



## Legislation Text

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File #: 20-204, Version: 1

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### Memorandum

**Date:** March 24, 2020

**To:** The Honorable Moke Simon, Chair, Lake County Board of Supervisors

**From:** Scott DeLeon, Eric Porter - Community Development Department

**Subject:** Appeal to Board of Supervisors, AB 19-03 for Minor Use Permit MUP 18-10 (Sandtner/Frey Appeal)

**Exhibits:**

- A - AB 19-03 Appeal Packet
- B - Planning Commission Staff Report and Attachments (May 13, 2019)
- C - Planning Commission Minutes (May 23, 2019)
- D - CalFire Email String from Battalion Chief Mike Wink (November 10, 2019)
- E - Public Resource Code 4290 and 4291 Report
- F - Conditions of Approval
- G - Site Plans
- H - Correspondence with Appellant's Attorney

**Executive Summary:** (include fiscal and staffing impact narrative):

The appellant, Brenda Frey represented by attorney Andre Ross, is appealing the Planning Commission's May 23, 2019 decision to adopt a Mitigated Negative Declaration (IS 18-28) and approve a Minor Use Permit (MUP 18-10) for the applicant Stephan Sandtner and the property owner Jason Oram. If approved, the use permit would allow an A-Type 2B (mixed light) commercial cannabis cultivation site within (3) 30' x 96' greenhouses, representing a total cultivation area of 8,640 square feet at 16983 Hofacker Lane, Lower Lake; APN number 012-056-44. Proposed water source is a 150,000 gallon rainwater catchment system consisting of (10) 15,000 gallon tanks.

During the hearing, the Planning Commission took testimony, deliberated, then voted 3-0 (2 absentees) to approve Minor Use Permit (MUP 18-10) with changes to the condition of approval regarding water source to limit the applicant to a rainwater catchment system only for irrigation purposes.

The reference to CalFire letter within the Planning Commission staff report was erroneous. At the time that MUP 18-10 was submitted, CalFire was conducting site visits to assure compliance with Public Resource Codes 4290 and 4291. Staff received a 12 page checklist from the CalFire representative that contained no recommendation, but did contain standards that applied to the private lane (Hofacker Lane).

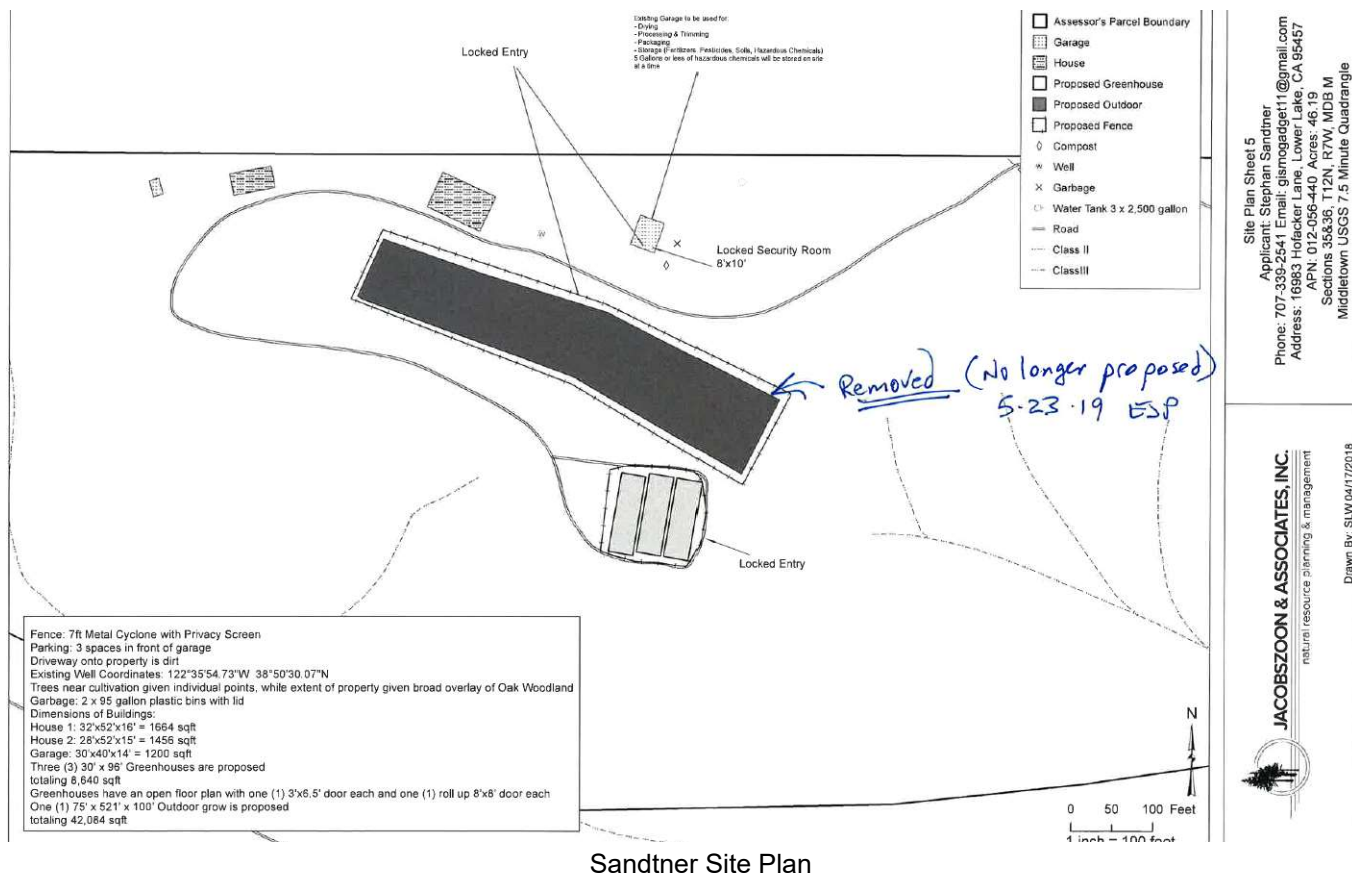
Following the Planning Commission's decision and this subsequent appeal, Mike Wink (CalFire Chief) submitted an email dated November 10, 2019 that indicated CalFire would not support a commercial cultivation project on Hofacker Lane because the lane did not meet CalFire 4290 and 4291 standards for width, overhead clearance and slope.

The applicant will be required to improve Hofacker Lane as a condition of approval. That is one of the options available to the Board of Supervisors for consideration. Should the Board deny the appeal and approve the use permit, an additional condition of approval will be required to address PRC 4290 and 4291 compliance for Hofacker Lane.

**Points of the Appeal.** The appellant has raised three points of concern within his appeal as noted below. Item 4 was initiated by staff following the Planning Commission's hearing.

#### Appeal Item:

1. Original Condition No. H1 - poorly worded, confusing.
2. Property Owner's approval in question.
3. Homeowner's Association should be included in the process.



#### Appeal Discussion

**Point 1 - Water.** Condition No. H-1: (paraphrased) - the appellant stated that the Planning Commission added the word 'primary' to the proposed rainwater catchment system as the water source, which would have allowed the applicant to rely on well water 7 times during a 6-month period.

**Staff's Response:** The Planning Commission ultimately amended condition H1 to state that the exclusive use of the rainwater catchment system as the sole irrigation water source for the commercial cannabis cultivation; this is stated in the revised conditions of approval for this action.

The Planning Commission agreed that a condition requiring monitoring of the rainwater catchment system is needed, and that the monthly use of all water sources on site needs to be required within the Annual Report required by the conditions of approval. The applicant could have a one-time water delivery imported to his site, however this may occur with written consent by the Community Development Director on an 'emergency only' basis, since this is allowed to any other cultivator in Lake County via written request and written consent.

**Point 2 - Property Owner's Involvement.** The Appellant's representative states: "Owner's Approval. The Staff Report dated May 13, 2019 regarding the Applicant's MUP 18-10 application is based on a potentially erroneous statement material fact with respect to the County of Lake's 'Property Owners Approval' requirement.

The Appellant's representative then states: "With respect to the lawful and proper inquiry as to whether or not the Applicant's Project has obtained a valid approval of the Property Owner, the May 13<sup>th</sup> Staff Report states as follows: 'The applicant is working with the owner of record, Jason Oram, who is also co-applicant on this proposal.'"

**Staff's Response:** The Property Owner of Record, Jason Oram, was the lead project proponent that addressed the Planning Commission during the Applicant's portion of the deliberation. Mr. Oram has passed a background check, has signed the application as 'owner', and has stated his support for the project, evidenced by the video testimony of the proceedings. The Property Owner has communicated with staff on multiple occasions during the use permit review process to advocate for the project and has served as a primary point of staff contact.

**Point 3 - The Homeowner's Association should be involved as Owner.** The Pomo Lake Subdivision has a Homeowner's Association (HOA). The appellant appears to state that approval of the Homeowner's Association is germane to the outcome of the Planning Commission's procedural review.

During the hearing, the appellant's attorney stated that the County had no jurisdiction over Covenants, Codes and Restrictions (CCR) enforcement; this position was confirmed by the Community Development Director, but had no relevance to the Property Owner's consent on this action, or on the Planning Commission's ability to approve a land use permit at the subject site.

**Staff's Response:** The County is neutral regarding CCRs that either allow or prohibit certain uses from occurring within the HOA boundary. A commercial cannabis use permit can be approved by the County even if an HOA's CCRs prohibit such a use.

### **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**

Applicants: 707 Organics/Stephen Sandtner

Owner: Jason Oram

Location: 16983 Hofacker Lane, Lower Lake

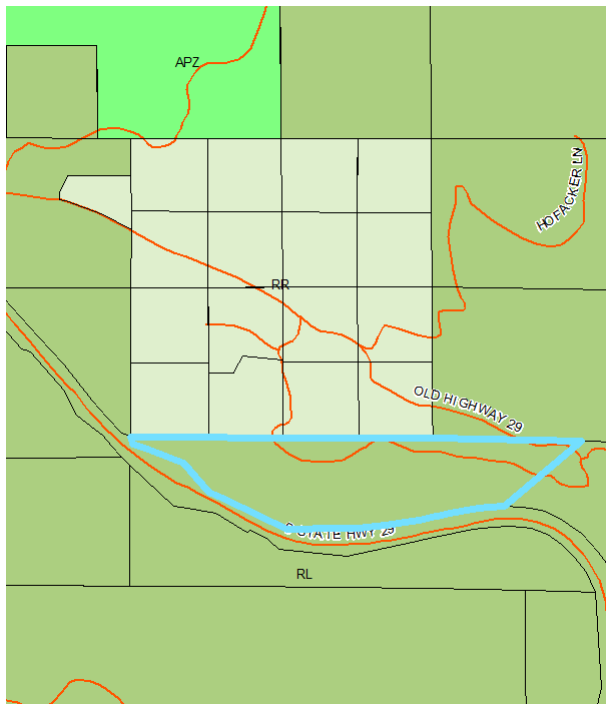
A.P.N.: 012-056-44

Parcel Size: 48.46 acres

General Plan: Rural Lands

Zoning: "RL"; Rural Lands

Flood Zone: None



Zoning of Subject Site and Vicinity

**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.

**Response:** The Applicant has agreed to have the rainwater catchment system be used as the **sole** water source for irrigation. Condition of approval number H1 has been modified to require this. The State Water Quality Control Board was contacted by staff in February 2019, and they are fully supportive of a rainwater catchment system being used as an irrigation method for this purpose. The

applicant has agreed to all of the applicable terms within Article 27, subsection (at) that pertain to water and storm water management, since this project would capture rainwater and store it in ten 15,000 gallon water storage tanks on site.

## **2. Article 50.4, Minor Use Permits, 'Findings Required for Approval'**

The Review Authority may only approve or conditionally approve a Minor 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:** The Planning Commission found that this application met this subsection.

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

**Response:** The Planning Commission found that the subject site is 45.65 acres in size, large enough to accommodate this proposed 8,240 s.f. cannabis cultivation area (excluding the 1,200 s.f. drying room).

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

**Response:** The site would take access from Hofacker Lane, a private gated unpaved road. At the time of original application submittal, CalFire was the responsible agency for determining whether the ingress - egress was sufficient or needed to be upgraded. On May 2, 2018, CalFire Battalion Chief Chris Vallergera provided staff with Public Resource Code (PRC) 4290 and 4291 for private road and driveway standards, however no recommendations were given by CalFire regarding the proposal. Staff mis-interpreted the CalFire response and recommended approval of the cannabis license with no required improvements to Hofacker Lane. A condition of approval (Condition No. J.7) was included that incorrectly cited a positive recommendation from CalFire that did not occur. Ultimately the Planning Commission approved this commercial cannabis permit on May 23, 2019.

On June 13, 2019 following the Planning Commission's decision, William Sapeta, Fire Chief, Lake County Fire Protection District, sent an email to Mike Wink, Battalion Chief, CalFire (as well as to other contacts), stating that he had received a complaint regarding the use of Hofacker Lane for access to the Sandtner/Oram cannabis site, but that the jurisdiction belonged to the South County Fire Protection District (CalFire).

On Sunday, October 13, 2019, CalFire's Battalion Chief Mike Wink emailed Jack Smalley, Interim Fire Marshal, stating that "... when you leave Hofacker Road, the access roads/driveways meet no standards for a driveway, one way road or a road... (t)he South Lake County Fire Protection District does not support the issuance of any ... Use Permits that do not apply State Law minimums for Fire Safe Regulations."

In order for the Applicant to use the site for a commercial cannabis activity, Hofacker Lane would need to be improved in a manner that it would meet PRC 4290 road standards; or, the County would have to waive 4290/4291 requirements. Since structures are involved, staff is unable to recommend that the County waive these standards. If the applicant were given the opportunity to improve Hofacker Lane in a manner that makes it compliant with PRC 4290; this would mean that the gate, road width, road grade, overhead clearance and road surface material would need to comply. It would require a Grading Permit and a new CEQA review (Initial Study) due to the amount of earth that would need to be moved. The applicant would need to provide engineered drawings that would need to be reviewed by the Building Official before the Grading Permit could be considered.

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 services for the cannabis cultivation use. The issue of the inadequacy of Hofacker Lane however (previous finding) needs to be addressed in a new condition of approval.

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:** The Planning Commission made the finding that this project was in compliance with the Lake County General Plan, Lower Lake Area Plan, and Lake County Zoning Ordinance.

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.*

### **3. Article 27, Section (au)7.i; 'Findings Required for Approval':**

1. The proposed use complies with all development standards described in Section 1.i.

This report identifies the development standards that apply to cannabis cultivation in Lake County. The applicant is fully compliant with most of the development standards, and can be made to comply through conditions of approval of the development standards that are not yet met, primarily improving Hofacker Lane in a manner that allows it to comply with Public Resource Codes 4290 and 4291.

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

The owner (Oram) and the applicant (Sandtner) have passed a Live Scan background check, and are both qualified to undertake a commercial cannabis cultivation activity subject to approval of

this use permit.

3. The application complies with the qualifications for a permit described in Section 1.ii.(i)

This application complies with all qualifications for a permit described in Section 1.ii.(f). The applicant is proposing an A-Type 2B (mixed light) commercial cannabis cultivation site within three 30' x 96' greenhouses, representing a total cultivation area of 8,640 s.f. at 16983 Hofacker Lane, Lower Lake; APN number 012-056-44. Proposed water source is a 150,000 gallon rainwater catchment system consisting of (10) 15,000 gallon tanks. The applicant also qualifies for the Type 13 'Self Distribution' license which should be added to this decision (if it is approved) now that it is an available option.

APPEAL SUBMITTAL. The appellant submitted an application for Appeal to the Board, along with the required fee and 'Exhibit A'.

**If not budgeted, fill in the blanks below only:**

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

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

☒ Not applicable

- |  |  |   |   |
|--|--|---|---|
| <input type="checkbox"/> Well-being of Residents | <input type="checkbox"/> Public Safety               | <input type="checkbox"/> Infrastructure   | <input type="checkbox"/> <i>Technology Upgrades</i> |
| <input type="checkbox"/> Economic Development    | <input type="checkbox"/> Disaster Recovery           | <input type="checkbox"/> County Workforce | <input type="checkbox"/> <i>Revenue Generation</i>  |
| <input type="checkbox"/> Community Collaboration | <input type="checkbox"/> Business Process Efficiency | <input type="checkbox"/> Clear Lake       | <input type="checkbox"/> <i>Cost Savings</i>        |

**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:**

Deny appeal number AB 19-03; uphold the Planning Commission's decision to adopt the Mitigated Negative Declaration (IS 18-16) and approve the minor use permit (MUP 18-10).

**Sample motion:**

**Appeal Denial**

I move that the Board of Supervisors make an intended decision to deny the Appeal AB 19-03 and uphold the Planning Commission's decision to adopt Initial Study IS 18-16 and approve Minor Use Permit MUP 18-10 **with the new condition as specified below**, applied for by Stephan Sandtner for property located at 16983 Hofacker Lane, Lower Lake, known as APN 012-056-44, and direct County Counsel to prepare findings of fact.

**Proposed New Condition:**

This Use Permit approval shall not become effective, operative, vested or final until the proposed access meets California Code of Regulations (CCR) Title 14, Chapter 7, Subsection 1273.01 prior to cultivation activities occurring on the site. The road improvement standards to Hofacker Lane shall be

as follows:

**Width.** Prior to the start of cultivation, Hofacker Lane shall be constructed to provide a minimum of two ten (10) foot traffic lanes, not including shoulder. These traffic lanes shall provide for two-way traffic flow to support emergency vehicle and civilian egress. Vertical clearances shall conform to the requirements in California Vehicle Code section 35250. Surface material shall include an all-weather surface that is capable of supporting a 75,000 pound vehicle. Following road improvement completion, the applicant shall schedule an inspection with the Building Official for Lake County prior to cultivation.