



Legislation Text

File #: 19-1184, Version: 1

MEMORANDUM

Date: January 14, 2020

To: Board of Supervisors

From: Michalyn DelValle, Community Development Director
Eric Porter, Associate Planner

Subject: Appeal to Board of Supervisors, AB 19-06 of Major Use Permit, UP 18-43 and Initial Study, IS 18-58. APN: 014-004-20

Supervisor District 1

- EXHIBITS:**
- A. AB 19-06 Application including Appellant's Attachments
 - B. Planning Commission Staff Report with Attachments dated June 17, 2019
 - C. Planning Commission Minutes from June 27, 2019 Public Hearing
 - D. Copy of California Department of Toxic Substance Control review of 19020 Butts Canyon (PG&E) Site Evaluation
 - E. Water Availability Analysis, dated November 6, 2019

EXECUTIVE SUMMARY:

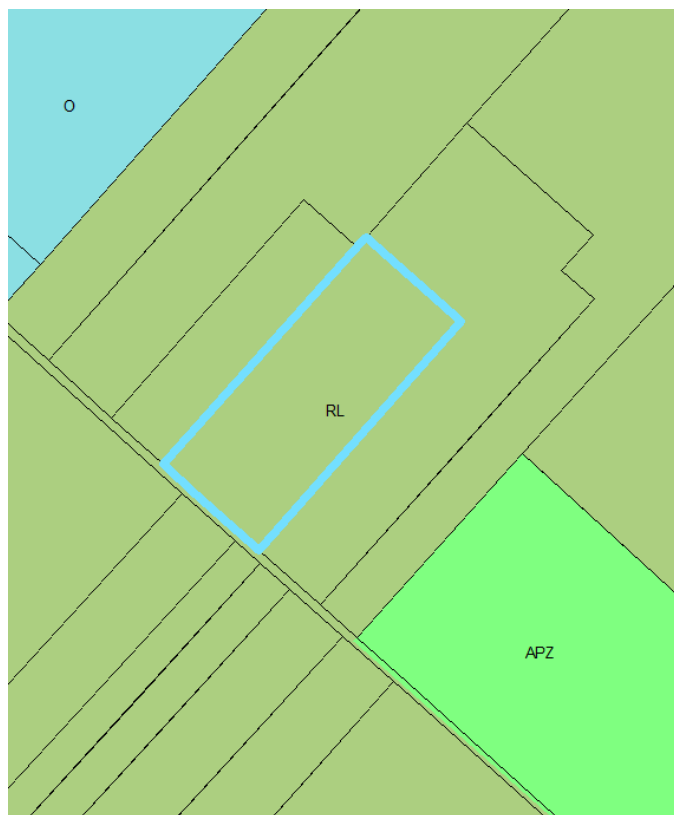
The Appellant, Judson Hodges, is appealing the Planning Commission's June 27, 2019 decision to adopt a Mitigated Negative Declaration and approve a Major Use Permit (files no. UP 18-43 and IS 18-58), which if approved would allow an A-Type 3B (medium mixed light) commercial cannabis cultivation site at 19424 Butts Canyon Road, Middletown; APN number 014-004-20. Approval would allow 25,996 square feet (s.f.) of cultivation area and up to 21,996 s.f. of canopy inside (13) 98' x 20' greenhouses, as well as a 4,000 s.f. drying building. The Planning Commission required permanent restrooms in the drying building that were ADA compliant along with a hand-wash station, also ADA compliant.

Background

The use permit applicant and property owner, Shannon Sanders, applied for an A-Type 3B (medium mixed light) commercial cannabis application using 13 greenhouses. The site is pastoral, and is accessed via gravel driveway. The site is compliant with Public Resource Codes 4290 and 4291 (CalFire regulations). The cultivation site was burned in the Valley Fire; the center of the property is a burn scar - the applicant had removed some dead oak trees, and the cultivation site is flat, and is concealed from view based on the terrain and the heavy shrub and tree growth that is still present and had not burned in the Valley Fire.

On June 27, 2019, the Planning Commission held the public hearing for the major use permit; took testimony, deliberated, then voted to approve Major Use Permit UP 18-43 and adopt initial study IS 18-58. This appeal followed. Of note: two online petitions were put on the internet

approximately one week prior to the hearing; one was in support of this application, and one was against the application. Over 700 people signed the two petitions; the mixture of those in support and in opposition is about 50/50 (slightly more were opposed to it).



Zoning of Subject Site and Vicinity

Basis of the Appeal

The Appellant, Judson Hodges, cited several aspects of the project that he opined did not meet several specific Zoning Ordinance sections (Article 51.4, subsection #1, “Safety” (no specific code section referenced), and “Water” (no specific code section referenced). The Appellant stated the following:

1. “The project does not meet the requirement of article 51.4, #1.

“That the establishment, maintenance, or operation of the use applied for will not under the circumstances of the particular case, be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use, or be detrimental to property and improvements in the neighborhood or the general welfare of the County.

“The presentation by the applicant during the Planning Commission hearing did not adequately address this.”

Response: *It is unclear by the Appellant’s concern raised exactly which portion of this code the Appellant believes was not met by the Planning Commission (“Commission”) The Commission adopted the following finding:*

“The immediate area contains rural land with several homes, one of which is located about 635

feet away from the cultivation site. As previously discussed, the primary potential impacts resulting from this proposal appear to be Aesthetics (greenhouse buildings as viewed from the south along Butts Canyon Road), Air Quality (odor) and Noise. All of these significant impacts have been adequately addressed within the applicant's submittal for the reasons previously stated."

Article 51.4 requires the Planning Commission to find that the use permit will not 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." Here are the responses to each of these items:

1. **Health.** The Appellant has not demonstrated any substantive reasons why the growing of commercial cannabis might be detrimental to the health of those in the vicinity. The plants will be grown in greenhouses, which has the potential of having odors reduced through the use of various odor control devices. Condition no. C-1 requires the Applicant to submit an Odor Control Plan to Community Development Department for review and acceptance, or review and revision (or denial) prior to cultivation.
 2. **Safety.** The Appellant states "The county is currently not able to adequately address public safety. The sheriff department is woefully under staffed. During the planning hearing the Commissioners acknowledged that there are limited deputies, 2 to 0 on during the evenings. This proposed project presents an unwelcomed opportunity for crime in our neighborhood and puts us at risk." The Appellant however offers no data to back up this allegation. Further, all cannabis employees must undergo successful 'live scan' background checks through the Sheriff's Department. Mr. Sanders and his assistant have successfully undertaken this background check, and any future employees that Mr. Sanders employs will be required to pass this background check.
 3. **Morals.** The Appellant has not offered any testimony or facts that would indicate that the morals of persons living or working in this area would be adversely affected.
 4. **Comfort.** The Appellant has not offered any testimony or facts that would indicate that the comfort of persons living or working in this area would be adversely affected.
 5. **General Welfare.** The Appellant states that the safety of the neighborhood would be at risk due to an understaffed Sheriff's Department, but offers no data to support this claim.
 6. **Property and Improvement.** The Appellant stated that crime will increase due to this commercial cannabis cultivation site, however no evidence is offered pertaining to how this would put 'property and improvement' at risk.
2. The Appellant states: "The county is currently not able to adequately address public safety. The sheriff department is woefully under staffed. During the planning hearing the Commissioners acknowledged that there are limited deputies, 2 to 0 on during the evenings. This proposed project presents an unwelcomed opportunity for crime in our neighborhood and puts us at risk."

Response: The response to safety was already stated in Response #2, previous page.

3. The Appellant states: "WATER. The applicant and staff were inaccurate presenting the impact of the water use from this project. They have not addressed the water use issues from the multiple illegal grows in the neighborhood, one right across the street, and how that is impacting our fragile water table now, before the Shannon project. Staff was unwilling to address the potential impact of the GII Site and how 700,000 annual gallons needed for the project will impact our hydrosphere."

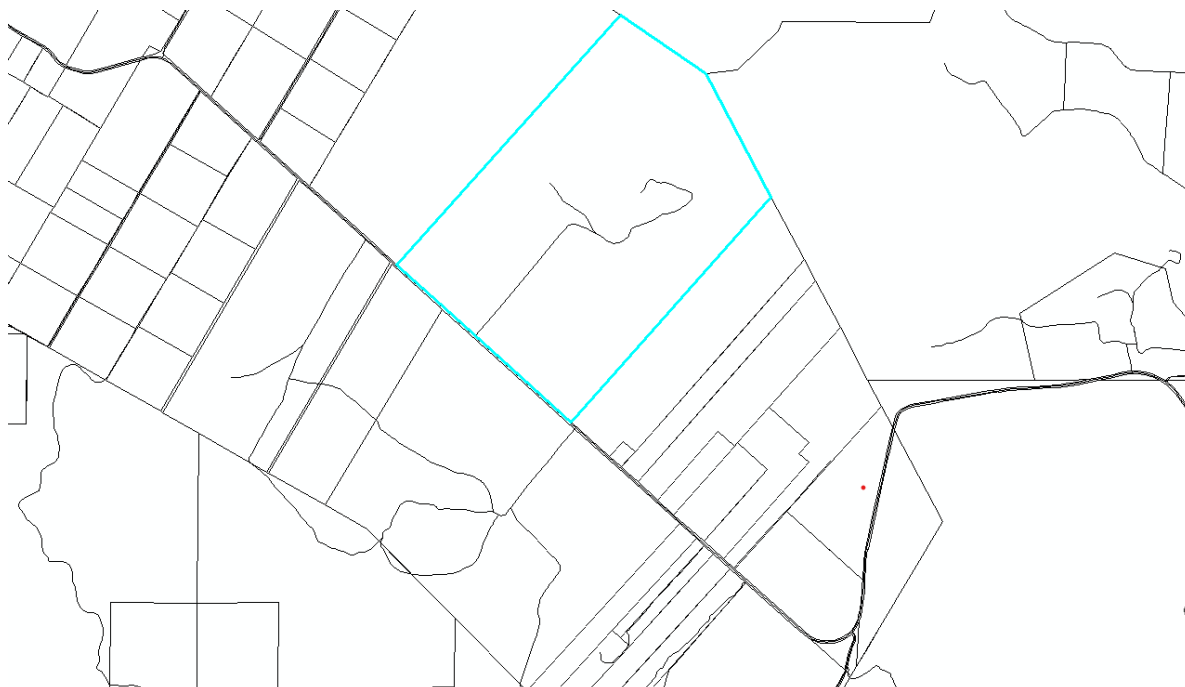
Response: *The applicant demonstrated to the Planning Commission's satisfaction that they have a legally established water source on the site. On November 7, 2019, the applicant Sanders submitted a technical memorandum to staff that contained a comprehensive Water Availability Analysis (attached as Exhibit E), which confirmed that the water table is strong in this area and has a rapid recharge rate.*

The appellant also raised concerns regarding the former PG&E geothermal extraction site, located several lots to the north of the cannabis cultivation site, stating that the cannabis cultivation activity would cause water migration that would lead to toxic waste from the PG&E site to migrate into the aquifer used by neighboring lots.

Staff contacted the California Department of Toxic Substances Control (Sacramento office) on July 18, 2019 and obtained the following information:

"Geothermal Inc., 19020 Butts Canyon Rd., Middletown, CA 95461. Geothermal Inc. started operations in 1976 producing geothermal energy for Pacific Gas & Electric by extracting underground steam and converting it to electricity. Geothermal operated but went back and forth with DHS to determine if their wastes were RCRA characteristic and at the same time the Regional Board issued a Cease and Desist Order until their surface impoundments were retrofitted. Geothermal later ceased operations in 1987 and filed for bankruptcy in November 1987. A regional management committee was appointed to oversee the investigation, cleanup and closure of the facility. After years of cleanup, Corrective Action released Environmental Indicators that confirm that remedy construction is complete, groundwater migration is under control, and human health exposure is under control. These yeses confirm the clean closure of the facility." (emphasis added; see Exhibit 4)

Based on the California Department of Toxic Substance Control's findings stated above, there is no risk to the aquifer related to the prior geothermal extraction that had occurred on 19020 Butts Canyon Road located 2100 feet northwest of the cultivation site under consideration.



PG&E Site and Subject Site

4. The Appellant has submitted the names of 10 neighbors who have objected to this proposed project.

Response: *Adult-use cannabis cultivation is a new phenomenon in Lake County. It is common for neighbors to object to this type of use. The primary objections that staff typically receives are concerns about odor, traffic impacts, safety and water consumption. Three of those concerns are directly or indirectly raised in this appeal, and include odor, safety and water concerns.*

It appears that all impacts can be mitigated. Lake County has no adopted minimum thresholds for water (aquifer) recharge capability, there is no measurable basis for denying a cultivation application based on water availability at present time, nor is there evidence to support a weak aquifer in this location. Odor can be controlled through filtration systems, and the applicant is required to provide an Odor Control Plan. Increased threats to safety cannot be quantified. The site is generally hidden by trees. The cultivation areas are inside locked greenhouses that are behind a screening fence. The site is accessed through a locked gate, and the applicant must install security surveillance cameras as a condition of approval.

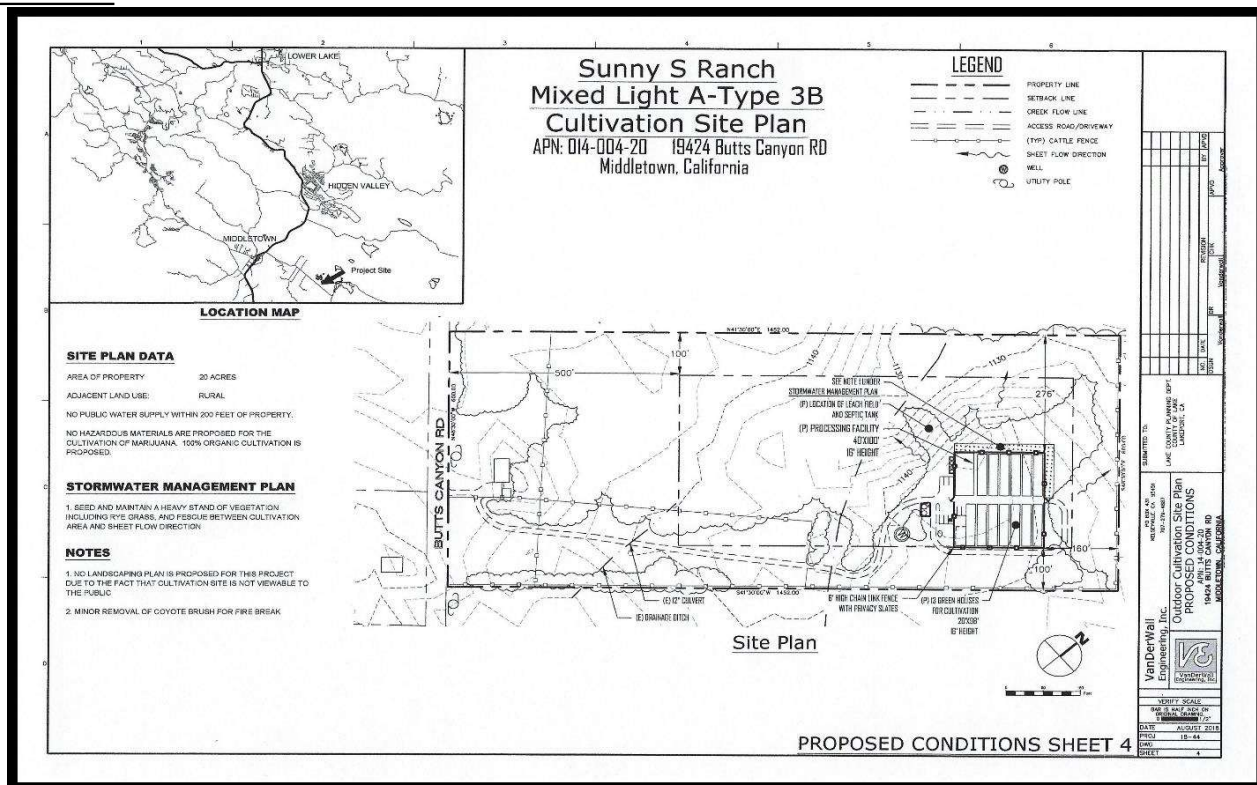
Commercial Cannabis Applications

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.

Project Description

Applicant/Owner: Shannon Sanders
Location: 19424 Butts Canyon Road, Middletown
A.P.N.: 014-004-20

Parcel Size: 20.12 acres
General Plan: Rural Lands
Zoning: "RL - SC"; Rural Lands - Scenic Combining
Flood Zone: None



Proposed Site Plan

PROJECT ANALYSIS

The Lake County Zoning Ordinance has three articles 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

The following subsections within Article 27 relate to water usage:

(d) Minor and Major Use Permits for Commercial cannabis cultivation

(5) Responses to the following performance standards questions:

(iv) Does the applicant have a legal, on-site source of water?

(v) Does the applicant agree to monitor water use and share the data with the County?

(vi) Does the applicant agree to make water source available to Cal Fire for firefighting?

(8) A complete list of every owner of the applicant entity. Each individual owner shall submit the following information:

(xv) Identification of all water sources used for cultivation activities and the estimated volume of water used on a monthly basis.

The Applicant has provided proof of water via well within his application package, and has provided a Water Availability Analysis on November 7, 2019. The analysis recommended that the applicant provide several water storage tanks on site that would be used during drier months, and that could be recharged later in the day when water demands are lower. Staff recommends that the Applicant be required to provide at least two 5,000 gallon water storage tanks if the Board of Supervisors deny this appeal and approve the Use Permit and adopt the Initial Study. The applicable new condition would state:

H.5. Prior to cultivation, the applicant shall install two 5,000 gallon water tanks to be used for irrigation purposes during drier months. These tanks are to be recharged after 4 pm when water demands are lower.

2. Article 51.4, Major Use Permits, 'Findings Required for Approval'

The Board of Supervisors may approve or conditionally approve a Major Use Permit 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.

Response: By approving this use permit, the Planning Commission found that this project met the terms of Lake County Zoning Ordinance, Article 51, subsection 4.1.

2. That the site for the project is adequate in size, shape, location, and physical characteristics to accommodate the type of use and level of development proposed.

Response: By approving this use permit, the Planning Commission found that the subject site is +20 acres in size, large enough to accommodate the proposed 25,996 square feet of proposed cultivation area; this total cultivation area represents about 3% of the site, thereby meeting the terms of Lake County Zoning Ordinance, Article 51, subsection 4.2.

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

Response: The Planning Commission found that Butts Canyon Road, a County paved road, was adequate for purposes of providing traffic to this site, thereby meeting the terms of Lake County Zoning Ordinance, Article 51, subsection 4.3.

4. That there are adequate public or private services, including but not limited to fire protection, water supply, sewage disposal, and police protection to serve the project.

Response: The Planning Commission found that the site has adequate public / private services for the cannabis cultivation use, thereby meeting the terms of Lake County Zoning Ordinance, Article 51, subsection 4.4.

5. That the project is in conformance with the applicable provisions and policies of this Code, the General Plan and any approved zoning or land use plan.

Response: *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.*

6. That no violation of Chapters 5, 17, 21, 23 or 26 of the Lake County Code currently exists on the property, unless the purpose of the permit is to correct the violation, or the permit relates to a portion of the property which is sufficiently separate and apart from the portion of the property in violation so as not to be affected by the violation from a public health, safety or general welfare basis.

Response: *The 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.*

APPEAL SUBMITTAL. The Appellant submitted an application for appeal to the Board, along with the required fee and narrative providing the Appellant's basis for appeal.

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):

- | | | | |
|--|--|---|--|
| <input type="checkbox"/> Well-being of Residents | <input type="checkbox"/> Public Safety | <input type="checkbox"/> Infrastructure | <input checked="" type="checkbox"/> Not applicable |
| <input type="checkbox"/> Economic Development | <input type="checkbox"/> Disaster Recovery | <input type="checkbox"/> County Workforce | <input type="checkbox"/> Technology Upgrades |
| <input type="checkbox"/> Community Collaboration | <input type="checkbox"/> Business Process Efficiency | <input type="checkbox"/> Clear Lake | <input type="checkbox"/> Revenue Generation |
| | | | <input type="checkbox"/> 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 19-06.

B. Adopt mitigated negative declaration (IS 18-58) for Use Permit (UP 18-43) 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 and AQ-8.
3. 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.
4. Potential environmental impacts related to Hazards and Hazardous Materials have been mitigated to less than significant levels by mitigation measure HHM-1.

4. Potential environmental impacts related to Noise have been mitigated to less than significant levels by mitigation measures NOI-1, NOI-2, and NOI-3.
5. As mitigated, this project will not result in any significant adverse environmental impacts.

C. Approve UP 18-43 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, Middletown 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.

D. Add Condition of Approval number H.5 as follows;

*H.5. **Prior to cultivation**, the applicant shall install two 5,000 gallon water tanks to be used for irrigation purposes during drier months.*

Sample motion:

Appeal Denial

I move that the Board of Supervisors make an intended decision to deny the Appeal AB 19-06 and uphold the Planning Commission's decision to adopt Initial Study IS 18-58 and approve Major Use Permit 18-43 as modified, as applied for by Shannon Sanders for property located at 19424 Butts Canyon Road, Middletown; APN number 014-004-20, and direct County Counsel to prepare findings of fact.

Reviewed by Michalyn DeValle: