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

PLANNING COMMISSION MEETING DATE: December 1, 2021

SUBJECT: Conditional Use Permit (CUP) 2021-08/Andracki; Variance (VAR) 2021-06/Andracki; Variance (VAR) 2021-07/Andracki

EXECUTIVE SUMMARY

The applicant has applied for a CUP and two VARs to operate a commercial cannabis cultivation operation located at 691 Desert Trail Way in the community of Charleston View.

PROJECT INFORMATION.

Supervisory District: 5

Project Applicant: Stephen Andracki

Property Owner: Stephen Andracki

Site Address/ 691 Desert Trail Way, Charleston View, CA

Community: Charleston view

A.P.N.: 048-433-36

General Plan: Resort Recreational (RES)

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

Size of Parcel: Approximately 10-acres

Surrounding Land Use:

Location:	Use:	Gen. Plan Designation	Zoning
Site	Residential and organic farming	Resort Recreational (RES)	Open Space with a 40-acre minimum (OS-40)
North	Vacant	Resort Recreational (RES)	Open Space with a 40-acre minimum (OS-40)
East	Vacant	Resort Recreational (RES)	Open Space with a 40-acre minimum (OS-40)
South	Vacant	Resort Recreational (RES)	Open Space with a 40-acre minimum (OS-40)
West	Vacant	Resort Recreational (RES)	Open Space with a 40-acre minimum (OS-40)

Staff Recommended Action: 1.) Approve the Conditional Use Permit (CUP) 2020-08/Andracki; Variance (VAR) 2021-06/Andracki; and Variance (VAR) 2021-07/Andracki 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 has requested a CUP to operate a medical commercial cannabis cultivation operation, located at 691 Desert Trail Way in the community of Charleston View. This establishment will grow cannabis plants for medical uses. The mature plants will also be dried, cured, trimmed and packaged at the project site (activities included with cultivation). The property is zoned OS, which allows for commercial cannabis cultivation with a CUP. The surrounding area is vacant and zoned OS. 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 the Andracki cannabis cultivation project is currently in use as an organic vegetable and egg farm and vineyards. It is already developed with agriculture uses and is highly disturbed. There is a single-family home where the owner/grower resides part time.

The project will also require a setback variance as it cannot meet the 300-foot setback requirement set forth by the County cannabis cultivation requirements. It also needs a fence height variance for a higher than the 6-foot limit as provided for in the zoning code, for required security.

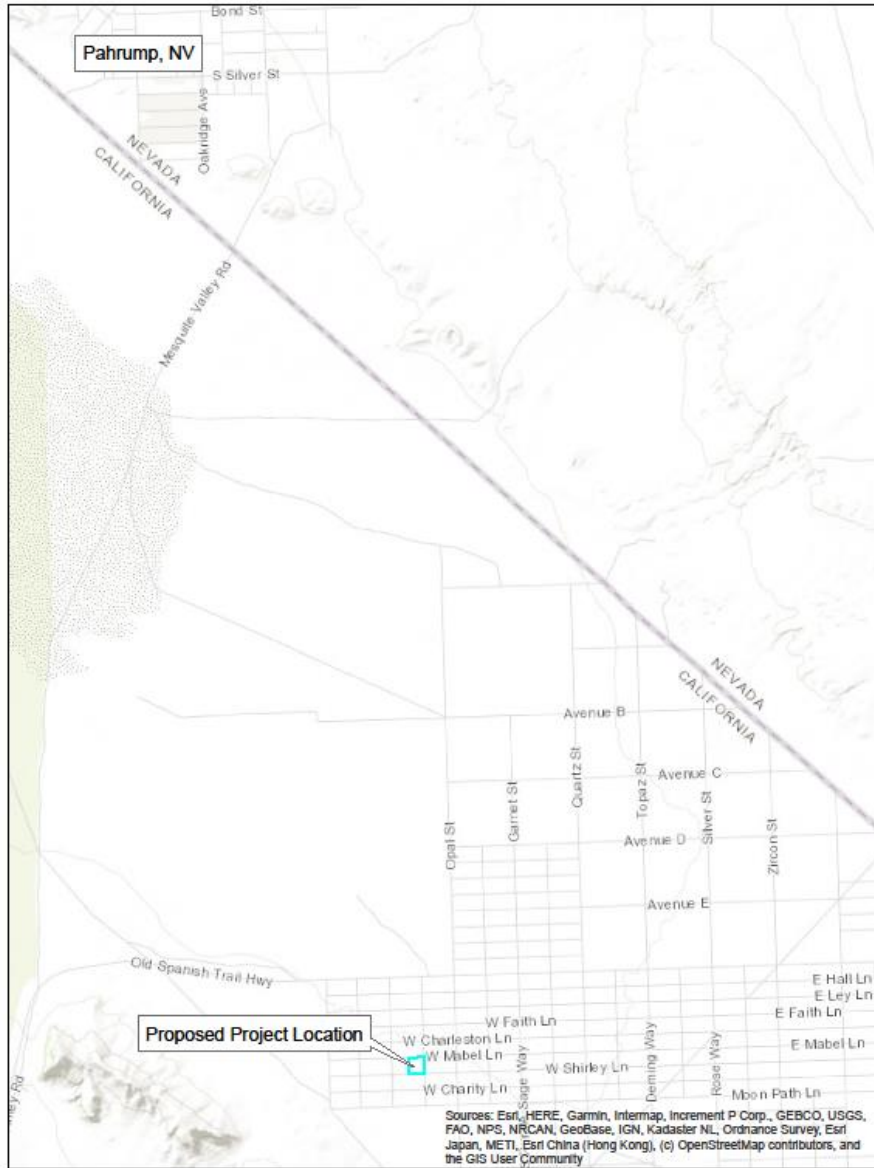
The project will occur in phases that could take up to eight-years to complete. The first phase will occur strictly within existing buildings and grow areas. Additional hoop houses (4), a drying and curing building and up to two additional aquaponics greenhouses may be phased in over time. Any and all additional building/growing areas will be located strictly on areas already in use for the current farm. All cannabis will be organically grown and waste will be ground up and used for compost. The farm is also powered by 50KW solar array with batteries. Generators are only used when sunlight is low.

At full buildout, the cannabis cultivation operations will employ approximately eight people. Currently, there are four farm workers plus the two owners at the property on a daily basis. Delivery truck trips will stay at about twice a week as they are now. Overall traffic may increase slightly with the change from the existing farm to a cannabis cultivation operation at buildout. The owner maintains the dirt road to the farm from the Old Spanish Trail Highway and will continue to do so.

Water use will also not increase with the change in crops. Currently, the farm and the residential yard area require about 1.8-million gallons of water per year. At phase 1 this will be lowered by about 90% and will then go back up incrementally with the development phases but will not exceed the amount of water currently used. The water is provided by two onsite wells and there is not another water source to the project area, other than trucking it in. Water will also continue to be recycled and rainwater captured by the applicant to help minimize well water usage and to meet the goal of a sustainable cannabis cultivation project.

The OS zone requires a 300-foot setback for the entire perimeter of a cultivation project area. The applicant's property is 10-acres and cannot accommodate the setback requirement; therefore, a setback variance is being requested for the project. This request is for a 200-foot encroachment on the north and west sides and a 250-foot encroachment on the south and east. Since this property is located far from other development and is already being used for a very similar use the variance request is reasonable. A fence height variance is also being sought for the required security for a cannabis related business.

Vicinity Map



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 Resort Recreation (REC) as it allows for commercial activities and the project promotes Goal AG 1.0 that states: *Provide and maintain a viable and diverse agriculture industry in Inyo County.* It also promotes Policy AG-1.2 that states: *Support and encourage continued agriculture production activities in the County.* The applicant is proposing to grow cannabis as a replacement to organic vegetable and egg farming and vineyards, which is consistent with both, as it diversifies and maintains an agriculture type of production.

Zoning Ordinance Consistency

The OS zoning designation allows for agriculture uses. Commercial cannabis cultivation is also allowed in the OS zone with a CUP. The applicant has applied for the CUP to operate the cannabis cultivation project in compliance with the County's zoning ordinance.

ENVIRONMENTAL REVIEW

Pursuant to the California Environmental Quality Act (CEQA), the proposal is covered by the Common Sense 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 being used as a farm; is disturbed by the farming use; and, the proposed activities will result in no change to the impact of uses than are allowed without the CUP. It will not cause new impacts on the property since all future activity will occur in the same disturbed areas as are currently used for the existing farm.

NOTICING & REVIEW

The applications for CUP 2021-08 and VAR 2021-06/Andracki have been reviewed by the appropriate county departments and the Southern Inyo Fire Protection District and no issues were reported. Before the applicant can begin the cannabis cultivation activities, a cannabis business license will also need to be obtained from the Inyo Mono Agricultural Commission.

CUP 2021-08 and VAR 2021-06 and 2021-07/Andracki were 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 Inyo County Code 18.78.360(F). No comments have been received to date.

RECOMMENDATION

Planning Department staff recommends the approval of CUP 2021-08; VAR 2021-06 and VAR 2021-07/Andracki with the following Findings and Conditions of Approval:

FINDINGS – Conditional Use Permit

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 Common Sense 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 being used as a farm and is disturbed; and, the proposed activities will result in no change to the impact of uses than are allowed without the CUP or currently or historically conducted on the property.]

2. The proposed Conditional Use Permit is consistent with the Inyo County General Plan Goal 1.0 and Policy 1.2.
[Evidence: The goal of this project is to allow for a commercial cannabis cultivation operation. General Plan Goal AG 1.0 states: Provide and maintain a viable and diverse agriculture industry in Inyo County and Policy AG-1.2 states: Support and encourage continued agriculture production activities in the County. The applicant is proposing to grow cannabis as a replacement to organic vegetable and egg farming and vineyards, which is consistent with both Goal 1.0 and Policy 1.2 as it diversifies and maintains agriculture type production in the County.]
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 OS zone.
[Evidence: The OS zoning designation allows for agriculture uses. Commercial cannabis cultivation is also allowed in the OS zone with a CUP. The applicant has applied for the CUP to operate the cannabis cultivation project in compliance 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 as a farm and is highly disturbed. It is related to the 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 as a farm and is 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 project was reviewed by the Southern Inyo Fire District and they found no issues with it. It will also be reviewed by the Inyo County Sheriff for a cannabis business license, which requires a security plan.]

Due to these factors, 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: A commercial cannabis cultivation operation in the OS zone requires a CUP per Inyo County Code Section 18.12.040(N) and is therefore necessary for the operation of the project.]

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.

Findings – Variance 2021-06 – Setback Encroachment

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) 18.12.040 (N) requires 300-foot front, rear and side yard setbacks for cannabis cultivation. Due to the current use and conditions of the proposed project site, this setback requirement is not attainable. The property is currently developed with an organic vegetable and egg farm and vineyards. The applicant will only grow cannabis in the areas already disturbed by current farming on the property. Land within the County that is designated OS is mostly vacant and consist of parcels that are at least 40-acres in size. Some has agriculture and residential uses. Most of these uses are not used for commercial cannabis and are not as remote as this location, nor are they replacing existing agriculture uses. These factors are unique with regard to the OS zone, and warrant the applicant's need for setback encroachments.*)

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

(Affirmative – Evidence: *Allowing for the encroachments into the setbacks keeps the cannabis cultivation within the existing foot print of an operating farm. The property is located in the remote area of Charleston View and surrounded by vacant land. The nearest other developed property (has a vacant mobile home) in the vicinity is about .25-miles away. Allowing the encroachments into the setbacks is not allowing for activities that are detrimental or injurious to either pubic welfare or other properties in the vicinity as it is sparsely populated and primarily undeveloped.*)

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 encroachments into the required yard setbacks is being requested so the applicant can convert an existing organic vegetable and egg farm and vineyards to an organic medical cannabis cultivation farm. The strict application of the 300-foot setbacks would essentially stop the project. Granting a variance for the encroachments would still allow for the general purposes of Title 18.12 of the Zoning Code to be fulfilled, as the OS zone encourages agriculture; allows for farms, ranches, greenhouses etc.; and, allows for commercial cannabis cultivation as a conditional use; therefore, the setback encroachment will not affect the general purposes of 18.12.*)

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 proposed cannabis cultivation project is located in the OS zone and about .25-miles from the nearest other development (a vacant mobile home). Commercial cannabis cultivation is an allowed conditional use in the OS zone. The*

variance will allow for encroachments into the front, rear and side yard setbacks, but will not create additional disturbance or expansion of the area already used for farming. Any person with property in the OS zone can apply for the same use and the same variance. For these reasons, the requested variance to encroach into the yard setbacks cannot be said to constitute a grant of special privileges. It would, instead, allow the continued use of the property for a type of agriculture.)

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 front, rear and side yard setback requirements. The proposed commercial cannabis cultivation use 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 REC as it allows for commercial 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 applicant is proposing to grow cannabis as a replacement to organic vegetable and egg farming and vineyards, which is consistent with both Goal 1.0 and Policy 1.2 as it diversifies and maintains agriculture production in the County.)

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

(Affirmative – Evidence: The requested variance is being considered along with Conditional Use Permit 2021-08/Andracki and has been determined to be an Exemption under CEQA.)

Findings – Variance 2021-07 – Fence Height

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 will be 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 applicants 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, and a safer situation for the other properties in the Charleston View area. The higher fence will likely detour theft, and as such, the current variance request to allow an 8-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 where cannabis will 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 fence height could create difficulties/hardships for the applicant in keeping the area safe and free from theft. Granting a variance for an 8-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 for protective fencing. Although 18.78.170 addresses public property and swimming pools, the intent is safety; 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. 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 for protective fencing and although 18.78.170 addresses public property and swimming pools, the intent is safety; and therefore, granting a variance for protective fencing is within the general purposes of title 18.78. For these reasons, the requested variance to allow an 8-foot fence cannot be said to constitute a grant of special privileges. It would, instead, allow the property owners 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 REC as it allows for commercial 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 applicant is proposing to grow cannabis as a replacement to organic vegetable and egg farming and vineyards, which is consistent with both Goal 1.0 and Policy 1.2 as it diversifies and maintains agriculture production in the County.)

7. The requirements of the California Environmental Quality Act have been met. (Affirmative – Evidence: *The requested variance is being considered along with Conditional Use Permit 2021-08/Andracki and has been determined to be an Exemption under CEQA.*)

CONDITIONS OF APPROVAL

1. The applicant shall work with the Inyo County Environmental Health Department and the County Building and Safety Department to obtain all necessary permits for all phases of the project. Failure to comply may cause revocation of CUP 2021-08; VAR 2021-06; and, VAR 2021-07/Andracki.
2. All phases of the project shall be constructed only in areas currently in use for vegetable and egg production and vineyards.

3. Hold Harmless

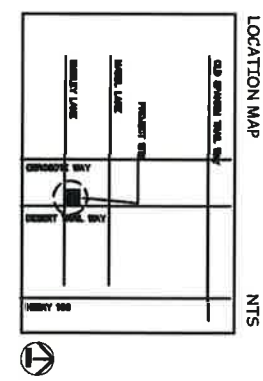
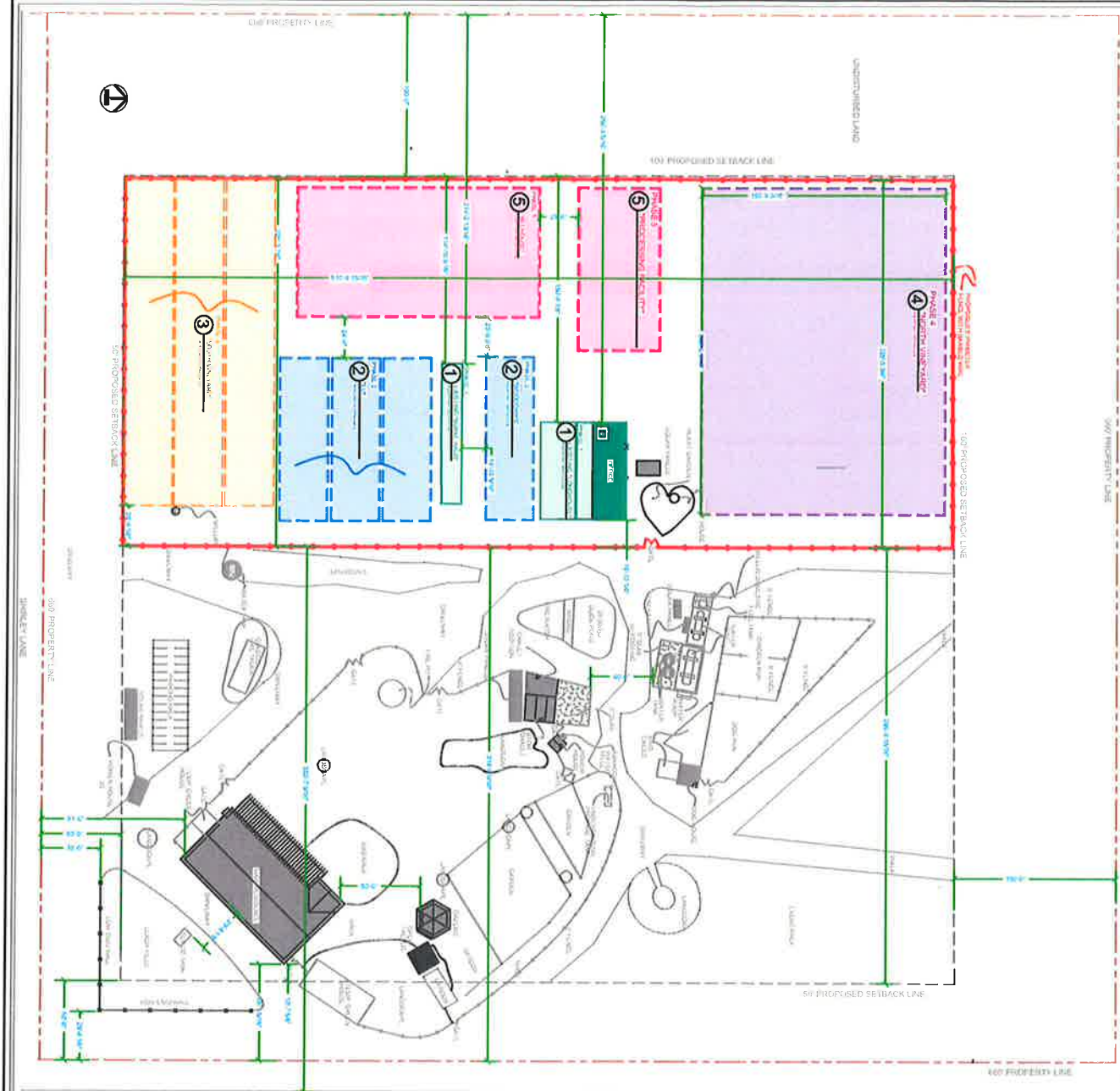
The applicant/developer shall defend, indemnify and hold harmless Inyo County agents, officers, and employees from any claim, action or proceeding against the County or its agents, officers, or employees to attack, set aside, void or annul an approval of the county, its advisory agencies, its appeals board, or legislative body concerning Conditional Use Permit No. CUP 2021-08; VAR 2021-06; and, VAR 2021-07/Andracki. The County reserves the right to prepare its own defense.

4. 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

- Site Plan



1 PHASE 1 - EXISTING (AREAS IN GREEN) - EXISTING "LONGHOUSE" AQUAPONIC GREENHOUSE & EXISTING "BURKE HAUS" AQUAPONIC GREENHOUSE.

2 PHASE 2 - PROPOSED (AREAS IN BLUE) AQUAPONIC GREENHOUSE 100'x30'.
(3) PROPOSED "EU" INGROUND HOOP-HOUSES EACH HOOP-HOUSE TO BE 100'x30'.

3 PHASE 3 - PROPOSED (AREAS IN ORANGE) PROPOSED "SOUTH VINEYARD" INGROUND HOOP-HOUSES 200'x30'.

4 PHASE 4 - PROPOSED (AREAS IN PURPLE) PROPOSED "NORTH VINEYARD" FUTURESTIC AQUAPONIC GREENHOUSE 200'x150'.

5 PHASE 5 - PROPOSED (AREAS IN PINK) PROPOSED "PROCESSING FACILITY" SITE BUILT 100'x50'.
(1) PROPOSED "BEENHOUSE" AQUAPONIC GREENHOUSE 150'x80'.

ALL AREAS IN GREY ARE EXISTING, AS IS PHASE ONE IN GREEN. PERIMETER FENCE IS PROPOSED 6' CHAINLINK FENCE WITH BARBED WIRE ALONG TOP AND A RELIACY SCREEN TO RUN THE ENTIRE LENGTH OF FENCE, APPROXIMATELY 511'x226' (116,000 sq ft).

NEVADA GEO-TECH, INC.
 3170 EAST MANASSAS BLVD, MANASSAS, NEVADA 89001
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 info@geotech.com

LICENSURE EXPENSE
 DIVISION NUMBER DATE NOTES
 PROJECT NUMBER DATE NOTES

PROPOSED AQUAPONIC GROW AREA
 SQUARE FOOTAGE = 116,000 sq ft
 AREA = 271 ac

GENERAL NOTES
 COUNTY OF INDO. DEPARTMENT OF BUILDING & SAFETY
 1100 W. WASHINGTON ST., INDIANAPOLIS, IN 46202
 ALL WORK DESCRIBED HEREIN SHALL BE IN ACCORDANCE WITH ALL LOCAL ORDINANCES AND ALL APPLICABLE STATE AND FEDERAL REGULATIONS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPLICABLE AGENCIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPLICABLE AGENCIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPLICABLE AGENCIES.

PROJECT INFO
 SITE ADDRESS: 601 DESERT TRAIL WAY, CHARLESTON WYOM. 82209
 OWNER: GRENK-S-NO
 ARCHITECT: TDC ARCHITECT
 DATE: 2/23/2021
 PROJECT NUMBER: 1575/21/01
 ZONING: OS 90
 PARCELS: 1575/21/01

PROPOSED SITE PLAN
 PHASE 1-5
 SHEET NO: SP-1
 DATE: 2/23/21
 SCALE: ALL
 PROJECT NO: 1575/21/01