



COUNTY OF LAKE

COMMUNITY DEVELOPMENT DEPARTMENT

Courthouse - 255 N. Forbes Street

Lakeport, California 95453

Planning Department · Building Department · Code Enforcement

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Item 6

9:25 a.m.

August 11, 2022

STAFF REPORT

TO: Planning Commission

FROM: Mary Darby, Community Development Director
Prepared by: Eric Porter, Associate Planner

DATE: August 11, 2022

RE: **Center Grow / Jason Jones; Modification (MMU 21-24) to a Use Permit (UP 18-32) for Commercial Cannabis Cultivation and Initial Study (IS 21-37).** Location: 26066 and 27084 Jerusalem Grade Road, Middletown. APN: 013-017-62 and 66

Supervisor District 1

- ATTACHMENTS:**
1. Vicinity Map
 2. Original Conditions of Approval
 3. Modification Conditions of Approval
 4. Agency Comments
 5. Revised Site Plans, dated 8-25-2021 and prepared by Canna Consulting.
 6. Water Analysis; dated March 11, 2022 and prepared by Matthew Klein, P.E
 7. Initial Study (IS 21-37)

I. EXECUTIVE SUMMARY

On October 8, 2020, the Planning Commission approved Use Permit UP 18-32 for one acre of outdoor cannabis cultivation on the subject site.

On August 31, 2021, the County received an application for a modification to the cultivation area to enable the applicant to convert one acre of outdoor cannabis cultivation to ½ acre (22,000 sq. ft.) of greenhouse “mixed light” cultivation.

The project, following this modification, will result in a slight decrease in water usage. The proposed greenhouse buildings are specifically intended for mature cannabis

plants, and the overall cultivation area will be reduced by almost half from what had been approved under UP 18-32.

The greenhouse buildings are to be constructed in an area that had been previously disturbed by medicinal and adult-use outdoor cannabis cultivation beginning in year 2017. The site had also been burned in the Valley Fire in 2015. Dead trees were removed, and the proposed expansion area was surveyed by the Biologist and Archaeologist prior to the 2018 use permit submittal. No additional impacts to any of the 21 California Environmental Quality Act (CEQA) categories were determined to occur with this project.

The 79 acre subject site from an existing private access way located on Jerusalem Grade Road, an unpaved dirt road in this location. The previous Building Official had made a determination that Jerusalem Grade Road at this location was agriculturally exempted from CalFire Road Standards.

The original application included a Biological Survey and an Archeological Survey, both of which took into consideration the area proposed for the new greenhouses.

Staff is recommending **Approval with Conditions** of **MMU 21-24**.

II. PROJECT DESCRIPTION

Applicant/Owner: Center Grow / Jason Jones
Location: 26066 and 27084 Jerusalem Grade Road, Middletown
A.P.N.: 013-017-62 and 66
Parcel Size: 79± acres
General Plan: Rural Lands and Resource Conservation
Zoning (entire site): "RL-WW", Rural Lands - Waterway
Flood Zone: None
Date Submitted: August 31, 2021

III. PROJECT SETTING

Existing Uses and Improvements: The site presently contains a dwelling, septic system, well and three 7-1/2' by 15' accessory buildings, as well as the commercial cannabis cultivation area. The applicant was also approved for an A-Type 13 Self Distribution license in 2020 for the original use permit, which carries over to this application.

Water Analysis

The applicant prepared a comprehensive Water Analysis (Technical Memorandum) dated March 11, 2022 and prepared by Matthew Klein, P.E., that evaluates the permitted groundwater well's productivity; the aquifer storage, use and recharge rates during drought- and non-drought years; and, water demands from neighboring sites.

Matthew Klein, the author of the water analysis, concludes that this project will not adversely impact the Coyote Valley water basin.

A 2-hour pump test was run on this well in July 2020 by Jack Pollack, owner of Pollack Pump and Filtration. The well test showed a consistent 37 to 40 gallons-per-minute production with no draw-down.

The site contains four 2,500 gallon water storage tanks that were originally used for legal medicinal marijuana production in 2017. The legal outdoor cannabis cultivation began in 2018 and continues to present.

The water is drawn from the Coyote Valley water basin. This basin has an estimated capacity of 29,000 acre feet, or about 9 billion gallons, although the “usable storage capacity” is estimated at 7,000 acre feet. Overall demand for all agricultural uses drawing from this water basin is 4,073 acre feet, which represents about 58% of the usable water storage for this basin according to the Water Analysis submitted.

Projected annual water usage for Center Grow is 0.9 acre feet. The estimated water recharge rate of the aquifer during a drought year is 51 acre feet, and about 67 acre feet during a non-drought year.

Topography: Flat; less than 10% on almost all of the cultivation site

- Soils: **208-Skyhigh-Asbill complex, 15 to 50% slope.** This map unit is on hills. The vegetation is mainly annual grasses and oaks with scattered shrubs. Permeability of the Skyhigh soil is slow. Available water capacity is 3 to 7 inches. Effective rooting depth is 20 to 40 inches. Surface runoff is rapid, and the hazard of erosion is severe. The shrink-swell potential is high. This unit is used mainly for livestock grazing, wildlife habitat, and watershed. It can be used for firewood production.

Water Supply: Permitted groundwater well

Sewage Disposal: Permitted on-site septic system

Fire Protection: South Lake County Fire Protection District (CalFire)

Vegetation: Several varieties of oak trees; native grasses

Water Courses: Small man-made on-site retention pond; Class III seasonal stream

Surrounding Uses and Zoning

- North, South and West: “RL” Rural Lands. Parcel sizes generally range from 40 to 160 acres and are mostly undeveloped. There is one dwelling located approximately 1,500 feet to the northwest of the cultivation site.
- East: Open Space / BLM land, undeveloped.

Figure 1 - Aerial Photo of Site and Area



Source: Google Earth Pro

Figure 2 – Zoning Map of Site and Surrounding Area



Source: Lake County GIS Mapping

IV. PROJECT ANALYSIS

The County of Lake General Plan designation for the subject site is Rural Lands and Resource Conservation.

Rural Lands. The purpose of this land use category 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. They are generally supportive to the management of the natural infrastructure of the watersheds, and are located outside of Community Growth Boundaries.

Resource Conservation. The purpose of this land use category is to assure the maintenance or sustained generation of natural resources within the County. The highest priority for these lands is to provide for the management of the County's natural infrastructure. This management should include, but is not limited to, functioning as watershed lands which collect precipitation and provide for the important filtering of water to improve water quality. In addition, these lands provide important ground water recharge capability which is critical to the maintenance of the natural ecosystem and to providing a sustainable ground water supply for the County. This category would include public and private areas of: significant plant or animal habitats; forest lands in Timberland Preserve Zones; agricultural lands within the Williamson Act; grazing; watersheds including waterways and wetlands; outdoor parks and recreation; retreats; mineral deposits and mining areas which require special attention because of hazardous or special conditions; publicly-owned land (e.g., U.S. Forest Service, BLM land, State, and County); and open space activities. Uses allowed in this designation are those related to resource utilization and resource conservation activities. Resource utilization operations and facilities will require a conditional use permit. This designation is located both inside and outside of Community Growth Boundaries.

Typical uses permitted by right include, but are not limited to, animal raising, crop production, single family residences, game preserves and fisheries and retention of open space. Other typical uses permitted conditionally include, but are not limited to, recreational facilities, manufacturing and processing operations, mining, and airfields.

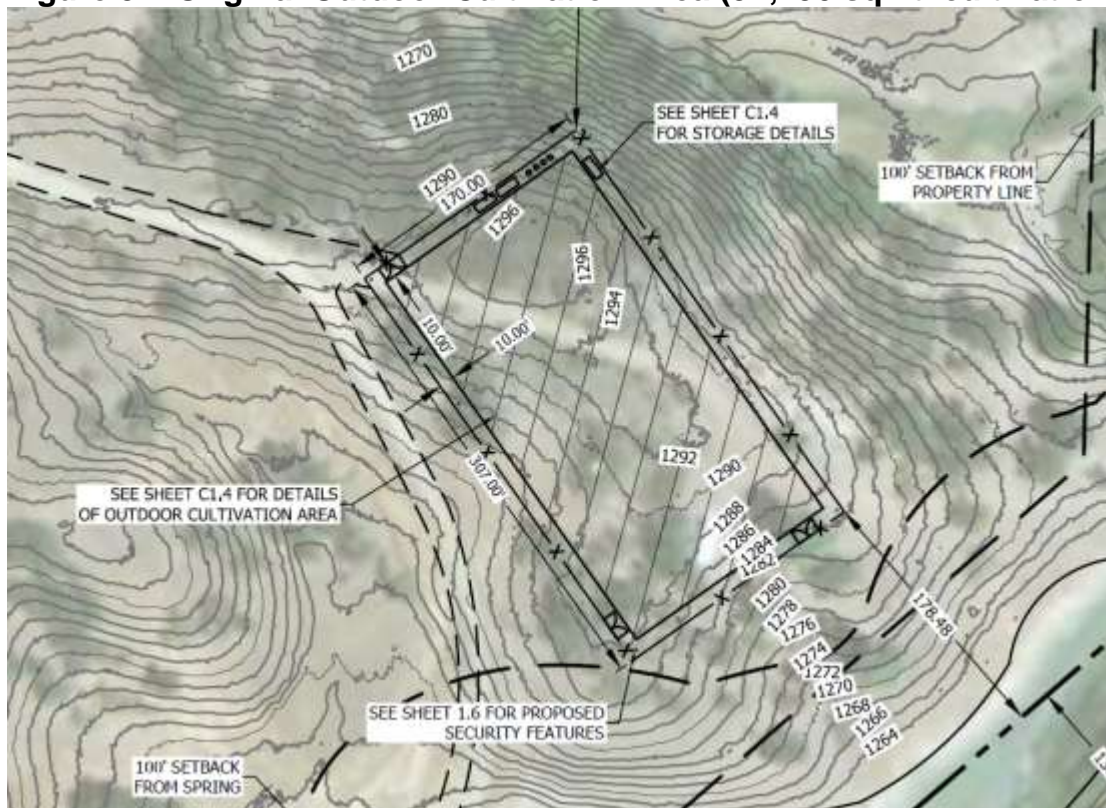
The project parcel is located in a rural area of the county with an average cross slope of less than 20%. See Figure 5, Slope Map.

The lots were reconfigured in 2020 through Lot Line Adjustment LLA 19-04, which has since been recorded. The graphic above shows the two lots prior to the adjustment. The new cultivation area is located about 178 feet from the new lot line according to Sheet 7 in the submitted material for this modification.

Regarding compliance with the Lake County Zoning Ordinance, the commercial cannabis use was determined through original file no. UP 18-32 to be in conformance with the applicable provisions and policies of the Lake County Zoning Ordinance as the cultivation of commercial cannabis is an allowable use within the "RL" Rural Lands Zoning Designation upon securing a minor/major use permit pursuant to Article 27 of the Lake County Zoning Ordinance. On July 6, 2018 the applicant submitted a major use permit to the Community Development Department for processing; the original use

permit was approved on October 8, 2020 by the Lake County Planning Commission and was not appealed.

Figure 3 – Original Outdoor Cultivation Area (52,190 sq. ft. cultivation area)



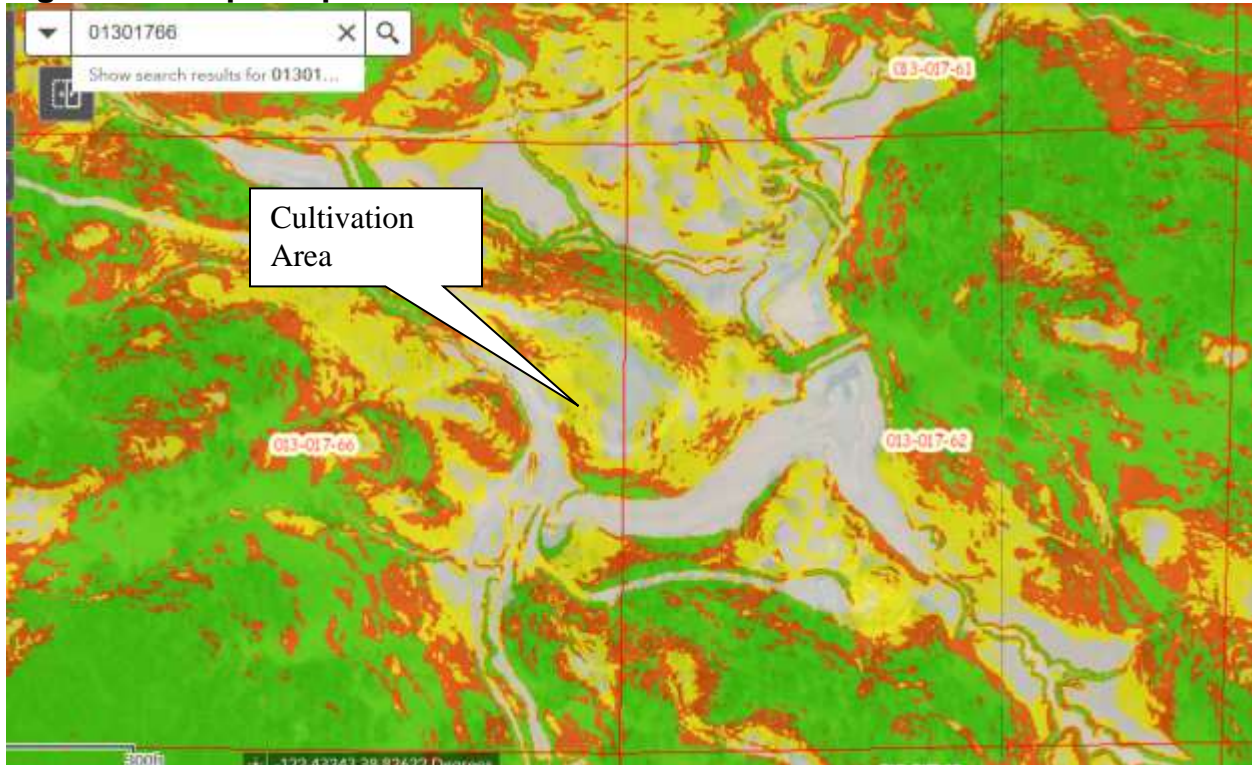
Source: Original Application UP 18-32 Site Plan

Figure 4 – Revised Modification Site Plan (21,960 sq. ft. canopy area)



Source: Application Material Submitted for MMU 21-24

Figure 5 – Slope Map



Source: Lake County GIS Mapping

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

Open Space

- *Goal OSC-1 Biological Resources.* To preserve and protect environmentally sensitive significant habitats, enhance biodiversity, and promote healthy ecosystems throughout the County.

The proposed cultivation area is located approximately 800 feet from BLM lands that are undeveloped, and approximately 120 feet from the nearest Class III seasonal waterway according to Sheet 7 of the submitted site plans.

Economic Development

Goal LU-6: “To maintain a healthy and diverse local economy that meets the present and future employment, shopping, recreational, and service needs of Lake County residents”.

- Policy LU 6.1: “The County shall actively promote the development of a diversified economic base by continuing to promote agriculture, recreation services and commerce and by expanding its efforts to encourage industrial and non-industrial corporate developments, and the developments of geothermal resources”.

The proposed commercial cannabis operation, would create diversity within the local economy, create future employment opportunities for up to five local residents. The project will promote the expansion of non-industrial corporate developments.

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

- **5.1.2.d** Support continued enforcement of County Zoning Codes and further refine abatement programs for code violations.

Response: *The site contains no code violations. The applicant has diligently pursued the original use permit license, and has continued to be compliant as is verified through annual site inspections. The change proposed is allowed under Article 60.33 of the Lake County Zoning Ordinance.*

- **5.1.5** Encourage comprehensive economic development efforts for the long-term benefit of the Planning Area aimed at increasing local employment opportunities
- **5.1.5b** Priority should be given to providing service and employment opportunities locally.
- **5.1.5c** Increase local employment opportunities in order to provide an adequate number of jobs to support the local population.

Response: *The project will employ up to five local residents who will purchase commodities (gas, food and so on) at local merchants; this in turn helps the overall local economy in the Middletown / Lower Lake area.*

Zoning Ordinance Conformance

Article 7 – Rural Lands (RL). The purpose of this zoning designation is 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.

Article 34, Waterway (WW). The purpose of the Waterway Combining District is to preserve, protect and restore significant riparian systems, streams and their riparian, aquatic and woodland habitats; protect water quality; control erosion, sedimentation and runoff; and protect the public health and safety by minimizing dangers due to floods and earth slides. 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 - Use Permits

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

Response: *The cultivation of commercial cannabis is an allowable use within the rural lands zoning designation upon issuance of a use permit, pursuant to Article 27, Section 27.11 (Table B) of the Lake County Zoning Ordinance. An A-Type 3B license allows up to 22,000 square feet of canopy area per license and requires 20 acres. The project is proposing to convert his approved A-Type 3 outdoor license to one A-Type 3B mixed light cultivation license.*

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

Development Standards

- Minimum Lot Size (20 acres per license): *Complies; the subject site is over 79 acres in size. The applicant has applied for the conversion of his existing A-Type 3 (medium outdoor) cultivation license to one A-Type 3B (medium mixed light) cultivation license. The applicant already has one Type 13 'Self Distribution License'.*
- Setback from Property Line (100 feet): *Complies; the applicant owns both adjoining lots, so the cultivation area is allowed to cross over the property line as shown on the site plan. The nearest property line associated with the outer lot boundary is over 500 feet from the cultivation area.*
- Setback from Off-Site Residence (200 feet minimum): *Complies, the nearest neighboring residential dwelling unit is located approximately 1,500 feet away from the cannabis cultivation area.*
- Fence Height between Six (6) and Eight (8) Feet: *Complies, the existing fence height is six (6) feet.*
- Maximum Cultivation Area (22,000 square feet per license): *Complies. The applicant is proposing 22,000 square feet of cultivation area.*

General Requirements. The applicant has submitted all necessary application material (Property management Plan, Site Plans, etc.) and meets all of the General Requirements outlined in Section (at) of Article 27 of the Lake County Zoning Ordinance. These include, but are not limited to, obtaining a State License, completion of background checks, obtaining property owner(s) approval, complying with hours of operation and deliveries, access requirements, etc. Conditions of Approval have been incorporated to insure continuous compliance.

Article 37 Waterway (WW). The purpose of this zoning designation is to protect, preserve, and restore significant riparian systems, streams and their riparian, aquatic and woodland habitats, including but not limited to protecting water quality; erosion control through best management practices, and protecting the public health and safety.

Response: *Pursuant to Article 27 of the Lake County Zoning Ordinance, the proposed use must be a minimum 100 feet away from top of bank of any waterway (seasonal or*

year-round. According to the applicant Property Management Plan and Site Plans, the proposed use has met this requirement. Additionally, the applicant has provided engineered drainage and erosion control plans that show the cultivation area will not inadvertently have chemical spillage occurring through stormwater runoff or any other obvious means. Condition of Approval and/or mitigation measures have been incorporated to reduce any potential impact to less than significant.

Article 60 – Expiration, Revocation, or Modification of Permits and Reapplication

Development Standards, General Requirements and Restrictions. This application meets the following Development Standards, General Requirements and Restrictions as specified within Article 60 of the Lake County Zoning Ordinance.

60.33 Reapplication for amendment of permits: Any permit pursuant to this Chapter may be amended by the granting of a new permit of the same type and following the same procedure for adoption of the original permit, except as specifically provided for in this Chapter. Amendments to permits may include extensions of expiration periods as provided for in Section 60.10 and changes in uses, structures, and conditions previously approved; however, any change in conditions must be approved by the Review Authority that originally adopted such conditions.

Response: *The applicant has met the terms of the original approval. However, in order to modify an existing and approved use permit, the applicant must apply for an amendment pursuant to Lake County Article 60.33. The review authority (Lake County) has prepared an Initial Study. All potential impacts associated with the new greenhouses were evaluated during the 2022 Initial Study. No additional water is needed; the ‘disturbed area’ (expansion area) was prepared in 2018 when the site was developed following approval of use permit UP 18-32. Minimal additional site disturbance is proposed for the greenhouse building pads.*

V. ENVIRONMENTAL REVIEW

The California Environmental Quality Act (CEQA) requires public agencies to evaluate the environmental implications of proposed land use actions. The County of Lake has determined that the minor modification of use permit UP 18-32 is not categorically exempt from CEQA review, and an Initial Study / Mitigated Negative Declaration was prepared and uploaded to the State Clearinghouse on June 7, 2022. No new (un-surveyed) areas are proposed for this expansion. The greenhouse areas were all surveyed during the original Biological and Archaeological Surveys that occurred for file no. UP 18-32.

The California Environmental Quality Act (CEQA) sets forth regulations for determining a projects’ cumulative impacts on the environment. A complete environmental review for this expansion was undertaken and resulted in an Initial Study, which evaluated the cumulative impacts of the original and revised project scope. CEQA sections 15162 and 15164 apply to this amended project. These CEQA sections state the following.

§ 15162. Subsequent EIRs and Negative Declarations.

(b) If changes to a project or its circumstances occur or new information becomes available after adoption of a negative declaration, the lead agency shall prepare a subsequent EIR if required under subdivision (a). Otherwise the lead agency shall determine whether to prepare a subsequent negative declaration, an addendum, or no further documentation.

Response: *The County of Lake has determined that the changes proposed warrant an Initial Study, IS 18-37.*

VI. RECOMMENDATION

Staff recommends the Planning Commission:

- A. Adopt the Initial Study (IS 21-37) for Modification MMU 21-24 with the following findings:
 - 1. Potential environmental impacts related to aesthetics can be mitigation to 'less than significant' through the implementation of mitigation measure AES-01.
 - 2. Potential environmental impacts related to air quality can be mitigation to 'less than significant' through the implementation of mitigation measures AQ-1 through AQ-7.
 - 3. Potential biological resource impacts can be reduced to 'less than significant' through the implementation of mitigation measures BIO-1 through BIO-3.
 - 4. Potential environmental impacts related to Cultural and Tribal resources can be mitigation to 'less than significant' through the implementation of mitigation measures CUL-1 through CUL-3.
 - 5. Potential environmental impacts related to noise impacts can be mitigation to 'less than significant' through the implementation of mitigation measures NOI-1 through NOI-3.
 - 6. Potential environmental impacts related to cumulative impacts can be mitigation to 'less than significant' through the implementation of mitigation measures established within 1, 2, 3, 4 and 5 above.
 - 7. This project will have 'less than significant' environmental impacts based on the analysis provided in the Initial Study for IS 21-37, and the subsequent mitigation measures established in the Initial Study and as stated herein.
- B. **Approve Modification MMU 21-24 with the following findings:**
 - 1. That the project complies with the required findings for approval of a modification as are described in Lake County Zoning Ordinance, Article 60.33.

2. 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.
3. The site is adequate in size, shape, locations, and physical characteristics to accommodate the type of use and level of development proposed.
4. The streets, highways and pedestrian facilities are reasonably adequate to safely accommodate the proposed use.
5. There are adequate services available to serve the project.
6. This project is consistent with the Lake County General Plan, Middletown Area Plan and Lake County Zoning Ordinance.
7. No violation of Chapter 5, 17, 21, 23 or 26 of the Lake County Code currently exists on this property.

Sample Motions:

Initial Study (IS 18-37)

I move that the Planning Commission find that that the Initial Study (IS 18-37) applied for by **Center Grow / Jason Jones** on a property located at **26066 and 27084 Jerusalem Grade Road, Middletown**, further described as **APNs: 013-017-62 and 66** will not have a significant effect on the environment, and that no new mitigation measures are necessary per the findings listed in the staff report dated **August 11, 2022**.

Modification (MMU 21-24)

I move that the Planning Commission find that the **Modification (MMU 21-24)** applied for by **Center Grow / Jason Jones** on a property located at **26066 and 27084 Jerusalem Grade Road, Middletown**, further described as **APNs: 013-017-62 and 66** does meet the requirements of Section 60 of the Lake County Zoning Ordinance and the Modification be granted subject to the conditions and with the findings listed in the staff report dated **August 11, 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's decision, an appeal to the Board of Supervisors may be filed. The appropriate forms and applicable fee must be submitted prior to 5:00 p.m. on or before the seventh calendar day following the Commission's final determination.

Approved by: _____
Mary Darby, Director