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

PLANNING COMMISSION

MEETING DATE: July 28, 2021

SUBJECT: CUP 2021-02/Cook; and VAR
2021-02/Cook

EXECUTIVE SUMMARY

The applicant, Reginald Cook, sole owner and operator of Eastern Sierra Botanical, has applied for a Conditional Use Permit (CUP) for the cultivation of hemp on his property, located at 1 Hidden Valley Ranch Road, Lone Pine, CA with Assessor Parcel Number (APN) 026-070-09. Due to the shape of the parcel and underlying geology, the applicant has also applied for a Variance to encroach 295 feet into the required 300-foot setback. The CUP is being requested contingent on the Variance.

PROJECT INFORMATION

Supervisory District: 5

Applicant: Reginald Cook, Eastern Sierra Botanical

Landowner: Reginald Cook

Community: Lone Pine, CA

A.P.N.: 026-070-09

Existing General Plan: Rural Protection (RP)

Existing Zoning: Open Space, 40 acre minimum (OS-40)

Surrounding Land Use:

Location	Use	General Plan Designation	Zone
Site	Residential and agriculture	Rural Protection (RP)	Open Space, 40-acre minimum (OS-40)
North	Vacant	State and Federal Lands (SFL)	Open Space, 40-acre minimum (OS-40)
East	Vacant	State and Federal Lands (SFL)	Open Space, 40-acre minimum (OS-40)
South	Vacant	State and Federal Lands (SFL)	Open Space, 40-acre minimum (OS-40)
West	Vacant	State and Federal Lands (SFL)	Open Space, 40-acre minimum (OS-40)

Recommended Action:

- 1.) Approve the Conditional Use Permit 2021-02/Cook, and certify the project as a Negative Declaration under CEQA.
- 2.) Approve the Variance 2021-02/Cook, and certify the project as a Negative Declaration under CEQA.

Alternatives:

- 1.) Specify modifications to the proposal and/or the Conditions of Approval.
- 2.) Make specific findings and deny the application.
- 3.) Continue the public hearing to a future date, and provide specific direction to staff regarding additional information and analysis needed.

Project Planner:

Graham Meese

BACKGROUND

The applicant has applied for a CUP to cultivate hemp on his property located at 1 Hidden Valley Ranch Road, approximately two miles southwest of Lone Pine (vicinity map). In 2018 the applicant was granted a general plan amendment and zone reclassification with the intent to grow marijuana but instead decided to grow industrial hemp. The parcel is approximately 28-acres in size and currently used for residential and agricultural activities including a small vineyard, fruit and nut orchard, and vegetable garden. The property is zoned OS-40, which allows for hemp cultivation with a CUP. The applicant intends to cultivate hemp in three areas of the property totaling approximately 11,410 square feet and use one existing structure to cure the product before transport (see site map). The surrounding area is state and federal property zoned OS-40. The proposed project is in a remote location and is not within 600-feet of a school, daycare, park, or library; and therefore, is not prohibited by state or county exclusion areas.

The applicant has also applied for a variance of 295 feet to cultivate hemp within the 300-foot setback requirements. The available growing area in this parcel is constrained by the shape of the parcel and the unique rock formations found on the property as well as large areas of underground rocks. This property is located in a remote area surrounded by state and federal land zoned OS-40. The three cultivation sites have been previously disturbed and were used as a vegetable garden and lawn. The CUP is being requested contingent on the Variance.

STAFF ANALYSIS

General Plan Consistency

The goal of this project is to allow for a hemp cultivation operation. The project is consistent with the General Plan designation of Rural Protection (RP) as it provides for “low-intensity agriculture.” The RP General Plan designation is compatible with the existing Open-Space (OS-40) 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 hemp. This activity is consistent with Goal AG 1.0, as it diversifies the types of agriculture that currently exist in the County.

Zoning Ordinance Consistency

The proposed project is a CUP to allow for the commercial cultivation of hemp. The OS-40 zone allows for commercial hemp cultivation with a CUP as long as the project can meet the 300-foot setback requirement. Due to the shape of the parcel and underlying geology, the applicant has also applied for a variance to encroach 295 feet into the required 300-foot setback. The CUP is being requested contingent on the Variance. 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 agricultural activities to the county and is consistent with the Open Space purpose statement.

ENVIRONMENTAL REVIEW

Conditional Use Permit 2021-02/Cook and Variance 2021-02/Cook are a Negative Declaration under CEQA. Planning Department staff deemed that the proposed project has no possibility of causing significant environmental effects because the project is occurring in a location that is already disturbed and was used previously as a vegetable garden and lawn. The applicant will be planting directly into the soil, and only naturally amending the soil with leaf mulch, and cow and horse manure. The plants will be watered using drip irrigation from an artesian spring located, and completely contained on the property. The flow from the spring under natural conditions at any time during the year does not create surface flow off of the property and thus is exempt from needing a water right. No listed threatened or endangered plant species are known to exist on the property and this project will not negatively impact the local community as it is located in an isolated valley surrounded by state and federal lands.

TRIBAL CONSULTATION

In compliance with AB 52, SB 18, and Public Resource Code Section 21080.3.1(b), tribes identified as being local to Inyo County, were notified via a certified letter on May 13, 2021 about the project and the opportunity for consultation on this project. The tribes notified were as follows: Big Pine Tribe of Owens Valley, Bishop Paiute Tribe, Fort Independence Indian Community of Paiutes, Lone Pine Paiute-Shoshone Tribe, Timbisha Shoshone tribe, Twenty-Nine Palms Band of Mission Indians, Cabazon Band of Mission Indians, and the Torrez Martinez Desert Cahuilla Indians.

Inyo County has not received any responses to tribal consultation requests.

NOTICING & REVIEW

The applications for CUP 2021-02/Cook and VAR 2021-02/Cook have been reviewed by the appropriate County departments with no comments indicating there are any issues with the request. The Mono Inyo County Agricultural department stated that if the applicant decides to use any pesticides they must first apply for an Operator ID from the Ag. Commissioner.

The project was noticed on July 15, 2021 in the Inyo Register and mailed to property owners within 300-feet of the project location. No comments have been received by staff to date.

RECOMMENDATIONS- CUP 2021-02/Cook

Planning Department staff recommends the approval of Conditional Use Permit 2021-02/Cook and certify that it is exempt from CEQA.

FINDINGS

1. The proposed Conditional Use Permit is a Negative Declaration under CEQA guidelines and the provisions of the California Environmental Quality Act have been satisfied.
[Evidence: Conditional Use Permit 2021-02 is a Negative Declaration under CEQA. The proposed project has no possibility of causing significant environmental effects because the project is occurring in a location that is already disturbed and had been used previously as a personal vegetable garden and lawn. The applicant will be planting directly into the soil, and only naturally amending the soil with leaf mulch, and cow and horse manure. The plants will be watered using drip irrigation from an artesian spring located and completely contained on the property. The flow from the spring under natural conditions at any time during the year does not create surface flow off of the property and thus is exempt from needing a water right. No listed threatened or endangered plant species are known to exist on the property and this project will not negatively impact the local community as it is located in an isolated valley surrounded by state and federal lands.]
2. The proposed Conditional Use Permit is consistent with the Inyo County General Plan Land Use designation of Rural Protection (RP).
[Evidence: The goal of this project is to allow for the cultivation of an agricultural product, hemp, on a parcel of land with an (RP) General Plan designation. The project is consistent with the General Plan designation of Rural Protection (RP) as

it provides “low-intensity agriculture.” The (RP) General Plan designation is compatible with the existing Open-Space (OS-40) zoning designation. The proposed project is relatively small(11,410 Square Feet) and located on previously disturbed land. This project will bring more agricultural activities to the county and is proposed to be conducted outdoors, using drip irrigation. 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 hemp. This activity is consistent with Goal AG 1.0, as it diversifies the types of agriculture that currently exist in the County.]

3. The proposed Conditional Use Permit is consistent with the Inyo County Zoning Ordinance, which permits hemp cultivation activities, as a conditional use, in the OS-40 zone (contingent on the proposed Variance).

[Evidence: The OS-40 zone allows for commercial hemp cultivation with a CUP as long as the project can meet the 300-foot setback requirement. Due to the shape of the parcel and underlying geology, the applicant has also applied for a variance to encroach 295 feet into the required 300-foot setback, thus the approval of the CUP will be contingent upon the approval of the Variance. The Open Space zone, within its purpose statement, says that it is established to: encourage the protection of... agricultural lands from fire, erosion, soil destruction, pollution, and other detrimental effects of intensive land use activities, and crop cultivation is listed as a principal permitted use.]

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 goal of this project is to examine the economic viability of cultivating hemp on his property and determine what markets he can sell his product to. These goals have the potential to benefit both County businesses, and others in the State.]

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 type of agricultural use. The hemp cultivation would replace a pre-existing personal vegetable garden and lawn. Due to the relatively small size of the project (11,410 square. feet), it will not cause impacts on transportation or service facilities in the vicinity as no special equipment, large vehicles, or paid employees will be needed in the production or harvesting of Hemp.]

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 to allow for hemp cultivation. This agricultural use will not change or increase the current level or general type of allowed uses in the Lone Pine area and the proposed project is located in a privately owned, isolated canyon, not visible by the town of Lone Pine or from the community in Alabama Hills; 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: Hemp cultivation activities are allowed but require a conditional use permit per Inyo County Code Section 18.45.030(P) and it is, therefore, necessary for the operation of Eastern Sierra Botanicals.]

CONDITIONS OF APPROVAL

1. Hold Harmless

The applicant 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 2021-02/Cook. The County reserves the right to prepare its own defense.

2. Compliance with County Code

The applicant 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.

3. Use of Pesticides

The applicant shall obtain an Operator ID from the Agricultural Commissioner and contact Inyo County Environmental Health if they intend on using any pesticides.

RECOMMENDATIONS- VAR 2021-02/Cook

Planning Department staff recommends the approval of Variance 2021-02/Cook and certify that it is exempt from CEQA.

Variance Request & Site Characteristics

The applicant is requesting a variance to cultivate hemp in three areas on his property totaling an area of approximately 11,410 square feet (see site map). Site “A” would encroach 295-feet, site “B” would encroach 214-feet, Site “C” would encroach 290 feet, and the existing structure used for curing would encroach 272 feet into the required 300-foot setback (see site map and photos). Sites A and B will have approximately 50 hemp plants, and site C will have approximately 800 hemp plants, all planted directly into the ground. All sites will be drip irrigated from an artesian spring located on and completely contained on the property. The soils in all sites have been previously disturbed and used as a vegetable garden and lawn and naturally amended using leaf

mulch, horse manure, and cow manure. These same amendments are planned to be used in this project. The applicant shall obtain an Operator ID from the Agricultural Commissioner and contact Inyo County Environmental Health if they intend on using any pesticides or herbicides.

The applicant has requested this variance because the available growing area on this parcel is constrained by the shape of the parcel and the unique rock formations found on the property, as well as large areas of underground rocks (see site photos). The use of preexisting disturbed areas will allow the applicant to cause no new ground disturbance.

This property is located up a remote canyon southwest of Lone Pine and the surrounding parcels are state and federally owned, zoned OS-40. The nearest privately owned parcel is over a mile away, to the south, in the Alabama Hills.

Previous Variance History

No prior variances have been applied for regarding this property.

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.

RECOMMENDATIONS- Variance 2021-02/Cook

Planning Department staff recommends the approval of Variance 2021-02/Cook and certify that it is exempt from CEQA.

Findings

Staff has reviewed this 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: The property is zoned Open Space, 40 Acre minimum (OS-40), which allows for commercial hemp cultivation with a CUP as long as the project can meet the 300-foot setback requirement. The loss of suitable areas to cultivate hemp on this parcel is due to the shape of the parcel, the rock formations throughout the property and large areas of underground rocks. The Open Space zone, within its purpose statement, says that it is established to: encourage the protection of... agricultural lands from fire, erosion, soil destruction, pollution and other detrimental effects of intensive land use activities, and crop cultivation is listed as a principal permitted use.]
2. That the result would not be detrimental to the public welfare, or injurious to property in the vicinity.
[Affirmative – Evidence: Approving this variance will allow for the cultivation of hemp to encroach 295-feet into a 300-foot setback. This property is located in a remote area southwest of Lone Pine and is surrounded by state and federal lands. The closest privately owned parcel with a house is located over a mile away to the south. The proposed variance will not cause a situation that could be considered detrimental to the public welfare as the proposed development is located in an isolated canyon, obscured from public view, and will not have any impact on the surrounding public lands.]
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 project site area is constrained by the shape of the parcel, the rock formations throughout the property, and large areas of underground rocks that reduce the areas of viable land to cultivate hemp. These factors create difficulties/hardships in meeting the required setback requirements for the cultivation of hemp in the Open Space zone. Granting a variance to encroach 295-feet into a 300-foot setback would still allow the general purposes of Title 18.12 (OS) of the Zoning Code to be fulfilled, as the encroachment would not change the rural agricultural character or use of the property.]

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 located in an isolated canyon in a rural area southwest of Lone Pine surrounded by state and federal lands. The applicant has designed the three plot locations to avoid any additional ground disturbance and to not disrupt the general appearance of the undeveloped hillside. The project area is located in the bottom of a small canyon out of sight from any surrounding towns, neighborhoods, or major roads. For these reasons, the requested variance to encroach into the required setback cannot be said to constitute a grant of special privileges. Rather, it allows the owner to use the property under an allowable conditional use.]
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 would allow for the cultivation of hemp, a conditional use under the Open Space zoning regulations.]
6. The proposed variance is consistent with the Inyo County General Plan
[Affirmative – Evidence: The requested variance presents no inconsistencies with the General Plan land use designation for the project site, which is Rural Protection (RP) as it provides “low-intensity agriculture. The (RP) General Plan designation is compatible with the existing Open-Space (OS-40) 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 hemp. This activity is consistent with Goal AG 1.0, as it diversifies the types of agriculture that currently exist in the County.]
7. The requirements of the California Environmental Quality Act have been met.
[Affirmative – Evidence: Variance 2021-02 is a Negative Declaration under CEQA. The proposed project has no possibility of causing significant environmental effects because the project is occurring in a location that is already disturbed and had been used previously as a vegetable garden and lawn. The applicant will be planting directly into the soil, and only naturally amending the soil with leaf mulch, and cow and horse manure. The plants will be watered using a drip-irrigated from an artesian spring located on and completely contained on the property. The flow from the spring under natural conditions at any time during the year does not create surface flow off of the property and thus is exempt from needing a water right. No listed threatened or endangered plant species are known to exist on the property and this project will not negatively impact the local community as it is located in an isolated valley surrounded by state and federal lands.]

Conditions of Approval

1.) **Hold Harmless**

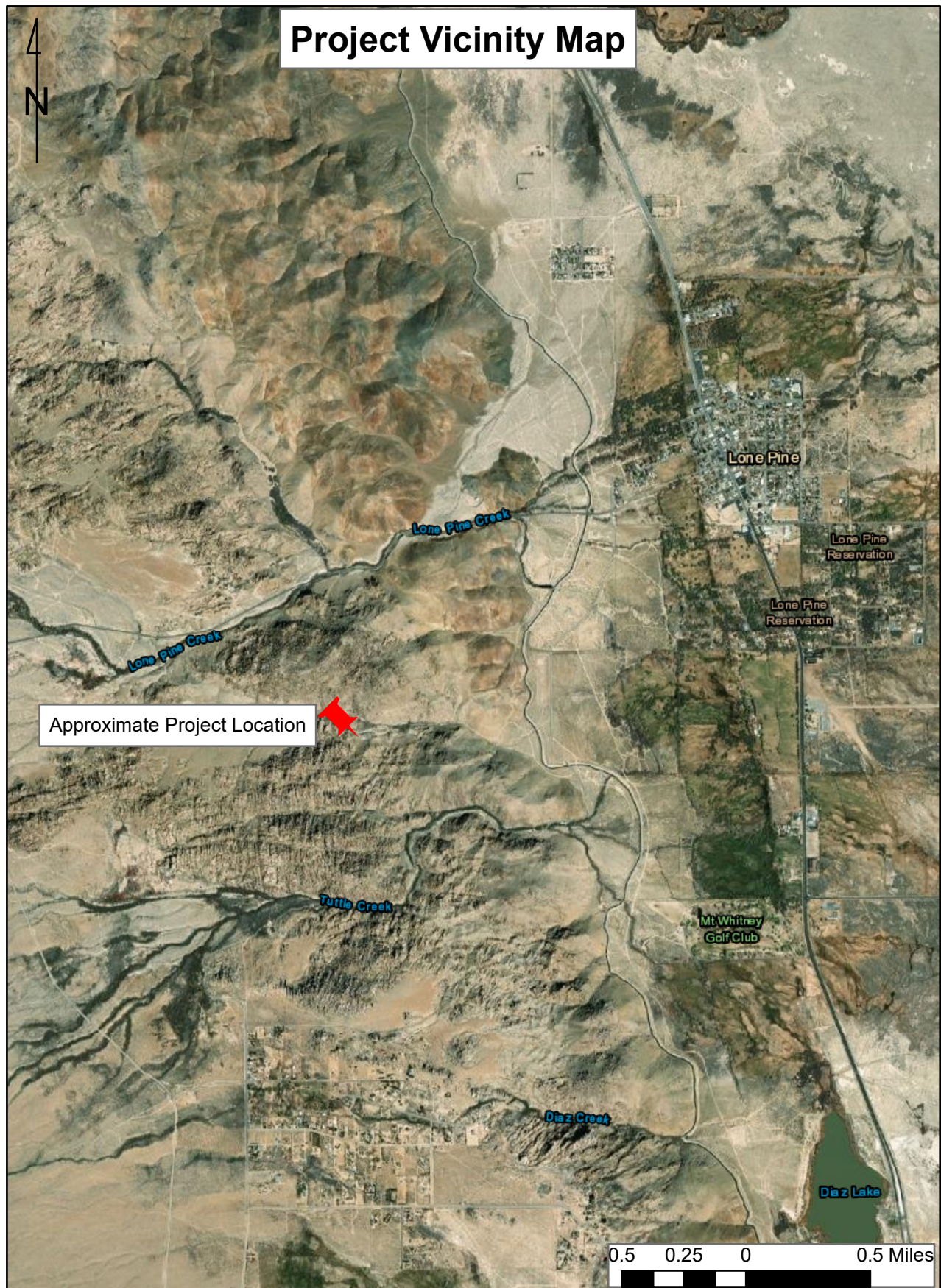
The applicant, landowner, and/or operator shall defend, indemnify and hold harmless Inyo County, its agents, officers and employees from any claim, action, or proceeding against the County, its advisory agencies, appeal boards, or its legislative body concerning Variance 2021-02/Cook or applicant's failure to comply with conditions of approval.

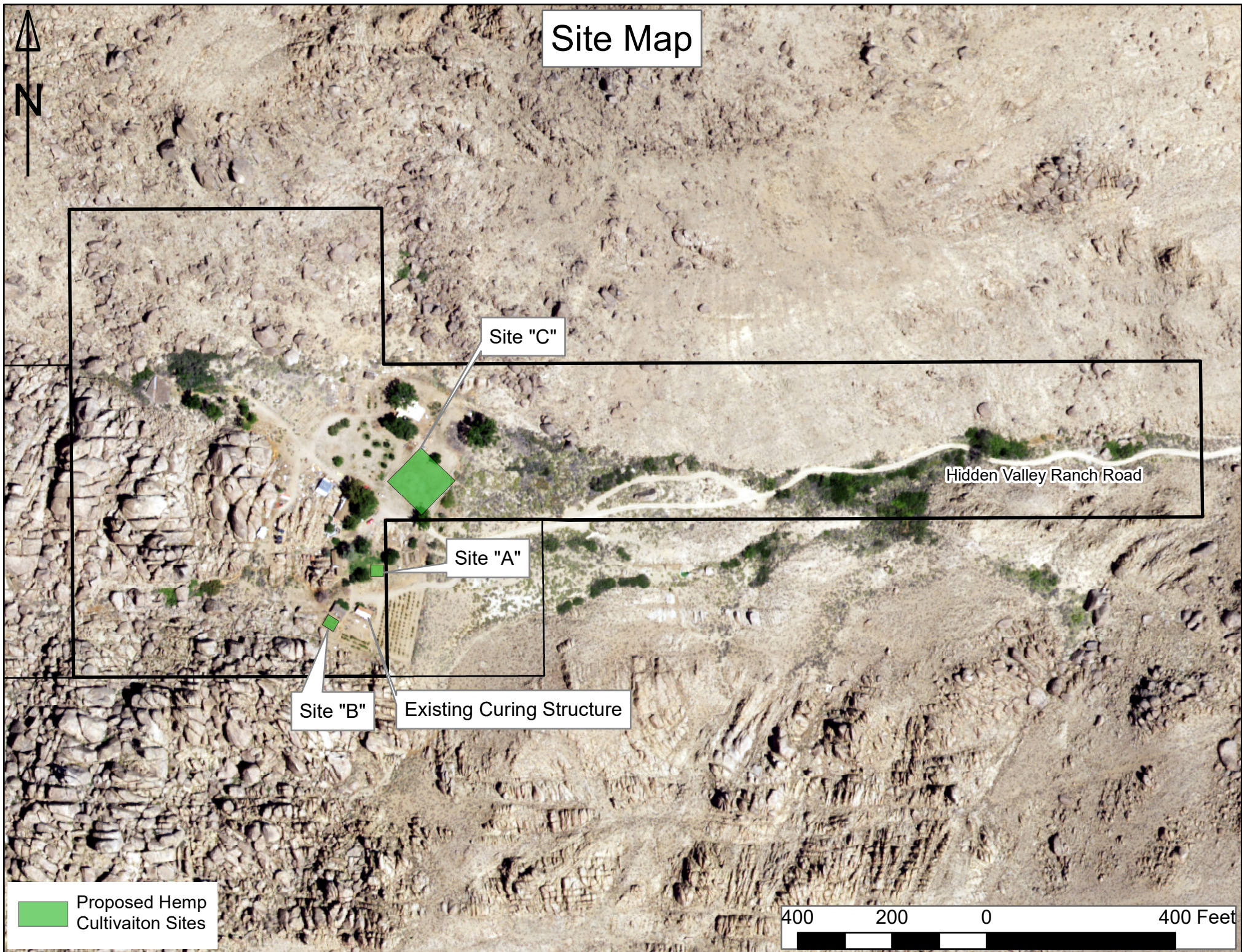
2.) **Compliance with County Code**

The applicant/developer shall conform to all applicable provisions of Inyo County Code including the Building and Safety Code and the Health and Safety Code.

Attachments:

- Vicinity Map
- Site Map
- Site Photos





Ingress / Egress









Site "C"