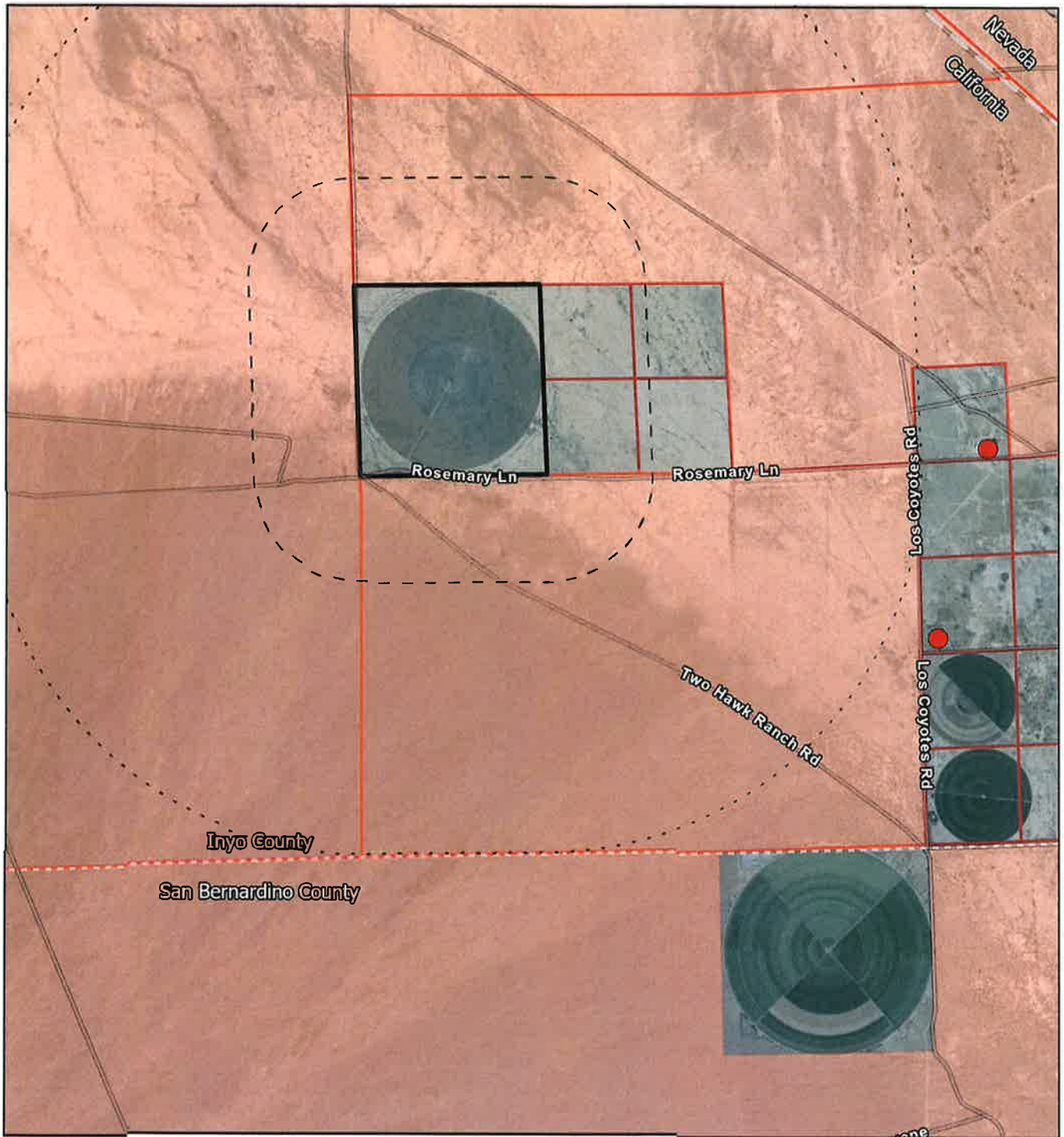


- - - fence
[Grid Pattern] Cannabis Cultivation Area

0 300 600 Feet



FIGURE 2: NANOFARMS NEARBY LAND USES



- Project Area
- 1,500 ft buffer
- parcels
- Private Land
- Residential home
- BLM
- 1 mile buffer

0 0.25 0.5 Miles

