



COUNTY OF LAKE
COMMUNITY DEVELOPMENT DEPARTMENT
Planning Division
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STAFF REPORT

TO: Planning Commission

FROM: Scott DeLeon, Community Development Director
Tocarra Thomas, Deputy Director
Prepared by: Sateur Ham, Assistant Planner

DATE: May 13, 2021

RE: **Frosty Oaks, LLC**

- **Major Use Permit (UP 19-46)**
- **Initial Study (IS 19-65)**

Supervisor District Eddie Crandell
Planning Commissioner Batsulwin Brown

ATTACHMENTS:

1. Vicinity Map
2. Property Management Plan
3. Proposed Site Plans
4. Proposed Conditions of Approval
5. Initial Study
6. Agency Comments

I. EXECUTIVE SUMMARY

Frosty Oaks is requesting approval of a Major Use Permit for Commercial Cannabis Cultivation (*the cultivation of commercial cannabis includes the planting, growing, harvesting, drying, curing, grading, trimming, and/or any combination of those activities, including processing*) at 1027 Watertrough Road, Clearlake Oaks, CA on Lake County APN 628-100-10. The applicant's proposal includes one (1) **A-Type 3 "Outdoor" License**, outdoor cultivation for adult-use cannabis without the use of light deprivation and/or artificial lighting in the canopy area of one acre in size, within a **28,252** square feet cultivation area and include the following:

- **One (1) Type 13:** "Distributor Transport Only, Self-Distribution" License
- 120 square feet storage shed
- 120 square feet security shed
- Four (4) 5,000 gallons water storage tanks
- Two (2) 2,500 gallons water storage tanks

The cultivation area will be conducted within an enclosed area secured by a chain-link fence approximately six (6) feet in height. The fence will be screened with a privacy mesh, which will

help reduce visibility within the surrounding area. According to the Project Management Plan (Attachment 2), the existing well produces approximately 10 gallons per minute and will utilize the proposed water tanks for storage during the dry season. The well near the northeast parcel boundary will be pumped underground to the water storage tanks proposed near the cultivation site in the eastern portion of the property. Frosty Oaks will utilize the existing underground water lines from the well to the storage tanks, which are a combination of PVC piping and black poly tubing. Water use is projected to be approximately 600,247 gallons per year. The proposed outdoor cultivation method is in planting beds with drip irrigation systems served by an existing permitted well.

The project's core business hours of operation will take place between 8:00 a.m.- 6:00 p.m. with deliveries and pickups restricted to 9:00 a.m.-7:00 p.m. Monday through Saturday and Sunday from 12:00 p.m.-5:00 p.m. According to the application, visitation will only be allowed when specific permission is granted.

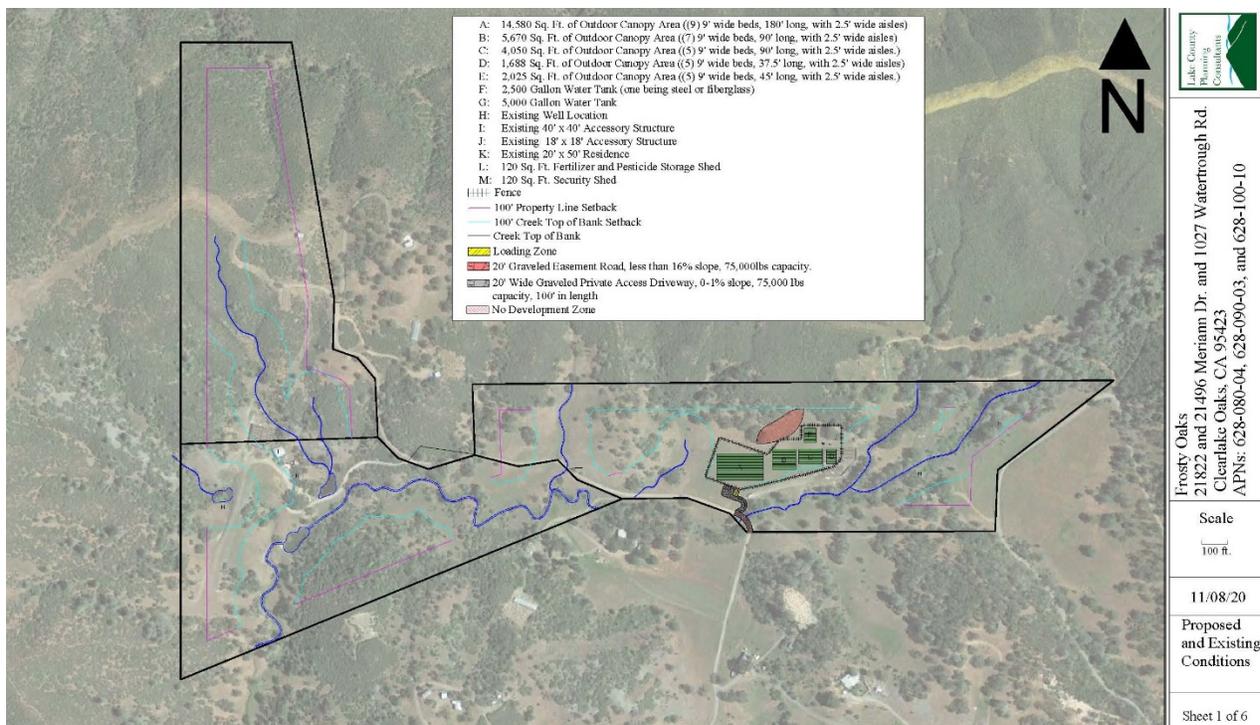


Figure 1. Proposed Site Plans and Cultivation Area

Staff is recommending denial of Major Use Permit, UP 19-46, and the adoption of a Mitigated Negative Declaration based on the environmental analysis (Initial Study, IS 19-65) with the incorporated Mitigation Measures and Conditions of Approval.

II. PROJECT DESCRIPTION

Applicant: Frosty Oaks, LLC (Stuart Spivack)
Owner: Frosty Oaks
Location: 1027 Watertrough Rd. and [21822 & 21496 Meriann Dr.]
 Clearlake Oaks, CA 95423

<u>A.P.N.:</u>	628-100-10 and [628-080-04, 628-090-03]
<u>Parcel Size:</u>	68 acres
<u>General Plan:</u>	Rural Lands
<u>Zoning:</u>	Rural Lands-Waterway District Combining
<u>Flood Zone:</u>	“X”: Areas determined to be outside the 0.2% annual chance (500-year) floodplain
<u>Submittal Date:</u>	November 20, 2019
<u>Farmland of Local Importance:</u>	This proposed project is designated as Grazing land and is not located within 500’ of existing agricultural uses

III. PROJECT SETTING

Surrounding Uses and Zoning

The property is surrounded by “RL” Rural Lands zoned properties, with some “O” Open Space nearby across the north. The sizes of the parcels vary greatly, from just about 5 acres to over 500 acres. About 30% of the nearby properties appear to contain dwellings, while most seem to be currently vacant of use.

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Figure 3. Aerial Photo of Subject Site

- Topography: The cultivation area is fairly flat with a slope of less than 10%, however, the average cross-slope of the adjoining parcels within the property boundary is between 22-36%.
- Soils: The *project area* contains the following soil type:
Henneke-Montara-Rock (142)
- Water Supply: Existing Well
- Sewage Disposal: On-site septic system.
- Fire Protection: Northshore Fire Protection District
- Vegetation: The cultivation area takes place within an area that was previously disturbed.
- Water Courses: Indian Creek

IV. PROJECT ANALYSIS

General Plan Conformance

The General Plan designation for the subject site is Rural Lands. The following General Plan policies relate to site development in the context of this proposal:

Rural Lands allows for rural development in areas that are primarily in their natural state, although some agricultural production, especially vineyards, can occur on these lands. This category is appropriate for areas that are remote or characterized by steep topography, fire hazards, and limited access. Typical uses permitted by right include, but are not limited to, animal raising, crop production, single-family residences, game preserves, and fisheries. Other typical uses permitted conditionally include, but are not limited to, recreational facilities, manufacturing and processing operations, mining, and airfields.

Response: *The applicant is proposing commercial cannabis cultivation which is categorized as agricultural/ crop production and allowable for Rural Lands within the Lake County General Plan (2008). Also, the applicant is proposing an A-Type 3 outdoor cannabis cultivation permit which allows up to a 1-acre canopy area. The applicant will only utilize a little over half of the allowable use within their project scope. The applicant meets the general plan conformance for the allowable use under this designation.*

The following General Plan policies are related to site development in the context of this proposal:

Land Use

Goal LU-6: “To maintain a healthy and diverse local economy that meets the present and future employment, shopping, recreational, and service needs of Lake County residents”.

- *Policy LU 6.1:* “The County shall actively promote the development of a diversified economic base by continuing to promote agriculture, recreation services, and commerce and by expanding its efforts to encourage industrial and non-industrial corporate developments and the developments of geothermal resources”.

Response: *The proposed Commercial Cannabis Operation, would create diversity within the local economy, create future employment opportunities for residents and allow the expansion of industrial and non-industrial corporate developments. According to the applicant, employees are proposed as part of the project (The number of employees is unknown at this time). The number of employees can increase or decrease depending on the stage of the cultivation season.*

Shoreline Communities Area Plan Conformance

The subject site is within the Shoreline Communities Area Plan’s boundary. The Plan contains several policies that are subject to consistency review as follows:

“3.2.1d Assist the local agricultural community and new large agricultural projects to increase water supplies and implement conservation techniques for the use and reuse of irrigation water”.

Response: *Per the zoning ordinance, it is required that all applicants install a water meter to monitor water usage and provide an estimated water calculation based on the canopy size. Also,*

the project management plan includes proposed irrigation methods and includes how the project will implement water conservation techniques (see Attachment 2).

“3.4.1c Preserve lands for agricultural production.”

“5.5.3b Preserve areas containing prime agricultural soils or demonstrating unique characteristics that allow for viable economic opportunities for the agricultural industry.”

Response: *Cannabis Cultivation is primarily in areas zoned Agricultural Preserve, Agriculture, Timberland Preserve, Rural Lands, Rural Residential, and Suburban Reserve. Additionally, there are some restrictions and cultivation methods based on agricultural soils. The project area is in Rural Lands with soil designation for grazing lands, which is an area with existing vegetation well suited to the grazing of livestock. The cultivation of cannabis within this area is permitted for outdoor and indoor grows consistent with the project proposal.*

Zoning Ordinance Conformance

Article 5 – Rural Lands Zoning District

The purpose to provide for resource-related and residential uses of the County’s undeveloped lands that are remote and often characterized by steep topography, fire hazards, and limited access.

Article 37 – Waterway Combining District (WW)

The purpose is to preserve, protect and restore significant riparian systems, streams, riparian, aquatic and woodland habitats, protecting water quality, erosion control, sedimentation/runoff and protecting the public’s health/safety by minimizing dangers due to flood and earth slide.

Article 27 - Use Permits

The purpose of Article 27 is for those uses possessing characteristics of unique and special form as to make their use acceptable in one or more districts upon issuance of a zoning permit, minor or major use permit; in addition to any required building, grading, and/or health permits.

Response: *The cultivation of commercial cannabis is permitted within the Rural Lands zoning district upon issuance of a use permit, according to Section 27.11 (Table B) of the Lake County Zoning Ordinance. A-Type 3 license allows up to 43,560 ft² of canopy per license and requires 20 acres. This project, if approved, will consist of 28,252 sq ft of canopy on a total of 68 acres. Therefore, the applicant meets this requirement and will be cultivating more than half of the allowable canopy area for the license type.*

Development Standards, General Requirements, and Restrictions. This application meets the following Development Standards, General Requirements, and Restrictions as specified within Article 27, subsection (at) of the Lake County Zoning Ordinance.

Development Standards

- Minimum Lot Size (20 acres per A-Type 3): *Complies, the lot is 68 acres in size. The applicant needs 20 acres for an A – Type 3 license.*
- Setback from Property Line (100 feet): *Complies; the cultivation site is set back a minimum of 100 feet from the nearest property line.*

- Setback from Off-Site Residence (200 feet): *Complies; the nearest dwelling is over 200 feet away from the cultivation area.*
- Minimum Fence Height of Six (6) Feet: *Complies; the proposed enclosure is a 6 feet tall chain-linked fence.*
- Maximum Canopy Area (43,560 ft² maximum for an A-Type 3 “Outdoor”): *Complies; the proposed canopy area would be 28,012 ft² of outdoor canopy area.*

General Requirements. There are several general requirements for cannabis cultivation listed in Section 27.13(at) of the Lake County Zoning Ordinance. These include, but are not limited to, obtaining a State License, completion of background checks, obtaining property owner approval, complying with hours of operations and deliveries, access requirements, etc.

Response: *The applicant meets the General Requirements outlined in Section 27.13(at) of the Zoning Ordinance. The project will include the applicant’s information, government-issued identification, background checks, project management plan, project description, land use compliance for the applicable permitted license type, and well information. If the requirements have not yet been met, a condition has been added to ensure compliance.*

The applicant has also submitted a Property Management Plan, outlining compliance with all regulations regarding cannabis operations including air quality, cultural resources, energy usage, fertilizer usage, fish and wildlife protection, stormwater management, security, compliance monitoring, etc. Also, the applicant complies with the restrictions regarding the prohibited activities listed in Article 27, subsection 13(at), including but not limited to the removal of trees, illegally diverting water, producing excessive odors, cultivating within a Cannabis Exclusion Area, etc. The project does not propose any tree removal and will utilize a private well. The project include a 100 feet buffer from the property line and is located over 200 feet away from an off-site resident to minimize odor through passive means.

V. ENVIRONMENTAL REVIEW

The California Environmental Quality Act (CEQA) requires agencies to evaluate the environmental implications of land use actions. An Initial Study and Mitigated Negative Declaration (IS 19-65; Attachment 5) was prepared and circulated for public review in compliance with CEQA from **1/21/2021 to 02/19/2021**. The applicant also submitted a Cultural Resource Assessment to the Community Development Department (CDD) dated April 23, 2019, which concluded that there is a prehistoric site within the project boundaries, however, the site is located outside of the cultivation area and will not be impacted by the project. Avoidance measures will be implemented and included within the conditions of approval (Attachment 4). The condition of approval will allow the applicant to mark the location of the prehistoric site to be undeveloped to preserve cultural resources for future use. Additionally, the local tribes were notified of the project and no adverse comments were received.

The Initial Study found that the project could cause potentially significant impacts:

- Air Quality
- Biological Resources
- Cultural Resources/Tribal Cultural Resources
- Geology/Soils
- Hydrology/Water Quality
- Wildfire
- Utilities/Service Systems
- Noise

However, with the incorporation of the mitigation measures in Attachment 5, all impacts can be reduced to a less than significant level. Therefore, the staff is recommending a Mitigated Negative Declaration be adopted.

VI. MAJOR USE PERMIT FINDINGS FOR APPROVAL

The Review Authority shall only approve or conditionally approve a Major Use Permit (LCZO Section 51.4, Major Use Permits) if all of the following findings are made:

1. That the establishment, maintenance, or operation of the use applied for will not under the circumstances of the particular case, be detrimental to the health, safety, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use, or be detrimental to property and improvements in the neighborhood or the general welfare of the County.

Response: *The proposed use of commercial cannabis cultivation operation is permitted in the Rural Lands zoning designation upon issuance of a Major Use Permit according to Article 27 of the Lake County Zoning Ordinance. The zoning ordinance provides project-specific details to incorporate measures that will alleviate potential detriments to the general welfare of the community such as buffer zones, installing security, road maintenance, and installing a water meter. The general requirement also includes providing specific plans such as security plans, erosion and sediment prevention plans, stormwater plans, water management plans, and other plans to ensure that the proposed use would address and minimize various factors that will potentially impact the neighboring areas. The project is located within an existing CC&Rs, the Double Eagle Ranch Property Owners' Association (DERPOA), with a list of permissible land use established by the association that the property owner must oblige to upon acquiring such properties. Under the DERPOA Declaration Section I. Permissible Land Use addresses that "Commercial Use is Prohibited. No trade, commercial or manufacturing enterprise shall be conducted on any property, nor shall anything be done thereon which may become an annoyance or nuisance to the residents of the neighborhood..". The Declaration of the CC&Rs intends to protect the morals, comfort, and general welfare of the person residing within this community and it was an agreement among the residence and DERPOA. Although the County may not enforce the CC&Rs, the CC&Rs do represent the prevailing view of what constitutes the comfort and general welfare of their neighborhood. **Therefore, the proposed project does not meet this finding and violates the existing CC&Rs that encompass the statement of this finding.***

2. That the site for the project is adequate in size, shape, location, and physical characteristics to accommodate the type of use and level of development proposed.

Response: *The proposed cultivation area is 28,252 ft²; this represents 0.9% of the 68-acre site. The proposed project meets all siting and development standards for cannabis. That is, the site is adequate to accommodate the proposed project with the incorporation of all buffer zones due to physical characteristics to avoid sensitive biological resources and cultural resources as well as a setback from property lines and nearest off-site dwelling.*

3. That the streets, highways, and pedestrian facilities are reasonably adequate to safely accommodate the specific proposed use.

Response: *Per the Public Resource Code 4290 Fire Safe Requirements, the project is exempt from meeting CalFire road standards due to the absence of any structures requiring a building permit. The applicant must comply with all building codes once a building is constructed.*

4. That there are adequate public or private services, including but not limited to fire protection, water supply, sewage disposal, and police protection to serve the project.

Response: *This application was routed to all of the affected public and private service providers including Public Works, Special Districts, Environmental Health, and PG&E. No adverse comments were received. The applicant will be subjected to all agency requirements as part of any future developments and will be included as part of the conditions of approval. Also, there are adequate public services to accommodate the proposed project.*

5. That the project is in conformance with the applicable provisions and policies of this Code, the General Plan, and any approved zoning or land use plan.

Response: *Since commercial cannabis cultivation is a permitted use for land designation Rural Lands within Article 27 of the local zoning ordinance, this proposal is consistent with the governing ordinance for cannabis cultivation in Lake County. The proposal, as conditioned, meets all requirements and development standards of the Zoning Ordinance. The General Plan and the Shoreline Communities Plan do not have any provisions for commercial cannabis, but both plans include either direct and/or indirect provisions for economic development and related policies that the project such as initiatives for potential economic growth within the county (see Section IV, Project Analysis, above).*

6. That no violation of Chapters 5, 17, 21, 23, or 26 of the Lake County Code currently exists on the property, unless the purpose of the permit is to correct the violation, or the permit relates to a portion of the property which is sufficiently separate and apart from the portion of the property in violation so as not to be affected by the violation from public health, safety or general welfare basis.

Response: *There are no violations of Chapters 5, 17, 21, 23, or 26 of the Lake County Code on this property.*

In addition to the findings required above for a Use Permit, the following findings are required for approval of a cannabis-specific Use Permit:

7. The proposed use complies with all development standards described in Chapter 21, Article 27, Section 1.i. as outlined in this staff report.
8. The application complies with the qualifications for a permit described in Chapter 21, Article 27, Section 1.ii as outlined in this staff report and Attachments 1 through 6.

VII. RECOMMENDATION

Staff recommends that the Planning Commission take the following actions:

A. Deny Mitigated Negative Declaration (IS 19-65) for Major Use Permit (UP 19-46)

B. Deny Major Use Permit UP 19-46 with the following findings:

1. That the establishment, maintenance, or operation of the use applied for will under the circumstances of the particular case, be detrimental to the health, safety, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use, or be detrimental to property and improvements in the neighborhood or the general welfare of the County.

Sample Motions:

Mitigated Negative Declaration

I move that the Planning Commission find that the **Major Use Permit (UP 19-46)** applied for by **Frosty Oaks, LLC (Stuart Spivack)** on property located at **1027 Watertrough Road, Clearlake Oaks, CA**, further described as **APNs: 628-100-10, [628-080-04 & 628-090-03]** cannot be adopted if the Use Permit is denied per staff's recommendation in the staff report dated **May 13, 2021**.

Major Use Permit (UP 19-46)

I move that the Planning Commission find that the **Major Use Permit (UP 19-46)** applied for by **Frosty Oaks, LLC (Stuart Spivack)** on property located at **1027 Watertrough Road, Clearlake Oaks, CA**, further described as **APNs: 628-100-10, [628-080-04 & 628-090-03]** **does not** meet the requirements of Section 51.4 and Article 27, Section 1(at) [i, ii] of the Lake County Zoning Ordinance and the Major Use Permit be denied subject to the conditions and with the findings listed in the staff report dated **May 13, 2021**.

***NOTE:** The applicant or any interested person is reminded that the Zoning Ordinance provides for a seven (7) calendar day appeal period. If there is a disagreement with the Planning Commission, an appeal to the Board of Supervisors may be filed. The appropriate forms and applicable fees must be submitted prior to 5:00 p.m. on or before the seventh calendar day following the Commission's final determination.*