



COUNTY OF LAKE

COMMUNITY DEVELOPMENT DEPARTMENT

Planning Division

Courthouse - 255 N. Forbes Street

Lakeport, California 95453

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Item 5
9:25 AM
May 13, 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: May 13, 2021

SUBJECT: Noble Farms / Patty Lanier **REVISED**
Minor Use Permit Application (MUP 18-28) for Commercial Cannabis
Cultivation, and Initial Study (IS 18-33). APN: 012-048-11

Supervisor District 1

ATTACHMENTS:

1. Vicinity Map
2. **Revised** Site Plans
3. Property Management Plan
4. Agency Comments
5. Proposed Conditions of Approval
6. **Revised** Initial Study IS 18-63 and Mitigated Negative Declaration
7. Public Comments

I. EXECUTIVE SUMMARY

The applicant is requesting approval of a Minor Use Permit to allow the following commercial cannabis cultivation licenses: two (2) A-Type 2 outdoor licenses and one (1) Type 13 Self Distribution license. The applicant proposes a phased development; the time-frames by phase listed below. Together these licenses allow 15,000 square feet of cultivation area and 10,000 square feet of canopy area.

The 40± acre subject site is located at 18211 Ponderosa Trail, Lower Lake, and is known as APN 012-048-11. The subject site contains a previously approved medical cannabis cultivation area, a dwelling, an on-site septic system and a domestic well, which will also be used for cannabis irrigation. The site is served by a private road (Ponderosa Trail) that connects with Noble Ranch Road. The topography of the parcel is a saddle between two broad hills; the eastern portion of the site is flat, while the western portion of the site has slopes in excess of 30% with undeveloped forest land. The 15,000 sq. ft. cultivation area is located as shown on the site plan below and slopes to the northwest toward Little High Valley. There are no wetlands or creeks on the property.

Background. In Spring, 2020, the applicant changed the scope of her project and proposed six phases of development including 10 greenhouses, however the use of structures for commercial cannabis cultivation such as greenhouses require compliance with Public Resource Code (PRC) 4290 and 4291 road standards. The road serving the applicant's property is substandard, and would have required significant improvements that were not financially feasible by the applicant.

The original initial study took into account the use of greenhouses and a drying building. The applicant has eliminated those structures, and instead seeks to use 'cold steel frame hoop houses', which are regarded as outdoor cultivation (no lighting), and the project then qualifies as an 'ag exempt' project, meaning that CalFire road standards would not apply.

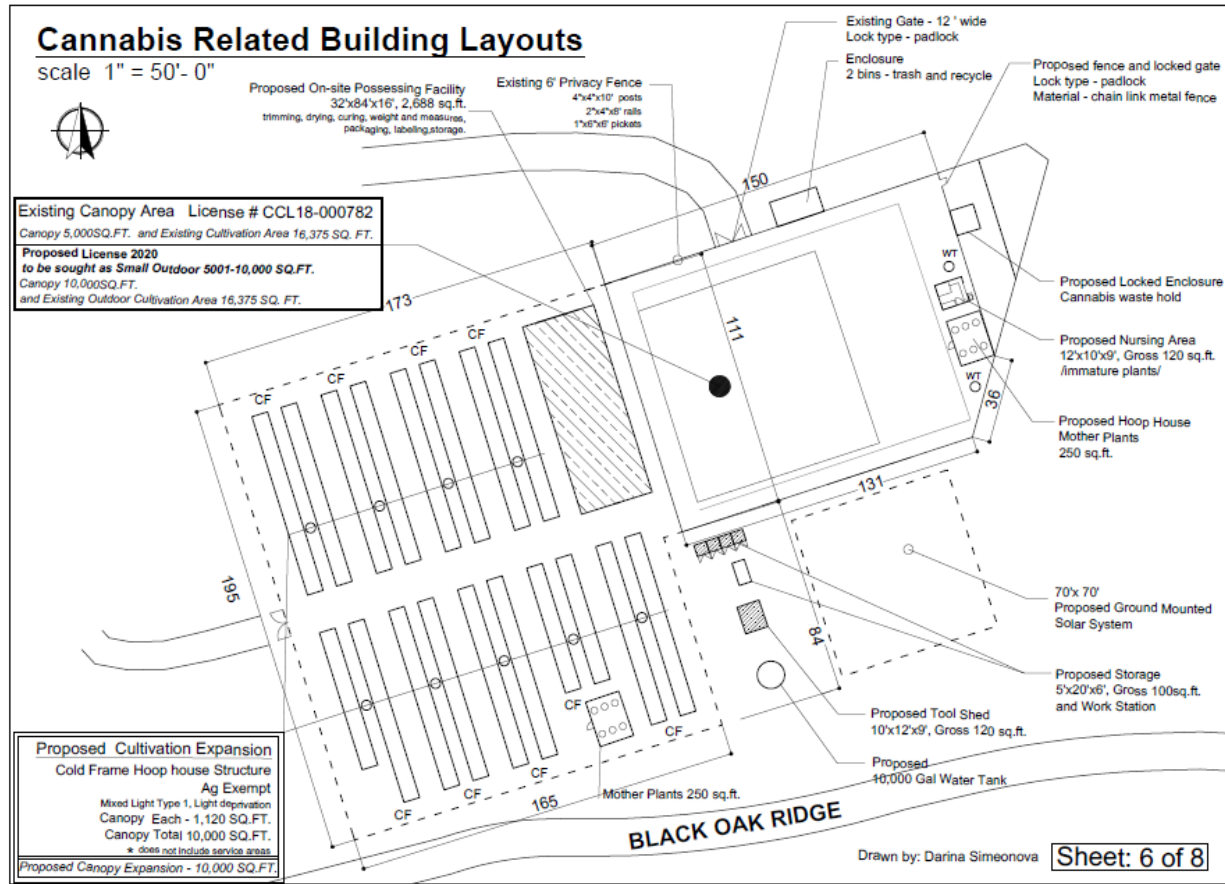
The Initial Study Addendum was sent to the State Clearinghouse on January 21, 2021, and was intended to reflect the new project details, and the subsequent mitigation measures that would be necessary to mitigate impacts with the revised project scope and details. The footprint of the cultivation area has not changed; only the structures have been removed.

The revised Plan proposes gradual increases in the size and scale of the outdoor cultivation areas as follows:

- Phase 1: 5,000 sq. ft. of canopy; estimated 6,500 sq. ft. of cultivation area. Target date: March 2020 through early activation (since expired).
- Phase 2: continue with Phase I canopy / cultivation area. Target date: March 2021
- Phase 3: continue with Phase I canopy / cultivation area. Target date: March 2022
- Phase 4: add 3,360 sq. ft. of canopy, 4,000 sq. ft. of cultivation area. Target date: March 2023
- Phase 5: add 3,360 sq. ft. of canopy; 4,000 sq. ft. of cultivation area. Target date: March 2024
- Phase 6: add 3,280 sq. ft. of canopy; 3,500 sq. ft. of cultivation area. Target date: March 2025

Construction

- Minimal site preparation will be needed based on the prior medicinal marijuana cultivation that was legally permitted on the site, and the application of the early activation permit that was issued by the County in 2020. An estimated 10 to 20 weekly construction-related trips are likely to occur. This site was granted 'Self Certification' in 2017 which allowed the cultivation of medicinal cannabis. Due to the prior self-certification, the proposed cannabis cultivation area is within an existing fenced in area, and the interior driveway is already in place.
- Staging of equipment will occur on the existing interior driveway.



The applicant has indicated that up to 3 employees will be on site during cultivation. Parking is provided to the west of the cultivation site.

The estimated water usage ranges between 75,000 and 112,500 gallons per year. This amount of proposed water usage is generally consistent with other comparably sized outdoor cannabis cultivation licenses.

CEQA analysis indicated that potential impacts to Aesthetics, Air Quality, Biological Resources and Cultural Resources could be mitigated through mitigation measures. These are identified later in this report.

Staff recommends conditional approval of **MUP 18-28**.

II. **PROJECT DESCRIPTION**

Applicant/Owner: Patricia Lanier
Location: 18211 Ponderosa Trail, Lower Lake
A.P.N.: 012-048-11
Parcel Size: 40± acres
General Plan: Agriculture
Zoning: "A", Agriculture

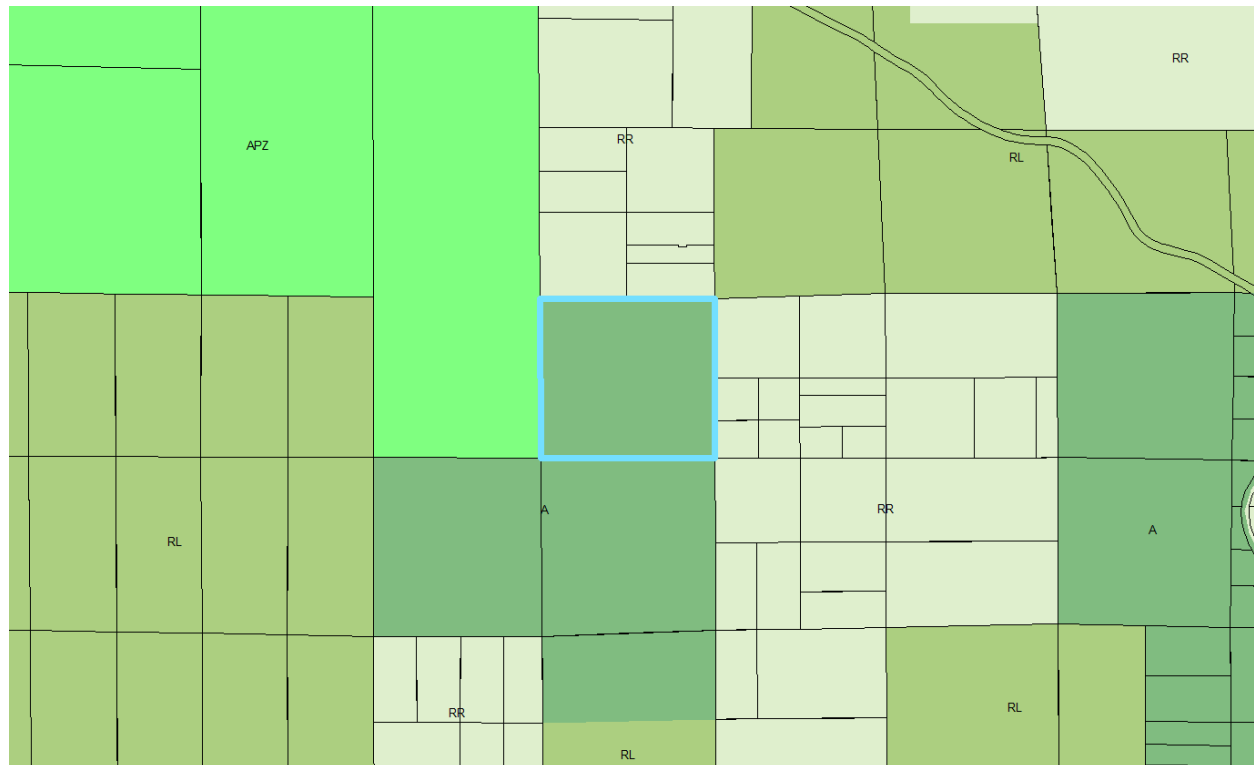
Flood Zone: None

Date Submitted: June 13, 2018 (multiple revisions followed the submittal)

III. PROJECT SETTING

Existing Uses and Improvements: The subject site contains two dwellings of undetermined size served by septic systems; a domestic well, a 2-story barn, a vegetable garden, and an existing gravel driveway.

Surrounding Uses and Zoning



North: “RR” Rural Residential, “RL” Rural Lands and “APZ” Agricultural Preserve. Parcel sizes range from approximately 2 to 150 acres. Two of the near northern lots contain dwellings.

South: “A” Agriculture and “RR” Rural Residential. Parcel sizes range from approximately 5 to 40 acres in size. The southern neighboring lot contains a permitted cannabis cultivation area and a dwelling.

East: “RR” Rural Residentially-zoned land. Parcel sizes range from approximately 5 to 10 acres in size. About half of the adjacent or nearby lots to the east contain dwellings.

West: “APZ” Agriculture Preserve. Parcel is 150 acres in size.

Topography: Varied; ranges from flat (eastern side) to over 30% (western side).

Water Supply: On-site well.

Sewage Disposal: On-Site Septic Systems

Fire Protection: CalFire (South Lake Fire Protection District)

Vegetation: Several varieties of oak trees, pine trees, grass

IV. PROJECT ANALYSIS

General Plan Conformance

The General Plan designation for the subject site is Agriculture, which includes areas with prime farmland, vineyard soils and grazing lands, along with areas characterized by steep slopes and limited services. One purpose of this land use category is to protect the County's valuable agricultural resources and to prevent development that would preclude its future use in agriculture. These lands are actively or potentially engaged in crop production, including horticulture, tree crops, row and field crops, and related activities. 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”.

Response: 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.

Lower Lake Area Plan Conformance

The subject site is within the Lower Lake Area Plan’s boundary. The Plan contains several policies that are subject to consistency review as follows:

- Policy 5.1b-1: A high priority should be given to providing service and employment opportunities locally in the Lower Lake area in order to boost economic development and reduce travel distances.

Response: as described above, the proposed project would create diversity within the local economy and create future employment opportunities (the applicant would have up to 3 employees).

Zoning Ordinance Conformance

Article 5 – Agriculture Zoning District. Purpose: To protect the County’s agricultural soils, provide areas suitable for agriculture, and prevent development that would preclude their future use in agriculture.

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.

The cultivation of commercial cannabis is permitted within Agriculture zoning districts upon issuance of a use permit, pursuant to Section 27.11 (Table B) of the Lake County Zoning Ordinance. Type A-Type 2 license allows up to 10,000 sq. ft. of canopy per license and requires 20 acres. The project is proposing 2 A-Type 2 licenses and ultimately 15,000 sq. ft. of outdoor cultivation area.



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 for two A-Type 2B cannabis licenses): *Complies; the site is 40 acres in size.*

- Setback from Property Line (100 feet): *Complies, according to the applicants' site plan, the proposed cannabis site is approximately 330 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 sq. ft.): *Complies, the maximum canopy area is approximately 10,000 sq. ft.*
- Existing Neighboring Agricultural Uses: *There are no established agricultural uses within 1000 feet of the proposed outdoor commercial cannabis cultivation area.*

General Requirements. *The applicant meets all of the General Requirements outlined in Section (at) of the 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 operations 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 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. An Initial Study and Mitigated Negative Declaration (IS 18-33 – Attachment 6) was prepared and circulated for public review in compliance with CEQA guidelines section from March 12, 2020 to April 13, 2020. Following the initial Planning Commission hearing, a second 'addendum' to the original Initial Study was prepared and sent to the State Clearinghouse on January 21, 2021 with a 35 day review period.

Three comments were received during the original public review period from a neighbor who objected to the use, and two comments were received from individuals in support of the proposed use. Please see Attachment 7.

The Initial Study found that the project could cause potentially significant impacts to Aesthetics, Air Quality, Biological Resources, and Cultural Resources/Tribal Cultural Resources. However, with the incorporation of the mitigation measures below, all impacts can be reduced to a less than significant level.

Air Quality

- AQ-1: Prior to cultivation, the applicant shall submit an Odor Control Plan to the Community Development Department for review and approval, or review and revision.
- 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.

Biological Resources

- BIO-1: If additional land clearing is performed in the future, a pre-construction special-status species survey is required prior to new work occurring.
- BIO-2: If tree felling is performed in the future, a pre-construction nesting bird survey is required.
- BIO-3: If development of a project will result in the removal of commercial tree species, one of the following permits is needed: Less than 3 Acre Conversion Exemption; Christmas Tree; Dead, Dying or Diseased; Fuelwood or Split Products Exemption; a Public Agency, Public and Private Utility Right of Way Exemption; a Notice of Exemption from Timberland Conversion Permit for Subdivision; or an Application for Timberland Conversion Permit.

- **BIO-4:** If tree felling is performed in the future, a pre-construction nesting bird survey shall be conducted prior to any tree removal.

Cultural Resources and Tribal Cultural 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 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.

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.

Response: The immediate area contains rural and semi-rural land with several homes located at least 600 feet away from the cultivation site. As previously discussed, the potential impact resulting from this proposal are Air Quality, Cultural/Tribal Resources and Biological Resources. All potentially significant impacts 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.

Response: The proposed cultivation area is 15,000 sq. ft.; this represents less than 1% of the ±40 acre site. The cultivation areas are all located in a centrally located portion of the site. The cultivation area is located in the center of the site, and the site has significant tree coverage and slope to further mitigate any potential impacts associated with the cultivation area.

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

Response: The site is served by Noble Ranch Road, a narrow, unpaved private road that connects with Ponderosa Trail, also a narrow unpaved private road. 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 Noble Ranch Road or Ponderosa Trail.

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 Public Works, Special Districts, Environmental Health, and PG&E, and to all area Tribes. Relevant comments are attached as 'Attachment 3'. No adverse comments were received, and the applicant has coordinated with the nearest culturally affiliated tribe, Middletown Rancheria, to make sure that a Tribal representative was present during any new site disturbance.

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

Response: Since commercial cannabis cultivation is named as a permitted use in the A Agriculture zoning district within the Commercial Cannabis ordinance, this proposal is consistent with the governing ordinance for cannabis cultivation in Lake County. The General Plan and Lower Lake 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.

Response: 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.

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: This proposal complies with all development standards described in Section 1.i.

- (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 qualified to make the application for commercial cannabis cultivation.

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

Response: the application meets all applicable standards and criteria within Article 27(at) and 50.4, as well as the requirements found in section 1.ii.(i).

VIII. RECOMMENDATION

Staff recommends the Planning Commission:

A. Adopt Mitigated Negative Declaration **Addendum (IS 18-33) for Minor Use Permit MUP 18-28 with the following findings:**

1. Potential environmental impacts related to air quality have been mitigated to less than significant levels by 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 have been mitigated to less than significant levels by mitigation measures BIO-1, BIO-2, and BIO-3.
 3. Potential environmental impacts related to cultural / tribal cultural resources have been mitigated to less than significant levels by mitigation measures CUL-1 and CUL-2.
1. All potential impacts have been reduced to less than significant levels with incorporation of mitigation measures and specific conditions of approval.
 2. 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 REVISED Minor Use Permit MUP 18-28 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, Lower Lake Area Plan and Lake County Zoning Ordinance.
6. No violation of Chapter 5, 17, 21, 23 or 26 of the Lake County Code currently exists on this property.
7. The proposed use complies with all development standards described in Section 1.i
8. The applicant is qualified to make the application described in Section 1.ii.(g)
9. The application complies with the qualifications for a permit described in Section 1.ii.(i)

Sample Motions:

Mitigated Negative Declaration Addendum (IS 18-33)

I move that the Planning Commission find that that the Initial Study Addendum (IS 18-33) prepared for the project proposed by Patricia Lanier on a property located at 18211 Ponderosa Trail, Lower Lake, further described as APN: 012-048-11 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 May 13, 2021.

Minor Use Permit (MUP 18-28)

I move that the Planning Commission find that the Minor Use Permit (MUP 18-28) applied for by Patricia Lanier on a property located at 18211 Ponderosa Trail, Lower Lake, further described as APN: 012-048-11 does meet the requirements of Section 50.4 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 May 13, 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.