



COUNTY OF LAKE

COMMUNITY DEVELOPMENT DEPARTMENT

Planning Division

Courthouse - 255 N. Forbes Street

Lakeport, California 95453

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Continued to June 24, 2021

STAFF REPORT - **ADDENDUM**

TO: Planning Commission

FROM: Prepared by: Eric Porter, Associate Planner

DATE: June 24, 2021 (original hearing 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 2-25-2020
 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 and without having to pay the fee for a new application.

II. **BACKGROUND**

On July 24, 2018, the applicant applied for two use permits on two adjacent lots. Permits UP 18-36 and MUP 18-37 were taken in as a major and a minor use permit; 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.

The property can accommodate many more licenses than what was submitted. This appeal is limited to what was submitted to the County.

Staff is recommending **denial of appeal no. AA 21-01 without prejudice** to allow the new applicant to re-apply for both applications.

III. **ORIGINAL PROJECT DESCRIPTION**

<u>Applicant:</u>	Diamond 1 and 2 / Jonathan Boies
<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

Parcel Size: 568+ acres
General Plan: 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.

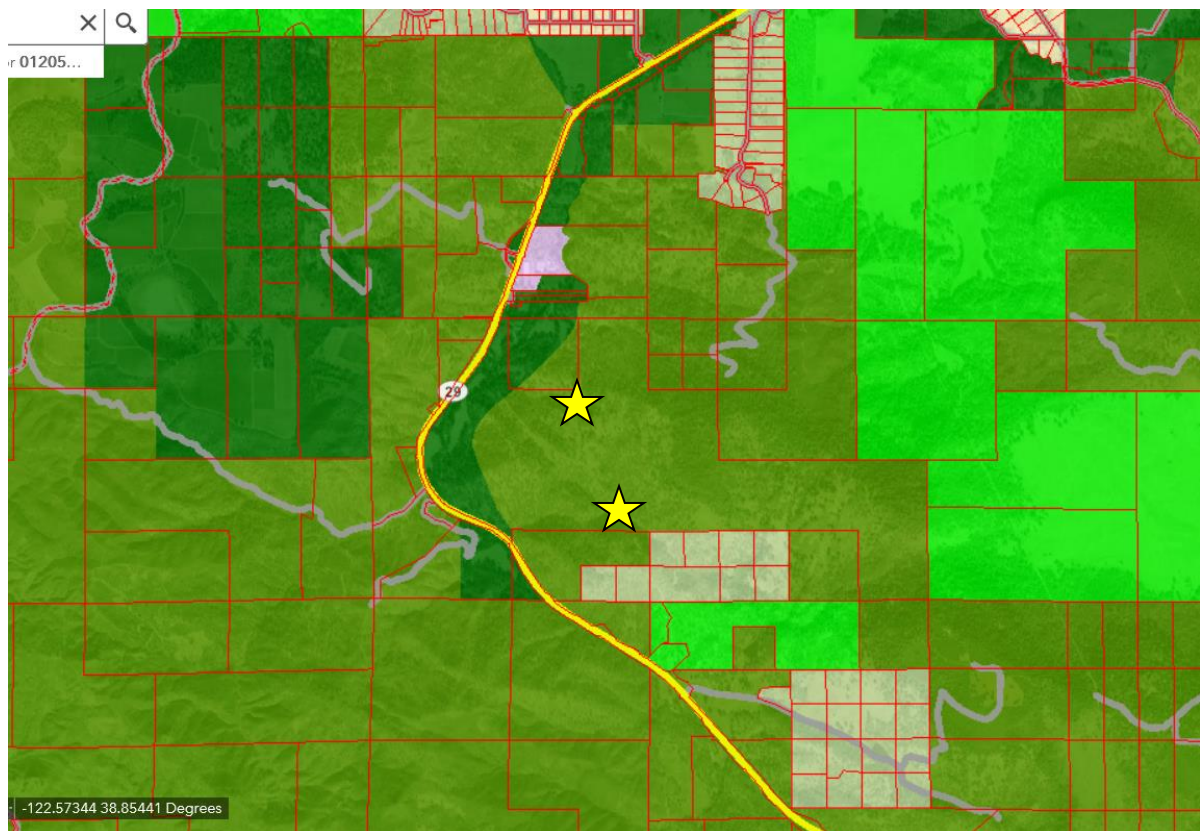
Surrounding Uses and Zoning

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

Topography: Steep, mostly over 30%.

Water Supply: Existing well

Sewage Disposal: Existing On-Site Septic

Fire Protection: South Lake Fire Protection District (CalFire)

Vegetation: 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.

Based on the lack of communication and the time that passed between the first two letters sent to the contacts listed in the application, the County determined that both applications were permanently inactive in 2020.

On May 7, 2021, the County sent a '7 day file closure letter' to the owner, applicant and the person listed as the new person of responsibility for the file.

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 David Boies.

The appeal was filed by Mitch Hawkins, acting in behalf of the property owner David 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 initiated by the Lake County Planning Department based on the findings within this document.*

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.

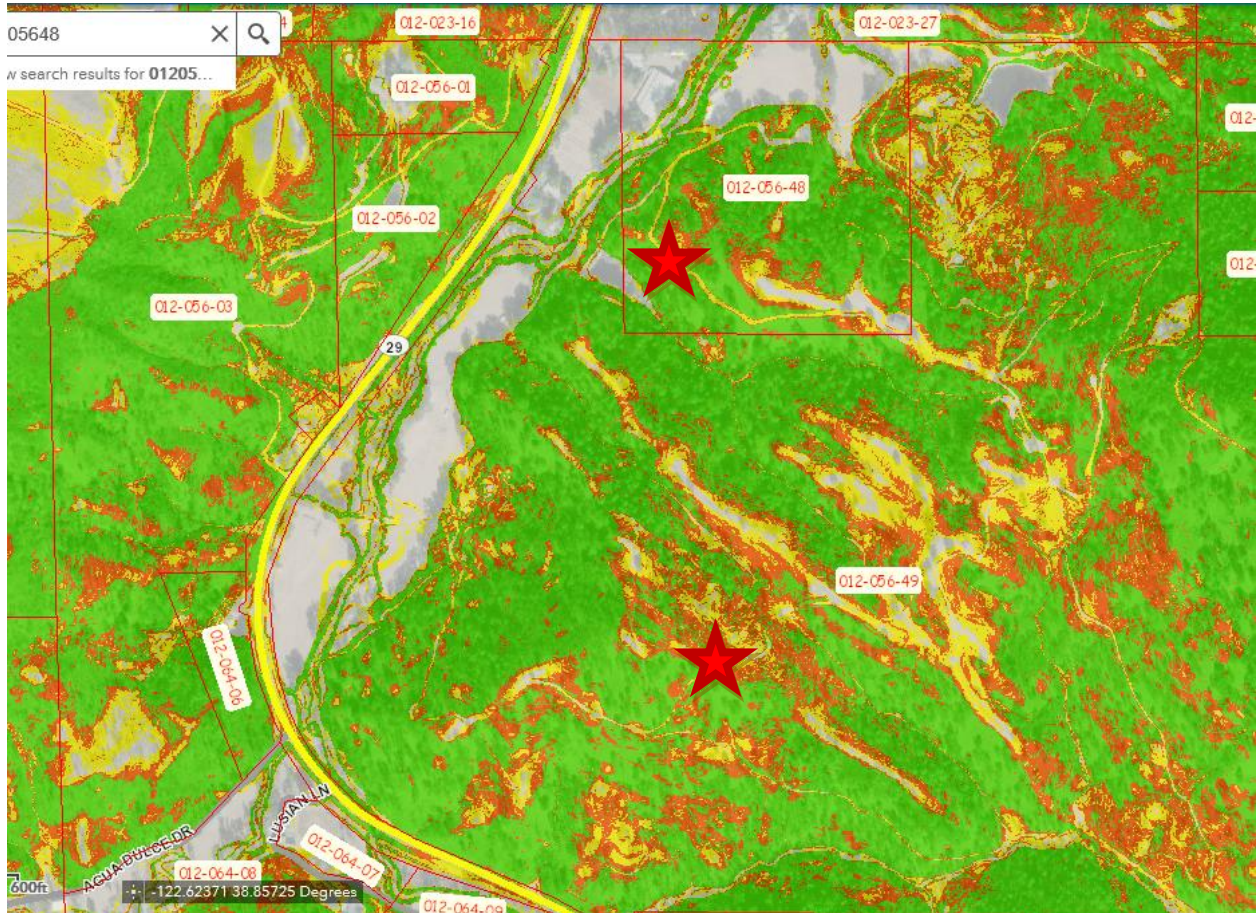
2. Article 50.4 and 51.4, Minor and Major Use Permits, Findings Required for Approval

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 not been involved with any aspect of this site other than to express interest in assuming control over an application that was originally filed by the property owner's son. The issue is whether a name change is permissible at an early stage in the review process, and whether a new application(s) is required.*

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 564 acres in size; large enough for commercial cannabis cultivation licenses to occur.*



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 within the CalFire separation distance required – the access road is on site, and the connecting highway, State Highway 29, is less than ½ mile from the site. The Highway is paved with shoulders varying between 2 and 4 feet.*

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 is served by a public highway, State Route 29; can be served by Kelseyville Fire, PG&E, and has a private well and septic system.*

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: *The site appears to comply with all aspects of all applicable codes, standards and regulations. The primary issue is the length of time that these two applications were inactive, and whether they should be withdrawn / resubmitted as new applications, or allowed to continue under their present application numbers but with different applicants.*

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.*

There is no evidence that the new applicant has passed a 'live scan' background check through the Lake County Sheriff's Department, however the applicant does not have to show evidence of passing live-scan prior to submittal. This evidence must occur prior to the application being deemed 'complete.' Neither application is 'complete' based on missing information needed by the County.

(2) 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, or be withdrawn and resubmitted as new applications.*

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.*

VII. RECOMMENDATION

Staff recommends the Planning Commission::

A. Deny categorical exemption (CE 18-66) for Use Permit (UP 18-36 and MUP 18-39) without prejudice and with the following findings:

1. Actual and potential environmental impacts related to this project have not been confirmed or denied. These must be verified prior to consideration for approval.
2. No CEQA (environmental) evaluation has occurred due to inactivity of the two applications.

B. Deny the Appeal AA 21-02 affecting Use Permits UPs UP 18-36 and MUP 18-39 with the following finding:

1. That the applications UP 18-36 and MUP 18-39 have remained inactive for a period of over two (2) years.
2. Denying this appeal without prejudice will allow the new applicant to apply for new use permits without any waiting period.

Sample Motions:

Categorical Exemption

I move that the Planning Commission find that the Categorical Exemption (CE 18-66) applied for by Diamond One and Diamond Two LLC on property located at 13046 and 13048 S. Highway 29, Lower Lake, and further described as **APN: 012-056-48 and 49** has not mitigated actual or potential environmental impacts for the reasons listed in the staff report dated **June 24, 2021**.

Appeal AA 21-02

I move that the Planning Commission find that the **administrative appeal AA 21-02** filed by Mitch Hawkins in behalf of the property listed below, and in order to restart **Use Permits (UP 18-36 and MUP 18-39)** applied for by Diamond One and Diamond Two LLC on property located at 13046 and 13048 S. Highway 29, Lower Lake, and further described as **APN: 012-056-48 and 49** be denied without prejudice subject to the findings listed in the staff report dated **June 24, 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.*