



**COUNTY OF LAKE**  
COMMUNITY DEVELOPMENT DEPARTMENT  
Planning Division  
Courthouse - 255 N. Forbes Street  
Lakeport, California 95453  
Telephone 707/263-2221 FAX 707/263-2225

**Item #1**  
**9:05 AM**  
**July 28, 2022**

## **STAFF REPORT**

**TO:** Planning Commission

**FROM:** Mary Darby, Community Development Director  
Preparer: LACO Associates  
Planner: Andrew Amelung, Cannabis Program Manager

**DATE:** July 28, 2022

**RE:** Bottle Rock Farms FJA Trust, Major Use Permit (UP 19-42), Initial Study (IS 19-61)

Supervisor District Jessica Pyska  
Planning Commissioner Maile Field

**ATTACHMENTS:**

1. Vicinity Map
2. Project Description and Property Management Plan
3. Proposed Site Plans
4. Proposed Conditions of Approval
5. Initial Study
6. Mitigation Monitoring Reporting Program
7. Site Visit Photos
8. Biological Site Assessment
9. Hydrology Report and Drought Mangement Plan
10. Comments Received

### **I. EXECUTIVE SUMMARY**

Bottle Rock Farms FJA Trust is requesting approval of a Major Use Permit for four A-Type 3 to allow cultivation up to 4-acre outdoor canopy area on adjoining parcels located at 9900 and 10030 Bottle Rock Road, Kelseyville on the Lake County, Assessor's Parcel Number (APN): 011-057-22 and 011-057-23. The property is currently developed with an existing and permitted single-family residential home and an agricultural exempt barn that is not proposed as part of the cultivation operation.

Each parcel includes a clearing that occurred as part of the three-acre conversion through the permitting process with the Department of Forestry and Fire Protection under a "*Less than 3-acre Conversion Exemption, Timber Conservation Plan*".



Both parcels have an s enclosed commercial cannabis cultivation area enclosed by a secured 6-foot fenced with the proposed project improvements and features as described below:

- North Parcel (9900 Bottle Rock Road): 87,120 square feet mature cannabis canopy area within a 93,000 square feet cultivation area. The proposed improvements on this parcel includes compost pile, waste area, employee parking spaces, 3,000 square feet temporary structures to hold 1,000 square feet of immature plants (include walkways and preparation area), stormproof shed, 3,000 gallon fire suppression water tank, ADA parking space, and 4,750 square feet processing building powered by solar.
- South Parcel (10030 Bottle Rock Road): 87,120 square feet mature cannabis canopy area within a 92,500 square feet cultivation area. The proposed improvements on this parcel includes compost pile, waste area, stormproof shed, employee parking spaces, six 5,000 gallon water storage tanks, and portable toilets.

Mature plants would be grown outdoor within fenced garden compounds. Cultivation would occur in full sunlight in amended native soil. According to the Property Management Plan, approximately 4,000 cubic yards of soil would be imported and tilled into the soil for the entire cultivation. “Auto-flowering” cultivars of cannabis would be grown, which have a transplant-to harvest cycle of approximately 10 weeks. Two crops would be harvested from each garden each year. The irrigation system for the cultivation operation would use water supplied by an existing well and a pump located in the central portion of the property. The water would be pumped via underground PVC piping to 5,000-gallon storage tanks. Irrigation would be provided via black poly tubing and drip tape (drip irrigation). A mixing tank may be used to add liquid fertilizers and other amendments to the irrigation water. A soil stockpile and compost pile would be established adjacent to each cultivation area.

The 4,750 square foot processing building would be used for the storage, drying, and trimming of cannabis. The building will include an ADA restroom. No cultivation would occur in this building. Electricity for the processing building would be provided by solar power with emergency backup electricity provided by a diesel generator. An existing well would serve the cultivation operation. Stormproof sheds or storage containers would be installed inside each cultivation compound. Employees would use the existing driveway for parking and staging. Employees would have access to a portable chemical toilet located at each of the cultivation areas.

Grading and vegetation removal would be required to construct the proposed processing building. The issuance of a building permit from the Community Development Department-Building Division allows up to 500 cubic yard of grading, which is sufficient for the construction of the processing building. The proposed cannabis cultivation would be set back a minimum of 100 feet from the top of the bank of the unnamed Class II watercourse in the vicinity of the project site.

According to the project descriptions submitted with the application and the Property Management Plan, onsite power would be supplied by solar power until a new electrical service is installed through PG&E. Solar power would be used to power all ancillary electric equipment which includes a processing building, well pump, security cameras, and security lights. Cannabis would be cultivated outdoors with no supplemental lighting. A solar system would be installed on the proposed processing building to power the operations at 9900 Bottle Rock Road and a solar system would be installed on the residence to power the operations at 10030 Bottle Rock Road. Backup generators would be used for emergency outages only.



According to the Site Management Plan and Water Use/Water Availability Study, the proposed project would require two (2) full-time managers as well as six (6) part-time employees, and cultivation operation will be operated by three people, typically, per day. Operations would occur up to seven (7) days per week with cultivation operations occurring approximately from March to November every year. Hours of operation for the proposed activities would typically be between 7:00 AM and 5:00 AM daily. The Lake County Zoning Ordinance restricts deliveries and pickups to 9:00 AM-7:00 PM Monday through Saturday and Sunday from 12:00 PM to 5:00 PM.

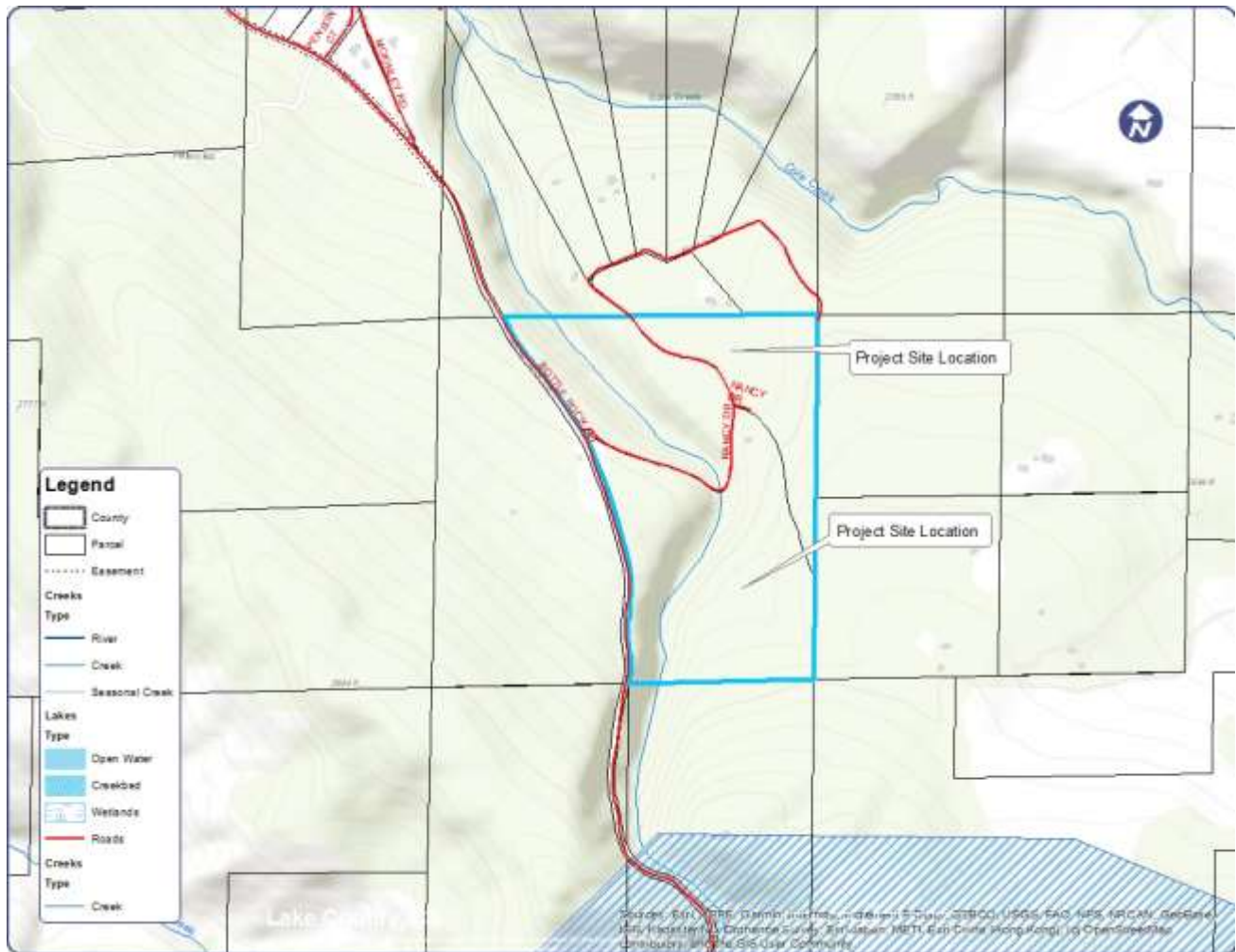


Figure 1. Proposed Site Plans and Cultivation Area

## Recommendation

Staff is recommending approval of Major Use Permit, UP 19-42, and the adoption of a Mitigated Negative Declaration with amendments to Biological Resource Mitigations Measures BIO-1, BIO-2, BIO-3 as recommended based on the environmental analysis (Initial Study, IS 19-61) with the incorporated Mitigation Measures and Conditions of Approval.

## II. PROJECT DESCRIPTION

Applicant: Bottle Rock Farms FJA Trust

Owner: Bottle Rock Farms FJA Trust



Location: 10030 and 9900 Bottle Rock Road, Kelseyville, CA

A.P.N.: 011-057-22 & 011-057-23

Parcel Size: 45.2 acres & 42.39 acres =87.59 acres

General Plan: Rural Lands

Zoning: RL-B5(5ac)-SC

Flood Zone: Areas of undetermined, but possible, flood hazard

Submittal Date: November 05, 2019

Farmland of Local Importance: The project site is designated as Grazing Land

SCH Number: 2021050007

### **III. PROJECT SETTING**

#### ***Surrounding Uses and Zoning***

The surrounding parcels to the North, East and West of the project parcel are zoned Rural Lands with parcel size ranges from 8 acres to 80 acres. To the South is zoning designation Open Space with parcel size approximately 63 acres. The property is located within an area of dense vegetation with parcels abutting the project parcel being zoned as timberland preserve.



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*Figure 3. Aerial Photo of Subject Site*

Topography: The proposed cultivation area is relatively flat with 3-4% grade, however, the overall cross-slope of the parcel is approximately 30%.

Soils: The proposed cultivation areas are located within Bottlerock-Glenview-Arrowhead complex (117), 5 to 30 percent slopes. Each soil type surface runoff is rapid, and the hazard of erosion is moderate. The permeability is a between slow to moderately slow.

Water Supply: An onsite permitted domestic well (well#824915) located approximately 300 feet from the northern cultivation area and approximately 1,300 feet from the southern cultivation area will provide water for the entire cultivation project. The well has a total depth of 450 feet and static water levels were recorded at approximately 105 feet from the top of casing at the time of installation. The well yield at the time of installation was measured at 16.5 gallons per minute (GPM). On January 13, 2020, Hurvitz Environmental Services Inc. conducted a 6-hour well yield test at the on-site domestic well. During the well test, HES pumped the well at an initial rate of 13.2 GPM. Within 1 hour the flow rate was reduced to 11.1 GPM



and within approximately 4 hours the pumping rate stabilized and sustained at approximately 9 GPM.

Sewage Disposal: An existing permitted septic system currently services the single-family dwelling. However, it would not be part of the cultivation area. The applicant proposes several portable toilets and a permanent septic system is proposed for the 4,750 square feet processing building for the future. The applicant will apply for the applicable permit with Environmental Health for the septic system.

Fire Protection: The project is located in the State Responsibility Area and within the Kelseyville Fire Protection District. The applicant will comply with the requirements of both Cal Fire and the Kelseyville Fire Protection's 2019 California Fire Code (CFC) with amendments.

Vegetation: A biological report was conducted after a 3-acre clearing on each parcel through a permit under authority of Cal Fire as a "Less than 3-Acre Conversion Exemption" permit. A Registered Professional Forester prepared the permit, and operations were carried out by a Licensed Timber Operator. The proposed operation will not require the removal or disturbance of any additional vegetation.

Water Courses: There is one unnamed Class II watercourse crossing the internal access (referred to as Nancy Drive) to cultivation area on the South Parcel (10030 Bottle Rock Road; APN 011-057-23).

#### **IV. PROJECT ANALYSIS**

As proposed, the project must be in conformance and comply with the General Plan, Kelseyville Area Plan, and Zoning Code.

##### **General Plan Conformance Section**

The General Plan designation for the subject site is Rural Lands. The Rural Lands designation is to allow rural development in areas that are primarily in their natural state, although some agricultural production, especially vineyards, can occur on these lands. The category is appropriate for areas that are remote, or characterized by steep topography, fire hazards, and limited access. Typical uses permitted by right include, but are not limited to, animal raising, crop production, single family residences, game preserves and fisheries. Other typical uses permitted conditionally include, but are not limited to, recreational facilities, manufacturing and processing operations, mining, and airfields. These lands also provide important groundwater recharge functions. As watershed lands, these lands function to collect precipitation and provide for important filtering of water to improve water quality.

*The applicant is proposing commercial cannabis cultivation which applies to agricultural/crop production with the Lake County General Plan (2008) for Agriculture and Rural Lands. Commercial cannabis cultivation is an allowable use within these land use designations and is located appropriately to support the use. The project is located in a rural area where the practice of cultivation and crop production is common under this designation.*



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

## **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: “The County shall prevent the intrusion of new incompatible land uses into an existing community area.

*Pursuant to Article 27 (Table B) of the Lake County Zoning Ordinance, the cultivation of cannabis is an allowable use within the “RL” Rural Lands land Use Designations upon securing a Minor/Major Use Permit. On December 12, 2019, the applicant submitted a Major Use Permit Application to the Community Development Department (CDD) for processing. In addition, the proposed project will be also be situated in an area surrounded by active and permitted cultivation operation projects.*

## **Kelseyville Area Plan Conformance**

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

“3.3b: New development should be designed to conserve water usage through the use of drought resistant vegetation, water flow restrictors and other conservation measures.”

“3.5f: The County should provide assistance to the local agricultural community in identifying ways to increase supplies of and implement conservation techniques for quality irrigation water in the Kelseyville Planning Area.”

“3.9a: Archaeological studies shall be required in accordance with state law whenever new development could potentially impact unique or significant cultural resources.”

“4.1h: The Fire Safety Guidelines adopted by the CDF shall be adhered to in areas subject to high and very high fire hazards.”

“5.35a: Local fire protection districts should work with area water purveyors to increase fire safety and water supply for existing development.”

“5.35d: New commercial uses should be required to provide private security measures.”

*The project proposal meets several policies from the Kelseyville Area Plan. The project incorporates and include the following policies above within the project proposal and the property management plan regarding water conservation, security measures, cultural resources, and fire protection. The irrigation system for the cultivation operation will use water supplied by the permitted well and a pump located at the central portion of the property. The water will be pumped via underground PVC piping to 5,000 gallon storage tanks adjacent to each cannabis garden. Irrigation will be provided via black poly tubing using drip irrigation for conservation measures. In an effort to protect cultural resources, a Cultural Resources Assessment was conducted on September 23, 2019 and resulted in negative findings. In addition, a request for consultation under AB52 was distributed on April 24, 2020 to Big Valley Rancheria, Cortina Rancheria, Elem Colony, Hopland Band of Pomo, Koi Nation, Mishewal-Wappo, Middletown Rancheria, Redwood Valley, Robinson Rancheria, Scotts Valley Band of Pomo, Upper Lake Habematolel, and Yocha Dehe. Middletown Rancheria responded and resulted in conducting a cultural sensitivity training and address any cultural concerns. No further actions was needed. The applicant also proposes fire*



suppressant water tanks for fire safety and minor road improvements to comply with the Fire Safety Guidelines adopted by CDF.

## **Zoning Ordinance Conformance**

### Article 7- Rural Lands Zoning District

To provide for resource related and residential uses of the County's undeveloped lands that are remote and often characterized by steep topography, fire hazards, and limited access.

*The project is located within the base zoning district Rural Lands. According to Article 27 of the Lake County Zoning Ordinance, commercial cannabis cultivation is permitted in the Rural Lands with a Major Use Permit. To qualify for a Major Use Permit the project must demonstrate that all regulations within Articles 7, Article 30, Article 34 and 27 are met or adequately mitigated. However, Article 7 does not specify the use typically permitted of specific crop farming such as cannabis cultivation operations but details of regulatory compliance are further described within Article 27. This project has demonstrated that it meets all regulations and addresses the following associated combining districts below.*

### Article 30- "B" Combining District

To provide for specified minimum lot sizes; or to promote open space and protect sensitive resources by clustering residential development. Within the "B" combining district, all uses of land shall comply with the regulations of the base zoning district and with the additional regulations of the "B" combining district. In no case shall a "B" combining district reduce a minimum lot size below that required or increase the maximum permitted density above that required in the development standards of the base zoning district with which it is combined.

### Article 34- Scenic Combining District

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.

*The proposed project conforms with all zoning designation under Rural Lands-B5-Scenic Combining District. Under Section 27.11, commercial cannabis cultivation is allowable upon obtaining a use permit under zoning designation for Rural Lands. Article 30 does not apply to the proposed project as the project does not involve the reduction of lot sizes and density as an effort to promote open space and protect sensitive resources. Article 34 protects views of scenic areas near Bottle Rock Road. Under this article, there are limitations and restrictions on what types of uses and dimensions of structures are permitted in areas designated as scenic. Greenhouses or agricultural processing are not permitted within scenic combining districts if designated adjacent to a State Highway. However, the use project site is located on county roads, where if located within the scenic combining districts, it is allowable upon first obtaining a Major Use Permit with an allowable size of 5,000 square feet on each case. The proposed project potentially complies as the processing facilities is under 5,000 square feet at the discretion of the reviewing authority.*

### Article 27 - Use Generally Permits

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



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

***Development Standards***

- Minimum Lot Size (20 acres per A-Type 3): *Complies, the two parcels together is approximately 87 acres in size. The applicant needs a total of 80 acres to apply for four A-Type 3 permit types.*
- Setback from Property Line (100 feet): *Complies; the cultivation site is set back a minimum of 100 feet from the nearest property line.*
- Setback from Off-Site Residence (200 feet): *Complies; the nearest structure is approximately 200 feet away from the cultivation area.*
- Minimum Fence Height of Six (6) Feet: *Complies; the proposed enclosure is a 6-foot tall fence for screening.*
- Maximum Canopy Area 174,240 square feet maximum for a (4) A-Type 3: *Complies; the proposed canopy area is not to exceed 174,240 square feet and will have a cultivation area of 190,250 square feet to include the processing building (see attachment 3). The applicant complies with the previous ordinance.*

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

The applicant meets the General Requirements outlined in Section 27.11(at) of Chapter 21 Zoning Ordinance, Ordinance 3106, and Ordinance 3101. If the requirements have not yet been met, a condition has been added to ensure compliance with the local zoning ordinance.

*The applicant meets the General Requirements outlined in Section 27 of the Zoning Ordinance. The applicant has undergone a background check, applicable state permits to acquire the CalCannabis Cultivation licensing, complied with the 4290 fire safety standards requirements, and qualified for the Major Use Permit. If the requirements have not yet been met, a condition has been added to the permit to ensure compliance prior to permitting activation. The applicant has also submitted a Property Management Plan, outlining compliance with all regulations relating to cannabis operations including air quality, cultural resources, energy usage, fertilizer usage, fish and wildlife protection, stormwater management, security, compliance monitoring, etc. The applicant proposes to meet all local, state, and federal compliance where it is applicable to the proposed project scope.*

**V. ENVIRONMENTAL REVIEW**

The California Environmental Quality Act (CEQA) requires agencies to evaluate the environmental implications of land use actions. An Initial Study and Mitigated Negative Declaration (IS 19-61; Attachment 5) was prepared and circulated for public review in compliance with CEQA from



5/3/2021 to 6/4/2021. In addition, the applicant provided technical documents to adequately evaluate and to determine the potential environmental impact of the proposed project. The following documents include a Water Availability Analysis/Water Use dated September 27, 2021, prepared by a Certified Hydrogeologist from Hurvitz Environmental Services Inc., a Cultural Resources Assessment dated September 23, 2019 by Tim Spillane, MA, RPA from Natural Investigations Company, and Biological Site Assessment Report dated September 23, 2019, was prepared by G.O. Graening, PhD.

The Initial Study found that the project could cause potentially significant impacts to Aesthetics, Air Quality, Biological Resources, Cultural Resources/Tribal Cultural Resources, Geology/Soils, Hydrology, Hazardous materials, and Noise. However, with the incorporation of the mitigation measures below, all impacts can be reduced to a less than significant level.

However, with the incorporation of the mitigation measures in Attachment 5, all impacts can be reduced to a less than significant level.

### **Aesthetics**

The proposed project is located within an area of dense vegetation and involves outdoor cultivation area that does not involve a substantial increase in light source. There is an existing residential home that currently emit a small amount of light. Though, the project may not increase substantially, it has the potential to create additional light and/or glare through the use of exterior security lighting, and processing facility. Any lighting associated with the proposed project would comply with the recommendations of “darksky.org” and local ordinances. Impacts relating to Aesthetics have been reduced to less than significant with the incorporated mitigation measures below:

- AES-1: An Outdoor Lighting Plan that meets the darkskies.org lighting recommendations shall be submitted for review and acceptance, or review and revision prior to cultivation.

### **Air Quality**

The impacts to air quality, which are limited to building the processing building and preparing soils for planting, would be temporary and would occur over about a 4 to 6 week period. Ongoing field management is considered an operational, not construction, activity. Operational impacts would include dust and fumes from site preparation of the cultivation area and vehicular traffic, including small delivery vehicles that would be contributors during and after site preparation/construction. Odors generated by the plants, particularly during harvest season, would be lessened through passive means due to the separation distance from other nearby structures and other measures such as planting native flowering vegetation surrounding the cultivation area.

Implementation of mitigation measures below would reduce air quality impacts to less than significant. Dust during site preparation would be limited during periods of high winds (over 15 mph). All visibly dry, disturbed soil and road surfaces would be watered to minimize fugitive dust emissions. Dust and fumes may be released as a result of vehicular traffic, including small delivery vehicles. Impacts relating to Air Quality have been reduced to less than significant with the incorporated mitigation measures below:

AQ-1: Prior to obtaining the necessary permits and/or approvals for any phase, the applicant shall contact the Lake County Air Quality Management District and obtain an Authority to Construct (A/C) Permit for all operations and any diesel-powered equipment and/or other equipment with the potential for air emissions or provide proof that a permit is not needed.



AQ-2: All mobile diesel equipment used must comply 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 CI engines. Additionally, all engines must notify LCAQMD prior to beginning construction activities and prior to 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 Lake County Air Quality Management District such information in order to complete an updated Air Toxic emission Inventory.

AQ-4: All vegetation during site development shall be chipped and spread for ground cover and/or erosion control. The burning of vegetation, construction debris, including waste material is prohibited.

AQ-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. The applicant shall regularly use and/or maintain the graveled area to reduce fugitive dust generations.

### **Biological Resources**

A Biological Site Assessment (BSA) was prepared by Natural Investigations Company, September 23, 2019. Reconnaissance-level field surveys were conducted on September 12-13, 2019. The project areas are within existing 3-acre clearings (one on each parcel) that were established under the permitting authority of CalFire as a “Less than 3 Acre Conversion Exemption” before the Biological Assessment was conducted by the consultants. Cultivation operations on the parcels would be installed on land previously cleared of vegetation as “Less than 3-Acre Conversion Exemption” under the authority of CalFire.

The biologist concluded that no special-status species were detected within the study area. Regionally-occurring special status plants could be present on the obsidian soils of the closed-cone pine forest habitat, primarily Greene’s narrow-leaved daisy. The mature trees in the study area have a moderate potential to harbor special status bats, primarily hoary bat, and western red bat. The study area contains suitable nesting habitats for various bird species because of the presence of trees and poles. However, no nests or nesting activity was observed in the project area during the field survey. The proposed project does not propose the removal of trees, some vegetation removal may be necessary for the construction of the processing building, it is recommended that trees must be inspected for the presence of active bird nests before tree felling or ground clearing. Biological Resources have been reduced to less than significant with the incorporated mitigation measures below.

While the application states that no additional vegetation would be removed or disturbed for this project. Biological Resource Mitigations measures were included in the circulated Initial Study/Mitigated Negative Declaration that address further site expansion and potential destruction to habitat. Therefore, staff recommends more effective mitigation and the addition of an additional mitigation measure (BIO-5).

### *Circulated BIO-1*



BIO-1: If the establishment of cultivation operations requires the destruction of closed-cone pine forest habitat, a pre-construction survey for special-status species should be performed by a qualified biologist to ensure that special-status species are not present. If any listed species or special-status species are detected, construction should be delayed, and the appropriate wildlife agency (CDFW and/or USFWS) should be consulted and project impacts and mitigation reassessed.

*Recommended Amended BIO-1*

BIO-: If the establishment of cultivation operations requires the destruction of closed-cone pine forest habitat, a pre-construction survey for special-status species shall be performed by a qualified biologist to ensure that special-status species are not present prior to any ground disturbing activity. The applicant shall notify the appropriate wildlife agency (CDFW and/or USFWS), and the Lead Agency (Lake County Planning Department). Additional project impacts shall be reviewed in accordance with the California Environmental Quality Act.

*Circulated BIO-2*

BIO-2: If construction activities require the removal of trees or shrubs or disturbance to riparian habitat, and if these activities occur during the nesting season (usually March to September), a pre-construction survey for the presence of special-status bird species or any nesting bird species should be conducted by a qualified biologist within 500 feet of proposed construction areas. If active nests are identified in these areas, CDFW and/or USFWS should be consulted to develop measures to avoid “take” active nests prior to the initiation of any construction activities. Avoidance measures may include the establishment of a buffer zone using construction fencing or the postponement of vegetation removal until after the nesting season, or until after a qualified biologist has determined the young have fledged and are independent of the nest site.

*Recommended BIO-2*

BIO-2: No removal of trees or shrubs associated with commercial cannabis cultivation activities at the project site shall occur unless a pre-construction survey for the presence of special-status bird species or any nesting bird species has been conducted by a qualified biologist within 500 feet of proposed construction areas, and consultation with CDFW and/or USFWS and the Lead Agency (Lake County Planning Department). Further expansion of the project area will require further review in accordance with the California Environmental Quality Act (CEQA). No disturbance to riparian habitat shall occur.

*Circulated BIO-3*

BIO-3: If the establishment of cultivation operations requires the destruction of undisturbed closed-cone pine forest habitat, a botanical survey should be conducted to identify if any special-status plant species are present and to delineate sensitive and non-sensitive plant habitat at a finer scale, which may reduce the overall area needed for protection.

*Recommended BIO-3*

BIO-3: No removal of undisturbed closed-cone pine forest habitat shall occur unless a botanical survey has been conducted to identify if any special-status plant species are present and to delineate sensitive and non-sensitive plant habitat at a finer scale, and consultation with CDFW and/or USFWS and the Lead Agency (Lake County Planning Department). Further expansion of the project area will require further review in accordance with the California Environmental Quality Act (CEQA).

BIO-4: All work should incorporate erosion control measures consistent with Lake County Grading Regulations and the State Water Resources Control Board Order No. WQ 2019-001-DWQ.



*Recommended Mitigation Measure BIO-5 (new)*

BIO-5: Removal of trees or other habitat is prohibited without further review and environmental analysis in accordance with the California Environmental Quality Act (CEQA).. If further trees are to be removed, applicant shall submit to the County a Tree Removal Plan for review and approval, which incorporates Mitigation Measures BIO 1, 2, & 3.

**Cultural Resources/Tribal Cultural Resources**

A Cultural Resources Assessment was conducted by Natural Investigations Company dated September 23, 2019. A California Historical Resources Information System (CHRIS) records search was completed by the Northwest Information Center (NWIC) on September 9, 2019. The Native American Heritage Commission (NAHC) also conducted a Sacred Lands File (SLF) search of the Project Area on August 26, 2019. Finally, Natural Investigations conducted a pedestrian survey of the proposed project area on September 13, 2019. The surveyed portion of the Project Area includes the entire 6-acre footprint of proposed project-related ground disturbance. No cultural resources of any kind have been previously recorded within the proposed project area, or within the 0.25-mile records search radius. The SLF search returned negative results for tribal cultural resources within the Project vicinity. No prehistoric or historic-era archaeological sites or ethnographic sites were identified during the field survey. However, mitigation measures will ensure in a case that significant artifacts or human remains could be discovered during any ground disturbances. Impacts relating to Cultural Resources/Tribal Cultural Resources have been reduced to less than significant with the incorporated mitigation measures below:

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, 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, and a qualified archaeologist for proper interment 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 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: In the event of an unanticipated discovery of cultural resources during the implementation of the project, all work must be halted within 100 feet (30 meters) of the find and a qualified archaeologist (36 CFR Part 61) notified so that its potential significance can be assessed.

**Geology/Soils**

Lake County contains numerous known active faults. There is a mapped linear fault that runs through the cultivation site on APN 011-057-22. Future seismic events in the Northern California region can be expected to produce seismic ground shaking at the site. All proposed construction is required to be built consistent with current California Building Code construction standards. To construct the proposed processing building, the applicant would be required to obtain a building permit with Lake County to demonstrate conformance with local and state building codes and seismic design requirements. Major grading is not proposed for the project. The proposed processing building would require grading and the applicant would need to obtain a grading and building permit from the Lake



County Community Development Department before construction. Impacts relating to Geology/Soils have been reduced to less than significant with the incorporated mitigation measures below:

GEO-1: Prior to any ground disturbance for building construction, the permittee shall submit erosion control and sediment plans to the Water Resource Department and the Community Development Department for review and approval. Said erosion control and sediment plans shall protect the local watershed from runoff pollution through the implementation of appropriate Best Management Practices (BMPs) in accordance with the Grading Ordinance. Typical BMPs include the placement of straw, mulch, seeding, straw wattles, silt fencing, and the planting of native vegetation on all disturbed areas. No silt, sediment, or other materials exceeding natural background levels shall be allowed to flow from the project area. The natural background level is the level of erosion that currently occurs from the area in a natural, undisturbed state. Vegetative cover and water bars shall be used as permanent erosion control after project installation.

GEO-2: Excavation, filling, vegetation clearing, or other disturbance of the soil shall not occur between October 15 and April 15 unless authorized by the Community Development Department Director. The actual dates of this defined grading period may be adjusted according to weather and soil conditions at the discretion of the Community Development Director.

GEO-3: The permit holder shall monitor the site during the rainy season (October 15 – May 15), including post-installation, application of BMPs, erosion control maintenance, and other improvements as needed.

GEO-4: If greater than fifty (50) cubic yards of soils are moved, a Grading Permit shall be required as part of this project. The project design shall incorporate Best Management Practices (BMPs) to the maximum extent practicable to prevent or reduce the discharge of all construction or post-construction pollutants into the County storm drainage system. BMPs typically include scheduling of activities, erosion and sediment control, operation and maintenance procedures, and other measures in accordance with Chapters 29 and 30 of the Lake County Code.

GEO-5: Prior to operation, all buildings, accessible compliant parking areas, routes of travel, building access, and/or bathrooms shall meet all California Building Code Requirements.

GEO-6: Prior to operation, all structure(s) used for commercial cultivation shall meet accessibility and CalFire standards. Please contact the Lake County Community Development Department's Building Division for more information.

### **Hazards and Hazardous Materials**

Materials associated with the proposed cultivation of commercial cannabis, such as gasoline, pesticides, fertilizers, alcohol, hydrogen peroxide, and equipment emissions may be considered hazardous if released into the environment. The applicant has stated that all potentially harmful chemicals would be stored in a stormproof shed and locked in a secured building on site. All equipment shall be maintained and operated in a manner that minimizes any spill or leak of hazardous materials. Hazardous materials and contaminated soil shall be stored, transported, and disposed of consistent with applicable local, state, and federal regulations. Impacts relating to Hazards and Hazardous Materials have been reduced to less than significant with the incorporated mitigation measures below:

HAZ-1: All equipment will be maintained and operated to minimize spillage or leakage of hazardous materials. All equipment will be refueled in locations more than 100 feet from surface water bodies.



Servicing of equipment will occur on an impermeable surface. In an event of a spill or leak, the contaminated soil will be stored, transported, and disposed of consistent with applicable local, state, and federal regulations.

HAZ-2: The storage of hazardous materials equal to or greater than fifty-five (55) gallons of a liquid, 500 pounds of a solid, or 200 cubic feet of compressed gas, then a Hazardous Materials Inventory Disclosure Statement/Business Plan shall be submitted and maintained in compliance with requirements of Lake County Environmental Health Division. Industrial waste shall not be disposed of on-site without review or permit from Lake County Environmental Health Division or the California Regional Water Quality Control Board. The permit holder shall comply with petroleum fuel storage tank regulations if fuel is to be stored on site.

HAZ-3: Prior to operation, the applicant shall schedule an inspection with the Lake County Code Enforcement Division within the Community Development Department to verify adherence to all requirements of Chapter 13 of the Lake County Code, including but not limited to adherence with the Hazardous Vegetation requirements.

HAZ-4: Prior to operation, all employees shall have access to restrooms and hand-wash stations. The restrooms and hand wash stations shall meet all accessibility requirements.

HAZ-5: The proper storage of equipment, removal of litter and waste, and cutting of weeds or grass shall not constitute an attractant, breeding place, or harborage for pests.

HAZ-6: All food scraps, wrappers, food containers, cans, bottles, and other trash from the project area should be deposited in trash containers with an adequate lid or cover to contain trash. All food waste should be placed in a securely covered bin and removed from the site weekly to avoid attracting animals.

### **Hydrology and Water Quality**

The proposed project has been designed to maintain riparian buffers and grading setbacks of 100 feet. No development would occur within the drainage buffers and setbacks. In addition, straw wattles would be staked around the cultivation areas to provide an additional buffer between the cultivation area and surface waters. The proposed project would be served by a portable toilet located at each of the cultivation sites. If a new ADA restroom with a handwashing station is required to be installed in the proposed processing building, this restroom would require a new onsite wastewater treatment septic system. State law requires permits for onsite systems to ensure that they are constructed and sited in a manner that protects human health and the environment. Prior to applying for a permit, the Lake County Division of Environmental Health requires a Site Evaluation to determine the suitability of the site for a septic system. Though, the applicant will need to adhere to all federal, state, and local regulation regarding wastewater treatment and water usage requirements. Additional mitigation measures will ensure that the life of the project will not create a potential impacts to the hydrology and water quality in the future. Impacts relating to Hydrology and Water Quality have been reduced to less than significant with the incorporated mitigation measures below:

HYD-1: Before this permit having any force or effect, the permittee(s) shall adhere to the Lake County Division of Environmental Health requirements regarding on-site wastewater treatment and/or potable water requirements. The permittee shall contact the Lake County Division of Environmental Health for details.



HYD-2: The production well shall have a meter to measure the amount of water pumped. The production wells shall have continuous water level monitors. The methodology of the monitoring program shall be described. A monitoring well of equal depth within the cone of influence of the production well may be substituted for the water level monitoring of the production well. The monitoring wells shall be constructed and monitoring began at least three months before the use of the supply well. An applicant shall maintain a record of all data collected and shall provide a report of the data collected to the County annually and/or upon made upon request.

HYD-3: Prior to construction, the applicant shall provide a new site plan for the property to show all dimensions and setbacks to meet all federal, state, and local regulations and conform to all building codes for the processing building.

### **Noise**

Noise related to outdoor cannabis cultivation typically occurs either during construction or as the result of machinery related to post-construction equipment such as well pumps or emergency backup generators during power outages. Emergency generators are not proposed as part of this project. Power would be supplied by solar power. This project would have some noise-related to site preparation (hours of construction are limited through standard conditions of approval). Although the property size would help to muffle noises heard by neighboring properties, mitigation measures are needed to further limit the potential sources of noise and include the following:

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

NOI-3: The operation of the air filtration system shall not exceed levels of 57 dBA between the hours of 7:00 a.m. to 10:00 p.m. and 50 dBA from 10:00 p.m. to 7:00 a.m. within residential areas as specified within Zoning Ordinance Section 21-41.11 (Table 11.2) measured at the property lines.

### **Mandatory Findings of Significance**

The applicant was authorized by CalFire for the permit to clear 3-acres of vegetation/tree removal under the permit “Less than 3-Acre Conversion Exemption” to convert to an agricultural use. The applicant

Therefore, the staff is recommending a Mitigated Negative Declaration be adopted.

## **VI. MAJOR USE PERMIT FINDINGS FOR APPROVAL**

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

1. That the establishment, maintenance, or operation of the use applied for will not under the circumstances of the particular case, be detrimental to the health, safety, morals, comfort, and



general welfare of the persons residing or working in the neighborhood of such proposed use, or be detrimental to property and improvements in the neighborhood or the general welfare of the County.

*The proposed use of commercial cannabis cultivation operation is permitted in the “RL” Rural Lands zoning district upon issuance of a Major Use Permit according to Article 27 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 such as private screening, security measures, background checks, cleared violation from code enforcement (in compliance with findings 6 below), and required setbacks. 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 consists of 174,240 square feet of the outdoor canopy within a 190,250 square feet of cultivation area. The allowable canopy area is based on the limitations of size, shape, location and physical characteristics of the site topography. The project scope adequately meets this requirements.*

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

*The site is accessed through Bottle Rock Road, a county-maintained road, the road is adequate to safely accommodate the specific proposed use.*

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

*The proposed project includes a portable toilet and handwashing station for employees and will propose permanent facilities for sewage disposal within the processing building. The water supply for the project will be provided by an existing permitted well used for irrigation. A request for review was circulated on April 24, 2020, Kelseyville Fire Protection District and the California Fire and Forestry commented on compliance. The applicant project scope includes compliance with the fire safety standard which includes on-site water storage for fire protection per NFPA 1142, driveway standards for emergency vehicle ingress, and egress. The applicant will comply with the 2019 California Fire Code (CFC) with Amendments adopted by the Kelseyville Fire Protection District. Lake County Sheriff Department commented and determined that the security measures are adequate for the project.*

4. 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 Land zoning district upon securing a Major Use Permit according to Article 27 of the Lake County Zoning Ordinance. Additionally, the Lake County General Plan does not have any provisions*



*specifically for commercial cannabis, but both the General Plan and the Kelseyville Area Plan have provisions for economic development and agricultural resources land use compatibility. Additionally, the subject property complies with the minimum setbacks and development standards.*

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

*There are no violations of Chapter 5-Building Regulations, Chapter 17 Subdivision Regulations, Chapter 21-Zoning Ordinance, Chapter 23-Clear Lake Shoreline, or Chapter 26-Clear Lake Integrated Aquatic Plant Management Program Ordinance of the Lake County Code on this property.*

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

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

## **VII. RECOMMENDATION**

**Staff recommends that the Planning Commission take the following actions:**

- A. Adopt Mitigated Negative Declaration (IS 19-61) for Major Use Permit (UP 19-42) with the following findings found in Attachment 5:**
  1. Potential aesthetics impacts can be mitigated to less than significant levels with the inclusion of mitigation measures AES-1.
  2. Potential air quality impacts can be mitigated to less than significant levels with the inclusion of mitigation measures AQ-1 through AQ-6.
  3. Potential biological impacts can be mitigated to less than significant levels with the inclusion of mitigation measures BIO-1 through BIO-4.
  4. Potential environmental impacts related to cultural and tribal resources can be mitigated to less than significant levels with the inclusion of mitigation measures CUL-1 and CUL-3.
  5. Potential geology and soils can be mitigated to less than significant levels with the inclusion of mitigation measures GEO-1 through GEO-6.



6. Potential hazards and hazardous materials impacts can be mitigated to less than significant levels with the inclusion of mitigation measures HAZ-1 through HAZ-6.
7. Potential hydrology and water quality impacts can be mitigated to less than significant levels with the inclusion of mitigation measures HYD-1 through HYD-4.
8. Potential noise impacts can be mitigated to less than significant levels with the inclusion of mitigation measures NOI-1 through NOI-3.
9. This project is consistent with land uses in the vicinity.
10. This project is consistent with the Lake County General Plan, Kelseyville Area Plan, and Zoning Ordinance.
11. Any changes to the project will require either an amended Use Permit or a new Use Permit unless the Community Development Director determines that any changes have no potential environmental impacts.
12. As mitigated through specific conditions of approval, this project will result in less than significant environmental impacts.
13. Planning Commission hereby finds that the new measure (BIO-5) is equivalent or more effective in mitigating or avoiding significant effects and that it in itself will not cause any potentially significant effect on the environment, therefore no recirculation of the proposed mitigated negative declaration is necessary.

**B. Approve Major Use Permit UP 19-42 with the following findings:**

1. That the establishment, maintenance, or operation of the use applied for will not under the circumstances of the particular case, be detrimental to the health, safety, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use, or be detrimental to property and improvements in the neighborhood or the general welfare of the County.
2. The site is adequate in size, shape, location, 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, Kelseyville 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 apply for the permit 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).

## **VIII. SAMPLE MOTIONS**

### **Mitigated Negative Declaration (IS 19-61)**

I move that the Planning Commission find that the **Mitigated Negative Declaration (IS 19-61)** prepared for Bottle Rock Farms FJA Trust on property located at 9900 and 10030 Bottle Rock Road, Kelseyville, CA 95451 further described as APNs: 011-057-22 and 011-057-23 will not have a significant effect on the environment with amendments to increase the effectiveness of Biological Resource Mitigations Measures BIO-1, BIO-2, BIO-3 and add Mitigation Measure BIO-5, as recommended in this staff report and therefore a mitigated negative declaration along with the accompanying Mitigation Monitoring Reporting Program (MMRP) shall be approved with the findings listed in the staff report dated July 28, 2022.

### **Major Use Permit (UP 19-42)**

I move that the Planning Commission find that the **Major Use Permit (UP 19-42)** applied for by Bottle Rock Farms FJA Trust on property located at 9900 and 10030 Bottle Rock Road, Kelseyville, CA 95451 further described as APNs: 011-057-22 and 011-057-23 does meet the requirements of Section 51.4 and Article 27, Section 1(at) [i, ii(g), i(ii)] of the Lake County Zoning Ordinance and the Major Use Permit be granted subject to the conditions of approval and with the findings listed in the staff report dated July 28, 2022.

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