



COUNTY OF LAKE
COMMUNITY DEVELOPMENT DEPARTMENT
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Planning • Building • Code Enforcement
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Item #6c
9:35 AM
June 27, 2024

STAFF REPORT

TO: Planning Commission

FROM: Mireya G. Turner, Community Development Department
Michelle Irace, Principal Planner
Mary Claybon, Associate Planner

DATE: June 27, 2024

SUBJECT: Consideration of proposed Major Use Permit (UP 20-31) Flying O, LLC (Alexander Rashed) and Mitigated Negative Declaration (IS 20-38) for one (1) A-Type 3 "Medium Outdoor" License for 43,472 square feet (sf) commercial cannabis canopy and a Type 13 Distributor, Self-Distribution, transport only license located at 11540 Bachelor Valley Road, Upper Lake, CA (APN 002-024-22).

ATTACHMENTS:

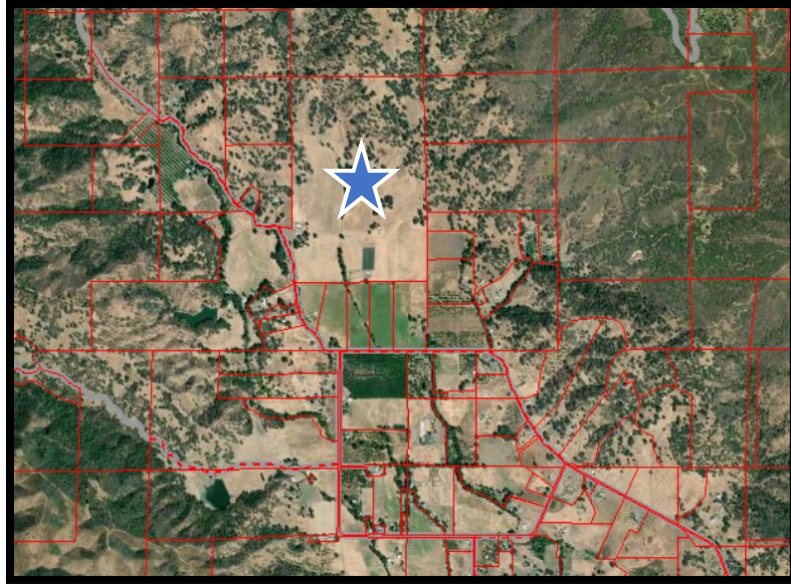
1. Project Site Plans (North Bay Civil Engineering, revised 4/15/2024)
2. Draft Conditions of Approval
3. Property Management Plan (revised 4/1/2024)
4. Draft Initial Study/Mitigated Negative Declaration (revised 5/7/2024)
5. Hydrology Report (North Bay Civil Engineering, revised 5/1/2024)
6. Drought Management Plan (North Bay Civil Engineering, 4/22/2022)
7. Biological Assessment (January 21, 2020)
8. LSA Watercourse Crossings (Jacobzoon and Associates 5/29/2020)
9. Agency Comments
10. Tribal Comments

EXECUTIVE SUMMARY

The applicant, Alexander Rashed of Flying O, LLC, is proposing cannabis cultivation operation consisting of one (1) A-Type 3 "Medium Outdoor" License for 43,472 square feet (sf) commercial cannabis canopy and an A-Type 13 Distributor, Self-Distribution, transport only license. The site is located approximately five miles northwest of Upper Lake. There is a Class II watercourse and associated riparian corridor traversing the parcel. Historical land uses include cattle grazing and Early Activation (EA 20-37) for cannabis cultivation. Infrastructure for cultivation was established during Early Activation. The applicant originally proposed mixed-light and outdoor cultivation, however the scope of the proposed project was reduced to outdoor cultivation only when the Department of Cannabis Control regulations for outdoor cannabis canopy were changed to address light-deprivation cultivation techniques not utilizing artificial lighting. The draft Initial

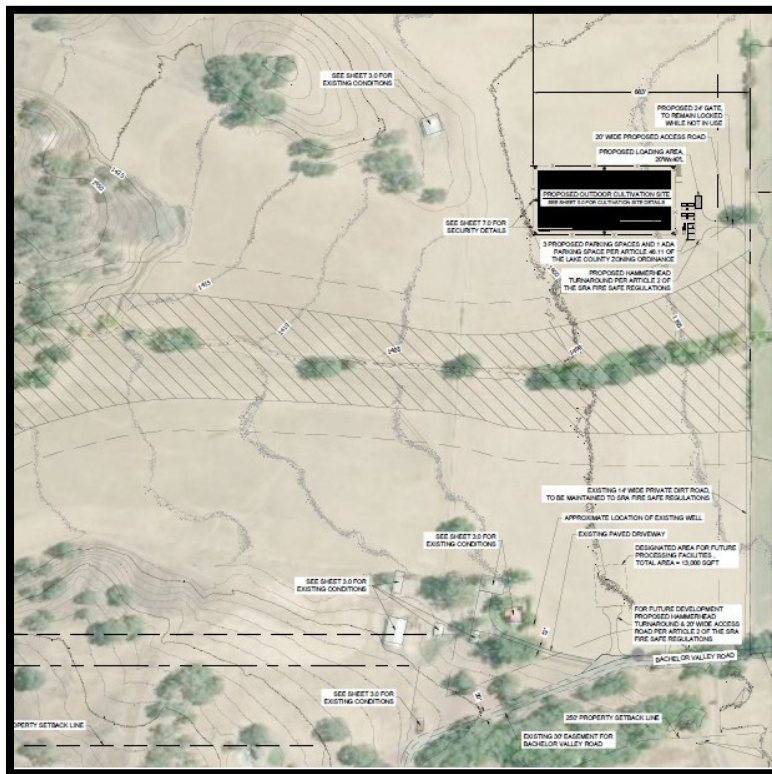
Study/Mitigated Negative Declaration (Attachment 4) has been updated accordingly. The total parcel acreage is 238.11 acres.

FIGURE 1 – VICINITY MAP



Source: Lake County GIS

FIGURE 2 – SITE PLANS



Source: Lake County GIS

PROJECT DESCRIPTION

<u>Project Title:</u>	Flying O, LLC
<u>Permit Numbers:</u>	UP 20-31; IS 20-38; EA 20-37
<u>Lead Agency:</u>	County of Lake Community Development Department Courthouse, 3 rd Floor, 255 North Forbes Street Lakeport, CA 95453
<u>Applicant Name & Address:</u>	Flying O, LLC / Alexander Rashed
<u>Property Owner:</u>	Ralph Gambonini
<u>Project Location:</u>	11540 Bachelor Valley Road, Upper Lake
<u>Parcel Number(s) (APN):</u>	008-024-22
<u>Parcel Size:</u>	238 acres
<u>General Plan Designation:</u>	Rural Lands, Resource Conservation
<u>Zoning District(s):</u>	“APZ-SC-WW-FF”; Agricultural Preserve District – Scenic Combining – Waterway – Floodway Fringe
<u>Flood Zone:</u>	X, Low Risk of Flooding (cultivation site), and AE Flood Plain, the base floodplain where base flood elevations are provided (located more than 100 feet from cultivation site)

Existing features:

- Cabin
- Residence
- Garage
- Septic system
- Groundwater well
- 24’ security gate
- Interior roadway improvements
- 20’x40’ loading zone
- Four (4) 8’ x 40’ Conex shipping containers
- One (1) 10’ x 10’ security shed
- One (1) 10’ x 10’ pesticide/fertilizer/chemical shed
- Eight (8) 2,500-gal water tanks
- 20’ x 20’ soil storage containment area
- 6’ perimeter fencing around the canopy area

As aforementioned within the Executive Summary, the project operated under Early Activation (EA 20-37) in 2020. The proposed cultivation would occur within the EA area. The infrastructure required for the cultivation project is present on the site. The existing residential structures on-site are not included in the proposal and would not be utilized for the operation of the project.

Proposed features:

- 43,472 sf outdoor cannabis canopy

The project parcel is accessed via Bachelor Valley Road southeast corner of the Project property. The project site is accessed via gravel and native soil surfaced driveway with a stream crossing (refer to Attachment 8 for more information). A locking metal gate controls access to the cultivation site. Emergency access for first responders, i.e. *KnoxBox*, will be installed at the metal gate controlling access to the site. The proposed outdoor commercial cannabis canopy area would be enclosed with 6-foot-tall galvanized woven wire fencing, covered with privacy screen/mesh where necessary to screen the cultivation/canopy areas from public view. Existing locking metal gates are used to control access to the outdoor cultivation area. The growing medium of the proposed outdoor canopy would be an imported organic soil mixture in above ground garden beds and nursery pots. Drip irrigation systems would be used deliver water to the proposed garden beds.

POINTS OF INTEREST

Water Use

A Technical Memorandum for Hydrology (Attachment 5) was prepared for this project by North Bay Civil Consulting dated May 1, 2024. The Memorandum evaluates annual water demand for the project; aquifer rate; and provides well data for the on-site well. There is one existing permitted on-site groundwater well that was tested on April 11, 2022, by Pollock and Sons Pump. The well produced about 15 gallons of water per minute (GPM) during the two hour well test, and the water level dropped 35 feet and recovered 100% the following day.

The project's water consumption is estimated for a daily demand of 3,000 gpd (gallons per day). The cultivation season for outdoor cannabis is estimated to be a 180—day season. The total annual demand for one acre of outdoor cannabis cultivation is estimated at 1.66 acre-feet annually. Taking soil characteristics into account, the Memorandum (Attachment 5) states that a total of 159 acre-feet will recharge during a drought year, and 185 acre-feet will recharge during a non-drought year. The Memorandum states that this project will demand between 1.3 and 1.6% of the total recharge rate annually to meet its water demand.

Irrigation for the cultivation operation will use water supplied by the existing well. The irrigation water would be pumped from the well via PVC piping to (8) 2,500-gallon water storage tanks, totaling 20,000 gallons of water storage and then delivered to a drip irrigation system. The drip lines will be sized to irrigate the cultivation areas at a rate slow enough to maximize absorption and prevent runoff. A drip irrigation system is the most water-efficient means of irrigation for the plants in fabric pots or raised beds. According to the site plans submitted for this project, the applicants are proposing eight (8) 2,500-gallon water tanks for irrigation purposes. An additional 5,000 gallons of water is required to be dedicated to fire suppression purposes. These tanks shall be equipped with connectors that can easily be used by emergency service providers, if needed.

Watercourse and Crossings

An intermittent Class II watercourse flows through the Project property from northwest to southwest. No development is proposed within 100-feet of the identified watercourses, which is consistent with Article 27 of the Lake County Zoning Ordinance that regulates commercial cannabis cultivation. The applicant has provided a Property Management Plan (Attachment 3) addressing controlled water runoff to reduce impacts to surface water bodies. No development

would occur within the drainage buffers and setbacks. The applicant proposes upgrading the culvert along the access driveway. All culvert upgrades/installation would be completed in accordance with a California Department of Fish and Wildlife (CDFW) Lake Streambed Alteration Agreement (LSAA). A CDFW LSAA has been applied for by the applicant and a LSA Water Course Crossings evaluation was performed by Jacobzoon and Associates (Attachment 8).

Stormwater Management

Stormwater Management within the Property Management Plan (Attachment 3) identifies the method of stormwater containment in the cultivation area (straw wattles), which are typical for this type of cultivation activity. The cultivation area is set back more than 100 feet from all water courses on site. Setbacks from any surface water channel or above-ground water storage facility is 100 feet or more as is required by Article 27.11(at) of the Lake County Zoning Ordinance. The Project property is enrolled in the State Water Resources Control Board's Cannabis General Order (Order No. WQ 2019-001-DWQ) as a Tier 2, Low Risk site and the applicant is required to adhere to the State Water Resources Control Board Cannabis Cultivation Policy requiring runoff to be retained on-site, mitigating off-site downstream drainage impacts. As required in the Cannabis Order's Policy for coming into compliance with Best Practicable Treatment or Control (BPTC) the following measures have been implemented within the Property Management Plan (Attachment 3) at the site for erosion control and stormwater pollution:

- Established and re-established vegetation within and around the proposed cultivation operation will be maintained/protected as a permanent erosion and sediment control measure.
- A native grass seed mixture and certified weed-free straw mulch will be applied to all areas of exposed soil prior to November 15th of each year, until permanent stabilization has been achieved.
- Gravel will be applied to the surfaces of access roads, pathways, and the aisles between the garden beds/pots of the proposed cultivation areas, to allow for infiltration while mitigating the generation of sediment laden stormwater runoff.
- Straw rolls/wattles will be installed before November 15th of each year throughout the proposed cultivation operation per the Project's engineered Erosion and Sediment Control Site Plan, to filter pollutants and promote stormwater retention and infiltration.
- If areas of concentrated stormwater runoff begin to develop, additional erosion and sediment control measures will be implemented to protect those areas and their outfalls.

1868 John Boone Howard Ranch House

A cultural Resource Evaluation (Evaluation) was prepared for this project by Wolf Creek Archaeology and is dated January 7, 2020. Prior to the field inspection, a record search was conducted at the Sonoma State University office of the California historical Resource Information System. The records search indicated that there are no cultural resources within one mile of the project boundaries; however, a significant historic building (the 1886 John Boone Howard ranch House) is located on the site. County Historic Site #39, J.B. Howard Ranch House, comprises a two-story Victorian cottage that was constructed in 1868 and was designated as locally historic by the Lake County Historical Society. The Historic Society notes that it represents an excellent example of a local architectural style from the 1860's and is associated with the life of a person important in Lake County's past. For these reasons, although it is not formally designated on the State register, it meets the State Historical Register criteria "B" and "C: of Public Resource Code §15064.5.

The Evaluation recommends a 50' setback from the Ranch House be established and that the Ranch House (and a 50' buffer) clearly be identified on the site plans. These requirements are included as a part of Mitigation Measure CUL-3 within the draft Initial Study/Mitigated Negative Declaration (Attachment 4) and Draft Conditions of Approval (Attachment 2). Consistent with this recommendation the proposed cultivation site is approximately over 1,100' east of the Ranch House (see Figure 3 below), The driveway serving the Ranch House would not be utilized for the proposed project.

FIGURE 3 – PROXIMITY TO HISTORIC J.B. HOWARD RANCH HOUSE



Source: Wolf Creek Archaeology

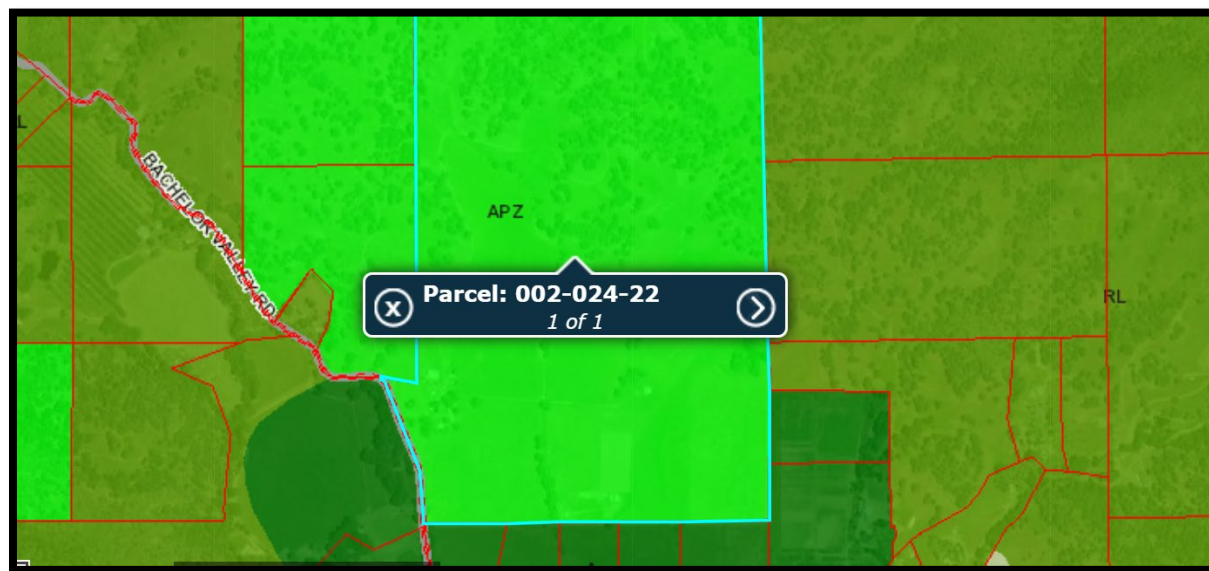
PROJECT SETTING

Surrounding Zoning and Uses

- North: "APZ-WW", Agriculture Preserve - Waterway; parcel is 534.84 acres in size and is undeveloped.
- Northeast: "RL-WW", Rural Lands – Waterway; two lots with each being about 80 acres in size and undeveloped.
- Southeast: "A-WW", Agriculture – Waterway. Two parcels of 10.87 and 18.08 acres in size and are developed with dwellings and crop production.
- South: "A-SC-WW-FF", Agriculture – Scenic Combining – Waterway – Floodway Fringe. Parcels range from 10 to 13 acres in size; two contain dwellings, and all five are crop-producing lots.

- West: “APZ-WW”, Agriculture Preserve - Waterway. Parcel is 38.63 acres in size and is undeveloped.
- West: “APZ-SC”, Agriculture Preserve – Scenic Combining. Parcel is 37.54 acres in size and is developed with a dwelling and accessory buildings.
- West: Split-zoned; “A-SC-FF”, Agriculture – Scenic Combining – Floodway Fringe; and “RL-SC-FF-WW”, Rural Lands – Scenic Combining – Floodway Fringe – Waterway. The property is 138.35 acre in size and contains a dwelling, accessory buildings and traditional crop production. There is an above-ground pond on the property.

FIGURE 4 – ZONING MAP



Source: Lake County Parcel Viewer

PROJECT ANALYSIS

General Plan Conformity

The General Plan designation for the subject site is Agricultural Preserve Zone. Agricultural Preserve Zone allows for the conservation and protection of land capable of producing agricultural products. The uses specified in this section have been determined to be compatible uses consistent with the California Land Conservation Act of 1965. Further parcelization of lands under contract shall be discouraged.

Chapter 3- Land Use

Goal LU-1: 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 new incompatible land uses into existing community areas.

Pursuant to Article 27, Sec. 21-27.10, Sec. 27.11 Table B of the Lake County Zoning Ordinance, the cultivation of cannabis is an allowable use within the “APZ” Agriculture Preserve-zoned land

upon securing a Minor/Major Use Permit. The project parcels are surrounded by large parcels with limited to no development. As discussed below in the *Zoning Ordinance Conformity* section, the project meets all required development standards intended to prevent incompatible land uses. Therefore, the proposed project would not be an intrusion of a new incompatible land use within the existing zoning and general plan designation of this area.

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 type of operation and chemicals used for spraying.

In reference to the Lake County Zoning Ordinance Article 27, Section 27.11 (at), the County requires a minimum 100-foot setback from all property lines of the subject property, a minimum 100-foot setback from the top of bank of any surface water source, and a minimum of 200-foot setback from any off-site residences. The nearest off-site residence is located over 1,000 feet south of the proposed Project, well over the 200-foot setback for offsite residences from commercial cannabis cultivation operations. Additionally, Commercial Cannabis Cultivation is prohibited within a 1,000 feet of Community Growth Boundaries, licensed childcare facilities, churches, or youth-oriented facilities. The nearest Community Growth Boundary is over 6.5 miles from the project site. This project complies with all of these required setbacks.

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, fault).

The applicant proposes to implement Public Resource Code 4290/4291 road standards for commercial operations to allow adequate access for wildfire suppression. Furthermore, the project will require a 5,000-gallon steel or fiberglass water tank dedicated to fire suppression. The applicant is required to obtain Building Permits, in accordance with all building and fire codes.

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

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

The Property Management Plan has stated that all fertilizers and pesticides used be properly stored and placed within storage sheds with the use of secondary containment as required for all commercial cannabis activities. Lastly, 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, as well as the State required 50-foot setback of Class III ephemeral watercourses.

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.

Prior to cultivation, the applicant is required to create 100 feet of defensible space around all buildings that will be occupied by humans and / or that require a building permit. As an added Condition of Approval, staff recommends all water tanks be equipped with a 2.5" Fire Department Hose Connection for fire suppression.

Chapter 8 Noise

Goal N-1: To protect County residents from the 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 remote location with adequate setbacks from sensitive receptors so as not to create a nuisance for the community. The Initial Study/Mitigated Negative Declaration for this project includes Mitigation Measures NOI-1 and NOI-2 including maximum non-construction related sounds levels. All construction activities, including engine warm-up, will be limited to Monday through Saturday, between the hours of 9:00 AM to 6:00 PM. The hours of operation are between 8:00 a.m. and 6:00 p.m. daily, with deliveries and pickups restricted to 9:00 a.m. -7:00 p.m. Monday through Saturday and Sunday from 12:00 p.m. to 5:00 pm.

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 groundwater 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.

Under Chapter 21, Article 27.11, the requirements for cannabis cultivation projects submittal include a Water Use Management Plan to be reviewed and approved by the County. The applicant has submitted a Hydrological Analysis, by Vanderwall Engineering and is dated September 29, 2021 (Attachment 6). The estimated total water usage for the proposed Project is 2,478,717 gallons / year or 7.6 acre-feet annually, including processing facility and employee usage. The Hydrological Analysis projected the average annual recharge during a drought year to be about twice the amount as would be needed for the proposed Project.

Upper Lake - Nice Area Plan Conformity

Ground Water Objective 3.2.1 Protect and preserve the quality and quantity of water resources for the long-term development of the Upper Lake - Nice Planning Area as well as the prevention of further ground subsidence.

- 3.2.1b New development should be designed to conserve water through the use of drought resistant vegetation, low flow plumbing fixtures and other conservation measures.

The applicant has submitted a Hydrological Analysis (Attachment 5) and Drought Management Plan (Attachment 6) for water use and measures to be implemented during a declared drought emergency. The site is enrolled with the California State Water Resources Control Board Cannabis general order to retain runoff on site to minimize impacts.

Wildlife Objective 3.3.1 To promote practices that ensure the protection of the Upper Lake - Nice Planning Area's diverse vegetation and wildlife.

- 3.3.1.a: Riparian and wetland habitat shall be designated Resource Conservation and shall be protected to the greatest extent possible. The Waterway "WW" and Wetland "W" combining districts shall be utilized where appropriate. Any permitted disturbances or removal of riparian vegetation shall require replacement at a ratio of 2 to 1.

The Draft Initial Study/Mitigated Negative Declaration incorporates mitigation measure BIO-1 specifically addressing riparian setbacks for pesticides and fertilizer storage facilities and for 100-foot setbacks from the bank of any watercourse, wetland, and/or vernal pool.

Zoning Ordinance Conformity

Article 4 Agricultural Preserve– Base Zoning District: Purpose: To provide zoning for lands in agriculture preserve and for the conservation and protection of land capable of producing agricultural products. The uses specified in this section have been determined to be compatible uses consistent with the California Land Conservation Act of 1965. Further parcelization of lands under contract shall be discouraged.

Under Article 27, Sec. 21-27.10, Sec. 27.11 Table B of the Lake County Zoning Ordinance, commercial cannabis cultivation is a permitted use within the Agricultural Preserve zoning district.

Article 34 – Scenic Combining (SC)

Purpose: To protect and enhance views of scenic areas from the County's scenic highways and roadways for the benefit of local residential and resort development, the motoring public, and the recreation-based economy of the County.

Accessory structures are limited to sixteen feet tall. Commercial Cannabis Cultivation within greenhouses cannot exceed 5,000 square feet. The applicant does not propose accessory

structures greater than sixteen feet tall. The applicant proposes outdoor cultivation, which does not require structures or limitation to square footage within structures.

Article 36 – Floodway Fringe (FF)

Purpose: 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. Proposed cultivation areas and structures would be located outside of the A flood zone portion of the parcel, within the X flood zone, which is identified as areas of minimal flooding,

Article 37 – Waterway Combining District (WW)

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. These purposes are to be accomplished by setting forth regulations to limit development activities in significant riparian corridors and through the establishment of an administrative procedure for the granting of exceptions from such regulations.

Article 27 – Uses Permitted: All uses listed in this Article and all matters related thereto, are declared to be 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 permits.

Pursuant to Article 27 of the Lake County Zoning Ordinance, outdoor commercial cannabis cultivation is permitted in the Agricultural Preserve zoning district with the issuance of a Major Use Permit. To qualify for a Major Use Permit the project must demonstrate that all regulations within Articles 4 and 27 are met and any adverse environmental impacts are adequately mitigated.

Development & Performance Standards

Minimum Lot Size (20 acres per license): *Complies; the subject site* Total combined acreage is approximately 238.11 acres. The applicant has applied for one A-Type 3 “Medium Outdoor” licenses, (1) A-Type 13 Self-Distribution license which would require a minimum of 20 acres.

- Setback from Property Line (100 feet): *Complies, the southwestern-most cultivation site is closest to a property line; it is about 230 feet from the nearest property line.*
- Setback from Off-Site Residence (200 feet minimum): *Complies, the nearest neighboring residential dwelling is located over 1,000 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 (43,560 sq. ft. per license): *The proposed canopy area is 43,472 sq. ft. in size.*

General Requirements

There are several general requirements for cannabis cultivation listed in Section 27.11(at) of the Lake County Zoning Ordinance. These include, but are not limited to, obtaining a State License,

completion of background checks, obtaining property owner approval, complying with hours of operations and deliveries, access requirements, etc.

The applicant has submitted a Property Management Plan (Attachment 3), outlining compliance with all regulations pertaining to cannabis operations including the following: air quality, project grounds, grading and erosion control BMP's, security, stormwater, water use, etc. In addition, the Project complies with the restrictions pertaining to the prohibited activities listed in Article 27, including healthy tree removal for the purpose of developing a cannabis cultivation site and water use that is illegally diverted.

Tribal Comments and Consultation

In accordance with AB-52, notification of the Project was sent to Big Valley Rancheria, Cortina Rancheria, Elem Colony, Koi Nation, Mishewal-Wappo, Middletown Rancheria, Redwood Valley Rancheria, Robinson Rancheria, Scotts Valley Band of Pomo Indians, Hopland Band of Pomo Indians, Habematolel Pomo of Upper Lake Tribe, and Yocha Dehe Wintun Nation on May 8, 2023, informing Tribes of the proposed project and offering consultation under AB-52. The Habematolel Pomo of Upper Lake Tribe requested consultation on May 30, 2023, (Attachment 9). Consultation concluded on July 26, 2023. The applicant has provided evidence that they have entered into a Monitoring Agreement with the Habematolel Pomo of Upper Lake Tribe.

AGENCY COMMENTS

The following agencies submitted comments on this project:

- Lake County Agricultural Commissioner
- Lake County Water Resources
- Lake County Building Safety Division
- Lake County Environmental Health
- NWIC (Sonoma State University)
- PG&E
- Lake County Special Districts
- Northshore Fire Protection District
- CAL FIRE

Of the agency comments submitted in response to the March 19, 2020, Request for Review, the following comments are of note:

- Northshore Fire Protection District
The location is within proximity and/or surrounded by a Very High Wildland Fire Hazard Severity Zone. Public Resources Code 4290, 4291 requirements are listed. While the project is proposing outdoor cannabis cultivation, which is to comply with agricultural standards, the project is still required to adhere to design standards and water storage requirements dedicated to fire suppression. The applicant has also proposed a hammerhead turnaround for use by emergency vehicles.

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 has been revised to correct typographical errors and minor revisions based on changes in the project (reduced footprint) over time. Additionally, language has been added to further improve the analyses and mitigation within some sections. These changes do not trigger recirculation of the Initial Study because they are minor in nature and do not result in new impacts or mitigation measures that were not previously analyzed (in accordance with CEQA Guidelines 15073.5).

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

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

Aesthetics Impacts relating to Aesthetics (AES) have been reduced to Less than Significant with mitigation incorporated as described by Mitigation Measure AES-1 through AES-3:

AES-1: The applicant shall install a minimum 6' tall screening fence around the cultivation area. Fabric shall not be used; the screening material shall be chain link with slats, or a solid wood or metal fence. This shall occur prior to any cultivation occurring on site.

AES-2: All outdoor lighting shall be directed downward onto the Project site and not onto adjacent properties. All lighting equipment shall comply with the recommendations of www.darksky.org.

AES-3: Security lighting shall be motion activated and all outdoor lighting shall be shielded and downcast or otherwise positioned in a manner that will not shine light or allow light glare to exceed the boundaries of the lot of record upon which they are placed.

Air Quality Impacts relating to Air Quality (AQ) have been reduced to Less than Significant with mitigation incorporated as described by Mitigation Measure AQ-1 through AQ-6:

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.

Biological Resources Impacts relating to (BIO) have been reduced to Less than Significant with mitigation incorporated as described by Mitigation Measure BIO-1:

BIO-1: If any vegetation is to be removed within 100 feet of the riparian corridor during typical nesting bird season (February 15 – August 31) it is recommended that pre-development nesting bird surveys are conducted in the proposed development area to reduce incidental take of any active avian nests. If any nests are discovered, the area shall be avoided, and a 50' buffer area shall be established to protect the nesting birds.

a) Prior to any ground disturbance and/or vegetation removal, the applicant shall have a pre-construction survey conducted by a qualified biologist for special-status plant and animal species to ensure that special-status species are not present. If any listed species are detected, construction shall be delayed, and the appropriate resource agency (CDFW and/or USFWS) shall be consulted with and project impacts and mitigation reassessed. American badger den surveys shall be conducted prior to any groundbreaking activities in an effort to reduce incidental take of any sensitive of native species within the Study Areas.

Cultural Resources Impacts relating to Cultural Resources (CUL) have been reduced to Less than Significant with mitigation incorporated as described by Mitigation Measure CUL-1 through CUL-3:

CUL-1: Should any archaeological, paleontological, or cultural materials be discovered during site development, all activity shall be halted within 100' of the find(s). A professional Archaeologist certified by the Registry of Professional Archaeologists (RPA) shall be notified 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: Prior to ground disturbing activities, the Permittee shall submit a Cultural Resources Plan, identifying methods of sensitivity training for site workers, procedures in the event of an accidental discovery, and documentation and reporting procedures. Prior to ground disturbing activities, the Permittee shall submit verification that all site workers have reviewed the Cultural Resources Plan and received sensitivity training.

CUL-3: The applicant shall show the historic Boone Ranch House structure on a revised site plan along with the recommended 50' buffer of 'non disturbance' prior to any site disturbance. In the event that any buried historic features (buried trash pits, outhouse vaults, filled in wells, etc.) are encountered elsewhere on the project site, work shall be immediately suspended, and an archaeologist called in to evaluate the significance of the feature. Work can resume after a mitigation plan has been developed and approved by the Community Development Director for Lake County.

Geology And Soils Impacts relating to Geology and Soils (GEO) have been reduced to Less than Significant with mitigation incorporated as described by Mitigation Measure GEO-1:

GEO-1: Prior to ground disturbance, the applicant shall install straw wattles around the cultivation area. No on-site drainage that originates from the cultivation area shall migrate into the seasonal or year-round water courses, or onto neighboring lots.

Hydrology and Water Quality Impacts relating to Hydrology and Water Quality (HYD) have been reduced to Less than Significant with mitigation incorporated as described by Mitigation Measure

HYD-1: The well shall have a meter to measure the amount of water pumped. The applicant shall maintain a record of all data collected and shall provide a report of the data collected within the Performance Report submitted to the County annually. The applicant shall adhere to the measures described in the Drought Management Plan during periods of a declared drought emergency.

Noise Impacts relating to Noise (NOI) have been reduced to Less than Significant with mitigation incorporated as described by Mitigation Measure NOI-1 and NOI-2:

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

Tribal Cultural Resources Impacts relating to Tribal Cultural Resources (TCR) have been reduced to Less than Significant with mitigation incorporated as described by Mitigation Measures CUL-1, CUL-2, and TCR-1 through TCR-5:

TCR-1: All on-site personnel of the project shall receive tribal cultural resource sensitivity training prior to initiation of ground disturbance activities on the project. The training must be according to the standards of the NAHC or the culturally affiliated Tribe(s). Training will address the potential for exposing subsurface resources and procedures if a potential resource is identified. The training will also provide a process for notification of discoveries to culturally affiliated Tribes, protection, treatment, care and handling of tribal cultural resources discovered or disturbed during ground disturbance activities of the Project. Tribal monitors will be required to participate in any necessary environmental and/or safety awareness training prior to engaging in any tribal monitoring activities for the project.

TCR-2: If previously unidentified tribal cultural resources are encountered during the project altering the materials and their stratigraphic context shall be avoided and work shall halt immediately. Project personnel shall not collect, move, or disturb cultural resources. A representative from a locally affiliated Tribe(s) shall be contacted to evaluate the resource and prepare a Tribal Cultural Resources plan to allow for identification and further evaluation in determining the tribal cultural resource significance and appropriate treatment or disposition.

TCR 3: Prior to commencement of ground disturbing activities, the permittee shall submit documentation to the Community Development Department demonstrating that they have engaged with the culturally affiliated Tribe(s) to provide cultural monitors and that cultural sensitivity training has been provided to site workers.

TCR-4: All ground disturbing activities shall be monitored by qualified tribal monitor(s). Qualified tribal monitor(s) are defined as qualified individual(s) who have experience with identification, collection, and treatment of tribal cultural resources of value to the Tribes. Such individuals will include those who:

- a) Possess the desired knowledge, skills, abilities, and experience established by the Native American Heritage Commission (NAHC) through the NAHC's Guidelines for Native American Monitors/ Consultants (2005) OR
- b) Members of culturally affiliated Tribe(s) who:
 - i. Are culturally affiliated with the project area, as determined by the NAHC; and
 - ii. Have been vetted by tribal officials of the culturally affiliated Tribe(s) as having the desired knowledge, skills, abilities, and experience established by the NAHC's Guidelines for Native American Monitors (as cited in TCR-1(a), above).

TCR-5: The permittee shall notify all culturally affiliated tribes at least 45 days prior to commencement of ground disturbance activities on the project. All cultural resources unearthed by Project activities shall be evaluated by the Archeologist and monitor(s). The culturally affiliated Tribe(s) must have an opportunity to inspect and determine the nature of the resource and the best course of action for avoidance, protection and/or treatment of the resource to the extent permitted by law. If the resource is determined to be a tribal cultural resource of value to Tribe, that Tribe will coordinate with the permittee to establish by which the Tribe(s) may appropriately protect, treat, and dispose of the resource(s) with appropriate dignity, which may include reburial or preservation of resources. The permittee shall allow the Tribe(s) to facilitate and ensure that the treatment and disposition by the Tribe(s) is followed to the extent permitted by law.

Wildfire Impacts relating to Wildfire (WDF) have been reduced to Less than Significant with mitigation incorporated as described by Mitigation Measure WDF-1 through WDF-5:

WDF-1: Construction activities will not take place during a red flag warning (per the local fire department and/or national weather service) and wind, temperature and relative humidity will be monitored in order to minimize the risk of wildfire. Grading will not occur on windy days that could increase the risk of wildfire spread should the equipment create a spark.

WDF-2: Prior to cultivation, the applicant shall provide 100' of defensible space around all buildings. This does not require tree removal, but it does require removal of grasses and brush, and limbing trees up to a height of 8'.

WDF-3: Prior to cultivation, the applicant shall schedule a site visit with the Building Official or designee to verify that the roads, gates and site are PRC 4290 and 4291 compliant.

WDF-4: The applicant shall place at least 5,000 gallons of water on site that is designated specifically as for use of fire suppression. Water tanks shall have connectors that are able to the used by Fire Protection Districts.

WDF-5: The applicant shall install Knox-Boxes on all locked gates to enable emergency service providers to access the site. The property address shall be clearly posted on the driveway entrance to the site from Bachelor Valley Road.

Mandatory Findings of Significance

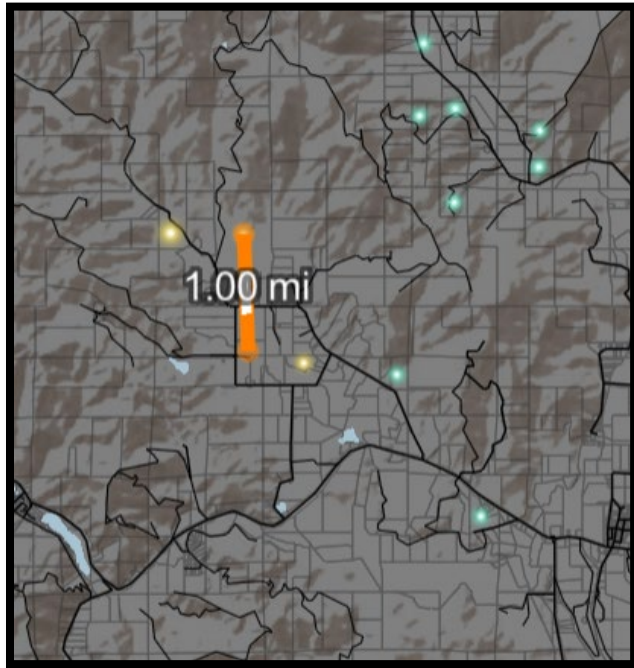
The discussion within this section is incorporated to mitigate any potential impacts from the implementation of the project. In addition to the mitigation measures above, the applicant will apply for permits from various agencies including the Department of Cannabis Control, the State Water Resources Control Board, and the California Department of Fish and Wildlife, and any other applicable agencies to operate a commercial cannabis cultivation operation. The various agencies include complying with state regulatory setback requirements and restrictions that would then further minimize potential impacts to the environments that address natural resources.

Potentially significant impacts have been identified related to Aesthetics, Air Quality, Biological Resources, Cultural Resources, Geology and Soils, Hydrology, Noise, Tribal Cultural Resources and Wildfire. These impacts in combination with the impacts of other past, present, and reasonably foreseeable future projects could cumulatively contribute to significant effects on the environment. Implementation of and compliance with mitigation measures identified in each section as project conditions of approval would avoid or reduce potential impacts to less than significant levels and would not result in any cumulatively significant environmental impacts.

CUMULATIVE IMPACTS

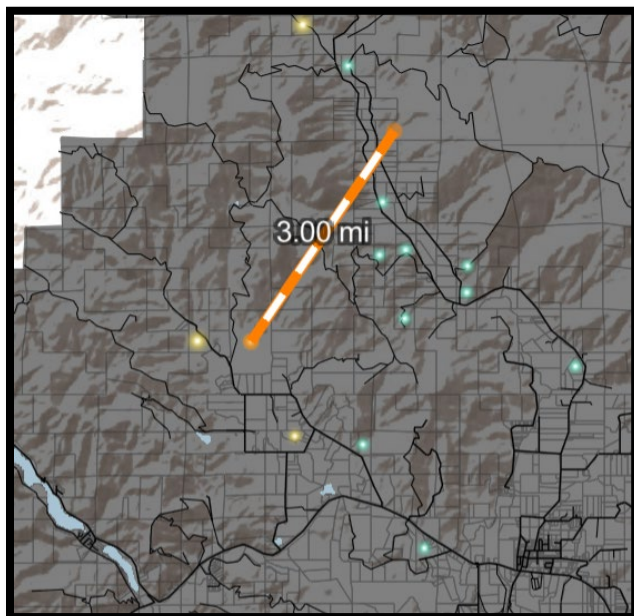
Within one mile of the proposed project are one pending and zero approved projects. Within a three-mile radius, there two are pending and eight approved projects.

FIGURE 4 – One Mile Radius



Source: Lake County GIS

FIGURE 5 – Three Mile Radius



Source: Lake County GIS

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 operation is a permitted use in the “APZ” Agricultural Preserve 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 proposal is for 43,472 sf outdoor commercial cannabis canopy area with one (1) A-Type 3 “Medium Outdoor” license and one (1) A-Type 13 Self-Distribution license. The Lake County Cannabis Ordinance allows A-Type 3 cultivation licenses on Agriculture Preserve zoned property when the project meets the applicable size and locational criteria and standards. The applicant seeks two licenses; the cultivation license for an A-Type 3 ‘medium outdoor’ license which requires 20 acres of property. The second license is a Type 13 Self Distribution- Transport Only license, which has no minimum acreage requirement. The subject site is approximately 238.11 acres in size, large enough to allow the cultivation licenses that have been applied for.

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

The site is served by Bachelor Valley Road, a County maintained road. The site is also served by a private on-site driveway that is dirt, but generally flat and well maintained. Interior roadway improvements are proposed with Fire Safe Requirements, the project will need to meet the CAL FIRE road standards including a hammerhead turnaround. The applicant must comply with all building codes prior to construction of any structures. There is no pedestrian access to the Project Site. The project has adequate access to accommodate the specific 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.*

The project site will utilize a permitted onsite groundwater well and eight (8) 2,500 gallon water storage tanks. 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 Northshore 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 Agricultural Preserve 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 Upper Lake/Nice Communities 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).

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

The applicant has submitted a completed application.

RECOMMENDATIONS

Staff recommends the Planning Commission take the following actions:

- A. Adopt Mitigated Negative Declaration (IS 20-38) for Major Use Permit (UP 20-31) with the following findings:
 1. Potential environmental impacts related to Aesthetics (AES) 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 (AQ) can be mitigated to less than significant levels with the inclusion of mitigation measures AQ-1 through AQ-6.
 3. Potential environmental impacts related to Biological Resources (BIO) can be mitigated to less than significant levels with the inclusion of mitigation measures BIO-1.
 4. Potential environmental impacts related to Cultural Resources (CUL) can be mitigated to less than significant levels with the inclusion of mitigation measures CUL-1 through CUL-3.
 5. Potential environmental impacts related to Geology and Soils (GEO) can be mitigated to less than significant levels with the inclusion of mitigation measures GEO-1.
 6. Potential environmental impacts related to Hydrology (HYD) can be mitigated to less than significant levels with the inclusion of mitigation measures HYD-1.
 7. Potential environmental impacts related to Noise (NOI) can be mitigated to less than significant levels with the inclusion of mitigation measures NOI-1 through NOI-2.
 8. Potential environmental impacts related to Tribal Cultural Resources (TCR) can be mitigated to less than significant levels with the inclusion of mitigation measures TCR-1 through TCR-5.
 9. Potential environmental impacts related to Wildfire (WDF) can be mitigated to less than significant levels with the inclusion of mitigation measures WDF-1 through WDF-5.
- B. Approve Major Use Permit UP 20-31 with the following findings:
 1. That the establishment, maintenance, or operation of the use applied for will not under the circumstances, 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 are reasonably adequate to safely accommodate the proposed use.

4. There are adequate services to serve the project.
5. This project is consistent with the Lake County General Plan, Upper Lake- Nice Area Plan, and Lake County Zoning Ordinance.
6. No violation of Chapter 5, 17, 21, 23 or 26 of the Lake County Code currently exists on this property, with a condition of approval implemented.
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 20-38)

I move that the Planning Commission find that potential impacts associated with this project can be mitigated to 'less than significant' through the implementation of the Mitigated Negative Declaration (IS 20-38) submitted by Flying O, LLC (Alexander Rashed) for the property located at 11540 Bachelor Valley Road, Upper Lake (APN: 002-024-22) will not have a significant effect on the environment, and that the Planning Commission adopt Initial Study (IS 20-38) with the findings listed in the staff report dated June 27, 2024.

Major Use Permit (UP 20-31)

I move that the Planning Commission find that the Major Use Permit (UP 20-31) applied for by Flying O, LLC (Alexander Rashed) on property located at 11540 Bachelor Valley Road, Upper Lake (APN: 002-024-22) does meet the requirements of Section 51.4 and Article 27 of the Lake County Zoning Ordinance and that the Major Use Permit be granted based on the findings and subject to the conditions included in the staff report dated June 27, 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, 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 day following the Planning Commission's decision on this matter.*