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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director

August 9, 2021
Sent via email

Graham Meese
Assistant Planner
Inyo County
168 N. Edwards St.
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Independence, CA 93526

Pinnacle Cannabis (Project)
Negative Declaration (ND)
SCH# 2021070224

Dear Mr. Meese:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Negative Declaration (ND) in 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 the Draft ND. 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: Pinnacle Growth Inc.

Project Description: The Draft ND proposes the development of a cultivation, processing, distribution, and non-storefront retail delivery facility on approximately 1.5 to 2 acres of a 15-acre segment in the northeast of the 80-acre parcel at Assessor Parcel Number (APN) 038-300-07-00 in Inyo County, CA. The parcel is currently designated for industrial use. The Project will include the construction of three 320 ft^2 storage buildings, six 10,000 ft^2 greenhouses for cultivation, one 3,000 ft^2 mother greenhouse, and two 3,000 ft^2 metal buildings for manufacturing/processing for a total building area of approximately 69,960 ft^2. Water for the Project is proposed to come from an existing well on the parcel, which is supplied by groundwater and requires the approval of the Inyo County Environmental Health Department.

Location: The Project is located in Searles Valley, in southern Inyo County, east of Highway 395. The Project parcel is identified as APN 038-300-07 in the Draft ND, which corresponds with the address 1555 Trona Wildrose Road, Trona, CA 93592, Inyo County (APN 038-300-07-00; GPS coordinates: 35.81897, -117.3407). While not explicitly depicted in a figure, the portion of parcel inferred to be developed in the proposed Project lies on the east side of Trona Wildrose Road north of Trona Airport Road. The parcel is surrounded by Bureau of Land Management property that is currently open space to the west, northwest, south, and east. An undeveloped, privately owned parcel lies northeast of the site. The Project parcel falls within the Rattlesnake Canyon (US Geological Survey Hydrologic Unit Code 12) subwatershed, with mapped streams running through the parcel that drain south to Searles Lake. The parcel is located within the Searles Valley Groundwater Basin.

Timeframe: The Draft ND gives no timeframe for the construction of the Project.

COMMENTS AND RECOMMENDATIONS

CDFW has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (i.e., biological resources). CDFW has reviewed the Draft ND and determined that it lacks sufficient detail to determine whether the County has identified and disclosed the Project's impacts (i.e., direct, indirect, and cumulative) to biological resources and whether those impacts are less than significant. CDFW offers the following comments and

recommendations 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.

- Project location: Please note that the address provided in the NOA and Draft ND ("1550 Trona Wildrose Road") does not correspond to the address associated with the APN provided ("1555 Trona Wildrose Road").
- Incomplete description of Project activities: Key components of the Project description, including the specific location and scope of the Project, have not been included in the Draft ND. The Draft ND indicates the approximate area of the Project—namely, a 15-acre segment of the larger 80-acre parcel—however, it does not indicate where in that 15-acre segment the estimated 1.5 to 2 acres of impacts would occur. The final CEQA document should include a written description and figure accurately illustrating the site layout. In addition, the Draft ND includes no building/construction specifications or description of the cannabis cultivation structures (i.e., "(6) 10,000 ft^2 cultivation greenhouses, (1) 3,000 ft^2 mother greenhouse"; p. 1 of Draft ND). To be considered indoor cultivation, a structure should have a permanent roof and walls, as well as an impermeable floor. Cultivation structures that may be opened to the atmosphere will have different impacts on biological resources than completely enclosed structures (e.g., pesticides and artificial light will have greater impacts if structures are not completely enclosed; see the section "Cannabis-Specific Impacts on Biological Resources" below). Specifications are also lacking for the "drainage conveyance" and tank that are proposed to collect cultivation runoff (p. 13 of Draft ND). In addition, no timeframe is provided for the construction of the Project, and details have not been provided regarding Project site access, construction of roads/parking lots on-site, fencing, security lighting, and landscaping. CDFW recommends that the final CEQA document include a complete Project description and analyze the impacts to biological resources.
- Hydrology and CDFW jurisdictional waters: The Draft ND (p. 13) indicates that the area is "virtually flat" and that "there are no streams in the area that will be affected by the increase of impervious surface" created by the Project. However, the location and scope of impervious surfaces resulting from the Project has not been disclosed, so it is not possible to determine whether impacts are less than significant. Multiple mapped streams (including US Geological Survey National Hydrography Dataset [NHD] ephemeral flowlines) cross the parcel at APN 038-300-07-00. These streams are identifiable in aerial imagery, and topographic map contours indicate that they drain southward to Searles Lake. CDFW recommends that the final CEQA document fully disclose the location and scope of construction for the proposed Project and ensure that impacts to streams and biological resources have been analyzed. CDFW jurisdiction extends to all rivers, lakes, and streams, including those that are ephemeral. CDFW's Lake and Streambed Alteration (LSA) Program should be notified (Fish and Game Code section 1602) of cannabis-related Project activities prior to construction so that impacts to streams and associated resources may be assessed to determine whether an LSA Agreement is required. See the section "Role of Lake and Streambed Alteration (LSA) Program in Cannabis Licensing" below.

Assessment of Impacts to 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 Report and Adequacy of Surveys

The Draft ND bases its analysis of impacts to biological resources on a report by Geode Environmental Inc. (April, 2021), which conducted an assessment of the 15-acre segment of the parcel east of Trona Wild Rose Road where development is proposed (Biological Resources Report, p. 5). The Biological Resources Report indicates that a focused survey for desert tortoise (*Gopherus agassizii*; federal threatened species and state threatened/candidate endangered species) was combined with habitat assessments for burrowing owl (*Athene cunicularia*; CDFW Species of Special Concern [SSC]) and Mohave ground squirrel (*Xerospermophilus mohavensis*; state threatened species) on March 2, 2021, from 1015 to 1515 hours. CDFW is concerned that the focused survey for desert tortoise was combined with habitat assessments and that the focused survey/habitat assessments were not conducted at the appropriate time of year to accurately detect the presence of special status wildlife and plant species.

CDFW is not able to fully assess impacts to desert tortoise populations due to the lack of information given in the project description regarding construction plans and details. CDFW is available to consult regarding the timing of the desert tortoise surveys and their limited scope per the 2019 USFWS desert tortoise protocol: "Applicants or surveyors should contact appropriate federal, state and local agencies in the planning process because they may have their own requirements that need to be considered during the approval process for projects. Early coordination with these agencies will allow you to move through the planning process more efficiently." In addition, the focused survey/habitat assessments involved a 15-acre segment of the 80-acre parcel, which may not be adequate to assess indirect impacts to biological resources on the remainder of the parcel.

CDFW is concerned about the potential for special status species to occur on the parcel and that waiting to assess the site for the presence of special status species until the time of construction will not reduce impacts to less than significant, particularly for species such as burrowing owl, desert tortoise, desert kit fox (*Vulpes macrotis arsipus*; protected as a fur-bearing mammal), Mohave ground squirrel, American badger (*Taxidea taxus*; CDFW Species of Special Concern), and special status plants (see sections below). As a result, CDFW recommends the mitigation measures given below. Deficiencies in the County's

CEQA documentation can affect later project approval by CDFW in its role as a Responsible Agency.

Burrowing Owl (*Athene cunicularia*)

CDFW is not able to fully assess impacts to burrowing owl populations due to the lack of information given in the project description regarding construction plans and details. The Draft ND states that no evidence of burrowing owls was observed on the site (Biological Resources Report, p. 17). However, given that the ND does not specify the footprint in the Project description, CDFW cannot analyze the Project's potential impacts to burrowing owl. The potential Project impacts to burrowing owl are unknown and may include areas that were not surveyed (e.g., the remainder of APN 038-300-07-00, which may provide artificial burrow substrates). Therefore, CDFW recommends that the County follow the recommendations and guidelines provided in the *Staff Report on Burrowing Owl Mitigation* (CDFW 2012 or most recent version), which specifies that project impact evaluations include the following steps: (1) habitat assessment, (2) surveys, and (3) an impact assessment. The three progressive steps are effective in evaluating whether a project will result in impacts to burrowing owls, and the information gained from the steps will inform any subsequent avoidance and minimization measures. Absent clarification regarding timing, construction methods, and footprint of the Project, CDFW recommends the following mitigation measure including a habitat assessment in the remainder of the parcel, as well as pre-construction surveys:

MM BIO-1: A habitat assessment for burrowing owl shall be conducted in the remainder of parcel in accordance with the *Staff Report on Burrowing Owl Mitigation* (CDFG 2012 or most recent version). If the burrowing owl habitat assessment identifies burrowing owl habitat on site, focused surveys should be conducted according to the *Staff Report on Burrowing Owl Mitigation* (CDFG 2012 or most recent version).

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* (CDFG 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. CDFW shall be notified of burrowing owl survey results within 48 hours of detection. The qualified biologist shall coordinate with USFWS and CDFW to conduct an impact assessment to develop avoidance and minimization 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-11 is enclosed as Attachment 1 at the end of this letter.

Desert Tortoise (*Gopherus agassizii*)

CDFW is not able to fully assess impacts to desert tortoise populations due to the lack of information given in the project description regarding construction plans and details. A query of the California Natural Diversity Database (CNDDB) and Biogeographic Information and Observation System (BIOS), including unprocessed data, returned a reported occurrence of desert tortoise approximately 0.7 miles from the Project site. The Draft ND acknowledges the potential for desert tortoise to be found on the Project site but reports that no tortoises or signs of tortoises were present during the focused survey (Biological Resources Report, p. 15). CDFW is concerned that the timing of the March 2021 focused survey, which was combined with other assessments, was insufficient to determine the presence of desert tortoise on the Project site. The Draft ND does not adequately identify impacts to desert tortoise. Chapter 4 of the *Desert Tortoise (Mojave Population) Field Manual* indicates that "surveys should be conducted during the desert tortoise's most active periods (April through May or September through October)" (USFWS 2009, p. 4–8). CDFW is concerned that waiting until pre-construction surveys to assess whether desert tortoise is on the Project site will not reduce impacts to less than significant. Absent an adequate Project description and clarification of the avoidance and minimization measures proposed, CDFW recommends that prior to commencing Project activities, a focused survey for desert tortoise following the *Desert Tortoise (Mojave Population) Field Manual* should be conducted by a qualified biologist. Absent clarification regarding timing, construction methods, and footprint of the Project, CDFW recommends the following mitigation measure, which includes both focused and pre-construction surveys:

MM BIO-2: Prior to commencing Project activities, a focused survey for desert tortoise shall be conducted by a qualified biologist, according to protocols in chapter 4 of the *Desert Tortoise (Mojave Population) Field Manual* (USFWS 2009 or most recent version), during the species' most active periods (April through May or September through October). CDFW recommends working with USFWS and CDFW concurrently to ensure a consistent and adequate approach to planning survey work and that biologists retained to complete desert tortoise protocol-level surveys submit their qualifications to CDFW and USFWS prior to initiation of surveys.

No more than 14 calendar days prior to start of Project activities, a qualified biologist shall conduct pre-construction surveys for desert tortoise as described in the USFWS *Desert Tortoise (Mojave Population) Field Manual* (USFWS 2009 or most recent version). Pre-construction surveys shall be completed using perpendicular survey routes within the Project area and 50-foot buffer zone. Pre-construction surveys cannot be combined with other surveys conducted for other species while using the same personnel. Project activities cannot start until two negative results from consecutive surveys using perpendicular survey routes for desert tortoise are documented. Should desert tortoise presence be confirmed during the survey, the qualified biologist shall immediately notify CDFW and USFWS to determine appropriate avoidance and minimization measures.

Desert Kit Fox (*Vulpes macrotis arsipus*)

CDFW is not able to fully assess impacts to desert kit fox populations due to the lack of information given in the project description regarding construction plans and details. Desert kit fox is protected as a fur-bearing mammal under Title 14 of the California Code of Regulations (Chap. 5, § 460) and may not be taken at any time. While no desert kit foxes were observed on the Project site according to the Draft ND (Biological Resources Report, p. 17), a previously inhabited kit fox den was reported 550 ft north of the site. Because desert kit fox has high fidelity to natal dens, it is crucial to adequately assess whether desert kit fox is present on the Project site well in advance of commencing Project activities. If desert kit fox is found on-site during breeding season, it could delay Project activities until appropriate vegetation and construction buffers can be established on the Project site. Absent clarification regarding timing, construction methods, and footprint of the Project, CDFW recommends pre-construction surveys for desert kit fox as follows:

MM BIO-3: No more than 14 days prior to the beginning of ground disturbance and/or Project activities, a qualified biologist shall conduct pre-construction surveys to determine if potential desert kit fox burrows/dens are present in the Project area. Pre-construction surveys should include 100-percent visual coverage of the Project area and cannot be combined with other surveys conducted for other species while using the same personnel. If the pre-construction surveys confirm occupied desert kit fox habitat, Project activities shall be immediately halted, and the qualified biologist shall notify CDFW and USFWS to develop avoidance, minimization, and mitigation measures. No disturbance of active dens shall take place when juvenile desert kit fox may be present and dependent on parental care.

Mohave Ground Squirrel (*Xerospermophilus mohavensis)*

CDFW is not able to fully assess impacts to Mohave ground squirrel populations due to the lack of information given in the project description regarding construction plans and details. The Draft ND indicates that no suitable habitat for Mohave ground squirrel was observed on the Project site (Biological Resources Report, p. 18). However, Mohave ground squirrel has been reported in the vicinity of the Project site, as near a 1.1 mile. Because the site is surrounded by open desert, and because CDFW's California Wildlife Habitat Relationship model indicates the Project site is within habitat that is of medium quality for Mojave ground squirrel, CDFW recommends that pre-construction surveys be conducted. No focused Mohave ground squirrel surveys were conducted on the Project site. CDFW recommends that a focused, species-specific survey, conducted by a qualified biologist, using the *Mohave Ground Squirrel Survey Guidelines* (https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83975&inline), be completed at the appropriate time of year and time of day when Mojave ground squirrel is active or otherwise identifiable. Absent clarification regarding timing, construction methods, and footprint of the Project, CDFW recommends the following mitigation measure be added to the final CEQA document:

MM-BIO 4: Prior to commencement of Project activities, focused surveys should be conducted by a qualified biologist, at the appropriate time of year and time of day

when Mohave ground squirrel is active or otherwise identifiable, according to the protocols in the *Mohave Ground Squirrel Survey Guidelines* (CDFG, 2010 or most recent version). Should Mohave ground squirrel presence be confirmed during the survey, Project activities shall be immediately halted, and the qualified biologist shall notify CDFW.

Preconstruction surveys following the *Mohave Ground Squirrel Survey Guidelines* (CDFG, 2010 or most recent version) shall be performed by a qualified biologist authorized by a Memorandum of Understanding issued by CDFW. The preconstruction surveys shall cover the Project area and a 50-foot buffer zone. Should Mohave ground squirrel presence be confirmed during the survey, the qualified biologist shall notify CDFW and the Project proponent shall obtain an ITP for Mohave ground squirrel prior to the start of Project activities.

Nesting Birds

CDFW is not able to fully assess impacts to nesting bird populations due to the lack of information given in the project description regarding construction plans and details. It is the Project proponent's responsibility to comply with all applicable laws related to nesting birds and birds of prey. Fish and Game Code sections 3503, 3503.5, and 3513 afford protective measures as follows: section 3503 states that it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto. Fish and Game Code section 3503.5 makes it unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by Fish and Game Code or any regulation adopted pursuant thereto. Fish and Game Code section 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. § 703 et seq.).

CDFW is concerned about impacts to nesting birds from vegetation removal on the Project site and from construction (e.g., noise/disturbance). Although the Draft ND addresses the need for nesting bird surveys, the timing and scope of are insufficient. CDFW recommends the revised document include specific avoidance and minimization measures to ensure that impacts to nesting birds do not occur. Project-specific avoidance and minimization measures may include, but are not limited to, Project phasing and timing (avoiding peak breeding season), monitoring of Project-related noise (where applicable), sound walls, and buffers, where appropriate. CDFW recommends that pre-construction surveys be conducted as a mitigation measure and that they be completed no more than 3 days prior to vegetation clearing or ground disturbance activities; instances of nesting could be missed if surveys are conducted sooner. Note that nesting bird surveys must be conducted regardless of the time of year to protect species that may nest outside the peak breeding season, such as raptors and hummingbirds. Absent clarification regarding timing, construction methods, and footprint of the Project, CDFW recommends the following mitigation measure:

MM BIO-5: Regardless of the time of year, 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.

Special Status Plants

CDFW is not able to fully assess impacts to special status plants in the area due to the lack of information given in the project description regarding construction plans and details. The final CEQA document should include measures to fully avoid and otherwise protect special status 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. 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." Absent clarification regarding timing, construction methods, and footprint of the Project, CDFW recommends the following mitigation measure:

MM BIO-6: A focused plant survey shall be conducted by a qualified biologist for rare plants prior to commencing Project activities when most plant species would be identifiable. The survey should follow CDFW's *Protocols for Surveying and Evaluating Impacts to Special Status Species Native Plant Populations and Natural Communities (CDFW 2018 or most recent version),* and survey results should report any additional special status plant species found to be present in the Project area. Should any special status plants 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.

Minimizing Impacts to Other Species

According to the Draft ND (Biological Resources Report, p. 14), 12 wildlife species, including special status species American badger (*Taxidea taxus*) and desert kit fox (*Vulpes macrotis arsipus*), were detected on or near the Project site. Because of the potential for these and other species to occur on-site, CDFW recommends inclusion of the following mitigation measure:

MM BIO-7: A qualified biologist shall be on-site prior to and during all ground- and habitat-disturbing activities to move out of harm's way wildlife that would otherwise be injured or killed from Project-related activities. Movement of wildlife out of harm's way should be limited to only those individuals that would otherwise by injured or killed, and individuals should be moved only as far as necessary to ensure their safety. Measures shall be taken to prevent wildlife from re-entering the Project site. Only biologists authorized by a Memorandum of Understanding issued by CDFW shall move CESA-listed species.

Employee Awareness of Wildlife Resources

CDFW is concerned that because the Project area is bordered by open desert, 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 and coyotes are both known to prey on desert tortoise and other sensitive species. 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 or driveways 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 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 final CEQA document 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, but not limited to, burrowing owl, desert tortoise, desert kit fox, American badger, Mohave ground squirrel, rare and sensitive plants, and nesting birds. 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.

Cannabis-Specific Impacts on Biological Resources

CDFW recommends that the County consider cannabis-specific impacts to biological resources that may result from the Project activities.

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, 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. 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(a)(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 (the passage of AB 1788, signed by the governor on September 29, 2020, banned the general use of second-generation anticoagulants in California). 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, as these pose a hazard to nontarget wildlife and result in a prolonged/inhumane death. The California Department of Pesticide Regulation (CDPR) stipulates that pesticides must meet 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 ND (pp. 13, 14) states that pesticides, herbicides, and fungicides may be used in the cannabis cultivation facilities (i.e., greenhouses that have not been fully described in the Draft ND) and stored on-site. CDFW recommends the following mitigation measure focused on avoiding impacts to biological resources:

MM BIO-9: Prior to construction and issuance of any grading permit, Inyo County shall develop a plan 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 ND indicates that Project activities will involve new sources of artificial light for buildings. Because of the potential for artificial light to impact nocturnal wildlife species and migratory birds that fly at night, CDFW recommends the following mitigation measure:

MM BIO-10: 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 when many wildlife species are most active. Ensure that lighting for cultivation activities and security purposes is shielded, cast downward and toward developed areas, 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.

Noise

Construction and operation of cannabis facilities may result in a substantial amount of noise through road use, equipment, and other project-related activities. This may adversely affect wildlife species in several ways as wildlife responses to noise can occur at exposure levels of only 55 to 60 decibels (Barber et al. 2009). (For reference, normal conversation is approximately 60 decibels, and natural ambient noise levels [e.g., forest habitat] are generally measured at less than 50 decibels.) Anthropogenic noise can disrupt the communication of many wildlife species including frogs, birds, and bats (Sun and Narins 2005, Patricelli and Blickley 2006, Gillam and McCracken 2007, Slabbekoorn and Ripmeester 2008). Noise can also affect predator-prey relationships as many nocturnal animals such as bats and owls primarily use auditory cures (i.e., hearing) to hunt. Additionally, many prey species increase their vigilance behavior when exposed to noise because they need to rely more on visual detection of predators when auditory cues may be masked by noise (Rabin et al. 2006, Quinn et al. 2017). Noise has also been shown to reduce the density of nesting birds (Francis et al. 2009) and cause increased stress that results in decreased immune responses (Kight and Swaddle 2011).

The Draft ND indicates that the Project activities will include "construction related noise from grading activities, engine noise from trucks, and building construction" (p. 15). CDFW recommends the following: Consider use of noise suppression devices such as mufflers or enclosures for generators. Restrict use of equipment to hours least likely to disrupt wildlife (e.g., not at night or in early morning). Do not use generators except for temporary use in emergencies. Power to sites can be provided by solar PV (photovoltaic) systems, cogeneration systems (natural gas generator), small micro-hydroelectric systems, or small wind turbine systems. Consider use of noise suppression devices such as mufflers or enclosure for generators. Sounds generated from any means must be below the 55–60 dB range within 50 feet from the source.

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

CDFW is not able to fully assess impacts to streams on the site due to the lack of information given in the project description regarding construction plans and details. 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. Multiple mapped streams (including US Geological Survey National Hydrography Dataset [NHD] ephemeral flowlines) cross the parcel at APN 038-300-07-00. CDFW's LSA Program should be notified of Project activities prior to construction so that impacts to streams and associated resources may be assessed, and, if appropriate, avoidance and minimization measures may be proposed.

The Department of Cannabis Control (DCC) 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 DCC, 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) and learn more about cannabis cultivation permitting at https://wildlife.ca.gov/Conservation/Cannabis/Permitting. CDFW recommends the following mitigation measure:

MM BIO-11: Prior to construction and issuance of any grading permit, the Project Sponsor shall obtain written correspondence from 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.

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 filled out and submitted online at the following link: https://wildlife.ca.gov/Data/CNDDB/Submitting-Data. The types of information reported to CNDDB can be found at the following link: https://wildlife.ca.gov/Data/CNDDB/Plants-and-Animals.

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 Draft ND for Pinnacle Cannabis to assist Inyo County in identifying and mitigating Project impacts on biological resources. CDFW has assessed the Draft ND and found that it does not adequately describe the Project; as a result, CDFW is not able to determine if the County has identified and analyzed impacts on biological resources or whether those impacts are less than significant. Deficiencies in the County's CEQA documentation can affect later project approval by CDFW in its role as a Responsible Agency. CDFW recommends that prior to the adoption of the final CEQA document, Inyo County revise the document to include a complete description of the specific location and scope of the Project and analysis of impacts to biological resources that includes appropriate avoidance, minimization, and mitigation measures.

CDFW has Cannabis Unit staff who are available to provide guidance on identifying, minimizing, and mitigating impacts to biological resources and any CDFW permitting that will be associated with this project. If you have questions or would like to set up a meeting with CDFW staff to discuss this letter, please contact Kevin Francis, Environmental Scientist, at kevin.francis@Wildlife.ca.gov.

Sincerely,

DocuSigned by:
Alisa Ellsworth
84FBB8273E4C480...

Alisa Ellsworth
Environmental Program Manager

Attachment 1: MMRP for CDFW-Proposed Mitigation Measures

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ATTACHMENT 1: MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

Mitigation Measure	**Schedule**	**Responsible Party**
MM BIO-1: Burrowing Owls A habitat assessment for burrowing owl shall be conducted in the remainder of parcel in accordance with the Staff Report on Burrowing Owl Mitigation (CDFG 2012 or most recent version). If the burrowing owl habitat assessment identifies burrowing owl habitat on site, focused surveys should be conducted	**Preconstruction surveys:** No more than 14 days prior to any ground- or vegetation-disturbing Project activities	Inyo County

according to the Staff Report on Burrowing Owl Mitigation (CDFG 2012 or most recent version). 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 (CDFG 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. CDFW shall be notified of burrowing owl survey results within 48 hours of detection. The qualified biologist shall coordinate with USFWS and CDFW to conduct an impact assessment to develop avoidance and minimization measures to be approved by CDFW prior to commencing Project activities.		
MM BIO-2: Desert Tortoise Prior to commencing Project activities, a focused survey for desert tortoise shall be conducted by a qualified biologist, according to protocols in chapter 4 of the Desert Tortoise (Mojave Population) Field Manual (USFWS 2009 or most recent version), during the species' most active periods (April through May or September through October). CDFW recommends working with USFWS and CDFW concurrently to ensure a consistent and adequate approach to planning survey work and that biologists retained to complete desert tortoise protocol-level surveys submit their qualifications to CDFW and USFWS prior to initiation of surveys. No more than 14 calendar days prior to start of Project activities, a qualified biologist shall conduct pre-construction surveys for desert tortoise as described in the USFWS Desert Tortoise (Mojave Population) Field Manual (USFWS 2009 or most recent version). Pre-construction surveys shall be completed using perpendicular survey routes within the Project area and 50-foot buffer zone. Pre-construction surveys cannot be combined with other surveys conducted for other species while using the same personnel. Project activities cannot start until two negative results from	No more than 14 days prior to beginning any Project activities. Ongoing throughout Project activities.	Inyo County

consecutive surveys using perpendicular survey routes for desert tortoise are documented. Should desert tortoise presence be confirmed during the survey, the qualified biologist shall immediately notify CDFW and USFWS to determine appropriate avoidance and minimization measures.		
MM BIO-3: Desert Kit Fox No more than 14 days prior to the beginning of ground disturbance and/or Project activities, a qualified biologist shall conduct pre-construction surveys to determine if potential desert kit fox burrows/dens are present in the Project area. Pre-construction surveys should include 100-percent visual coverage of the Project area and cannot be combined with other surveys conducted for other species while using the same personnel. If the pre-construction surveys confirm occupied desert kit fox habitat, Project activities shall be immediately halted, and the qualified biologist shall notify CDFW and USFWS to develop avoidance, minimization, and mitigation measures. No disturbance of active dens shall take place when juvenile desert kit fox may be present and dependent on parental care.	No more than 14 days prior to beginning any Project activities.	Inyo County
MM-BIO 4: Mohave Ground Squirrel Prior to commencement of Project activities, focused surveys should be conducted by a qualified biologist, at the appropriate time of year and time of day when Mohave ground squirrel is active or otherwise identifiable, according to the protocols in the Mohave Ground Squirrel Survey Guidelines (CDFG, 2010 or most recent version). Should Mohave ground squirrel presence be confirmed during the survey, Project activities shall be immediately halted, and the qualified biologist shall notify CDFW. Preconstruction surveys following the Mohave Ground Squirrel Survey Guidelines (CDFG, 2010 or most recent version) shall be performed by a qualified biologist authorized by a Memorandum of Understanding issued by CDFW. The preconstruction surveys shall cover the Project area and a 50-foot buffer zone. Should Mohave ground squirrel presence be confirmed during the survey, the qualified biologist shall notify CDFW and the Project proponent shall obtain an ITP for Mohave ground squirrel prior to the start of Project activities.	Prior to construction and issuance of any grading permit. Ongoing throughout Project activities.	Inyo County

MM BIO-5: Nesting Birds Regardless of the time of year, 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.	Within 3 days of beginning any vegetation clearing or ground disturbing activities.	Inyo County
MM BIO-6: Special Status Plants A focused plant survey shall be conducted by a qualified biologist for rare plants prior to commencing Project activities when most plant species would be identifiable. The survey should follow CDFW's Protocols for Surveying and Evaluating Impacts to Special Status Species Native Plant Populations and Natural Communities (CDFW 2018 or most recent version), and survey results should report any additional special status plant species found to be present in the Project area. Should any special status plants 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	Prior to construction and issuance of any grading permit. Ongoing throughout Project activities.	Inyo County

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.		
MM BIO-7: Minimizing Impacts A qualified biologist shall be on-site prior to and during all ground- and habitat-disturbing activities to move out of harm's way wildlife that would otherwise be injured or killed from Project-related activities. Movement of wildlife out of harm's way should be limited to only those individuals that would otherwise by injured or killed, and individuals should be moved only as far as necessary to ensure their safety. Measures shall be taken to prevent wildlife from re-entering the Project site. Only biologists authorized by a Memorandum of Understanding issued by CDFW shall move CESA-listed species.	Ongoing during Project activities.	Inyo County
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, but not limited to, burrowing owl, desert tortoise, desert kit fox, American badger, Mohave ground squirrel, rare and sensitive plants, and nesting birds. 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 County

MM BIO-9: Pesticides Prior to construction and issuance of any grading permit, Inyo County shall develop a plan 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 County
MM BIO-10: 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 when many wildlife species are most active. Ensure that lighting for cultivation activities and security purposes is shielded, cast downward and toward developed areas, 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 County
MM BIO-11: LSA Program Prior to construction and issuance of any grading permit, the Project Sponsor shall obtain written correspondence from 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	Prior to construction and issuance of any grading permit.	Inyo County

Game Code section 1602 resources associated with the Project.		