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**Title:** 9:30 A.M. - PUBLIC HEARING Consideration of Appeal, AB 19-02 of Use Permit, UP 18-23 and Initial Study, IS 18-28. APN: 013-060-18

**Sponsors:** Community Development

**Indexes:**

**Code sections:**

**Attachments:** 1. Exhibit A Appellants Documents, 2. Exhibit B Staff Report, 3. Exhibit B2, 4. Exhibit B3, 5. Exhibit C PC Minutes, 6. Exhibit C2 Guerra Handout, 7. Exhibit D PRC 1273, 8. Exhibit E Parcel Map, 9. Exhibit F BOS Legal Notice, 10. Exhibit G Ewing & Associates Letter

Date	Ver.	Action By	Action	Result
1/14/2020	1	BOARD OF SUPERVISORS		

**MEMORANDUM**

**Date:** January 14, 2020

**To:** Board of Supervisors

**From:** Michalyn DeValle, Community Development Director  
Eric Porter, Associate Planner

**Subject:** Consideration of Appeal, AB 19-02 of Use Permit, UP 18-23 and Initial Study, IS 18-28. APN: 013-060-18

Supervisor District 1.

**EXECUTIVE SUMMARY:**

The Appellant, Antonio Guerra represented by attorney Andre Ross, is appealing the Planning Commission’s April 11, 2019 decision to adopt a Mitigated Negative Declaration and approve a Major Use Permit (files no. UP 18-23 and IS 18-28), to allow an A-Type 3 (outdoor) commercial cannabis cultivation site at 15232 Spruce Grove Road, Lower Lake; APN number 013-060-18.

**Background**

The use permit applicant, Will Dawson, was approved for ‘Early Activation’ on June 28, 2018 through file number EA 18-18. This approval enabled him to plant cannabis in 2018 while his major use permit was under review. Mr. Dawson was approved again for Early Activation on March 27, 2019 through file number EA 19-04; this enabled him to plant in 2019 while his major use permit review process concluded.

On February 27, 2019, a Notice of Intent to adopt a Mitigated Negative Declaration was mailed to

property owners within 725 feet of the proposed cannabis site; the notice was sent to Mr. Guerra as an affected neighbor.

In March 2019, the appellant, Mr. Guerra, contacted staff by phone and in person to express concerns about the applicant and his employees using an easement that went through Mr. Guerra's property. The parcel map (Exhibit E) that created both properties in 1994 did not show the 20' wide access easement, which had been recorded separately after the parcel map had been approved. The easement is identified through metes and bounds legal description (see Reference Appellant's Exhibit A, page 2), and is visible in its current location via Google Maps; please see aerial photo below.

### ***The Easements***

There are two recorded easements associated with the applicant's property. One is a 30' wide public utility and access easement that runs parallel with Spruce Grove Road and is shown on the parcel map. The second easement is a 20' wide access easement, slightly more than 1000 feet long, that bisects Mr. Guerra's property and terminates on the Dawson (Cowan/Miller) property; this is the access that is used by Mr. Dawson for site access, and is the basis for this appeal. Reference Appellant's 'Exhibit A', page 2. Neither easement specifies the allowed use of either easement; both are identified as 'public access and utility' easements.

Mr. Guerra, Appellant, asserts that Public Resources Code (PRC) section 4290(1) cannot be met without unauthorized trespass onto his property because of CalFire's requirement for 30' deep turn-arounds versus the 20' wide limit of the easement width.



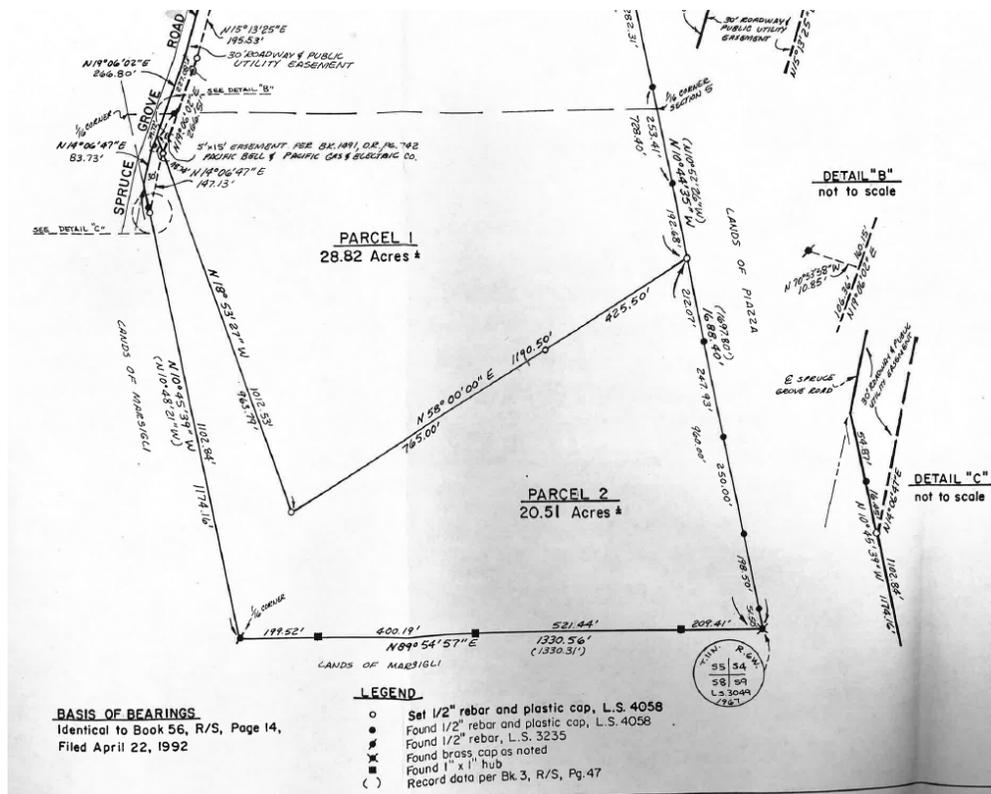
### **Aerial of Applicant and Appellant's Properties**

### ***Commercial Cannabis Applications***

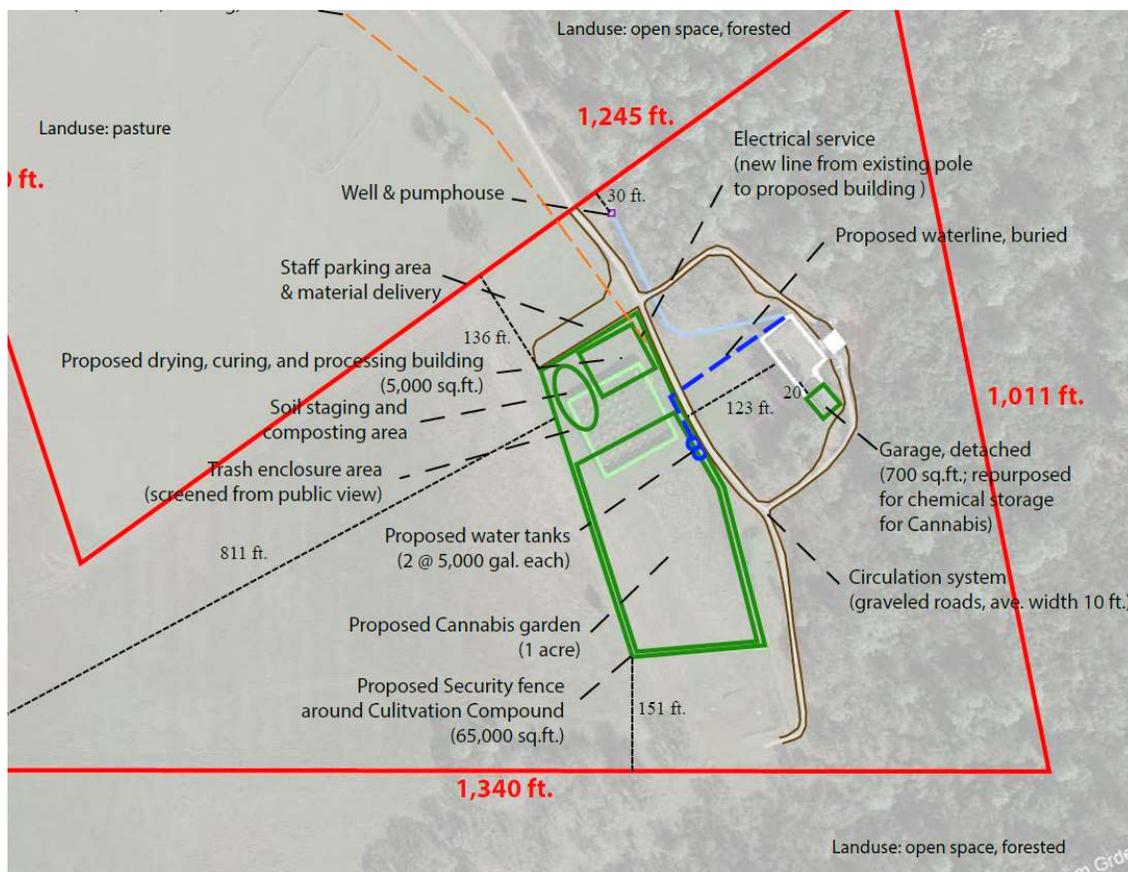
A commercial cannabis license can be obtained through a major or a minor use permit depending on the type of cannabis cultivation license that is sought. Approval of a commercial cannabis use permit changes the nature of a residential property into a commercial use; this means that certain requirements become applicable, such as Americans with Disabilities Act (ADA) and CalFire access requirements as found in Public Resources Code (PRC) sections 4290 and 4291.

**Project Description**

**Applicant:** Will Dawson  
**Owners:** Jack Cowan and Laura Miller  
**Location:** 15232 Spruce Grove Road, Lower Lake  
**A.P.N.:** 013-060-18  
**Parcel Size:** 20.51 acres (Appellant's property is ±29 acres in size)  
**General Plan:** Rural Lands  
**Zoning:** "RL"; Rural Lands  
**Flood Zone:** None



**1994 Parcel Map that created both Properties**



**Site Plan showing location of the disputed Access and Utility Easement**

**I. APPEAL ANALYSIS**

The Lake County Zoning Ordinance has three chapters that contain relevant requirements to this appeal; Chapter 27, subsection (at); Chapter 51.4, Major Use Permits, and Chapter 58, 'Appeals'.

**1. *Article 27, subsection (at), Commercial Cannabis Cultivation***

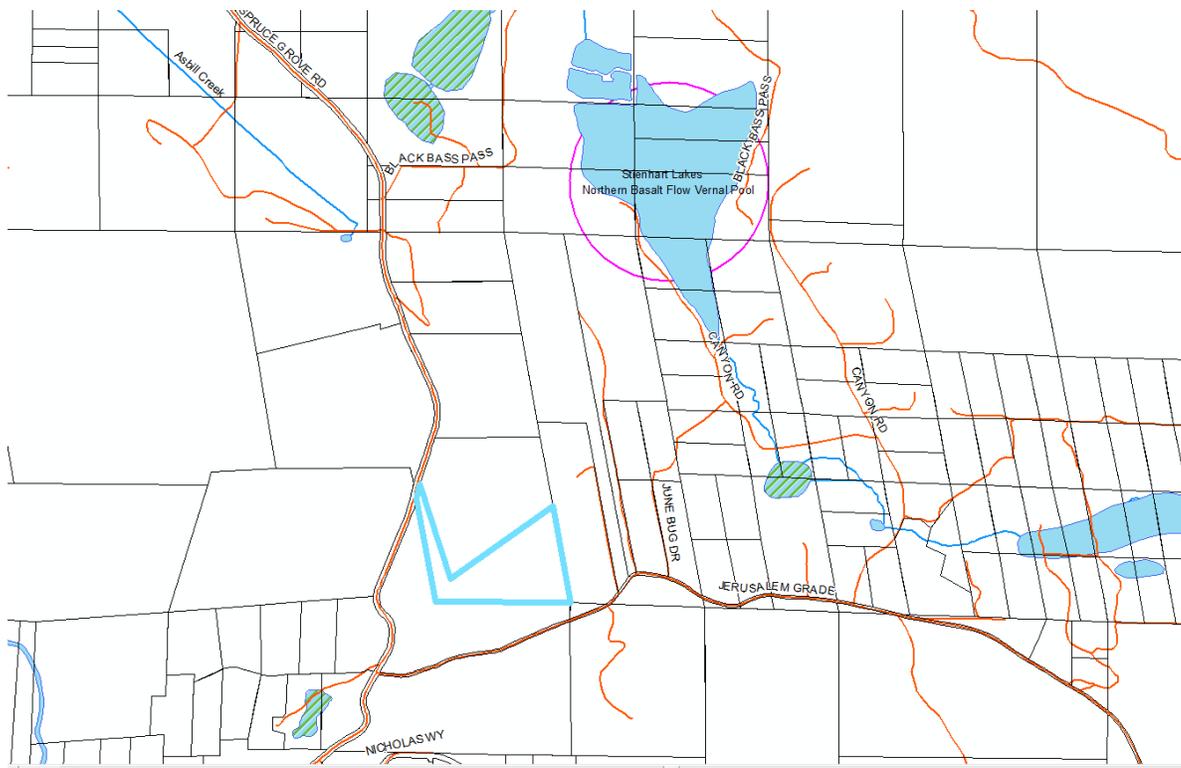
**(o) Access Standards**

a. Any site where a cannabis related activity is permitted shall have access to a public road or a recorded easement that allows for, but not limited to, delivery trucks, emergency vehicles, sheriff and other law enforcement officers, and government employees who are responsible for inspection or enforcement actions. Driveway encroachments onto County-maintained roadways shall be constructed to current County standards and shall be constructed with an encroachment permit obtained from the Department of Public Works.

**Response:** The Applicant has two recorded easements to his property; the 30' wide public access and utility easement that runs parallel to Spruce Grove Road, and the 20' wide public access easement that runs through the Guerra property. The Guerra easement is by definition a 20' wide dead-end road measuring slightly more than 1000 feet in length; this dead-end road is addressed in greater detail later in this report. Use of the 30' access easement directly to Spruce Grove Road from

Applicant's property is unfeasible due to the grade differential according to the applicant Dawson; if the applicant attempted to use the 30' access easement, it would require a Grading Permit and a new CEQA review for the earth movement necessary to install a new driveway. An Initial Study for the cannabis permit (CEQA review) has already occurred, but is limited to the cultivation site rather than a potentially new driveway.

b. All driveways shall be constructed and maintained so as to prevent road surface and fill material from discharging to any surface water body



### **Map showing Subject Site and nearest Water Bodies and Streams**

**Response:** The subject site is not adjacent to any water bodies, streams or lakes.

c. The design of all access to and driveways providing access to the site where the cannabis related activity that is permitted shall be sufficient to be used by all emergency vehicles and shall be approved by the applicable fire district.

**Response:** The basis of this appeal is the use of the 20' wide access easement that travels through the Guerra property and terminates on the Dawson property. This easement is defined as a dead-end road per Public Resources Code (PRC) section 1271.00 (Definitions). This section of the PRC states:

*“Roads, streets, private lanes: Vehicular access to more than one parcel; access to any industrial or commercial occupancy, or vehicular access to a single parcel with more than two buildings or four or more dwelling units.”*

*“Dead-end road: A road that has only one point of vehicular ingress/egress, including cul-de-sacs and looped roads.”*

PRC section 1273.09 then addresses the rules for dead-end roads and states the following:

(a) *“The maximum length of a dead-end road, including all dead-end roads accessed from the dead-end road, shall not exceed the following cumulative lengths, regardless of the numbers of parcels served:*

- *“Parcels zoned for 20 acres or larger - 5280 feet (the 20’ wide access road is 1,100 feet long and serves two parcels)*

*“All lengths shall be measured from the edge of the roadway surface at the intersection that begins the road to the end of the road surface at the intersection that begins the road to the end of the road surface at its farthest point...”*

*“(b) Where parcels are zoned 5 acres or larger, turnarounds shall be provided at a maximum length of 1320 foot intervals. (each parcel is about 20 acres in size)*

*“(c) Each dead-end road shall have a turnaround constructed at its terminus.”*

**Response:** The 20’ wide dead-end road complies with PRC subsection 1273.09(a), (b) and (c). As stated, this road is about 1,100 feet long (up to 5280 feet is allowed); is less than 1320 feet in length per subsection (b) thereby not requiring any turnarounds on the Guerra property, and has ample turnaround space at its terminus on the Dawson property.

This PRC section exempts the requirements for turn-arounds every 400 feet that would otherwise be required if this were not a dead-end road. This negates the basis of this appeal. The appellant claims that this proposal does not meet PRC 4290 and/or 4291, the CalFire requirements for private properties, however PRC 1273.09 eliminates the requirement for turn-arounds on dead-end roads that meet the definition of a dead-end road, and that comply with (a), (b) and (c).

d. Gates shall not be constructed across driveways or access roads that are used by neighboring properties or the general public. Gates constructed across public access easements are subject to removal per State Street and Highway Codes.

**Response:** No gates that cross driveways or access roads that are used by the neighboring properties or the general public are needed or proposed.

## **2. Article 51.4, Major Use Permits, ‘Findings Required for Approval’**

The Board of Supervisors may only approve or conditionally approve a Major Use Permit if all of the following findings are made:

a. 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:** *By approving this use permit, the Planning Commission found that this use would not be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of this use, and that the use would not be detrimental to property and*

improvements in the neighborhood, or the general welfare of the County, thereby meeting the terms of Lake County Zoning Ordinance, Article 51, subsection 4.1.

b. 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:** By approving this use permit, the Planning Commission found that the subject site is 20.51 acres in size, large enough to accommodate this proposed 65,000 s.f. cannabis cultivation area, thereby meeting the terms of Lake County Zoning Ordinance, Article 51, subsection 4.2.

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

**Response:** By approving this use permit, the Planning Commission found that Spruce Grove Road and the 20' wide dead-end road that is the subject of this appeal are adequate for purposes of providing traffic to this cannabis cultivation facility, thereby meeting the terms of Lake County Zoning Ordinance, Article 51, subsection 4.3.

d. 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:** By approving this use permit, the Planning Commission found that the site has adequate services for the cannabis cultivation use, thereby meeting the terms of Lake County Zoning Ordinance, Article 51, subsection 4.4.

e. 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:** By approving this use permit, the Planning Commission made the finding that this project was in compliance with the Lake County General Plan, the Middletown Area Plan, and Lake County Zoning Ordinance, thereby meeting the terms of Lake County Zoning Ordinance, Article 51, subsection 4.5.

f. 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, thereby meeting the terms of Lake County Zoning Ordinance, Article 51, subsection 4.6.

II. **APPEAL SUBMITTAL.** The appellant submitted an application for Appeal to the Board, along with the required fee and 'Applicant's Exhibits A through F'.

If not budgeted, fill in the blanks below only:

Estimated Cost: \_\_\_\_\_ Amount Budgeted: \_\_\_\_\_ Additional Requested: \_\_\_\_\_ Future Annual Cost: \_\_\_\_\_

Consistency with Vision 2028 and/or Fiscal Crisis Management Plan (check all that apply):

Not applicable

- Well-being of Residents
- Economic Development
- Community Collaboration

- Public Safety
- Disaster Recovery
- Business Process Efficiency

- Infrastructure
- County Workforce
- Clear Lake

- Technology Upgrades
- Revenue Generation
- Cost Savings

If request for exemption from competitive bid in accordance with County Code Chapter 2 Sec. 2-38, fill in blanks below:

- Which exemption is being requested?
- How long has Agreement been in place?
- When was purchase last rebid?
- Reason for request to waive bid?

**RECOMMENDED ACTION:**

**A. Deny appeal number AB 19-02.**

**B. Adopt mitigated negative declaration (IS 18-28) for Use Permit (UP 18-23) with the following findings:**

1. Potential environmental impacts related to aesthetics have been mitigated to less than significant levels by mitigation measures AES-1 and AES-2.
2. 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, AQ-7, AQ-8, AQ-9 and AQ-10.
3. 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.
4. Potential environmental impacts related to Cultural and Tribal resources have been mitigated to less than significant levels by mitigation measures CUL-1 and CUL-2.
5. Potential environmental impacts related to Hazards and Hazardous Materials have been mitigated to less than significant levels by mitigation measure HAZ-1.
6. Potential environmental impacts related to Noise have been mitigated to less than significant levels by mitigation measures NOI-1, NOI-2, and NOI-3.
7. As mitigated, this project will not result in any significant adverse environmental impacts.

**C. Approve UP 18-23 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.

**Sample motion:**

**Appeal Denial**

I move that the Board of Supervisors make an intended decision to deny the Appeal AB 19-02 and uphold the Planning Commission's decision to adopt Initial Study IS 18-28 and approve Use Permit 18-23, applied for by Will Dawson for property located at 15232 Spruce Grove Road, Lower Lake, known as APN 013-060-18, and direct County Counsel to prepare findings of fact.

Reviewed by Michalyn DeValle: