



## Legislation Details (With Text)

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**Type:** Action Item      **Status:** Agenda Ready

**File created:** 11/12/2020      **In control:** Planning Commission

**On agenda:** 12/10/2020      **Final action:**

**Title:** ADDENDUM - 9:10 a.m. - Public hearing on consideration of Rezone (RZ 17-01), General Plan Amendment (GPAP 17-01), Parcel Map (PM 17-01) and Initial Study (IS 17-31). Applicant is Richard and Whitney Brand, proposing a Rezone, General Plan Amendment and Tentative Parcel map to subdivide APN 013-028-81 into four parcels. Currently, the parcels are split zoned and the applicant seeks to rezone APN 013-028-81 to be completely within the RR-Rural Residential zoning district and rezone APN 013-028-82 to be completely within the RL-Rural Lands zoning district. Location: 23987 & 24073 State Highway 29, Middletown, CA 95461; APN: 013-028-81 & 013-028-82.

**Sponsors:** Community Development

**Indexes:**

**Code sections:**

**Attachments:** 1. Staff Report, 2. Attachment 1 - Project Description & Vicinity Map, 3. Attachment 2 - Tentative Parcel Map, 4. Attachment 3 - Proposed Rezone Map\_Rev, 5. Attachment 4 - Draft Ordinance for Rezone 17-01, 6. Attachment 5 - Draft Resolution for GPAP 17-01, 7. Attachment 6 - Proposed Conditions of Approval\_Rev 1272020 Clean, 8. Attachment 7 - Agency Comments, 9. Attachment 8 - Initial Study & Attachments, 10. ADDENDUM TO PC AGENDA\_121020

Date	Ver.	Action By	Action	Result
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### Memorandum

Item 2  
9:10 AM  
December 10, 2020

### STAFF REPORT

**TO:** Planning Commission

**FROM:** Scott DeLeon, Interim Community Development Director  
Tocarra Thomas, Deputy Community Development Director  
Eric Porter, Associate Planner  
Prepared By: Michelle Irace, Senior Planner & Mark Roberts, Principal Planner

**SUBJECT:** Brand Family Parcel Map Project  
General Plan Amendment (GPAP 17-01); Rezone (RZ 17-01); Parcel Map (PM 17-01); and Initial Study (IS 17-31)

**SUPERVISORIAL DISTRICT:** 1

**DATE:** November 25, 2020

**ATTACHMENTS:**

1. Project Description and Vicinity Map
2. Tentative Parcel Map
3. Proposed Rezone Map-“Exhibit A”
4. Draft Rezone Ordinance
5. Draft General Plan Amendment Resolution
6. Proposed Conditions of Approval
7. Agency Comments
8. Initial Study and Mitigated Negative Declaration

**I. EXECUTIVE SUMMARY**

The applicant is requesting a Rezone, General Plan Amendment and Tentative Parcel Map to subdivide APN 013-028-81 into four parcels.

Applicant/owner: Richard & Whitney Brand.

Location: 23987 & 24073 State Highway 29, Middletown, CA 95461.

APN: 013-028-81 & 013-028-82.

Parcel size: ±75 acres total (parcel -81 is 30 acres & parcel -82 is 45 acres).

General Plan: Rural Lands - Rural Residential - Resource Conservation.

Zoning: “RL-RR-WW-SC” - Rural Lands - Rural Residential - Waterway - Scenic Combing Overlay District (013-028-81) & “RL-RR-WW” - Rural Lands - Rural Residential - Waterway (013-028-82).

Fire District: South Lake County Fire Protection District.

Flood Zone: “X” - Areas determined to be outside the 0.2% annual chance (500-year) flood plain.

School District: Middletown Unified School District.

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**AERIAL PHOTO OF SITE AND SURROUNDING AREA**



**EXISTING ZONING**

**Project Description**

The applicant is requesting a Rezone, General Plan Amendment and Tentative Parcel Map of two existing parcels (013-028-81 & 82). The parcels are located approximately 3.5 miles south of Middletown and are developed with single family homes and a vineyard. Bullion Creek runs through the north portion of the project site. The applicant may further develop the lots in the future as allowed within the RR and RL zoning district. However, no development details are known at this time. The project description and associated maps and figures are included as **Attachment 1**.

The Tentative Parcel Map proposes to subdivide APN 013-028-81 into four parcels. Currently, the existing two parcels are split zoned and the applicant seeks to rezone APN 013-028-81 to be completely within the RR-Rural Residential base zoning district and rezone APN 013-028-82 to be completely within the RL-Rural Lands zoning district as shown below. The Tentative Parcel Map is included in **Attachment 2**.

**Tentative Parcel Map for Assessor Parcel Number: 013-028-81:**

APN 013-028-81 would be subdivided into four (4) parcels:

- Parcel One (1): Is proposed to be approximately +/- 8.90 acres in size
- Parcel Two (2): Is proposed to be approximately +/- 5.00 acres in size
- Parcel Three (3): Is proposed to be approximately +/- 9.52 acres in size
- Parcel Four (4): Is proposed to be approximately +/- 5.93 acres in size

**REZONE REQUEST:**

Parcel Number	Current Zoning Designation	Proposed Zoning Designation
013-028-81	"RR-RL-WW-SC" ( <i>Rural Residential - Rural Lands - Waterway and Scenic Combining</i> )	"RR-SC-WW" ( <i>Rural Residential -- Waterway and Scenic Combining</i> )
013-028-82	"RR-RL-WW" ( <i>Rural Residential - Rural Lands - Waterway</i> )	"RL-WW" ( <i>Rural Lands - Waterway</i> )

**GENERAL PLAN AMENDMENT REQUEST:**

Parcel Number	Current General Plan Designation	Proposed General Plan Designation
013-028-81	"RL-RR-RC" ( <i>Rural Lands - Rural Residential -Resource Conservation</i> )	"RR-RC" ( <i>Rural Residential - Resource Conservation</i> )
013-028-82	"RL-RR-RC" ( <i>Rural Lands - Rural Residential -Resource Conservation</i> )	"RL-RC" ( <i>Rural Lands - Resource Conservation</i> )

The proposed parcels will be accessed from existing unimproved roadways off of State Highway 29.



The applicant shall obtain all necessary permits from the California Department of Transportation (Caltrans) and the Lake County Department of Public Works for any work and improvements within the right-of-way, as necessary.

### ***Project Setting***

Existing Uses and Improvements: The two existing parcels are currently developed with single family dwellings and agricultural uses. Uses on the proposed parcels would be as follows:

- Proposed Parcels One (1) and Two (2) are developed with single-family dwellings which are served by existing onsite wells and waste management systems (septic).
- Proposed Parcel Three (3) is partial developed with existing agricultural uses (vineyard) and a reservoir/pond.
- Proposed Parcel Four (4) would remain undeveloped/vacant at this time.
- There is an existing PG&E Pole Line Easement that crosses the proposed Parcel Three (3) and a Portion of Parcel Two (2).

### Surrounding Zoning and Land Uses:

*South:* RL Rural Land and RR Rural Residential (largely undeveloped land with some single family residential; lots ranging from 8 to 60 acres in size).

*East:* State Highway 29 is immediately east of the parcels. SR Suburban Reserve lots (approximately 0.5-1.5 acres in size) developed with single family homes and RR Rural Residential undeveloped lots that range from approximately 20-150 acres in size.

*West:* RL Rural Land undeveloped lots ranging from approximately 13 to 150 acres in size.

*North:* RR Rural Residential and RL Rural Land lots undeveloped or developed with single family dwellings on lots that range from 25 to 150 acres.

Topography: Varies (0% to greater than 30%). Parcel -81 proposed to be subdivided mostly contains 0% to 20% slopes, with the exception of some areas containing greater than 30% slopes. According to the Tentative Parcel Map, the proposed parcels have cross slopes ranging from 15% to 29%.

Soils: According to the soil survey of Lake County, prepared by the U.S.D.A, the parcels contain the following soil types: Bressa - Millsholm Loams, 15-30% slopes (soil unit 120); Henneke - Montara-Rock Outcrop Complex, 15 to 50% slopes (soil unit 142); Jafa loam, 5-15% slopes (soil unit 145); and Speaker-Maymen-Millsholm Association, 30-50% slopes (soil unit 227). According to County Records, parcel number 013-028-82 may have known Serpentine soils.

Water Supply: Private Well.

Sewage Disposal: Private Septic System.

Vegetation: Varied. Dominant vegetation includes Oaks, Ponderosa Pine, Doug Fir, Grassland, and Vineyards (within parcel -81).

**Staff recommends conditional approval of the proposed General Plan Amendment (GPAP 17-01); Rezone (RZ 17-01); Parcel Map (PM 17-01); and Initial Study (IS 17-31). Proposed**

Conditions of Approval are included as Attachment 6 and findings for approval are included in Section IV below.

## II. PROJECT ANALYSIS

### **GENERAL PLAN CONFORMANCE**

The project is located within the Middletown Area Plan and designated Rural Lands - Rural Residential - Resource Conservation in the Lake County General Plan. The General Plan contains policies related to rural residential development (such as Land Use Goal 3 and its associated policies) that would be applicable to future development of the proposed parcels but is not specific to the requested entitlements at this time. However, the following Goals and Policies are applicable to the General Plan Amendment and Rezone request.

**Policy LU 2.5 Rural Lands Densities.** The County shall require acreage minimums of 40 acres if average slopes are 30 percent or greater, and acreage minimums of 60 acres if average slopes exceed 40 percent, especially in areas identified as being special study zones in the Safety Element, or within a high wildland fire severity area.

**Policy LU 8.2 General Plan Amendments.** The County shall not amend the General Plan more than four times per year except as allowed by State law. Each amendment, however, may include multiple changes. Any amendment requires Planning Commission and Board of Supervisors public hearings.

**Response:** *The project is consistent with the above applicable General Plan policies, as the proposed Tentative Parcel Map and General Plan Amendment meets the densities allowed (as further discussed below). In addition, to date, the County has processed two General Plan Amendments in the 2020 calendar year, making this General Plan Amendment the third this year, if approved.*

**Rural Lands.** The purpose of this land use category is to allow rural development in areas that are primarily in their natural state, although some agricultural production, especially vineyards, can occur on these lands. 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.

Density/Intensity 1 DU/ 20 60 acres

The base density of 20 acres shall be decreased when the average slope of the property increases, as follows:

30 acre minimum density if average slope is between 20% and 29%.

40 acre minimum density if average slope is between 29% and 35%.

60 acre minimum density if average slope exceeds 35%.

The minimum density in the Rural Lands designation may be increased for parcels with average slopes between 20 and 29% when it can be demonstrated that factors related to wildland fire/fuel loading and landslide hazards are not present.

**Rural Residential.** This land use category is designed to provide single family residential development in a semi rural setting. Large lot residential development with small scale agricultural activities is appropriate. Typical uses permitted by right include single family residences; crop production; raising of poultry, rabbits, and other small animals for domestic use; raising of bovine animals, horses, sheep, and goats for domestic use; and sale of crops produced on the premises. Typical uses permitted conditionally include agricultural related services and recreational facilities.

Density/Intensity: 1 DU/5 Acres if average cross slope is less than 30%  
1 DU/10 Acres if average cross slope is 30% or greater

**Response:** *The portion of the parcels north of the existing road (and creek) are designated as RR, while the portion of the parcels south of the existing road (and creek) are designated as RL. The applicant is seeking a General Plan Amendment to change the designation of parcel -81 to RR only and parcel -82 to RL only (while leaving the Resource Conservation designation for the existing creek on both parcels). The existing parcels are developed with single family homes and agricultural uses, consistent with the RL and RR designations. Parcel -82 is currently 45 acres in size and would remain as is. Parcel -81 is approximately 30 acres in size and is proposed to be subdivided into smaller lots, which would not be consistent with the density allowed for RL. However, the proposed lots (all with a minimum five acre parcel size) would be consistent with the density allowed in the RR designation proposed with the General Plan Amendment. According to the Tentative Parcel Map, the portion of parcel -81 that would become Parcels 1 (8.9 acres) and 2 (5.0 acres) are both developed with a single family residence and mostly contain slopes less than 30%, consistent with the intent and density allowed for the RR designation. Proposed Parcel 3 (9.52 acres) has a cross slope of 21% and contains vineyards and agricultural uses that would remain. Proposed Parcel 4 (5.93 acres) has a cross slope of 29% and would remain undeveloped. These uses and development standards are consistent with the RR designation proposed in the General Plan Amendment.*

**Resource Conservation.** The purpose of this land use category is to assure the maintenance or sustained generation of natural resources within the County. The highest priority for these lands is to provide for the management of the County's natural infrastructure. This management should include, but is not limited to, functioning as watershed lands which collect precipitation and provide for the important filtering of water to improve water quality. This category would include public and private areas of: significant plant or animal habitats; forest lands in Timberland Preserve Zones; agricultural lands within the Williamson Act; grazing; watersheds including waterways and wetlands; outdoor parks and recreation; retreats; mineral deposits and mining areas which require special attention because of hazardous or special conditions; publicly owned land (e.g., U.S. Forest Service, BLM land, State, and County); and open space activities. Uses allowed in this designation are those related to resource utilization and resource conservation activities.

**Response:** *Bullion Creek is the only portion of the project sites that is designated as Resource Conservation. The project does not include development near the creek. However, the Initial Study contains mitigation to avoid any potential impacts that may occur from future development (See Environmental Review Section below and Attachment 8).*

## **MIDDLETOWN AREA PLAN CONFORMANCE**

The Middletown Area Plan (2010) is a guide for long-term growth and development in the Planning Area and is a complement to the Lake County General Plan. It is a planning tool that will facilitate refined planning decisions based on community values and priorities of the residents in the area. The

Planning Area includes 148.43 square miles in the southernmost portion of Lake County. The Middletown Area Plan does not contain specific policies related to the Tentative Parcel Map but does contain several policies related to new residential development that any future development would have to be found consistent with. The following policy related to the General Plan Amendment is applicable to the project.

**Policy 5.5.2a** Evaluate proposals to amend the Planning Area land use maps that increases the acreage of land designated rural residential, suburban residential reserve, and low density residential by the following criteria:

- Adequate water with suitable quality must be available and capable of being provided for each potential parcel.
- Soils must be suitable for on-site waste disposal systems.
- Adequate access, fire fuel breaks, water storage or equivalent measures for rural fire protection must be provided.
- Adequate access must be available or proposed to safely accommodate the potential increase in traffic without adversely impacting the existing circulation system.
- Proposals must not adversely affect adjacent land uses.
- The proposal must not impact a significant or unique natural resource.
- The supply of existing parcels with the same designation as that proposed should be insufficient to accommodate projected growth in the Planning Area through the 20-year planning period.
- Proposals to change to rural residential, suburban residential reserve or low density residential should provide a logical buffer between suburban densities and agricultural or more remote rural, or incompatible land uses.
- The area should be adjacent to existing land designated with the same land use classification as proposed and should not result in a “spot” designation or be incompatible with residential densities in the vicinity.
- Areas with average cross slopes exceeding 30% should not be considered for land use designation changes to suburban residential reserve or low density residential. Areas proposed to be designated rural residential with average cross slopes exceeding 30% should incorporate the use of minimum lot size of 10 acres or more.

**Response:** *The project is consistent with the above policy, as the parcels are developed and served by existing facilities adequate to serve the site(s), contain low density residential, and will preserve the natural resources on-site. According to the Tentative Parcel Map, the proposed parcels contain cross slopes of 15% to 29% and the steepest portion of the site (proposed parcel 4) is to remain undeveloped. In addition, the project is generally consistent with the Middletown Area Plan as it supports single family rural development and conservation of natural resources (Objective 3.7.2 and Policy 5.5.3c), as well as agricultural uses (Objective 5.5.4).*

### **ZONING ORDINANCE CONFORMANCE**

Currently, the parcels are split zoned “RL-RR-WW-SC” - Rural Lands - Rural Residential - Waterway - Scenic Combining Overlay District (013-028-81) and “RL-RR-WW” - Rural Lands - Rural Residential - Waterway (013-028-82). The applicant seeks to rezone APN 013-028-81 to be completely within the RR-Rural Residential zoning district (with the WW-SC Combining District) and rezone APN 013-028-82 to be completely within the RL-Rural Lands zoning district (with the WW Combining District).

**Rural Lands.** This zoning designation is intended 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. Single family residential and agricultural uses are permitted within the RL designation, but it contains development standards (width, length, etc.) for creating parcels, as well as development of single family homes.

**Rural Residential.** This zoning designation is intended to provide for single-family residential development in a semi-rural setting along with limited agriculture.

**Water Way Combining District.** This Combining District is intended to preserve, protect and restore significant riparian systems, streams and their riparian, aquatic and woodland habitats; protect water quality; control erosion, sedimentation and runoff; and protect the public health and safety by minimizing dangers due to floods and earth slides. These purposes are to be accomplished by setting forth regulations to limit development activities in significant riparian corridors and through the establishment of an administrative procedure for the granting of exceptions- from such regulations. This Combining District contains development standards relating to setbacks, erosion, vegetation removal, etc. to protect water resources.

**Scenic Combining District.** This Combining District is intended to protect and enhance views of scenic areas from the County's scenic highways and roadways for the benefit of local residential and resort development, the motoring public, and the recreation based economy of the County. SC provides development standards (setbacks, height restrictions, etc.) specific to development in order to preserve the visual character of the area.

**ARTICLE 47, SEC. 21-47.20 ORDINANCE TEXT AMENDMENT AND REZONING AMENDMENT.**

Article 47 of the Lake County Zoning Ordinance identifies procedures for both ordinance and rezone amendments. Section 21-47.21 and 21-47.22 identify the information required to apply for a Rezone (zoning maps identifying areas to be rezoned, as well as property owners of interest).

**Response:** *The single family homes and agricultural uses are existing and permitted within the RL and RR zoning designations. The proposed Rezone would require a General Plan Amendment, in compliance with the Lake County Zoning Ordinance; the applicant has provided all information required in Article 47 to process the Rezone. The proposed Parcel Map is consistent with all applicable development standards in the Zoning Ordinance. The applicant has submitted all required information for the Rezone application. With approval of the requested entitlements, the project would not conflict with the General Plan, Middletown Area Plan or Zoning Ordinance. In addition, all future development will have to adhere to requirements within the aforementioned plans and codes, including standards contained within the WW and SC Combining Districts.*

**CHAPTER 17 (SUBDIVISION REGULATIONS) OF THE LAKE COUNTY CODE - ARTICLE III  
TENTATIVE MAP**

Chapter 17 of the Lake County Code contains provisions for subdivisions, including Tentative Map and Final Map requirements and procedures, as well as subdivision development standards (lot size, access standards, etc.).

**Response:** *The proposed Tentative Parcel Map has been prepared by a licensed surveyor and meets all requirements outlined in Section 17-6, as well as the development standards outlined in Section 17-23. In addition, the Tentative Parcel Map has been reviewed by the County Surveyor for consistency with Subdivision Regulations; Conditions of Approval have been added to ensure the Tentative and Final Maps are consistent with Chapter 17 of the Lake County Code.*

### III. ENVIRONMENTAL EVALUATION

The California Environmental Quality Act (CEQA) requires agencies to evaluate the environmental implications of land use actions. An Initial Study and Mitigated Negative Declaration (IS 17-31; **Attachment 8**) was prepared and circulated for public review in compliance with CEQA from July 15, 2020 to August 18, 2020. Comments were received by CalFIRE, PG&E and the Lake County Department of Water Resources; no comments objecting the project were received (comments are included in **Attachment 7**).

The Initial Study found that the Rezone, General Plan Amendment would not have any impact of the environment. However, with approval of the Parcel Map, the applicant has stated that they may develop the parcels with single family development in the foreseeable future. Although no specific development details are available or proposed at this time, potential development of the parcels was analyzed at a general level and it was determined that future development of the parcels has the potential to result in significant impacts to Air Quality, Biological Resources, Cultural/Tribal Cultural Resources, Geology/Soils, Hazards, and Hydrology/Water Quality. However, the below Mitigation Measures would reduce all potential impacts to Less than Significant.

#### **Air Quality**

AQ-1: Work practices shall minimize vehicular and fugitive dust to reduce the impact of fugitive dust emissions to a less than significant level in staging areas, work areas, and adjoining roads by use of water, paving or other acceptable dust palliatives to ensure that dust does not leave the property. Access to project areas shall be limited to authorized vehicles.

AQ-2: Vehicles and equipment shall be well maintained and in compliance with State emission requirements. The permit holder shall obtain all necessary for any diesel generators or diesel engines installed as operating, support, or emergency backup equipment for the Lake County Air Quality Management District.

AQ-3: Vegetation that is removed for any development must be properly disposed. The permit holder shall chip vegetation and spread the material for erosion control.

AQ-4: All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.

AQ-5: According to County Records, parcel number 013-028-82 may have known Serpentine soils. Therefore, prior to any ground disturbance and/or future development the applicant shall contact the Lake County Air Quality Management District as a Dust Mitigation Plan may be required.

AQ-6: Work practices and/or future development shall minimize vehicular and fugitive dust to reduce the impact of fugitive dust emissions to a less than significant level in staging areas, work areas, and adjoining roads by use of water, paving or other acceptable dust palliatives to ensure that dust does not leave the property. Access to project areas shall be limited to authorized vehicles.

AQ-7: All vegetative waste from development activities shall be composted and/or chipped as a means of disposal. All vegetation removed shall be chipped and spread for ground cover and erosion control. Site development and vegetation disposal shall not create a nuisance odors, smoke or dust.

AQ-8: Burning of vegetative material is discourage, but if not alternative material is available, a Smoke Management Plan shall be submitted to the Lake County Air Quality Management District and the local fire protection District for review and approval.

### **Biological Resources**

BIO 1: All residential development and its access shall be emphasized within the central, valley portions of the project parcels and be accessed by existing ranch roads.

BIO-2: Development within the Douglas Fir Forest in the southern portions of the property shall be restricted to the margins of this habitat and/or to adjacent mixed oak woodlands along the eastern edge of the property within the 2.1 acre area on parcel four delineated as "Development Area, 2.1 Acres on final map.

BIO-3: The use of fencing shall be restricted to residential yards and existing vineyard development.

BIO-4: In order to avoid potential impacts to the Yellow Legged Frog, any development within the active channel of the creek extending along the northern property boundary, shall occur prior to April 1 or after June 15, by which time frog larvae and young are mobile and independent. Disturbance of the channel structure shall be limited to the immediate construction site. Alternatively, work may occur when the channel is naturally dry.

- In the event that work must occur within the active channel when water is present between April 1 and June 15, all such work shall be performed in as few events as possible and all required materials and equipment shall be on-site prior to the event in order to avoid delays which would prolong the disturbance period. The period of disturbance shall be held to the minimal amount of time necessary to accomplish the required tasks. A qualified biologist with a valid California Department of Fish and Wildlife collecting permit shall be on-site during each day of the active channel disturbance event.
- Any foothill yellow-legged adult or larval frogs within the work area shall be captured and transferred to an adjacent, unaffected stream segment.
- In the event that eggs of this species are found during these surveys, in-channel activities shall be delayed for one week (eggs usually hatch within 5 days) and the site re-inspected to determine if eggs have hatched. If not, an additional delay shall be required until the eggs have hatched.

BIO-5: In order to avoid potential impacts to the Western Pond Turtle, all work within the channel of the creek extending along the northern edge of the property, or within ponds should occur after August 15 but before the onset of winter rains and the end of the grading season (October 15). Downed trees, stumps and other basking sites and refuges within these aquatic habitats shall remain undisturbed.

- In the event that work must occur within the active channel between April 1 and June 15, or within a pond, all such work shall be performed in as few events as possible and all required materials and equipment shall be on-site prior to the event in order to avoid delays which would prolong the disturbance period. The period of disturbance shall be held to the minimal amount of time necessary to accomplish the required tasks. A qualified biologist with a valid California Department of Fish and Wildlife collecting permit shall be on-site during each day of the active channel disturbance event.
- In the event that western pond turtles are identified, a qualified biologist with a valid California Department of Fish and Wildlife collecting permit should be present during all construction activities at the crossing site.

**BIO-6:** To avoid any potential impacts to the White-tailed kites and/or Purple Martins any vineyard development, including vegetation removal, shall occur outside of the nesting season (February 15 through August 31).

- If construction during the nesting season cannot be avoided, any required vegetation removal shall be the minimal amount necessary for development and shall be completed prior to the nesting season. In the event that vegetation removal is necessary during the nesting season, the work shall be preceded by a pre-construction nest survey conducted by a qualified biologist within two weeks of disturbance. If an active nest of a sensitive bird species is found, a Construction buffer shall be established in consultation with California Department of Fish and Wildlife staff. Said buffer shall remain in place until fledging is completed or until it is determined that the nesting effort has failed as determined by the qualified biologist.

**BIO-7:** To avoid potential impacts to the Pallid Bat, any trees to be removed (outside of the dates listed below), that is suitable for use by bats shall be surveyed for signs of bats. This survey shall occur no earlier than fourteen (14) days prior to tree removal. Suitable trees include those with hollows and/or shedding bark.

- If pallid bats, or other bats with sensitive regulatory status, are discovered during the surveys, a buffer of 50 feet should be established depending on recommendations of the surveying biologist. Removal of these roost trees shall be restricted to between September 15 and October 15, when young of the year are capable of flying, or between February 15 and April 1 to avoid hibernating bats and prior to formation of maternity sites.

**BIO-8:** Placement of any fill and/or any project improvements/ development that results in the discharge of dredged and/or fill material into potential jurisdictional areas on the project sites shall require authorization from the following agencies, which included but is not limited to the following:

- U.S Army Corps of Engineers Nationwide Permit.
- Regional Water Quality Control Board pursuant to Sections 404 and 401 of the Clean Water Act
- California Department of Fish and Wildlife - 1601/1604 Stream Alteration Agreement.

**BIO-9:** Any development shall maintain a minimum of a thirty (30) foot or greater setback from top of bank for all waterways located on project parcels.

**BIO-10:** Prior to any work occurring in and/or near any waterway, the applicant shall submit Erosion and Sediment Control Plans and a Storm Water Management Plan to the Community Development Department for review and approval. Said Plans shall protect the local watershed from runoff pollution through the implementation of appropriate Best Management Practices (BMPs) in accordance with the Grading Ordinance. [Coverage under the National Pollutant Discharge Elimination System (NPDES), General Permit for Storm Water Discharges associated with a Construction Activity (General Permit) and a Storm Water Pollution Prevention Plan (SWPPP) may be required]

**BIO-11:** All manzanita Shrub Areas shown on the final parcel map may contain Jepson Navarretia and a survey of the area in question shall be performed by a qualified Botanist prior to development.

## **Cultural Resources/Tribal Cultural Resources**

**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 local

overseeing 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 local overseeing Tribe shall immediately be notified; a licensed archaeologist shall be notified, and the Lake County Community Development Director shall be notified of such finds.

## **Geology/Soils**

Implement Mitigation Measure AQ-5.

GEO-1: Prior to any ground disturbance, the permitted shall submit Erosion Control and Sediment Plans to the Community Development Department for review and approval. Said Erosion Control and Sediment Plans shall protect the local watershed from runoff pollution through the implementation of appropriate Best Management Practices (BMPs) in accordance with the Grading Ordinance. Typical BMPs include the placement of straw, mulch, seeding, straw wattles, silt fencing and the planting of native vegetation on all disturbed areas. No silt, sediment or other materials exceeding natural background levels shall be allowed to flow from the project area. All BMP's shall be maintained for life of the project.

GEO-2: Prior to any ground disturbance, (if applicable), the permit holder shall submit and obtain a Grading Permit from the Community Development. The project design shall incorporate appropriate BMPs consistent with County and State Storm Water Drainage Regulations to the maximum extent practicable. The project design shall incorporate Best Management Practices (BMPs) to the maximum extent practicable to prevent or reduce discharge of all construction or post-construction pollutants into the County storm drainage system. BMPs typically include scheduling of activities, erosion and sediment control, operation and maintenance procedures and other measures in accordance with Chapters 29 and 30 of the Lake County Code.

GEO-3: Excavation, filling, vegetation clearing or other disturbance of the soil shall not occur between October 15 and April 15 unless authorized by the Community Development Director. The actual dates of this defined grading period may be adjusted according to weather and soil conditions at the discretion of the Community Development Director.

GEO-4: The permit holder shall monitor the site during the rainy season (October 15 -May 15), including post-installation, application of BMPs, erosion control maintenance, and other improvements as needed.

## **Hazards**

HAZ-1: All hazardous waste shall not be disposed of on-site without review or permits from Environmental Health Department, the California Regional Water Control Board, and/or the Air Quality Board. Collected hazardous or toxic waste materials shall be recycled or disposed of through a registered waste hauler to an approved site legally authorized to accept such material.

HAZ-2: The storage of potentially hazardous materials shall be located at least 100 feet from any existing water well. These materials shall not be allowed to leak onto the ground or contaminate

surface waters. Collected hazardous or toxic materials shall be recycled or disposed of through a registered waste hauler to an approved site legally authorized to accept such materials.

HAZ-3: Any spills of oils, fluids, fuel, concrete, or other hazardous construction material shall be immediately cleaned up. All equipment and materials shall be stored in the staging areas away from all known waterways.

HAZ- 4: The storage of hazardous materials equal to or greater than fifty-five (55) gallons of a liquid, 500 pounds of a solid, or 200 cubic feet of compressed gas, then a Hazardous Materials Inventory Disclosure Statement/Business Plan shall be submitted and maintained in compliance with requirements of Lake County Environmental Health Division. Industrial waste shall not be disposed of on site without review or permit from Lake County Environmental Health Division or the California Regional Water Quality Control Board. The permit holder shall comply with petroleum fuel storage tank regulations if fuel is to be stored on site.

HAZ-5: The project design shall incorporate appropriate BMPs consistent with County and State Storm Water Drainage regulations to prevent or reduce discharge of all construction or post-construction pollutants and hazardous materials offsite or into the creek. The site shall be monitored during the rainy season (October 15-April 15) and erosion controls maintained.

### **Hydrology/Water Quality**

Implement Mitigation Measures BIO-9, BIO-10, GEO-1 through GEO-4, HAZ-3 and HAZ-5.

## **IV. FINDINGS REQUIRED FOR APPROVAL**

### **GENERAL PLAN AMENDMENT**

#### **1. The proposed amendment is consistent with the General Plan, and the Middletown Area Plan.**

*As previously described in the General Plan Conformance Section of this Staff Report, the parcels are currently split zoned and the applicant is seeking a General Plan Amendment to change the designation of parcel -81 to RR only and parcel -82 to RL only (while leaving the Resource Conservation designation for the existing creek on both parcels). The parcels are currently developed with single family homes and agricultural uses, consistent with the RL and RR designations. Parcel -82 is currently 45 acres in size and would remain as is. Parcel -81 is approximately 30 acres in size and is proposed to be subdivided into smaller lots, which would not be consistent with the density allowed for RL. However, the proposed lots (all with a minimum five acre parcel size) would be consistent with the density allowed in the RR designation proposed with the General Plan Amendment. According to the Tentative Parcel Map, all of the proposed parcels are a minimum of five acres in size and contain average cross slopes less than 30%, consistent with the density allowed within the RR and RL designations. Bullion Creek is the only portion of the project sites that is designated as Resource Conservation. The project does not include development near the creek and the Initial Study contains mitigation to avoid any potential impacts that may occur from future development (See Environmental Review Section of this Staff Report).*

*The General Plan contains policies related to rural residential development (such as Land Use Goal 3 and its associated policies) that would be applicable to future development of the proposed parcels but is not specific to the requested entitlements at this time. The project is*



*consistent with General Plan Policies 2.5 and 8.2 as the parcels are developed and served by existing facilities adequate to serve the site(s), contain low density residential, and will preserve the natural resources on-site.*

*In addition, the project is consistent with the Middletown Area Plan as it supports single family rural development and conservation of natural resources (Objective 3.7.2 and Policy 5.5.3c), as well as agricultural uses (Objective 5.5.4) within the RR and RL designations.*

- 2. 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 amendment would not be detrimental to the public interest, health, safety, convenience, or welfare of the County, because the amendment facilitates a logical and orderly expansion of surrounding RR and RL designations and land uses. The uses are currently existing and no development is proposed at this time. The proposed General Plan Amendment has been reviewed by the County surveyor, Sherriff's Department, Fire Marshal, and other departments and agencies for health and safety concerns. The proposed use (and any future uses) shall meet all Federal, State and local agency requirements.*

- 3. This project will not result in any significant adverse environmental impacts.**

*The Initial Study found that the Rezone, General Plan Amendment would not have any impact of the environment. However, with approval of the Parcel Map, the applicant has stated that they may develop the parcels with single family development in the foreseeable future. Although no specific development details are available or proposed at this time, potential development of the parcels was analyzed at a general level and it was determined that future development of the parcels has the potential to result in significant impacts to Air Quality, Biological Resources, Cultural/Tribal Cultural Resources, Geology/Soils, Hazards, and Hydrology/Water Quality. However, the identified Mitigation Measures would reduce all potential impacts to Less than Significant.*

## **REZONE**

- 1. That the project is in conformance with the applicable provisions and policies of this Code, the General Plan, Lake County Zoning Ordinance and any approved zoning or land use plan.**

*The single family homes and agricultural uses are existing and permitted within the RL and RR zoning designations. The proposed Rezone would require a General Plan Amendment, in compliance with the Lake County Zoning Ordinance; the applicant has provided all information required in Article 47 to process the Rezone. The proposed Parcel Map is consistent with all applicable development standards in the Zoning Ordinance. In addition, all future development will have to adhere to requirements within the aforementioned plans and codes, including standards contained within the WW and SC Combining Districts. The applicant has submitted all required information for the Rezone application. With approval of the requested entitlements, the project would not conflict with the General Plan, Middletown Area Plan or Zoning Ordinance.*

**2. This project will not result in any significant adverse environmental impacts.**

*The Initial Study found that the Rezone, General Plan Amendment would not have any impact of the environment. However, with approval of the Parcel Map, the applicant has stated that they may develop the parcels with single family development in the foreseeable future. Although no specific development details are available or proposed at this time, potential development of the parcels was analyzed at a general level and it was determined that future development of the parcels has the potential to result in significant impacts to Air Quality, Biological Resources, Cultural/Tribal Cultural Resources, Geology/Soils, Hazards, and Hydrology/Water Quality. However, the identified Mitigation Measures would reduce all potential impacts to Less than Significant.*

**TENTATIVE PARCEL MAP**

According to SB 1241, three findings must be made in order to approve a parcel map. Section 66474.02(a)(1) requires that “a finding supported by substantial evidence in the record that the design and location of each lot in the subdivision, and the subdivision as a whole, are consistent with any applicable regulations adopted by the State Board of Forestry and Fire Protection pursuant to Sections 4290 and 4291 of the Public Resource Code (PRC).”

Section 66474.02(a)(2) requires that a finding supported by substantial evidence in the record that structural fire protection and suppression services will be available for the subdivision through any of the following entities:

- (A) A county, city, special district, political subdivision of the state, or another entity organized solely to provide fire protection services that are monitored and funded by a county or other public entity; and
- (B) The Department of Forestry and Fire Protection by contract entered into pursuant to Section 4133, 4142, or 4144 of the Public Resources Code.

Section 66474.02(a)(3) requires that “a finding that to the extent practicable, ingress and egress for the subdivision meets the regulations regarding road standards for the fire equipment access adopted pursuant to Section 4290 of the Public Resource Code and any applicable local ordinance.

*The project site is located in high severity fire zone/State Responsibility Area. The project has been reviewed by the Department of Public Works, CalFIRE, and other agencies and departments for safety and access concerns, and had no adverse comments.*

*The proposed parcels are/will be accessed from existing unimproved roadways. The existing access/roadway would be improved to meet all Federal, State and local agency requirements. The applicant shall obtain all necessary permits from the California Department of Transportation (Caltrans) and/or the Lake County Department of Public Works for any work and/or improvements within the right-of-way. Future development will adhere to all Federal, State and local fire requirements/regulations, including Chapter 13 of the Lake County Code.*

*The proposal is consistent with these required findings.*

**INITIAL STUDY AND MITIGATED NEGATIVE DECLARATION**

**1. The Initial Study, Mitigated Negative Declaration and its Mitigation Monitoring Reporting**

Program have been prepared in conformance with CEQA and all CEQA requirements have been adequately met for the project.

*An Initial Study and Mitigated Negative Declaration (IS 17-31; Attachment 8) was prepared and circulated for public review in compliance with CEQA from July 15, 2020 to August 18, 2020. No comments objecting the project were received. All requirements of CEQA Guidelines Article 5 for preparation of an Initial Study, and Article 6 for consideration and adoption of a mitigated negative declaration, have been met.*

2. This project is consistent with the Lake County General Plan, Middletown Area Plan and the Lake County Zoning Ordinance.

*As described above in Rezone Fining No. 1, the project is consistent with the Lake County General Plan, Middletown Area Plan, and the Lake County Zoning Ordinance.*

3. This project is consistent with land uses in the vicinity.

*The project parcels, as well as parcels in the vicinity are currently developed with single family homes and agricultural uses, consistent with the Rural Lands and Rural designations. The Rezone, General Plan Amendment and Parcel Map would create additional parcels, consistent with all applicable development standards for the Rural Lands and Rural Residential zoning designations. However, no development is proposed at this time. All future development shall adhere to all local, state and federal regulations to ensure compatibility with surrounding land uses.*

4. This project will not result in any significant adverse environmental impacts.

*The Initial Study found that the Rezone, General Plan Amendment would not have any impact of the environment. However, with approval of the Parcel Map, the applicant has stated that they may develop the parcels with single family development in the foreseeable future. Although no specific development details are available or proposed at this time, potential development of the parcels was analyzed at a general level and it was determined that future development of the parcels has the potential to result in significant impacts to Air Quality, Biological Resources, Cultural/Tribal Cultural Resources, Geology/Soils, Hazards, and Hydrology/Water Quality. However, identified Mitigation Measures would reduce all potential impacts to Less than Significant.*

## RECOMMENDATION

### **Staff recommends the Planning Commission:**

#### **A. Recommend Adoption of the Mitigated Negative Declaration (IS 17-31) and its associated Mitigation Monitoring Reporting Program with the following findings:**

- 1) The Initial Study and Mitigated Negative Declaration have been prepared in conformance with CEQA and all CEQA requirements have been adequately met for the project.
- 2) This project is consistent with the Lake County General Plan, Middletown Area Plan, the Lake County Zoning Ordinance and Subdivision Map Act.
- 3) This project will not conflict with land uses in the vicinity.

- 4) With the mitigation measures identified in the Mitigation Monitoring Reporting Program this project will not result in any significant adverse environmental impacts.

**B. Recommend Approval of General Plan Amendment GPAP 17-01 with the following findings:**

- 1) That the project is in conformance with the applicable provisions and policies of this Code, the General Plan, Lake County Zoning Ordinance and the Middletown Area Plan.
- 2) 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.
- 3) This project will not result in any significant adverse environmental impacts.

**C. Recommend Approval of Rezone RZ 17-01 with the following findings:**

- 1) That the project is in conformance with the applicable provisions and policies of this Code, the General Plan, Lake County Zoning Ordinance and the Middletown Area Plan.
- 2) With the mitigation measures identified in the Mitigation Monitoring Reporting Program this project will not result in any significant adverse environmental impacts.
- 3) The proposed rezone will not result in “spot zoning” and the project will not conflict with land uses in the vicinity.

**D. Recommend Approval of Parcel Map PM 17-01 with the following findings:**

- 1) This project is consistent with the Lake County General Plan, Zoning Ordinance, Subdivision Ordinance, and the Middletown Area Plan.
- 2) This project is consistent with the State Subdivision Map Act and Chapter 17 of the Lake County Code.
- 3) Adequate structural fire protection and suppression services will be available for Parcel Map through South Lake County Fire Protection District.
- 4) Ingress and egress for the Parcel Map shall meet all applicable regulations regarding road standards for the fire equipment access adopted pursuant to Section 4290 of the Public Resources Code and any applicable ordinance.
- 5) A Mitigated Negative Declaration has been adopted for this project based on Initial Study IS 17-31 that found the project will not result in any significant adverse environmental impacts.

**V. SAMPLE MOTIONS:**

**Initial Study and Mitigated Negative Declaration**

I move that the Planning Commission recommend that the Board of Supervisors find on the basis of the **Initial Study IS 17-31** and the mitigation measures identified in the Mitigation Monitoring

Reporting Program, that **General Plan Amendment GPAP 17-01, Rezone RZ 17-01 and Tentative Parcel Map PM 17-01** will not have a significant effect on the environment and thereof, recommend the Planning Commission recommend the Board of Supervisors approve the proposed Mitigated Negative Declaration and its associated Mitigation Monitoring Reporting Program with the findings listed in the Staff Report dated November 25, 2020.

#### **General Plan Amendment**

I move that the Planning Commission recommend that the Board of Supervisors make a motion of approval for **General Plan Amendment GPAP 17-01 applied for by Richard & Whitney Brand** for the following reasons: The proposed General Plan Amendment is found to be consistent with the Lake County General Plan, the Middletown Area Plan, and the Lake County Zoning Ordinance; the proposed amendment is compatible with the existing land uses in the vicinity, and as outlined in the Initial Study IS 17-31, prepared for this application, the proposed amendment will not result in any significant adverse environmental impacts and further direct staff to prepare a proposed resolution.

#### **Rezone:**

I move that the Planning Commission has reviewed and considered the environmental effects of **Rezone RZ 17-01** as set forth in the proposed Initial Study (IS 17-31) which has been prepared for this project, and that the Planning Commission recommend that the Board of Supervisors approve the proposed rezoning applied for by **Richard & Whitney Brand** on property located at **23987 & 24073 State Highway 29, Middletown, CA 95461; APNs 013-028-81 & 013-028-82** for reasons listed in the Staff Report dated November 25, 2020.

#### **Parcel Map**

I move that the Planning Commission find that the **Tentative Parcel Map PM 17-01** applied by **Richard & Whitney Brand** on property located at **23987 State Highway 29, Middletown, CA 95461; APN 013-028-81** is in conformity with the provisions of the Subdivision Map Act and Chapter 17 of the Lake County Code and the Lake County Code, and upon that basis approve said map subject to the conditions and with the findings listed in the Staff Report dated November 25, 2020.

***NOTE:** The applicant or any interested person is reminded that the Zoning Ordinance provides for a seven (15) calendar day appeal period for parcel maps. If there is a disagreement with the Planning Commission, 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 Commission's final determination*