



Legislation Text

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File #: 22-383, Version: 1

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**Memorandum**

Date: May 3, 2022

To: The Honorable Lake County Board of Supervisors

From: Mary Darby, Community Development Director

Subject: 10:00 a.m. Public Hearing - Discussion and Consideration of Appeal (AB 21-05) of Planning Commission Approval of Major Use Permit 19-36 and IS/MND 19-56 "Lake Vista Farms, LLC", Clearlake. APN's 010-053-01 and 010-053-02.

Executive Summary:

**EXHIBITS:**

- A1 - APPEAL
- A2 - APPEAL RESPONSE: TECHNICAL MEMORANDUM FOR WATER USE
- A3 - 11.18.2021 STAFF REPORT, PC MINUTES, AGENCY AND PUBLIC COMMENTARY
- A4 - SITE PLANS
- A5 - PROPERTY MANAGEMENT PLAN
- A6 - HYDROLOGY REPORT
- A7 - DROUGHT MANAGEMENT PLAN
- A8 - CONDITIONS OF APPROVAL
- A9 - INITIAL STUDY
- A10 - BIOLOGICAL REPORT
- A11 - CITY OF CLEARLAKE LETTER OF SUPPORT
- A12 - AGENCY COMMENTS
- A13 - REMEDIATION
- A14 - VIOLATIONS
- A15 - EA CONDITIONS OF APPROVAL

**I. BACKGROUND**

The appellant is appealing the Planning Commission's November 18, 2021 3-1 approval (four Planning Commissioners present) of a Major Use Permit (19-36) to permit a commercial cannabis cultivation major use permit and mitigated negative declaration of the following uses located at 2050 and 2122 Ogulin Canyon Road, Clearlake, CA 95423, APN's 010-053-01 and 010-053-02.

- Fifteen (15) A-Type 3 "outdoor" licenses totaling 816,750 sq. ft. cultivation (18.75 acres) and 653,400

sq. ft. of total canopy (15 acres) on five (5) sites:

- Site A. Northwestern Hops Field (with a cultivation area of 5.09 acres)
  - Site B. Southwest Clearing (with a cultivation area of 6.56 acres)
  - Site C. Northeast Hops Field (with a cultivation area of 1.45 acres)
  - Site D. Central Hops Field (with a cultivation area of 3.72 acres)
  - Site E. Chaparral Clearing (with a cultivation area of 1.92 acres)
- Sites A through D would include temporary 20' x 100' (2,000 square feet) hoop-houses that are of simple construction that will not require lighting. The hoop-houses are intended to provide protection for cannabis plants, and would be used on an as-needed basis and dismantled at the end of each growing season
  - Portable toilets, trash enclosures, vegetation waste storage areas, 2,500-gallon water storage tanks at five cultivation areas, Conex shipping containers and/or 8'x 8' storage sheds (or similar) for storage of pesticides, fertilizers, and hazardous materials
  - A 1.5 acres onsite nursery within an existing barn and shade structures
  - One (1) renovated 10' x 30' shipping container to house security equipment and camera monitors
  - 6' tall security wire fencing that will be secured by locked gates and that will enclose cultivation areas.

The applicant was approved for Early Activation (EA) on February 28, 2020 by the County Zoning Administrator. The applicant's lessee subsequently constructed hoop houses on Site A and graded 56,640 square feet of Site B. There was also evidence that trees were removed during the grading of the site. The Code Enforcement Division of the County of Lake's CDD cited the lessee with Notice of Violation and Stop Work Order on May 14, 2020. The applicant was found to be in violation of several conditions outlined in the EA Approval (EA 20-22), including but not limited to:

- Condition of Approval four (4)
- Condition of Approval Seven (7)
- Condition of Approval Nine (9)
- Condition of Approval Seventeen (17)

Exhibit 14 includes documentation on the violations and remediation. To address the violations, the applicant coordinated with the CDD staff to identify and implement corrective actions, including the removal of the hoop houses, preparation of engineered grading plans, stabilization of the illegal grading area, and installation of storm water management controls to prevent erosion. These plans and associated actions to mitigate the violations were received by the CDD, which were cleared by the CDD on August 8, 2021. No cultivation activities have occurred at the project site since the revocation of the Early Activation.

On November 18, 2021 the Use Permit was approved by the Lake County Planning Commission. An appeal to

the Board of Supervisors was filed by the appellant on November 24, 2021. The appellant filed the appeal on behalf of at least twelve (12) residents located in the Burns Valley Groundwater Basin area which is located southwest of the said property.

The combined parcel area is approximately 302.4 acres and is located on Ogulin Canyon Road in Clearlake. The subject site is within the boundary of the Shorelines Communities Area Plan. The project parcel is within the City of Clearlake's Sphere of Influence/City Limits. Cannabis cultivation is prohibited within 1,000 feet of a City's Sphere of Influence unless the applicant can provide a letter of support from the City of Clearlake. A letter of support from the City of Clearlake was issued on February 24, 2020.

A Major Use Permit is required for this project pursuant to compliance with State regulations; the County of Lake General Plan and the Shoreline Communities Area Plan; Article 68, Article 27 Part 27.11 (at), and 51.4 of the County of Lake Zoning Ordinance.

### ***Project Description***

Applicant: Brian D. Pensack / Garrett W. Burdick

Owner: Lake Vista Farms, LLC

Location: **2050 & 2122 Ogulin Canyon Road, Clearlake, CA 95422**

**APN: 010-053-01 and 010-053-02 [Project location]**

Parcel Size: 302.4 total combined acreage

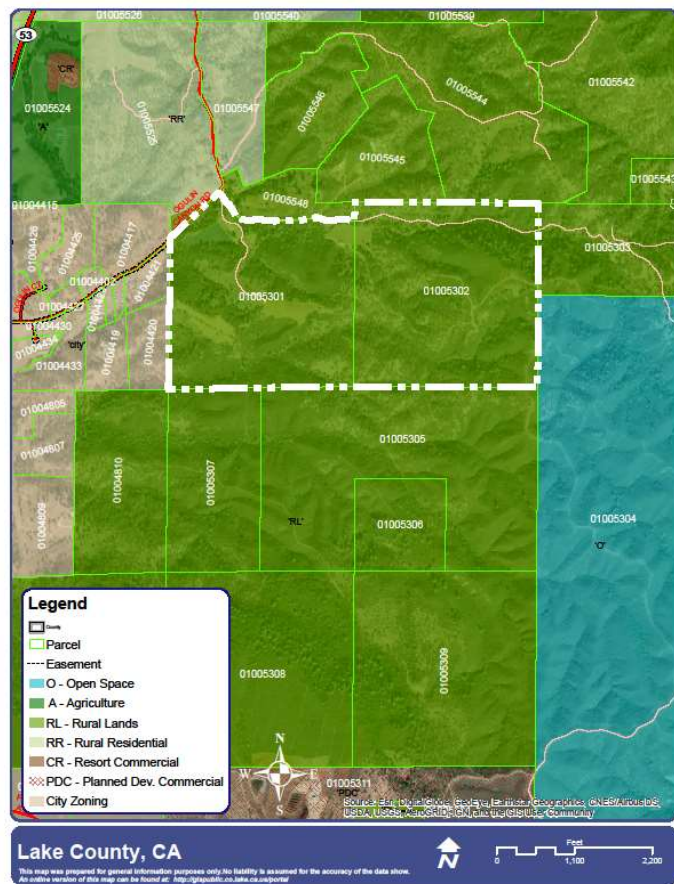
General Plan: Rural Lands

Zoning: "RL" Rural Lands

Flood Zone: "D" Areas of undetermined, but possible, flood hazard area

Cultivation Area: 816,750 sq. ft. (18.75 acres) in total.

Canopy Area: Estimated at 653,400 sq. ft (15 acres)



## Surrounding Zoning and Land Use:

**North:** Property to the north is zoned Rural Land (RL) and Rural Residential (RR). Land uses are residential and agricultural (cannabis cultivation).

**South:** Property to the south is zoned RL. Land uses are residential and agricultural.

**East:** Property to the east is zoned RL and Open Space (O). Land uses are residential and agricultural.

**West:** Property to the west is within City limits of Clearlake and the City’s C-4 Zoning District, defined as “Heavy Service Commercial - Light Industrial.” Land uses are residential, commercial, and light industrial.

The project parcel is within 1,000 feet of the City of Clearlake Sphere of Influence/City Limits. Cannabis cultivation is prohibited within 1,000 feet of the City Sphere of Influence unless the applicant can provide a letter of support from the City. A letter of support from the City of Clearlake was issued on February 24, 2020 and this support letter was issued before the above noted grading violation was issued by the County of Lake CDD.

## II. APPEAL DISCUSSION

**SEC. 21-58.30 BOARD OF SUPERVISORS APPEALS.** Decisions of the Planning Commission may be appealed.

**Response:** *The appellant submitted written concerns regarding this application on November 24, 2021.*

- (b) Timeliness, form, filing and fee: An appeal of a decision by the Planning Commission shall be filed with the Clerk of the Board of Supervisors within seven (7) calendar days of the decision on the prescribed form and accompanied by the applicable fee in the amount to be set by the Board of Supervisors. **(Ord. No. 1749, 7/7/1988)**

**Response:** *This appeal was filed on November 24, 2021 within the appeal period on the correct application form and with the correct application fee.*

- (c) Required documents: An appeal shall be accompanied by a written statement setting forth the grounds upon which the appellant asserts there was an error or abuse of discretion by the Planning Commission. **(Ord. No. 1897, 12/7/1989)**

**Response:** *The appellant submitted a written description of why the appellant believes the Planning Commission erred in its decision to approve this land use permit and CEQA review (IS/MND). The appellants cited several specific aspects of the PC's decision as being deficient. The appellant maintains that the development of existing grape vineyards and additional approved cannabis operations contribute to biological impacts associated with water demand, water use, and the capacity of the groundwater system to recharge, and that the proposed water use for the cultivation of cannabis in said property would have cumulative impacts on water demand, water use and capacity of the groundwater system to recharge. The appellant maintains that the capacity of the groundwater to store and recharge water during the current drought remains unaddressed in the environmental review. The appellant objects to the outdoor growing of cannabis because the site area is within the County's required 1000-foot setback from the City of Clearlake's Sphere of Influence/City Limits, and notes that the Early Activation (EA) permit that was approved by the County in February 2020 was later revoked due to violations of the EA. The argument made by the appellant in its entirety is found as EXHIBIT A1 - APPEAL.*

**58.32 Effect of filing the appeal:** An appeal shall stay the proceedings and effective date of the decision of the Planning Commission until such time as the appeal has been acted on as hereinafter set forth.

**Response:** *The Planning Commission approved file no. UP 19-46 on November 18, 2021. The appeal was filed on the 6th day of the appeal period for this action (November 24, 2021).*

**58.33 Forwarding of record:** Prior to the hearing on said appeal, the Planning Department shall transmit to the Board of Supervisors pertinent permit materials including all maps and data and a staff report setting forth the reasons for the decision by the Planning Commission.

**Response:** *All applicable documents, maps, Planning Commission staff report, hearing minutes and public testimony received by staff have been included with this Memorandum as EXHIBITS A1 through A16.*

**58.34 Public hearing and notice:** Following the filing of an appeal, the Board of Supervisors shall hold a public hearing on the matter scheduled and noticed as required in Section 57.3. The public hearing shall be de novo and all interested persons may appear and present evidence.

**Response:** *A Public Hearing notice will be sent upon submission of this Memo and Exhibits to the Board of Supervisors for Review. Notice will be sent to all known property owners within 750 feet, and persons filing written and emailed comments prior to the Board of Supervisors hearing.*

### **III.** Project Analysis

#### ***1. Article 51.4, Major Use Permits, Findings Required for Approval***

The Board of Supervisors may approve or deny this appeal. Upholding the appeal would cause the Use Permit and IS/MND to be denied. Denying the appeal would result in the approval or conditional approval of the Major Use Permit and Mitigated Negative Declaration. The Planning Commission's decision was based on its making the following required 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.

***Response:*** Commercial Cannabis Cultivation Operation is a permitted use in the "RL" Rural Lands Zoning District as well as the "A" Agricultural district upon issuance of a Major Use Permit pursuant to Article 27 of the Lake County Zoning Ordinance. Prior to the applicant constructing any type of structure(s), the applicant shall obtain the necessary permits from the appropriate Federal, State and/or Local government agencies.

*The environmental analysis (EXHIBIT A9 - INITIAL STUDY) determined that the use would not be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood as all potential impacts have been reduced to less than significant with the incorporated mitigation measures and Conditions of Approval. Potential impacts identified relate to air quality, biological resources, cultural/tribal/ geologic resources, noise and wildfire. Additionally, the Community Development Department would conduct Annual Compliance Monitoring Inspections during the cultivation season to ensure compliance with the approved Property Management Plan and Conditions of Approval, as discussed in detail in the planning commission report dated November 18, 2021.*

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 project site is the former Hops-Meister Farm that included the cultivation of approximately 13.6 acres of hops beginning in 2009. The site has been developed to include farming and agricultural support facilities, including a 1,200 square foot residence, septic system, barn, accessory structures, multiple wells, and irrigation facilities. The said property includes 816,750 square feet of cannabis cultivation and 653,400 square feet canopy coverage. This canopy area represents 4.96% of the 302.40 total acre site. The pre-existing agricultural activities covered a site area of over 18 acres. Other land uses on said property include residential, timberland, and grazing land use activities. The project complies with the 20 acres of land to one acre of canopy stipulation. A deed restriction on each parcel is required for the approved permit Lake Vista Farms, LLC UP 19-36.

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

***Response:*** The project takes access via a gravel driveway from Ogulin Canyon Road through an existing security gate.

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:** *This application was routed to all of the affected public and private service providers including Public Works, Special Districts, Environmental Health, and PG&E, and to all area Tribes. Relevant comments may be found in EXHIBIT A3 - 11.18.21 STAFF REPORT, PLANNING COMMISSION MINUTES, AGENCY AND PUBLIC COMMENTARY. No comments were received that would affect a substantial adverse impact determination.*

*The appellant submitted a written description of why the appellant believes the Planning Commission erred in its decision to approve this land use permit and CEQA review (IS/MND). The appellants cited several specific aspects of the PC's decision as being deficient. The appellant maintains that the development of existing grape vineyards on other parcels and existing approved cannabis operations contribute to biological impacts associated with water demand, water use, and the capacity of the groundwater system to recharge, and that the proposed water use for the cultivation of cannabis in said property would have cumulative impacts on water demand, water use and capacity of the groundwater system to recharge. The appellant maintains that the capacity of the groundwater to store and recharge water during the current drought remains unaddressed in the environmental review.*

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:** *This project is a permitted use in accordance to the Rural Lands (RL) zoning district within the County of Lake's Commercial Cannabis ordinance. The project, as conditioned, meets all requirements and development standards of the Zoning Ordinance. The General Plan and the Shoreline Community Area Plan do not have any provisions for commercial cannabis, but both plans do have provisions for economic development and related policies that the project is consistent with (Please refer to the Staff Report from 11.18.21, section VI Project Analysis).*

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:** *Violations of the County of Lake were remediated as of August 8, 2021. Please refer to EXHIBITS A14 and A13, respectively, VIOLATIONS and REMEDIATION for full details on violation remediation. The Community Development Department has no record of current violations of Chapters 5, 17, 21, 23 or 26 of the Lake County Code for this property.*

#### **Article 27, sub. (at); Three Required Findings for Commercial Cannabis Approval**

In addition to the findings required for a Major Use Permit, the following findings are required for approval of a cannabis-specific Use Permit:

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

**Response:** *The Planning Commission found that the project was in compliance with all applicable standards and criteria, or could be brought to full compliance with conditions of approval (Please refer to the Staff Report from 11.18.21, section*

IX Approval Criteria).

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

**Response:** *The applicant has passed 'live scan', and is the owner of the property. The applicant is qualified to make this application.*

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

**Response:** *The application was determined to be complete and in compliance with the requirements set out in Article 27, Section 1.ii.(i) are met.*

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

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

**Consistency with Vision 2028** (check all that apply):

☒ Not applicable

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

- ☐ Public Safety
- ☐ Infrastructure
- ☐ Business Process Efficiency

- ☐ Disaster Prevention, Preparedness, Recovery
- ☐ County Workforce
- ☐ Clear Lake

## Recommended Action:

### Staff recommends that the Board of Supervisors:

Deny the Appeal (AB 21-05); uphold the Planning Commission's decision to approve the Use Permit (UP 19-36) and adopt Initial Study / Mitigated Negative Declaration (IS 19-56).

### Sample Motions:

#### Appeal Denial

I move that the Board of Supervisors make an intended decision to **deny the Appeal AB 21-05**.

#### Initial Study (IS 21-10)

I move that the Board of Supervisors find that the Major Use Permit (UP 19-36) applied for by **Lake Vista Farms, LLC** on a property located at **2050 and 2122 Ogulin Canyon Road, City of Clearlake, CA** further described as **APN: 010-053-01 and 02** will not have a significant effect on the environment and therefore a mitigated negative declaration shall be adopted with the findings for approval listed in the Planning Commission staff report dated **November 18, 2021**.

#### Use Permit Approval

I move that the Board of Supervisors find that the Major Use Permit (UP 19-36) applied for by **Lake Vista Farms, LLC** on a property located at **2050 and 2122 Ogulin Canyon Road, City of Clearlake, CA**, further described as **APN: 010-053-01 and 02** does meet the requirements of Sections 27(at) and 51.4 of the Lake County Zoning Ordinance and that the Board of Supervisors has reviewed and considered the Mitigated Negative Declaration which was adopted for this project and the Major Use Permit be granted subject to the conditions and with the findings listed in the Planning Commission staff report dated **November 18, 2021**.