



COUNTY OF LAKE
COMMUNITY DEVELOPMENT DEPARTMENT
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Scott De Leon
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Item 3
9:15 AM
April 8, 2021

STAFF REPORT

TO: Planning Commission

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

Prepared by: Eric Porter, Associate Planner

DATE: April 8, 2021

RE: **Badlands / Damien Ramirez; Major Use Permit (UP 19-31) and Initial Study (IS 19-39)**

Supervisor District 1

ATTACHMENTS:

1. Vicinity Map
2. Property Management Plan
3. Agency Comments
4. Conditions of Approval
5. Existing and Proposed Site and Grading Plans
6. Initial Study IS 19-39

I. EXECUTIVE SUMMARY

The applicant is requesting a major use permit for **(12) A-Type 3 (medium outdoor) cultivation areas** consisting of up to 529,560 square feet (sq. ft.) of cultivation area, and an **A-Type 13 Self Distribution license**. The property is located at 21518 Bartlett Springs Road, Lucerne, and is APN: 016-032-01. The applicant is also proposing two 1,500 sq. ft. sheds to use as drying buildings, and 6' tall security fencing.

Staff is recommending **Approval with Conditions** of **UP 19-31**.

II. PROJECT DESCRIPTION

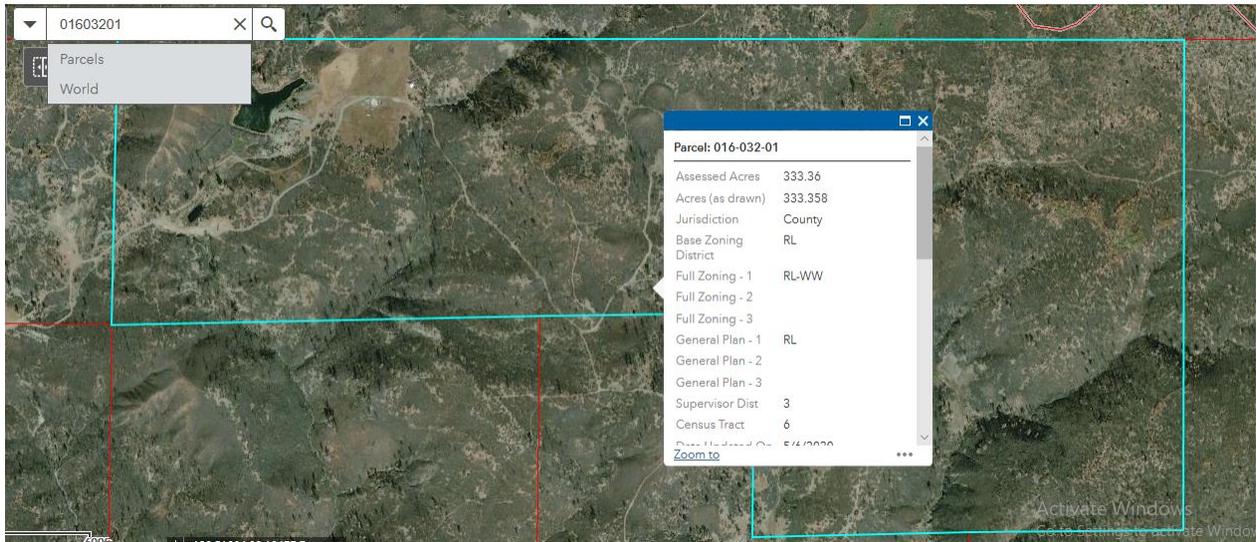
Applicant/Owner: Badlands LLC

Location: 21518 Bartlett Springs Road, Lucerne

A.P.N.s: 016-032-01

Badlands – UP 19-31

Parcel Size: 333 acres
General Plan: Rural Lands
Zoning: “RL-WW” – Rural Lands – Waterway
Flood Zone: X
Cultivation Area: 529,560 sq. ft.
Canopy Area: 522,720 sq. ft.



Aerial View of 333 acre Property

III. PROJECT SETTING

Existing Uses and Improvements: The parcels are about 333+ acres in size, well over the minimum required 80 acre size required for (4) A-Type 3 licenses. The property contains a well and was approved for a 3-acre cultivation area in 2018. The site and surrounding areas were extensively burned during the Mendo Complex fire of 2018.

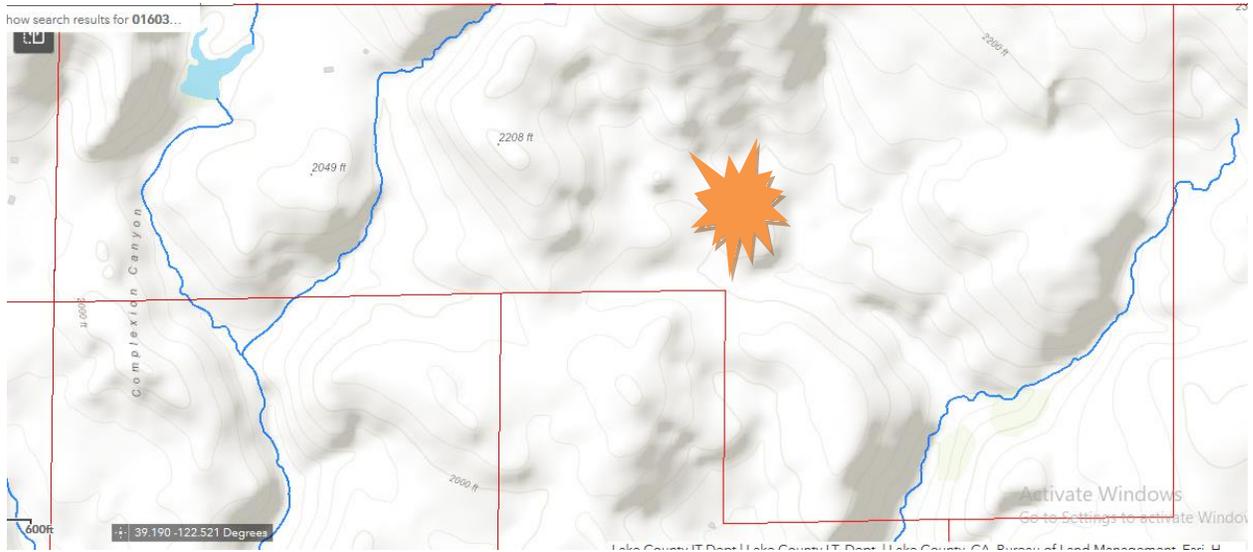
Surrounding Uses and Zoning

North: “O” Open Space (BLM land) and Colusa County; undeveloped

South: “RL” Rural Lands and “O” Open Space; undeveloped

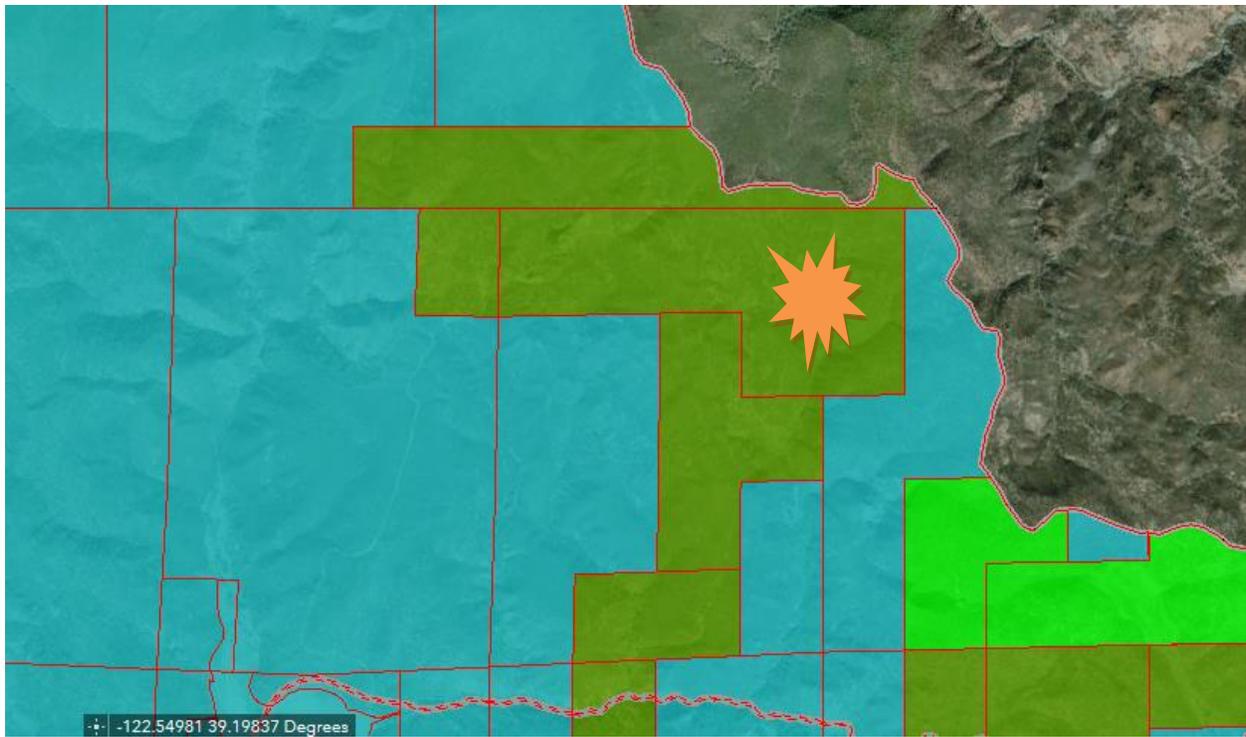
East: “O” Open Space and Colusa County; undeveloped

West: “RL” Rural Lands and “O” Open Space; undeveloped



TOPO MAP

Topography: Very Steep, greater than 30%.



Zoning of Site and Surrounding Lots

Soils: The site contains type **143-Henneke-Okiota complex, 30 to 50 percent slopes**. This map unit is on hills and mountains. The vegetation is mainly brush and a few conifers with an understory of sparse annual grasses. Elevation is 1,100 to 3,500 feet. The average annual precipitation is 25 to 40 inches. The Henneke soil is shallow and somewhat excessively drained. Permeability of the Henneke soil is moderately slow. Surface runoff is rapid, and the

hazard of erosion is severe. The Okiota soil is shallow and well drained. Permeability of the Okiota soil is slow. Surface runoff is rapid, and the hazard of erosion is severe.

Water Supply: Existing well

Sewage Disposal: None (portable restrooms)

Fire Protection: Northshore Fire Protection District

Vegetation: Some oak trees, grass; mostly burned during Mendo Complex fire

IV. PROJECT ANALYSIS

General Plan Conformance

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. They are generally supportive to the management of the natural infrastructure of the watersheds, and are located outside of Community Growth Boundaries.

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 can have a disturbing impact on land; cultivation areas are graded / prepped for the above-ground pots, and typically high-value soil is imported to fill the pots prior to planting. In this case the entire 333 acre property was significantly burned during the Mendo-Complex fire. The fire effectively eliminated potential flora and fauna from the cultivation site. Further, a biological study was performed, and no sensitive plant or animal species were observed on the site, in large part likely due to the Mendo-Complex fire.*

Shoreline Communities Area Plan Conformance Analysis

The subject site is within the Shoreline Communities' Area Plan's boundary. The following objectives and policies relate directly or indirectly to this proposed project.

Chapter 3, Natural Resources

Objective 3.1.1 Encourage programs that limit or reduce damage from soil erosion and sedimentation, and limit development within areas with expansive or serpentine soils.

- Policy 3.1.1a Employ appropriate erosion control measures during and after construction of new ... movement of earth.
- Policy 3.2.1c Design new development to reduce off-site runoff to the greatest extent possible.

Response: The applicant has provided an engineered Erosion Control and Grading Plan with the application materials submitted. The applicant has employed Best Management Practices to channel stormwater runoff in an appropriate manner that reduces erosion due to storm activity.

Chapter 5 – Land Use

Objective 5.1.1 Encourage comprehensive economic development efforts for the long-term benefit of the Shoreline Communities planning area aimed at increasing local employment opportunities.

- Policy 5.1.1b Priority should be given to providing service and employment opportunities locally.

Response: This project will employ up to 12 local persons, who in turn will spend money locally on food, gas, and other commodities including rent. The product grown on this property will be sold in local retail cannabis stores, which in turn will help stimulate local economy further.

Zoning Ordinance Conformance

Article 7 – Rural Lands (RL). Purpose: 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.

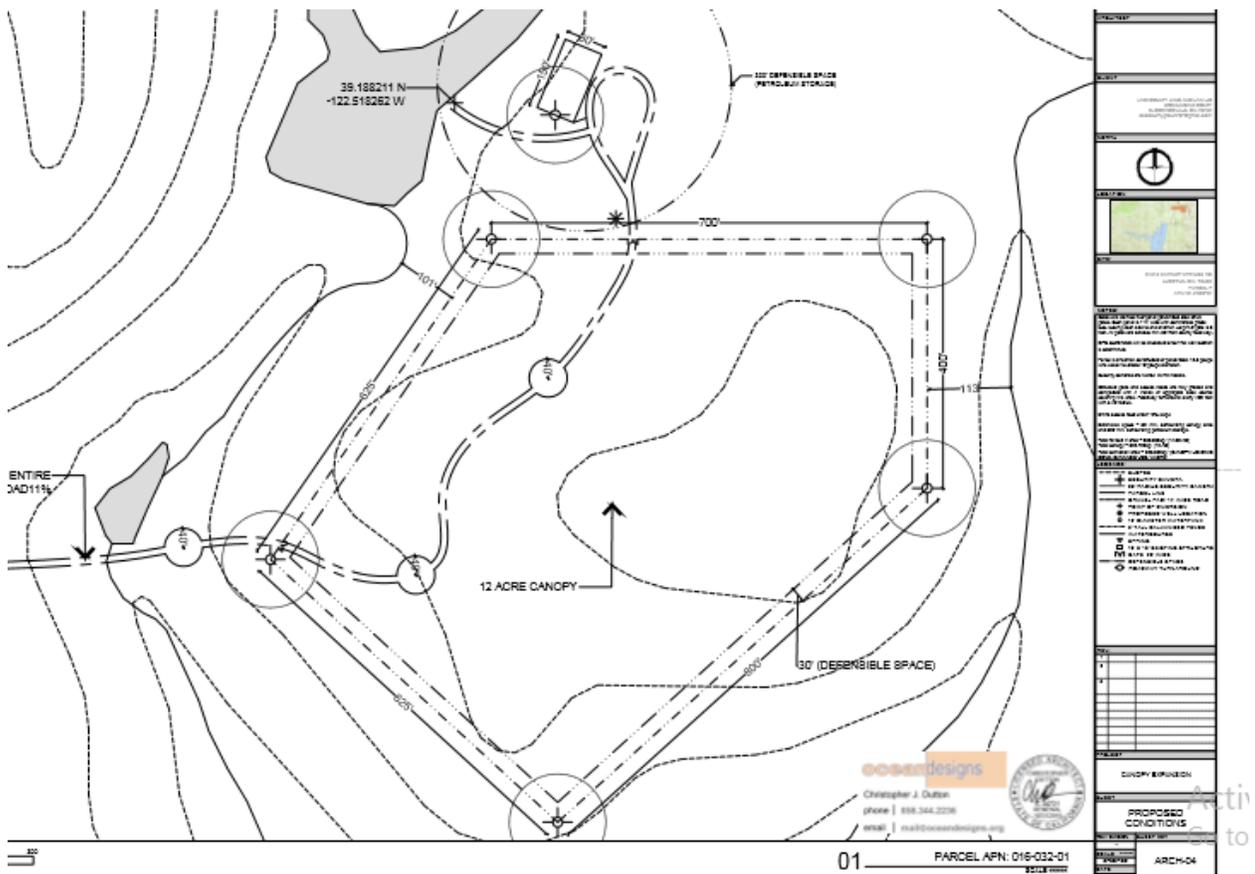
Development Standards, General Requirements and Restrictions. This application meets the following Development Standards, General Requirements and Restrictions as specified within Article 27, subsection (at) of the Lake County Zoning Ordinance.

Development Standards

- Minimum Lot Size (80 acres): *Complies; the subject site is 333 acres in size. The applicant has applied for twelve (12) A-Type 3 (medium outdoor) cultivation*

licenses and had been approved for three (3) A-Type 3 (medium outdoor) licenses in 2018. The applicant has also applied for a Type 13 'Self Distribution License', which is under consideration herein and is not reliant on any minimum lot size.

- Setback from Property Line (100 feet): *Complies, the cultivation site is about 200 feet from the nearest (southern) property line.*
- Setback from Off-Site Residence (200 feet minimum): *Complies, the nearest neighboring residential dwelling is located about 5000 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 sq. ft. per license): *The proposed canopy area is 522,720 sq. ft. in size. The proposed cultivation area is 529,560 sq. ft. in size.*



PROPOSED SITE PLAN

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 sand 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 19-39* (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:

Air Quality

- **AQ-1:** Prior to obtaining the necessary permits and/or approvals for this project, applicant shall contact the Lake County Air Quality Management District and obtain an Authority to Construct (A/C) Permit for all diesel powered equipment and/or other equipment with potential for air emissions.
- **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 emissions inventory.
- **AQ-4:** The applicant shall control dust during site preparation by watering down any disturbed areas on each day of construction.
- **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.

Biological Resources

- BIO-1: If construction activities would occur during the nesting season (usually March to September), a preconstruction survey for the presence of special-status bird species or any nesting bird species shall be conducted by a qualified biologist within 500 feet of proposed construction areas. If active nests are identified in these areas, CDFW and/or USFWS shall be consulted to develop measures to avoid “take” of active nests prior to the initiation of any construction activities. Avoidance measures may include establishment of a buffer zone using construction fencing or the postponement of vegetation removal until after the nesting season, or until after a qualified biologist has determined the young have fledged and are independent of the nest site. With the implementation of this mitigation measure, adverse impacts upon special-status bird species and nesting birds would be reduced to a less-than significant level.
- BIO-2: Wetland habitat may contain special-status plant or animal species. A pre-construction survey for special-status species shall be performed by a qualified biologist to ensure that special-status species are not present. If any listed species or special-status species are detected, construction shall be delayed, and the appropriate wildlife agency (CDFW and/or USFWS) shall be consulted and project impacts and mitigation reassessed.
- BIO-3: Wetland habitat within a watercourse is protected under Fish and Game Code Section 1600; a Streambed Alteration Agreement shall be needed before this habitat is disturbed. Issuance of this Agreement requires implementation of avoidance and minimization measures and compensation for habitat loss.

Cultural, Geological and Tribal Resources

- 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. Should any human remains be encountered, they shall be treated in accordance with Public Resources Code Section 5097.98 and Health and Safety Code 7050.5.
- CUL-2: All employees shall be trained in recognizing potentially significant artifacts that may be discovered during ground disturbance. If any artifacts or remains are found, the culturally affiliated Tribe shall immediately be notified; a

licensed archaeologist shall be notified, and the Lake County Community Development Director shall be notified of such finds.

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 homes that are located at least 5000 feet away from the nearest cultivation site. As previously discussed, the potential impacts resulting from this proposal are Air Quality, Biological Resources, and Cultural / Tribal / Geological Resources. All of these significant impacts have been adequately addressed within 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 260,000 sq. ft. of outdoor cultivation area. The Lake County Cannabis Ordinance allows Type 3 cultivation operations on Rural Land-zoned property when it meets the size and locational criteria and standards. The applicant seeks five licenses, four of which are A-Type 3 medium outdoor cultivation licenses, which requires an 80 acre minimum lot size. The applicant had previously been approved for three (3) A-Type 3 medium outdoor licenses in 2018, which required a 60 acre minimum lot size. The subject site is over 333 acres in size, large enough to allow the cultivation licenses that has been applied for and which had been previously approved. 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 Bartlett Springs Road, an unpaved County road. The road is 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.

Response: This application was routed to all of the affected public and private service providers including CAL FIRE, Northshore Fire District, Public Works, Special Districts, Environmental Health, and 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 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 the Commercial Cannabis ordinance, this proposal is consistent with the governing ordinance for cannabis growing in the Lake County General Plan and the Shoreline Communities Area Plan do not have any specific provisions for commercial cannabis, although they do contain policies related to economic development and erosion control measures.

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 purpose of this staff report is to evaluate consistency with the three documents that govern commercial cannabis cultivation in Lake County; the General Plan, the Shoreline Communities Area Plan, and the Zoning Ordinance, articles 7, 27 and 51.4.

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

Response: The applicant has successfully passed his background check with the Lake County Sheriff's Department, and is qualified to make this 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 five cannabis-related licenses; four for the outdoor cultivation site totaling 260,000 sq. ft., and a 'self-distribution' license (Type 13). The subject site is 333 acres in size, large enough to support the cultivation licenses; the applicant also qualifies for the Type 13 'Self Distribution' license.

VIII. RECOMMENDATION

Staff recommends the Planning Commission:

- A. **Adopt mitigated negative declaration (IS 19-39) for Use Permit (UP 19-31) with the following findings:**

1. 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.
2. Potential environmental impacts related to Biological Resources can be mitigated to less than significant impacts with the inclusion of mitigation measures BIO-1, BIO-2, and BIO-3.
3. Potential environmental impacts to Cultural / Geological / Tribal Resources can be mitigated to less than significant impacts with the inclusion of mitigation measures CUL-1 and CUL-2.
4. As mitigated through specific conditions of approval, this project will result in less than significant environmental impacts.
5. 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 19-31 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 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.
7. That the proposed use complies with all required standards and criteria found within Article 27 (at) of the Lake County Zoning Ordinance.

8. That the applicant is qualified to make this application.
9. That this application complies with all qualifications found in Article 27 (at) of the Lake County Zoning Ordinance.

Sample Motions:

Mitigated Negative Declaration

I move that the Planning Commission find that the **Initial Study (IS 19-39)** applied for by **Badlands LLC** on property located at **21518 Bartlett Springs Road, Lucerne**, and further described as **APN: 016-032-01** 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 **April 8, 2021**.

Major Use Permit (UP 19-31)

I move that the Planning Commission find that the **Use Permit (UP 19-31)** applied for by **Badlands LLC** on property located at **21518 Bartlett Springs Road, Lucerne**, and further described as **APN: 016-032-01** 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 **April 8, 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.*