



Legislation Text

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Memorandum

Date: March 12, 2024

To: The Honorable Lake County Board of Supervisors

From: Mireya G. Turner, Community Development Director
Michelle Irace, Principal Planner

Subject: 10:00 A.M. - Consideration of Appeal (AB 24-01) of Planning Commission's Denial of Major Use Permit (UP 20-40), Higher Ground Farms / John Oliver applicant and appellant; location: 3545 Finley East Road, Kelseyville (APN: 008-026-07)

Exhibits

- A. Staff Report from the January 11, 2024 Planning Commission hearing with the following attachments:
 - 1. Site Plans
 - 2. Draft Conditions of Approval
 - 3. Property Management Plan
 - 4. Initial Study (IS 20-50)
 - 5. Hydrology Report and Drought Management Plan
 - 6. Agency Comments
 - 7. Tribal Comments
 - 8. Public Comments (as of January 5, 2024)
- B. Planning Commission Minutes from January 11, 2024 Public Hearing
- C. Appeal Application (AB 24-01)
- D. Public Comments received as of February 20, 2024
- E. Conditions of Approval, Revised at the January 11, 2024 Public Hearing

Executive Summary: On January 11, 2024, the Lake County Planning Commission denied a Major Use Permit (UP 20-40) request for commercial cannabis cultivation of 22,000 square feet (sf) of canopy inside eight 30' x 96' greenhouses within a fenced 47,040 sf enclosure on a property located at 3545 Finley East Road, Kelseyville (APN: 008-026-07). The project also proposed one 25'-6" metal 48' x 100' drying building and several small sheds, water tanks and other cannabis-related structures, as well as one Type 13 Cannabis Distributor Transport Only, Self-Distribution License.

At the January 11 hearing, the Planning Commission noted issues related to siting of the proposed project and expressed the position that the project did not fit the character of the neighborhood; the Planning Commission denied the project on a 3 to 1 vote, with Commissioner Hess absent. The Planning Commission Staff Report and associated attachments are included as Exhibit A; the minutes of the meeting are included as Exhibit B, and the meeting may be viewed online at:

https://lakecounty.granicus.com/player/clip/696?view_id=1&redirect=true.

In accordance with County of Lake Zoning Code Section 58.31, the applicant filed an appeal (AB 24-01) of the Planning Commission's decision on January 18, 2024. The appeal application is included in Exhibit C.

All public comments received as of February 20, 2024, are included as Exhibit D.

There was no new information presented at the Planning Commission hearing that identified inconsistencies between the project (as conditioned) and the County Code, or information resulting in Staff being unable to recommend the findings required for a major use permit. As such, Staff's original recommendation for approval of the project remains. Staff recommends the Board uphold the appeal (AB 24-01), reversing the Planning Commission's denial of the project and approve Initial Study (IS 20-50) and Use Permit (UP 20-40).

I. PROJECT BACKGROUND

Setting. The project site is located on the southern side of Finley East Road in Kelseyville. The site had been used as a walnut orchard followed by hemp cultivation, but the property has sat idle since 2020. The property contains a dwelling and two shop buildings, as well as a building pad that was associated with the previous hemp cultivation. The site is surrounded by agricultural and residential uses. The Kelsey Creek Schoolhouse building is located on the property immediately to the east of the project; the site is owned by the Kelseyville Unified School District and leased by the Lucerne Area Revitalization Association (LARA) for maintenance and use of the building. The site is accessed via two internal driveways from East Finley Road: a western shared driveway that borders on the edge of the Kelsey Creek Schoolhouse; and a second eastern driveway serving the project parcel accesses the two shop buildings and is located about 100 feet east of the primary driveway.

Project Summary. An application for Major Use Permit (UP 20-40) was originally submitted on May 5, 2020. A project description summary and vicinity map are included below; a detailed project description and site plans can be found in the Planning Commission Staff Report (Exhibit A).

Applicant/Owner: "Higher Ground Farms", John Oliver (applicant); Leo Cortina (property owner).

File Number: UP 20-40, IS 20-50 (Major Use Permit and Initial Study).

Request: Commercial Cannabis Cultivation including 22,000 sf of greenhouse cannabis canopy within eight greenhouses and a Type 13 Cannabis Distributor Transport Only, Self-distribution License to enable legal transportation of cannabis.

Location: 3545 Finley East Road, Kelseyville.

A.P.N.: 008-026-07.

Parcel Size: ±23.69 acres.

General Plan: Agriculture.

Zoning: "A-WW-FF-AI", Agriculture - Waterway - Floodway Fringe - Agricultural Industry

Topography: Flat.

Flood Designation: "AE and AO", river or stream flood hazard areas, and areas with a 1% or greater chance of shallow flooding each year.

Water Supply: Existing permitted groundwater well.

Sewage Disposal: Existing on-site septic system.

Fire Protection: CALFIRE, Kelseyville Fire Protection District.

Vegetation: Scattered oaks and grasses.

Water Courses: Kelsey Creek (located about 475' from the proposed cultivation area).

Supervisory Dist.: 4; and 5 (easternmost portion of site along Kelsey Creek)

FIGURE 1 - VICINITY MAP



SOURCE: LAKE COUNTY GIS MAPPING

FIGURE 2- PROPOSED SITE PLAN

The California Environmental Quality Act (CEQA) requires agencies to evaluate the environmental implications of land use actions. A Draft Initial Study and Mitigated Negative Declaration (Attachment 4 of the Planning Commission Staff Report in Exhibit A) was prepared and circulated for public review in compliance with CEQA from 09/29/2022 to 10/28/2022. The Initial Study found all impacts to be less than significant with implementation of mitigation measures related to Aesthetics, Air Quality, Biological Resources, Cultural/Tribal Resources, Geology/Soils and Noise.

These requirements were verbally added to the project as conditions of approval at the January 11, 2023, Planning Commission meeting and have been included in the revised written conditions of approval in Exhibit E for the Board's consideration.

II. BASIS FOR THE DENIAL

Although the Planning Commission did not refute the fact that the proposed project meets all of the codified siting requirements contained within the Lake County Zoning Ordinance and State cannabis regulations, the Planning Commission noted a number of issues related to siting of the proposed project. Issues raised were not formalized within the motion for denial, but Staff summarizes the main points raised by the Planning Commission below.

1. Location is not consistent with the neighborhood character.
2. The project would alter the viewshed on Finley East Road and views of Mt. Konocti, which is considered sacred to culturally-affiliated tribes.
3. Proximity to adjacent farm labor quarters (residences).
4. Impacts to Kelsey Creek.
5. Proximity to a 'school'.

III. APPEAL ANALYSIS

Per Lake County Zoning Ordinance Section 58.31, decisions of the Planning Commission may be appealed by an interested party within seven (7) calendar days of the decision and shall be accompanied by a written statement setting forth the grounds upon which the appellant asserts there was an error or abuse of discretion by the Planning Commission.

In this case, the appeal (AB 24-01) of the January 11, 2024, Planning Commission decision was filed by the applicant in a timely manner on January 18, 2024. The applicant did not provide specific responses to each item raised by the Planning Commission but states, "Project meets all standards & regulations" as the reason for the appeal. The appeal application (AB 24-01) is included in Exhibit C. Staff's response to each the issues raised by the Planning Commission is provided below.

1. Location is not consistent with the neighborhood character.

Staff Response: Cannabis cultivation is allowed in certain areas within Lake County upon issuance of a major or minor use permit depending on the project's size and characteristics of the site. In this case, the property is located on a property with base zoning of "A"-Agriculture, within a mapped Farmland Protection Zone (FPZ). The Board of Supervisors approved Ordinance No. 3103 on April 20, 2021, which allows cannabis cultivation to occur in FPZ land, provided the cultivation occurs inside greenhouses with air filtration systems, as is being proposed in this application. The property is not located within an Exclusion Area and is in an area that is characterized by traditional crop production, including a processing/packing facility immediately across the street. The project meets all setbacks and development standards related to compatible uses. Therefore, the project would not be considered a non-compatible use. As noted above, the project has also been modified to further reduce impacts to neighboring properties, specifically the property immediately west that is owned by the Kelseyville Unified School District and leased by LARA.

2. The project would alter the viewshed on Finley East Road and views of Mt. Konocti, which is considered sacred to culturally-affiliated tribes.

Staff Response: Per the Lake County Zoning Code for Agricultural zoning (Article 5, section 5.15), accessory agricultural structures may be up to fifty (50) feet tall. The proposed greenhouses and processing facility would be below this limitation. Additionally, mitigation measures requiring blackout screening, fencing, and vegetative screening would be implemented to reduce impacts to the extent

practical. Lastly, the applicant has agreed to relocate the cultivation site approximately 200 feet further south to be at least 500 feet away from the Kelsey Creek Schoolhouse building, and additional vegetative screening being placed between both the Kelsey Creek Schoolhouse building and the processing facility, as well as between the Kelsey Creek Schoolhouse building and the cultivation site.

Related to tribal cultural resources, Staff sent Assembly Bill (AB) 52 notices to 11 tribes on April 8, 2022, informing tribes of the proposed project and offering consultation under AB-52. Of the 11 notified Tribes, the Yocha Dehe Tribe and the Upper Lake Habematolel Tribe replied, deferring to Big Valley and Middletown Rancheria Tribes. No other tribes responded to the AB 52 notice. Cultural and tribal cultural resources were also analyzed in the Initial Study and associated Cultural Resources evaluation, in compliance with the California Environmental Quality Act. These analyses found impacts to cultural resources to be less than significant with implementation of mitigation measures.

3. Proximity to adjacent farm labor quarters (residences).

Staff Response: Article 27 (Section 27.13(at)) requires cultivation sites to be located 200 feet from a residence. The farm labor quarters noted by the Planning Commission are located approximately 500 to 600 feet from the cultivation site. Further research by Staff found no records of permits for the mentioned farm labor quarters.

4. Impacts to Kelsey Creek.

Staff Response: The County Code requires a 100-foot setback from all water courses. The cultivation site and associated buildings are a minimum of 475 feet away from Kelsey Creek and Finely East Road provides further separation between the site and the creek. The applicant has also submitted a sediment and erosion control plan (sheet 4 of Site Plans) that show stormwater mitigation measures that adequately address slope and erosion control, in accordance with Lake County Grading Regulations, the State Water Resources Control Board Order No. WQ 2019-001-DWQ and Construction General Permit 2009-009-DWQ. Lastly, the Initial Study (And associated Biological Report) found impacts to Kelsey Creek to be less than significant.

5. Proximity to a 'school'.

Staff Response: The "Hells Bend Schoolhouse", also referred to as the Kelsey Creek Schoolhouse is located on the parcel (APN 008-026-06) immediately west of the proposed cultivation site. According to Dr. John Parker, the Schoolhouse was built in 1869 and relocated to its present location in 1882. Classes were held in the schoolhouse until 1920, when the use of the building as a school discontinued. Please refer to the January 11 Planning Commission Staff Report for more information.

Article 68 (Definitions) of the Lake County Code defines a 'school' as follows,

School: "For the purpose of cannabis regulation, school means any public or private school providing instruction in kindergarten or any grades K to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes. (Ord. No. 3709, 12/11/2018)".

Staff must analyze the project for compliance with required setbacks from existing uses. The building has not been utilized as a school since 1920 and does not meet the definition of a school per the County Code. Although LARA has been in contact with Community Development Department (CDD) Staff related to their intentions to restore and utilize the building as a community gathering space and event center in the future, no such permits have been submitted to CDD to date for review. Additionally,

the County Code does not allow school uses within the “A” zoning district.

As noted above, the applicant proposes to use the secondary driveway further east from the building and would plant vegetative screening between the building and cultivation area, and processing building to reduce potential impacts to the adjacent site. The proposed project would not prohibit the School District and LARA from future rehabilitation of the building or other plans for the site.

Conclusion. CDD Staff must analyze projects for conformance with existing code requirements and regulations. As summarized above and discussed in detail throughout the January 11 Planning Commission Staff Report (and associated documents), the project meets all required regulations related to development and siting, and is also consistent with the General Plan and Kelseyville Area Plan. Staff recommends the Board uphold the appeal, reversing the Planning Commission’s denial of the project, and approve Use Permit (UP 20-40) and Initial Study (IS 20-50). Findings for approval are provided below, and conditions of approval (as revised) are included in Exhibit E.

IV. MAJOR USE PERMIT FINDINGS FOR APPROVAL

The Review Authority shall only approve or conditionally approve a Major Use Permit (LCZO Section 51.4, Major Use Permits) if all of the following findings are made:

- 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.*

The proposed use of commercial cannabis cultivation is a permitted use in the “A” Agriculture Zoning District subject to the issuance of a major use permit pursuant to Article 27.13(at) and Article 51.4 of the Lake County Zoning Ordinance, and subject to cultivation occurring in greenhouses, as required for projects within a mapped Farmland Protection Area. The immediate area has traditional agricultural uses. Cannabis cultivation, while not recognized as a crop in the traditional sense, involves growing and harvesting cannabis plants. Additionally, the Community Development Department will require annual compliance monitoring reports and conduct annual inspections during the cultivation season to ensure compliance with the approved Property Management Plan and Conditions of Approval.

The County has received adverse comments from neighboring property owners and concerned groups and individuals objecting to the project due to the presence of the Kelsey Creek Schoolhouse, which would be located a minimum of 500 feet from the edge of the cultivation area on the neighboring lot to the west; however the project does not propose modifications to the building or other components that would impact the building or its historic significance. Additionally, the Kelsey Creek Schoolhouse does not meet the definition of a school within the County Code, so the 1000-foot separation required between cannabis cultivation sites and schools does not apply.

Lastly, the Initial Study found all impacts to be less than significant with implementation of mitigation measures related to Aesthetics, Air Quality, Biological Resources, Cultural/Tribal Resources, Geology/Soils and Noise.

- 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.*

The proposal consists of 22,000 sf of greenhouse cannabis canopy. The Lake County Zoning Ordinance allows cultivation operations on “A” Agriculture-zoned land if the land meets the requirements within Article 27.13(at). The subject site is ±23 acres in size, large enough to enable the cultivation area proposed to occur,

and meets all required setbacks.

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

The site is accessed via an interior driveway that connects to Finley East Road, a paved County-maintained road. There are two driveways serving the site: the original driveway proposed for the project leading to the cultivation site is shared with the adjacent parcel and is located approximately 140 feet from the Kelsey Creek Schoolhouse; the secondary driveway is located approximately 100' further east of the originally proposed driveway. The applicant has agreed to use the secondary driveway as the primary access to the cultivation site in order to keep cannabis-related traffic further from the Kelsey Creek Schoolhouse site's access. Traffic impacts are also analyzed within Section XVII, Transportation, of the Initial Study, which were found to be less than significant. As noted within the analysis, the application materials submitted indicate that trips associated with the project will be minimal, estimated at eight to sixteen daily trips excluding deliveries, which are expected to occur once or twice weekly. Because the project would not result in over 110 trips per day, impacts related to vehicle miles traveled (Guidelines section 15064.3) would be less than significant. The project was circulated for public agency review, including but not limited to: Kelseyville Fire Protection District, California Highway Patrol, the Lake County Sheriff's Department, Cal Fire, and the Lake County Department of Public Works. All commercial cannabis projects require compliance with PRC 4290 and 4291; this is a typical condition added to all commercial cannabis cultivation projects.

- 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.*

There are adequate public utilities and services available to the site. The Kelseyville Fire Protection District provides fire-related emergency services to the site. The Lake County Sheriff's Department provides police protection. The site is served by PG&E on-grid power. The site is served by a private permitted groundwater well and existing septic system. The application was routed to all of the affected public and private service providers, including Public Works, Environmental Health, Specials Districts; Water Resources and PG&E. All agency comments have been included as conditions of approval, as appropriate.

- 1. 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.*

Upon review, the Community Development Department has determined that the proposed use for the cultivation of greenhouse cannabis is in conformance with the applicable provisions and policies of this Code, the General Plan, the Kelseyville Area Plan, and the Lake County Zoning Ordinance as the cultivation of cannabis is an allowable use within the "A" Agriculture Zoning Designation upon securing a major use permit pursuant to Article 27 (Table B) of the Lake County Zoning Ordinance. The General Plan and Kelseyville Area Plan do not have any provisions specifically for commercial cannabis, but both plans have provisions for economic development and land use compatibility.

- 2. 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.*

There are no documented violations of Chapters 5, 17, 21, 23 or 26 of the Lake County Code on the subject properties. This was confirmed by the Cannabis Division of the Lake County Planning Department during and following a site visit that occurred on July 24, 2023. The applicant is required to provide proof of a successful Live Scan background check prior to permit activation.

Further, Article 27.13(at) has three findings that must be met for commercial cannabis:

3. The proposed use complies with all development standards described in Chapter 21, Article 27, Section 1.i.

As noted throughout this memorandum, as well as the January 11 Planning Commission Staff Report, the proposed use permit is consistent with Article 27, section 1.i., as well as other portions of the Zoning Ordinance, General Plan and Kelseyville Area Plan.

4. The applicant is qualified to make the application described in Chapter 21, Article 27, Section 1.ii. (g).

The applicant is qualified to make this application and is required to successfully complete a 'Live Scan' background check prior to operation.

5. The application complies with the qualifications for a permit described in Chapter 21, Article 27, Section 1.ii. (i).

The application complies with the qualifications for a permit described in Chapter 21, Article 27, Section 1.ii. (i).

If not budgeted, fill in the blanks below only: N/A

Estimated Cost: _____ Amount Budgeted: _____ Additional Requested: _____ Future Annual Cost: _____

Purchasing Considerations (check all that apply):

☒ Not applicable

☐ Fully Article X. <https://library.municode.com/ca/lake_county/codes/code_of_ordinances?nodeId=COOR_CH2AD_ARTXPU_S2-38EXCOBI>- and/or Consultant Selection Policy <http://lcnet.co.lake.ca.us/Assets/Intranet/Policy/Policies+26+Procedures+Manual/Ch4_2021v2.pdf>-Compliant (describe process undertaken in "Executive Summary")

☐ Section 2-38 <https://library.municode.com/ca/lake_county/codes/code_of_ordinances?nodeId=COOR_CH2AD_ARTXPU_S2-38EXCOBI> Exemption from Competitive Bidding (rationale in "Executive Summary," attach documentation, as needed)

☐ For Technology Purchases: Vetted and Supported by the Technology Governance Committee <<http://lcnet.co.lake.ca.us/Assets/Intranet/Intranet+Forms/Information+Technology/AdvPlan.pdf>> ("Yes," if checked)

☐ Other (Please describe in Executive Summary)

Consistency with Vision 2028 <<http://www.lakecountyca.gov/Government/Directory/Administration/Visioning/Vision2028.htm>>

(check all that apply):

☐ Not applicable

☐ Well-being of Residents

☐ Public Safety

☐ Disaster Prevention, Preparedness, Recovery

☒ Economic Development

☐ Infrastructure

☐ County Workforce

☐ Community Collaboration

☐ Business Process Efficiency

☐ Clear Lake

Recommended Action: Staff recommends that the Board of Supervisors: Approve the Appeal (AB 24-01), overturning the Planning Commission's denial of Major Use Permit (UP 20-40) and approve Initial Study (IS 20-50), subject to the findings in the Memorandum dated March 12, 2024, and Conditions of Approval in Exhibit E.

Sample Motions:

Initial Study (IS 20-50) Approval

I move that the Board of Supervisors find that the proposed Major Use Permit (UP 20-40) for Higher Ground Farms at 3545 Finley East Road, Kelseyville (APN: 008-026-07) would not have a significant impact on the environment and can be mitigated to 'less than significant' through the implementation of the Mitigated Negative Declaration (IS 20-50), subject to the findings in the Memorandum dated March 12, 2024, and Conditions of Approval in Exhibit E.

Appeal Approval (AB 24-01)

I move that the Board of Supervisors approve Appeal AB 24-01, in concept, and direct Staff to prepare

Draft Findings of Fact.