



# PLANNING AND BUILDING DEPARTMENT

## PLANNING DIVISION

<http://www.edcgov.us/Government/Planning>

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### PLACERVILLE OFFICE:

2850 Fairlane Court, Placerville, CA 95667

#### BUILDING

(530) 621-5315 / (530) 622-1708 Fax

[bldgdept@edcgov.us](mailto:bldgdept@edcgov.us)

#### PLANNING

(530) 621-5355 / (530) 642-0508 Fax

[planning@edcgov.us](mailto:planning@edcgov.us)

### LAKE TAHOE OFFICE:

924 B Emerald Bay Road

South Lake Tahoe, CA 96150

(530) 573-3330

(530) 542-9082 Fax

[tahoebuild@edcgov.us](mailto:tahoebuild@edcgov.us)

TO: Board of Supervisors Agenda of: May 21, 2024

FROM: Evan Mattes, Senior Planner Legistar No.: 24-0936

RE: CCUP-A24-0002 Appeal of CCUP21-0004 Single Source Solutions

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### **Recommendation**

Based on the analysis of CCUP-A24-0002 staff recommends the Board of Supervisors take the following action:

- 1) Deny the appeal and uphold the Planning Commission's continuation off calendar of CCUP21-0004 Single Source Solutions with direction to prepare an Environmental Impact Report (EIR) or revise the project to address public concerns and testimony; and
- 2) Adopt and Authorize the Chair to sign Resolution XXX-2024 (Attachment D), denying appeal CCUP21-A24-0002 of CCUP21-0002 and adopting Findings of Fact (Attachment I).

### **Alternative Actions**

1. Approve the appeal and approve CCUP21-0004 Single Source Solutions and adopt the Mitigated Negative Declaration;
2. Approve the appeal and deny CCUP21-0005 Single Source Solutions with direction to staff to prepare findings of denial based upon Board of Supervisors direction.

### **Project Description**

The proposed project would include the cultivation of approximately 87,120 square feet (2 acres) of flowering outdoor cannabis canopy in a fenced, designated cannabis cultivation area, an existing water well and tank for irrigation and storage, proposed storage containers for processing and harvest storage, a fire hydrant, a temporary processing tent, a proposed prefab office, a proposed Tuff Shed for chemical and solar electric equipment storage, parking spaces, portable toilet and handwashing station, and a solar panel array. Phase II of the proposed project would install 1.28 acres of hoopouses in the eastern portion of the 2-acre cultivation area.

### **Project History**

CCUP21-0004 was initially heard by the Planning Commission on March 27, 2024. April 25, 2024. Public comment was received on the project, including concerns about odor, water impacts, County standards, and compliance with CEQA. On March 25, 2024 public comment on CCUP21-0004 was received from Todd Moore with concerns regarding odor, water impacts,

County standards and compliance with the California Environmental Quality Act (CEQA). As part of the public comment letter the commenter attached an Appendix of Exhibits, including Appendix A, an Odor Study prepared by Paul Schafer of SCS Engineers & Environmental Consultants. Appendix A disagreed with the baseline and conclusions of the project odor study prepared by Ray Kapahi of Environmental Permitting Specialists.

Pursuant to CEQA section 15064(g), *“If there is disagreement among expert opinion supported by facts over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant and shall prepare an EIR”*. As there are two qualified professionals with differing expert opinion, Planning Staff introduced a memo (Legistar Attachment G) amending their recommendation to the Planning Commission to continue the project off calendar to allow for the preparation of an Environmental Impact Report or allow the applicant to revise their project to address public comment concerns and testimony. As there was a quorum of three Planning Commissioners and no decision could be agreed upon, the item was continued to the April 25, 2024 Planning Commission hearing.

Additional public comments were received prior to the April 25, 2024 hearing, which included additional data and statement of qualifications from Paul Schafer of SCS Engineers & Environmental Consultants. Planning staff did not change their recommendation at or prior to the April 25, 2024 hearing. After further questions and deliberation the Planning Commission voted 3-2 to continue the project off calendar and to direct the applicant to either prepare an EIR or revise their project to address public concerns and testimony. The Planning Commission report documentation, and written comments are available here: [County of El Dorado - File #: 24-0520 \(legistar.com\)](https://legistar.com/County_of_El_Dorado_-_File_#:24-0520) and the record of the public hearing is available here: [Planning Commission Meeting 4-25-2024 \(granicus.com\)](https://granicus.com/Planning_Commission_Meeting_4-25-2024). This is part of the record on appeal.

## **Appeal Filed**

On May 7, 2024, Appeal CCUP-A24-0002 (Legistar Attachment A) was submitted in a timely manner by Michael Pinette representing Single Source Solutions, Inc. As stated in the appeal, the appellant is specifically appealing the Planning Commission’s continuation of CCUP21-0004 based upon illegally applying CEQA rules, not following ordinance guidelines, that the Planning Commission did not give clear direction to staff for what modifications are required of the project, and that the odor analysis is being retested utilizing the peer review baseline opinion from SCS Engineering. The appeal is requesting approval of CCUP21-0004 without modification.

### *1. Illegally Applying CEQA*

*Staff Response:* The appellant states that Planning Staff and the Planning Commission is illegally applying CEQA. As part of a public comment a peer review of the submitted odor study and statement of qualifications was prepared by Paul Schafer of SCS Engineers & Environmental Consultants. Planning Staff has determined that Paul Shafer is a qualified professional for odor and air quality analysis. Paul Schafer (outside expert) disagreed with the baseline and conclusions of the project odor study prepared by Ray Kapahi of Environmental Permitting Specialists, who completed the study for the applicant. CEQA Guideline section 15064(g), states that *“If there is disagreement among expert opinion supported by facts over the significance of*

*an effect on the environment, the Lead Agency shall treat the effect as significant and shall prepare an EIR". (See also Sierra Club v. County of Sonoma (1992) 6 Cal. App. 4<sup>th</sup>, 1307, 1316-1317 noting that CEQA "reflects a preference for resolving doubts in favor of environmental review when the question is whether any such review is warranted. For example, if there is a disagreement among experts over the significance of an effect, the agency is to treat the effect as significant and prepare an EIR.")*(internal citations omitted). As there are two experts who disagree an EIR shall be prepared.

Additionally, public testimony brought forward concerns over water usage and impacts to ground water, with evidence demonstrating that wells in the area had gone dry. This layperson testimony should be further addressed and analyzed. Pursuant to Section 130.41.200.1.B cannabis is not an agricultural crop, General Plan policies providing preference to agricultural crops do not apply to cannabis. Staff provided a recommendation to either prepare an EIR or allow for the project to redesign their project to address these issues.

## 2. *Ordinance Guidelines*

*Staff Response:* The appellant does not state what ordinance guidelines are not being followed. However, as the project has an odor study, which staff cannot reliably use, staff cannot make the finding for the requested setback reduction, as it can no longer be demonstrated that the requested setback will substantially achieve the purpose of the required setback. As proposed the project cannot reduce the 800 foot setback and would be inconsistent with the requirements of El Dorado County Zoning Ordinance Sections 130.41.100.4.C, 130.41.200.5.C and 130.41.200.5.D.

## 3. *Planning Commission Direction*

*Staff Response:* The Planning Commission took staff's recommendation to either prepare an Environmental Impact Report or allow the applicant to revise their project to address public comments concerns and testimony. The project applicant is responsible for deciding if they want to pursue an EIR or if they want to attempt to revise their project. The project applicant is responsible for designing their project and demonstrating how it complies with all applicable rules and regulations. Planning staff is not responsible for designing an applicant's project.

## 4. *SCS Engineering Retest*

*Staff Response:* As part of a public comment a peer review of the submitted odor study and statement of qualifications was prepared by Paul Schafer of SCS Engineers & Environmental Consultants. Planning Staff has determined that Paul Shafer is a qualified professional for odor and air quality analysis. The applicant states that further testing and analysis utilizing the baseline suggestions of SCS Engineers & Environmental Consultants is underway. This further demonstrates that the project needs to be continued to allow for environmental review.