



## PLANNING AND BUILDING DEPARTMENT

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TO: Board of Supervisors Agenda of: April 29, 2025

FROM: Evan Mattes, Senior Planner Legistar No.: 25-0508

RE: CCUP-A25-0001 Appeal of CCUP21-0007 Rosewood

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#### Recommendation

Based on the analysis of CCUP-A25-0001 staff recommends the Board of Supervisors take one the following actions:

- 1) Deny appeal CCUP-A25-0001 and uphold the Planning Commission denial of Rosewood Commercial Cannabis Use Permit CCUP21-0007 Rosewood, based on the Findings (Attachment J) as presented; and Adopt and Authorize the Chair to sign Resolution XXX-2025 (Attachment D), denying appeal CCUP-A25-0001 with Findings of Fact; or
- 2) Approve appeal, CCUP-A25-0001, and reverse the Planning Commission's denial of Rosewood Commercial Cannabis Permit CCUP21-0007, thereby approving CCUP21-0007 based on the Findings (Attachment J), subject to the Conditions of Approval (Attachment K) and Adopt and Authorize the Chair to sign Resolution XXX-2025 (Attachment E), approving appeal CCUP-A25-0001 with Findings of Fact (Supervisory District 2).

#### Project Description

The project proposes the cultivation of approximately 15,000 square feet of mature mixed-light cannabis canopy, and construction of the proposed project would occur in two (2) phases: Phase I would include the construction and operation of a mixed-light cannabis cultivation facility that would include 10,000 square feet of flowering canopy within four (4) 2,880 sf greenhouses, a 2,880 sf storage and processing building, site gate with exclusionary fencing around the cultivation site, 10,000 gallon water storage tank, new septic system and ground mounted solar array; Phase II would consist of the construction of an additional 5,000 square feet of flowering, mixed-light canopy area within two (2) 1,800 sf and one (1) 2,880 sf greenhouses. Phase II would be constructed directly adjacent to Phase I. Full buildout of the project would include the construction of seven (7) greenhouses totaling 18,000 sf of greenhouse space to accommodate 15,000 sf of mature mixed-light cannabis cultivation. There are anticipated to be three harvest cycles per year, with mature plant to be transported off-site. The proposed greenhouses are proposed over the premises internal property line. The project was conditioned to complete a lot line adjustment or lot line merge to accommodate structural setback development standards.

#### Project History

CCUP21-0007 was heard by the Planning Commission on February 27, 2025. Public comment was received on the project, including concerns about water, setbacks and project size. Planning Staff prepared and distributed a memo on February 19, 2025, addressing public comment received during the Initial Study Mitigated Negative Declaration (ISMND) comment period. An additional memo was prepared and distributed by Planning Staff on February 25, 2025, to address public comments regarding manufacturing, odor, setbacks and water. A motion was made by Commissioner Spaur to approve the project. The motion failed 2-3. A second motion was made Commissioner Nevis to deny the project, based on credible lay testimony that the proposed project:

1. Does not meet the requirements of the cannabis ordinance, particularly reduced setbacks from property lines and a bus stop due to land use conflicts, air quality impacts, and groundwater usage
2. Is injurious to the public health, safety and welfare and injurious to the neighborhood due to land use conflicts, air quality impacts, traffic safety and groundwater usage.

The motion passed 3-2. The Planning Commission report documentation, and written comments are available here: [County of El Dorado - File #: 25-0251](#) and the record of the public hearing is available here: [Planning Commission Meeting 02-27-25](#). These are part of the record on appeal.

### **Appeal Filed**

Appeal CCUP-A25-0001 (Attachment A) was submitted in a timely manner by Jason Kipperman, who is the project applicant. As stated in the appeal, the appellant is specifically appealing the denial of the project based upon consistency with Staff Report Recommendations, Legal Justification for Setback Reduction, Environmental Mitigation, Compliance with the California Environmental Quality Act (CEQA) and lower impact compared to alternative land uses.

#### **1. Consistency with Staff Report Recommendations**

*Staff Response:* The appellant states that the Planning Department staff report recommended approval of CCUP21-0007, concluding that the project complies with applicable General Plan policies and Zoning Ordinance requirements, and that no objections were raised by reviewing agencies. The Staff Report presented to the Planning Commission recommended approval of the project based on staff findings and subject to Conditions of Approval. As part of standard permit processing procedures, the project was distributed to applicable agencies for review, these include but are not limited to, AQMD, DOT, Pioneer Fire Protection District, Pioneer Union School District and EMD. No objections were raised by reviewing agencies. Comments were implemented as part of the recommended conditions of approval.

During the hearing, public comments concerning the project received included setbacks, odor and groundwater impacts on neighboring properties. The Planning Commission found that lay testimony demonstrated that the project does not meet the requirements of the cannabis ordinance, particularly reduced setbacks from property lines and a school bus stop due to land use conflicts, air quality impacts, and groundwater usage.

#### **2. Justification for Setback Relief**

*Staff Response:* The appellant states that the denial cites setback issues, however Section 130.41.100.4.C allows for setback reductions, when certain criteria has been met. The appellant believes the project meets those criteria.

Sections 130.41.200.5.B and 130.41.200.5.C of the El Dorado County Ordinance establishes a setback for cannabis cultivation projects of 800 feet from property lines or public right-of-way, 300 feet from the upland extent of any water course and 1,500 feet from any school bus stop. Distances to school bus stops are measured parcel line to parcel line. El Dorado County Zoning Ordinance Section 130.41.100.4.C allows for any setback for a commercial cannabis to be reduced so long as the applicant demonstrates that the actual setback will substantially achieve the purpose of the required setback and that the parcel was owned or leased by the applicant before voter approval of the Cannabis Ordinance on November 6, 2018. Section 130.41.200.5.G requires that cannabis shall be screened from public view so that no part of a plant can be seen from an adjacent street or adjacent parcel, with greenhouses and hoop houses being the preferred means of screening. Typical concerns for substantially achieving the purpose of the required setback, is visibility and odor. Odor studies demonstrate that the project would comply the 7 dilution threshold (DT) requirements. The project would be located within greenhouses, which the County's preferred method of screening cannabis.

During the hearing public comment concerning the project setbacks, odor and groundwater impacts on neighboring properties. The Planning Commission found that lay testimony demonstrated that the reduced setbacks would not meet the intent of the setback requirements. The Planning Commission found that the proximity of the project to adjacent property lines and the school bus stop located at the corner of Derby Lane and Omo Ranch Road. The appellant provided a letter from the school district that the school bus stop is currently inactive, however it could be used at any time when needed. Additionally, the Planning Commission found that due to lay testimony that the reduced setbacks would have substantial impacts to air quality and groundwater resources.

### *3. Environmental Mitigation*

*Staff Response:* The appellant states that the project has environmental mitigation measures and analysis in place to address concerns regarding water usage, air quality and odor and traffic.

The project is estimated to use approximately 225,000 gallons of water per year, with the project site containing two permitted wells. In comparison, the average single-family home uses approximately 123,80 gallons of water annually. The project parcel is not located over a critically over drafted groundwater basin. Water rights law is administered by the State Water Resources Control Board (SWRCB). SWRCB is the only agency with authority to administer water rights, local governments and water districts do not administer water rights. The project was reviewed by SWRCB as part of the standard project distribution and Mitigated Negative Declaration Initial Study Agency review. The project is required to enroll under the SWRCB Cannabis General Order WQ 2019-0001-DWQ. One of the requirements is to prepare a Site Management Plan (SMP), which includes identifying potential sources of water quality violations or waste discharge requirements, corrective actions including implementing and monitoring Best Management Practices (BMP), and documenting water usage and timing to ensure the water use is not impacting water quality objecting and beneficial uses. Based upon lay testimony the Planning Commission determined that the water usage generated by the project, the location of the existing well and the reduced setback could impact groundwater resources on adjacent properties. The placement of wells are not subject to the Cannabis setback requirements. Well setbacks are determined by EMD.

An Odor Analysis was prepared by Environmental Permitting Specialists (EPS) for the proposed project. EPS found that odor intensity declines by 88 percent over 100 meters (26.7 percent every 100 feet). Analysis indicates the maximum odor intensity along property lines would be approximately 3.5 DT. The project would be enclosed within green houses and the

new processing structure. The analysis determined that odors produced, without additional mitigation, would be less than the 7 DT standard as required by El Dorado County Zoning Ordinance Section 130.41.200.5.D. An additional odor study prepared by EPS in 2024 was submitted for this project. This study provided further review and analyzed the potential use of misting systems for use on the project. This additional report confirmed the previous report's conclusion that the project would meet the 7 DT requirement without mitigation. While the project would meet County standards without mitigation, the project proposes to utilize carbon scrubbing filtration systems or equivalent for this project. Based on lay testimony the Planning Commission determined that the project could have air quality impacts greater than the ordinance allows.

After full project buildout is complete and during the most intensive harvesting period of the year, it was estimated that there would be a maximum number of 60 daily round trips per day during peak conditions. This includes any expected seasonal workers who would only be utilizing the site for a very limited portion of the year. The project is conservatively expected to generate up to 60 daily trips under busiest assumptions but would generate far fewer trips on most days. This project and on-site transportation review was reviewed by DOT. The appellant has indicated that they are willing to accept a condition requiring road maintenance from Derby Lane to the project site.

#### *4. CEQA Compliance*

*Staff Response:* The appellant states that the project went through a full CEQA review, including an extended 45-day public review period, that no significant unmitigated impacts were identified, that staff recommended adopting the ISMND and that the Planning Commissioners relied upon lay testimony. Staff recommended that the Planning Commission adopt the ISMND, as staff along with submitted studies found that there were no significant impact that could not be mitigated to a less than significant impact. The Planning Commission received lay testimony during the Planning Commission hearing that was found to be sufficient to find that the project would have unmitigated and unavoidable impacts, particularly to groundwater resources and air quality.

#### *5. Lower Impact Compared to Alternative Land Uses*

*Staff Response:* The appellant states that the project would have less impact than other activities, such as a winery, allowed by right for the subject PA-20 zoning designation. Approval of CCUP is a discretionary action that analyzed upon applicable section El Dorado County Zoning Ordinance Title 130 and not against what is not allowed by right.

### **CONCLUSION**

Staff recommends the Board of Supervisors hear and consider testimony on the appeal and determine if the project should be denied (via a denial of the appeal), approved via an approval of the appeal, or alternatively approved in a modified form or with modified conditions of approval.