



COUNTY OF LAKE
COMMUNITY DEVELOPMENT DEPARTMENT
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Item 6c
9:05 a.m.
January 11, 2024

STAFF REPORT

TO: Planning Commission

FROM: Mireya G. Turner, Director
Michelle Irace, Principal Planner
Prepared by Eric J. Porter, Associate Planner

DATE: January 11, 2024

SUBJECT: Consideration of proposed Major Use Permit UP 20-40, Higher Ground Farms / John Oliver and Mitigated Negative Declaration (IS 20-50) for approval of 22,000 square feet (sf) of cannabis canopy inside eight greenhouses within a fenced 47,040 sf enclosure; project includes a 48' x 100' drying building, and one Type 13 Cannabis Distributor Transport Only, Self-Distribution License on a property located at 3545 Finley East Road, Kelseyville (APN: 008-026-07)

ATTACHMENTS:

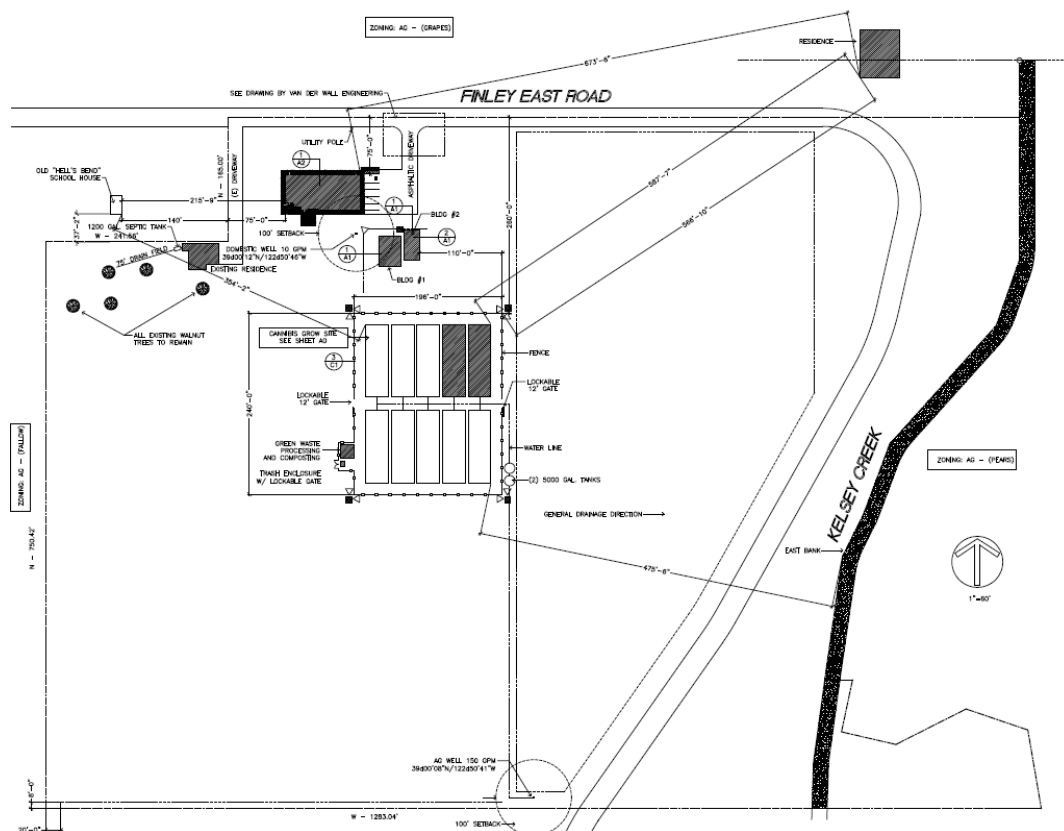
1. Project Site Plans
2. Draft Conditions of Approval
3. Property Management Plan
4. Initial Study
5. Hydrology Report and Drought Management Plan
6. Agency Comments
7. Tribal Comments
8. Public Comments

EXECUTIVE SUMMARY

This application is requesting one A-Type 3B mixed-light commercial cannabis cultivation license for 22,000 sf of cannabis canopy within eight 30' x 96' greenhouses; two 30' x 96' greenhouses for immature plants; one 48' x 100' building for cannabis processing and drying, and a Type 13 Distributor Transport Only, Self-distribution License. The project includes site improvements with the following: 6' tall screening/ security fence, security system, employee parking, a 10' x 10' restroom, and improvements to the interior driveway to make it compliant with Public Resource Codes (PRC) 4290 and 4291. The applicant is proposing to have two 5,000 gallon water tanks on site for irrigation. Water will be provided from an existing permitted on-site groundwater well. The applicant indicates that there will be four full-time employees, and up to 16 seasonal employees during peak harvest season.

Construction is anticipated to last up to three months and would occur Monday through Saturday from 8 a.m. to 5 p.m. Site work includes building 10 greenhouses, building the 48' x 100' processing / drying building, fence installation and improving the interior driveway to meet PRC 4290 and 4291 commercial driveway standards. Average vehicle trips during construction are estimated to be eight to sixteen daily trips, with up to 1,152 total projected construction trips

FIGURE 2 – SITE PLAN



Source: Material Submitted by Applicant

PROJECT DESCRIPTION

<u>Project Title:</u>	Higher Ground Commercial Cannabis Project
<u>Permit Numbers:</u>	UP 20-40, IS 20-50
<u>Lead Agency:</u>	Lake County Planning Division, 255 N. Forbes St., Lakeport CA
<u>Applicant Name & Address:</u>	John Oliver PO Box 94825 Las Vegas, NV 89193
<u>Property Owner:</u>	Leo Cortina
<u>Project Location:</u>	3545 Finley East Road, Kelseyville CA 95451
<u>Parcel Number(s) (APN):</u>	008-026-07
<u>Parcel Size:</u>	±23.69 acres
<u>General Plan Designation:</u>	Agriculture
<u>Zoning District(s):</u>	“A-WW-FF-AI”; Agriculture – Waterway – Floodway Fringe – Agriculture Industry
<u>Flood Zone:</u>	AE; The base floodplain where base flood elevations are provided, and AO, River or stream flood hazard areas, and areas with a 1% or greater chance of shallow flooding each year, usually in the form of sheet flow, with an average depth ranging from 1 to 3 feet. These areas have a 26% chance of flooding over the life of a 30-year mortgage. Average flood depths derived from detailed analyses are shown within these zone.

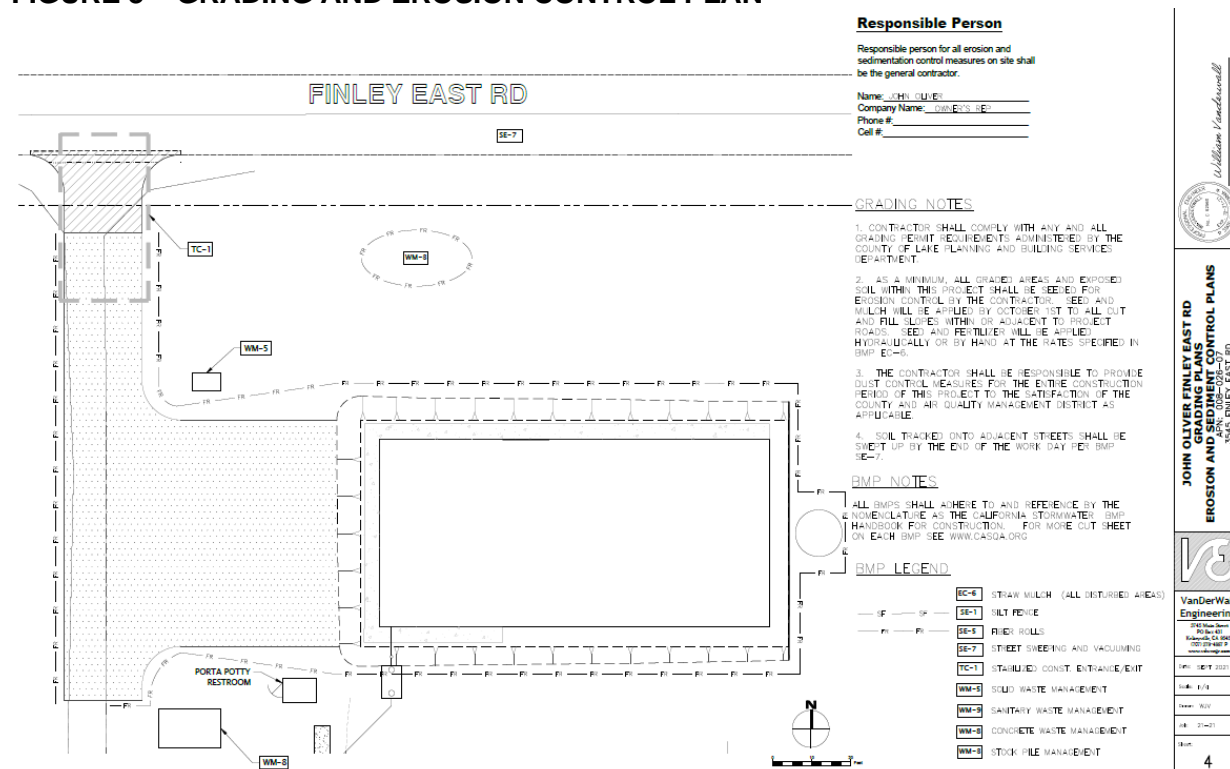
Existing Features on Site:

- (1) dwelling on a septic system
- (1) 520 sf storage building
- (1) 740 sf storage building
- (1) permitted groundwater well
- (1) Area for existing hay production
- (2) Unimproved driveways

Proposed Features on Site:

- (1) 48' x 100' metal drying building
- (8) 30' x 96' greenhouses
- (2) 5,000 gallon water tanks
- (4) full time employees
- (16) seasonal employees
- Interior driveway improvements

FIGURE 3 – GRADING AND EROSION CONTROL PLAN



Source: Material Submitted by the Applicant

POINTS OF INTEREST

1. Adjacent Vacant, Historic Schoolhouse. The “Hells Bend Schoolhouse”, also referred to as the Old Kelseyville Schoolhouse is on the parcel (APN 008-026-06) immediately west of the proposed cultivation site. According to Dr. John Parker, the Schoolhouse was built in 1869 and was moved to the Quercus Ranch in 1871. The building was again moved to its present location in 1882, and classes were held in the schoolhouse until 1920, when the use of the building as a school discontinued. The building has been vacant since discontinuation of the school use in 1920. The old Schoolhouse is eligible for State Historic Building listing and is included in the Lake County Historic Building Registry.

Public comments submitted by the Lucerne Area Revitalization Association (LARA) and attorneys representing the Kelseyville School District (School District) were received on June 1, 2023 and June 8, 2023 (Attachment 8). The correspondence expresses that both the LARA and the District strenuously object to the proposed project. The two main issues raised in the correspondence include: 1) stating that the proposed project would impact the historic Kelseyville Schoolhouse building, and therefore conflicts with the Lake County General Plan and the Kelseyville Area Plan; and 2) stating that the District intends to continue to use its property for school and School District-related purposes and the approval of this project will violate the 1,000-foot setback requirement noted in the Lake County Zoning Ordinance (Article 27), as the cultivation site would be approximately 543 ft from the Schoolhouse building.

Related to the statement that the project would impact the historic Old Kelseyville Schoolhouse building, and therefore be in conflict with the General Plan and Kelseyville Area Plan, as noted in the Project Analysis section of this Staff Report, the project meets all required setbacks, and development and performance standards intended to reduce land use conflicts and nuisance

issues related to cannabis cultivation. Impacts to cultural and historic resources are also analyzed under the California Environmental Quality Act (CEQA). Specifically, the CEQA Appendix G Checklist Section V. Cultural Resources, question (a) asks if the project would cause a substantial adverse change in the significance of a historical resource pursuant to Section 15064.5, which is generally defined as buildings or resources listed or eligible for listing on a local, state or federal historic register. The driveway that serves the project parcel borders on the edge of the Old Kelseyville Schoolhouse parcel (and approximately 125 ft away from the Schoolhouse building). A second driveway serving the project parcel accesses the two shop buildings and is located about 100 feet east of the primary driveway. The applicant is now proposing to use the secondary driveway in response to public comments received rather than the primary driveway due to proximity of the schoolhouse building. The use of the secondary driveway as the primary access to the cultivation site will ensure that cannabis-related traffic is further from the old schoolhouse site's access. The driveway would be improved for current fire and building code standards as a part of the project; however, the proposed improvements would not result in impacts to the building. In summary, the project does not propose modifications to the Schoolhouse building or other components that would impact the building or its historic significance.

Related to the proposed cannabis cultivation site's proximity to a 'school', the use of the Schoolhouse and/or the site for youth activities has not been confirmed following the County's request to the School District and to LARA for documentation that demonstrates that the building and/or site is being used for youth activities. The Lake County Code defines a school as follows in the context of commercial cannabis: *School: For the purpose of cannabis regulation, school means any public or private school providing instruction in kindergarten or any grades K to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes.* The building has remained vacant since 1920 and has not been used by the School District or by any youth groups since. Based on the correspondence received, there are plans for the building, at some point in the future, to be used by youth-related groups and/or activities. However, the building would require significant renovations to be deemed habitable under the California Building Code and additionally discretionary review may be required; to date, no such permits have been submitted to the Community Development Department (CDD). The potential approval of the proposed project would not prohibit the School District and LARA from future rehabilitation of the building or other plans for the site.

PROJECT SETTING

All properties surrounding the project property are zoned Agriculture (A). The following neighboring lot characteristics are present. See Figure 3, next page for map.

- North: Agriculture (A) zoned properties ranging in size from 0.95 acres to ±10 acres in size. Most of the neighboring northern lots are developed with dwellings and agricultural uses. Parcel number 008-026-06 contains the Old Kelseyville Schoolhouse building.
- South: Agriculture (A) zoned properties, both being about 5 acres in size and developed with dwellings. The lot to the southwest contains agricultural uses.
- East: Agriculture (A) zoned property, about 45 acres in size and developed with a dwelling and agricultural uses. The adjacent eastern property contains Kelsey Creek.
- West: Agriculture (A) zoned property, about 20 acres in size; contains a dwelling and crop production.

FIGURE 4 – ZONING MAP



Source: Lake County GIS Mapping

PROJECT ANALYSIS

General Plan Conformity

The General Plan Designation for the subject site is Agriculture, which allows commercial cannabis cultivation with a discretionary use permit approval. The project site is located in a mapped Farmland Protection Area, which allows cannabis cultivation, but only inside of greenhouses with air filtration systems as are being proposed in this application. The following General Plan goals and policies related to site development in the context of this proposal.

Chapter 3-Land Use

Goal LU-1: To encourage the overall economic and social growth of the County while maintaining its quality of life standards.

- Policy LU 1.3 Prevent Incompatible Uses. The County shall prevent the intrusion of incompatible uses into existing community areas.

Cannabis cultivation is allowed in certain areas within Lake County upon issuance of a major or minor use permit depending on the project's size and characteristics of the site. In this case, the property is located within a mapped Farmland Protection Zone, which allows greenhouse cultivation with air filtration systems. The property is not located within an Exclusion Area and is in an area that is characterized by traditional crop production. The project meets all setbacks and development standards related to compatible uses. Therefore, the project would not be considered a non-compatible use.

- Policy LU 1.4 Communities. The County shall recognize each community as an important asset to the County and seek to strengthen and revitalize all communities.

The approval of this use permit will allow both the agricultural industry and the cannabis industry to strengthen and revitalize the overall community through promoting economic development, employment opportunities, as well as tax and other revenues for the county. According to the applicant, the operation will include four full-time employees and up to sixteen seasonal employees during the growing season. Employees will spend money locally on commodities such as food, gas, rent and other items, which in turn will benefit local area merchants. Cannabis grown on site will be sold in local retail outlets, further benefitting revenues for cannabis retailers.

Goal LU-2: To clearly differentiate between areas within Lake County appropriate for higher intensity urban services and land uses from areas where rural or resource use should be emphasized.

- Policy LU 2.4 Agricultural / Residential Buffer. The County shall require adequate setbacks between agricultural and non-agricultural uses. Setbacks shall vary depending on the type of operation and chemicals used for spraying.

All required setbacks for the project have been met, and there are no residential units within 400 feet of the cultivation area. The property is approximately ±23.69 acres, portions of which will create a separation buffer from other properties in the vicinity.

Goal LU-7: To preserve Lake County communities' character and scale, including their design heritage and historic character.

- Policy LU-7.1 Adaptive Reuse. (definition provided under findings for Chapter 9, Open Space, Conservation and Recreation below) The County shall encourage and promote the adaptive reuse of all historic structures in order to preserve the historic resources that are a part of Lake County's heritage.
- Policy LU-7.2 Historic Buildings and Areas. The County shall preserve buildings and areas with special and recognized historic, architectural, or aesthetic value. New development should respect architecturally and historically significant buildings and areas.
- Policy LU-7.3 Historic Preservation. The County shall work with local preservation groups and community property owners to improve building facades and exteriors consistent with the historic and visual character of each area.

As discussed in the Executive Summary Section of this Staff Report, the project does not propose modifications to the historic Old Kelseyville Schoolhouse building, located on the adjacent parcel, and would not prevent the School District or LARA from future rehabilitation of the building. The project meets all required setbacks, and development and performance standards intended to reduce land use conflicts and nuisance issues related to cannabis cultivation. Impacts to cultural and historic resources are also analyzed under the California Environmental Quality Act (CEQA). Specifically, the CEQA Appendix G Checklist Section V. Cultural Resources, question (a) asks if the project would cause a substantial adverse change in the significance of a historical resource pursuant to Section 15064.5, which is generally defined as buildings or resources listed or eligible for listing on a local, state or federal historic register. The primary driveway that serves the project parcel will not be used due to proximity to the Old Schoolhouse property. The interior driveway (existing), located about 100 feet to the south of the primary driveway, will be improved for current fire and building code standards as a part of the project. In summary, the project does not propose

modifications to the Schoolhouse building or other components that would impact the building or its historic significance.

Chapter 7 – Health and Safety

Goal HS-1: To ensure the County is protected from injury and damage resulting from natural catastrophes, man-made events, and hazardous conditions.

- Policy HS-1.3 Building and Fire Codes. The County shall ensure all buildings for human habitation are designed in compliance with the Uniform Building Code and other requirements based on risk (e.g. seismic hazards, flooding), type of occupancy, and location e.g. floodplain, faults).

The project's access way is required to meet Public Resource Code (PRC) 4290 and 4291 commercial driveway standards to allow adequate access for wildfire suppression. The applicant will have two 5,000 gallon water tanks on site; one of these will be required to be fitted with connectors that will enable emergency responders to attach fire hoses to the tank in the event of an on-site fire. The tank shall be made of steel or fiberglass per CAL FIRE suppression tank standards.

Goal HS-5: To protect residents, visitors and property from hazardous materials through their safe use, transport and disposal.

- Policy HS-2.1 Hillside Development. Areas in excess of 30% slope or in a mapped naturally occurring asbestos areas may require submittal of engineered plans for all construction and grading at the discretion of the Community Development Department. These plans shall address roads, utility corridors, and similar off-site improvements as well as erosion and dust control. Development in other areas possessing potential landslide risk, regardless of slope, shall require engineered plans and/or geotechnical study prior to discretionary approval or approval of grading or building permits.

The project parcel is flat. The applicant has provided drawings that show stormwater mitigation measures that adequately address slope and erosion control. There is no mapped asbestos on the project site.

- Policy HS-5.6 Contamination Prevention. The County shall review new development proposals to ensure that the soils, surface water and groundwater are protected from contamination.

The applicant will maintain a hazardous material storage container with the use of secondary containment as required for all commercial cannabis activities. The proposed project also meets the required 100-foot setback from any spring, top-of-bank of any creek or seasonal stream (Class II watercourse), edge of lake, delineated wetland or vernal pool. The project also meets the State required 50' setback from a Class III ephemeral watercourse.

Goal HS-7: To minimize the possibility of the loss of life, injury or damage to property as a result of urban and wildland fire hazards.

- Policy HS 7-6 Development Guidelines: Developers and/or subsequent owners must assume responsibility for ongoing fire prevention maintenance activities for the project,

including abatement of fuel buildup, fire break maintenance, access provision, and provision of adequate water supply to meet fire flow.

The applicant will be required to upgrade the interior driveway to meet PRC 4290 and 4291 commercial driveway standards. The applicant will be required to provide a 100 foot fire break around all structures; this must be maintained by the applicant for the life of the project. The prior use of the site as a hemp farm required the removal of some walnut trees which occurred several years ago, however hemp production is no longer occurring on site. The applicant will be required to maintain a 100' defensible space around all structures. Lastly, the applicant will be required to fit one of the water tanks with connectors that will enable fire protection services to connect to a fire tank; the tank must be made of steel or fiberglass to meet CAL FIRE specifications for a fire suppression tank. This is added as a condition of approval.

Chapter 8 – Noise

Goal N-1: To protect County residents from harmful exposure of excessive noise and prevent incompatible land uses from encroaching upon existing and planned land uses.

- Policy N-1.4: Site Planning To Reduce Noise Impacts. The County should encourage proper site planning, architectural layout, and use of building materials as methods of noise attenuation. The following techniques should be considered to reduce noise impacts: increase the distance between noise source and receiver through the use of building setbacks and/or dedication of noise easement.

The project is situated in a relatively remote area, and shows setbacks that are no less than 160' from any property line. The nearest off-site dwelling is located about 400 feet to the northeast of the cultivation area, and site preparation, which is a potential source of noise, would last approximately six to eight weeks, and would take place between the hours of 7:00 a.m. and 7:00 p.m., which is typically a time when residents are not sleeping.

Chapter 9 – Open Space, Conservation and Recreation

- Goal OSC-8: To manage and protect sites of cultural and archaeological importance for the benefit of present and future generations.
- Policy OSC 8.2: Protection of Resources with Potential State or Federal Designations. The County should encourage the protection of cultural and archaeological sites with potential for placement on the National Register of Historic Places and/or inclusion in the California State Office of Historic Preservation's California Points of Interest and California Inventory of Historic Resources. Such sites may be of statewide or local significance and have anthropological, cultural, military, political, architectural, economic, scientific, religious, or other values.

Please refer to the discussion in the Executive Summary section of this Staff Report, as well as the discussion related to consistency with the Land Use Element policies related to historic resources.

Chapter 11 – Water Resources

Goal WR-1: Provide for the current and long-range water needs of the County and for the protection of the quality and quantity of groundwater resources.

- Policy WR-1.2: Sustainable Groundwater Withdrawal. The County shall manage groundwater resources within its jurisdiction through ordinances, project approvals, and agreements to ensure an adequate, safe, sustainable and economically viable ground water supply for existing and future use within the County, to maintain and enhance the natural environment, protect existing groundwater users, the overall economy of the County, and groundwater and surface water quality and quantity in a manner consistent with existing law and with a doctrine of safe yield within the groundwater basins of the County.

There is one existing permitted groundwater well located on the site. A well test was performed by Jim's Pumps on July 27, 2021. The well produced about 253 gallons per minute over a four-hour testing period. The well was drilled to a depth of 100 feet when installed. The water was found at a depth of 40 feet, and over the four-hour test, the well had a 10 foot drawdown with rapid recovery following shut down of the test.

The applicant provided a Technical Memorandum, prepared by Northpoint Consulting Group Inc., dated November 11, 2021. The Memorandum ("Study") assumed that daily water demand per plant was 6 gallons per day, which is consistent with industry standards. The projected water demand for this project is 690,000 gallons of water per year over a 365 day year (about 2.1 acre-feet). Included in this projected use is water use by employees and for irrigation. Total on-site water storage is 10,000 gallons inside two 5,000 gallon water tanks.

The Technical Water Memorandum ("Study") had the following projections and conclusions regarding the aquifer. The site is located on the Big Valley Groundwater Basin, which includes the watersheds of Manning Creek/ Rumsey Slough, Adobe Creek, Hill Creek, Kelsey Creek, Cole Creek and Highland Creek. The well is located just west of Kelsey Creek in the Kelsey Creek watershed. The estimated Big Valley Water Basin storage capacity is 105,000 acre-feet, with a usable amount of 60,000 acre-feet. According to the 2006 Lake County Groundwater Management Plan, the agricultural demand for water within the Big Valley Groundwater Basin is 11,454 acre-feet during an average year. The Big Valley Groundwater Basin is not a listed 'critically over-drafted' basin, and the recharge rates of the Basin during drought years exceeds the demand by the known wells using the basin.

Per the calculations and assumptions in the Hydrology Memorandum, the project has adequate water supply for the proposed irrigation use. The report also concludes that even in a drought year, estimates show that the well has the capacity to handle the proposed water irrigation needs of the project, without impacting the surrounding neighbor's wells.

Kelseyville Area Plan Conformity

The project site is located within the Kelseyville Planning Area and is under the jurisdiction of the Kelseyville Area Plan. The following policies within the Plan apply to this application.

Chapter 3 – Natural Resource Policies

- Objective 3.2: To encourage programs which reduce and limit the potential for soil erosion.

The applicant has provided an erosion control plan prepared by Vanderwall Engineering in order to minimize potential stormwater impacts to neighboring lots. The applicant will need to comply with the Statewide Waste Discharge Order for cannabis cultivators. The Erosion Control Plan shows various erosion control measures including straw wattles to be used to channel stormwater runoff, straw mulch, and seeding exposed earth to control windborne dust.

There are no creeks or watersheds located within 100 feet of the cultivation area, and the plans appear to effectively minimize potential stormwater runoff issues that might otherwise be associated with this project. Kelsey Creek is located about 475 feet from the closest edge of the cultivation area according to the site plan submitted; this is greater than the 100' of required separation from a surface water source as is required in Article 27, section 13(at).

- Objective 3.3: To protect and preserve the quality and quantity of water resources for the long-term development of the Kelseyville area.

The project has met the requirements of County of Lake Ordinance No. 3106, which requires a hydrological report and drought management plan be completed by a hydrologist, hydrogeologist, geologist or civil engineer, and that impacts from water use on the surrounding area be analyzed. This information was reviewed and incorporated into the initial study, which concluded that there will not be any significant impacts with the described mitigation measures in place.

- Objective 3.5: To encourage agricultural activities and development in Kelseyville Planning Area and limit the intrusion of incompatible development into prime areas.

The project is consistent with Ordinance No. 3103, which requires lots within Farmland Protection Areas to be cultivating inside greenhouses.

Chapter 5 – Land Use Policies

- Policy 5.1b-1: A high priority should be given to providing service and employment opportunities locally in the Kelseyville Planning Area in order to boost economic development and reduce travel distances.

This applicant will have four employees during regular operations and construction and up to sixteen employees during harvest season. In addition to the income made by these employees, the applicant will provide State-controlled product to local cannabis retail stores, further enabling more retail cannabis-related local employment. The project will benefit the County and State tax base by generating cannabis taxes annually.

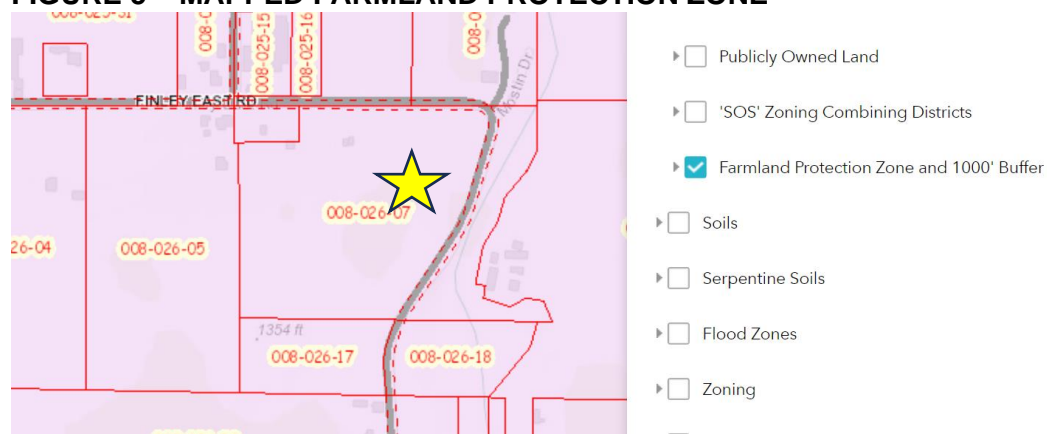
Zoning Ordinance Conformity

Article 5 – Agriculture (A): The site is zoned “A-WW-FF-AI”, Agriculture - Waterway – Floodway Fringe – Agricultural Industry. The purpose of the Agriculture zone is to protect the County’s agricultural soils, provide areas suitable for agriculture, and prevent development that would preclude their future use in agriculture.

The project site is located in a mapped Farmland Protection Zone (FPZ). The Board of Supervisors approved Ordinance No. 3103 on April 20, 2021 which allows cannabis cultivation to occur in FPZ land, provided the cultivation occurs inside greenhouses as is being proposed in this application.

Article 28 – Agricultural Industry Combining District (AI). The purpose of this combining district is to protect the County’s Intensive agricultural activities and soils by reducing the potential for conflicts between residential uses and intensive agricultural uses. The project proposes commercial cannabis cultivation inside greenhouses. There are traditional agricultural crops being grown in the vicinity, however because the cannabis is being grown inside greenhouses that are required to have air filtration systems, the likelihood of pesticides or fertilizers migrating from the cannabis site onto other lots containing traditional crops is minimal.

FIGURE 5 – MAPPED FARMLAND PROTECTION ZONE



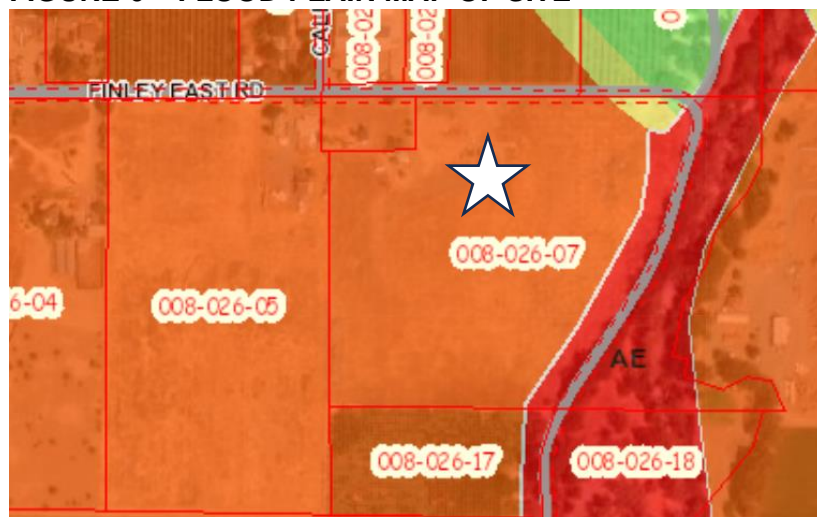
Source: Lake County GIS Mapping

Article 36 – Floodway Fringe Combining District. The purpose of this combining district is to provide land use regulations for properties and their improvements situated in the floodplain to ensure protection from hazards and damage which may result from flood waters. The entire parcel is located in the AO flood plain for Kelsey Creek, so building footings will be required to be engineered for all structures.

Article 37 – Waterway Combining District (WW). The purpose of this combining district is to preserve, protect and restore significant riparian systems, streams and their riparian, aquatic and woodland habitats; protect water quality; control erosion, sedimentation and runoff; and protect the public health and safety by minimizing dangers due to floods and earth slides.

The site is flat, and the potential for landslides is very minimal due to the lack of slope on the site. Property Management Plan (Page 14) describes the erosion control methods that will be used for the project to control stormwater runoff, which include watering down roads and exposed areas during windy days, and using straw wattles around the cultivation area to prevent roof runoff from migrating to other sites. This is also required within a condition of approval for this project.

FIGURE 6 – FLOOD PLAIN MAP OF SITE



Source: Lake County GIS Mapping

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 or health permit as required.

Development and Performance Standards

This application meets the Development Standards, General Requirements, and Restrictions as specified within Article 27.13, subsection (at) of the Lake County Zoning Ordinance. These include:

- Minimum Lot Size (20 acres required for an A-Type 3 license): *Complies; The lot is ±23.67 acres in size, and 20 acres is required for the permit requested.*
- Setback from property line (100 feet): *Complies; the cultivation sites are set back more than 100 feet from all property lines.*
- Setback from off-site residence (200 feet): *Complies; the nearest off site dwelling is greater than 400 feet to the north-east of the cultivation area.*
- Minimum and maximum fence height of six (6) to eight (8) feet: *Complies; the proposed fence is six (6) feet tall.*
- Maximum canopy area (22,000 sf of greenhouse cultivation for each 20 acres of land): *Complies; The total proposed canopy area is 22,000 sf which requires 20 acres of land. The ±23.69 acre lot size supports the proposed permit.*

General Requirements

There are 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, and other applicable standards and criteria found

in Article 27, subsection 27.13(at), as well as in Article 51, subsection 4, Major Use Permit Findings for Approval.

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.

Article 41, Performance Standards. All land use projects in the “A” Agriculture zoning district requires review under Article 41. The following findings apply to this project.

- Section 41.2, *Exceptions*. This section only applies if a project:
 - Does not have potential to significantly impact the environment; or,
 - Does not have potential to create substantial public controversy; or,
 - Does not have potential to injure public health, safety or welfare.

The cultivation site is located on a ±23.69 acre property. Cannabis applications have the potential to create public controversy due to the public perceptions of the use combined with concerns about traffic, water, odor and security and in this case, due to the presence of a historic building located on the western adjacent lot. The above exceptions do not apply to this project due to the probable controversy that will result from this application, and no exceptions to the performance standards apply due to the potential for objections to the project.

- Section 41.4, *Air Quality*. The project has some potential to impact air quality during construction and to a lesser extent during operations. The cannabis canopy area is 22,000 sf in size. Mature plants will be inside greenhouses that are required to have carbon air filtration systems, which will help to minimize odors, particularly during harvest season. Ground disturbance will consist of preparing the pad for the drying building and greenhouse pads. The Initial Study for this project has mitigation measures that will help reduce dust and wildfire threats during site disturbance. Odor control will occur inside the greenhouses through required carbon air filtration systems. Carbon filtration systems are required in all buildings that will contain mature cannabis plants, including the proposed drying building.
- Section 41.5, *Electromagnetic Interference*. This section is intended to assure that a project will not impact any activity outside of the project area by producing electromagnetic interference. Cannabis cultivation activities do not generate electromagnetic interference, so this section does not apply.
- Section 41.6, *Erosion Control*. This section is intended to reduce or eliminate potential impacts associated with erosion, which is potentially prevalent during site disturbance. The applicant has submitted Erosion and Drainage Control Plans that show methods of erosion control that will be in place prior to ground disturbance and over the life of the project. The applicant is also required to apply for and receive a grading permit due to the extent of site improvements that will occur.
- Section 41.7, *Fire and Explosion Hazards*. The project site is located in a non-wildland, non-urban area with relatively low risk of wildfire. No mitigation measures other than interior driveway improvements and maintaining defensible space around all buildings appears to be necessary for this project.

- Section 41.8, *Glare and Heat*. The greenhouses and the proposed drying building have some potential for glare. The building heights are not shown on the materials submitted, however most greenhouses of this size are typically 14' to 16' tall. The maximum allowed height for accessory buildings on this property is 20 feet; this includes the metal drying building. The applicant shall use non-glare materials for all buildings including windows. This is added as a condition of approval.
- Section 41.9, *Landscaping Standards*. The site is flat and has little native landscaping that would otherwise screen the new use from neighboring uses. The applicant is proposing a 6' tall wire mesh screening fence. The County no longer allows fabric screening material due to poor durability, and requires more substantial materials be used in the construction of screening fencing. The screening fence will further screen the cultivation activities from view around the perimeter of the cultivation area.
- Section 41.10, *Liquid, Solid and Hazardous Wastes*. The section applies to potential discharges of toxic elements. The project must rely on organic fertilizers and pesticides to meet State regulations for impurities. There may be some fuel used during construction for the construction vehicles; mitigation measures and Conditions of Approval require a spill containment kit be kept on site in the event of a fuel spill, and equipment staging will occur on previously disturbed portion of the site, which will minimize the potential for chemical infiltration into the soil in the event of a spill.
- Section 41.11, *Noise*. The project may generate some noise during construction which is expected to last about four to six weeks. During operations, air filtration systems required in the greenhouses and processing building have potential to generate noise. Mitigation measures limit noise measured at the property lines during daytime and night-time hours. Violations of noise that are ongoing may cause the County to re-visit the approval of this use permit if it is approved.
- Section 41.12, *Open and Outdoor Storage and Display*. The applicant has not indicated that any outdoor storage or display will occur, nor is any authorized under this use permit.
- Section 41.13, *Radioactivity*. Cannabis cultivation projects do not produce radioactivity. This section does not apply.
- Section 41.15, *Vibrations*. There is some potential for groundbourne vibrations during site disturbance, primarily for building pad preparations. The applicant is limited in permissible noise levels during and after site disturbance activities occur; the type of equipment used in construction does not generate vibrations, and no mining, rock crushing or other activities that might cause vibrations are not permitted for this project.

Tribal Consultation

Lake County sent Assembly Bill (AB) 52 notices to 11 tribes on April 8, 2022, informing tribes of the proposed project and offering consultation under AB-52. Of the 11 notified Tribes, the Yocha Dehe Tribe and the Upper Lake Habematolel Tribe replied (Attachment 7), deferring to Big Valley and Middletown Rancheria Tribes. No other tribes responded to the AB 52 notice.

Agency Comments

Lake County Planning Division has received comments from the following agencies:

- Lake County Building Official
- California Highway Patrol
- CalCannabis
- Lake County Environmental Health Department
- Lake County Sheriff's Department
- California Historical Resources Information System (CHRIS)
- PG&E
- Redbud Audubon Society
- Lake County Special Districts
- Lake County Department of Public Works
- North Coast Regional Water Quality Control Board

The following agencies submitted comments on this project that require action by the applicant:

- Lake County Building Official – building permits required
- California Highway Patrol - traffic concerns on Finley East Road; unclear on potential vehicle impact to Schoolhouse property based on close proximity of the Higher Ground driveway
- Lake County Environmental Health (EH) – 2021 site evaluation and field clearance to locate the existing septic system. Applicant must meet EH requirements regarding Onsite Wastewater Treatment System (OWTS). Any new restroom(s) will require a new OWTS separate from any existing OWTS serving the residence.
- North West Information System (Sonoma State) – five prior Cultural Studies on the subject site. The project area contains a mapped Native American archaeological site, the Mostin Site, P-17. Recommended is an archaeologist update the conditions of the site on Office of Historic Preservation's DPR 523 resource recordation forms.
- Redbud Audubon – opposes project; states that the Initial Study is flawed by not evaluating potential impact to the historic area. Did not evaluate potential impacts on the endangered Hitch in Kelsey Creek.
- Lake County Special Districts – water line in Finley East Road, Any work in the right-of-way will require coordination with the Special Districts Department.

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 (Attachment 4) was prepared and circulated for public review in compliance with CEQA from 09/29/2022 to 10/28/2022.

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

- Aesthetics
- Air Quality
- Biological Resources
- Cultural / Tribal Resources
- Geology/Soils
- Noise

The following mitigation measures are added into the Conditions of Approval:

Aesthetics. The project has some potential to impact Aesthetics in the area due to the proposed greenhouses and lighting associated with the structures. The following mitigation measures will help to reduce potential impacts to Aesthetics to less than significant levels.

- AES-1: Prior to cultivation, all greenhouses shall incorporate blackout screening so that no light is visible from outside each greenhouse. The drying building shall incorporate blackout screening if any interior lighting is visible from outside the structure.
- AES-2: Prior to cultivation, a minimum 6' tall screening fence shall be installed around the perimeter of the cultivation. The screening material shall not be fabric due to poor durability, and the fence may be chain link with slats, or solid wood or metal.
- AES-3: All exterior lighting shall be downcast and shall not be directly visible from public roads or neighboring lots. All lighting shall comply with fixture recommendations found in darksky.org.

Air Quality. The project has some potential for dust and odor impacts. The following mitigation measures will reduce the potential impacts to less than significant levels.

- AQ-1: Prior to obtaining the necessary permits and/or approvals for any phase, applicant shall contact the Lake County Air Quality Management District (LCAQMD) 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 all federal, state, and local requirements, including the requirements of the State Air Toxic Control Measures for compression ignition engines. Additionally, all engines must notify LCAQMD prior to beginning construction activities and prior to any diesel engine use.
- 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 LCAQMD such information in order to complete an updated Air Toxic emission Inventory.
- AQ-4: All vegetation removed 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-5: 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-6: All areas subject to infrequent use of driveways, overflow parking, etc., shall be surfaced with gravel, chip seal, asphalt, or an equivalent all weather surfacing. Applicant shall regularly use and/or maintain graveled area to reduce fugitive dust generations.

- AQ-7: Prior to greenhouse cultivation, and prior to use of the processing building for cannabis drying and packaging, the applicant shall install carbon or similar air filters in each structure.

Biological Resources. The project has some potential for impacts to biological resources. The following mitigation measures will help to reduce potential impacts on biological resources to less than significant levels.

- BIO-1: All work shall incorporate erosion control measures consistent with the engineered Grading and Erosion Control Plans submitted; the Lake County Grading Regulations, and the State Water Resources Control Board Order No. WQ 2019-001-DWQ and Construction General Permit 2009-009-DWQ.
- BIO-2: Permit conditions for this project shall require strict compliance with local, state, and federal regulations for the handling, use, and storage of agricultural chemicals.

Cultural and Tribal Resources. The project has some potential to impact historic, cultural and tribal resources. The site contains a mapped Native American historic site, the Mostin-17 site, that was identified on previous cultural studies. The following mitigation measures will further reduce potential impacts to Cultural and Tribal impacts to less than significant levels.

- 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 applicant shall notify the culturally affiliated Tribe(s), and a qualified archaeologist 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, the applicant shall notify the Sheriff's Department, the culturally affiliated Tribe(s), and a qualified archaeologist for proper internment and Tribal rituals per 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 culturally affiliated Tribe(s) shall immediately be notified; a licensed archaeologist shall be notified, and the Lake County Community Development Director shall be notified of such finds.
- CUL-3: Prior to site disturbance, the applicant shall bring an archaeologist to the site and shall stake out the mapped historically sensitive area for avoidance. If the sensitive area is within the project boundary, the applicant shall amend the site plan to show a 50' buffer of non-disturbable area between the sensitive site and the cultivation site.

Geology and Soils. The project has some potential for impacts to geology and soils regarding sensitive historic portions of the site. The following mitigation measure will help to reduce potential impacts to the Mostin Site to less than significant levels.

- CUL-3: Geology section refers to mitigation measure CUL-3 as the mitigation measure for potentially significant historic relics or items

Noise. The project has some potential to have noise-related impacts, particularly during site disturbance and construction. The following mitigation measures will help to reduce potential noise-related impacts resulting from this project.

- NOI-1: All construction activities including engine warm-up shall be limited Monday Through Friday, between the hours of 7:00 a.m. and 7:00 p.m., and Saturdays from 12:00 noon to 5:00 p.m. 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 7:00 a.m. to 10:00 p.m. and 45 dBA between the hours of 10:00 p.m. to 7:00 a.m. within residential areas as specified within Zoning Ordinance Section 21-41.11 (Table 11.1) at the property lines.

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.*

The proposed use of commercial cannabis cultivation is a permitted use in the “A” Agriculture Zoning District subject to the issuance of a major use permit pursuant to Article 27.13(at) and Article 51.4 of the Lake County Zoning Ordinance, and subject to cultivation occurring in greenhouses as is proposed since the cannabis project is within a mapped Farmland Protection Area. The immediate area has traditional agricultural uses; cannabis cultivation, while not recognized as a crop in the traditional sense, involves growing and harvesting cannabis plants. Additionally, the Community Development Department will require annual compliance monitoring reports and conduct annual inspections during the cultivation season to ensure compliance with the approved Property Management Plan and Conditions of Approval.

The County has received adverse comments from neighboring property owners and concerned groups and individuals objecting to the project due to the presence of the Old Kelseyville Schoolhouse located about 354 feet from the edge of the cultivation area on the neighboring lot to the northwest; however the project does not propose modifications to the Schoolhouse building or other components that would impact the building or its historic significance. Additionally, the Old Schoolhouse Site has not demonstrated that they meet the criteria for the 1000-foot separation required between cannabis cultivation sites and churches, schools and youth-related activity sites.

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.*

The proposal consists of 22,000 sf of greenhouse cannabis canopy. The Lake County Zoning Ordinance allows cultivation operations on “A” Agriculture-zoned land if the land meets the requirements within Article 27.13(at). The subject site is ±23 acres in size, large enough to enable the cultivation area proposed to occur.

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

The site is accessed via an interior driveway that connects to Finley East Road, a paved County-maintained road. The original driveway leading to the cultivation site is located very close to the property line of the lot containing the Old Kelseyville Schoolhouse; the applicant has two driveways; the secondary driveway is located approximately 100' to the east of the originally-proposed driveway. The applicant has agreed to use the secondary driveway as the primary access to the cultivation site in order to keep cannabis-related traffic further from the old schoolhouse site's access.

California Highway Patrol submitted comments indicating that additional study(s) may be necessary to assure that there is adequate access onto Finley East Road and had some concerns about additional trip generation generated by the project when the shared driveway to the Old Schoolhouse parcel was proposed for the project. As noted above, the alternate driveway further east of the shared driveway is now proposed as the main access for the project. Traffic impacts are also analyzed within Section XVII. Transportation of the Initial Study, which were found to be less than significant. As noted within the analysis, the application materials submitted indicate that trips associated with the project will be minimal, estimated at eight to sixteen daily trips excluding deliveries, which are expected to occur once or twice weekly. Because the project would not result in over 110 trips per day, impacts related to vehicle miles traveled (Guidelines section 15064.3) would be less than significant. The project was circulated for public agency review, including but not limited to Kelseyville Fire Protection District, California Highway Patrol, the Lake County Sheriff's Department, Cal Fire, and the Lake County Department of Public Works. The California Highway Patrol comments are noted above. All commercial cannabis projects require compliance with PRC 4290 and 4291; this is a typical condition added to all commercial cannabis cultivation projects.

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.*

There are adequate public utilities and services available to the site. The Kelseyville Fire Protection District provides fire-related emergency services to the site. The Lake County Sheriff's Department provides police protection. The site is served by PG&E on-grid power. The site is served by a private permitted groundwater well and existing septic system.

The application was routed to all of the affected public and private service providers, including Public Works, Environmental Health, Specials Districts, Audubon Society (opposed to the project); Water Resources and PG&E. All agency comments are attached (Attachment 6).

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.*

Upon review, the Community Development Department has determined that the proposed use for the cultivation of greenhouse cannabis is in conformance with the applicable provisions and policies of this Code, the General Plan, the Kelseyville Area Plan, and the Lake County Zoning Ordinance as the cultivation of cannabis is an allowable use within the "A" Agriculture Zoning Designation upon securing a major use permit pursuant to Article 27 (Table B) of the Lake County Zoning Ordinance. The General Plan and Kelseyville Area Plan do not have any provisions specifically for commercial cannabis, but both plans have provisions for economic development and land use compatibility.

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.*

There are no documented violations of Chapters 5, 17, 21, 23 or 26 of the Lake County Code on the subject properties. This was confirmed by the Cannabis Division of the Lake County Planning Department during and following a site visit that occurred on July 24, 2023.

Further, Article 27.13(at) has three findings that must be met for commercial cannabis:

7. *The proposed use complies with all development standards described in Chapter 21, Article 27, Section 1.i.*

The purpose of this report is to evaluate the levels of compliance with the standards and criteria found in Article 27, section 1.i., as well as other portions of the Zoning Ordinance, General Plan and Kelseyville Area Plan.

8. *The applicant is qualified to make the application described in Chapter 21, Article 27, Section 1.ii. (g).*

The applicant is qualified to make this application as he has passed a 'Live Scan' background check.

9. *The application complies with the qualifications for a permit described in Chapter 21, Article 27, Section 1.ii. (i).*

The application complies with the qualifications for a permit described in Chapter 21, Article 27, Section 1.ii. (i).

RECOMMENDATIONS

Staff recommends the Planning Commission take the following actions:

- A. Adopt Initial Study (IS 20-50) for Major Use Permit (UP 20-40) with the following findings:
 1. Potential impacts to Aesthetics can be mitigated to 'less than significant' levels with the inclusion of mitigation measures AES-1 through AES-3.
 2. Potential environmental impacts related to Air Quality can be mitigated to less than significant levels by mitigation measures AQ-1 through AQ-7
 3. Potential environmental impacts related to Biological Resources can be mitigated to less than significant levels by mitigation measures BIO-1 and BIO-2.
 4. Potential environmental impacts related to Cultural and Tribal Resources can be mitigated to less than significant levels by mitigation measures CUL-1 through CUL-3.
 5. Potential environmental impacts regarding Geology and Soils can be mitigated to less than significant levels with the inclusion of mitigation measure CUL-3.

6. Potential environmental impacts related to noise can be mitigated to less than significant levels by mitigation measures NOI-1 and NOI-2.
 7. This project is consistent with other agricultural land uses in the vicinity.
 8. This project is consistent with the Lake County General Plan, Kelseyville Area Plan and Lake County Zoning Ordinance.
- B. Approve Major Use Permit (UP 20-40) 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. 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.
 3. That the streets, highways and pedestrian facilities are reasonably adequate to safely accommodate the specific proposed use with mitigation measure added.
 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 Lake County General Plan, the Kelseyville Area Plan and the Lake County Zoning Ordinance.
 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 Chapter 21, Article 27, Section 1.i.
 8. The applicant is qualified to make the application described in Chapter 21, Article 27, Section 1.ii.(g).
 9. The application complies with the qualifications for a permit described in Chapter 21, Article 27, Section 1.ii.(i).

Sample Motions:

Mitigated Negative Declaration (IS 20-50)

I move that the Planning Commission adopt Mitigated Negative Declaration (IS 20-50) for Higher Ground Farms on property located at 3545 Finley Road East, Kelseyville (APN: 008-026-07) with the findings listed in the staff report dated January 11, 2024.

Major Use Permit (UP 20-40)

I move that that the Planning Commission approve Major Use Permit (UP 20-40) for Higher Ground Farms on property located at 3545 Finley East Road, Kelseyville (APN: 008-026-07) based on the findings and subject to the conditions listed in the Staff Report dated January 11, 2024.

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's decision, 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 Planning Commission's final determination.