Outlook

PC 02/27/25
Item 3
21 Pages

Attached letter to Planning Commission with Exhibits from Harry Lehmann of Derby Court

From Harry Lehmann <hvlehmann@protonmail.com>
Date Wed 2/26/2025 5:53 AM
To Planning Department <planning@edcgov.us>; Evan R. Mattes <Evan.Mattes@edcgov.us>
Cc Christine Schaufelberger <cschaufel@gmail.com>

1 attachment (15 MB)
To Planning Commission 2_26_2025.pdf;

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Report Suspicious

Mr. Evan Mattes, Senior Planner

Evan -

Thank you for your professionalism late yesterday in providing the essential Application for CCUP21-0007.

As you will see from the attached letter to the Planning Commission, please distribute to the Commission, I have respected your concerns as expressed, when you explained to me why I was not able to find the Application by many searches by ordinary means.

After three episodes of scanner failure, and it is now 5:30 in the morning after a very long haul, attached, hopefully, is my letter to the Commission covering identifiable and I believe quite certain flaws, including fatal flaw, in the Application for CCUP21-0007.

Most interesting, from a lawyer's perspective shocking, is that there literally and certainly is no proper Applicant named in the Application. This is a certain and definite finding.

Respectfully, this is such a clear and glaring error that, my personal but experienced view, it would be a lasting embarrassment to both Planning and the Commission if a Conditional Use Permit were granted after the Hearing on Thursday morning.

I believe that when you see what I've pointed out, that there is, LITERALLY, no actual legal Applicant, you will see that what I've just above said is not from harshness, but is just plain unavoidable analytical outcome.

Respectfully, I believe that experienced Planners and any experienced lawyer in public entity claims will see and agree that it is legally impossible to actually grant a Conditional Use Permit based on the Application which is the foundation for the attempt towards Permit.

I'd tried by asking for a couple of days, and then searching at the County, and then finally calling you when I'd obtained your number, it was just an entire mystery why this public document was not Internet available. But as you will see quite clearly from the attached, the issues which you explained by telephone in our brief call have been scrupulously respected.

Evan, my first public entity case was in 1983, and I've been doing that work for decades. My trial work specialty is in scientific proof, and a lot of that has involved hydrology and levees, such as the Yuba Flood Cases, an easy to find title. It was the fee from that case and the fee from a supposedly 'impossible to win' paralysis case, also public entity (LA County) that allowed me to spend so many of the my days in the last

fifteen years in our fight against the public health consequences of 5G et al, a subject upon which the NTP of the NIH is quite clear.

It is from that background that I suggest that the findings concerning the absence of any proper actual Applicant will be of interest to you and your Department and the Commission.

I've scanned this through a method that I've never personally scanned before, but it looks like it will work correctly. Please get back to me if there is any legibility problem, which is not from what I can see expected.I

Thank you again for your professionalism. In undergraduate school my focus was in Public Administration, but very long ago Governor Reagan had other ideas for me. I was also, so long ago, a Sierra Club National Law Intern, when we pushed the GGNRA through. My point being that I spent years in work related to your career focus, and write from that position of respect.

Harry

PS to Christine: Chris, it is almost 6 AM as I finally launch this. Maybe 12 to 15 hours straight, I've lost track. I am concerned as to whether, given that this is a scan method new to me, I will succeed in sending this out to each of our neighbors. So, Just In Case, please kindly forward this, or at least the attached letter, as immediately as you can, to our neighbors in our Derby Valley. Kindness, Satygraha,

HVL

Sent with Proton Mail secure email.

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February 26, 2025

El Dorado County Planning Commission
c/o Evan Mattes, Senior Planner
2850 Fairlane Court
Placerville, CA 95667
planning@edcgov.us

RE: Objections to CCUP21-0007
RE: As referenced and for Hearing of February 27, 2025

Dear Commissioners -

Overview of Defects in Application by Type

The first purpose here is to provide the Planning Commission with a brief of the formal objections to the sufficiencies of the Application regarding CCUP21-0007 which are later listed and explained herein. The purposes of the individual objections to the pending Application and the purposes of the cumulative effects of the flaws in the Application is to respectfully show that it would be inconsistent with prevailing law, practice, and common sense to allow a Conditional Use Permit to be issued on the basis of the Application which has been made seeking such Permit. It is stated at the outset that not only Clear And Convincing Evidence, but Proof Beyond A Reasonable Doubt, show that the issuance of a Permit based on the current history of this Application and its contents would be in violation of the law.

Rather than looking at this through an adversarial lens, the flaws in the Application here are so utterly clear that it will result in utterly wasted expense and difficulty for the County as well as the participants here if, in direct variance against clear legal principles, any Permit were issued on the Application here, which is so provably flawed.

This will report to the Planning Commission about the consequences of the application of two separate sets of analytical standards, first Procedural compliance, and secondly compliance with the applicable Substantive standards unavoidably faced by El Dorado County and this Planning Commission as to whether or not CCUP21-0007 can *at this time* be lawfully granted, *given the current condition of the Application*.

The issues which both proponents and opponents face at this Hearing on February 27, 2025, both procedural and legally substantive, are either identifiable and actual or boastful overstatements of position from seeking advantage. Talk is cheap and no position here will ultimately be well served by arguing for positions which upon deep analysis, are without merit.

On behalf of myself and my wife, as the owners of one of the affected homes on Derby Court, the approach taken here is not attempted argumentative persuasion, but limited to clearly stating identifiable positions grounded in the evidentiary history judged in the light of applicable County, State, and Constitutional procedural standards,, and CEQA substantive standards.

Nobody's position in this dialogue between the proponents, the opponents, and this Commission will be advanced by making stuff up and alleging contrivances to make a point. The involved standards either apply ornot. No amount of lipstick on a pig stops it from oinking.

If the facts and history show procedural rules non-compliance in the Application and Application process then as a result the current Application must be denied and the filing of a new Application is necessary.

If the facts and history, when judged by applicable standards, both CEQA and Constitutional, show that an EIR is necessary for legal compliance, then completion of an EIR and the evaluation of that EIR by this Commission must occur prior to the Commission's next consideration of issuance of a Permit towards the goals in CCUP21-0007. In this context, the better outcome for the Applicant is that the Commission order that an EIR be completed for the reasons following herein, since if, in the alternative, there have been violations of mandatory procedural standards, the Applicant is quite literally 'back to square one.'

A Permit pursuant to CCUP21-0007 cannot be lawfully issued based on the current Application because of clearly identifiable violations of basic Procedural standards by the Applicant.

1. ALL PARTIES ARE ENTITLED TO RELY UPON THE DOCUMENTS SUPPLIED TO CONCERNED MEMBERS OF THE PUBLIC AS ACCURATE

On February 25,2025 Senior Planner Evan Mattes demonstrated solid public servant professionalism by supplying the undersigned, Harry V. Lehmann, co-owner of 3500 Derby Court, with a complete image of the Application for Conditional Use Permit as originally filed. I requested this follow-through from Planning after hours of effort disclosed that I could not obtain that document by ordinary computer based search, despite that I had signed up for the eTrack system and repeated inserted what should have been operational search terms. In his telephone call back to me on this last Tuesday afternoon, Mr. Mattes explained that while, as a general matter, full Applications for Conditional Use Permit, being public records, were available through ordinary computer search of County public records, an exception in approach is practiced by El Dorado County in the Cannabis production facility Applications, so as to limit the easy Internet availability of information which could be of financial security concern and other forms of security concern. I thank Mr. Mattes for his professionalism and, to me at least, while it was a surprise and there was some time lost, the explanation of restraint as to constancy of publication of such information seemed to me to have been reasonably derived. In this day and age whenever we see somebody performing their work with professionalism it is pleasurable.

Attached as Exhibit A to this Opposition is the carrier email used by Mr. Mattes to provide the Application as filed with Planning. Either that Application was compliant with applicable legal standards or it was not. This Application is a public record which in addition directly affects our property and the properties of our neighbors in the Derby valley, I do not accept or agree with the 'WARNING' at the bottom of Mr. Mattes email which attempts to attach any confidential or privileged status to the involved Application, the County does not have the legal right to attach security clearances to local public documents. However, as a matter of reciprocal cordial conduct the involved 25 pages of the Application are not attached here and only those elements which are essential to the legal analysis as below stated are referenced.

It is noted to the attention of the Commission that the final resort to Planning was made

only after exhaustive review of the data posted by the Planning Department at the County web page had been completed, and after my ascertaining from our neighbor Christine that despite her prior attempts she had not been previously given the Application despite repeated requests, though at some point she was given a small portion of it, which I have not as yet seen. With respect this is brought to the attention of the Commission because the fact that the chosen comparative secrecy of this type of Application was not publically disclosed caused about two days delay in the submission of this Opposition document. That Application is the foundation for this whole process and no house is sturdy until the foundation has been completely analyzed.

All aspects herein treated concerning non-compliance with applicable legal standards in the Application are grounded in the legally justified belief by this recipient that the Application documents as provided to me on February 25th are complete and accurate images of the actual Application for the Rosewood/CCUP210007 Application For Conditional Use Permit.

2. THE APPLICATION IS FOR THE ROSEWOOD/CCUP10007 IS FATALLY DEFECTIVE FOR FAILURE TO LEGALLY IDENTIFY THE APPLICANT.

As shown in the responses to FORM 'A' - Identifying Information (Required for ALL Applicants), at Line 'f.' of such FORM 'A,' under 'TYPE OF OWNERSHIP (check one),' the Applicant is identified by the checking of the following three boxes as so provided in said FORM 'A;' as a "Limited Liability Company (LLC)," then also as a "Corporation," and then with a third identifier by checking the box "Other (Specify)," and by explanation under that "Other (Specify)" box, over a line provided on said FORM 'A' stating: "In the process of converting LLC into a C Corp." This is legal nonsense. There is no such lawful legal entity which is simultaneously an LLC, a Corporation, and "In the process of converting LLC into a C Corp." No such legal trinity exists, this is a make-believe Applicant.

An Applicant can be a natural person, such as a land owner, or a corporation with landowner consent properly shown (by El Dorado Standards by Notarized statement of permission), or an LLC with landowner consent properly shown, or as a corporate or LLC owner outright. There are other legal entities, such as a Limited Partnership which might in some cases be allowed to file a lawfully compliant Application For Conditional Use Permit.

However, whatever 'could have been' is irrelevant, other than for illustration. The bottom line here is that there is no such legal entity which is composed of an LLC and a Corporation and 'Other (Specify)' with the further explanation that whatever this Applicant really is, it is "In the process of converting LLC into a C Corp." This is a make-believe entity.

Aside from the obvious reality that this Commission would be permanently branded as negligent and out of touch with practical and legal reality if this preposterous collected mixture of claimed entities were allowed to be a lawful Applicant For Conditional Use Permit, there are extremely material practical reasons why this newly invented Applicant Trinity cannot be allowed as the basis for any Application of legal gravity, including for illustration two examples:

1) El Dorado County, as is utterly common if not universal with Permitting agencies, insists that the Applicant sign an Indemnification And Hold Harmless agreement, providing that the Applicant will hold the County harmless and indemnify the County for any legal fees and related consequences that the County endures as a result of being sued Based on my decades in trial based work, even allowing a small corporation by itself to sign the required Hold Harmless is reckless if not bonded, because at a practical level a

simple Chapter 7 will wipe out any shot at making the County whole in that situation. However, what is presented here is even far worse than that, this is some sort of unidentifiable semi-corporate platypus of a claimed Applicant, rendering the entire concept of a useful indemnification ridiculous on its face and clearly unenforceable.

2) Our liability laws, imperfect in application as they sometimes are, from the days of Contributory Negligence with its Last Clear Chance to the improved sanity of Li vs. Yellow Cab, instruments which deliver decent justice in most instances to those who deserve it and a have qualified advocacy to insure that fairness. Allowing this Application to ripen at this time into a Permit, based on this obviously fallacious claimed Applicant would have the effect of issuing a 'Get Out Of Jail Free" card to the actual human beings behind this mirage of competing corporate titles. I am not an important person in El Dorado County, and also left my decades of trial practice after certain fees combined to allow it so as to practice in Public Health and Constitutional areas, so that I am not even any longer well known in my original hometown county, Marin. However, you, on this Planning Commission, are in your positions because you are recognized as important to the well being and solid administration of our El Dorado County, where after a lot of thought, Jean and I chose as our home in the foothills, my preferred residence. I'm not mentioning your regional importance to kiss up to you, which wouldn't work anyway, but because the same stature which brings you to the Planning Commission will necessarily have caused you to know some of the local Judges of the Superior Court well. So please take a moment, and bring to mind one of our local Judges here whom you know to be a responsible and intelligent person, and just imagine for a moment what any such responsible and intelligent Judge would conclude if she or he saw that an Application for Conditional Use Permit had been allowed to ripen into a Permit with this preposterous platypus of Applicant status as the starting blocks for the Application involved. Let us, all of us, just ponder that for a moment, just as ordinary reasonably intelligent and caring people. It is respectfully suggested as unlikely that any responsible attentive Judge of the Superior Court would consider any so-defined Applicant as a responsible and logical entity actually entitled to Permit issuance. This isn't something where we have to be on one side of this dialogue or another to see how fatally defective the Application actually is, by just ordinary common sense.

When we build a house, we can't build the second floor until the first floor has been built sufficiently to bear the weight of that second floor. Similarly, we can't build that first floor until the foundation is complete to support it. The original Application is the entire FOUNDATION for the Conditional Use Permit which is being sought. This is not something that can be corrected 'after the fact,' even if such attempt was made, an unknown, amongst other reasons, which each and all of us can see, ***namely that due to this incredibly obvious fatal defect in the original Application the so-called 'Applicant' never acquired even the legal standing necessary for any subsequent attempt to repair this three tiered oddity of Applicant description.***

For the reasons just treated, this Application, composed of language which we, as members of the public, are entitled to accept as the actual language is irredeemably fatally flawed and for this reason alone the Application is a legal nullityh and any and all works and reports and analysis filed in furtherance of the goals of CCUP21-0007 are for the same reasons legally null.

3. THE APPLICATION IS FOR THE ROSEWOOD/CCUP10007 IS FATALLY DEFECTIVE BECAUSE THE ONLY LEGAL BASIS FOR THE INSTALLATION OF THIS FACILITY IN OUR RESIDENTIAL NEIGHBORHOOD IS THAT OUR ZONING ALLOWS FOR SMALL SCALE AGRICULTURE, WHEREAS THE APPLICATION

FOR CCUP21-0007 STATES THAT THE PERMIT SOUGHT IS FOR "MANUFACTURING," WHICH IS NOT AN ACTIVITY COVERED BY THE AGRICULTURAL ZONING ALLOWANCE TO OUR NEIGHBORHOOD.

I'm personally new to this controversy. We all have times of overwhelm I've been in one of those times for a cross-current of reasons, and it was only within the last week prior to this composition that I personally grasped how devastating the allowance of this heavily staffed manufacturing facility would be to our neighborhood. In addition to the vast increase in traffic and damage and resulting dust to the our privately owned roads, for reasons discussed, infra, regarding the 'horseshoe valley' in which we live, where, unlike the flat lands in the Chico example on which the Applicant, whomever that is, relies, all of our residences are downwind from this marijuana facility, with a prevailing wind from the west, which will funnel all odors in a concentrated way into our valley, which is constrained to the south, north, and east by walls of mountain. Bottom line, here the point is both Procedural and Substantive, any agricultural zoning designation which we have in its limited way for our residential neighborhood does not include manufacturing, yet on the Application received as above described from Senior Planner Mattes, there is a form, which was filled out by the person doing so for the 'Applicant' which form is titled as follows, with the underline in the original: REQUIRED SUBMITTAL INFORMATION for SUPPLEMENTAL SUBMITTAL INFORMATION FOR COMMERCIAL CANNABIS FACILITIES. Wow, that's awkward language, but the central point addressed here is that whomever was filling this form out for the Applicant, whomever that is (see above), in response to question numbered '1,' namely "**What State of California cannabis business license types are you applying for? (check all that apply),"** responded with 'Cultivation/Nursery,' and 'Distribution,' and 'Manufacture.'

This one doesn't take years of work in General Semantics to understand with clarity. First, the Applicant states at this point that the business license sought will be for 'Manufacture,' and 'Manufacture' is not an activity within any reasonable interpretation of the Agricultural zoning which is allowed for our residential community. Secondly, the additional sought category 'Distribution,' is not an agricultural activity. The first one is obvious, and the non-compliance with the Agricultural zoning is therefore equally obvious.

I'm typing this out in the early morning hours of February 26th, when I first saw 'Distribution,' as a sought category of activity my tired and foggy impression was along the lines of, 'well, they've got to get their product out, maybe there should be some slack cut as to Distribution. This is how I see it, perhaps you'll agree: If this were a purely Agricultural zoning activity, the end product, say the marijuana tops for example, would be trucked out to one or more separate locations from which actual Distribution would take place. But that is not what the person who filled out this form for the alleged Applicant is actually saying with the above response to this form question: Here, instead, ***the Application seeks to allow actual Distribution, by definition to multiple third parties, FROM THE SITE*** in our neighborhood.

Earlier here, while defending the position that the County cannot treat a public record Application for Conditional Use Permit as a legally classified document, this report to the Planning Commission expressed sympathetic understanding of the goals of the County in not posting Cannabis facility Applications in steady-state availability via the Internet, ***for security reasons*** which I can understand, and despite the resulting loss of time and resulting delay in this submission, this submission has respected by not posting the entire Application which Senior Planner Mattes supplied in this document, despite the right of any citizen to do so.

This same concern, neighborhood security loss clearly and directly attributable to the fact

that the Application seeks Distribution from the ***same site*** where the non-Agricultural activity of Manufacturing will take place, meaning that there will be, so long as the facility is in operation, and particularly in the post harvest months, the continuing and security hazard increasing phenomena of Distribution to unidentified third parties. The fact that Manufacturing is not an activity allowed by the Agricultural zoning that out residential neighborhood has is obvious, and that inclusion by itself shows that it would be directly against the zoning involved to allow this manufacturing facility to receive a Conditional Use Permit based upon the Application as it currently exists, which is what we have to work with. Direct distribution to third party wholesalers, and arguably even retail distribution, severely raises the level of security hazard from this facility, and in any event, Distribution, which by its definition in business is to third parties, and in any event unidentified, is not within the bounds of the residential and Agricultural zoning that is allowed to our Derby valley neighborhood. While it is conceivable that some revision in the new Application which has been made mandatorily necessary by the failure to define the legal status of the Applicant in any comprehensible way, that's not what we, and the Commission, face at this time. We face instead an Application which in addition to the other factors so far discussed and as will follow, seeks two categories of conduct, Manufacturing and Distribution, which are not within the scope of the Agricultural zoning allowance to our Residential neighborhood. For this additional reason, it would be legally impermissible for this already fatally flawed Application to result in the issuance of a Conditional Use Permit based on the current status, which includes these two non-Agricultural activities.

4. PUBLIC NOTICE OF THE HEARING SCHEDULED FOR FEBRUARY 27TH IS DEFECTIVE DUE TO NON-COMPLIANCE WITH APPLICABLE LAW

Exhibit B to this report to the Planning Commission in opposition to CCUP21-0007 is the sworn Declaration of Ms. Rains of the Mountain Democrat.

In order for a public Notice from a governmental entity regarding anticipated actions of that government entity to be legally effective, strict compliance with all rules governing the method of publication of such Notice is required.

As part of accomplishing Exhaustion Of Administrative Remedies, counsel, or in this case the objecting homeowner, must do her or his best to state all legal positions so that they are preserved for Appeal to the Board of Supervisors and then subsequently for advocacy in the Superior Court.

The Notice which is testified to by Ms. Rains is legally defective, necessarily stated here in order to preserve the rights involved. All such Notices, to be legally effective, must 'stand on their own,' without imposing a duty of interpretation on the public. This is why we, as an organized legal society, must have strict compliance with all Notice standards, including that the date of any Hearing so Notice must be accurately stated, and the publication must be stated with sufficient regularity that the public has a reasonable chance of actually being informed.

One of the problems that we face if we do not insist on strict interpretation of the Notice standards and their application is that if Notice is in fact improper, we can never know, after such improper attempted Notice the extent of the actual effect of such failure. That's why we have no choice but strict compliance with the Notice standards.

The purported Notice upon which the Applicant and staff rely regarding advising the public of the Hearing scheduled for February 27th as herein treated does not state the year in which the publication of such purported Notice took place, rather there are three digits stated; '2/12' with

no statement of the year in which such purported Notice took place. Given the strict compliance standard which applies to such Notices to the public and given that no year is stated in the Declaration of Ms. Allison Rains, which Declaration states that the Notice "has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-with: 2/12," which does not state a year for such publication, and therefore under the applicable strict compliance standards is defective. For this reason, which is also of Constitutional importance in terms of Due Process, this Hearing on the 27th, having been improperly Noticed due to the date anomaly (no year stated), and pending further research which is beyond my capacity as this is typed out at 2:42 AM, objection to the legal efficiency of the attempted Notice for this Hearing of February 27th is additionally stated on the basis that a single publication on one date, at best two weeks before the Hearing, is not Notice reasonably calculated to adequately inform the public that the Hearing involved, about the subject matter involved, will take place. Third, further objection as to the legal sufficiency of the Notice is stated on the basis that the Declaration involved is on the same date as the claimed Publication. As one of the County documents points out, I admit being to tired to cite that one exactly, "Printing" is not the same as "Publication." Obviously, the printing has to take place before the Publication can occur. We can tell for sure, trusting Ms. Rains and I assume she's honest, that the Printing had occurred by the time, ***on the same day*** that she executed her Declaration. But given that the Declaration was sworn on the exact same day that the Publication is alleged to have been completed, at a position sympathetic to the Declarant, the Publication process was apparently still underway, post printing, when the Declaration was signed. As one of the homeowners from our neighborhood who opposes the granting of this Permit, and yet still a member of the California Bar and federal Bar, my lawyer's ordinary standards of care require that this failure of Notice, in my view, 'failures,' plural, be brought to the attention of the Planning Commission and such further governmental and judicial processes which this situation may demand of our time.

This already and clearly fatally flawed Application should not be allowed to ripen into any form of Permit due to the failures of proper Notice as here stated. The actual Declaration as executed by Declarant Rains from the Mountain Democrat is dated 'this 12th day of FEBRUARY, 2025.' Printing and publication are different phenomena, an article can, for example, be printed on one day, and then not published until the next day. Here, the Declaration was made on the same day as the publication to which the Declaration refers, but there is no statement as to time. This makes it impossible for any reader to determine whether the Declaration was after printing, but before circulation, which would not be legal publication, or after both printing and publication, which if present would appear to be compliant with the Notice requirements. Since it is impossible for the reader to determined from the 'same date' of alleged 'publication' and also the Declaration whether the actual publication (as opposed to mere printing) had occurred in compliance with the applicable strict standards, the alleged Publication is defective. There is no thought or belief stated here that the Declarant was in any way dishonest, the issue is that this is a strict compliance situation which requires that the ultimate readers, the persons being Notified, be able to ascertain from reading whether or not there has been actual compliance with governing requirements.

Substantive legal objections to the issuance of a Conditional Use Permit, or any Permit, on the basis of the evidentiary record here, including the documentary record associated with this alleged Application.

1. AN ENVIRONMENTAL IMPACT REPORT IS REQUIRED PRIOR TO THE ISSUANCE OF ANY PERMIT PURSUANT TO THE ATTEMPTED APPLICATION INVOLVED IN SEEKING CCUP21-007 BECAUSE THE ODOR CONTAINMENT CLAIMS MADE BY ALLEGED EXPERTS SUPPORTING THE APPLICATION ARE

AT OBVIOUS SEVERE VARIANCE WITH THE TOPOGRAPHY INVOLVED.

In a rebuttal argument, a Mr. Tannenbaum claimed in an submission dated February 21st that California case law, specifically at 97 Cal.App 4th 327, that objections from neighbors or local residents, without supporting expert analysis, do not trigger the EIR requirement. I state in response that he case he cites does not state what Mr. Tannenbaum claims. Mr. Tannenbaum further claims to the Commission that those opposed must provide what he labels as 'scientifically valid' studies or expert opinion, whereas, first, no such absolute blanket requirement exists, and, s second, as will be proven right here and now, the odor studies which the Applicant has relied upon, and presented to this Commission, are demonstrably not, to use his term, 'scientifically valid.' This is a straight forward confusion between 'apples and oranges.'

The alleged expert (whose training is from the manufacturer of the sniffing device employed) claims that an odor containment approach which is alleged by the expert involved to be effective in Chico, shows that the carbon based smell containment alleged to be effective for this Somerset proposal will be effective. This is either an nonsensical claim by this expert, meaning that it has failed to take into account obvious basic facts, and that due to those facts the expert claims on odor containment involved are advocacy, not dispassionate expert level science. The contrary statements I have just made are either correct or not. So let's look at the facts.

The system which is claimed to have been effective in Chico was a water mist based system, as is graphically shown by photographs of that mist system in operation. This water mist based containment system is now asserted to show that the system claimed to be effective for the Permit sought in CCUP21-0007 will be effective. This is provably, at best, an incomplete argument, as opposed to actual scientific analysis, for at least two reasons.

First, the odor containment system being advocated by this hired expert in support of CCUP21-0007 is a carbon filtration system, not the water mist containment system which was claimed by this advocacy expert to have been effective in Chico. And maybe it was. But, first, these are entirely separate systems, of separate types, one of which, the one in Chico, apparently met this expert's stated objectives, and the other, in Somerset, works on a different basis entirely.

Secondly, this expert 'testimony,' either by failure to notice, or by preference, one can't tell which dominates here, utterly fails to take into account the radically different topographies between the two sites. This doesn't require us to be rocket scientists. Chico is flat, and the maps and photographs used to illustrate that system show that it is on flat land surrounded by flat land.

To the contrary, our neighborhood is in a valley which is closed off by mountain terrain to the north, mountain terrain to the south, and mountain terrain, with tall tree growth, to the east, but open to the west, from which direction the prevailing winds come with high uniformity. Even if it were the case or is the case that the water mist system in Chico worked well, the odor from that pot factory will dissipate by winds over flat lands.

Whereas, in exact contrast, our neighborhood is open to the wind from one direction, the west, into a 'horseshoe valley,' where the involved smells will be blown from the west, into a closed valley, with inevitable, though so far unmeasured by this expert, concentration effect. This is an utterly distinct and different topography which cannot possibly avoid having an utterly different effect in terms of odor dissipation. The fact that the topography differential was entirely avoided by this claimed expert shows us that this was not a truly scientific analysis.

Therefore we urge that an EIR is necessary to legitimately measure the realistic odor

consequences from this marijuana manufacturing plant. We're just stuck with this location problem. It might well be, that, if we did not in reality have this mountainous air movement restraint on three sides, with the wind chronically blowing the pot smells into our neighborhood, and the distances from the homes were similar, we'd have less reason for objection. But that just simply is not the case. This claimed odor containment expert analysis is not credible because of these two factors, that there is an 'apples and oranges' confusion between the mist system in Chico, and that there is an IMMENSE difference in topography.

This is not about any bias for or against marijuana consumption, which is legal here in California, where reservoirs are kept empty for eighteen months despite repeated fire warnings, I am glad that we are no longer punishing people for pot, ruining lives with felonies, which is how it was until we changed the law with George Moscone's SB 95, was cruel and unusual. This is a straight forward topography problem. I'm 77, I was half of the two person lead team that lobbied SB 95 through the legislature, after my best friend from high school, who'd had perfect scores on both sides of is SAT, took his own life from the effects of multiple felony pot incarcerations in October of 1969, after which I swore we'd change that law, which we did. I am not an advocate against pot, per se. But most of us know that even a tiny amount of pot, such as near harvest, is very detectable, and, given the concentration unavoidably resultant from our neighborhood topography, I don't want to be in the position, every time our granddaughters visit the ranch, of answering to a seven year old the question, 'Grandpa, what is that smell around here all the time.' This is just, outright, because of the topography trap and the wind from the west, a very poorly thought through site for this manufacturing endeavor, and the sought Permit should not issue.

2. OBJECTION TO THIS PERMIT BEING ISSUED BECAUSE THE DATA WE CAN SO FAR FIND DOES NOT INDICATE THAT ANYTHING EVEN APPROACHING AN ADEQUATE WATER SUPPLY IS AVAILABLE FOR THIS FACTORY.

After review of all of the documents on this Application available at the County website, it has so far been impossible for me to determine where, exactly, and in particular, from what proven well, the massive amount of water necessary for all of these fine pot plants is going to arrive from. In fact, one of the claimed wells, installed by Waters drilling, the family and company name, was only producing a couple of gallons a minute, and then was closed and capped off by the prior owner of the involved property where this manufacturing facility is now proposed two be built. This is, most of all, a topography problem, and an 'advocacy data,' problem as all of us from lives in trials have seen before, countless times.

Objection to CCUP21-0007 is here stated on the grounds that the alleged Applicant has not even come close to explaining how this manufacturing and growth industry facility is going to obtain the water it needs, in addition to the four bedroom house with pool that, as it has been explained to me, takes water from the same well. The nearby vineyard has already sucked up a lot of water, and this is not, by me, stated as a complaint, just a fact, with one of the homes nearer to this claimed facility that us being compelled to turn off all water faucets from time to time, already, just to allow their tank to fill up. This Application for Conditional Use Permit should be denied on all grounds stated herein, including that there has absolutely been no clear and documented showing that there is sufficient water available to the site to fill the needs of this project, and that, even if such water amount were found to be obtainable, it would have such a high likelihood of interfering with water access for neighboring properties that this Application should be denied due to the absence of an adequate showing of sufficient water alone as a free standing and deeply material issue.

Concluding Statement

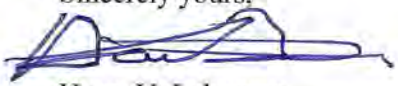
For all of the foregoing reasons the Planning Commission should not issue any Permit based on the Application in the record regarding CCUP21-0007. Attached as Exhibit C to this document is the thoughtful seven page objection to this project and any Permit for it by our neighbor, Christine Schaufelberger, which letter from Christine is already in possession of the Planning Department, having previously been provided to Senior Planner Evan Mattes. By this reference I hereby incorporate Christine's letter as though completely set forth herein, consistent with my agreement and support for the points in that letter, and as it is now 4:30 in the morning, and it is beyond my abilities to type out some of the same points or similar in my own language.

While I have disagreed, and do, with the characterizations of appellate law which were recently pitched concerning by a supporter of this project in characterizing 197 Cal.App 4th 327, my reading of the case discloses language which is helpful, to me at least, in better comprehending that it is not the duty of those who object to a project as requiring an EIR to prove that need, but rather that a showing of the existence of a material environmental issues is enough to compel that the Applicant assure completing of an EIR prior to further consideration of the project which has been shown that substantial environmental issues may exist. The Court in that opened the decision with the following summary language:

> Citizens contends the trial court erred because there is substantial evidence of a fair argument that the Project may have a significant environmental impact on: hazards or hazardous materials; air quality for sensitive receptors; particulate matter and ozone; and greenhouse gas emissions and global climate change.
>
> We conclude that the judgment denying Citizens's petition for a writ of mandate must be reversed to the extent it concluded that Citizens had not presented a fair argument that hazards and hazardous materials from the Project may create a potentially significant adverse environmental impact. In all other respects, the judgment is affirmed.

It is beyond any reasonable dispute that the Application in regard to CCUP21-0007 is fatally defective, the proven fact that there isn't even a clearly defined Applicant is legally fatal to the now-pending Application, which will be before this Commission on the 27th of February of this year, 2025. There are multiple additional and material flaws in the proponent's cause and claims and Application, as set forth above and as incorporated herein. This Application, as it currently stands, cannot lawfully support the Permit sought, and the failures in definition of the corporate entity are so egregious in scope that on that ground alone this project, to proceed at all, which topographically it should not, clearly and obviously requires an entirely new, and proper, Application. It is approaching 5 AM on the 26th as I type this out, and it still needs assembly, scanning, and dispatch. It would be a miracle if there aren't many typographic flaws in this, but under the circumstances and this writer's exhaustion I've got no choice but to send it as it is, something I never do, but this time will, send out a first draft. So what you see is what you get, please look past whatever surface flaws are here, and see what we who object are saying, this is an inadequately thought through and poorly documented Application for the placement of a project where, as matters of topography and environmental impact it does not belong, and very certainly, at the least, requires and entire new Application filing and an EIR. Thank you.

Sincerely yours,



Harry V. Lehmann

El Dorado County CCUP21-0007 Rosewood

From Evan R. Mattes <Evan.Mattes@edcgov.us>

To hvlehmann@protonmail.com

Date Tuesday, February 25th, 2025 at 4:40 PM

Harry,

Per our phone call, please see the attached CCUP application. Be advised that this is from the initial submittal and may not reflect changes and evolutions as the project went through the use permit process.

Evan Mattes
Senior Planner

County of El Dorado
Planning and Building Department
2850 Fairlane Court
Placerville, CA 95667
Office: (530) 621-5994
evan.mattes@edcgov.com

4.04 MB 1 file attached

CCUP21-0007 Application Packet.pdf 4.04 MB

EXHIBIT A TO PLANNING COMMISSION LETTER OF FEBRUARY 26, 2025

Mountain Democrat

PROOF OF PUBLICATION
(2015.5. C.C.P.)

STATE OF CALIFORNIA
County of El Dorado

I am a citizen of the United States and a resident of the County aforesaid; I'm over the age of eighteen years, and not a party to or interested in the above-entitled matter. I am principal clerk of the printer at the Mountain Democrat, 2889 Ray Lawyer Drive, a newspaper of general circulation, printed and published Wednesday and Friday, in the City of Placerville, County of El Dorado, and which newspaper has been adjudged a newspaper of general circulation by the Superior Court to the County of El Dorado, State of California, under the date of March 7, 1952, Case Number 7258; that the notice, of which the annexed is a printed copy (set in type no smaller than non-pareil), has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-with:

2/12

ALL IN THE YEAR 2025

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Dated at Placerville, California, this 12th day of FEBRUARY, 2025

Allison Rains
Signature

Allison Rains
Legals Clerk

Proof of Publication
NOTICE OF PUBLIC HEARING

NOTICE OF PUBLIC HEARING

The County of El Dorado Planning Commission will hold a public hearing in the Building C Hearing Room, 2850 Fairlane Court, Placerville, CA 95667 on February 27, ~~2024~~ 2025, at 8:30 a.m., to consider the following: Commercial Cannabis Use Permit CCUP21-0007/Rosewood submitted by JASON KIPPERMAN to request a Commercial Cannabis Use Permit for the construction and operation of a cannabis cultivation facility for medical and adult-use recreational cannabis. The property, identified by Assessor's Parcel Numbers 095-130-051 & 095-130-054, consisting of 20.24 acres, is located on the west side of Derby Lane, approximately .3 mile south of the intersection with Omo Ranch Road, in the Somerset area, Supervisorial District 2. (County Planner: Evan Mattes, 530-621-5994) (Mitigated Negative Declaration)

Agenda and Staff Reports are available approximately two weeks prior at https://eldorado.legistar.com/Calendar.aspx

All persons interested are invited to attend and be heard or to write their comments to the Planning Commission. For the current remote options, including whether in-person attendance is allowed, please check the meeting Agenda no less than 72 hours before the meeting, which will be posted at https://eldorado.legistar.com/Calendar.aspx. If you challenge the application in court, you may be limited to raising only those items you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Commission at, or prior to, the public hearing. Any written correspondence should be directed to the County of El Dorado Planning and Building Department, 2850 Fairlane Court, Placerville, CA 95667 or via e-mail: planning@edcgov.us.

To ensure delivery to the Commission prior to the hearing, written information from the public is encouraged to be submitted by Thursday the week prior to the meeting. Planning Services cannot guarantee that any FAX or mail received the day of the Commission meeting will be delivered to the Commission prior to any action.

COUNTY OF EL DORADO
PLANNING COMMISSION
KAREN L. GARNER, Executive Secretary
~~February 7, 2025~~ February 12, 2025
2/12 **14220**

EXHIBIT **B** TO PLANNING COMMISSION LETTER OF FEBRUARY 26, 2025

El Dorado County Planning Commission
% Evan Mattes, Senior Planner
2850 Fairlane Court
Placerville, CA 95667
planning@edcgov.us

RE: Rosewood/CCUP21-0007 Draft Mitigated Negative Declaration

Dear Planning Commissioners,

I am a resident near the proposed Rosewood Commercial Cannabis project and am submitting these public comments, including a summary and a more detailed section, to urge the Planning Commission to reject the current Mitigated Negative Declaration (MND) and associated documents due to significant flaws, gaps in evidence, and potential environmental impacts as outlined in the California Environmental Quality Act (CEQA).

These comments reflect concerns raised by the Derby Road Neighborhood, including critical issues related to groundwater usage, land use conflicts, air quality impacts, wildfire risks, and transportation safety. These concerns constitute **substantial evidence under the Fair Argument Standard**, demonstrating that the project could result in significant environmental impacts and necessitating the preparation of a full Environmental Impact Report (EIR).

We respectfully request that the Planning Commission take the following actions:

- Reject the current Mitigated Negative Declaration (MND) and Initial Study.

- Reject the Mitigation Monitoring and Reporting Plan (MMRP).

- Deny the Cannabis Use Permit for this project.

These actions will ensure compliance with CEQA, protect public health and safety, and preserve the environmental integrity of our community.

Thank you for your attention to these concerns.

Sincerely,

Christine Schaufelberger, cschaufel@gmail.com
3430 Derby Court, Somerset, CA 95684, 530-400-5606

Summary of Public Comments on Rosewood/CCUP21-0007 Draft Mitigated Negative Declaration

The Derby Road Neighborhood raises significant concerns regarding the Draft Mitigated Negative Declaration (MND) for the proposed Rosewood Commercial Cannabis project. The following comments outline the community's key issues and recommendations:

1. Groundwater Supplies (X. Hydrology and Water Quality)

Concerns: The MND fails to account for cumulative groundwater impacts, including:
- Existing residential water usage and a 30-acre vineyard sharing the same aquifer.
- Potential conflicts between residential, agricultural, and cannabis operations, especially during drought conditions.
- Omitted water use details from adjacent residences, including a case where water access is already limited.

Recommendation: An Environmental Impact Report (EIR) is required to analyze cumulative impacts, ensuring adequate groundwater resources for all users.

2. Land Use Planning (XI. Established Community and Agricultural Zones)

Concerns:
- The MND incorrectly concludes 'No Impact' on the Derby Road Neighborhood, a planned residential area developed specifically for residential use.
- The MND overlooks the agricultural importance of the nearby Fairplay AVA vineyard and winery, which are part of an officially recognized agricultural zone.

Recommendation: The CEQA analysis must explicitly evaluate potential disruptions to residential and agricultural land uses and address conflicts with the Fairplay AVA designation.

3. Air Quality (III. PM2.5 Dust Emissions)

Concerns: Up to 60 vehicle trips daily on unpaved roads will generate dust and PM2.5 emissions, potentially impacting air quality and public health.

Recommendation:
- Conduct baseline air quality assessments and traffic modeling to quantify emissions.
- Implement mitigation measures such as paving roads, using dust suppressants, or limiting vehicle speeds.

4. Odor Mitigation (Appendix B)

Concerns: The odor analysis relies on data from a different location (Chico, CA) and does not reflect the specific conditions of the Rosewood site.

Recommendation: Conduct a site-specific odor dispersion study using local meteorological data and worst-case operational scenarios. Ensure carbon filtration systems are modeled accurately.

5. Wildfire Risks (XX. Fire Safe Plan)

Concerns:

- It fails to address the risks to neighboring residential properties, including inadequate analysis of evacuation routes.

Recommendation: Revise the plan to address wildfire risks comprehensively, particularly for Wildland Urban Interface areas.

6. Transportation Impacts (Appendix L)

Concerns: Increased traffic on Derby Lane and Rosewood Lane raises safety and dust-related concerns, requiring further analysis of cumulative impacts.

Recommendation: Address transportation safety, dust mitigation, and cumulative traffic impacts in the CEQA review.

7. Cumulative Impacts Analysis

Critical Requirement: The MND inadequately evaluates cumulative impacts, including groundwater usage, wildfire risks, air quality, and traffic.

Recommendation: Prepare a comprehensive EIR to address all potential cumulative impacts as required by CEQA (§15130).

Detailed Public Comments on Rosewood/CCUP21-0007 Draft Mitigated Negative Declaration

III. Air Quality – See reply to Appendix B. Odor Report

X. Hydrology and Water Quality
Impact Analysis: b. Ground Water Supplies

The groundwater supply and recharge calculations fail to include the existing large residence on the property which houses 4-6 occupants and a swimming pool, in its assessment. The combined annual water usage will be approximately 350,000 gallons per year. 125,000 gpy for the residence and 225,000 gpy for the project, See Appendix XIX. Utility and Service Systems, Sufficient Water Supply: "the average single-family home in the area uses approximately 123,800 gallons of water annually (El Dorado Irrigation District 2022)." This omission alone should result in denial of the Cannabis Use Permit.

A detailed review of groundwater availability, cumulative impacts, and public input is critical. If these factors indicate significant environmental risks, preparation of an EIR would ensure that all potential impacts are properly analyzed and mitigated, providing greater legal defensibility for the project. See the Draft MND Groundwater Supplies for reference.

XI. LAND USE PLANNING

The report fails to disclose that the Derby Road Neighborhood was intentionally developed as a residential community. The neighborhood was created by two separate developers who subdivided the land into parcels ranging from 5 to 20 acres, specifically for residential purposes. Several homes were constructed by one of the developers, with the remaining homes built by private contractors. Notably, one 20-acre parcel was initially developed as a private residence before the addition of the Vino de Oro Vineyard and Winery. This vineyard is located less than a quarter mile southeast of the proposed Rosewood property and is included in the Fairplay American Viticultural Area.

Definition of Established Community under CEQA

Under CEQA, the term 'established community' generally refers to an existing, developed area that includes residential, commercial, or industrial uses, along with associated infrastructure and services. The definition may vary depending on the context of the specific CEQA analysis, but it often encompasses:

Residential Areas: Neighborhoods with homes, apartments, or other dwelling units that have been developed and occupied.

Characterized by Stability: An established pattern of land use and occupation, as opposed to areas undergoing significant new development or redevelopment.

Definition and Characteristics of Established Agricultural Zones

While there isn't a formal legal definition for 'established agricultural zones' under CEQA, the concept often refers to areas that are officially designated, recognized, or historically used for agricultural production. For example, an area like the Fairplay American Viticultural Area (AVA) is considered an established agricultural zone because it is officially recognized for its specific characteristics favorable to viticulture. Key characteristics of established agricultural zones, including an AVA like Fairplay, typically include:

Designation and Recognition: For AVAs, this includes federal designation by the Alcohol and Tobacco Tax and Trade Bureau (TTB) based on distinctive geographic, soil, climate, and historical factors that make the area suitable for specific crops like grapes.

Agricultural Activity: The area is actively used for farming or cultivation of crops, particularly specialty agriculture like vineyards, orchards, or other types of sustainable farming practices.

Cultural and Economic Importance: Established agricultural zones often have a cultural

and economic role in their regions, contributing to local identity, tourism, and economy (e.g., wine production in Fairplay AVA).

Environmental Sensitivity and Stewardship: These zones are often protected under CEQA as sensitive areas where projects might affect soil quality, water availability, or the character of the agricultural landscape.
When considering CEQA implications, 'established agricultural zones' like the Fairplay AVA should be referenced in analyses that address impacts on farmland, agricultural resources, or the unique character of the region, as these are considered significant environmental factors under CEQA guidelines.

XX. Wildfire – See Appendix G Fire Safe Plan

Appendix B: Odor Report

After reviewing the Environmental Permitting Specialists (EPS) report dated August 11, 2021, and its reliance on data from a different cannabis operation in Chico, CA, we believe additional clarification and site-specific analysis are necessary to ensure compliance with CEQA and El Dorado County Ordinance 5110 (5) D.

Environmental Data:
Has the modeling incorporated local meteorological data specific to Rosewood, such as prevailing wind patterns, temperature, and humidity? How has the unique topography of the Rosewood site, which may influence odor dispersion, been accounted for in the analysis?

Sensitive Receptors:
What is the predicted odor intensity at the nearest property **boundary, which is 128' from the processing building,** and sensitive receptors under worst-case operational conditions? Have these predictions been validated with on-site testing or comparable operations using carbon filtration systems?

Technology Validation Carbon Filtration System:
The report references the use of carbon filtration as the primary mitigation measure. However, no data specific to this system's effectiveness at Rosewood is provided. Have performance tests or simulations been conducted to demonstrate the system's capability to achieve compliance with the 7 D/T odor threshold at Rosewood?

Reliance on Chico Study:
The Chico study focuses on a misting system, which is not proposed for Rosewood. Why is data from a misting system being used to validate a carbon filtration system? What assurance can the planners provide that the Chico data is applicable to Rosewood, given the difference in mitigation technologies?

Inclusion of the Processing Building as a Significant Odor Source:
Was the processing building explicitly modeled as an odor source in the odor dispersion analysis?
Are there specific data points or measurements addressing odor levels from the processing building at the property line or nearest sensitive receptors?

Integration into Site-Wide Odor Plan:
Does the odor plan consider the **entire site**, including cumulative contributions from all odor sources (greenhouses, processing building, storage areas)?
Are there site-wide mitigation measures, such as synchronized odor controls, for times when multiple sources are emitting odors simultaneously?
Has the effectiveness of the carbon filtration system in the processing building been validated under worst-case odor scenarios?

Modeling Tools and Standards
Has a recognized dispersion modeling tool, such as **AERMOD**, been used to simulate odor dispersion at Rosewood? If not, what methodology was employed?
How does the methodology align with CEQA's standards for environmental analysis and modeling accuracy?

How does the modeling demonstrate compliance with El Dorado County's 7 D/T odor threshold at the property line under varying operational and weather conditions?

Ongoing Monitoring:
What plans are in place to monitor odor levels during operation to validate the modeling predictions?
If odors exceed predicted levels, what contingency measures will be implemented?

Request for Clarification and Further Analysis
To ensure the project meets CEQA requirements and addresses community concerns, we respectfully request the following:
A new, site-specific odor dispersion analysis that includes:
Local meteorological data. Modeling of the proposed carbon filtration system's performance under Rosewood-specific conditions. Explicit inclusion of the processing building as a significant odor source in the modeling. Documentation of compliance with CEQA and El Dorado County Ordinance 5110 (5) D, based on the updated analysis. A detailed plan for ongoing odor monitoring and corrective actions in case of exceedances.

By addressing these gaps, the project will be better positioned to demonstrate compliance with regulatory standards and alleviate concerns regarding its potential impacts on nearby properties.

Appendix G Fire Safe Plan

The study conducted by Phillips Consulting Services failed to include the 10-acre property located on the East side of the project. The occupied residential acreage, located at the corner of Derby Road and Rosewood Lane, has a shared 583' property line and the Rosewood Lane access "Right of Way" crosses through the Derby Lane parcel. Any changes in Rosewood Lane access will affect the two parcels that are the only access point to the project. It is imperative that this matter is addressed promptly to ensure adherence to all legal and regulatory requirements.

Appendix L: On-Site Transportation Review

According to the On-Site Transportation Review conducted by Prism Engineering (2021; Appendix L), the project is expected to generate a total of up to 60 trips per day under peak conditions. The review does not address the potential dust emissions that will result from up to 60 vehicle trips per day on the unpaved portions of Derby Lane and Rosewood Lane after construction is completed.

We request that El Dorado County incorporate an analysis of potential air quality impacts related to PM2.5 emissions from road dust into the CEQA review process. As you are aware, vehicle traffic is a significant contributor to fine particulate matter (PM2.5), particularly from road dust generated by vehicle travel and site operations.

To ensure compliance with CEQA requirements and to protect the health and safety of the community, we request that the County require the inclusion of the following considerations in the CEQA documentation:

1. Baseline Air Quality Assessment: Conduct a detailed assessment of existing PM2.5 levels in the project area, using data from the California Air Resources Board (CARB) or other reliable sources.

2. Traffic and Emissions Modeling: Quantify PM2.5 emissions from road dust due to increased vehicle traffic. This analysis should account for factors such as the number of vehicle trips, vehicle types, road surface conditions, and meteorological influencences.

PC 02/26/25
Item 3
12 Pages

APPLICANT'S POSITION AND RESPONSE TO PUBLIC COMMENT RE: FEBRUARY 27, 2025 EL DORADO COUNTY PLANNING COMMISSION HEARING FOR CCUP 21-007/ROSEWOOD

From Dale Schafer <daleschaferlaw@gmail.com>
Date Wed 2/26/2025 2:39 PM
To David Spaur <David.Spaur@edcgov.us>; Bob Williams <Bob.Williams@edcgov.us>; Jeff Hansen <Jeff.Hansen@edcgov.us>; Andy Nevis <Andy.Nevis@edcgov.us>; Daniel Harkin <Daniel.Harkin@edcgov.us>; BOS-District I <bosone@edcgov.us>; BOS-District II <bostwo@edcgov.us>; oldbosthree@edcgov.us <oldbosthree@edcgov.us>; BOS-District IV <bosfour@edcgov.us>; BOS-District V <bosfive@edcgov.us>; Aaron D. Mount <aaron.mount@edcgov.us>; Evan R. Mattes <Evan.Mattes@edcgov.us>; Planning Department <planning@edcgov.us>
Cc Jason Kipperman <jaykipp@icloud.com>; Jason Kipperman <jaykipp0904@aol.com>

1 attachment (580 KB)
25.02.26_-_JSJ._Applicants_Position_and_Response_to_PC.pdf;

Good Afternoon,

Attached, for your review, consideration, and public comment please find APPLICANT'S POSITION AND RESPONSE TO PUBLIC COMMENT RE: FEBRUARY 27, 2025 EL DORADO COUNTY PLANNING COMMISSION HEARING FOR CCUP 21-007/ROSEWOOD.

Please let me know if you have any questions or concerns.

Thank you,

Heather Schafer
Legal Assistant

The Law Office of
DALE SCHAFER
2583 Meadow Lane
Cameron Park, CA 9562

(530) 320-4191

APPLICANT'S POSITION AND RESPONSE TO PUBLIC COMMENT RE: FEBRUARY 27, 2025 EL DORADO COUNTY PLANNING COMMISSION HEARING FOR CCUP 21-007/ROSEWOOD

To: *El Dorado Planning Commission, copies to members of El Dorado County Board of Supervisors*
From: *Dale Schafer Esq, Attorney for Applicants Re: CCUP 21-007/Rosewood*
Date: *February 26, 2025*

Dear Commissioners:

Please accept this as my client's position regarding the Initial Study Mitigated Negative Declaration (ISMND) and the Cannabis Conditional Use Pertim (CCUP) scheduled to be heard on 2/27/2025 at the regularly scheduled Planning Commission Hearing. Further, please accept this as my client's response to public comment against adopting the ISMND and the CCUP.

Nature of Proceedings

The Planning Commission (PC) is the agency, designated by the Board of Supervisors (BOS), to hold hearings, take evidence, and make recommendations to the BOS for land use planning, development, and community growth. The PC sits as a quasi-judicial body in making its determinations and is bound by the rules outlined in CCR Title 2, Division 2, Chapter 2.5, Article 7, sections 1187 et seq. When acting in this capacity, the PC must

afford all parties due process, apply established rules and policies to specific facts, and make recommendations to the BOS using the substantial evidence standard.

Substantial Evidence

California Code of Regulations Article 20, section 15384 contains the definition of Substantial Evidence, as it applies to agency decisions. Section 15384 states:

(a) *"Substantial evidence" as used in these guidelines means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. Whether a fair argument can be made that the project may have a significant effect on the environment is to be determined by examining the whole record before the lead agency.* ***Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence.***

(b) ***Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.*** (Emphasis added)

Title 14, section 15074 provides the rules by which a Lead Agency must make its determination to adopt a Mitigated Negative Declaration. Section 15074 states in pertinent part:

Section 15074 - *Consideration and Adoption of a Negative Declaration or Mitigated Negative Declaration*
(a) Any advisory body of a public agency making a recommendation to the decision-making body shall consider the proposed negative declaration or mitigated negative declaration before making its recommendation.
(b) Prior to approving a project, the decision-making body of the lead agency shall consider the proposed negative declaration or mitigated negative declaration together with any comments received during the public review process. The decision-making body shall adopt the proposed negative declaration or mitigated negative declaration only if it finds on the basis of the whole record before it (including the initial study and any comments received), that there is no substantial evidence that the project will have a significant effect on the environment and that the negative declaration or mitigated negative declaration reflects the lead agency's independent judgment and analysis.

"Significant effect on the environment" means a substantial, or potentially substantial, adverse change in the environment. Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence. Complaints, fears, and suspicions about a project's potential environmental impact likewise do not constitute substantial evidence. (Newtown Preservation Society v County of El Dorado (2021) 65 Cal App 5th 771, 780-781, citing Pocket Protectors v City of Sacramento (2004) 124 Cal App 4th 903, 927-928, Joshua Tree Downtown Business Alliance v County of San Bernardino (2016) 1 Cal App 5th 677, 690)

El Dorado County Cannabis Ordinances

In 2018, the voters of California passed Proposition 64, the Adult Use of Marijuana Act (AUMA), with over 57% of the vote. The Legislature in 2017, combined the previous Medical Cannabis Regulation and Safety Act (MCRSA) with AUMA to create the Medical and Adult Use of Cannabis Regulation and Safety Act (MAUCRSA) This set of laws established, among other things, the various cannabis business license types. It also specifically left local jurisdictions with local control to allow, or deny, cannabis businesses within their jurisdictions.

In the General election of November 6, 2018, the voters of El Dorado County passed the ballot measures that make up the El Dorado Cannabis ordinances (Cannabis Ordinance) by over 60%. The Cannabis Ordinance established the zones where cannabis cultivation businesses are allowed, the types of businesses allowed on cultivation premises, the setbacks, rules to seek a variance from the setbacks, and the total number of cultivation operations allowed in the county, among other things. The Cannabis Ordinance states in pertinent part:

Title 130, article 4, Chapter 130.41.100.2 (definitions) *Premises means a single, legal parcel of property. Where contiguous legal parcels are under common ownership or control, such contiguous legal parcels may be counted as a single "premises."*

Chapter 130.41.100.4c states: *No Commercial Cannabis Use Permit may be granted unless the applicant demonstrates compliance with all standards in the County Code and State law and regulations for the particular commercial cannabis activity. Any setback for a commercial cannabis activity may be reduced in a Commercial Cannabis Use Permit 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 ordinance from which this Section is derived on November 6, 2018.*

130.41.200.3 states: *Limit on the Number of Commercial Cannabis Operations. The maximum number of commercial cannabis cultivation operations in the unincorporated portions of the County shall be limited to 150. A minimum of 75 of the total 150 cannabis cultivation operations are reserved for outdoor or mixed-light cultivation operations that are less than 10,000 square feet in total canopy area, with 40 of the 75 reserved for operations limited to cultivation canopy of 3,000 square feet or less and cannabis that is grown exclusively with natural light and meets organic certification standards or the substantial equivalent. This Section sets the maximum possible permits only and nothing in this Section shall be construed to require the County to issue a minimum or the maximum number of permits.*

130.41.200.4.C.3 states: *Lots zoned AG, LA, and PA with a premises between 15 and 25 acres in area: Up to two percent of the size of the premises per outdoor or mixed-light cultivation operation with a maximum of four outdoor or mixed-light cultivation operations, but not to exceed 1.5 acres of total canopy coverage for that premises, excluding any nursery area.*

130.200.5.B states: *Location. Outdoor or mixed-light commercial cannabis cultivation shall not be located within 1,500 feet from any school, school bus stop, place of worship, park, playground, child care center, youth-oriented facility, pre-school, public library, licensed drug or alcohol recovery facility, or licensed sober living facility. Distance shall be measured from the nearest point of the premises that contains the commercial cultivation to the nearest point of the property line of the enumerated use using a direct straight-line*

measurement. A new adjacent use does not affect the continuation of an existing use that was permitted and legally established under the standards of this Chapter.

130.41.200.5.C states: *Setbacks. Outdoor or mixed-light cultivation of commercial cannabis shall be setback a minimum of 800 feet from the property line of the site or public right-of-way and shall be located at least 300 feet from the upland extent of the riparian vegetation of any watercourse.*

130.41.200.5.G states: *Screening. Cannabis shall be screened from public view so that no part of a plant can be seen from an adjacent street or adjacent parcel. Screening shall be accomplished by enclosure within a greenhouse or hoop house or by use of fencing or vegetation. All greenhouses, hoop houses, and fences shall comply with all building and zoning codes and any other applicable law or regulation. Greenhouses and hoop houses are the preferred means of screening.*

130.41.300.9.3 states: *Type N and Type P licenses may be permitted in the Community Commercial (CC), Regional Commercial (CR), General Commercial (CG), Industrial High (IH), Industrial Low (IL), Research and Development (R&D), Planned Agricultural (PA), Limited Agricultural (LA), Agricultural Grazing (AG), Meyers Community Center (MAP-1), and Meyers Industrial (MAP-2) zone districts subject to a Commercial Cannabis Use Permit and Commercial Cannabis Operating Permit under Section 130.41.100. Permits in Planned Agricultural (PA), Limited Agricultural (LA), and Agricultural Grazing (AG) zone districts shall be limited to sites that meet the minimum premises area of ten acres, and the County may require a premises greater than ten acres to maintain consistency with other laws, surrounding residential uses, and neighborhood compatibility.*

Title 4, Division 19, Chapter 8, Article 1, Section 17006 (c) defines Type N Manufacturing and states: *"Type N," for manufacturers that produce cannabis products other than extracts or concentrates that are produced through extraction. A Type N licensee may also:*

(1) Conduct packaging and labeling of cannabis products on the licensed premises; and

(2) Register and operate the licensed premises as a shared-use facility in accordance with article 2 (commencing with section 17124) of chapter 8.

The voters of El Dorado County voted, with a substantial majority of over 60%, to approve commercial cannabis operations in the unincorporated areas of El Dorado County. This represents the democratic process in action, although there remain residents, of the county, who do not approve of commercial cannabis operations, at least not in their backyard.

The Cannabis Ordinance authorizes cannabis cultivation operations on various properties over ten (10) acres in designated zones throughout the county, establishes setbacks, requirements to obtain a variance from the setbacks, and the types of cannabis businesses that are authorized to operate on cannabis cultivation operations among many other things.

The PC is the designated authority of the BOS to determine if a CCUP is to be granted. In making this determination, the PC is mandated to afford the parties Due Process, follow established rules and policies, and make its determinations based on the substantial evidence standard. This standard is fact-based. Expert opinions and reasonable inferences must be based on facts. If there is not a factual basis for a decision, the decision is

susceptible to challenge for being arbitrary and capricious. In formulating their decision, the PC relies on staff and experts for opinions about the subjects being decided. In this case, what is to be decided is an ISMND, CCUP, setback variances, and whether, and to what extent, Type N manufacturing will be authorized on the cultivation operation.

ISMND

In 2000, this project was first reviewed by planning staff to determine if it met the general requirements of the Cannabis Ordinance. After receiving the preliminary thumbs up, the application for this specific project was filed in 2021, CCUP 21-007. Following the filing of the CCUP application, the project obtained multiple opinions from qualified experts that include:

1. Security Plan;
2. Odor analysis;
3. Well Report;
4. Fire Safe Plan;
5. Site Management Plan;
6. Environmental Noise Assessment;
7. Percolation Test for septic system installation;
8. Biological Resources Assessment;
9. Arborist report;
10. Transportation Review, including Vehicle Miles Traveled (VMT) memorandum; and
11. Cultural Resources Assessment.

All of these studies, plans, assessments, and tests were submitted to the planning staff for their review. Further, these documents were used by Helix Environmental Planning (Helix), the County's designated expert, for their analysis of the environmental impacts from the proposed cannabis cultivation project. Based upon the independent analysis of Helix, they determined that there would be no significant environmental impacts, with mitigation measures. Accordingly, Helix issued an ISMND that is at the center of the proceeding to be held on 2/27/2025 before the PC.

In addition, planning staff, issued Findings about the project, based on the factual analysis and opinions, of the independent experts who prepared the documents listed above. As stated in the Findings, all required agencies were sent the "project" for review, analysis, and comment. From these comments, planning staff determined that the project was, among other things:

1. The project is consistent with the General Plan;
2. Satisfied the Sheriff for security plan, with modifications for access to live video feed for real-time analysis at the project site, without diminishing services;
3. Satisfied both Pioneer Fire and Cal Fire for emergency access to water during any fire event, without diminishing services;
4. Consistent with traffic general plan requirements;
5. Zoning was appropriate for cannabis cultivation;
6. Lighting plans were consistent with the Zoning Ordinance;

7. Consistent with setback requirements based upon substantially meeting the purpose of the setback;
8. Consistent with odor requirements;
9. Contained adequate water for the project through an existing well;
10. The permit issuance was consistent with the General Plan;
11. The proposed use is specifically permitted by a CCUP; and
12. The proposed use would not be injurious to public health or the neighborhood.

Based upon the ISMND, Findings, and submitted expert reports and analysis, planning staff prepared the Conditions Of Approval that the applicant is required to follow when building, and operating, the cannabis cultivation operation. These Conditions Of Approval include many of the following conditions:

1. Comply with all local and state rules and regulations for operating;
2. Halt the project and notify the appropriate agency if Heritage or Archeological Resource items are discovered during construction;
3. Indemnify the county;
4. Utilize Track and Trace for all cannabis activities on the project;
5. Allow inspections of the operation;
6. Exterior lighting is directed downward to contain the light on the project site;
7. Monitor odors;
8. Mitigation measures for the buildout phase to include a preconstruction Biological Study for endangered species;
9. Mitigation plan for grading, vegetation removal, and tree removal;
10. Fugitive Dust Mitigation Plan for the buildout phase;
11. Installation of fire hydrants for Pioneer Fire and Cal Fire to use;
12. Improvement of roads to allow access by fire equipment;
13. Installation of Knox boxes, with keys, for emergency access by fire and Sheriff;
14. Monitor actual trips to and from the project, with yearly reporting; and
15. Erosion and Sedimentation Control Plan.

The documents prepared for the applicants, listed above, represent expert analysis and opinions based upon facts. The basic facts came from the project proposal, including, but not limited to, the description, plat maps, and site visits by the professionals retained. Their opinions are also based upon their education, training, and relevant experience. The experts, retained by the applicants, authored studies, reports, assessments, and tests that constitute substantial evidence to support the granting of the ISMND and CCUP in this matter.

Helix is the retained expert for the county. Their opinions about the environmental impacts of the cannabis project are based upon their review of the documents created by the applicant's experts, education, training, experience, and site visit. The ISMND is based on facts, which form the basis for the expert opinions expressed. The ISMND is substantial evidence upon which the PC can base its approval of the project.

County Planning staff are the in-house experts on planning rules, the general plan, the specifics of El Dorado land use, and making recommendations to the PC or the BOS. The Planning staff's expertise is based upon their education, training, and experience with handling similar projects. The findings of the Planning Staff are based upon the documents prepared for the applicants, their expertise, and site visits. Similarly, the Conditions of Approval are based upon the documents prepared for the applicants, the Findings, the ISMND, the staff's

expertise, and site visits. Both the Findings and Conditions of Approval are substantial evidence upon which the PC can make their decision to approve the CCUP, and ISMND.

There have been comments received by the PC in opposition to this project. These comments fall into several categories. These categories include:

1. Setbacks;
2. Odor control;
3. Water well usage;
4. Vehicle trips related to the project;
5. Residential neighborhood aesthetics;
6. Type N manufacturing;
7. Traffic impact;
8. Fire risk;
9. Noise;
10. Light contamination; and
11. Security and public safety;

SETBACKS

When the Cannabis Ordinance was passed by the voters, it set the distances the project must be from school bus stops (1,500 ft.) and property lines (800 ft.) These setbacks can be reduced if the applicant owned, or leased the property before 11/06/2018, which the applicants did, if the actual setback substantially complies with the purpose of the setback. The purpose of the setbacks is to ensure that plants can not be seen from the bus stop or property line and the cultivation operation has odors less than 7 Dilutions to threshold (7DTs) at the bus stop or property line. The plants on the cultivation operation will be inside greenhouses and therefore can **NOT** be seen from either the bus stop or any of the property lines around the cultivation premise. Further, the detailed odor analysis, done for this project, concludes that there should be less than 7 DTs at both the greenhouses and the manufacturing building, which will both be equipped with carbon filters on their exhaust from the structures. Additionally, the dissipation studies conclude that every 100 feet the odor will dissipate by over 27%. Accordingly, the reduction of the setbacks from the bus stop and property lines will be well below the threshold of 7DTs. The actual setbacks substantially achieve the purpose of the setbacks by having plants in greenhouses and odors below the threshold at all property lines. There are no facts presented by any commenters that contradict the odor studies. The setbacks should be approved.

ODOR CONTROL

The expert who authored the odor studies, Mr. Ray Kapahi, is an established expert on the topic of cannabis odor control. Mr Kapahi is well versed on the use of carbon filters in greenhouses and has performed additional testing upon buildings where cannabis is stored. He is also an expert on different methods of reducing cannabis odors. Mr. Kapahi has performed real-time testing of the dispersion of cannabis odors and the level of cannabis odors at property lines in El Dorado County. The studies have been sent to Planning staff and posted to the PC

hearing agenda. Mr. Kapahi's reports and studies constitute substantial evidence for approval of the ISMND and the CCUP. None of the commenters have provided facts that contradict or counter the opinions of Mr. Kapahi. The setbacks should be approved.

WATER WELL USAGE

The well located on the parcel where the cultivation project is located was drilled in 2000 and is 580 feet deep. The well was tested as part of this project and found to produce 7.5 gpm at startup. Planning staff notes that water policy is not an issue the county has any control over. The project is located in a fractured granite aquifer area with no problems noted for too little water, or recharge problems. The water usage, reported to the State Water Resources Control Board agency, was not questioned. There have been no facts presented by commenters that contradict the determination by the state that water usage is within appropriate parameters. The PC should approve the ISMND and the CCUP because water usage is appropriate.

As an aside, there is a report of a well on the property that only produced 1.5 gpm. That well was destroyed and another well was permitted and drilled.

VEHICLE TRIPS RELATED TO THE PROJECT

When the employee estimate for the project was provided, the full built project included an outdoor cultivation project. That preliminary outdoor project has been dropped. The estimates of 10 full-time employees for the 10,000 to 15,000 square feet of canopy are more realistically 6. Four (4) of the employees will live, and have lived for a number of years, in the residence located adjacent to the cultivation greenhouses. When harvest time arrives, there may be as many as 10 part-time workers for a short period of time. The part-time workers will be brought to the cannabis operation by a single vehicle or the minimum number of vehicles necessary to transport the workers.

The estimates of 60 trips per day from the project are higher than expected from this project. However, if the trips are less than 100 per day, no further studies are necessary according to CEQA standards. It is estimated that daily trips related to the project will be far less than 60 per day, but Vehicle Mileage Studies are not required until there are at least 100 trips per day.

It should be noted that the applicants have agreed to improve Rosewood Lane to accommodate fire vehicles and maintain the road thereafter. There is also a road maintenance agreement for Rosewood Lane that would require the applicants to maintain the road because of increased usage, which the applicants have agreed to do.

None of the commenters has provided any facts that would be substantial evidence to warrant additional studies or mitigation measures for dust control. Realistically, there will likely be fewer than 10 trips in a day on Derby Lane or Rosewood Lane. The ISMND and the CCUP should be approved.

RESIDENTIAL NEIGHBORHOOD AESTHETICS

Several commenters oppose the project because they claim a cannabis cultivation operation, in their neighborhood, will be a bad thing and detract from the residential nature of the area. It should be noted that the voters of El Dorado County decided where cannabis cultivation projects can be located. In this case, the zoning is PA 20, with residences allowed. There are no restrictions in either the CC&Rs or any other agreements that prohibit commercial enterprises in the Derby Lane agricultural area. It should also be noted that there is a commercial vineyard on Derby Lane.

Social impacts, not caused by the environmental impacts of a project, are not substantial evidence. The neighborhood in and around Derby Lane is not a residential neighborhood as that term is understood in high-density residential areas. The zoning is PA 20 and the voters decided that a cannabis cultivation operation was appropriate in that zone. Although it may be understandable that people who live in proximity to a cannabis business might not want the project in their neighborhood, the voters decided otherwise. The Not In MY Back Yard (NIMBY) sentiment does not provide substantial evidence so accordingly, the ISMND and the CCUP should be approved.

TYPE N MANUFACTURING

The Cannabis Ordinance provides that cannabis cultivation operations can have Type N manufacturing as part of the CCUP & CCOP. This was put to the voters and they decided it was appropriate. Type N manufacturing prohibits any extraction, whether chemically or mechanically. A state cultivation license allows a cultivator to produce Non-Manufactured Cannabis Products, such as pre-rolls, but no manufacturing can be done. A Type N license allows for the infusion of pre-rolls with cannabis concentrates. It also allows the packaging of cannabis products. Further, the El Dorado County Department of Transportation has reviewed the manufacturing aspect of this project with no problems noted. Once the manufacturing building is built, there may be another 2-3 workers and that should keep the trips well below 100 per day.

Type N manufacturing on PA 20 zoned land was passed by the voters. There are no facts presented by commenters that constitute substantial evidence. The experts employed, or retained, by the County have not expressed any concerns for Type N manufacturing on this project premise. The PC should approve Type N manufacturing as part of the CCUP.

TRAFFIC IMPACT

Derby Lane is reported to be 12 feet wide and unpaved. The distance from Omo Ranch Road to Rosewood Lane is relatively short. There are no people, other than applicants, living on Rosewood Lane. It is anticipated that traffic will be substantially less than 60 trips per day. The speed on Derby is kept to a minimum and trips related to this project will take place during daylight hours. It is difficult to imagine how any “children” in the area of Derby Lane would not be able to see, and avoid, any vehicles related to this project. There are no facts provided by the commenters that are substantial evidence. The ISMND and the CCUP should be approved.

FIRE RISK

The applicants have agreed to upgrade Rosewood Lane to accommodate fire vehicles. Also, the project will have 10,000 gallons of water storage that will be connected to a hydrant for the fire department to access in case of a fire. Knox boxes and keys will be available for the fire department to have access to water when they need it. Rosewood Lane has only the applicants as residents and the residence they live in is at the end of Rosewood Lane. The road will be improved and maintained. The commenters have provided no facts about any increased fire risk from this project. Pioneer Fire and Cal Fire have approved a fire-safe plan and there is no mention of any fire risk from this project. The PC should approve the ISMND and the CCUP.

NOISE

Commenters have expressed concerns about noise coming from this project. A study of the noise potential was produced in this case and the expert opinion was that the project would have noise levels within acceptable levels, per county and state standards. Commenters have provided no facts that would warrant any additional studies about noise from exhaust fans or warrant a full EIR. During construction, noise levels will be monitored and mitigation measures will be part of the grading permit. The noise levels are below the threshold and the ISMND and the CCUP should be approved.

LIGHT CONTAMINATION

This project has been studied for exterior lights and their impact on the area. All exterior lights will be motion-activated and point downward to prevent light from extending beyond the project premise. There will be limited light within the greenhouses because artificial light is not the energy source, it will be sunlight. Any additional light will be limited and only last for an hour or two when sunlight needs to be augmented to stop flowering. The commenters have provided no facts to demonstrate light contamination, only speculation. Speculation is not substantial evidence. The ISMND and the CCUP should be approved.

SECURITY AND PUBLIC SAFETY

The applicants submitted to the Sheriff a detailed security plan. The Sheriff will have real-time access to video feeds from the cultivation premise. The security plan is confidential, but the Sheriff has approved it. Both Fire and the Sheriff believe they can provide fire and safety services to the project.

Commenters have not provided any facts to substantiate their concerns for security and public safety. Both Fire and the Sheriff believe they can respond to any problems at the project and provide for public safety. Speculation about security and public safety are not substantial evidence. The ISMND and the CCUP should be approved.

PUBLIC COMMENTS

I wish to acknowledge and express my gratitude, to Lee Tannenbaum for his detailed responses to public comments. I wish to adopt his responses and incorporate them into this presentation by reference. It seems clear that the commenters are throwing as much mud against the wall as they can to produce some sort of an argument for substantial evidence. The commenters fail at that endeavor. Facts are necessary and preferably expert opinions based upon facts, but none are provided. The ISMND and the CCUP should therefore be approved.

CONCLUSION

The opinions of the Planning Staff and Helix are based upon facts, expert opinions, site visits, knowledge of the Cannabis Ordinance, County Zoning, the County General Plan, and CEQA. The ISMND, and the recommendations to approve both the ISMND and the CCUP, are from the County's own experts. The opinions and recommendations from Helix and the Planning Staff constitute Substantial Evidence to approve both the ISMND and the CCUP.

The commenters are expressing many concerns, questions, and speculations about this project. However, there are no facts presented and certainly nothing that constitutes Substantial Evidence to raise a fair argument against approving both the ISMND and the CCUP.

The applicants request that the PC approve both the ISMND and the CCUP at the hearing on 2/27/2025.

Thank you for your time and attention to this matter.

Very truly yours,

DocuSigned by:
Dale Schafer
21D9734399F347C...

Dale Schafer, Esq.

Outlook

CCUP21-0007/Rosewood Commercial Cannabis - Public Comment Letter

From Cammy &/or Michael Morreale <mcmorreale@sbcglobal.net>
Date Wed 2/26/2025 3:11 PM
To Planning Department <planning@edcgov.us>; Evan R. Mattes <Evan.Mattes@edcgov.us>; Andy Nevis <Andy.Nevis@edcgov.us>; Bob Williams <Bob.Williams@edcgov.us>; Jeff Hansen <Jeff.Hansen@edcgov.us>; David Spaur <David.Spaur@edcgov.us>; Patrick Frega <Patrick.Frega@edcgov.us>

1 attachment (703 KB)
Green Gables - Appeal from Latrobe School District BUS STOP - BOS 11-7-23 File 23-1823.pdf;

Please read this email and attachment and upload both (email and attachment) to the subject Agenda for tomorrow's calendar. The attachment is precedence created by the Green Gables Commercial Cannabis Project being rejected in the Appeal Hearing on 11/7/23. This precedence is relevant to the Rosewood Cannabis project as the active Bus Stop is less than the allowed distance to the property line(s) as per the Ordinance.

On 11/7/23 Dave Scroggins (Superintendent of Latrobe School District) (re: Green Gable project) presented the Appeal - please see recording at this link https://eldorado.granicus.com/player/clip/1965?view_id=2&redirect=true -- (go to time counter 4:38 to hear the Appeal for the BUS STOP).

The Rosewood project should automatically be disallowed/rejected as it does not meet the School Bus Stop Ordinance. Also, I want to remind you of the decision the Board of Supervisors made on April 9, 2024 regarding disbanding the cannabis ad hoc committee and directing staff to **no longer pursue any additional changes to the cannabis ordinance, including setbacks**, canopy limits, propagation, and manufacturing.

Thanks for your help.

Cammy Morreale
El Dorado South County Resident

File Number: ~~CUP~~ V23-0001 Receipt No.: 49078

Date Received: 9-7-2023 Amount: $239

APPEAL FORM

(For more information, see Section 130.52.090 of the Zoning Ordinance)

Appeals must be submitted to the Planning Department with appropriate appeal fee. Please see fee schedule or contact the Planning Department for appeal fee information.

APPELLANT The Latrobe School District

ADDRESS 7900 South Shingle Road, Shingle Springs

DAYTIME TELEPHONE 530-677-0260

A letter from the Appellant authorizing the Agent to act in his/her behalf must be submitted with this appeal.

RECEIVED
SEP 07 2023
EL DORADO COUNTY
PLANNING AND BUILDING DEPARTMENT

AGENT

ADDRESS

DAYTIME TELEPHONE

APPEAL BEING MADE TO: (Board of Supervisors) Planning Commission

ACTION BEING APPEALED (Please specify the action being appealed, i.e., approval of an application, denial of an application, conditions of approval, etc., and specific reasons for appeal. If appealing conditions of approval, please attach copy of conditions and specify appeal.)

The Latrobe School District Administration and the Latrobe School District Board of Trustees are respectfully appealing the approval of Variance V23-0002 on the grounds that the variance issued did not satisfy the conditions of approval required in Section 130.52.070 of the El Dorado County Code of Ordinances.

Please see attached for specifics of the appeal.

DATE OF ACTION BEING APPEALED August 24, 2023

Signature

Date 9/7/23

Sec. 130.52.090 - Appeals.

Any decision by the review authority of original jurisdiction may be appealed by the applicant or any other affected party, as follows:

A. An appeal must be filed within 10 working days from the decision by the review authority by completing the appeal form and submitting said form together with the applicable fee, as established by resolution of the Board, to the Department. The appellant shall clearly identify on the appeal form the specific reasons for the appeal and the relief requested.

B. The hearing body for the appeal shall consider all issues raised by the appellant and may consider other relevant issues related to the project being appealed. The hearing body for the appeal shall be as follows:

   1. All decisions of the Director are appealable to the Commission and then to the Board.

   2. All decisions of the Zoning Administrator and the Commission are appealable to the Board.

   3. All decisions of the Board are final.

C. The hearing on an appeal shall be set no more than 30 days from receipt of a completed appeal form and fee. If the Board meeting is canceled for any reason on the date on which the appeal would normally be heard, the appeal shall be heard on the first available regularly-scheduled meeting following the canceled meeting date. The 30-day time limitation may be extended by mutual consent of the appellant(s), the applicant, if different from the appellant, and the appeals body. Once the date and time for the hearing is established the hearing may be continued only by such mutual consent.

D. In any appeal action brought in compliance with this Section, the appellant(s) may withdraw the appeal, with prejudice, at any time prior to the commencement of the public hearing. For the purposes of this Section, the public hearing shall be deemed commenced upon the taking of any evidence, including reports from staff.

E. Upon the filing of an appeal, the Commission or the Board shall render its decision on the appeal within 60 days.

F. No person shall seek judicial review of a County decision on a planning permit or other matter in compliance with this Title until all appeals to the Commission and Board have been first exhausted in compliance with this Section.

RECEIVED
SEP 07 2023
EL DORADO COUNTY
PLANNING AND BUILDING DEPARTMENT

APPEAL FORM

Appeal for Approval of Variance V23-0002

Attachment

The Latrobe School District Administration and the Latrobe School District Board of Trustees are respectfully appealing the approval of Variance V23-0002 on the grounds that the variance issued did not satisfy the conditions of approval required in Section 130.52.070 of the El Dorado County Code of Ordinances.

Specifically,

- There are special **NO** circumstances or exceptional characteristics or conditions relating to the land, building, or use referred to in the application, which circumstances or conditions do not apply generally to land, buildings, or uses in the vicinity and the same zone;
- The strict application of the zoning regulations as they apply to the subject property would **NOT** deprive the subject property of the privileges enjoyed by other property in the vicinity and the same zone (California Government Code Section 65906);
- Issuing this variance **DOES** grant special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated (California Government Code Section 65906); and
- The granting of this variance is **NOT** compatible with the maps, objectives, policies, programs, and general land uses specified in the General Plan and any applicable specific plan, and **IS** detrimental to the public health, safety, and welfare or injurious to the neighborhood.

Cash Register Receipt

County of El Dorado

Receipt Number
R49078

DESCRIPTION	ACCOUNT	QTY	PAID
ProjectTRAK			**$239.00**
V-A23-0001 Address: 6914 SOUTH SHINGLE RD APN: 087021057			**$239.00**
APPEALS FEES			$239.00
ALL APPEALS	3720200 0240	0	$239.00
TOTAL FEES PAID BY RECEIPT: R49078			**$239.00**

RECEIVED

SEP 07 2023

EL DORADO COUNTY
PLANNING AND BUILDING DEPARTMENT

Date Paid: Thursday, September 07, 2023

Paid By: LATROBE SCHOOL DISTRICT

Cashier: ERM

Pay Method: CHK-PLACERVILLE 1165

You can check the status of your case/permit/project using our online portal etrakit https://edc-trk.aspgov.com/etrakit/

Your local Fire District may have its' own series of inspection requirements for your permit/project. Please contact them for further information. Fire District inspections (where required) must be approved prior to calling for a frame and final inspection through the building department.

Due to the large number of structures destroyed in the Caldor Fire, it is anticipated that there will be a large number of applications for building permits in the burn area after fire debris and hazardous materials have been cleaned up. Building permits in the Caldor Fire area will not be issued until after a property has been cleared of fire debris and hazardous materials as a result of the Caldor Fire. Even if a property has been cleared of fire debris and hazardous materials or never had any fire debris and hazardous materials, it does not mean that there are no other health hazards or dangers on the property, including dangers resulting from fire-damaged or hazard trees. Property owners and residents must do their own investigation to determine whether there are any other health hazards or dangers on the property. The issuance of a building permit for the property does not accomplish this task. A building permit is a ministerial action requiring only limited review by the County to ensure that the structure meets all applicable building standards. In most zones, an individual is allowed by right to construct a residence after receiving a building permit that only requires conformity to building standards. The building permit is issued based on information supplied by the applicant without independent investigation by the County of the property or potential health hazards or dangers. Given the limited scope of enforcement, it is not possible for the County to identify potential health hazards or dangers that are not directly associated with the permitted structure. The applicant is in a position to inspect the property, identify potential health hazards or dangers, and tailor the application to avoid any potential health hazards or dangers.