



COUNTY OF LAKE

COMMUNITY DEVELOPMENT DEPARTMENT

Planning Division

Courthouse - 255 N. Forbes Street

Lakeport, California 95453

Telephone 707/263-2221 FAX 707/263-2225

STAFF REPORT

TO: Planning Commission

FROM: Prepared by: Eric Porter, Associate Planner

DATE: June 24, 2021

RE: **Blue Lakes Organics LLC; Major Use Permit (UP 20-45) and Initial Study (IS 20-56)**

Supervisor District 3

ATTACHMENTS:

1. Vicinity Map
2. Site Plans
3. Property Management Plan
4. Agency Comments
5. Proposed Conditions of Approval
6. Initial Study IS 20-56
7. Public Comments

I. EXECUTIVE SUMMARY

The applicant is requesting a major use permit for **one (1) A-Type 3 “medium outdoor” license** consisting of 20,000 square feet (sq. ft.) of cultivation area for the first two phases, then expanding each of the two 10,000 sq. ft. cultivation areas to 20,000 sq. ft. each. The applicant has also applied for an **A-Type 13 Self Distribution license**. The properties are adjacent to one another and are located at 10680 and 10717 Schuette Road, Upper Lake, and are APNs: 003-001-21 and 003-002-11. In addition to the A-Type 3 and Type 13 licenses, the applicant is proposing:

- 64 SF. surveillance storage
- (2) drying sheds (192 SF. each /384 SF. in total)
- (1) ADA restroom (64 SF.)
- (1) fertilizer storage shed (96 SF.)
- Existing (1) fertilizer storage shed
- The property is accessed from Schuette Road.

Water Analysis

The larger of the two properties, tax lot 003-002-11, had a well drilled on the property in year 2011. On April 16, 2020, the applicant had a well test performed on this well by JAK Drilling. The well produced 15.5 gallons consistently over a four hour time-frame, and had a rapid recharge rate. The depth to the water in 2011 was 21 feet; the year 2020 test showed the depth to the aquifer as being 27 feet.

Staff is recommending **Approval with Conditions** of **UP 20-45**.

II. PROJECT DESCRIPTION

<u>Applicant:</u>	Blue Lakes Organics LLC
<u>Owner:</u>	Alma Franco
<u>Location:</u>	10680 and 10717 Schuette Road, Upper Lake
<u>A.P.N.s:</u>	003-001-21 and 003-002-11
<u>Parcel Size:</u>	46 acres combined
<u>General Plan:</u>	Rural Lands
<u>Zoning:</u>	“RL” – Rural Lands
<u>Flood Zone:</u>	D
<u>Cultivation Area:</u>	Phase I: Two 10,000 sq. ft. cultivation areas Phase II: Expand each cultivation area by 10,000 sq. ft.
<u>Canopy Area:</u>	Estimated at 17,000 sq. ft. (Phase I); 34,000 sq. ft. (Phase II).

III. PROJECT SETTING

Existing Uses and Improvements: The parcels are 46 acres in size combined, the minimum required 20 acre size for the proposed cultivation licenses. The property contains a house, several small sheds, a well and septic system.

Surrounding Uses and Zoning

North and East: “RL” Rural Lands; 10 to 20 acres in size, mostly undeveloped.

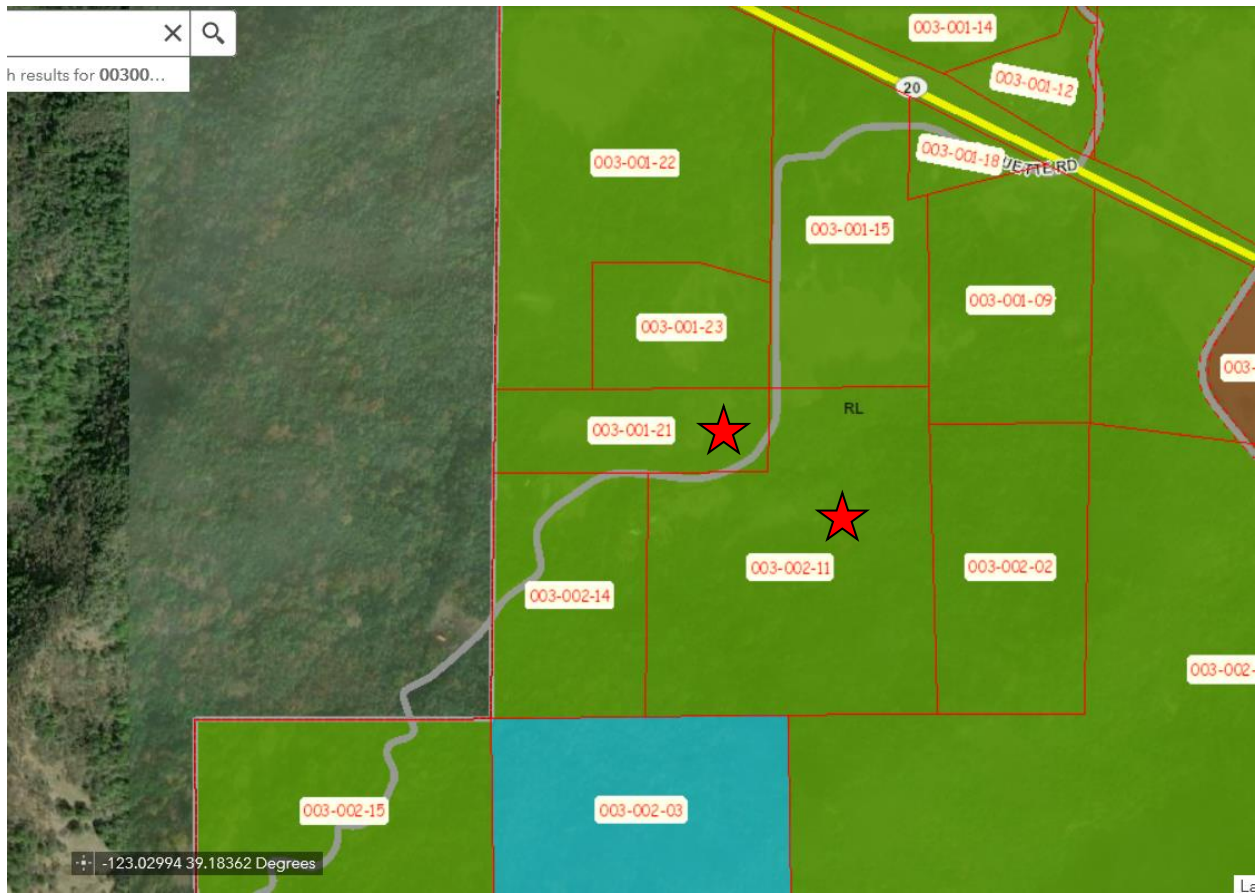
West: Undetermined zoning; Mendocino County. Undeveloped lots.

South: “O” Open Space (BLM) land; undeveloped.

Topography: Varied; the cultivation areas are mostly about 10% slope

Soils: The soil at the cultivation site is Type **167-Maymen-Etsel-Mayacama complex, 30 to 75 percent slopes, and 177-Millsholm-Bressa loams, 30 to 50 percent slopes**. Surface runoff is rapid, and the hazard of erosion is moderate to high. The shrink-

swell potential in the subsoil is high. Neither soil unit is considered to be productive soil and are categorized as Class VII soils.



Water Supply: Existing well

Sewage Disposal: ADA Restroom (to be built)

Fire Protection: North Shore Fire Protection District

Vegetation: Oaks, shrubs, native grasses

IV. PROJECT ANALYSIS

General Plan Conformance

The General Plan designation for the subject site is Rural Lands.

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.

The following General Plan policies relate to site development in the context of this proposal:

Land Use

Goal LU-1: is to encourage the overall economic and social growth of the County while maintaining its quality of life standards.

- Policy LU-1.3 Prevent Incompatible Uses. The County shall prevent the intrusion of new incompatible land uses into existing community areas.

Response: The general area is characterized by large, mostly undeveloped lots, both publicly and privately owned. Pursuant to Article 27 (Table B) of the Lake County Zoning Ordinance, the cultivation of cannabis is an allowable use within the “RL” Rural Lands-zoned land upon securing a Use Permit. This particular project is near Federally-owned BLM land, although the cultivation area is outside of all exclusion areas that are mapped, and the neighboring federal land is not a designated or developed park, which would otherwise require a 1000 foot setback.

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, a minimum 100 foot setback from the top of bank of any surface water source, and a minimum of 200 foot setback from any off-site residences. The nearest off-site residence is located approximately ½ mile to the east of the cultivation site. Additionally, Commercial Cannabis Cultivation is prohibited within a 1,000 feet of Community Growth Boundaries, licensed child care facilities, churches, or youth-oriented facilities. This project complies with all of these required setbacks.

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”.

The proposed Commercial Cannabis Operation, would create diversity within the local economy, create future employment opportunities for between five and ten local residents and allow the expansion of commercial development.

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Response: The proposed Commercial Cannabis Operation would create diversity within the local economy, and create future employment opportunities for local residents. According to the applicant’s application there will be a total of up to ten (10) employees proposed which will add to the economic vitality of south Lake County by employees purchasing gas, food and commodities, which in turn will help local retail stores economically. The number of employees working on site will vary between four and ten depending on the stage of the cultivation season.

Upper Lake - Nice Area Plan Conformance

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

Economic Development

- 5.1.1i A high priority should be given to providing service and employment opportunities locally.

The use will have between 5 and 10 employees which will help the area economy by having employees spend money in local establishments on items like food, gas and rent or home ownership. The product will be sent to local cannabis retailers, who in turn will provide more employment and opportunity for their employees to spend money on local commodities.

Air Quality

- 4.4.1b (C)ommercial activities with the potential to emit toxic, hazardous, or nuisance air contaminants shall be located at safe distances and oriented from residential areas, schools, health care facilities, parks, and other sensitive receptors, and in areas that are most conducive to avoiding dispersion and direct transport of emitted materials. Such sources shall be required to use Best Available Control Technology to control emissions.

The applicant has provided an Odor Control Plan for ongoing cultivation activity, and dust mitigation measures for the site preparation portion of this development.

- 4.4.1g Alternatives to open burning of vegetative waste such as chipping or composting should be promoted.

Burning cannabis waste is prohibited; this is a standard Condition of Approval for all cannabis cultivation licenses issued in Lake County. The applicant will store the vegetation waste on site until it is chipped and spread on the site as compost.

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 In this case, the 40 acre property is large enough for the proposed cultivation project. The minimum zone requirements are found below under ‘Development Standards, General Requirements and Restrictions.’

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 at 46 acres in size according to a survey map provided with the cannabis application. The applicant has applied for one A-Type 3 (medium outdoor) cultivation license. The license requires a 20 acre parcel combined. 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 100 feet from the nearest (northern) property line.*
- Setback from Off-Site Residence (200 feet minimum): *Complies, the nearest neighboring residential dwelling is located about 206 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. for an A-Type 3 license): *The estimated canopy area is 17,000 sq. ft. for phase I and 34,000 sq. ft. for phase II following expansion. The timing of the phases is not identified, although it is probable that Phase I will occur in 2021 and Phase II will occur in 2022.*
- Farmland Protection Zone: *No.*

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.

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 20-01* (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. *The proposed project has some potential for air quality-related impacts during and after construction. The following mitigation measures will reduce impacts to less than significant levels related to 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 all Federal, State, and local requirements, including the requirements of the State Air Toxic Control Measures for CI engines. Additionally, all engines must notify LCAQMD prior to beginning construction activities and prior to engine Use.
- 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.
- AQ-7: Prior to cultivation under this license, the applicant shall plant fragrant non-cannabis plant species along the perimeter of the cultivation areas. These new planted areas shall contain plants that are planted at no more than two-foot spacing intervals, and shall be irrigated and retained in a healthy state for the duration of this project.

Cultural / Geological / Tribal Resources. *The project has some potential to have impacts related to Cultural, Geological and Tribal resources due to the site preparation needed. The following mitigation measures will reduce impacts to less than significant levels.*

- 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 applicant shall notify the culturally affiliated Tribe, and a qualified archaeologist 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, the applicant shall notify the Sheriff's Department, the local overseeing Tribe, and a qualified archaeologist for proper internment and Tribal rituals per 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.

Noise. *This project has some potential for noise during and after construction. The following mitigation measures will reduce noise-related impacts to less than significant levels.*

- NOI-1: All construction activities including engine warm-up shall be limited Monday Through Friday, between the hours of 7:00am and 7:00pm, and Saturdays from 12:00 noon to 5:00 pm 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 10:00PM 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: Generators shall only be used as Emergency Power Backup supply and shall not be used for regular power provision to this facility.

VI. MAJOR USE PERMIT FINDINGS FOR APPROVAL. Article 51, Section 51.4

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 lots, several with homes that are located at least 800 feet away from the nearest cultivation site. As previously discussed, the potential impacts resulting from this proposal are Air Quality, Cultural / Geological / Tribal Resources 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 a two-phased development. The first phase contains two 10,000 sq. ft. cultivation areas. The second phase would expand both cultivation areas by an additional 10,000 sq. ft. for a combined 40,000 sq. ft. cultivation area in two locations. The Lake County Cannabis Ordinance allows Type 3 cultivation operations on Rural Lands-zoned property when it meets the size and locational criteria and standards. The applicant seeks two licenses; one is for cultivation, and one is for an A-Type 13 Self Distribution license. The subject site is 46 acres in size, large enough to allow the cultivation licenses that have been applied for.

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

Response: The site is served by Schuette Road, an unpaved private 12' wide dirt road. The road is not Public Resource Code 4290 and 4291 compliant, but can be widened to meet agricultural road standards (14' width; new surfacing is required).



Schuette Road at Highway 20

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. The Upper Lake Habematolel Tribe met with the applicant, and the two entities have a signed agreement for tribal monitoring during site disturbance. Relevant comments are attached as 'Attachment 4'.

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 Agricultural Preserve zoning district within Table B of Article 27, the Commercial Cannabis ordinance, this proposal is consistent with the governing ordinance for cannabis growing in the county. The Lake County General Plan and the Upper Lake-Nice 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 compliant with the development standards with the exception of CalFire Road Standards (Public Resource Code sections 4290 and 4291), however no new structures are being proposed, so agricultural road standards can be applied to this project. .

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

Response: The applicant has passed a 'live scan' background check, and is qualified to apply for a commercial cannabis cultivation license 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) with change to the use type described herein. The applicant is proposing two cannabis-related licenses; one for the cultivation site (an A-Type 3 license), and one for a 'self-distribution' license (Type 13). The subject site is over 20 acres in size based on the maps provided by the applicant; large enough to support the cultivation license as well as the Type 13 'Self Distribution' license.

VIII. RECOMMENDATION

Staff recommends the Planning Commission:

A. Adopt mitigated negative declaration (IS 20-56) for Major Use Permit (UP 20-45) 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 Cultural / Geological / Tribal Resources can be mitigated to less than significant levels with the inclusion of mitigation measures CUL-1 and CUL-2.
3. 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.
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 Major Use Permit UP 20-45 with the following findings:

1. That the establishment, maintenance, or operation of the use applied for with the change to the license type described herein 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. 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

I move that the Planning Commission find that the **Initial Study (IS 20-56)** applied for by **Blue Lake Organics LLC** on property located at **10717 and 10680 Schuette Drive, Upper Lake**, and further described as **APNs: 003-001-21 and 003-002-11** 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 **June 24, 2021**.

Major Use Permit (UP 20-45)

I move that the Planning Commission find that the **Major Use Permit (UP 20-45)** applied for by **Blue Lake Organics LLC** on property located at **10717 and 10680 Schuette Drive, Upper Lake**, and further described as **APNs: 003-001-21 and 003-002-11** 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 **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.