



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 2
January 24, 2019
9:15 AM

STAFF REPORT

TO: Planning Commission

FROM: Michalyn DelValle, Community Development Director
Prepared By: Eric Porter, Associate Planner

DATE: December 20, 2018

RE: **Donygan, Major Use Permit UP 18-06; Initial Study IS 18-10**
Supervisor District 5

ATTACHMENTS:

1. Vicinity Map
2. Site Plans
3. Property Management Plan (available upon request)
4. Agency Comments
5. Early Activation Conditions (EA 18-02)
6. Proposed Conditions of Approval
7. Initial Study (IS 18-10)
8. Public Input
9. Recorded Access Easement

I. EXECUTIVE SUMMARY AND PROJECT HISTORY

On April 19, 2018, the applicant applied for Major Use Permit UP 18-06, for operation of one A-Type 3 outdoor cannabis cultivation license. The **cannabis cultivation area** would consist of **63,743** square feet and the **canopy would be 43,500 square feet** in size on a 141.4 acre parcel that is zoned "RL" Rural Lands.

Project Characteristics

The proposed hours of operation for cannabis cultivation would be Monday through Sunday 8:00am to 5:00pm, and Saturdays from 9:00am to 1:00pm. During normal hours of operation there would typically be two (2) employees. During peaks hours there would be between three (3) and five (5) employees.

The property is currently developed with a 2,047 s.f. manufactured home, an 800 s.f. utility shed and a 2,585 s.f. barn. The applicant is proposing to install three (3) greenhouses that are 2,520 s.f. each for a total of 7,560 s.f. of greenhouses space. Two of the greenhouses will be used for immature cannabis plant starts; the other two are for growing traditional crops not subject to this use permit. The applicant is

proposing a 41,998 s.f. outdoor cultivation area; an additional 11,600 s.f. of outdoor cultivation area intended for immature plants; a 120 square foot storage shed (Sheet S4) and a 2,400 s.f. processing shed (Sheet S4). A note on sheet S4 also mentions a new 800 s.f. processing shed, however that structure is presently on site and was built in 1989.

The site is accessed via a recorded shared access easement, which passes through three properties before ending on Mr. Donygan's property. See Attachment 9.

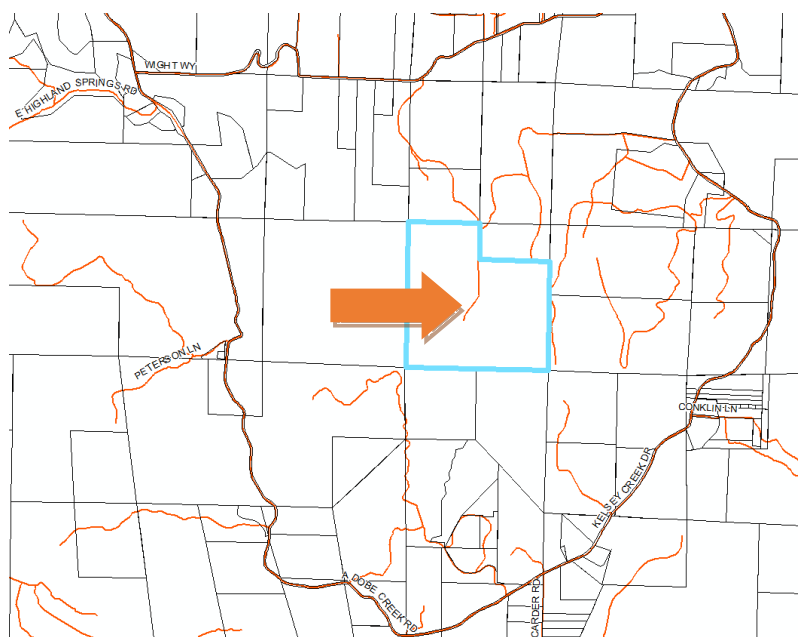
The applicant intends to complete the proposed project in the following phases:

Phase One: Construct two (2) of the four (4) proposed 2,520 s.f. greenhouses. The applicant would also install two (2) 5,000 gallon water storage tanks. Also, the 47' x 55' barn will be converted in a manner that will allow cannabis processing, as well as lavender and chamomile which do not require a use permit. Phase One will also have an 11,600 s.f. immature (outdoor) plant area (not included as canopy area but included as cultivation area); a 120 s.f. chemical storage shed, and a 2,400 s.f. processing building.

Phase Two: Install the remaining two (2) 2,520 s.f. greenhouses.

According to Article 27 (Lake County's Commercial Cannabis ordinance), the commercial cannabis Cultivation Area is the sum of all the areas used for cultivation, including gardens, soil staging and material storage areas, ancillary buildings, and access roads.

Staff recommends **approval with conditions** as proposed.



VICINITY MAP

II. PROJECT DESCRIPTION

Applicant/Owner: Michael Donygan

Location: 8959 Wight Way, Kelseyville, CA 95451.

A.P.N.: 007-036-02

General Plan: Rural Lands

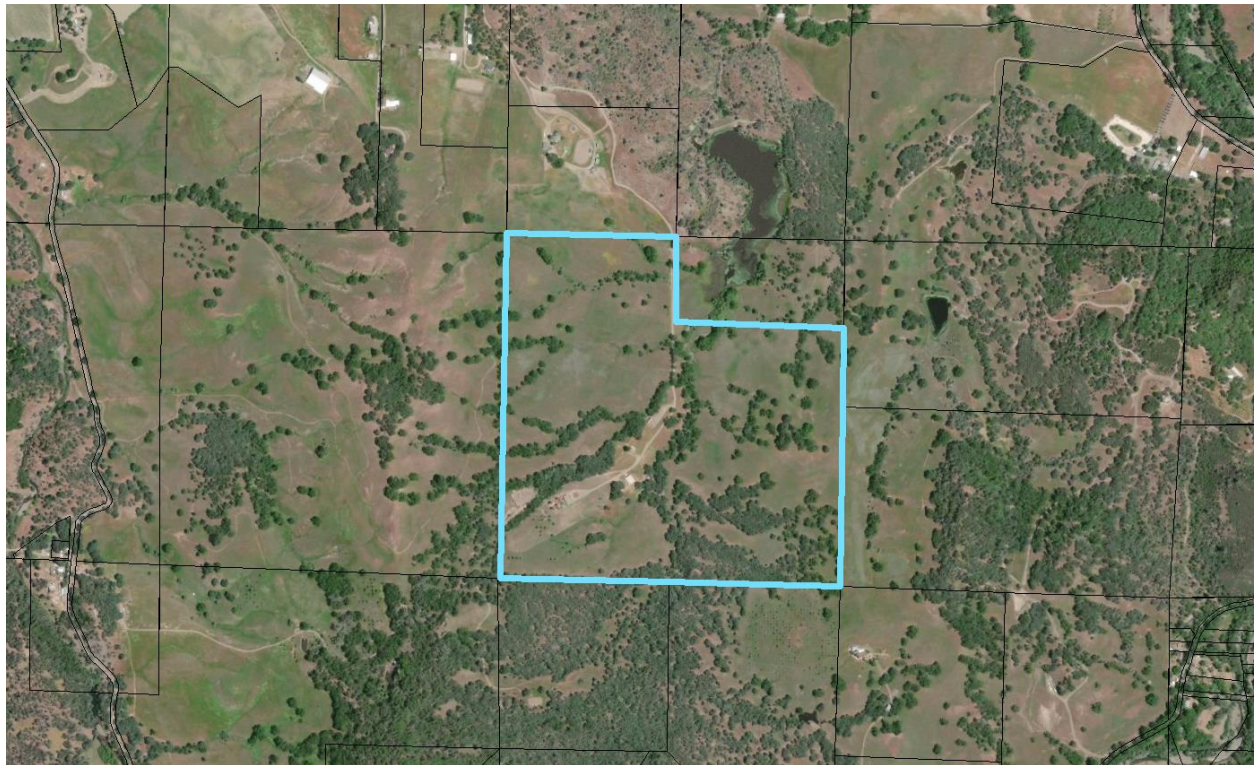
Zoning: "RL-WW-B5" Rural Lands – Waterway – Special Lot Size/Density.

Parcel Size: 141.4± acres

Flood Zone: X (outside the 500 year flood plain)

Canopy Area: 43,500 s.f.

Cultivation Area: 63,743 s.f.



Aerial of the 141+ acre Subject Site and Vicinity

III. PROJECT SETTING

Existing Uses and Improvements: The ±141 acre property is currently developed with a 2,047 s.f. manufactured home, well, septic system, an 800 s.f. utility shed, and a 2,585 s.f. barn.

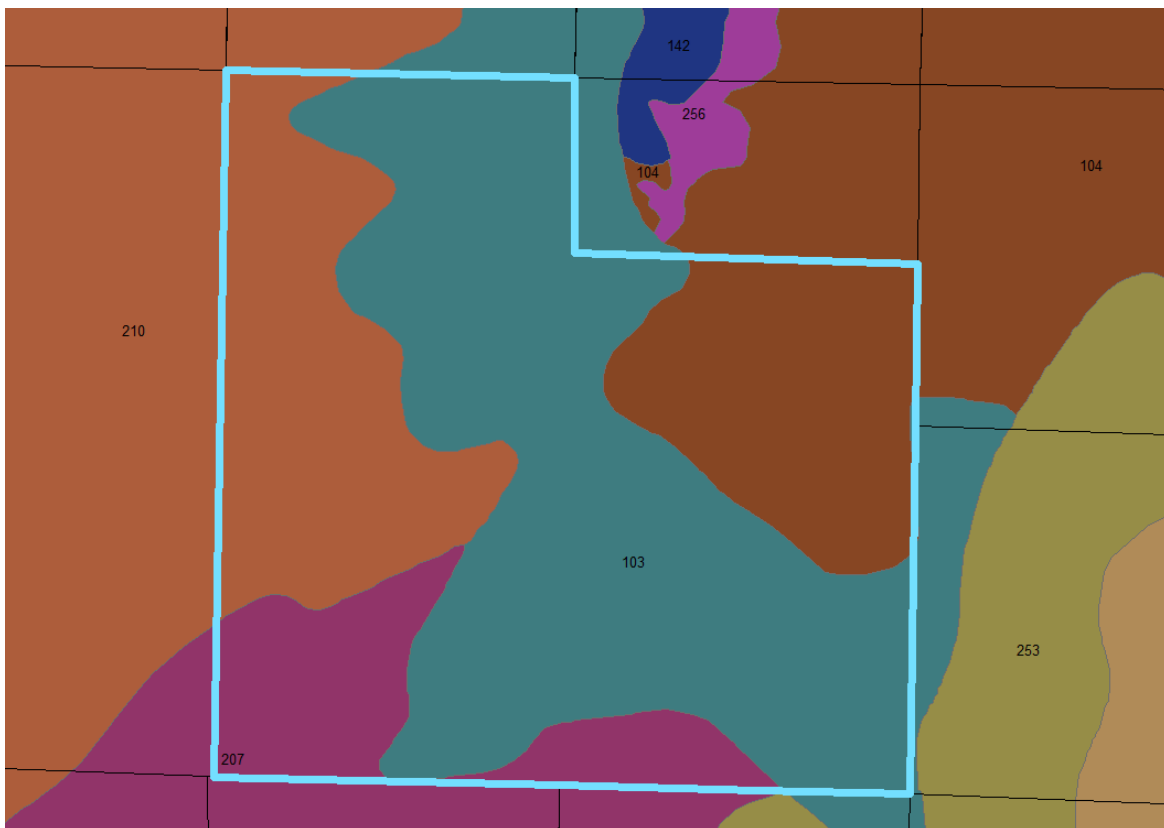
Surrounding Zoning and Land Uses: The project is located in a rural area of the county with parcels that are generally developed with single-family residences and accessory structures. The parcels to the North and South are designated as “RL” Rural Lands; “RR” Rural Residential and “A” Agriculture, and parcel sizes range from approximately 1 to 140 acres in size. The parcels to the East and West are designated as “RL” Rural Land, “A” Agriculture and “TPZ” Timber Preserve Zone, and parcel sizes range from approximately 0.25 to 300 acres in size.

Topography: The project parcel is mostly flat. The eastern portion of the lot does contain some slopes that range from approximately 10% to greater than 20%.

Soils:

- **103-Asbill clay loam, 5 to 8 percent slopes.** This soil unit is moderately deep, well drained soil on hills, and was formed in material weathered from shale and siltstone. The vegetation is mainly annual grasses and scattered oaks. The average annual precipitation is 25 to 40 inches, the average annual air temperature is 56 to 60 degrees F, and the average frost-free period is 160 to 205 days. Permeability of the Asbill soil is slow. Surface runoff is medium, and the hazard of erosion is moderate. The shrink-swell potential is high. This unit is used mainly for livestock grazing. It is also used for hay and pasture, vineyards, and homesite development. Because of the slow permeability, irrigation water needs to be applied slowly to minimize runoff. Depth to bedrock is also a limitation. Because of the slow permeability of the soil in this unit, irrigation water needs to be applied slowly to minimize runoff. Use of a cover crop helps to control erosion and runoff. All tillage should be on the contour or across the slope. Tillage should be kept to a minimum.
- **104-Asbill clay loam, 8 to 15 percent slopes.** This moderately deep, well drained soil is on hills. This soil unit is significantly similar to Type 103 soils in all key categories.
- **207-Skyhigh-Asbill complex, 8 to 15 percent slopes.** This map unit is on hills. The vegetation is mainly annual grasses and oaks with scattered shrubs. Elevation is 1,450 to 2,100 feet. The average annual precipitation is 25 to 40 inches, the average annual air temperature is 56 to 60 degrees F, and the average frost-free period is 160 to 205 days. This unit is about 55 percent Skyhigh loam and 25 percent Asbill clay loam. The components of this unit are so intricately intermingled that it was not practical to map them separately at the scale used. Included in this unit are small areas of Millsholm and Sleeper soils. The Skyhigh soil is moderately deep and well drained. It formed in material weathered from sandstone or shale. Permeability of the Skyhigh soil is slow. Surface runoff is rapid, and the hazard of erosion is moderate. The shrink-swell potential is high.

- **210-Skyhigh-Sleeper-Millsholm association, 8 to 15 percent slopes.**
This map unit is on hills. The vegetation is mainly oaks and annual grasses. Elevation is 1,250 to 2,500 feet. The average annual precipitation is 30 to 40 inches, the average annual air temperature is 56 to 59 degrees F, and the average frost-free period is 160 to 200 days. This unit is about 35 percent Skyhigh loam, 30 percent Sleeper loam, and 20 percent Millsholm loam. The Skyhigh and Sleeper soils are on intermediate and lower side slopes. The Millsholm soil is on upper side slopes and hilltops. Included in this unit are small areas of Asbill and Bressa soils. Also included are small areas of soils on ridgetops that are less than 10 inches deep to bedrock, soils in drainageways that have 20 to 45 percent gravel, and soils that are similar to the Skyhigh soil but have a light-colored surface layer. Included areas make up about 15 percent of the total acreage. The percentage varies from one area to another.



Soil Types on the Subject Site

<u>Water Supply:</u>	On-Site well
<u>Sewage Disposal:</u>	On-Site Waste Disposal System (Septic)
<u>Fire Protection:</u>	Kelseyville Fire Protection District & CALFIRE
<u>School District:</u>	Kelseyville Unified School District
<u>Vegetation:</u>	Grass, dirt, oak trees and mix of natural vegetation

IV. **PROJECT ANALYSIS**

General Plan Conformance

The land use designation on the project parcels is *Rural Lands* and *Resource Conservation*.

Rural Lands is intended to allow rural development in areas that are primarily in their natural state, generally characterized by steep topography and located outside of a Community Growth Boundary. Rural Lands allows a variety of uses, including but not limited to crop production, animal raising, game preserves and single family residence.

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

- *Policy LU-1.3 Prevent Incompatible Uses.* The County shall prevent the intrusion of new incompatible land uses into existing community areas.
- *Goal OSC-1 Biological Resources.* To preserve and protect environmentally sensitive significant habitats, enhance biodiversity, and promote healthy ecosystems throughout the County.
- *Policy OSC-1.4 Protect Riparian Corridors*
The County shall require that buildings and other forms of development be set back from riparian corridors to avoid damage to habitat.

Potentially incompatible aspects of cultivation practices relate to water consumption and availability, odor control, interference with other established uses (traffic pattern changes, diminished road quality), unsafe chemical usage, and loss of animal habitat, particularly for sensitive species. Each of these potential impacts have been addressed within the Mitigated Negative Declaration, and within specific Conditions of Approval.

Kelseyville Area Plan Conformance

The Kelseyville Area Plan objective is to provide guidance regarding long term growth and development of the Kelseyville, Finley, and Big Valley Areas and other surrounding rural lands. The Area Plan is a tool by which greater planning detail is provided for the Kelseyville area.

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

The proposed use would provide and/or promote agricultural services and employment opportunities within the Kelseyville Planning Area.

Zoning Ordinance Conformance. The proposal must meet the applicable requirements found within Lake County Zoning Ordinance, Article 7 (Rural Land), Article

27 (Commercial Cannabis Cultivation), Article 30 (Special Lot Size / Density Combining District), and Article 37 (Waterway Combining District).

Article 7 – RL Rural Lands. 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 27 - Development Standards, General Requirements and Restrictions. 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.

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): ***Complies, the site is 141+ acres in size.***
- Setback from Property Line (100 feet): ***Complies; the cultivation sites are 300+ feet from the nearest property line.***
- Setback from Off-Site Residence (200 feet): ***Complies; the nearest dwelling is 2,437 feet away from the cannabis cultivation area.***
- Minimum Fence Height of Six (6) Feet: ***Complies; the proposed fence height is 7 feet.***
- Maximum Canopy Area (43,560 s.f.): ***Complies; the canopy area will be 43,500 square feet in size.***
- Maximum Cultivation Area (65,000 s.f.): ***Complies, the maximum Cultivation Area would be 63,743 square feet in total area.***



Existing 2,585 s.f. Barn

General Requirements. *The applicant meets the following General Requirements. If the requirements have not been met, a condition has been added to assure compliance.*

- State License and Permits required (ref. Section 27.at.3.ii.a). *Complies; see 'Conditions', Attachment 6.*
- Background Checks (ref. Section 27.at.3.ii.e). *The current employees have undergone background checks as required by this subsection of the Zoning Ordinance. However, a condition has been added to assure compliance in the event of new employees or change of ownership in the future; see Attachment 6.*
- Property Owners Approval. *The applicant is the property owner.*
- Co-location of Permits. *The applicant is applying for an A-Type 3 permit. No co-location is requested at this time.*
- Operation Hours for Deliveries (Monday through Saturday 9:00AM-7:00PM & Sundays 12:00PM – 5:00PM). *A condition has been added; see Attachment 6.*
- Duration of Permits cannot exceed ten (10) years. *A condition has been added; see Attachment 6.*
- Weights and Measures. *A condition has been added; see Attachment 6.*
- Access Adequacy Standards – *The site is accessed from Wight Way, a paved County maintained road.*



Photo of the model of the Greenhouse sought by Applicant



Proposed Greenhouse

Prohibited Activities. *The applicant meets the following prohibited activities:*

- Tree Removal. *None is proposed.*
- Water use when illegally diverted from any lake, spring, wetland, stream, creek, vernal pool, or river. *Water sources on site are all legal.*
- Odor Control. *An Odor Control Plan is required; see Conditions, Attachment 6.*
- Electrical Generators may be used only on an emergency basis. *See Conditions, Attachment 6, 'Noise'.*
- Lights must comply with County Dark Skies lighting standards; *see Attachment 6.*

- Pesticide Usage is limited to State-approved chemicals. See *Attachment 6, Hazards and Hazardous Materials*.
- Protection of Minors. *Required by conditions; see Attachment 6.*
- Commercial cannabis Cultivation Exclusion Area – *complies. The site is not located within 1000 feet of:*
 - A Community Growth Boundary
 - A school
 - A developed public park
 - A drug or alcohol rehabilitation facility
 - A licensed child care or nursery school
 - A church or other family-oriented facility providing services intended for minors



Permitting Process

The **Property Management Plan** submitted by the applicant contains all of the required Elements as specified within Article 27 of the Lake County Zoning Ordinance:

- Air Quality
- Cultural Resources
- Energy Use

- Fertilizer Usage
- Fish and Wildlife Protection
- Operations Manual
- Grounds
- Pest Management
- Security
- Storm Water Management:
- Waste Management
- Management Plan
 - Cannabis Vegetative Material Waste Management
 - Growing Medium Management
 - Cannabis Vegetative Material Waste Management:
- Water Resources
- Water Use
- Compliance Monitoring
- Annual Reports - Performance Review

Article 30 – Special Lot Size / Density Combining District (B). The purpose of this combining district is 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. For the purpose of this Section, density shall mean the maximum number of dwelling units permitted per gross acre.

30.2 Special lot sizes and densities available:

(c) “B5” areas: Maximum permitted density measured by dwelling units per gross acre and minimum lot size shall be as specified on the sectional district map.

Complies; no changes in density are proposed by this permit.

Article 37 – Waterway Combining District (WW).

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

Within the “WW” Waterway combining district, all uses of land shall comply with the regulations of the base zoning district and with the additional regulations of the “WW” combining district.

37.4 Uses permitted:

(a) All uses permitted in the base zoning district; however, no person shall undertake any development activity within a riparian corridor...

Complies; Article 27 has greater setbacks of cannabis-related activities from a seasonal or perineal water course (100 feet), versus a 20 or 30 foot setback required by the regulations of this chapter. The applicant will maintain greater than 100’ setback from the streams located on and near this property. Further, the applicant has submitted a Stormwater Management Plan that addresses safeguards for protecting these watershed resources.

Early Activation. The applicant was approved for early activation of use zoning permit (EA 18-02) on June 26, 2018. The Early Activation was valid for a period of six (6) months, and expired on December 26, 2018.

V. CONDITIONS OF APPROVAL

In addition to the typical conditions that are applied to this type of permit, there are several conditions that are specific to regulating cannabis cultivation. The full list of conditions for this report are found in *Attachment 6*.

Condition of Approval A9:

An applicant shall keep accurate records of commercial cannabis activity. All records related to commercial cannabis activity as defined by the State Licensing Authorities shall be maintained for a minimum of seven (7) years.

- *The County may examine the books and records of an applicant and inspect the premises of a permittee when the County deems necessary to perform its duties under this division. All inspections shall be conducted during standard business hours of the permitted facility or at any other reasonable time.*
- *Applicants shall keep records identified by the County on the premises of the location permitted and the County may make any examination of the records of any applicant. Applicants shall also provide and deliver copies of such documents to the County upon request.*
- *An applicant, or its agent or employee, that refuses, impedes, obstructs, or interferes with an inspection of the premises or records of the applicant pursuant to this section, has engaged in a violation of this article.*

Condition of Approval A17:

This use permit approval shall not become effective, operative, vested or final until the applicant has paid the Cannabis Cultivation Tax through June 30, 2019. Said tax shall be paid within thirty (30) days of permit issuance. Proof of payment is required to be submitted to the Community Development Department. Failure to pay said tax will result in the initiation of permit revocation proceedings.

Condition of Approval K3:

The applicant shall submit an Annual Performance Review Report a year from their initial date of operation for review and approval by the Planning Commission. The Planning Commission may delegate review of the Annual Performance Review Report to the Community Development Director at the time of the initial hearing or at any time thereafter. The Annual Performance Review Report shall identify the effectiveness of the approved Major Use Permit, Operations Manual, Operating Standards, and Conditions of Approval, as well as the identification and implementation of additional procedures deemed necessary. In the event the Planning Commission identifies issues with the Annual Performance Review Report, it may lead to revocation of the approved use and/or the Planning Commission may require the submittal of more frequent Performance Review Reports.

Condition of Approval K4:

The applicant(s) shall submit an application for **renewal** of the authorized use to the Community Development Department a minimum of 180 days prior to the expiration date of said use. Failure to submit an application for renewal by *(July 24, 2028)* may result in the expiration of the permit.

VI. ENVIRONMENTAL REVIEW

The California Environmental Quality Act (CEQA) requires agencies to evaluate the environmental implications of land use actions. Please refer to *Initial Study IS 18-10* (Attachment 7) for the Environmental Analysis of the proposed cannabis cultivation action. Any potential environmental impacts have been reduced to less than significant with the incorporated Mitigation Measures and Conditions of Approval. The following areas were identified as having potential environmental impacts:

Issue: Aesthetics

The project is not anticipated to create additional light or glare. Non-glare materials shall be required to be used on the structure. If the applicant wishes to install lighting at a future date, the applicant must adhere to the Lake County Dark Skies lighting requirements.

- Mitigation Measure AES-1: All greenhouses shall be equipped with blackout film/material to be used at night for maximum light blockage to lessen the impact on the surrounding parcels and the dark skies.
 - Applicant shall submit a Blackout Film/Materials Plan to the Community Development Department for review and approval prior to issuance of any permits.
- Mitigation Measure AES - 2: A Lighting Plan shall be submitted to the Community Development Department for review and approval prior to issuance of any permits for any proposed phase.
 - All lighting shall be directed downwards onto the project site and not onto adjacent roads or properties. Lighting equipment shall be consistent with that which is recommended on the website: www.darkskyorg and provisions of section 21.41.8 of the Zoning Ordinance.

- All lights used for cannabis, including indoor and/or mixed light cultivation shall be fully contained within structures or otherwise shielded to fully contain any light or glare involved in the cultivation process. Artificial light shall be completely shielded between sunset and sunrise.
- 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.

Issue: Air Quality

The project has the potential to result in short- and long-term air quality impacts. Dust and fumes may be released as a result of vegetation removal, grading, vehicular traffic, including small delivery vehicles and use of construction equipment. Construction of the project would take place over a short period of time and would be temporary, which would not result in significant air quality impacts. Additionally, implementation of mitigation measures below would further reduce air quality impacts to less than significant.

According to the Property Management Plan for Agronyca (dba Hedone Farms), the plan identified three (3) specific goals:

- Minimize building occupants exposed to indoor air containments and particulates that me be harmful to their health, including areas where cannabis plants may be dried, cured, packaged and ship
- To mitigate the amount of air pollution and particulates that are generated and emitted by the applicant while cultivating cannabis.
- To mitigate the amount of air pollution and particulates that are generated and emitted during the build out expansion of Hedone Farms Cultivation facility.

According to the Air Quality Management Plan, the applicant would monitor and documents the performance of the Air quality. Specifically levels of CO₂, Ozone and Sulfur (in the event of emergency pesticide application) generated and emitted by the applicant would be measured as to establish benchmarks for performance. On an annual basis, the applicant would review all documentation pertaining to the performance of the Air Quality Management Plan as to determine if the amount of levels of air pollution are with acceptable tolerance and/or levels or if additional mitigations are needed.

According to the Property Management Plan, odors from the processing facility where cannabis is handled, dried, cured, processed and packaged would be installed with in-line fans that have been coupled with activated carbon filters to help reduce potential cannabis odors. Once the processing has been completed, the rooms would be thoroughly cleaned to help reduce any potential remaining odors and the applicant would keep an accurate log and/or records on any repairs or replacements of ventilations and odors equipment.

According to the Property Management Plan, the applicant would install apparatus required for the successful implementation and operation of the Air Quality Management

Plan prior to operations. All employees, would be trained in all Standard Operating Procedures that pertain to the Air Quality Management Plan before beginning their shifts.

According to the Property Management Plan, the following Best Management Practices for indoor air quality would be implemented as applicable for the maintenance and/or renovation activities.

- HVAC Protection
 - Source Control
 - Pathway Interruption
 - Housekeeping
 - Scheduling
-
- Mitigation Measure AQ-1: Work practices are required in order to minimize vehicular and fugitive dust during the wireless communication facility development and management by use of water or other acceptable dust palliatives to maintain two inches of visibly-moist soil in the project area and to ensure that dust does not leave the property.
 - Mitigation Measure AQ-2: All Mobile diesel equipment used for construction and/or maintenance must be compliance with State registration requirements. Portable and stationary diesel powered equipment must meet the requirements of the State Air toxic Control Measures for CI engines.
 - Mitigation Measure AQ-3: Vegetation that is removed for development must be properly disposed. The applicant shall chip vegetation and spread the material for erosion control as an alternative to vegetation burning. Due to close proximity to residential areas, chipping and/or mastication is recommended for the majority of the brush removal.
 - Mitigation Measure AQ-4: Construction and/or work practices that involved masonry, gravel, grading activities, vehicular and fugitive dust shall be management by use of water or other acceptable dust palliatives to maintain two inches of visibly-moist soil in the project area and to ensure that dust does not leave the property.
 - Mitigation Measure AQ-5: 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.
 - Mitigation Measure AQ-6: The Cultivation of Commercial Cannabis is subject to AB 2588 Air Emission Inventory requirements administrated by the Lake County Air Quality Management District. Therefore, 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.

- Mitigation Measure AQ-7: Prior to obtaining the necessary permits and/or approvals for any phase, the applicant shall submit an Odor Control Plan to the Lake County Air Quality Management District, apply for and receive a temporary permit, and apply for an Authority to Construct permit.
- Mitigation Measure AQ-8: All areas subject to low use (driveways, over flow parking, etc.) shall be surfaced with gravel. Applicant shall regularly use and/or maintain graveled area to reduce fugitive dust generations.
- Mitigation Measure AQ-9: The use of White Rock is prohibited for any road surfacing, including parking areas as it breaks down and would create excessive dust.
- Mitigation Measure AQ-10: The applicant shall submit an Asbestos Notification Form to the Lake County Air Quality Management District (LCAQMD) for any remodeling and/or demolition.
 - *The National Emissions Standards for Hazardous Air Pollutants (NESHAP) for asbestos in buildings requires asbestos inspections by a Certified Asbestos Consultant for major renovations and all demolitions. A complete survey includes inspection of attic spaces, crawl spaces, areas with pipes or heating ducts and equipment.*
 - *An Asbestos Notification (with complete survey and lab report) must be submitted to the Lake County Air Quality Management District at least fourteen (14) days prior to beginning any renovations or demolition work. If regulated asbestos is found, the facility must be abated prior to demolition or renovation (where asbestos may be disturbed).*

Issue: Biological Resources

A Biological Assessment was done by NCRM, dated November 21, 2017, for the project area. The project area is situated at approximately 1,600 feet above sea level and within a Valley Oak Woodland Habitat Area. Access to the study area is from a driveway that runs through the property beginning on the northern most boundary and runs south eventually curving west up to the main residence. The study area is approximately 1,300 feet south of the northern edge of the driveway. The driveway bisects the study area. The project area is also lies in the middle of two intermittent streams that drain to Kelsey Creek, which runs northward, eventually draining into Clear Lake. The project encompasses approximately 2.7 acres but an area of approximately 5 acres was evaluated for the biological assessment.

Water-Courses

According to the Biological Assessment, dated November 21. 2017, there are two (2) unnamed intermittent watercourses are present just north and south of the Biological Survey Area (BSA) and two (2) ephemeral watercourses drain to the south at the southern edge of the BSA. These waters are connected to Kelsey Creek and ultimately to Clear Lake

The project area **is not within** the boundaries of any designated Habitat Conservation Plan and/or other area designated as part of the Natural Community Conservation Planning Act. U.S. Fish and Wildlife Service (USFWS) wetland mapper includes the intermittent stream on their on-line maps and wetland indicator species were found to be dominant within the stream channel and along its banks

Sensitive Species and Habitat Concerns

According to the Biological Assessment, dated November 21, 2017, there are sensitive, or special status; fish, wildlife, and botanical species listed as Rare, Endangered, Threatened, Sensitive, or Species of Special Concern, by the USFWS, California Department of Fish and Wildlife (CDFW), California Native Plant Society (CNPS), California Department of Forestry (CDF), Bureau of Land Management (BLM), the U.S. Forest Service (USFS), or National Marine Fisheries Service (NMFS). To determine the potential for special species to occur within the general project area, topographical maps, aerial photographs, and queries of the following database programs were reviewed:

- California Natural Diversity Database (CNDDDB)
- United State Fish & Wildlife Service (USFWS)
- California Cooperative Anadromous Fish & Habitat Data Program (Calfish)

Wildlife Species

The database queries reported a total of eighteen (18) sensitive wildlife species that may have some potential to occur within or near the project area (Refer to *Table 1a of Biological Report*). **Of the 18 reported wildlife species, only two (2) were observed at the project area:**

- *White-Tailed Kite (Elanus leucurus)* and
- *Golden Eagle (Aquila chrysaetos)*.

Four (4) additional wildlife species have some potential to occur, as somewhat suitable habitat exists within or near the project area, these species may include the following:

- *Purple Martin (Progne subis)*.
- *Townsend's Big-Eared Bat (Corynorhinus townsendii)*
- *Pallid Bat (Antrozous pallidus)*
- *American Badger (Taxidea taxus)*

There were numerous wildlife species that are directly related to the presence of forested habitat but were discounted from having the potential to occur or be impacted by the project due to the lack of forested habitat on or near the project. Thus, there are thirteen (13) wildlife species that have little to no chance of occurring, due to the lack of suitable habitat within or near the project area. This includes the federally listed northern spotted owl (*Strix occidentalis caurina*) and the western yellow-billed cuckoo (*Coccyzus americanus occidentalis*), both of which have nearest known locations over 2-miles from the project, but for which there is no existing habitat on the project area. Additionally, the project reach of the intermittent stream is not included within the Central California coast DPS steelhead (*Oncorhynchus mykiss*). Thus, no direct or indirect effects would occur to federally designated Critical Habitat.

Plant Species

The database queries reported a total of seventy-four (74) special status plant species within the vicinity of the project area (Refer to *Table 1b*). However, during the site assessment, one (1) listed species was observed; the *Leptosiphonjepsonii*.

Of the seventy-four (74) species in the scoping list, twenty-four (24) were identified as having ***potential habitat*** within the project area and two (2) listed plant community were observed; the Wildflower Field and Valley Oak Woodland. No other listed special status community was identified within the study area.

Due to the project causing a physical disturbance to habitat, the project will be subject to the Fish and Wildlife filing fee. This fee is used to defray the costs of managing and protecting California Fish and Wildlife resources.

- **Mitigation Measure BIO -1:** This use permit approval shall not become effective, operative, vested or final until the California Department of Fish and Wildlife filing fee required or authorized by Section 711.4 of the Fish and Wildlife Code is submitted by the property owner to the Community Development Department. Said fee shall be paid within 30 days of approval. Failure to pay said fee by the specified deadline shall result in this use permit automatically becoming null and void.
- **Mitigation Measure BIO-2:** Prior to issuance of building permits, a pre-construction survey shall be conducted during the nesting season (February 15th through August 15th) prior to vegetation removal and/or noise impacts to ensure White-Tailed Kites are not nesting in the BSA boundary. If nesting White-tailed Kites is documented, consultation with California Department of Fish & Wildlife shall take place and a no-impact buffer zone shall be put into place until the nest has been determined to have fledged or failed by a biologist (*Biological Survey, NCRM, and November 21, 2017*).
- **Mitigation Measure BIO-3:** Applicant shall avoid the nesting period from May 1 through August 15 to reduce potential impacts to nesting purple martins. However, if vegetation removal work is required to begin prior to August 15, applicant shall have a qualified Biologist/Ornithologist visit the site to determine if any active nest are present.
- **Mitigation Measure BIO-4:** The applicant shall consult with the California Department of Fish & Wildlife (CDFW) if any roosting bats are discovered during development.
- **Mitigation Measure BIO-5:** In order to reduce potential impacts to nesting birds, the applicant shall work within a limited construction and/or developing period during the nesting period (February 15 to August 15). The applicant shall complete the following if construction and/or development occurs during the nesting period.
 - *A nesting bird survey by a qualified profession shall take place at least once before any vegetation disturbance or removal takes place.*

- *A qualified biologist shall survey the areas of impact no more than three days prior to impact or removal if done within the nesting season.*
- *Any active nests should be protected with a 50 to 100-foot buffer (species dependent) or exclusion area until the nest is no longer active*
- Mitigation Measure BIO-6: The applicant construct a exclusionary zone around the *Jepson's Leptosiphon* population to protect this species and/or individual from any clearing, structures or heavy machinery operations that may be part of the development process.
- Mitigation Measure BIO 7: Prior to the issuance of permits, the applicant shall submit an Oak Mitigation Plan to the Community Development Department. Said plan shall include the following:
 - *Valley Oak Trees removed shall be replaced at a 3:1 ratio (three mitigation trees for every one removed).*
 - *A maintenance and monitoring plan shall be developed to ensure successful establishment of mitigation valley oak trees. The plan shall require monitoring for 7 years and shall include the replacement of oak mitigation trees that become diseased or die during the monitoring period. Any replacement trees shall be monitored for a total of 7 years commencing from their planting date.*
 - *Removal of other oaks in the vicinity of the project shall be prohibited without County approval.*
- Mitigation Measure BIO-8: The applicant shall preserve existing vegetation where not otherwise specified for removal, which consists of native tree species.
- Mitigation Measure BIO-9: The applicant shall ensure to use only previously disturbed areas for staging materials and/or equipment. No areas shall be newly developed for the purpose of staging.
- Mitigation Measure BIO 10: The applicant shall preserve and/or avoid existing vegetation not otherwise specified for removal, which consist of native tree species.

Issue: Cultural and Tribal Resources

A Cultural Resources Evaluation was conducted by Dr. John Parker, Archaeological Research on September 30, 2016. The purpose of the evaluation was to locate, describe, and evaluate any archaeological or historical resources that may be present within the project area. The background research indicated that eight (8) prehistoric sites had been recorded within one mile of the project; however no cultural resources had been recorded within ½ mile of the project. Also, the background check did not discover any historic or prehistoric cultural resources within the project area.

The field investigation discovered four (4) isolated pieces of chipped stone (remnants of prehistoric tools) as well as one isolated piece of historic ranch hardware. These items

were all isolated and do not constitute a “significant” historic resource as defined in the California Public Resource Code. As no other historic or prehistoric materials were found, it has been determined that there are no significant historic resources with the project area.

However, in keeping with CEQA Guidelines, if archaeological resources are uncovered during construction, work at the place of discovery should be halted immediately until a qualified archaeologist can evaluate the finds [§15064.5(f)].

- Mitigation Measure CUL-1: Should any archaeological, paleontological, or cultural materials be discovered during vineyard development, all activity shall be halted in the vicinity of the find(s), and a qualified archaeologist retained 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, they shall be treated in accordance with Public Resources Code Section 5097.98.

Issue: Hazards and Hazardous Materials

Materials associated with proposed cultivation of commercial cannabis such as gasoline, diesel, carbon monoxide, pesticides, fertilizers and the equipment emissions may be considered hazardous if released into the environment.

According to the applicant, while working in the facility, employees may be exposed to a variety of hazards, such as:

- Biological and/or Chemical Exposure
- Dust Inhalation
- Cuts and Lacerations
- Eye Damage

Routine construction materials and all materials associated with the proposed use would be transported and disposed of properly in accordance with all applicable Federal, State and local regulations.

According to the Property Management Plan, the applicant would maintain accurate and comprehensive records that account for and reconcile all waste activity related to the disposal of marijuana and marijuana products. Any marijuana waste transferred to a producer, processor, or research certificate holder will be recorded in a transaction entered into the Inventory Tracking System, in accordance with state and local regulations. The applicant would additionally coordinate and/or consult with the regulating authorities involved in Waste Management and/or disposal prior to the operations to ensure that all proper procedures and/or requirements would be met.

According to the Property Management Plan, the Inventory Control Manager (ICM) under the management of the Chief Compliance Officer (CCO), is responsible for implementing portions of the Waste Management Plan that cover materials that contain cannabis, including:

- Training employees in the proper procedures for handling and disposing of materials.

- The ICM or his/her designee is responsible for keeping a record of training for each training module related to inventory control and other components of cannabis waste for every employee, including the date training occurred, type of training, the signature of the employee upon completion of training, the signature of an authorized person who can verify completion of training, and the date retraining is due.
- Recording the change in disposition of all product waste at each point of control in the ICS.

According to the Property Management Plan, the Facilities Manager (FM) in cooperation with other managers who use chemicals, is responsible for implementing portions of the Waste Management Plan that cover materials that do not contain cannabis, including:

- Training employees in the proper procedures for handling and disposing of materials, including the [Globally Harmonized System](#) of Classification and Labeling of Chemicals (GHS) and the use of Safety Data Sheets (SDSs).
- The FM or his/her designee is responsible for keeping a record of training for each training module related to non-cannabis waste management for every employee, including the date training occurred, type of training, the signature of the employee upon completion of training, the signature of an authorized person who can verify completion of training, and the date retraining is due.

According to the Property Management Plan, Department Managers (DM) Department managers (including the FM in relation to chemicals used by facilities staff) are responsible for the following:

- Verifying the labeling of chemical substances in his/her work area.
- Auditing the work practices of their employees to verify that procedures and personal protective equipment (PPE) designed to prevent employee exposures to hazardous substances are being properly employed.
- Maintaining a current chemical inventory (and an SDS binder, if appropriate) for hazardous substances used and stored in areas under their supervision.
- Conducting periodic reviews for workplace hazards and developing corrective actions for hazards identified within the department.

According to the Property Management Plan all employees and/or staff would be asked to review the waste management procedures related to their specific task at a minimum of once per year and give recommendations for improvement. According to the Property Management Plan, all employees would be trained to clarify and address the waste types that would be present on site.

- Mitigation Measure HAZ 1: The project shall comply with Section 41.7 of the Lake County Zoning Ordinance that specifies that all uses involving the use or storage of combustible, explosive, caustic or otherwise hazardous materials shall comply with all applicable local, state and federal safety standards and shall be provided with adequate safety devices against the hazard of fire and explosion, and adequate firefighting and fire suppression equipment.

- Mitigation Measure HAZ 2: Prior to the issuance of any permits, the applicant shall submit a Spill Management and Control Plan that has been reviewed and approved by the Department of Environmental Health. Applicant shall submit approved plan to the Community Development Department.
- Mitigation Measure HAZ 3: Prior to the issuance of any permits, the applicant shall submit a Hazardous Chemical Plan that has been reviewed and approved by the Department of Environmental Health. Applicant shall submit approved plan to the Community Development Department.
- Mitigation Measure HAZ 4: Prior to the issuance of any permits, the applicant shall submit a Wastewater Plan (Greywater) that has been reviewed and approved by the Department of Environmental Health. Applicant shall submit approved plan to the Community Development Department.
- Mitigation Measure HAZ 5: 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.
- Mitigation Measure HAZ 6: All hazardous waste Waste shall not be disposed of on-site without review or permits from Environmental Health Department, the California Regional Water Control Board, and/or the Air Quality Board. Collected hazardous or toxic waste materials shall be recycled or disposed of through a registered waste hauler to an approved site legally authorized to accept such material.
- Mitigation Measure HAZ 7: Prior to obtaining the necessary permits and/or approvals for any phase the applicant shall submit and maintain a Materials Inventory Disclosure Statement/Business Plan with the Environmental Health Department for 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. The applicant shall submit written documentation to the Community Development Department that all necessary permits have been obtained.

Issue: Noise

Short-term increases in ambient noise levels to uncomfortable levels could be expected during project grading and/or construction. Mitigation measures will decrease these noise levels to an acceptable level.

- Mitigation Measure NOI-1: All construction activities including engine warm-up shall be limited Monday Through Friday, between the hours of 7:00am and 7:00pm 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.

- Mitigation Measure NOI-2: Maximum non-construction related sounds levels shall not exceed levels of 55 dBA between the hours of 7:00AM to 10:00PM and 45 Dba between the hours of 10:00PM to 7:00AM within residential areas as specified within Zoning Ordinance Section 21-41.11 (Table 11.1) at the property lines.
- Mitigation Measure NOI-3: The operation of the Heating and Ventilation Units shall not exceed levels of 57 dBA between the hours of 7:00AM to 10:00PM and 50 dBA from 10:00PM to 7:00AM within residential areas as specified within Zoning Ordinance Section 21-41.11 (Table 11.2) at the property lines.

Issue: Transportation

The project parcel is located approximately one (1) mile off of Wight Way, a paved County maintained public road. The site is accessed via right-of-way easement (*Deed of Trust - Document # 2016005780 "Together with a right-of-way rod purposes extending in a southerly direction from Wight Road to the Northeast corner of the Northwest quarter of the southeast quarter of Section 33, township 13 North, Range 9 West, M.D.M – Parcel ID Number 007-036-02)* that runs between Wight Way and the subject site. According to the referenced document above, there are no restrictions on how the right-of-way access may be used.

- Mitigation Measure TRANS-1: A minimal increase in traffic is anticipated due to construction, maintenance and weekly and/or monthly incoming and outgoing deliveries through the use of small vehicles only. The applicant has indicated that large delivery vehicles and/or freighters are prohibited no matter what the circumstance might be. If road improvements are required on, the applicant shall meet all local and state standards and the increase in traffic is not substantial.
- Mitigation Measure TRANS-2: The recorded easement shall permit delivery trucks, emergency vehicles, sheriff and other law enforcement officers, and government employees who are responsible for inspection or enforcement actions at all times. The design of all access to and driveways providing access to the site where the cannabis related activity that is permitted shall be sufficient to be used by all emergency vehicles and shall be approved by the applicable fire district.
- Mitigation Measure TRANS-3: Driveway encroachments onto County-maintained roadways shall be constructed to current County standards and shall be constructed with an encroachment permit obtained from the Department of Public Works.
- Mitigation Measure TRANS-4: All driveways shall be constructed and maintained so as to prevent road surface and fill material from discharging to any surface water body.
- Mitigation Measure TRANS-5: Gates shall not be constructed across driveways or access roads that are used by neighboring properties or the general public. Gates constructed across public access easements are subject to removal per State Street and Highway Codes. A Knox box is required on all gated entrances.

This project is consistent with surrounding land uses in the area, which is characterized by large lots and a relatively sparse population. The project is also consistent the Lake County General Plan, Kelseyville Area Plan and the Lake County Zoning Ordinance, Article 27, subsection (at), which allows commercial cannabis cultivation in specific zoning districts under very specific conditions, all of what are met, or can be conditioned to be met through specific mitigation measures and / or conditions of approval. Cannabis permit findings are located in Article 27 of the Lake County Zoning Ordinance. Consistency with those findings are the basis of this report. The General Plan and the Kelseyville Area Plan do not regulate commercial cannabis cultivation permits.

VII. MAJOR USE PERMIT FINDINGS FOR APPROVAL. Article 51, Section 51.4a

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 project is located in a rural area of the County and consists of approximately 141 acres in size and the nearest single family residence from the area to be developed within the project parcel is located approximately 2,437 feet away.

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 site is adequate in size, shape and location since it is located in a rural area of the county and is located approximately one (1) mile off of Wight Way. The existing and proposed use is also out of sight by distance and the natural topography of the land, which consists of slopes varying from approximately 10% to greater than 50% which helps minimize any potential visual impacts to the surrounding area.

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

The project parcel is located approximately one (1) mile off of Wight Way and is accessed via recorded easement – please see Attachment 9. The maintenance of the private right-of-way is the responsibility of those who share it. Wight Way is a public (County) road that is maintained by the Department of Public Works.

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

There are adequate public and/or private services through the use of existing onsite well(s) and waste disposal (septic) systems. The existing infrastructure and the proposed use has adequate emergency service protection through

Kelseyville Fire Protection District, Cal Fire and the Lake County Sheriff's Office. The applicant is currently coordinating with the Department of the Environmental Health for the installation of additional sewage disposal system(s).

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 proposed uses are in conformance with the General Plan and the Kelseyville Area Plan as the plans encourage employment opportunities and economic development of agricultural facilities to help increase the overall viability of the County. The existing structures on the site consist of a 2,300 s.f. manufactured home, an 800 s.f. utility shed and a 2,585 s.f. barn are uses permitted by right. The proposed cannabis use is permitted in the "RL" Rural Lands Zoning District subject to a Major Use Permit per Article 27, section (at), 'Commercial Cannabis Cultivation'.

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

There are no documented violations on the subject site.

VIII. RECOMMENDATION. Staff recommends that the Planning Commission:

A. *Adopt a Mitigated Negative Declaration (IS 18-10) for Major Use Permit (UP 18-06) with the following findings:*

1. Potential environmental impacts related to Aesthetics have been mitigated to less than significant levels with the incorporated mitigation measures AES-1 and AES-2.
2. Potential environmental impacts related to Air Quality have been mitigated to less than significant levels with the incorporated mitigation measures AQ-1, AQ-2, AQ-3, AQ-4, AQ-5, AQ-6, AQ-7, AQ-8, AQ-9 and AQ-10.
3. Potential environmental impacts related to Biological Resources have been mitigated to less than significant levels with the incorporated mitigation measures BIO-1, BIO-2, BIO-3, BIO-4, BIO-5, BIO-6, BIO-7, BIO-8, BIO-9 and BIO-10.
4. Potential environmental impacts related to Cultural and Tribal Resources have been mitigated to less than significant levels with the incorporated mitigation measure CUL-1.
5. Potential environmental impacts related to Hazards and Hazardous Material Resources have been mitigated to less than significant levels with the incorporated mitigation measures HAZ-1, HAZ-2, HAZ-3, HAZ-4, HAZ-5, HAZ-6 and HAZ-7.

6. Potential environmental impacts related to Noise Resources have been mitigated to less than significant levels with the incorporated mitigation measures NOI-1, NOI-2 and NOI-3.
7. Potential environmental impacts related to Transportation and Traffic Resources have been mitigated to less than significant levels with the incorporated mitigation measures TRANS-1, TRANS-2, TRANS-3, TRANS-4 and TRANS-5.
8. As mitigated through specific conditions of approval, this project will result in less than significant environmental impacts.

B. *Approve Major Use Permit (UP 18-06) with the following findings:*

1. That the establishment, maintenance, or operation of the use applied for will not under the circumstances of the particular case, be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use, or be detrimental to property and improvements in the neighborhood or the general welfare of the County.
2. That the site for the project is adequate in size, shape, location, and physical characteristics to accommodate the type of use and level of development proposed.
3. That the streets, highways and pedestrian facilities are reasonably adequate to safely accommodate the specific proposed use.
4. That there are adequate public or private services, including but not limited to fire protection, water supply, sewage disposal, and police protection to serve the project.
5. That the project is in conformance with the applicable provisions and policies of this Code, the General Plan and any approved zoning or land use plan.
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.

IX. SAMPLE MOTIONS

Mitigated Negative Declaration

I move that the Planning Commission find on the basis of the Initial Study No. 18-10 prepared by the Planning Division and the mitigation measures which have been added to the project, that the use permit as applied for by **Michael Donygan** on property located at **8959 Wight Way, Kelseyville** and further described as **APN: 007-036-02** will not have a significant effect on the environment and therefore a mitigated negative declaration shall be issued with the findings listed in the staff report dated **December 20, 2018**.

Use Permit Approval – UP 18-06

I move that the Planning Commission find that the Use Permit (UP 18-06) applied for by **Michael Donygan** on property located at **8959 Wight Way, Kelseyville** and further described as **APN: 007-036-02** does meet the requirements of Section 51.4 of the Lake County Zoning Ordinance and that the Planning Commission has reviewed and considered the Mitigated Negative Declaration which was adopted for this project and the Use Permit be granted subject to the conditions and with the findings listed in the staff report dated **December 20, 2018**. This permit is valid for a period of ten years from the date of this approval.

***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 calendar day following the Commission's final determination*

Reviewed By: _____