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GAVIN NEWSOM, Governor
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January 04, 2021
Sent via email

Governor's Office of Planning & Research

Jan 05 2021

STATE CLEARINGHOUSE

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Inyo Face Cannabis Retail and Cultivation (Project)
Initial Studies and Draft Mitigated Negative Declarations (IS/MNDs)
SCH#s 2020120074 and 2020120075

Dear Cathreen:

The California Department of Fish and Wildlife (CDFW) received two Notices of Intent to Adopt an MND from Inyo County for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.[1]

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife; CDFW appreciates the opportunity to respond to both Draft IS/MNDs in one letter. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is California's Trustee Agency for fish and wildlife resources and holds those resources in trust by statute for all the people of the state. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

[1] CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

CDFW is also submitting comments as a Responsible Agency under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

Proponent: Inyo Face, LLC.

Project Description: A complete project description is not provided in the Draft IS/MNDs. The Project consists of cannabis cultivation and a retail cannabis business to be located on the parcel directly north of the cannabis cultivation. Although there are separate Draft IS/MNDs for the cultivation and retail businesses, they rely on a single Biological Resources Report and the content of Section IV Biological Resources (p 8) of the Draft IS/MNDs is identical. Therefore, CDFW is commenting on both Draft IS/MNDs in this letter. According to the two Draft IS/MNDs, construction is proposed for a 1,335 sq.ft. retail cannabis store that is 13-feet 6-inches in height and an 18,504 sq.ft. cannabis cultivation and processing building that is 22-feet in height on two adjacent parcels.

According to the Biological Resources Report (accessed at the Inyo County website, https://www.inyocounty.us/services/planning-department/current-projects), the Project would consist of one single-story commercial building, parking lots, a secure staging area, and landscaping. Access to the site would be from East Old Spanish Trail Highway, with emergency access from Hall Lane. Utility access will be provided from East Old Spanish Trail Highway, water will be from a proposed well, and sewage will be handled with an on-site septic system.

Location: 800 East Old Spanish Trail Highway in the unincorporated community of Charleston View of southeastern Inyo County. APNs 048-391-05-00 and 048-391-12-00. 35°58'15.61"N, 115°53'44.26"W. The Project parcels are bordered on the North by East Old Spanish Trail Highway, on the East by Carpenter Rd, on the South by Hall Ln. and on the West by two additional parcels planned for later development by the same project proponent. The area around the Project consists primarily of open desert land with a few single-family homes and graded roads. The Project site is located within the Stump Springs-Calvada Springs watershed, in an alluvial basin which drains towards a dry lakebed in the lower Pahrump Valley. The Project location is approximately 20 miles East of Tecopa and 45 miles West of Las Vegas, NV.

Timeframe: No timeframe given in the Draft IS/MNDs.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Inyo County in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. CDFW is also concerned that potential cannabis related biological impacts and corresponding mitigation are not identified in the Draft IS/MNDs.

In addition to the sections below, CDFW is concerned with the lack of detail in the Project descriptions provided in the Draft IS/MNDs, the lack of a clear site diagram that shows where on the parcels planned construction will take place, as well as conflicting Project descriptions in the Draft IS/MNDs and the Biological Resources Report. The Project descriptions do not provide enough information to fully assess potentially significant impacts. The Draft IS/MNDs do not mention parking, driveways, fencing, paving, utility installation, drainage plans, landscaping, or other Project infrastructure. Additionally, no timeline for construction and implementation of the Project was given in the Draft IS/MNDs. If the start date for Project activities is delayed, the biological assessment and surveys could be outdated and site conditions may have changed when the Project begins. CDFW generally considers survey results valid for one year. To evaluate the project impacts on biological resources, CDFW requests that the Draft IS/MNDs is revised to include a detailed project description addressing the above comments including a detailed site map and a project timeline.

CDFW is concerned that mitigation was deferred in the Draft IS/MNDs. Section IV Biological Resources (p 8) of the Draft IS/MNDs states that impacts to species identified as a candidate, sensitive, or special status species will be less than significant only with mitigation incorporation, but no mitigation measures have been provided. CDFW requests that specific mitigation measures are included in the Draft IS/MNDs prior to adoption of the MNDs.

ASSESSMENT OF IMPACTS ON BIOLOGICAL RESOURCES

California Endangered Species Act (CESA)

CDFW is responsible for ensuring appropriate conservation of fish and wildlife resources including threatened, endangered, and/or candidate species of plant and animal species, pursuant to CESA. CDFW recommends that an incidental Take Permit (ITP) be obtained if the Project has potential to "take" (California Fish and Game Code Section 86 defines "take" as hunt, pursue, catch, capture, or kill or attempt to hunt, pursue, catch, capture, or kill) state-listed CESA species, either through construction or over the life of the property. CESA ITPs are issued to protect, conserve, enhance, and restore state-listed CESA species and their habitats.

Biological Surveys

A general biological survey was conducted from 1500-1800 on April 14, 2020 and from 1500-1500 (zero hours) on April 15, 2020 (Biological Resources Report, Table 1, p 6) on

the 9.65-acre site. A single biologist cannot reasonably be expected to complete focused, protocol-level surveys for burrowing owl, desert tortoise, nesting birds, and rare plants, nor adequately survey 9.65 acres for all species in one three-hour general survey. CDFW is concerned about the adequacy of the biological surveys to identify fish and wildlife resources on the Project site and requests biological surveys be conducted as specified in proposed mitigation measures BIO-1 through BIO-4 below.

Burrowing Owl (*Athene cunicularia*)

The Draft IS/MNDs conclude, based on the biological survey completed, that there is potential for burrowing owl to occur on the Project site (p 9). According to the Biological Resources Report (p 14), "Approximately 9.65 acres of suitable burrowing and wintering habitat for burrowing owl is present and impacts to breeding individuals could occur if the species begins to use the site during the breeding season. Impacts to wintering and breeding individuals would be considered significant." CDFW recommends that focused surveys be conducted, as the general biological surveys completed in April of 2020 are not adequate to assess current burrowing owl presence on the parcel. The Biological Resources Report (Table 1, p 6) establishes that the surveys conducted by RECON Environmental, Inc. biologist Jason R. Sundberg did not follow the protocol established by the CDFW *Staff Report on Burrowing Owl Mitigation* (2012). The survey was completed before the recommended peak breeding season window (April 15 through July 15) for breeding season surveys; the surveys were not conducted at least three weeks apart; and the surveys were conducted by a single biologist over 9.65 acres in only 3 hours while completing surveys for other biological resources such as desert tortoise and rare plants. CDFW requests that focused burrowing owl surveys be conducted according to the *Staff Report on Burrowing Owl Mitigation* (2012 or most recent version; https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline).

Preconstruction surveys are also required because suitable burrowing owl habitat was confirmed on site. Preconstruction surveys should also be conducted using the *Staff Report on Burrowing Owl Mitigation* (2012). CDFW recommends that the following mitigation measure be added to the Draft IS/MNDs:

MM BIO-1: Suitable burrowing owl habitat has been confirmed on the site, therefore focused burrowing owl surveys shall be conducted in accordance with the *Staff Report on Burrowing Owl Mitigation* (2012 or most recent version). If the focused burrowing owl surveys detect active burrowing owl burrows outside the breeding season (September 1 through January 31), or within the breeding season (February 1 through August 31) but owls are not nesting or in the process of nesting, active and/or passive relocation may be conducted following consultation with CDFW and U.S. Fish and Wildlife Service (USFWS). A relocation plan will be required by CDFW and USFWS if active and/or passive relocation is necessary. The relocation plan will outline the basic process and provide options for avoidance and mitigation, identify short- and long-term habitat management needs of the receiver site, and identify the entity responsible for all financial costs associated

with the relocation plan and long-term management of the receiver site.

Preconstruction burrowing owl surveys shall be conducted no less than 14 days prior to the start of Project-related activities and within 24 hours prior to ground disturbance, in accordance with the *Staff Report on Burrowing Owl Mitigation* (2012 or most recent version). Preconstruction surveys should be performed by a qualified biologist following the recommendations and guidelines provided in the *Staff Report on Burrowing Owl Mitigation*. If the preconstruction surveys confirm occupied burrowing owl habitat, Project activities shall be immediately halted. The qualified biologist shall coordinate with USFWS and CDFW to conduct an impact assessment to develop avoidance, minimization, and mitigation measures to be approved by CDFW prior to commencing Project activities.

Pursuant to the CEQA Guidelines, section 15097(f), CDFW has prepared a draft mitigation monitoring and reporting program (MMRP) for proposed MM BIO-1. The draft MMRP with MM BIO-1 through MM BIO-8 is enclosed as Attachment 1 at the end of this letter.

Desert Tortoise (Gopherus *agassizii*)

Desert tortoises are listed as Threatened under CESA and the Draft IS/MNDs concludes that there is potential for desert tortoise to occur on the Project site (p 9). According to the Biological Resources Report (p 14), "Approximately 9.65 acres of suitable foraging habitat for desert tortoise is present and impacts could occur if the species begins to use the site. Impacts to individuals and their habitat would be considered significant." A general biological survey for multiple species, including desert tortoise, was conducted over the course of three hours by RECON Environmental, Inc. biologist Jason R. Sundberg on April 14 and 15, 2020 on the Project site. While no evidence of living tortoises was found at that time, the Project site occurs within the Eastern Mojave Recovery Unit (USFWS 2011; Biological Resources Report, p 12). With average temperatures in the high 50s and low 60s Fahrenheit, desert tortoise may not have been very active in the weeks preceding the surveys. The most recent update to USFWS *Mojave Desert Tortoise Pre-project Survey Protocol* states, "The most effective way to estimate abundance of tortoises is to conduct surveys when tortoises are most active" (USFWS 2018). Given the potential for desert tortoise to be found on the site during the life of the Project, CDFW requests that a qualified biologist conduct a protocol level survey according to the USFWS Desert Tortoise (Mojave Population) Field Manual. CDFW recommends the following mitigation measure be added to the Draft IS/MNDs:

MM BIO-2: A qualified biologist shall conduct a protocol level presence or absence survey no more than 14 days prior to initiating Project activities in accordance with procedures described in Chapter 6 of the US Fish and Wildlife Service Desert Tortoise (Mojave Population) Field Manual. In addition, the survey shall utilize perpendicular survey routes and 100-percent visual coverage of the Project area and 50-foot buffer zone for desert tortoise and their sign. If the survey confirms absence,

a qualified biological monitor shall remain on-site during all Project activities to confirm desert tortoise do not enter the Project site. If the survey confirms presence, the Project Proponent shall obtain an Incidental Take Permit (ITP) for desert tortoise prior to the start of Project activities. If the biological monitor during the life of the Project encounters a desert tortoise, work shall be suspended, and the Project Proponent shall obtain an ITP for the species prior to the restarting Project activities.

Nesting Birds

The Draft IS/MNDs proposes no mitigation measures to avoid or minimize potentially significant impacts to nesting birds. CDFW is concerned that although the Draft IS/MNDs mentions a general preconstruction survey (p 9), no timing or details are provided and it is unclear if the survey would include nesting birds. CDFW requests that preconstruction nesting bird surveys be conducted and recommends that the following mitigation measure be added to the Draft IS/MND:

MM BIO-3: Nesting bird surveys shall be conducted by a qualified avian biologist no more than three (3) days prior to vegetation clearing or ground disturbance activities. Preconstruction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. The qualified avian biologist will make every effort to avoid potential nest predation as a result of survey and monitoring efforts. If active nests are found during the preconstruction nesting bird surveys, a Nesting Bird Plan (NBP) shall be prepared and implemented by the qualified avian biologist. At a minimum, the NBP shall include guidelines for addressing active nests, establishing buffers, ongoing monitoring, establishment of avoidance and minimization measures, and reporting. The size and location of all buffer zones, if required, shall be based on the nesting species, individual/pair's behavior, nesting stage, nest location, its sensitivity to disturbance, and intensity and duration of the disturbance activity. To avoid impacts to nesting birds, any grubbing or vegetation removal shall occur outside peak breeding season (February 1 through September 1).

Special Status Plants

The Draft IS/MNDs should include measures to fully avoid and otherwise protect rare and sensitive plant species from Project related direct and indirect impacts. Plants constituting California Rare Plant Ranks 1A, 1B, 2A, and 2B generally meet the criteria of a CESA-listed species and should be considered as an endangered, rare or threatened species for the purposes of CEQA analysis. According to a California Natural Diversity Database (CNDDB) query using BIOS mapping software, Goodding's phacelia (*Phacelia pulchella var. gooddingii*, CNPS 2B.2 plant species), Nye milk-vetch (*Astragalus nyensis*, CNPS 1B.1 plant species), and gravel milk-vetch (*Astragalus sabulonum*, CNPS

2B.2 plant species) are likely to occur within or near to the Project site. CDFW recommends that the Draft IS/MNDs include information describing how the Project will avoid impacts to these species.

After reviewing the Biological Resources Attachment 3 (Sensitive Plant Species Observed or with the Potential to Occur), CDFW is concerned with the presumption of low likelihood of occurrence for many sensitive plant species in the project area. CDFW's *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities* (2018 or most recent version; https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline) states, "The failure to locate a known special status plant occurrence during one field season does not constitute evidence that this plant occurrence no longer exists at this location, particularly if adverse conditions are present." CDFW is concerned that the rare plant survey was not conducted properly as it took place as part of a general biological survey over the span of three hours across 9.65 acres by a single biologist. CDFW requests that a thorough assessment of special status plant species and communities be conducted prior to Project activities. CDFW recommends the following mitigation measure be included in the Draft IS/MNDs:

MM BIO-4: A thorough floristic-based assessment of special status plants and natural communities, following CDFW's *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities* (CDFW 2018*)* or most recent version shall be performed by a qualified biologist prior to commencing Project activities. Should any state-listed plant species be present in the Project Area, the Project Proponent shall obtain an ITP for those species prior to the start of Project activities. Should other special status plants or natural communities be present in the Project Area, a qualified restoration specialist shall assess whether perennial species may be successfully transplanted to an appropriate natural site or whether on-site or off-site conservation is warranted to mitigate Project impacts. If successful transplantation of perennial species is determined by a qualified restoration specialist, the receiver site shall be identified, and transplantation shall occur at the appropriate time of year. Additionally, the qualified restoration specialist shall perform seed collection and dispersal from special status annual plant species to a natural site as a conservation strategy to minimize and mitigate Project impacts. If these measures are implemented, monitoring of plant populations shall be conducted annually for 5 years to assess the mitigation's effectiveness. The performance standard for mitigation shall be no net reduction in the size or viability of the local population.

Pesticides, Including Fungicides, Herbicides, Insecticides, and Rodenticides

Cannabis cultivation sites (whether indoor or outdoor) often use substantial quantities of pesticides, including fungicides, herbicides, insecticides, and rodenticides. Wildlife, including beneficial arthropods, birds, mammals, amphibians, reptiles, and fish, can be poisoned by pesticides after exposure to a toxic dose through ingestion, inhalation, or

dermal contact (Fleischli et al. 2004, Pimentel 2005, Berny 2007). They can also experience secondary poisoning through feeding on animals that have been directly exposed to the pesticides. (Even if used indoors, pesticides such as rodenticides may result in secondary poisoning through ingestion of sickened animals that leave the premises or ingestion of lethally poisoned animals that are disposed of outside.) Even nonlethal doses of pesticides can negatively affect wildlife; pesticides can compromise immune systems, cause hormone imbalances, affect reproduction, and alter growth rates of many wildlife species (Pimentel 2005, Li and Kawada 2006, Relyea and Diecks 2008, Baldwin et al. 2009).

CDFW recommends minimizing use of synthetic pesticides, and, if they are used, to always use them as directed by the manufacturer, including proper storage and disposal. Toxic pesticides should not be used where they may pass into waters of the state, including ephemeral streams, in violation of Fish and Game Code section 5650(6). Anticoagulant rodenticides and rodenticides that incorporate "flavorizers" that make the pesticides appetizing to a variety of species should not be used at cultivation sites. Alternatives to toxic rodenticides may be used to control pest populations at and around cultivation sites, including sanitation (removing food sources such as pet food, cleaning up refuse, and securing garbage in sealed containers), and physical barriers (e.g., sealing holes in roofs and walls). Snap traps should not be used outdoors as they pose a hazard to nontarget wildlife. Sticky or glue traps should be avoided altogether as these pose a hazard to nontarget wildlife and result in a prolonged/inhumane death. In addition, the California Department of Pesticide Regulation (CDPR) stipulates that pesticides must certain criteria to be legal for use on cannabis. For details, visit: https://www.cdpr.ca.gov/docs/cannabis/questions.htm and https://www.cdpr.ca.gov/docs/county/cacltrs/penfltrs/penf2015/2015atch/attach1502.pdf. The Draft IS/MND states that pesticides may be used in the cultivation process, therefore CDFW recommends the following mitigation measure:

MM BIO-5: Prior to construction and issuance of any grading permit, Inyo Face, LLC shall develop a plan, to be approved by Inyo County, with measures to avoid, minimize, or mitigate the impacts of pesticides used in cannabis cultivation, including fungicides, herbicides, insecticides, and rodenticides. The plan should include, but is not limited to, the following elements: (1) Proper use, storage, and disposal of pesticides, in accordance with manufacturers' directions and warnings. (2) Avoidance of pesticide use where toxic runoff may pass into waters of the State, including ephemeral streams. (3) Avoidance of pesticides that cannot be used on cannabis in the state of California, as set forth by the Department of Pesticide Regulation. (4) Avoidance of anticoagulant rodenticides and rodenticides with "flavorizers". (5) Avoidance of sticky/glue traps. (6) Inclusion of alternatives to toxic rodenticides, such as sanitation (removing food sources such as pet food, cleaning up refuse, and securing garbage in sealed containers), and physical barriers.

Artificial Light

Cannabis cultivation operations often use artificial lighting or "mixed-light" techniques in indoor operations to increase yields. If not disposed of properly, these lighting materials pose significant environmental risks because they contain mercury and other toxins (O'Hare et al. 2013). In addition to containing toxic substances, artificial lighting often results in light pollution, which has the potential to significantly and adversely affect fish and wildlife. Night lighting can disrupt the circadian rhythms of many wildlife species. Many species use photoperiod cues for communication (e.g., birdsong; Miller 2006), determining when to begin foraging (Stone et al. 2009), behavioral thermoregulation (Beiswenger 1977), and migration (Longcore and Rich 2004). Phototaxis, a phenomenon that results in attraction and movement toward light, can disorient, entrap, and temporarily blind wildlife species that experience it (Longcore and Rich 2004). The Draft IS/MNDs do not address light usage on the Project, but typical cannabis projects include use of artificial light for nighttime function and security lighting. CDFW recommends the following mitigation measure:

MM BIO-6: Light shall not be visible outside of any structure used for cannabis cultivation. Employ blackout curtains where artificial light is used to prevent light escapement. Eliminate all nonessential lighting from cannabis sites and avoid or limit the use of artificial light during the hours of dawn and dusk, as these windows of time are when many wildlife species are most active. Ensure that lighting for cultivation activities and security purposes is shielded, cast downward, and does not spill over onto other properties or upward into the night sky (see the International Dark-Sky Association standards at http://darksky.org/). Use LED lighting with a correlated color temperature of 3,000 Kelvins or less, properly dispose of hazardous waste, and recycle lighting that contains toxic compounds with a qualified recycler.

Role of Lake and Streambed Alteration (LSA) Program in Cannabis Licensing

Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may adversely impact any river, stream, or lake. An unnamed ephemeral stream has been mapped on the Project site using ArcGIS software and County Waterboard data, and according to the biological survey the soil is primarily made of alluvium which is evidence of water flow across the parcels. The California Department of Food and Agriculture (CDFA) requires cannabis cultivators to demonstrate compliance with Fish and Game Code section 1602 prior to issuing a cultivation license (Business and Professions Code, § 26060.1). To qualify for an Annual License from CDFA, cultivators must have an LSA Agreement or written verification from CDFW that one is not needed. Cannabis cultivators may apply online for an LSA Agreement through the Environmental Permit Information Management System (EPIMS; https://epims.wildlife.ca.gov). Cannabis cultivators may learn more about cannabis cultivation permitting at https://wildlife.ca.gov/Conservation/Cannabis/Permitting. CDFW recommends the following mitigation measure:

MM BIO-7: Prior to construction and issuance of any grading permit, the Project Sponsor shall 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 Sponsor should obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.

Employee Awareness of Wildlife Resources

CDFW is concerned that large development projects in this area of Inyo County could have lasting impacts on local wildlife and plant species. The area surrounding the Project is primarily open land, thus Project development will bring biological hazards common to urban-wildland interface areas. Waste management must be a priority as accessible waste can encourage opportunistic species such as rats, ravens, and coyotes to become more prevalent, posing a substantial predation hazard to wildlife. Predators like ravens (reported as present in the general biological survey) and coyotes (likely to occur in the area) are both known to prey on desert tortoise. Waste management plans should include waste receptacles with closing, lockable lids and a waste removal schedule that does not allow for excess waste to accrue. Increased traffic may also pose a hazard to species in the form of vehicle-animal collisions which often lead to the death of the animal. For slow moving species like desert tortoise, busy roads in their territory can have a significant impact on populations.

Project activities, including construction and routine work for the life of the Project, will affect local wildlife. Part of the Project Proponent's responsibility is to educate individuals that will be on-site, whether they are employees of Inyo Face, LLC. or contractors, on the wildlife species that may be present and how to limit impacts to wildlife species in the area. CDFW recommends that the following Employee Education Program be added to the Draft IS/MNDs as a mitigation measure:

MM BIO-8: A qualified biologist shall conduct an education program for all persons employed or otherwise working on the Project site prior to performing any work on-site. The program shall consist of a presentation that includes a discussion of the biology of the habitats and species that may be present at the site. The qualified biologist shall also include as part of the education program information about the distribution and habitat needs of any special status species that may be present, legal protections for those species, penalties for violations, and mitigation measures. The Employee Education Program should include, but not be limited to: (1) Best practices for managing waste and reducing activities that can lead to increased occurrences of opportunistic species and the impacts these species can have on wildlife in the area, (2) Protected species that have the potential to occur on the Project site including desert tortoise, burrowing owl, rare and sensitive plants, and nesting birds, and (3) The location of the

ephemeral stream that crosses from the east to the northwest side of the parcels and the importance of ensuring that no refuse or pollution enters the streambed habitat. Interpretation shall be provided for any non-English speaking workers, and the same instruction shall be provided for any new workers prior to their performing any work on-site.

Hydrology and Water Quality

The Draft IS/MNDs do not fully address impacts to hydrological and water resources during construction and for the life of the Project. Impacts to these resources could directly or indirectly impact local wildlife species and ecosystem function. Regarding impacts to surface or ground water quality (Section X, Hydrology and Water Quality, subsection (a), p 12) Inyo Face, LLC. defers to later coordination to determine NPDES/SWPPP needs. The Draft IS/MNDs should include information on their proposed SWPPP and Best Management Practices. For groundwater management (Section X, Hydrology and Water Quality, subsection (b), p 12) no specific hydrological data on groundwater at the site or a well analysis is provided; this is of particular concern for the cannabis cultivation portion of the Project. Regarding site drainage impacts, the Draft IS/MNDs (Section X, Hydrology and Water Quality, subsection (c), p 13) find that the Project will be constructed on an area that is virtually flat and not in proximity to any streams. As mentioned in the above LSA section of this letter, there is a mapped ephemeral stream that crosses the Project site. Also, increasing the impermeable area of the site poses concerns for increased runoff and decreased drainage. The Draft IS/MNDs (Section X, Hydrology and Water Quality, subsection (c), p 13) state that "In the unlikely event issues are found at pre-construction, they will be addressed during building review." CDFW is concerned about the deference of drainage plans or mitigation measures and recommends that prior to adoption of the MND Inyo Face, LLC should work with the appropriate entities to develop plans to avoid, minimize, and mitigate impacts to hydrological and water resources.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDB). The CNNDB field survey form can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDB_FieldSurveyForm.pdf. The completed form can be mailed electronically to CNDDB at the following email address: CNDDB@wildlife.ca.gov. The types of information reported to CNDDB can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp.

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the

Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

CONCLUSION

CDFW appreciates the opportunity to comment on the MND for Inyo Face, LLC. to assist Inyo County in identifying and mitigating Project impacts on biological resources. CDFW has assessed the Draft IS/MNDs and found that they do not adequately identify or mitigate for all of this Project's impacts on biological resources. CDFW recommends that prior to the adoption of this MND, Inyo County revise the document to include a more complete project description and assessment of impacts to biological resources on the Project parcels and adjacent parcels, as well as appropriate avoidance, minimization, and mitigation measures.

Questions regarding this letter or further coordination should be directed to Kevin Francis, Environmental Scientist at (909) 239-0895 or Kevin.Francis@wildlife.ca.gov, or to Marissa Caringella, Senior Environmental Scientist (Specialist) at (909) 544-1177 or Marissa.Caringella@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Heather Pert
DF423498814B441...

For
Scott Wilson
Environmental Program Manager I

Attachment 1: MMRP for CDFW-Proposed Mitigation Measures

ec: HCPB CEQA Program
Habitat Conservation Planning Branch
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ATTACHMENT 1: MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

Mitigation Measure	Schedule	Responsible Party
MM BIO-1: Burrowing Owl Surveys Suitable burrowing owl habitat has been confirmed on the site, therefore focused burrowing owl surveys shall be conducted in accordance with the Staff Report on Burrowing Owl Mitigation (2012 or most recent version). If the focused burrowing owl surveys detect active burrowing owl burrows outside the breeding season (September 1 through January 31), or within the breeding season (February 1 through August 31) but owls are not nesting or in the process of nesting, active and/or passive relocation may be conducted following consultation with CDFW and U.S. Fish and Wildlife Service (USFWS). A relocation plan will be required by CDFW and USFWS if active and/or passive relocation is necessary. The relocation plan will outline the basic process and provide options for avoidance and mitigation, identify short- and long-term habitat management needs of the receiver site, and identify the entity responsible for all financial costs associated with the relocation plan and long-term management of the receiver site. Preconstruction burrowing owl surveys shall be conducted no less than 14 days prior to the start of Project-related activities and within 24 hours prior to ground disturbance, in accordance with the Staff Report on Burrowing Owl Mitigation (2012 or most recent version). Preconstruction surveys should be performed by a qualified biologist following the recommendations and guidelines provided in the Staff Report on Burrowing Owl Mitigation. If the preconstruction surveys confirm occupied burrowing owl habitat, Project activities shall be immediately halted. The qualified biologist shall coordinate with USFWS and CDFW to conduct an impact assessment to develop avoidance, minimization, and mitigation measures to be approved by CDFW prior to commencing Project activities.	**Focused Surveys:** Breeding Season Surveys: 1 survey prior to breeding season and 3 surveys during breeding season spaced at least 3 weeks apart. Non-breeding Season Surveys: At least 4 surveys evenly spread throughout the non-breeding season. **Pre-construction Surveys:** No less than 14 days prior to start of any Project activities and within 24 hours prior to ground disturbance.	Inyo Face, LLC.
MM BIO-2: Desert Tortoise A qualified biologist shall conduct a protocol level presence or absence survey no more than 14 days prior to initiating Project activities in accordance with procedures described in Chapter 6 of the US Fish and Wildlife Service Desert Tortoise (Mojave Population) Field Manual. In addition, the survey shall utilize perpendicular survey routes and 100-percent visual coverage of the Project area and 50-foot buffer zone for desert tortoise and their sign. If the survey confirms absence, a qualified biological monitor shall remain on-site during all Project activities to confirm desert tortoise do not enter the Project site. If the survey confirms presence, the Project Proponent shall obtain an Incidental Take Permit (ITP) for desert tortoise prior to the	No more than 14 days prior to beginning any Project activities. Ongoing throughout Project activities.	Inyo Face, LLC.

start of Project activities. If the biological monitor during the life of the Project encounters a desert tortoise, work shall be suspended, and the Project Proponent shall obtain an ITP for the species prior to the restarting Project activities.		
MM BIO-3: Nesting Birds Nesting bird surveys shall be conducted by a qualified avian biologist no more than three (3) days prior to vegetation clearing or ground disturbance activities. Preconstruction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. The qualified avian biologist will make every effort to avoid potential nest predation as a result of survey and monitoring efforts. If active nests are found during the preconstruction nesting bird surveys, a Nesting Bird Plan (NBP) shall be prepared and implemented by the qualified avian biologist. At a minimum, the NBP shall include guidelines for addressing active nests, establishing buffers, ongoing monitoring, establishment of avoidance and minimization measures, and reporting. The size and location of all buffer zones, if required, shall be based on the nesting species, individual/pair's behavior, nesting stage, nest location, its sensitivity to disturbance, and intensity and duration of the disturbance activity. To avoid impacts to nesting birds, any grubbing or vegetation removal shall occur outside peak breeding season (February 1 through September 1).	Within 3 days of beginning any vegetation clearing or ground disturbing activities.	Inyo Face, LLC.
MM BIO-4: Special Status Plants A thorough floristic-based assessment of special status plants and natural communities, following CDFW's *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities* (CDFW 2018*)* or most recent version shall be performed by a qualified biologist prior to commencing Project activities. Should any state-listed plant species be present in the Project Area, the Project Proponent shall obtain an ITP for those species prior to the start of Project activities. Should other special status plants or natural communities be present in the Project Area, a qualified restoration specialist shall assess whether perennial species may be successfully transplanted to an appropriate natural site or whether on-site or off-site conservation is warranted to mitigate Project impacts. If successful transplantation of perennial species is determined by a qualified restoration specialist, the receiver site shall be identified, and transplantation shall occur at the appropriate time of year. Additionally, the qualified restoration specialist shall perform seed collection and dispersal from special status annual plant species to a natural site as a conservation strategy to minimize	Prior to construction and issuance of any grading permit. Ongoing throughout Project activities.	Inyo Face, LLC.

and mitigate Project impacts. If these measures are implemented, monitoring of plant populations shall be conducted annually for 5 years to assess the mitigation's effectiveness. The performance standard for mitigation shall be no net reduction in the size or viability of the local population.		
MM BIO-5: Pesticides Prior to construction and issuance of any grading permit, Inyo Face, LLC shall develop a plan, to be approved by Inyo County, with measures to avoid, minimize, or mitigate the impacts of pesticides used in cannabis cultivation, including fungicides, herbicides, insecticides, and rodenticides. The plan should include, but is not limited to, the following elements: (1) Proper use, storage, and disposal of pesticides, in accordance with manufacturers' directions and warnings. (2) Avoidance of pesticide use where toxic runoff may pass into waters of the State, including ephemeral streams. (3) Avoidance of pesticides that cannot be used on cannabis in the state of California, as set forth by the Department of Pesticide Regulation. (4) Avoidance of anticoagulant rodenticides and rodenticides with "flavorizers". (5) Avoidance of sticky/glue traps. (6) Inclusion of alternatives to toxic rodenticides, such as sanitation (removing food sources such as pet food, cleaning up refuse, and securing garbage in sealed containers), and physical barriers.	Prior to construction and issuance of any grading permit.	Inyo Face, LLC.
MM BIO-6: Artificial Light Light shall not be visible outside of any structure used for cannabis cultivation. Employ blackout curtains where artificial light is used to prevent light escapement. Eliminate all nonessential lighting from cannabis sites and avoid or limit the use of artificial light during the hours of dawn and dusk, as these windows of time are when many wildlife species are most active. Ensure that lighting for cultivation activities and security purposes is shielded, cast downward, and does not spill over onto other properties or upward into the night sky (see the International Dark-Sky Association standards at http://darksky.org/). Use LED lighting with a correlated color temperature of 3,000 Kelvins or less, properly dispose of hazardous waste, and recycle lighting that contains toxic compounds with a qualified recycler.	Ongoing throughout Project activities.	Inyo Face, LLC.
MM BIO-7: LSA Program Prior to construction and issuance of any grading permit, the Project Sponsor shall 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 Sponsor should obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.	Prior to construction and issuance of any grading permit.	Inyo Face, LLC.

MM BIO-8: Employee Education Program A qualified biologist shall conduct an education program for all persons employed or otherwise working on the Project site prior to performing any work on-site. The program shall consist of a presentation that includes a discussion of the biology of the habitats and species that may be present at the site. The qualified biologist shall also include as part of the education program information about the distribution and habitat needs of any special status species that may be present, legal protections for those species, penalties for violations, and mitigation measures. The Employee Education Program should include, but not be limited to: (1) Best practices for managing waste and reducing activities that can lead to increased occurrences of opportunistic species and the impacts these species can have on wildlife in the area (2) Protected species that have the potential to occur on the Project site including desert tortoise, burrowing owl, rare and sensitive plants, and nesting birds, and (3) The location of the ephemeral stream that crosses from the east to the northwest side of the parcels and the importance of ensuring that no refuse or pollution enters the streambed habitat. Interpretation shall be provided for any non-English speaking workers, and the same instruction shall be provided for any new workers prior to their performing any work on-site.	Prior to any person performing work on-site. Ongoing throughout Project activities.	Inyo Face, LLC.