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TO: Board of Supervisors Agenda of: March 5, 2024

FROM: Evan Mattes, Senior Planner Legistar No.: 24-0275

RE: CCUP-A24-0001 Appeal of CCUP21-0002 Harde

Recommendation

Based on the analysis of CCUP-A24-0001 staff recommends the Board of Supervisors take the following action:

- 1) Deny the appeal and uphold the approval of CCUP21-0002 Harde, based on the Findings and subject to the Conditions of Approval as approved by the Planning Commission; and
- 2) Adopt and Authorize the Chair to sign Resolution XXX-2024, denying appeal CCUP21-A24-0001 of CCUP21-0002 and adopting Findings of Fact (Attachment C).

Alternative Actions

1. Approve the appeal and overturn the approval CCUP-21-0002 Harde, with direction to staff to return the findings of denial based upon Board of Supervisor direction

Project Description

The proposed project would include the cultivation of 68,000 square feet of mature outdoor cannabis canopy grown in four (4) areas. Construction of the proposed project would occur in two (2) phases: Phase I and Phase II. Phase I would include the installation of Area A-1 which includes 43,000 square feet of outdoor cannabis canopy grown north of the existing vineyards. Phase II would include the installation of Area B-1 which includes 10,000 square feet of outdoor cannabis canopy, Area B-2 which includes 10,000 square feet of outdoor cannabis canopy, and Area B-3 which includes 5,000 square feet of outdoor cannabis canopy. The total cannabis canopy in Phase I would be 43,000 square feet and the total cannabis canopy in Phase II would be 25,000 square feet. Construction of Phase I would occur immediately upon project approval and upon acquisition of the required permits from the County and State and would take approximately three (3) months to complete. Construction of Phase II is anticipated to be implemented between two (2) to four (4) years after project approval. The project has been conditioned to only grow 10,000 square feet of canopy during the first year of the first grow cycle. At final build out the cannabis canopy would be located approximately 350 feet from the eastern property line, 470 feet from the northern property line, 900 feet from the western property line and 360 feet from Perry Creek Road.

Project History

CCUP21-0002 was heard by the Planning Commission on January 25, 2024. Public comment was received on the project, including concerns about odor/odor mitigation, setbacks and project size. At the hearing Planning Staff introduced a memo (Legistar Attachment F) amending Condition of Approval 25, limiting the options allowed to the applicant for odor mitigation, and creating new Condition of Approval 56, requiring additional odor monitoring reports. These conditions of approval were proposed in response to public comment. During the hearing another condition of approval (COA 57) was added limiting the canopy size during the first year of the first grow cycle to 10,000 square feet. Commissioner Boeger made a motion to approve CCUP21-0002, with amended Condition of Approval 25 and additional Conditions of Approval 56 and 57. The motion passed 4-0, with Commissioner Payne abstaining.

Appeal Filed

On February 5, 2024, Appeal CCUP-A24-0001 (Legistar Attachment A) was submitted in a timely manner by Cammy Morreale representing Alice Clary. As stated in the appeal, the appellant is specifically appealing the project based upon proximity to school bus stop, new information presented at the Planning Commission, non-compliance with setback requirements and the adequacy of the Mitigated Negative Declaration.

1. School Bus Stop Distance

Staff Response: The appellant states that there is a school bus stop located at 6500 Perry Creek Road, located on the parcel directly south of the proposed project site. This bus stop was not commented upon during the initial agency project distribution. During project review no school bus stop was identified at 6500 Perry Creek Road, the closest school bus stops were identified on the Pioneer Elementary Blue Route updated December 8, 2023 (Legistar Attachment I). This information was reviewed again January 22, 2024 in response to public comment. The Pioneer Elementary Blue Route was updated after the January 25, 2024 Planning Commission Hearing, on January 30, 2024. This project as it was submitted, analyzed and approved meets 1,500 foot setback requirement from school bus stops.

2. New/Inaccurate Information

Staff Response: The original odor mitigation measure, implemented as COA 25, offered two options for odor mitigation. In response to public comment Planning Staff revised COA to remove the option to mitigate odor by spraying odor neutralizer at the property line. The project would need to spray odor neutralizer at the cannabis canopy with fans blowing the neutralizer across the cannabis canopy, located approximately 350 feet from the nearest property line. This did not introduce any new information to the project description.

Based upon public comment, additional information regarding odor neutralizers was prepared by Helix Environmental, the County's CEQA consultant (Legistar Attachment H). Pursuant to the U.S. Occupational Safety and Health Administration standards commercial odor neutralizers do not contain hazardous components.

At the Planning Commission hearing COA 57 was added to the project limiting the first year grow cycle to 10,000 square feet of canopy. The canopy would be located within the initially proposed 43,000 square foot Phase-1 proposal. After the initial grow cycle year the applicant could build out Phase-1 in its entirety. This only changes phasing and has no impact to project description.

3. Non-Compliance with Cannabis Setbacks

Staff Response: El Dorado County Zoning Ordinance Section 130.41.200.5.C requires a minimum of 800 feet from property line. Section 130.41.100.C of the El Dorado County Zoning Ordinance allows for any setback to be reduced for a commercial cannabis activity in a CCUP, so long as the applicant demonstrates that the actual setback will substantially achieve the purpose of the required setback and that the parcel was owned or leased by the applicant before voter approval of the Cannabis Ordinance derived on November 6, 2018. The project applicant owned the project property prior to November 6, 2018. With the odor mitigation and security plan the proposed setbacks would substantially achieve the purpose of the required setback of 800 feet.

4. Inadequate and Inaccurate Information/CEQA Compliance

Staff Response: The project would be required to be consistent with the project description, the project site plan and the Conditions of Approval, including COA 57 limiting the project to 10,000 square feet during the first year of the project grow cycle.

A mitigated negative declaration was prepared, by Helix Environmental, for the project determining that there were no significant impacts that could not be mitigated to a less than significant level. Helix Environmental is the County's CEQA consultant on cannabis projects. In addition to preparation of the CEQA document, Helix Environmental also conducts peer review of submitted project studies. Studies submitted and reviewed include, but are not limited to well reports, odor reports and biological studies. As stated previously the odor neutralizer has been determined to be nonhazardous. No unmitigated significant impacts, that would require the preparation of an Environmental Impact Report (EIR) were identified.