



COUNTY OF LAKE
COMMUNITY DEVELOPMENT DEPARTMENT
Planning Division
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Item 6
9:30 AM
May 27, 2021

STAFF REPORT

TO: Planning Commission

FROM: Scott DeLeon, Community Development Director
Prepared by: Eric Porter, Associate Planner

DATE: May 27, 2021

RE: **Legendary Farms; Major Use Permit (UP 19-15) and Initial Study (IS 19-27)**

Supervisor District 4

ATTACHMENTS:

1. Vicinity Map
2. Site Plans
3. Property Management Plan
4. Agency Comments
5. Proposed Conditions of Approval
6. Initial Study IS 19-27
7. Public Comments

I. EXECUTIVE SUMMARY

The applicant is requesting a major use permit for **(1) A-Type 3 (medium outdoor) cultivation area** consisting of up to 65,000 square feet (sq. ft.) of cultivation area, and an **A-Type 13 Self Distribution license**, *however given the location of the site within the mapped Farmland Protection Area, this license **will change to one (1) A-Type 3B license** within two years of use permit approval, and the allowable canopy area will be reduced to 22,000 sq. ft. following the license change. The applicant has also applied for one **A-Type 13 Self Distribution license**.* The property is located at 2290 Soda Bay Road, Lakeport, and is APN: 008-010-29.

Staff is recommending **Approval with Conditions** of **UP 19-15**.

II. PROJECT DESCRIPTION

Applicant: Legendary Farms / Melissa Smith

Owner: Frank Perez

Location: 2290 Soda Bay Road, Lakeport, CA

<u>A.P.N.s:</u>	008-010-29
<u>Parcel Size:</u>	41.26 acres
<u>General Plan:</u>	Agriculture
<u>Zoning:</u>	“A – WW – FF - SC”; Agriculture – Waterway – Floodway Fringe – Scenic Combining
<u>Flood Zone:</u>	AO
<u>Cultivation Area:</u>	Outdoor: estimated to be 65,000 square feet of cultivation area. Mixed light: estimated to be 25,000 square feet of cultivation area.
<u>Canopy Area:</u>	Outdoor: estimated to be 43,560 sq. ft. Mixed light: estimated to be 20,000 sq. ft.

Project History

The applicant originally applied for one (1) A-Type 3 medium outdoor cultivation license and one (1) A-Type 13 Self Distribution license to allow transportation of cannabis onto and off of the cultivation site. On December 15, 2020, the Board of Supervisors adopted Ordinance 3103, which in turn created certain areas within Lake County that are characterized by high value farmland and significant traditional Agricultural uses. The subject site is located within one of these mapped areas.

On May 25, 2021, the Board of Supervisors allowed for limited duration outdoor cultivation that was required to transition to greenhouse cultivation within two years of use permit approval if the application was determined to be complete on or before December 15, 2020. This application was determined to be complete before December 15, 2020.

III. PROJECT SETTING

Existing Uses and Improvements: The parcels combined are about 41+ acres in size, well over the minimum required 20 acre size. The property contains a house, a well and septic system; a one-acre cultivation area was permitted for medicinal cannabis, and several sheds and out buildings exist on the property. There is an existing on-site well and several 5,000 gallon water tanks for water storage.

Surrounding Uses and Zoning

North, South, East and West: “A” Agriculture. Parcel sizes range from approximately 3.5 to over 232 acres in size. About half of the neighboring properties contain dwellings, and there is significant agricultural activity in this general vicinity. The property to the north is under review for commercial cannabis within file no. UP 19-13.

Legendary Farms – UP 19-15



AERIAL PHOTO OF SITE AND VICINITY

Topography: Relatively flat; less than 10%.

Soils: The cultivation area contains type **125 - Cole Variant clay loam, calcareous substratum**. This very deep, moderately well drained soil is on flood plains. It formed in alluvium derived from mixed rock sources.

Water Supply: Existing well

Sewage Disposal: Existing On-Site Septic

Fire Protection: Lakeport Fire Protection District

Vegetation: Crops and some introduced vegetation



Zoning of Site and Surrounding Lots

IV. **PROJECT ANALYSIS**

General Plan Conformance

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

Open Space

- *Goal OSC-1 Biological Resources.* To preserve and protect environmentally sensitive significant habitats, enhance biodiversity, and promote healthy ecosystems throughout the County. *Commercial cannabis cultivation has a relatively small impact on properties depending on how large the cultivation activity is, and the extent of site preparation needed. In this case the footprint at the end of phase VI is relatively small at 15,000 s.f. There will be greenhouses built, however the greenhouses will be built on previously disturbed portion of the site.*

Response: The immediate area consists of lots that range in size from 20 acres to over 40 acres. Most of the surrounding area has agriculturally productive land and dwellings. The applicant will be required to convert outdoor to greenhouse production within three (3) years of approval of this permit, assuming it is approved. This is included as a Condition of Approval in this application sent to the Planning Commission. The lot to the immediate east (2800 Manning Road) is also under review for a commercial cannabis cultivation license with the same conversion requirements (file no. UP 19-13).

Lakeport Area Plan Conformance

The subject site is within the Lakeport Area Plan's boundary. The Plan does not contain policies that apply to commercial cannabis cultivation, however there are policies that encourage economic development within the Plan's boundaries. This applicant would have up to 5 employees during peak harvest times.

Zoning Ordinance Conformance

Article 5 – Agriculture (A). To protect the County's agricultural soils, provide areas suitable for agriculture, and prevent development that would preclude their future use in agriculture. The following regulations shall apply in all "A" districts.

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 permits, minor or major use permits in addition to any required building, grading and/or health permits.

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 license): *Complies; the subject site is 41+ acres in size. The applicant has applied for (1) A-Type 3 (medium outdoor) cultivation license that will transition into (1) A-Type 3B (medium mixed light / greenhouses) within two years per Ordinance 3103; both of these license types require a 20 acre minimum lot size. The applicant has also applied for a Type 13 ‘Self Distribution License’, which is under consideration herein.*
- Setback from Property Line (100 feet): *Complies, the cultivation site is about 250 feet from the nearest property line.*
- Setback from Off-Site Residence (200 feet minimum): *Complies, the nearest neighboring residential dwelling is located about 360 feet away from the nearest cannabis cultivation area.*
- Fence Height between Six (6) and Eight (8) Feet: *Complies, the proposed fence height is six (6) feet.*
- Maximum Canopy Area (medium outdoor: 43,560 sq. ft.): *The proposed canopy area is estimated to be 43,560 sq. ft. in size.*
- Maximum Canopy Area (medium mixed light: 22,000 sq. ft.): *The proposed medium mixed light (greenhouse) canopy will be up to 22,000 sq. ft. in size.*
- Mapped Farmland Protection Area: Yes
- Flood Plain: Yes (AO)

General Requirements. *The applicant meets all of the General Requirements outlined in Section (at) of Article 27 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 operation and deliveries, access requirements, etc. If the requirements have not yet been met, a condition has been added to assure compliance.*

The applicant has also submitted a Property Management Plan, outlining compliance with all regulations pertaining to cannabis operations including air quality, cultural resources, energy usage, fertilizer usage, fish and wildlife protection, storm water management, security, compliance monitoring, etc. In addition, the applicant complies with the restrictions pertaining to the prohibited activities listed in Subsection (at) of Article 27 of the Zoning Ordinance, including but not limited to the removal of trees, illegally diverting water, producing excessive odors, cultivating within a Cannabis Exclusion Area, etc.

V. ENVIRONMENTAL REVIEW

The California Environmental Quality Act (CEQA) requires agencies to evaluate the environmental implications of land use actions. Please refer to *Initial Study IS 19-03* (Attachment 6) for the Environmental Analysis of the proposed cannabis cultivation action.

Any potential environmental impacts have been reduced to less than significant with the incorporated Mitigation Measures and Conditions of Approval. The following areas were identified as having potential environmental impacts:

Air Quality

- AQ-1: Prior to obtaining the necessary permits and/or approvals for any phase, applicant shall contact the Lake County Air Quality Management District and obtain an Authority to Construct (A/C) Permit for all operations and for any diesel powered equipment and/or other equipment with potential for air emissions.
- AQ-2: All mobile diesel equipment used must be in compliance with State registration requirements. Portable and stationary diesel powered equipment must meet the requirements of the State Air Toxic Control Measures for CI engines.
- AQ-3: The applicant shall maintain records of all hazardous or toxic materials used, including a Material Safety Data Sheet (MSDS) for all volatile organic compounds utilized, including cleaning materials. Said information shall be made available upon request and/or the ability to provide the Lake County Air Quality Management District such information in order to complete an updated Air Toxic emission Inventory.
- AQ-4: The applicant shall maintain records of all hazardous or toxic materials used, including a Material Safety Data Sheet (MSDS) for all volatile organic compounds utilized, including cleaning materials to the Lake County Air Quality Management District.
- AQ-5: All vegetation during site development shall be chipped and spread for ground cover and/or erosion control. The burning of vegetation, construction debris, including waste material is prohibited.
- AQ-6: The applicant shall have the primary access and parking areas surfaced with chip seal, asphalt or an equivalent all weather surfacing to reduce fugitive dust generation. The use of white rock as a road base or surface material for travel routes and/or parking areas is prohibited.
- AQ-7: All areas subject infrequent use of driveways, over flow parking, etc., shall be surfaced with gravel. Applicant shall regularly use and/or maintain graveled area to reduce fugitive dust generations.

Biological Resources

- BIO-1: If any land clearing is undertaken, a pre-construction special status survey is required.
- BIO-2: Trees must be inspected for the presence of active bird nests before tree felling or ground clearing. If active nests are present in the project area during construction of the project, CDFW should be consulted to develop measures to avoid “take” of active nests prior to the initiation of any construction activities.

Avoidance measures may include establishment of a buffer zone using construction fencing or the postponement of vegetation removal until after the nesting season, or until after a qualified biologist has determined the young have fledged and are independent of the nest site.

Cultural / Geological (prehistoric) / Tribal Resources

- **CUL-1:** Should any archaeological, paleontological, or cultural materials be discovered during site development, all activity shall be halted in the vicinity of the find(s), the local overseeing Tribe shall be notified, and a qualified archaeologist retained to evaluate the find(s) and recommend mitigation procedures, if necessary, subject to the approval of the Community Development Director. Should any human remains be encountered, they shall be treated in accordance with Public Resources Code Section 5097.98 and Health and Safety Code 7050.5.
- **CUL-2:** All employees shall be trained in recognizing potentially significant artifacts that may be discovered during ground disturbance. If any artifacts or remains are found, the local overseeing Tribe shall immediately be notified; a licensed archaeologist shall be notified, and the Lake County Community Development Director shall be notified of such finds.

Hydrology and Water Quality

- **HYD-1:** The applicant shall remove all pots from the property no later than November 1 of each year, and will return the pots no earlier than April 1 of each year for the duration of the project.

Noise

- **NOI-1:** All construction activities including engine warm-up shall be limited Monday Through Friday, between the hours of 7:00am and 7:00pm to minimize noise impacts on nearby residents. Back-up beepers shall be adjusted to the lowest allowable levels. This mitigation does not apply to night work.
- **NOI -2:** Maximum non-construction related sounds levels shall not exceed levels of 55 dBA between the hours of 7:00AM to 7:00PM and 45 dBA between the hours of 10:00PM to 7:00AM within residential areas as specified within Zoning Ordinance Section 21-41.11 (Table 11.1) at the property lines.
- **NOI-3:** The operation of the Air Filtration System shall not exceed levels of 57 dBA between the hours of 7:00AM to 10:00PM and 50 dBA from 10:00PM to 7:00AM within residential areas as specified within Zoning Ordinance Section 21-41.11 (Table 11.2) measured at the property lines.

VI. MAJOR USE PERMIT FINDINGS FOR APPROVAL. Article 51, Section 51.4a

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 immediate area contains actively used agricultural land with homes that are located at least 250 feet away from the nearest cultivation site. As previously discussed, the potential impacts resulting from this proposal are Aesthetics, Air Quality, Biological Resources, Cultural / Tribal Resources, Hydrology and Noise. All of these significant impacts have been adequately addressed within conditions of approval for the reasons previously stated.

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 original proposal was for 65,000 sq. ft. of outdoor cultivation area, however with the adoption of Ordinance No. 3103, the applicant is required to transition into greenhouses, and the allowable area within the greenhouses for an A-Type 3B mixed light license is 22,000 sq. ft. of canopy per license. The Lake County Cannabis Ordinance allows Type 3 cultivation licenses on Agriculturally-zoned property when it meets the size and locational criteria and standards. The applicant seeks two licenses, one of which requires a 20 acre minimum. The subject site is over 41 acres in size, large enough to allow the cultivation licenses that have been applied for. The self-distribution license is also included, but has no direct relationship with the property size specifically.

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

Response: The site is served by Soda Bay Road, a paved designated scenic County road with 10' wide travel lanes and 2' wide shoulders on either side. The road is reasonably adequate to safely accommodate the proposed use. There are no known capacity issues on Soda Bay Road.

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 CAL FIRE, Lakeport Fire District, Public Works, Special Districts, Environmental Health, and all area Tribes. Relevant comments are attached as 'Attachment 3'. No adverse comments were received.

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 named as a permitted use in the Agriculture zoning district within the Commercial Cannabis ordinance, this proposal is consistent with the governing ordinance for cannabis growing in the Lake County General Plan and the Lakeport Area Plan do not have any specific provisions for commercial cannabis, but does have provisions for economic development.

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 a public health, safety or general welfare basis.

Response: The site does not have any violations of Chapters 5, 17, 21, 23 or 26 of the Lake County Code.

VII. USE PERMIT FINDINGS FOR APPROVAL Article 27, subsection (at):

- (1) The proposed use complies with all development standards described in Section 1.i

Response: This report identifies the development standards that apply to cannabis cultivation in Lake County. The applicant is fully compliant with the development standards.

- (2) The applicant is qualified to make the application described in Section 1.ii.(g)

Response: The applicant and his employees have passed a 'live scan' background check, and are qualified to undertake a commercial cannabis cultivation activity subject to approval of this use permit.

- (3) The application complies with the qualifications for a permit described in Section 1.ii.(i)

Response: This application complies with all qualifications for a permit described in Section 3.ii.(f). The applicant is proposing two cannabis-related licenses; one for (1) A-Type 3 medium outdoor cultivation license totaling 43,560 sq. ft. of canopy that would transition to 22,000 sq. ft of canopy area within two years per Ordinance No. 3103, and an A-Type 13 'self-distribution' license. The subject site is 41 acres in size, large enough to support the cultivation license; the applicant also qualifies for the Type 13 'Self Distribution' license.

VIII. RECOMMENDATION

Staff recommends the Planning Commission:

- A. Adopt mitigated negative declaration (IS 19-27) for Use Permit (UP 19-15) with the following findings:**

1. Potential environmental impacts related to aesthetics can be mitigated to less than significant levels with the inclusion of mitigation measures AES-1 and AES-2.
2. Potential environmental impacts related to air quality can be mitigated to less than significant levels with the inclusion of mitigation measures AQ-1, AQ-2, AQ-3, AQ-4, AQ-5, AQ-6 and AQ-7.
3. Potential environmental impacts related to Biological Resources can be mitigated to less than significant impacts with the inclusion of mitigation measures BIO-1, BIO-2, BIO-3 and BIO-4.
4. Potential environmental impacts related to Cultural / Tribal resources can be mitigated to less than significant levels with the inclusion of mitigation measures CUL-1 and CUL-2.
5. Potential environmental impacts related to hydrology and water quality can be mitigated to less than significant levels with the inclusion of mitigation measure HYD-1.
6. Potential environmental impacts related to noise can be mitigated to less than significant levels with the inclusion of mitigation measures NOI-1, NOI-2 and NOI-3.
7. As mitigated through specific conditions of approval, this project will result in less than significant environmental impacts.
8. Any changes to the project will require either an amended Use Permit and/or a new Use Permit unless the Community Development Director determines that any changes have no potential increased environmental impacts.

B. Approve Use Permit UP 19-15 with the following findings:

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.
2. The site is adequate in size, shape, locations, and physical characteristics to accommodate the type of use and level of development proposed.
3. The streets, highways and pedestrian facilities can be mitigated to be reasonably adequate to safely accommodate the proposed use.
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.
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.

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 a public health, safety or general welfare basis.
7. The proposed use complies with all development standards described in Section 1.i
8. The applicant is qualified to make the application described in Section 1.ii.(g)
9. The application complies with the qualifications for a permit described in Section 1.ii.(i)

Sample Motions:

Mitigated Negative Declaration

I move that the Planning Commission find that the **Initial Study (IS 19-27)** applied for by **Legendary Farms** on property located at **2290 Soda Bay Road, Lakeport**, and further described as **APN: 008-010-29** will not have a significant effect on the environment and therefore a mitigated negative declaration shall be approved with the findings listed in the staff report dated **May 27, 2020**.

Major Use Permit (UP 19-15)

I move that the Planning Commission find that the **Use Permit (UP 19-15)** applied for by **Legendary Farms** on property located at **2290 Soda Bay Road, Lakeport**, and further described as **APN: 008-010-29** does meet the requirements of Section 51.4 of the Lake County Zoning Ordinance and the Major Use Permit be granted subject to the conditions and with the findings listed in the staff report dated **May 27, 2020**.

***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 fee must be submitted prior to 5:00 p.m. on or before the seventh calendar day following the Commission's final determination.*