

**COUNTY OF LAKE**255 North Forbes Street
Lakeport, CA 95453**Legislation Text****File #: 24-866, Version: 1****Memorandum****Date: August 20, 2024****To: The Honorable Lake County Board of Supervisors**

From: Mireya G. Turner, Community Development Director
Michelle Irace, Principal Planner
Mary Claybon, Associate Planner

Subject: 9:15 A.M. - PUBLIC HEARING - Consideration of Appeal (AB 24-02) of Planning Commission's Approval of Major Use Permit (UP 20-96), Highland Farms, LP/Autumn Karcey; Location: 7508, 7522, 7634, & 7746 Highland Springs Road and 7257 & 7357 Amber Ridge Road in Lakeport, CA. (APNs 007-006-27, 34, 35, 40, 41, and 007-057-02); Appellants: Tom Lajcik, Margaux Kambara and Associates

Executive Summary:

A. May 23, 2024, Planning Commission Staff Report with the following attachments:

1. Project Site Plans by Lake Co. Development (11/10/2023)
2. Draft Conditions of Approval (May 23, 2024)
3. Farm Management Plan (amended 11/26/2023)
4. Draft Initial Study/Mitigated Negative Declaration (IS 20-116)
5. Hydrology Report by Summit Engineering, Inc. (11/12/2021)
6. Drought Management Plan
7. Water Availability Analysis by Summit Engineering, Inc. (1/20/2022)
8. Commercial Electric Service Calculation Analysis by Summit Engineering, Inc. (4/12/2021)
9. Combined Road Work and Culvert Volumes by Delve Engineering and Consulting (5/22/2021)
10. Geotechnical Report by Bauer Assoc, Inc. (12/10/2021)
11. Biological Assessment
12. Air Quality and GHG Models
13. Agency Comments
14. Tribal Comments
15. Public Comment

B. Planning Commission Minutes from May 23, 2024, Public Hearing

C. Appeal Application (AB 24-02)

D. Appellant Comments Submitted by Somach Simons & Dunn (7/26/24)

- E. Applicant (Highland Farms, LP) Comments Submitted by Rutan & Tucker, LLP (7/19/24)
- F. Ordinance 3096; Public Lands

On May 23, 2024, the Lake County Planning Commission adopted Mitigated Negative Declaration (IS 20-116) and approved a Major Use Permit (UP 20-96) for commercial cannabis cultivation of nineteen (19) A-Type 3 “Medium outdoor” licenses consisting of nineteen (19) acres of outdoor commercial cannabis canopy, two (2) A-Type 3B “Mixed-light” commercial cannabis canopy consisting of 34,404 square feet (sf), Type 4 Nursery, and a Type 13 B and C Distribution located at 7508, 7522, 7634, & 7746 Highland Springs Road and 7257 & 7357 Amber Ridge Road in Lakeport, CA. (APNs 007-006-27, 34, 35, 40, 41, and 007-057-02). The project proposes four cultivation gardens identified as A, B, C, and D with two stages of development. The first stage is proposed for outdoor commercial cannabis canopy. The second stage converts a portion of garden C from outdoor cultivation to 34,404 square feet (sf) of mixed-light commercial cannabis canopy within a 160 x 296 (Building H) greenhouse with 90 sf loading zone greenhouse.

At the May 23, 2024, hearing, the Planning Commission heard public comment and provided for the applicant and subject matter experts to respond; the Planning Commission approved the project by a unanimous vote of 3-0, with Commissioner Brown absent and the District 5 seat being vacant. The Planning Commission Staff Report and associated attachments are included as Exhibit A; the minutes of the meeting are included as Exhibit B, and the meeting may be viewed online at:

https://lakecounty.granicus.com/player/clip/722?view_id=1&redirect=true

In accordance with County of Lake Zoning Code Section 58.31, the appellants and Tom Lajcik, Margaux Kambara and Associates, filed an appeal (AB 24-02) of the Planning Commission’s decision on May 23, 2024. The appeal application is included in Exhibit C. As described in the application, the appellants note the presence of serpentine soils identified as Maymen-Hopland-Etsel Association, 15 to 50 percent slopes.

Staff’s analysis of the forementioned points raised by the appellants is included in Section III, Appeal Analysis, below. In summary, there was no new information presented at the Planning Commission hearing that identified inconsistencies between the project (as conditioned) and the County Code, or information resulting in Staff being unable to recommend the findings required for a major use permit. Additionally, the appellants did not provide any new information in the Appeal application that was not either previously analyzed by Staff or previously discussed and resolved at the Planning Commission hearing. As such, Staff’s original recommendation for approval of the project remains. Staff recommends the Board deny the appeal (AB 24-02), upholding the Planning Commission’s adoption of Initial Study (IS 20-116) and approval of Use Permit (UP 20-96).

The Appeal Application (AB 24-02) is included in Exhibit C and additional comments submitted by the Appellant are included in Exhibit D. Comments submitted by Highland Farms, LP (Applicant) are included in Exhibit E).

I. PROJECT OVERVIEW

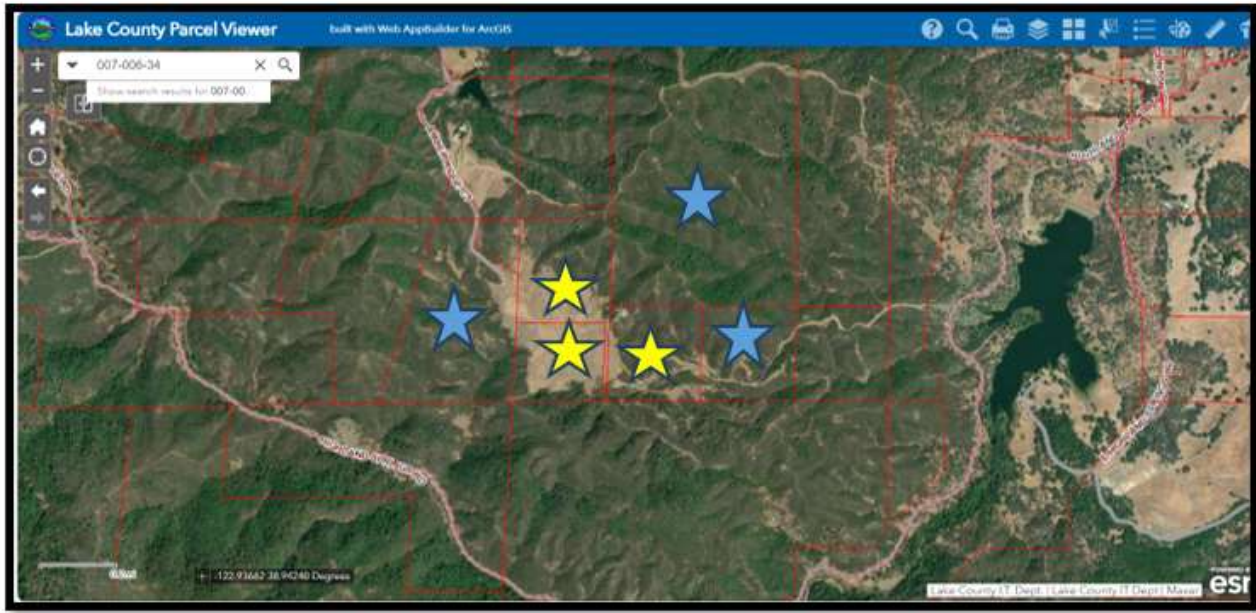
Setting. The site is located to the west of Highland Springs Lake in unincorporated Lake County, five miles west of Kelseyville, and seven miles south of Lakeport. The Project is being proposed with six parcels contiguous parcels to allow collocation/clustering of permits, three of which contain the

cultivation areas. (APNs: 007-006-40; 007-006-35; 007-006-34). Total acreage combined is 508.19 acres.

The site contains a total of one Class II and eight Class III streams. Nine stream crossings would be utilized during the operation of the proposed project in accordance with a California Department of Fish and Wildlife (CDFW) Lake Streambed Alteration Agreement (LSAA). Seasonal wetlands occur adjacent to, but not within the project site. Five biological surveys were completed for the proposed project (Exhibit A11). A minimum setback of 50 feet would be maintained from the top of bank of the Class III waterways and wetland boundaries, and 100 feet from the top of bank of the Class II waterway adhering to required setbacks. Comments were received from the California State Water Resource Control Board confirming setbacks. (Exhibit A13).

Project Summary. An application for Major Use Permit (UP 20-96) was originally submitted on December 14, 2020. The detailed project description and site plans can be found in the Planning Commission Staff Report (Exhibit A). Canopy and Cultivation Areas: The applicant proposes two stages of development. During Stage 1 of the project, the applicant is applying for nineteen (19) A-Type 3 acres of outdoor commercial cannabis cultivation area, rather than canopy area, to allow for future adjustments in cultivation style and layout within the footprint of the approved cultivation areas. While the 19 license types would typically allow for 19 acres of outdoor cannabis canopy, the applicant proposes a maximum of 5.9 acres of outdoor plant canopy based on the area only in which the cannabis plants will grow. This does not account for aiseways and rows. The applicant intends to request a reduction of the actual square footage of canopy for cultivation taxation purposes by June 01 of the calendar year, as determined for each growing season for the duration of the major use permit. Please refer to the Planning Commission Staff Report and Attachments included in Exhibit A for additional project details and site plans.

FIGURE 1 - VICINITY MAP



Source: Lake County Parcel Viewer

★ Cultivation ★ Clustering

FIGURE 2 - STAGE 1 SITE PLAN

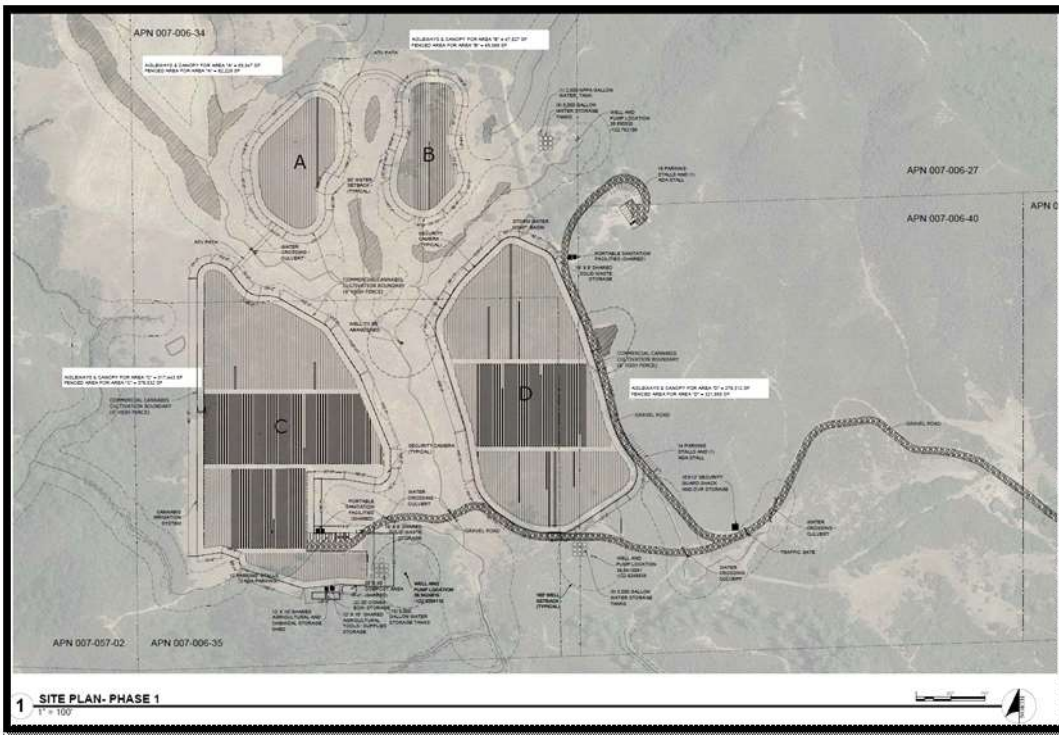
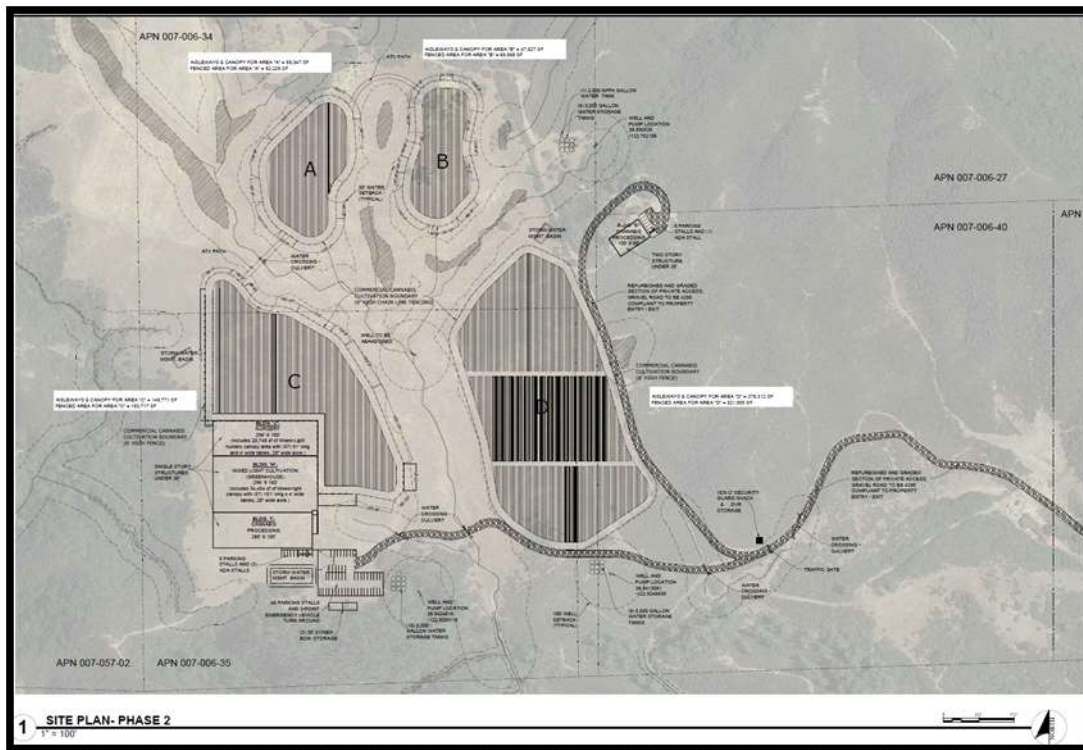


FIGURE 3 - STAGE 2 SITE PLAN



Environmental Review. The California Environmental Quality Act (CEQA) requires agencies to evaluate the environmental implications of land use actions. A Draft Initial Study and Mitigated Negative Declaration (Exhibit A4) was prepared and circulated for public review in compliance with CEQA from April 8, 2024, to May 7, 2024. The Initial Study found all impacts to be less than significant with implementation of mitigation measures related to Aesthetics, Air Quality, Biological Resources, Cultural Resources, Energy, Geology/Soils, Hazards & Hazardous Materials, Hydrology/Water Quality, Noise, Tribal Cultural Resources, and Wildfire.

Planning Commission Approval. At the May 23, 2024, public hearing, the Planning Commission considered all public testimony and information in the record and adopted the Initial Study/Mitigated Negative Declaration (IS 20-116) and approved (UP 20-96) based on the findings found in the Staff report dated May 23, 2024 (Exhibit A).

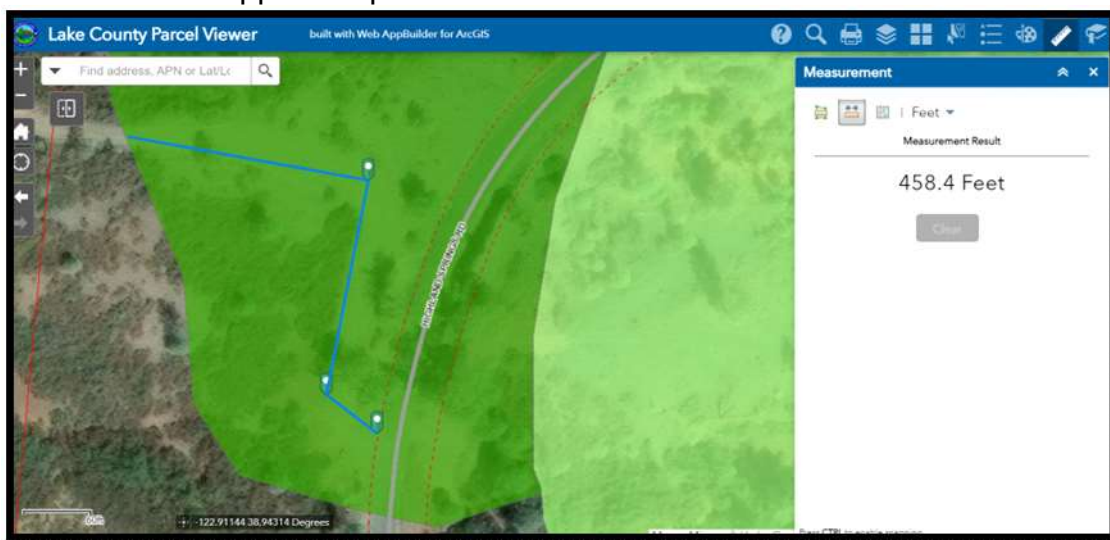
II. APPEAL ANALYSIS

Per Lake County Zoning Ordinance Section 58.31, decisions of the Planning Commission may be appealed by an interested party within seven (7) calendar days of the decision and shall be accompanied by a written statement setting forth the grounds upon which the appellant asserts there was an error or abuse of discretion by the Planning Commission. In this case, the appeal (AB 24-02) of the May 23, 2024, Planning Commission decision was filed by the appellants in a timely manner on May 28, 2024. In their application for Appeal (Exhibit C), the appellants provided specific areas of concern for the project stating, “CEQA and other legal violations. Additional comments submitted by the Appellant (Exhibit C) reiterate and expand upon these points. Points raised by the Appellant, as well as Staff’s responses to the issues are summarized below.

1. Serpentine soils, other environmental violations.

Staff Response: The access easement for the project parcels include APN 007-043-01, which is designated as Open Land owned by the County of Lake for Highland Springs Recreation Area. A portion of the access easement connecting to Highland Springs Road contains mapped serpentine soils for approximately 460 feet. Upon approval of the project, the applicant is required to obtain an Authority to Construct Permit from the Lake County Air Quality Management District (LCAQMD) as outlined in the Conditions of Approval (Exhibit A2). In addition, all earthwork and roadway improvements that are not exempt from grading and building permits must be approved by the Planning Division for a grading permit. The project requires a Serpentine Dust Control Plan due to the presence of serpentine soil, as indicated in Agency Comments (Exhibit #A13). The applicant is seeking approval for both the Authority to Construct permit from LCAQMD and a complex grading permit from Resource Planning. Upon project approval for UP 20-96, the applicant will submit a Serpentine Dust Control Plan to LCAQMD. The permit holder must comply with the terms and conditions of LCAQMD's Conditional Approval for the Serpentine Dust Control Plan. This Conditional Approval is valid for two years and must be renewed annually until determined otherwise by LCAQMD.

FIGURE 4 - Mapped Serpentine Soils



Source: Lake County GIS

2. Traffic cumulative effect on Highland Springs Road.

Staff Response: The property is accessed from Highland Springs Road via a private access roadway. The proposed project is expected to result in a maximum of 52 trips per day. The impact of vehicle miles traveled (VMT) for the project was assessed following guidelines provided by the California Office of Planning and Research (OPR) in the Transportation Impacts (SB 743) CEQA Guidelines Update and Technical Advisory, 2018.

The OPR Technical Advisory outlines criteria for identifying projects that are unlikely to have a significant VMT impact and can be exempt from further analysis. One of these criteria includes small projects, defined as those generating fewer than 110 new vehicle trips per day on average. The OPR specifies that VMT calculations should be based on a typical weekday and averaged over the year to account for seasonal variations.

Since the proposed project is projected to generate less than the 110-trip screening threshold for VMT impacts as outlined in the OPR Technical Advisory, it can be concluded that the project will have

a minimal transportation impact in relation to vehicle miles traveled.

During the Planning Commission hearing on May 23, 2024, Director Turner inquired about the condition and status of Highland Springs Road from the Department of Public Works. The response provided to the Planning Commission indicated that Highland Springs Road is a county-maintained road up to the county line. While there are narrow sections, it is not classified as a single-lane road. There are some areas with limited visibility, and caution is advised, especially on narrow, unpaved mountainous roads. The Department of Public Works is not aware of a high rate of accidents on this road.

Additionally, comments from the Department of Public Works, Roads Division (refer to Exhibit A13), require the project to improve the driveway to meet commercial standards. This improvement is also necessary in accordance with the requirements outlined in Public Resource Code 4290 and 4291 Road Standards, as requested by the Fire District.

3. Insufficient Hydrology and Biology Report

Staff Response: The appellants have not provided detailed reasons for their concerns regarding the adequacy of the Hydrological and Biological Reports. However, a summary of the documents and analyses prepared by qualified professionals for the project is outlined below.

Hydrological Report: The applicant has submitted a Water Use Analysis (Analysis) conducted by Sumit Engineering, taking into account the size of the cultivation areas. The Analysis (Exhibit A7) assesses the proposed use based on the cultivation areas with rows and aisles, rather than the actual plant canopy. As per the Analysis, the total estimated water demand for the Facility is 22.7 acre-feet per year, which accounts for 36% of the conservatively estimated 62.5 acre-feet per year of groundwater recharge potential for the project site. The water demand of the Facility does not exceed its estimated precipitation recharge capability.

Biological Surveys: The applicant has provided a collection of five Biological Assessments for the project site. These assessments include a Biological Assessment, Pinecrest Environmental Consulting dated December 9, 2020; Memorandum, Pinecrest Environmental Consulting dated 3/31/2021; Memorandum, Pinecrest Environmental Consulting dated May 23, 2021; Biological Memorandum, AES Montrose dated February 11, 2022; and Technical Memorandum, AES Montrose dated July 13, 2022 (Exhibit A11).

As analyzed in the Initial Study for the Project, the project could result in impacts to sensitive plant and animal species if not properly mitigated. The biological surveys include several protective measures that have been incorporated into the Initial Study/Mitigated Negative Declaration (Exhibit A4) as Biological Resources Mitigation Measures BIO-1 through BIO-3. These mitigations are reiterated within the project's Conditions of Approval (Exhibit A2). The State Water Resources Quality Control Board (SWRQCB) has jurisdiction over ephemeral drainages and isolated wetlands. The site does contain drainages and a wetland; however, a forma wetland delineation was not completed because the project would exceed the required setbacks from wetlands (as well as other water features on the site). Further, Mitigation Measure BIO-1 identifies protective measures for seasonal wetlands, including a survey of the seasonal wetlands and watercourses with setbacks and buffers identified with high-visibility fencing or flagging. SWRQCB has provided Agency Comments (Exhibit A13) on the project and a CDFW LSAA was applied for by the applicant.

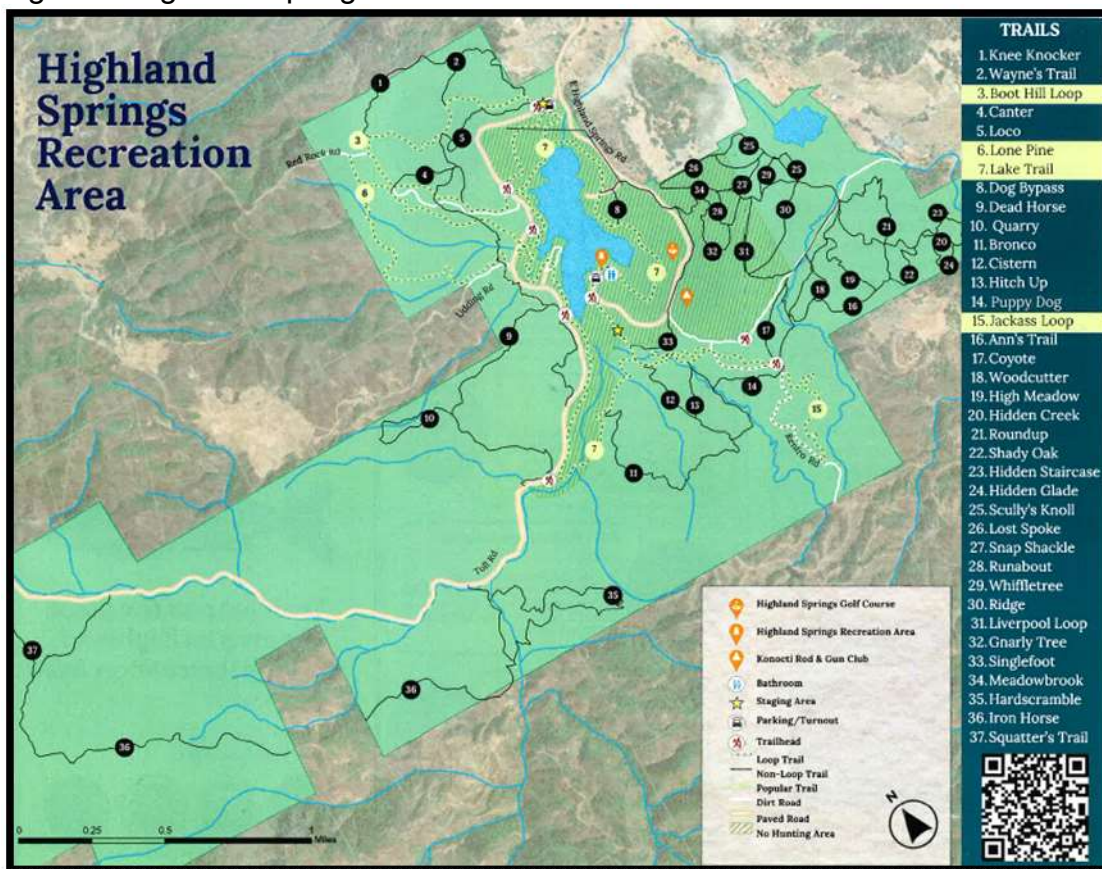
4. Proximity to Public Lands

Staff Response: Ordinance 3096 (Exhibit E) states commercial cannabis cultivation is prohibited within 1,000 feet of the following areas or uses.

“Public lands, where, because of development or other actions, it is clear that the public is invited to use such locations as places of recreation and other destination activities including but not limited to, hiking, birdwatching, equestrian activities, and camping. Additionally, all State and County parks are public lands.”

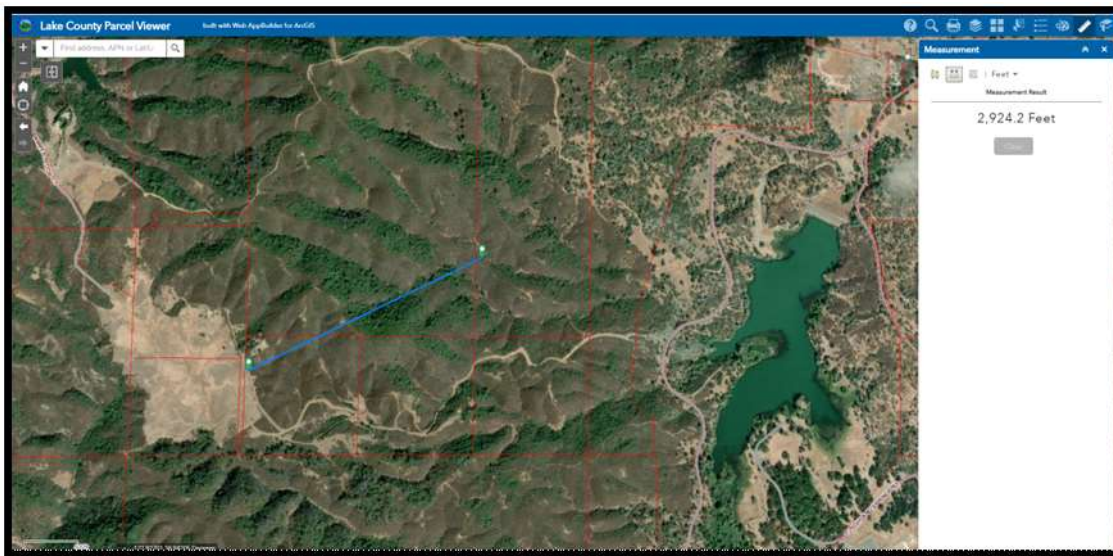
The Highland Springs Recreation Area (a County Maintained Park) is adjacent (northeast) of the project site. At the Planning Commission hearing, trail maps from Highland Springs were reviewed by staff and staff confirmed the closest trail was approximately 2,940 feet from the cultivation site. Therefor active trails are not within 1000’ setback from the closest cultivation site. See Figures 5 and 6 below.

Figure 5-Highland Springs Dedicated Trails for Public Use



Source: Highland Springs Trail Volunteers Group

Figure 6 - Distance from Cultivation Site to Dedicated Trails for Public Use



Source: Lake County GIS Portal

Conclusion

Staff must analyze projects for conformance with existing code requirements and regulations. As summarized above and discussed in detail throughout the May 23, 2024, Planning Commission Staff Report (and associated documents), the project meets all required regulations related to development and siting and is also consistent with the General Plan and Kelseyville Area Plan. Staff recommends the Board deny the appeal, upholding the Planning Commission’s approval of the project Use Permit (UP 20-96) and adoption of Initial Study (IS 20-116). Findings for approval are provided below, and conditions of approval (as revised) are included in Exhibit E.

III. 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 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 operation is a permitted use in the “RL” Rural Lands zoning district upon issuance of a Major Use Permit pursuant to Article 27, Sec. 21-27, Sec. 27.11 Table B of the Lake County Zoning Ordinance. The project scope complies with the minimum regulatory requirements set by the local ordinances to address the health, safety, morals, comforts, and general welfare of those working or residing near the proposed use. The project meets or exceeds all required setbacks for this type of use, including distance to nearby sensitive receptors. Prior to the applicant constructing any type of structure(s), the applicant shall obtain the necessary permits and licenses from the appropriate federal, state, and/or local government agencies. Additionally, the Community Development Department would conduct annual compliance monitoring inspections during the cultivation season to ensure compliance with the County’s ordinances, the approved Property Management Plan, mitigation measures, and conditions of approval.

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 location and size of the project site comply with the local ordinance requirements for use and setbacks. The site is large enough to meet the standards and criteria for commercial cannabis licenses applied for as found in Article 27.11. The Lake County Zoning Ordinance allows Types 1, 2, 3, and 4 cultivation operations within "RL" Rural Lands zoning districts, and the subject site is 508.19 acres total, large enough to enable the cultivation and canopy areas, as proposed.

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

Interior roadway improvements are proposed. Per Fire Safe Requirements, the project will need to meet the CAL FIRE road standards outlined in Public Resources Codes 4290/4291. The applicant must comply with all building codes prior to construction of any structures. The applicant must comply with LCAQMD for permitting requirements. There is no pedestrian access to the Project Site. The project has adequate access to accommodate the specific use and will be required to maintain and improve the access to be compliant with Public Resources Code 4290/4291.

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.

During Stage 1, the project site will utilize three permitted onsite groundwater wells and twenty-eight (28) 5,000-gallon water storage tanks, two of which are comprised of steel or fiberglass dedicated to fire suppression. During Stage 2, installation of 50,000-gal water tank, 65,000-gal water tank, and 77,000-gal water tank are proposed. The project parcel has adequate emergency service protection through the Lake County Sheriff's Office, California Highway Patrol (CHP), the California Board of Forestry and Fire Protection, (CAL FIRE), and the Lakeport Fire Protection District. The applicant is required to adhere to all applicable local, state, and federal regulations, mitigation measures, and conditions of approval intended to ensure adequate site. This application was routed to all the affected public and private service providers (including Public Works, Special Districts, Environmental Health, PG&E), and there are adequate public utilities and services available to the site.

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.

The cultivation of commercial cannabis is a permitted use within the Rural Lands zoning district upon securing a Major Use Permit according to Article 27.11 of the Lake County Zoning Ordinance. Additionally, although the Lake County General Plan does not have any provisions specifically for commercial cannabis, both the General Plan and the Area Plan have provisions for economic development, water resources, and agricultural resources land use compatibility. The subject property complies with the minimum setbacks and development standards. The proposed project does not have conflicting land use and is outside of buffer areas.

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 known violations of Chapters 5, 17, 21, 23, or 26 of the Lake County Code on this property.

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

This application meets the following Development Standards, General Requirements and Restrictions as specified within Article 27.11(at) of the Lake County Zoning Ordinance.

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

The applicant has passed a 'live scan' background check and is qualified to undertake a commercial cannabis cultivation activity subject to approval of this use permit. All employees of this project will also be required to pass a 'live scan' background check. The application complies with the qualifications for a permit described in Chapter 21, Article 27, Section 1.ii.(i).

If not budgeted, fill in the blanks below only:

Estimated Cost: _____ Amount Budgeted: _____ Additional Requested: _____ Future Annual Cost: _____

Purchasing Considerations (check all that apply):

Not applicable

- Fully Article X. <https://library.municode.com/ca/lake_county/codes/code_of_ordinances?nodeId=COOR_CH2AD_ARTXPU_S2-38EXCOBI>- and/or Consultant Selection Policy <http://lcnnet.co.lake.ca.us/Assets/Intranet/Policy/Policies+26+Procedures+Manual/Ch4_2021v2.pdf>-Compliant (describe process undertaken in "Executive Summary")
- Section 2-38 <https://library.municode.com/ca/lake_county/codes/code_of_ordinances?nodeId=COOR_CH2AD_ARTXPU_S2-38EXCOBI> Exemption from Competitive Bidding (rationale in "Executive Summary," attach documentation, as needed)
- For Technology Purchases: Vetted and Supported by the Technology Governance Committee <<http://lcnnet.co.lake.ca.us/Assets/Intranet/Intranet+Forms/Information+Technology/AdvPlan.pdf>> ("Yes," if checked)
- Other (Please describe in Executive Summary)

Consistency with Vision 2028 <<http://www.lakecountyca.gov/Government/Directory/Administration/Visioning/Vision2028.htm>>

(check all that apply):

Not applicable

- Well-being of Residents
- Economic Development
- Community Collaboration
- Public Safety
- Infrastructure
- Business Process Efficiency
- Disaster Prevention, Preparedness, Recovery
- County Workforce
- Clear Lake

RECOMMENDATION

Deny the Appeal (AB 24-02), upholding the May 23, 2024, Planning Commission's adoption of Initial Study/Mitigated Negative Declaration (IS 20-116) and approval of Major Use Permit (UP 20-96) subject to the findings in the Memorandum dated August 13, 2024, and Conditions of Approval in Exhibit A2.

Sample Motions:

Appeal Denial (AB 24-02)

I move that the Board of Supervisors deny Appeal AB 24-02, in concept, and direct Staff to prepare Draft Findings of Fact.

