



**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**  
9:10 AM  
March 12, 2020

## **STAFF REPORT**

**TO:** Planning Commission

**FROM:** Scott DeLeon, Interim Community Development Director  
Prepared by: Eric Porter, Associate Planner

**DATE:** February 17, 2019

**RE:** **Fiore Dulce; Minor Use Permit (MUP 18-14) for Commercial Cannabis Cultivation, Initial Study (IS 18-18).** APN: 013-013-49

Supervisor District 1

**ATTACHMENTS:**

1. Vicinity Map
2. Property Management Plan (available upon request)
3. Agency Comments
4. Proposed Conditions of Approval
5. Site Plans (a,b & c)
6. Initial Study IS 18-18

### **I. EXECUTIVE SUMMARY**

The applicant is seeking approval for one (1) A-Type 2 (small outdoor) adult-use cultivation with a total proposed cultivation area of 10,000 square feet (s.f.) and a Type 13 'Self Distribution' license. A second (larger) area will be applied for through a separate minor use permit after the conclusion of this process. The applicant is requesting a temporary 'porta-potty' during the first year of this use permit, and will provide a permanent ADA compliant restroom and hand-wash station in conjunction with the second use permit's review and approval.

The applicant has stated that this use permit has a projected 'planting date' of March 20, 2020.

The ±142 acre subject site is located at **21715 Jerusalem Grade Road, Middletown**, and is known as **APN 013-013-49**. The subject site contains a previously approved 100' by 100' medicinal cannabis cultivation area and a 12' x 24' shed.

There is a Class III stream, 'Dry Creek', located about 180 feet from the edge of the cultivation area. The shed is located 100' from Dry Creek.

The estimated water usage is 65,000 gallons per year according to the applicant. Note: this projected amount of proposed water usage is lower than other comparably sized outdoor cannabis cultivation licenses. Water will be stored in two 5,000 gallon water tanks that are already present on site.

The cultivation site would be served by an existing well on the property. A copy of the well permit was submitted with the application material provided. There is a year-round creek on the property that has a 'top of bank' located more than 100' from the proposed cultivation sites.

Staff is recommending **Approval with Conditions** of **MUP 18-14**.

## **II. PROJECT DESCRIPTION**

Applicant/Owner: Fiore Dulce C/O Robert Lipari  
Location: 21715 Jerusalem Grade Road, Middletown  
A.P.N.: 013-013-49  
Parcel Size: 142 acres  
General Plan: Rural Lands  
Zoning: "RL-WW", Rural Lands - Waterway  
Flood Zone: None  
Date Submitted: April 30, 2018  
Date of First Cultivation: June 11, 2019 (via Early Activation)  
Date of Cultivation: March 6, 2020

## **III. PROJECT SETTING**

Existing Uses and Improvements: The subject site contains a 100' x 100' medicinal marijuana cultivation area, a 12' x 24' shed, two 5,000 gallon water tanks, a well, and an existing gravel driveway. A site inspection took place on Thursday January 2, 2020 to evaluate the site for compliance with Public Resource Codes 4290 and 4291. The site is generally compliant, although verification of turn-out separation distances is needed following approval of this use permit (assuming it is approved).

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

**North, South, East and West:** "RL" Rural Lands zoned property. Parcel sizes range from approximately 9.5 acres to greater than 150 acres in size. Neighboring properties are developed with dwellings, accessory uses and agricultural uses.

Topography: Steep; mostly over 30%

Soils: The primary soil type on the cultivation portion of the site is type 153 soil. This soil type is identified as follows:

- **153-Konocti-Hambright complex, 15 to 30 percent slopes.** This map unit is on hills. Rock outcroppings and stones 10 inches to 50 feet in diameter are common throughout the unit. The vegetation is mainly oaks, brush, and annual grasses. Permeability of the Konocti soil is moderately slow. Available water capacity is 2 to 5 inches. Effective rooting depth is 20 to 40 inches. Surface runoff is rapid, and the hazard of erosion is severe. The Hambright soil is shallow and well drained. It formed in material weathered from basalt. Typically, the surface layer is reddish brown very gravelly loam 4 inches thick. The subsoil is reddish brown very gravelly loam 12 inches thick. Fractured basalt is at a depth of 16 inches. In some areas the surface layer is clay loam. Permeability of the Hambright soil is moderate. Available water capacity is 0.5 inch to 2.0 inches. Effective rooting depth is 10 to 20 inches. Surface runoff is rapid, and the hazard of erosion is moderate. This unit is used mainly as wildlife habitat and watershed. It is also used for homesite development and livestock grazing.

Water Supply: Existing well.

Sewage Disposal: Existing Septic System

Fire Protection: CalFire (South Lake Fire Protection District)

Vegetation: Several varieties of oak trees, native shrubs and grass

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

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

The General Plan designation for the subject site is Rural Lands. The following General Plan policies relate to site development in the context of this proposal:

The General Plan designation for the subject site is Rural Lands, which allows for rural development in areas that are primarily in their natural state, although some agricultural production, especially vineyards, can occur on these lands. This 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.

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

##### **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 local residents and allow the expansion of industrial and non-industrial corporate developments.*

### Land Use

- Policy LU-1.3 Prevent Incompatible Uses. The County shall prevent the intrusion of new incompatible land uses into existing community areas.
- Policy LU-5.4 Compatibility with Surrounding Land Use. The County shall ensure that appropriate industrial / heavy commercial sites will not result in harmful impacts to adjacent land uses. In addition, sites should be designed to prevent the intrusion of incompatible uses into industrial areas. Infilling of existing industrial areas is highly desirable where feasible.

Given the large lot sizes to the north, west and east coupled with generally sparse development in those areas, this area appears to be relatively well suited for this type of use. The lots to the south are zoned Rural Residential, and are smaller than other nearby lots and mostly contain houses.



Aerial Photo of Site

### ***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.
- **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.
- **5.4.2b** The use of permeable surfaces for driveways and sidewalks shall be encouraged to increase groundwater recharge and reduce runoff.

This applicant would have up to 4 employees, mostly during harvest time.

### ***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.

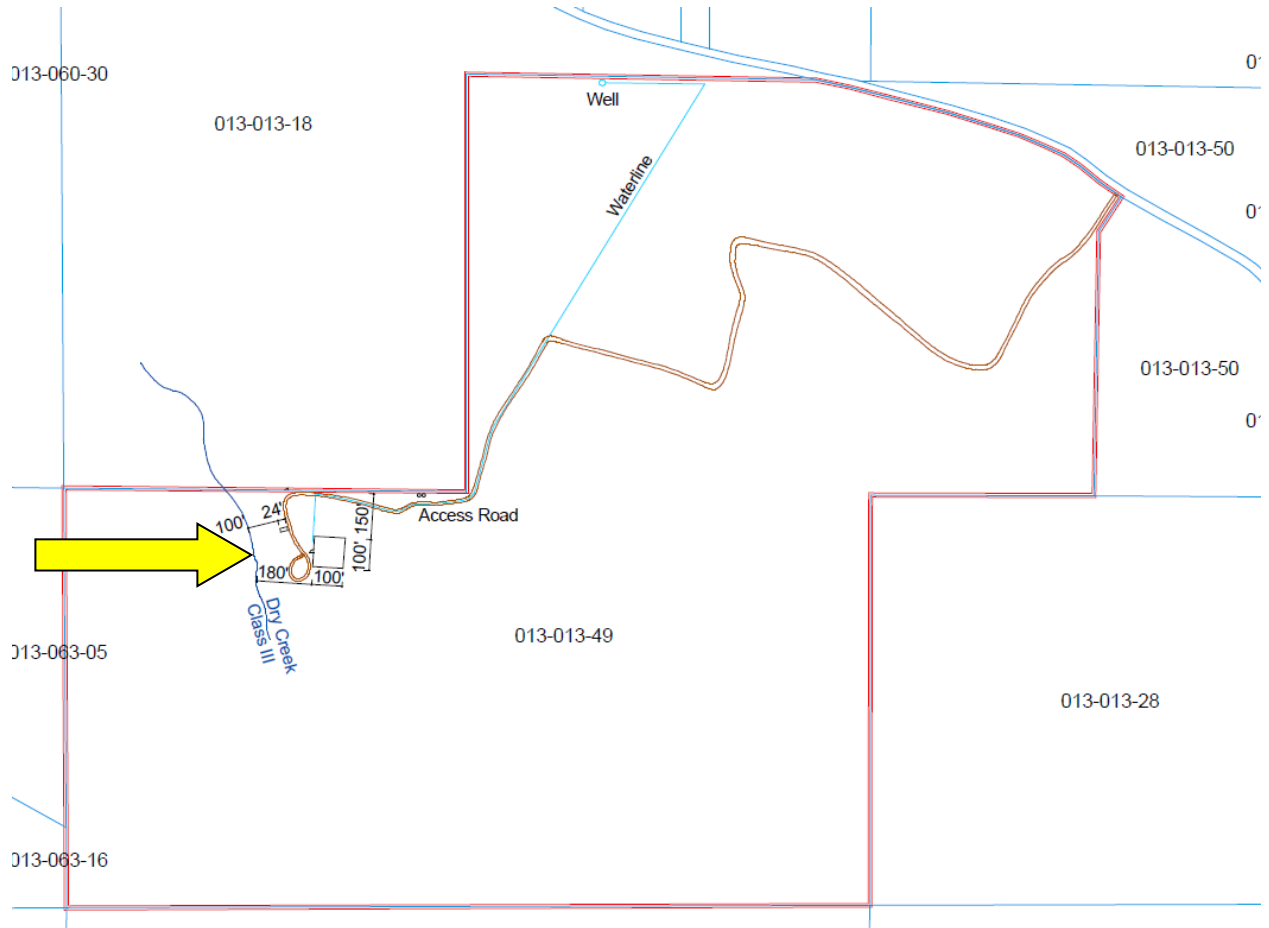
### Article 27 - Use Permits

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.

**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 for one A-Type 2 cannabis license): *Complies; the site is approximately 142 acres in size.*
- Setback from Property Line (100 feet): *Complies, according to the applicants’ site plan, the proposed cannabis site is approximately 150 feet from the nearest property line.*



- Setback from Off-Site Residence (200 feet): *Complies, the nearest residential dwelling is located on a separate parcel and is about 600 feet away from the proposed outdoor cannabis cultivation area.*
- Minimum Fence Height of Six (6) Feet: *Complies, according to the applicants' information submitted, the proposed fence height is six (6) feet.*
- Maximum Canopy Area (10,000 s.f.): *Complies, although the maximum canopy area is not shown, the maximum cultivation area containing the canopy will be 100' x 100' (10,000 s.f.).*
- Maximum Cultivation Area: *The cultivation area is 10,000 s.f. in total area which is allowed via Article 27 for an A-Type 2 adult-use cannabis permit.*

**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 4.*
- 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 Conditions, Attachment 4.*

- Property Owners Approval. *The owner is Robert Lipari, the applicant.*
- Co-location of Permits. *The applicant is not proposing any co-located permits.*
- Operation Hours for Deliveries (Monday through Saturday 9:00AM-7:00PM & Sundays 12:00PM – 5:00PM). *A condition has been added; see Conditions, Attachment 4.*
- Duration of Permits cannot exceed ten (10) years. *A condition has been added; see Conditions, Attachment 4.*
- Weights and Measures. *A condition was added; see Conditions, Attachment 4.*
- Access Adequacy Standards – *The site takes access from Jerusalem Grade Road, an unpaved County road at this location.*

### ***Prohibited Activities***

*The applicant complies with the restrictions pertaining to 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. The applicant has an on-site well, and will use two 5,000 gallon water tanks for on-site storage. The water tanks are existing.*
- Odor Control. *An Odor Control Plan is required as a condition of approval; see Conditions, Attachment 4.*
- Electrical Generators may be used only on an emergency basis. *See Conditions; Attachment 4.*
- Lighting (outdoor) must comply with darkskies.org lighting guidelines; *see Conditions, Attachment 4.*
- Pesticide Usage is limited to State-approved chemicals. *See Conditions, Attachment 4.*
- Protection of Minors. *Required by conditions; see Conditions, Attachment 4.*
- 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

## **V. 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 18-18* (Attachment 6) 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:

### ***Aesthetics***

- 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***

- AQ-1: Prior to obtaining the necessary permits and/or approvals for any phase, applicant shall contact the Lake County Community Development Department, and is required to submit an Odor Control Plan for review and approval or revision prior to final inspection.
- AQ-2: All mobile diesel equipment used must be in 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.
- 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.

### ***Cultural***

- 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), local overseeing Tribe shall be notified, 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 and with California Health and Safety Code section 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 local overseeing 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: The structural remains of the former agricultural operation should be left undisturbed. Should any project propose to modify, remove or otherwise change the ruins of the former house and associated buildings and other structures, a complete state record form should be filed to record and fully describe the location.

- CUL-4: No further improvement that involves earth moving, excavation, trenching, or other changes in the present ground surface should be made to the spring area without the participation of an archeologist. Any artifacts for features located near the spring that are encountered during any earth disturbing operations should be properly recorded by an archaeologist, and appropriate recommendations for preservation or recovery made.
- CUL-5: The ditch should be left undisturbed. If any changes are made in the ditch area, the entire feature should be examined and its function determined. Following this process, appropriate recommendations should be made for the preservation of the ditch or any remnants of it, if appropriate.

### **Noise**

- 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.
- 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.
- NOI-3: The operation of the Air Filtration System 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) measured at the property lines.

### **Wildfire**

- WILD-1: All regulations on the State of California's Public Resource Code, Division 4, and all Sections in 4290 and 4291 (4001-4958) shall apply to this application/construction.
- WILD -2: All regulations in the California Code of Regulations Title 14, Division 1.5, Chapter 7, Subchapter 2, Article 1 through 5 shall apply to this application/construction.
- WILD -3: All regulations in the California Building Code, Chapter 7A, Section 701A, 701A.3.2.A
- WILD-4: All regulations in the California Government Code, TITLE 5. LOCAL AGENCIES [50001 - 57550], DIVISION 1. CITIES AND COUNTIES [50001 - 52203], PART 1. POWERS AND DUTIES COMMON TO CITIES AND COUNTIES [50001 - 51298.5], CHAPTER 6.8. Very High Fire Hazard Severity Zones [51175 - 51189], Section 51182
- WILD-5: This shall include, but not be limited to property line set backs for structures that are a minimum of 30 feet, addressing, on site water storage for

fire protection, driveway/roadway types and specifications based on designated usage, all weather driveway / roadway surfaces engineered for 75,000lb vehicles, maximum slope of 16%, turnouts, gates (14 foot wide minimum), gate set backs (minimum of 30 feet from road), parking, fuels reduction including a minimum of 100 feet of defensible space. If this property will meet the criteria to be, or will be a CUPA reporting facility/entity to Lake County Environmental Health (see hyperlink below), it shall also comply specifically with PRC4291.3 requiring 300 feet of defensible space and fuels reduction around said structure.

## **VI. FINDINGS FOR APPROVAL**

The Review Authority shall only approve or conditionally approve a Minor Use Permit (LCZO Section 50.4, Minor 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 immediate area contains rural and semi-rural land with several homes that are located at least 300 feet away from the cultivation site. As previously discussed, some of the potential impacts resulting from this proposal are Air Quality (odor) and Noise if generators are used. All potentially significant impacts appear to have been adequately addressed within the applicant's submittal within the Property Management Plan and through the mitigation measures found in the Initial Study and herein.*

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 proposed cultivation area is the 10,000 s.f. area depicted on the site plan. This represents less than 0.3% of the 142 acre site.*

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

*The site is accessible by Jerusalem Grade Road, an unpaved County road that connects with the driveway leading to the subject site. The area is very sparsely populated; the likelihood of pedestrians using the shoulder are minimal. The use will likely generate between 4 to 8 average daily trips depending on the number of employees working on certain shifts. There are no known capacity issues associated with Jerusalem Grade Road at this site location.*

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. This application was routed to all of the affected public and private service providers including Public Works, Special Districts, Environmental Health, and to all area

*Tribes. Relevant comments are attached as 'Attachment 3'. No adverse comments were received.*

5. That the project is in conformance with the applicable provisions and policies of this Code, the General Plan and the Middletown Area Plan.

*Commercial cannabis cultivation is a permitted use in the 'RL' Rural Lands zoning district subject to a use permit. This proposal is consistent with Article 27(at) for commercial cannabis cultivation in Lake County. The General Plan and Middletown Area Plan do not have any provisions for commercial cannabis, but both plans do have provisions for economic development and related policies.*

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.

*The Community Development Department has no record of current violations of Chapters 5, 17, 21, 23 or 26 of the Lake County Code for this property.*

**FINDINGS FOR APPROVAL** (LCZO, Art. 27, section (au)7.i):

1. The proposed use complies with all development standards described in Section 1.i

*This report identifies the development standards that apply to cannabis cultivation in Lake County. The applicant is fully compliant with most of the development standards, and can be made to comply through conditions of approval of the development standards that are not yet met (primarily building permits for the greenhouses, and confirmation of turn-out spacing on site needed in order to comply with Public Resource Codes 4290 and 4291).*

2. The applicant is qualified to make the application described in Section 1.ii.(g)

*The applicant and his employees have passed a 'live scan' background check, and are qualified to undertake a commercial cannabis cultivation activity subject to approval of this use permit.*

3. The application complies with the qualifications for a permit described in Section 1.ii.(i)

*This application complies with all qualifications for a permit described in Section 3.ii.(f). The applicant is proposing two licenses; one is a cultivation site totaling 10,000 s.f. The second license is a 'self-distribution' license (Type 13). The subject site is 152 acres in size, large enough to support the cultivation activity proposed; the applicant also qualifies for the Type 13 'Self Distribution' license.*

## **VII. RECOMMENDATION**

### **Staff recommends the Planning Commission:**

#### **A. Adopt mitigated negative declaration (IS 18-18) for Minor Use Permit 18-14 with the following findings:**

1. Potential environmental impacts related to aesthetics have been mitigated to less than significant levels by mitigation measure AES-1.
2. Potential environmental impacts related to air quality have been mitigated to less than significant levels by mitigation measures AQ-1, AQ-2 and AQ-3.
3. Potential environmental impacts related to cultural resources have been mitigated to less than significant levels by mitigation measures CU-1 through CUL-5.
4. Potential environmental impacts related to noise have been mitigated to less than significant levels by mitigation measures NOI-1 through NOI-3.
5. Potential environmental impacts related to wildfire have been mitigated to less than significant levels by mitigation measures WILD-1 through WILD-5.

#### **B. Approve Minor Use Permit MUP 18-14 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, locations, and physical characteristics to accommodate the type of use and level of development proposed.
3. The streets, highways and pedestrian facilities are reasonably adequate to safely accommodate the proposed use.
4. There are adequate services to serve the project.
5. This project is consistent with the Lake County General Plan, Middletown Area Plan and Lake County Zoning Ordinance, Articles 50.4 and 27(at).
6. No violation of Chapter 5, 17, 21, 23 or 26 of the Lake County Code currently exists on this property.

### **Sample Motions:**

#### **Mitigated Negative Declaration (IS 18-18)**

I move that the Planning Commission find that that the Initial Study (IS 18-18) applied for by **Fiore Dulce C/O Robert Lipari** on a property located at **21715 Jerusalem Grade**

**Road, Middletown**, further described as **APN: 013-013-49** will not have a significant effect on the environment and therefore a mitigated negative declaration shall be approved with the findings listed in the staff report dated **February 17, 2019**.

**Minor Use Permit (MUP 18-14)**

I move that the Planning Commission find that the **Minor Use Permit (MUP 18-14)** applied for by **Fiore Dulce C/O Robert Lipari** on a property located at **21715 Jerusalem Grade Road, Middletown**, further described as **APN: 013-013-49** does meet the requirements of Article 50.4 and 27(at) of the Lake County Zoning Ordinance and the Minor Use Permit be granted subject to the conditions and with the findings listed in the staff report dated **February 17, 2019**.

*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:\_\_\_\_\_