



## COUNTY OF LAKE

COMMUNITY DEVELOPMENT DEPARTMENT

Courthouse - 255 N. Forbes Street

Lakeport, California 95453

Planning Department · Building Department · Code Enforcement

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**Scott De Leon**

Community Development Director

**Tocarra Nicole Thomas**

Community Development Deputy Director

Item 3

9:15 AM

March 25, 2021

### STAFF REPORT

**TO:** Planning Commission

**FROM:** Scott DeLeon, Community Development Director  
Tocarra Thomas, Community Development Deputy Director

Prepared by: Eric Porter, Associate Planner

**DATE:** March 25, 2021

**RE:** **Cunningham Farms; Major Use Permit (UP 19-43) and Initial Study (IS 19-62)**

Supervisor District 1

**ATTACHMENTS:**

1. Vicinity Map
2. Site Plans
3. Property Management Plan
4. Agency Comments
5. Proposed Conditions of Approval
6. Initial Study IS 19-62
7. Public Comments

#### **I. EXECUTIVE SUMMARY**

The applicant is requesting a major use permit for:

- **One (1) A – Type 3 “Outdoor” License** for two (2) 30,000 sq. ft. cultivation areas. East Side Farms seeks to obtain a Major Use Permit for Commercial Cannabis Cultivation for **total cannabis canopy of 43,560 square feet**. The **total cultivation area is 60,000 square feet**. All cannabis will be grown in above-ground planters.
- **One (1) A-Type 13 Self Distribution License.**
- **One (1) Complex Grading Permit**
- The proposed cultivation areas will be surrounded by a 6-foot tall wire fence, with privacy mesh to screen the cultivation areas from any view
- One(1) 30,000 gallon metal water storage tank (existing)
- One (1) 2,500 gallon water storage tank (existing)

- Four (4) 2,500 gallon water storage tanks (proposed)
- One (1) eight foot by eight foot fertilizer / pesticide storage container (existing)
- Two (2) Agriculture wells (existing)
- One (1) 28' by 40' barn (existing)
- An 800+ square foot dwelling (existing)
- One (1) 14' by 16' wooden shed (existing)
- One (1) 10' by 12' security center

The property is located at 23131 Jerusalem Grade Road, Middletown, and is APNs: 013-015-39, 43 and 57 (formerly lots 34 and 35 recently merged). The applicant is also proposing two 120 sq. ft. sheds for chemical / pesticide storage, and for security data storage.

Staff is recommending **Approval with Conditions** of **UP 19-43**.

## **II. PROJECT DESCRIPTION**

<u>Applicant:</u>	Ross Cunningham
<u>Owner:</u>	Cunningham Farms
<u>Location:</u>	23131 Jerusalem Grade Road, Middletown
<u>A.P.N.s:</u>	013-015-39, 43 and 57 (formerly lots 34 and 35 recently merged).
<u>Parcel Size:</u>	21.07+ acres
<u>General Plan:</u>	Rural Lands
<u>Zoning:</u>	"RL" – Rural Lands
<u>Flood Zone:</u>	None
<u>Cultivation Area:</u>	65,000 square feet
<u>Canopy Area:</u>	estimated to be 43,000 sq. ft.

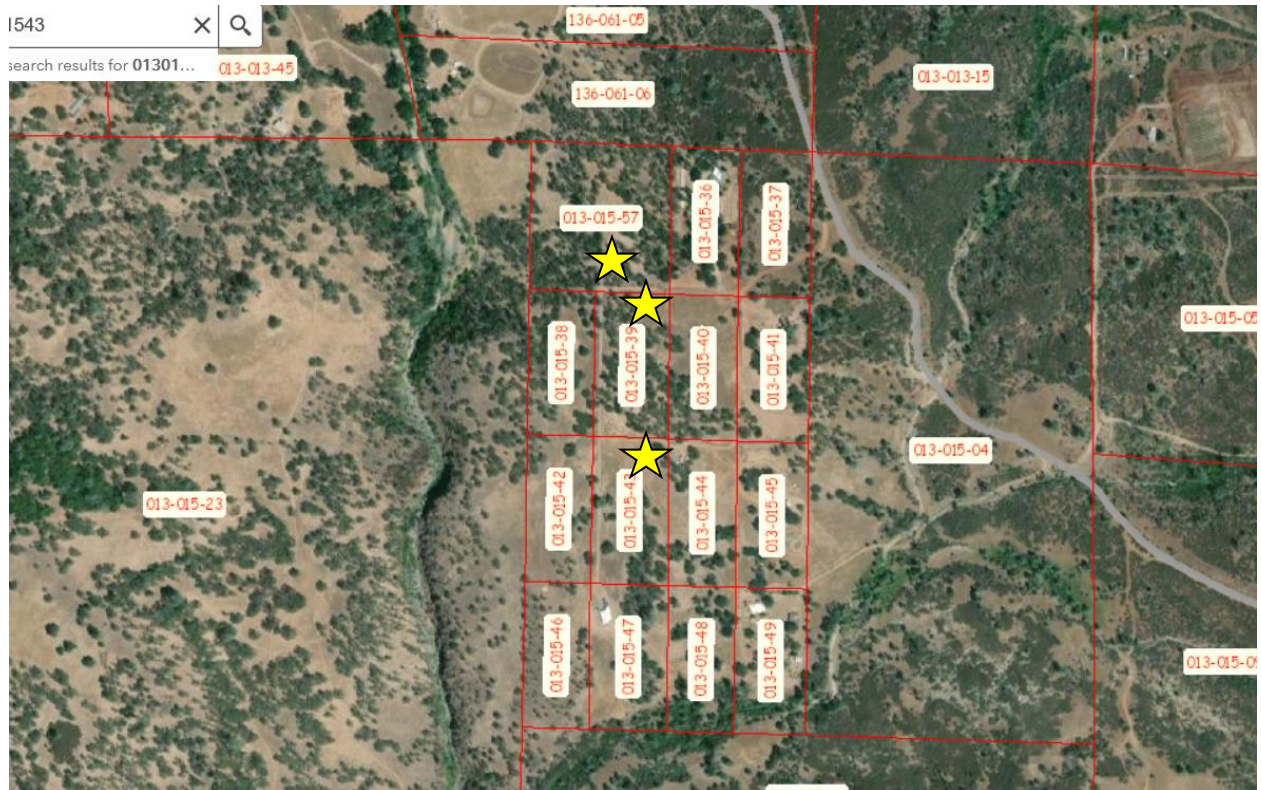
## **III. PROJECT SETTING**

Existing Uses and Improvements: The parcels are about 21+ acres in size, and are eligible for one A-Type 3 medium outdoor cultivation license based on property size, zoning and location. The project is also eligible for one Type 13 Self-Distribution license which has no property size requirements associated. The A-type 3 medium outdoor license requires a minimum of 20 acres on land that is not mapped as 'high value farmland', and which is not in a cannabis exclusion area, or within 1000 feet of an established agricultural use. The property contains an 800 square foot house, two wells, a metal 30,000 gallon water storage tank, a 2,500 gallon water storage tank, several small sheds and a septic system.

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

- North: "RL" – Rural Lands-zoned property, just over 19 acres and developed with a dwelling.

- East: “RL” – Rural Lands-zoned properties, just over 5 acres each; two are developed with dwellings.
- South: “RL” – Rural Lands-zoned properties, just over 5 acres each; one is developed with a dwelling.
- West: “APZ” – Agriculture Preserve-zoned land, 321 acres in size; raw land with no agricultural uses and is undeveloped.



**VICINITY AERIAL PHOTO**

Topography: Varied; mostly between 0% and 10% with portions over 30%.

Soils: The cultivation area contains type 107 (Bally-Phipps complex, 1S to 30 percent slope), and 195 (Phipps complex, 5 to 15 percent slope) soils.

Type 107 soil is characterized by being very deep and well drained. It formed in alluvium derived from mixed rock sources. Permeability of the Bally soil is slow.

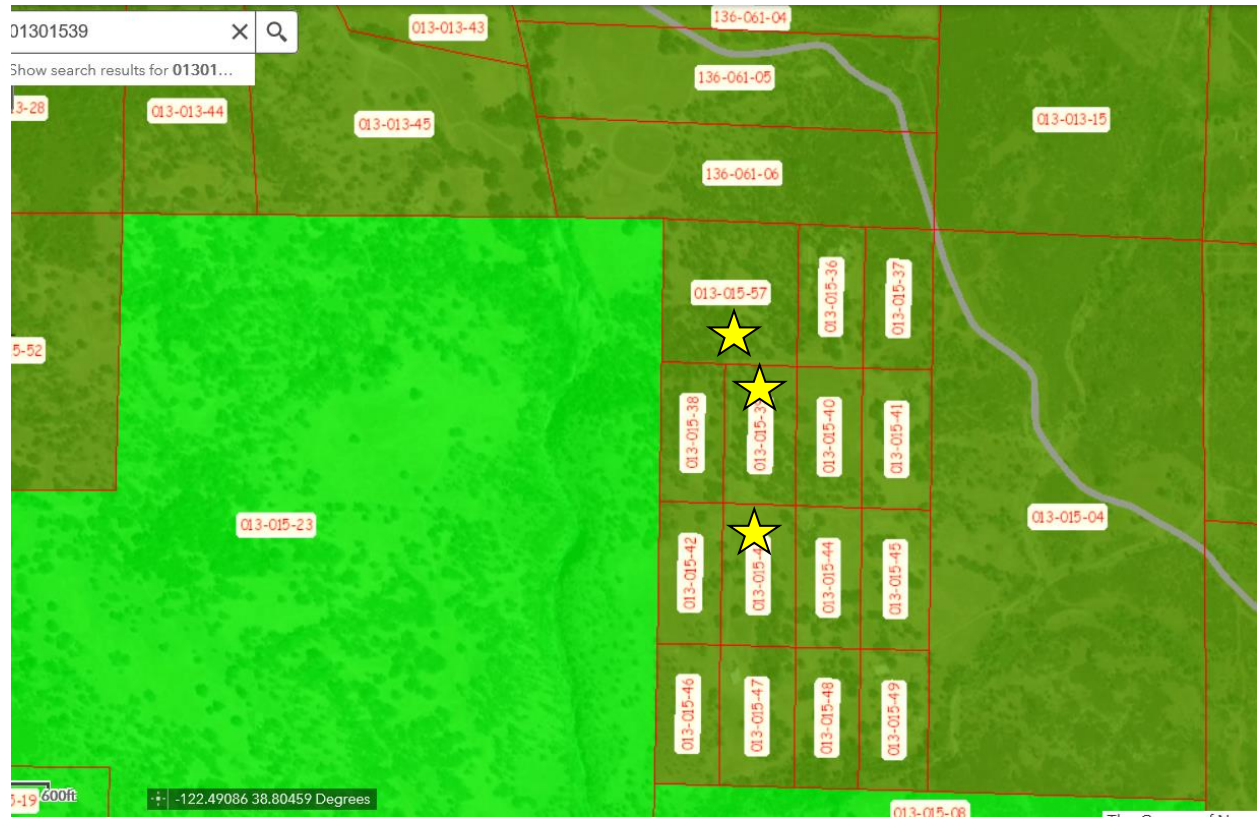
Type 195 soil is characterized by slow permeability. Available water capacity is 8 to 12 inches. Effective rooting depth is 60 inches or more. Surface runoff is rapid, and the hazard of erosion is moderate. The shrink-swell potential is high.

Water Supply: Two existing wells

Sewage Disposal: Existing On-Site Septic

Fire Protection: CalFire, South Shore Fire Protection District

Vegetation: Several varieties of oak trees, grass and some manzanita brush



**Zoning of Site and Surrounding Lots**

#### **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:

Rural Lands 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.

### Open Space

- *Goal OSC-1 Biological Resources.* To preserve and protect environmentally sensitive significant habitats, enhance biodiversity, and promote healthy ecosystems throughout the County. *Commercial cannabis cultivation has a relatively small impact on properties depending on how large the cultivation activity is, and the extent of site preparation needed. In this case the footprint at the end of phase VI is relatively small at 15,000 s.f. There will be greenhouses built, however the greenhouses will be built on previously disturbed portion of the site that had been used for medicinal cannabis cultivation (legally) in 2017.*

### **Middletown Area Plan Conformance**

#### **Chapter 5 – Community Development; Economic Development**

- **5.1.5** Encourage comprehensive economic development efforts for the long-term benefit of the Planning Area aimed at increasing local employment opportunities.

*Response: the proposal will provide employment opportunities for up to five employees; this will provide additional revenue to the employees, and to the service sector uses that already exist in the Middletown area through purchase of food, gas and other supplies and services.*

- **5.1.5b** Priority should be given to providing service and employment opportunities locally.

*Response: the applicant has not indicated where the employees would be recruited from. It is probable that employees are likely going to be recruited locally.*

- **5.1.5c** Increase local employment opportunities in order to provide an adequate number of jobs to support the local population.

*Response: see response to 5.1.5b.*

### **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 (40 acres): *Complies; the subject site is over 21 acres in size. The applicant has applied for one A-Type 3 (medium outdoor) cultivation license. The applicant has also applied for a Type 13 'Self Distribution License', which is under consideration herein.*
- Setback from Property Line (100 feet): *Complies, the cultivation site is located 100 feet from the nearest (western) property line.*
- Setback from Off-Site Residence (200 feet minimum): *Complies, the nearest neighboring residential dwelling is located about 350 feet away from the nearest cannabis cultivation area.*
- Fence Height between Six (6) and Eight (8) Feet: *Complies, the proposed fence height is six (6) feet.*
- Maximum Canopy Area (43,560 s.f.): *The proposed canopy area is estimated to be 43,000 sq. ft. in size.*
- Separation from Existing Agricultural Uses (1000 feet minimum): *Complies. The nearest established agricultural use (non cannabis) is over 5000 feet from the proposed cultivation area.*

**General Requirements.** *The applicant 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 approval, complying with hours of operation and deliveries, access requirements, etc. If the requirements have not yet been met, a condition has been added to assure compliance.*

The applicant has also submitted a Property Management Plan, outlining compliance with all regulations pertaining to cannabis operations including air quality, cultural resources, energy usage, fertilizer usage, fish and wildlife protection, storm water management, security, compliance monitoring, etc. In addition, the *applicant complies with the restrictions pertaining to the prohibited activities listed in Subsection (at) of Article 27 of the Zoning Ordinance, including but not limited to the removal of trees, illegally diverting water, producing excessive odors, cultivating within a Cannabis Exclusion Area, etc.*

**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 19-62* (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.*** *The applicant is proposing the removal of 12 blue oak trees. While this is not a prohibited activity, it is discouraged when in conjunction with commercial cannabis cultivation. The applicant is also proposing to use an existing greenhouse as a nursery. The applicant will be required to comply with the following mitigation measures:*

- AES-1: Prior to this use permit having any force or effect, the applicant shall plant oak trees (or an equivalent specie subject to the approval of the Community Development Director) on a 5:1 ratio (60 new trees). These trees will be provided with irrigation water, and shall be maintained in a healthy state for the duration of the use permit. The trees shall be no less than 5 gallon containers at time of planting.
- AES-2: All greenhouses incorporating artificial lighting 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.

***Air Quality.*** *There is some potential for impacts to air quality resulting from this project. The applicant shall be required to do the following to mitigate impacts to air quality:*

- AQ-1: Prior to cultivation, the applicant shall submit an Odor Control Plan to the Community Development Department for review and approval. The applicant shall plant fragrant non-cannabis plants along the northern and eastern portion of the northern-most site, and along the southern and eastern portion of the southern-most site. Fragrant plant species are plants such as lavender, mint, or similar plants that will mask the odor of cannabis plants. Planting density shall be no greater than 3' between plants, and plants shall be irrigated and maintained for the duration of the use permit.
- AQ-2: All Mobile diesel equipment used for construction and/or maintenance shall 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 as well as Lake County Noise Emission Standards.
- AQ-3: Construction and/or work practices that involve masonry, gravel, grading activities, vehicular and fugitive dust shall be managed by use of water or other acceptable dust palliatives to mitigate dust generation during and after site development.
- AQ-4: 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 to the Lake County Air Quality Management District.

- **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.
- **AQ-6:** The applicant shall have the primary access and parking areas surfaced with chip seal, asphalt or an equivalent all weather surfacing to reduce fugitive dust generation. The use of white rock as a road base or surface material for travel routes and/or parking areas is prohibited.
- **AQ-7:** All areas subject infrequent use of driveways, over flow parking, etc., shall be surfaced with gravel. Applicant shall regularly use and/or maintain graveled area to reduce fugitive dust generations.

***Cultural, Geological and Tribal Resources.*** *This is some potential for ground disturbance associated with this proposal to adversely impact cultural and tribal resources. The following mitigation measures are proposed to minimize these potential impacts:*

- **CUL-1:** Should any archaeological, paleontological, or cultural materials be discovered during site development, all activity shall be halted in the vicinity of the find(s), the culturally-affiliated 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 culturally-affiliated Tribe shall immediately be notified; a licensed archaeologist shall be notified, and the Lake County Community Development Director shall be notified of such finds.

***Geology and Soil.*** *The project has some potential to have adverse impacts to archaeologically sensitive geology. The following mitigation measure will reduce potential impacts to 'less than significant' levels.*

- **GEO-1:** Excavation, filling, vegetation clearing or other disturbance of the soil shall not occur between October 15 and April 15 unless authorized by the Community Development Director. The actual dates of this defined grading period may be adjusted according to weather and soil conditions at the discretion of the Community Development Director.

***Noise.*** *There is some potential for construction- related and post-construction-related noise to adversely impact surrounding properties. The following mitigation measures are added to minimize noise-related impacts:*

- **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.

**VI. 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.

*Response: The immediate area contains rural land with several homes that are located at least 350 feet away from the nearest cultivation site. As previously discussed, the potential impacts resulting from this proposal are Aesthetics, Air Quality and Cultural / Geological / Tribal Resources and Noise. All of these significant impacts have been adequately addressed within mitigation measures and/or conditions of approval for the reasons previously stated.*

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.

*Response: The proposal is for combined 65,000 sq. ft. of outdoor cultivation area. The Lake County Cannabis Ordinance allows Type 3 cultivation licenses on qualifying Rural Land-zoned property when the property meets all of the size and locational criteria and standards. The applicant seeks two licenses, which requires a 20 acre minimum. The subject site is over 21 acres in size, large enough to allow the cultivation licenses that have been applied for. The self-distribution license is also included, but has no direct relationship with the property size.*

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

*Response: The site is served by Jerusalem Grade Road, an unpaved County-maintained road at this location. There are no bicycle or pedestrian facilities available on this road, however the rural characteristics of this general area make pedestrian and bicycle transportation unfeasible in this area.*

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.

*Response: This application was routed to all of the affected public and private service providers including CAL FIRE, South Lake Fire District, Public Works, Special Districts, Environmental Health, Lake County Sheriff's Department, and all eleven 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 any approved zoning or land use plan.

*Response: Since commercial cannabis cultivation is named as a permitted use in the Rural Lands zoning district within Article 27 of the Lake County Zoning Ordinance (the Commercial Cannabis ordinance) subject to compliance with various setbacks and mitigation measures when deemed necessary through the CEQA review process, this proposal is consistent with the governing ordinance for cannabis growing in the Lake County. General Plan and the Middletown Area Plan do not have any specific provisions for commercial cannabis, but do have provisions for economic development which are satisfied by this project.*

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.

*Response: The site does not have any violations of Chapters 5, 17, 21, 23 or 26 of the Lake County Code.*

**VII. USE PERMIT FINDINGS FOR APPROVAL Article 27, subsection (at):**

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

*Response: The project complies with all development standards as stated within this staff report and accompanying Conditions of Approval.*

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

*Response: The applicant has passed the 'live scan' background check and is the owner of record of the property. The applicant is qualified to make the commercial cannabis application.*

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

*Response:* This application complies with all qualifications for a permit described in Section 3.ii.(f). The applicant is proposing two cannabis-related licenses; one for the outdoor cultivation site totaling 65,000 sq. ft. and a ‘self-distribution’ license (Type 13). The subject site is 21+ acres in size, large enough to support the cultivation license; the applicant also qualifies for the Type 13 ‘Self Distribution’ license, both for the reasons previously stated.

## **VIII. RECOMMENDATION**

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

#### **A. Adopt mitigated negative declaration (IS 19-62) for Use Permit (UP 19-43) with the following findings:**

1. Potential impacts related to aesthetics can be mitigated to less than significant levels with the inclusion of mitigation measures AES-1 and AES-2.
2. Potential environmental impacts related to air quality can be mitigated to less than significant levels with the inclusion of mitigation measures AQ-1, AQ-2, AQ-3, AQ-4, AQ-5, AQ-6 and AQ-7.
3. Potential environmental impacts related to Cultural / Tribal Resources can be mitigated to less than significant impacts with the inclusion of mitigation measures CUL-1 and CUL-2.
4. Potential impacts related to Geological Resources can be mitigated to less than significant levels with the inclusion of mitigation measure GEO-1.
5. Potential impacts related to noise can be mitigated to less than significant levels with the inclusion of mitigation measures NOI-1, NOI-2 and NOI-3.
6. As mitigated through specific conditions of approval, this project will result in less than significant environmental impacts.
7. Any changes to the project will require either an amended Use Permit and/or a new Use Permit unless the Community Development Director determines that any changes have no potential increased environmental impacts.

#### **B. Approve Use Permit UP 19-43 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 can be mitigated to be reasonably adequate to safely accommodate the 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 the applicable sections of the Lake County Zoning Ordinance, the General Plan and the Middletown Area 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.

**Sample Motions:**

**Mitigated Negative Declaration**

I move that the Planning Commission find that the **Initial Study (IS 19-62)** applied for by **Cunningham Farms** on property located **23131 Jerusalem Grade Road, Middletown, and is APNs: 013-015-39, 43 and 57 (formerly lots 34 and 35 recently merged)** 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 **March 25, 2021**.

**Major Use Permit (UP 19-43)**

I move that the Planning Commission find that the **Use Permit (UP 19-43)** applied for by **Cunningham Farms** on property located **23131 Jerusalem Grade Road, Middletown, and is APNs: 013-015-39, 43 and 57 (formerly lots 34 and 35 recently merged)** does meet the requirements of Section 51.4 of the Lake County Zoning Ordinance and the Major Use Permit be granted subject to the conditions and with the findings listed in the staff report dated **March 25, 2021**.

***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.*