



COUNTY OF LAKE

COMMUNITY DEVELOPMENT DEPARTMENT

Planning Division

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June 10, 2021

STAFF REPORT

TO: Planning Commission

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

DATE: June 10, 2021

RE: **Appeal AA-21-02 of two File Closures from the same applicant for Two Commercial Cannabis Cultivation Use Permits.**

Applicant: Jonathan Boies / Diamond B Ranch

Files No.: Use Permits (UP 18-36 and MUP 18-37) and Initial Studies for each application

Location: 13046 and 13048 S. Highway 29, Lower Lake

APNs: 012-056-48 and 49

Supervisor District 1

- ATTACHMENTS:**
1. Vicinity Maps
 2. Incomplete letter from County dated 2-22-2020
 3. Letter of File Closure from Lake County to David Boies and Mitch Hawkins dated May 7, 2021.
 4. Appeal Application and Support Materials submitted by the Appellant
 5. Notarized Letter from David Boies authorizing Mitch Hawkins to Act in His Behalf as Applicant, dated January 20, 2021.

I. SUMMARY

The applicant had submitted two applications on July 24, 2018. Both applications were determined to be incomplete, and sat idle since the day of submittal. The County sent a letter to the property owner and an apparent new contact for the project, Mitch Hawkins, on May 7, 2021 indicating that the files were closed due to inactivity, and that the file closure could be appealed. This appeal followed.

The Planning Commission is being asked to determine whether these two applications should be closed and new applications submitted, or whether these two applications can be revived (restarted) with a new applicant.

II. BACKGROUND

On July 24, 2018, the applicant applied for two use permits on adjacent lots. Permits UP 18-36 and MUP 18-37 were taken in as a major and a minor use permit, even though what they were requesting on each lot was identical; one (1) **M-Type 3 (medium outdoor) cultivation area and one (1) M-Type 1C ‘specialty cottage’ use permit for each of the two properties.** The applicant also applied for a **California Environmental Quality Act review (CEQA)** for each lot.

On September 6, 2018, the County staff sent an ‘incomplete application’ letter to the Applicant referencing missing items in both submitted applications. The missing items were a list of employees and a Water Availability Analysis. Staff received no reply.

On February 25, 2020, staff sent a 2nd ‘incomplete letter’ to the applicant reiterating the same missing information that was required with the first letter. Staff again received no reply.

On January 20, 2021, staff received a notarized letter from David Boies, father of the original applicant, indicating that his son, applicant Jonathan Boies, had passed away on February 19, 2019, and requesting County permission to continue processing the two cannabis permits referenced in this action. The letter indicated that Mitch Hawkins was authorized to act in behalf of Mr. Boies.

On February 19, 2021, staff received an email from Vanessa Bergmark, realtor, indicating that Mitch Hawkins was the local contact for the two cannabis files.

On March 31, 2021, staff received an email from Mitch Hawkins that contained the Incomplete application letter dated February 25, 2020.

On May 7, 2021, the County sent a ‘file closure’ letter to the applicant David Boies and Mitch Hawkins, indicating that they could appeal the decision to close the file if an appeal was filed within seven (7) days of the May 7, 2021 letter. Attachment 4.

On May 10, 2021, this appeal was filed with the County within the seven day appeal period. Attachment 5.

Staff is recommending **denial of appeal no. AA 21-01 and closure of file no. UP 19-12 and IS 19-24.**

III. ORIGINAL PROJECT DESCRIPTION

<u>Applicant:</u>	Diamond 1 and 2
<u>Owner:</u>	David Boies
<u>Locations:</u>	13046 and 13048 S. Highway 29, Lower Lake, CA
<u>A.P.N.s:</u>	012-056-48 and 49
<u>Parcel Size:</u>	568+ acres
<u>General Plan:</u>	Agriculture, Rural Lands

Zoning: Split; “RL-A-FF-WW-SC” – Rural Lands - Waterway

Flood Zone: AO (portion); X

IV. PROJECT SETTING

Existing Uses and Improvements: The two parcels combined are about 568+ acres in size. The smaller lot (48) contains a dwelling, a barn, several storage buildings, a well, a pond, and a septic system. The larger lot is undeveloped and contains scattered oak trees and native grass / shrubs.

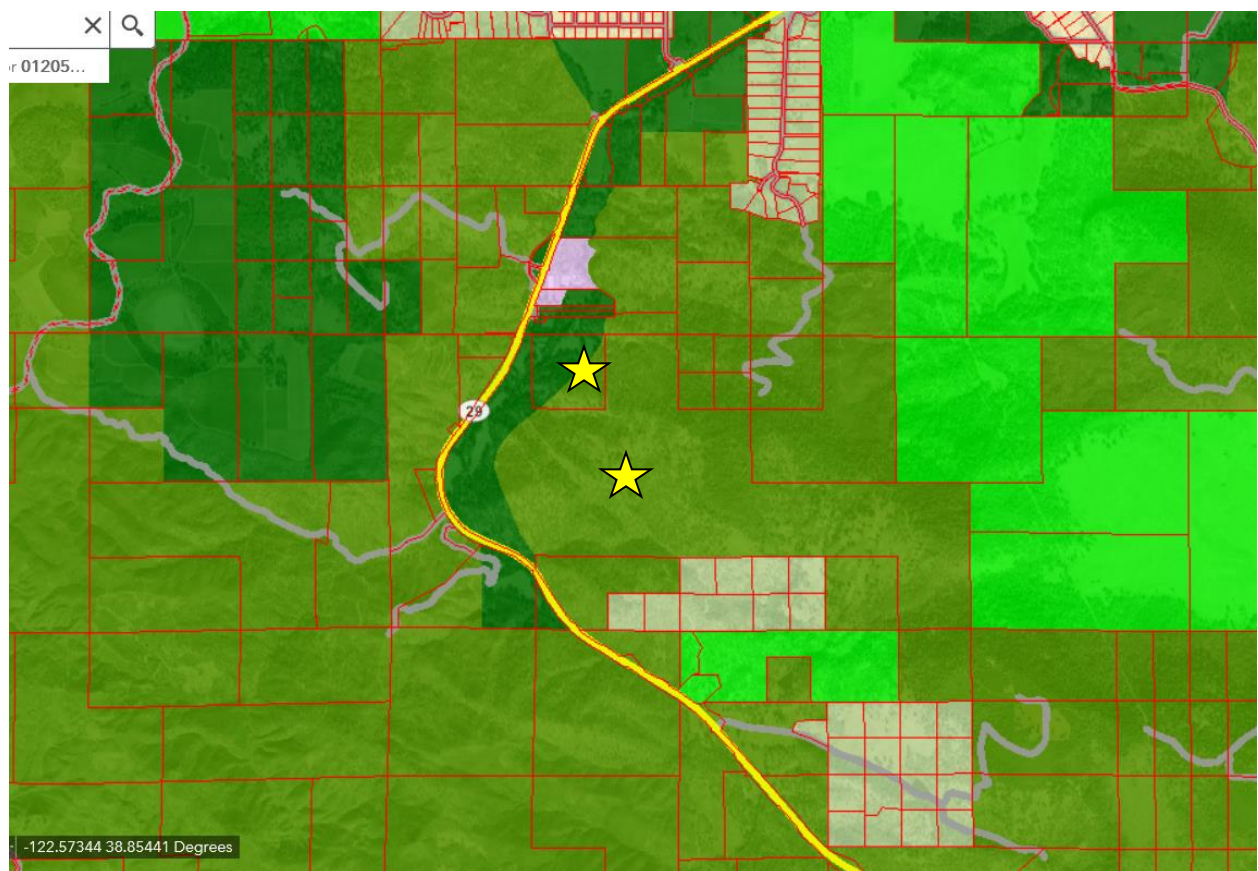
Surrounding Uses and Zoning

North: Developed land zoned A, Agriculture; sizes ranging from 2 to 10 acres

South: Undeveloped RL Rural Lands-zoned lot and 10 acre RR Rural Residentially-zoned lots developed with houses.

East: Undeveloped land zoned RL, Rural Lands and APZ, Ag Preserve.

West: Highway 29 and developed land zoned RL, Rural Lands 5+ acre lots.



ZONING MAP OF SITE AND VICINITY

<u>Topography:</u>	Steep, mostly over 30%.
<u>Water Supply:</u>	Existing well
<u>Sewage Disposal:</u>	Existing On-Site Septic
<u>Fire Protection:</u>	South Lake Fire Protection District (CalFire)
<u>Vegetation:</u>	Several varieties of oak trees, grass and some manzanita brush

Appeal Analysis

1. Article 58, APPEALS.

58.1 Appeals: Appeals may be taken from a decision of the Planning Director, Planning Department staff, Enforcement Officers, Development Review Committee, Zoning Administrator, or Planning Commission made pursuant to the enforcement or administration of the Zoning Ordinance.

58.11 Application: An application for an administrative appeal shall be made as follows:

(a) Persons eligible: The following persons shall be eligible to file an administrative appeal:

1. A person having an interest in the property that is subject of the decision being appealed.
2. Any interested person not satisfied with the decision of the Review Authority.

Response: *The original applications were submitted on July 24, 2018. Both applications were determined to be 'incomplete' as of September 6, 2018, and an 'incomplete application' letter was sent to the applicant, Jonathan Boies on September 6, 2018.*

A second letter was sent to the applicant on February 25, 2020. No response resulted from either letter and both files were left as 'incomplete' projects.

On January 5, 2021, the County received an email containing a notarized letter from the property owner David Boies, who lives out of state, and which authorized Mitch Hawkins to act as applicant in behalf of property owner Boies.

The appeal was filed by Mitch Hawkins, acting in behalf of the property owner Boies. The appeal was timely filed, and it appears that Mr. Hawkins has the authority to act in behalf of the property owner in this appeal.

(b) Timeliness: An administrative appeal shall be filed within seven (7) calendar days of the date on which the decision being appealed was rendered.

Response: *The appeal was filed on May 10, 2021, three days after the Notice of Decision (to close the file) was mailed and emailed to the Appellant.*

(c) Form, filing, and fee: An appeal of an administrative decision shall be made on the prescribed form and shall be filed with the Planning Department, accompanied by the applicable fee in the amount to be set by Resolution of the Board of Supervisors.

Response: *The appeal was submitted on the appropriate form with the appropriate fee for an Administrative Appeal.*

(d) Required documents: An appeal shall be accompanied by a written statement setting forth the grounds upon which the appellant asserts there was an error or abuse of discretion, or how the decision of the Planning Director, Planning Department, Enforcement Officer, Design Review Committee or Development Review Committee is inconsistent with the purposes of this Chapter.

Response: *The appeal was NOT accompanied by a written statement setting forth the grounds upon which the appellant asserts that there was an error or abuse of discretion, or how the Planning Director's decision is inconsistent with the purposes of this Chapter. The Community Development Department received a letter from Jeff Lucas, Community Development Services, stating that his agency was assisting Mr. Hawkins with the appeal, and that the only 'missing' item appeared to be a list of employees, which Mr. Hawkins submitted with the appeal application.*

2. Article 50.4 and 51.4, Minor and Major Use Permits, Findings Required for Approval

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 applicant / appellant has violated various regulations during the course of early activation, including cultivating inside the required 100 foot setback from top of bank of Cache Creek, a significant waterway. The specific details of violations are identified under '5' below. The use of pesticides and fertilizers close to waterways is potentially dangerous to the riparian ecosystem. **A finding cannot be made that compliance with subsection '1' has been met.***

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 affected portion of the site is about 99 acres in size; large enough for commercial cannabis cultivation activities to occur. However, the topography of the site is steep; mostly over 30%, including portions of the 'lower' cultivation areas shown on the revised site plans. The applicant / appellant moved the cultivation area from the site plan submitted to a location that is very close to Cache Creek (less than 100 feet away from top of bank). The Code Enforcement Manager believes that a portion of the cultivation activities were occurring on property not under consideration within UP 19-12, and without written consent of the neighboring property owner.*

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

Response: *The road leading into the site is more than 2 miles from the public portion of Dam Road. Three unrated culverts must be crossed to access the property. This portion of Dam Road is a shared dirt driveway that does not meet CalFire (PRC) 4290 and 4291 road standards.*

The applicant was made aware of the deficiencies of this road in early 2020, and scaled the project down from a full one-acre outdoor cultivation site with structures, to a small outdoor site with no structures, enabling the Fire Marshal to declare the site to be 'ag exempt', since no building permits were needed nor proposed.

The interior shared road however is not adequate for any commercial activity regardless of whether the road is 'ag exempt'. A finding cannot be made that this subsection can be met.

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: *The subject site had burned during the Clayton Fire, including a dwelling that had existed on the hill top overlooking the cultivation site. CalFire and South Lake Fire District did not respond to requests for comment on this project. The County Fire Marshal determined that the road leading to the cultivation site was not PRC 4290 / 4291 compliant, and could not made to be compliant due to the distance of the site from the nearest public road.*

SLOPE MAP (GREEN = GREATER THAN 30% SLOPE)

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: *There are several aspects of this cultivation activity that are problematic. The road is grossly substandard. Actively used culverts that are not rated must be crossed to gain access to the site. The applicant has cultivated in violation of the terms*

of the issued Early Activation in terms of location, and people living in RVs on the property, also contrary to the Lake County Zoning Ordinance. .

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: *There are no violations on the subject site.*

V. 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 applicable development standards are primarily found in Article 27, subsection (at), which lists the requirements and regulations for commercial cannabis cultivation in Lake County. The project must be compliant with the General Plan, the applicable Area Plan (in this case the Lower Lake Area Plan), and all applicable sections of the Lake County Zoning Ordinance.*

This project is not compliant with:

- *Zoning Ordinance, Article 27(at)(i) – requires annual confirmation of ownership verification and support.*
- *Zoning Ordinance, Sections 50.4 and 51.4, subsections 1, 2, 5 and 6.*
- *Zoning Ordinance, Article 27, subsection (at), ‘Required Findings for Approval’, sub 1, 2 and 3.*

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

Response: *There is no evidence that the new applicant has passed a ‘live scan’ background check through the Lake County Sheriff’s Department.*

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

Response: *Both applications had sat idle for two years. The new applicant now wants to resume the review of the applications under his name. The property owner has consented to this change of applicants. The only unresolved issue is whether an abandoned application can be revived.*

VI. ENVIRONMENTAL REVIEW

The California Environmental Quality Act (CEQA) requires agencies to evaluate the environmental implications of land use actions. *No Initial Study was drafted due to the incomplete status of both applications and due to the lack of an applicant.*

VII. RECOMMENDATION

Staff recommends the Planning Commission::

A. **Deny mitigated negative declaration (IS 19-24) for Use Permit (UP 19-08) with the following findings:**

1. Actual and potential environmental impacts related to biological resources, hydrology and water quality have occurred on the site between January 2020 and February 2021.
2. No CEQA (environmental) evaluation has occurred due to ongoing code violations on this site.

B. **Deny Use Permit UP 19-12 with the following findings:**

1. That the establishment, maintenance, or operation of the use applied for *has been detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use.*
2. The site *is not 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 inadequate to safely accommodate the proposed use.*
4. *That there are not adequate fire protection services to serve the project.*
5. *That the project is not in conformance with the applicable provisions and policies of this Code, the General Plan and any approved zoning or land use plan.*
6. *That violations of Chapters 5 and 21 of the Lake County Code have been documented on the site between January 2020 and February 2021.*
7. *The proposed use does not comply with all development standards described in Section 1.i*
8. *The applicant may not be qualified to make the application described in Section 1.ii.(g). The County requested a current letter from the property owner authorizing the applicant to continue to represent the property and has not yet received this authorization.*
9. *The application does not comply with the qualifications for a permit described in Section 1.ii.(i). There are documented violations on the site, and it is unclear whether these violations have been resolved. Ownership consent for the applicant / appellant to use the property is not established and is in doubt.*

Sample Motions:

Mitigated Negative Declaration

I move that the Planning Commission find that the **Initial Study (IS 19-24)** applied for by **Pura Vida** on property located at **18086 Dam Road, Clearlake**, and further described as **APN: 010-013-29** has not mitigated actual or potential environmental impacts for the reasons listed in the staff report dated **June 10, 2021**.

Use Permit (UP 19-12)

I move that the Planning Commission find that the **Use Permit (UP 19-12)** applied for by **Pura Vida** on property located at **18086 Dam Road, Clearlake**, and further described as **APN: 010-013-29** does not meet the requirements of Section 50.4 and 51.4 of the Lake County Zoning Ordinance and the Major Use Permit be denied subject to the findings listed in the staff report dated **June 10, 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 Planning Commission's final determination.*