



COUNTY OF LAKE

COMMUNITY DEVELOPMENT DEPARTMENT

Planning Division

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STAFF REPORT

TO: Planning Commission

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

DATE: May 27, 2021

RE: **Kindness Farms / Tiffany Devitt; Major Use Permit (UP 19-13) and Initial Study (IS 19-25)**

Supervisor District 4

ATTACHMENTS:

1. Vicinity Map
2. Site Plans
3. Property Management Plan
4. Agency Comments
5. Proposed Conditions of Approval
6. Initial Study IS 19-25
7. Public Comments

I. EXECUTIVE SUMMARY

Project Overview

The applicant is requesting a major use permit for **ten (10) A-Type 3 (medium outdoor) cultivation area** consisting of up to 650,000 square feet (sq. ft.) of cultivation area, *however given the location of the site within the mapped Farmland Protection Area, this license will change to ten (10) A-Type 3B licenses within two years of use permit approval, and the allowable canopy area will be reduced to 22,000 sq. ft. per license following the license change;* and an **A-Type 13 Self Distribution license**. The property is located at 2800 Manning Road, Lakeport, and is APN: 008-009-03.

Project History

This application was originally submitted by a different cultivator on May 1, 2020; however the original cultivator did not pass live scan, and the present applicant took over the application in Fall 2020.

In December 2020, the applicant applied for a variance to allow outdoor cultivation to occur on an area that is mapped as 'high value farmland'. On May 25, 2021, the Board of

Supervisors allowed for limited duration outdoor cultivation that was required to transition to greenhouse cultivation within several years of use permit approval if the application was determined to be complete on or before December 15, 2020. This application, minus the variance burden of proof, was complete before December 15, 2020. The variance is no longer required based on Ord. no. 3103, the ‘transition ordinance for outdoor cannabis in high value farmland (Farmland Protection Zoned-mapped land).

Staff is recommending **Approval with Conditions** of UP 19-13.

II. PROJECT DESCRIPTION

Applicant: Tiffany Devitt
Owner: Mary Henderson
Location: 2800 Manning Road, Lakeport, CA
A.P.N.: 008-009-03
Parcel Size: 232 acres
General Plan: Agriculture
Zoning: “A – WW – FF - W”; Agriculture – Waterway – Floodway Fringe – Wetland
Flood Zone: AO
Canopy Area: estimated to be 435,600 sq. ft.
Mapped Farmland Protection Zone: Yes

III. PROJECT SETTING

Existing Uses and Improvements: The parcel is 232+ acres in size, well over the minimum required 200 acre size for (10) A-Type 3 (or A-Type 3B) licenses. The property contains a house, a well and septic system, and several sheds and out buildings exist on the property. There is an existing on-site well and several 5,000 gallon water tanks for water storage. The entire property is located within a flood zone and is within the mapped Farmland Protection Area. The applicant was deemed complete prior to December 15, 2020.

Surrounding Uses and Zoning

North, South, and West: “A” Agriculture. Parcel sizes range from approximately 3.5 to over 100 acres in size. About half of the neighboring properties contain dwellings, and there is significant agricultural activity in this general vicinity.

East: Clear Lake



AERIAL PHOTO OF SITE AND VICINITY

Topography: Relatively flat; less than 10%.

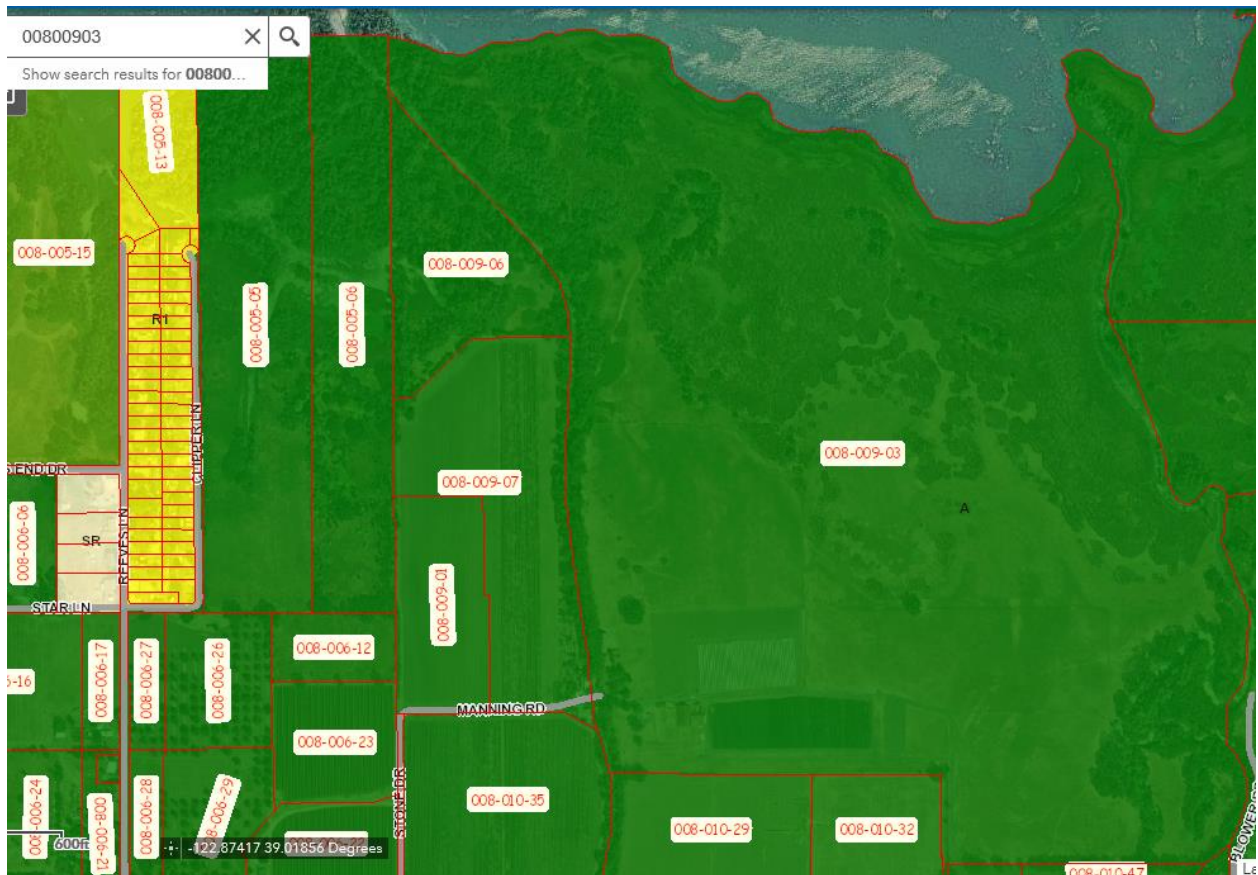
Soils: The cultivation area contains type **125 - Cole Variant clay loam, calcareous substratum**. This very deep, moderately well drained soil is on flood plains. It formed in alluvium derived from mixed rock sources.

Water Supply: Existing well

Sewage Disposal: Existing On-Site Septic

Fire Protection: Lakeport Fire Protection District

Vegetation: Crops and some introduced vegetation



Zoning of Site and Surrounding Lots

IV. PROJECT ANALYSIS

General Plan Conformance

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

Chapter 3 – Land Use

Goal LU-2: is to clearly differentiate between areas within Lake County appropriate for higher intensity urban services and land uses from areas where rural or resource use should be emphasized.

- Policy LU-2.4 Agricultural/Residential Buffer. The County shall require adequate setbacks between agricultural and non-agricultural uses. Setbacks shall vary depending on type of operation and chemicals used for spraying.

Response: In reference to the Lake County Zoning Ordinance Article 27, Section 27.11 (at), the county requires a minimum 100 foot setback from all property lines of the subject property, and a minimum of 200 foot setback from any off-site residences. The nearest off-site residence is located approximately 580 feet west of the cultivation site.

The cultivation site is located about 220 feet from neighboring traditional agricultural uses to the south; the southern adjacent lot also has a pending use permit for outdoor cannabis cultivation (file no. UP 19-15, “Legendary Farms”).

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 by providing employment to up to five persons according to the applicant’s application, and by providing cannabis products to local retailers who will also have employees. Persons directly and indirectly employed by this cultivator will spend money locally on food, gas, rent and other commodities. The number of employees can increase or decrease depending on the stage of the cultivation season.*

Chapter 9 - Open Space

- **Goal OSC-1 Biological Resources.** To preserve and protect environmentally sensitive significant habitats, enhance biodiversity, and promote healthy ecosystems throughout the County.

Response: *The applicant has had a Biological Study done for this property. The Biological Study submitted did not identify any specific threatened or endangered species within the study area, however the Study provided several mitigation measures to protect any species that might be present but were not observed. Those measures are within the Biological Mitigation Measures as ‘BIO-1’, ‘BIO-2’, ‘BIO-3’ and ‘BIO-4’, and are added in this staff report in the ‘Environmental Evaluation’ section.*

Lakeport Area Plan Conformance

The subject site is within the Lakeport Area Plan’s boundary. The Plan does not contain policies that apply to commercial cannabis cultivation, however there are policies that encourage economic development within the Plan’s boundaries. This applicant would have up to 5 employees during peak harvest times who would spend their earnings locally, which will help stimulate the local economy.

Zoning Ordinance Conformance

Article 5 – Agriculture (A). To protect the County’s agricultural soils, provide areas suitable for agriculture, and prevent development that would preclude their future use in agriculture. The following regulations shall apply in all “A” districts.

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 per license): *Complies; the subject site is 232+ acres in size. The applicant has applied for (10) A-Type 3 (medium outdoor) cultivation license which requires a 200 acre property; however given the location of the site within the mapped Farmland Protection Area, this license will change to an A-Type 3B license within three years of use permit approval. 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 about 370 feet from the nearest property line.*
- Setback from Off-Site Residence (200 feet minimum): *Complies, the nearest neighboring residential dwelling is located about 580 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 estimated to be 435,600 sq. ft. in size and will consist of ten A-Type 3 licenses. This area will decrease by half once the transition to greenhouses is completed in the required time-frame.*
- Proximity to nearby Traditional Agricultural Uses: *Less than 500 feet.*
- Located in a mapped Farmland Protection Zone: *Yes*
- Located in a Flood Zone: *Yes; the entire site is in an AO flood plain.*

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 19-27* (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 either within the Initial Study or due to recent Cannabis ordinance changes by the Board of Supervisors:

Aesthetics (not stated within the Initial Study but required because of recent changes to the commercial cannabis regulations through Ordinance 3103).

- **AES-1:** Prior to greenhouse use, the applicant shall equip each greenhouse with blackout screening so that lighting installed inside of greenhouses cannot be seen from a public road or a neighboring lot.
- **AES-2:** Prior to construction of the greenhouses, the applicant shall provide a vegetation screening plan to screen the greenhouses from public to the Lake County Community Development Department for approval. The vegetation screening shall consist of woody vegetation or trees that grow to no less than 20 feet tall. The species of woody vegetation or trees to be used may be chosen by the applicant but should be suited to localized soil and site conditions. Native plant species are encouraged as are plantings which will benefit local fauna. Plantings must be perennial and hardy in the local climate zone as specified in scientific literature or garden catalogs. The plan shall detail the woody vegetation or tree type, quantity, and placement as well as a maintenance and monitoring program to ensure the screen will be maintained through the life of the project.

Air Quality

- **AQ-1:** Prior to obtaining the necessary permits and/or approvals for any phase, applicant shall contact the Lake County Air Quality Management District and obtain an Authority to Construct (A/C) Permit for all operations and for any 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 emission Inventory.

- AQ-4: 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-5: 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-6: 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 project activities occur during the breeding season (March 1 through August 31), a qualified biologist shall conduct a breeding survey no more than 14 days prior to project activities to determine if any birds are nesting on the ground either on or adjacent to the study area. If nests are discovered, the biologist shall establish a buffer around the nests that shall remain an undisturbed area until the end of the nesting season.
- BIO-2: If initial ground disturbance occurs during the bat maternity roosting season (April 1 through September 1), a qualified biologist shall conduct a bat roost assessment of trees within 100 feet of the proposed construction. If bat maternity roosts are present, the biologist shall establish an appropriate exclusion zone around the maternity roost.
- BIO-3: All workers on crew shall be trained by a qualified biologist as to the sensitivity of the Foothill Yellow-Legged Frog, California Giant Salamander, and Red-Bellied Newt that can potentially be found on the property. No construction activities shall occur during rain events, defined as ¼ inch of rain falling within a 72-hour period. Construction activities shall resume 72 hours after the end of the rain event. All work areas shall be checked daily prior to the start of work to ensure that no special-status species are within the proposed work zone.

Cultural / Geologic (prehistoric) / 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 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 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 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.

Hydrology and Water Quality

- **HYD-1:** The applicant shall remove all pots from the property no later than November 1 of each year, and will return the pots no earlier than April 1 of each year for the duration of the project.

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 7:00PM 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 actively used agricultural land with homes that are located at least 580 feet away from the nearest cultivation site. The potential CEQA-related impacts resulting from this proposal are Aesthetics, Air Quality Biological Resources, Cultural / Geologic (prehistoric) / Tribal Resources, Hydrology and Water Quality, and Noise. 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 435,600 sq. ft. of outdoor canopy through ten (10) A-Type 3 licenses, however recent changes via Ordinance No. 3103 now require that any commercial cannabis cultivation activity that is in a mapped Farmland Protection Area such as this site be required to cultivate in greenhouses. Verbiage was adopted that such as this one allows a three-year transition period for any application that had been deemed complete before December 15, 2020, including this application, which is a candidate for this three year transition from outdoor to greenhouse cultivation. The Lake County Cannabis Ordinance allows Type 3 cultivation licenses on Agriculturally-zoned property when it meets the size and locational criteria and standards. The applicant seeks eleven licenses, ten of which requires a 200 acre minimum sized property. The subject site is over 232 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 Manning Road, a designated unpaved 20 foot wide County road at this location. The road is adequate to safely accommodate the proposed use; there are no known capacity issues on Manning Road, and the proposed project will generate between 20 and 40 trips per day, roughly the equivalent of two to four single family dwellings according to the International Transportation Engineer's manual, 10th edition.

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, Lakeport Fire District, Public Works, Special Districts, Environmental Health, and all area Tribes. Relevant comments are attached as 'Attachment 3'. No adverse comments pertaining to adequacy of public services 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 Agriculture 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 Lakeport Area Plan do not have any specific provisions for commercial cannabis, but do have provisions for economic development.

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: This report identifies the development standards that apply to cannabis cultivation in Lake County. The applicant is fully compliant with the development standards provided the applicant fully transitions to greenhouses within the two year window offered within Ordinance No. 3103.

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

Response: The applicant and her 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)

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 canopy totaling 435,600 sq. ft., and a 'self-distribution' license (Type 13). The subject site is 232 acres in size, large enough to support the 10 cultivation licenses applied for; the applicant also qualifies for the Type 13 'Self Distribution' license. The A-Type 3 (medium outdoor) license will convert to an A-Type 3B medium mixed light license within two years per Ordinance No. 3103.

VIII. RECOMMENDATION

Staff recommends the Planning Commission:

A. Adopt mitigated negative declaration (IS 19-27) for Use Permit (UP 19-15) with the following findings:

1. Potential environmental impacts related to aesthetics can be mitigated to less than significant levels with the inclusion of mitigation measure 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, and AQ-6.

3. 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.
4. Potential environmental impacts related to Cultural / Geologic (prehistoric) / Tribal resources can be mitigated to less than significant levels with the inclusion of mitigation measures CUL-1 and CUL-2.
5. Potential environmental impacts related to Hydrology and Water Quality can be mitigated to 'less than significant' levels with the inclusion of mitigation measure HYD-1.
6. Potential environmental 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.
7. As mitigated through specific conditions of approval, this project will result in less than significant environmental impacts.
8. 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 19-15 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 development standards described in Section 1.i
8. That the applicant is qualified to make the application described in Section 1.ii.(g)
9. That the application complies with the qualifications for a permit described in Section 1.ii.(i)

Sample Motions:

Mitigated Negative Declaration

I move that the Planning Commission find that the **Initial Study (IS 19-27)** applied for by **Tiffany Devitt** on property located at **2800 Manning Road, Lakeport**, and further described as **APN: 008-009-03** 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 27, 2021**.

Major Use Permit (UP 19-15)

I move that the Planning Commission find that the **Use Permit (UP 19-13)** applied for by **Tiffany Devitt** on property located at **2800 Manning Road, Lakeport**, and further described as **APN: 008-009-03** does meet the requirements of Section 51.4 and Section 27(at) 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 **May 27, 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's decision, 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.*