SUMMARY

Applicant: Cary Schwartz/Scott Dixon (Sky Road Ventures, Inc)

Owner: T.D. Investments L.P. (Georgine Dixon)

Location: 3428 Westach Way, Sonoma, APN 135-061-018

Subject: General Plan Amendment, Zone Change, and Cannabis Use Permit

PROPOSAL: Deny the request for a General Plan Amendment, Zone Change, and Cannabis Use Permit on a Limited Commercial (LC) zoned 4.65 acre parcel.

Environmental Determination: Statutorily Exempt pursuant to Section 15061(b)(4) in that the project will be rejected or disapproved by a public agency.

Ord. Reference: Sections 26-88-250(a); 26-88-250 (d); 26-88-250 (f) – Commercial Cannabis Uses

Land Conservation Contract: Not applicable

Zoning: LC (Limited Commercial) LG/MTN SR (Scenic Resource) VOH (Valley Oak Habitat)

General Plan: LC (Limited Commercial)

RECOMMENDATION: That the Planning Commission adopt a resolution recommending the Board of Supervisors deny the request for a General Plan Amendment, Zone Change and Cannabis Use Permit.

EXECUTIVE SUMMARY: Staff has scheduled the project for summary denial. Summary denial allows projects with major flaws or unresolvable issues to be scheduled for a decision in an expeditious manner without unnecessary and lengthy analysis.
The project site does not meet the General Plan criteria for a Land Use Designation Amendment, and there is insufficient policy basis to find that the General Plan Amendment is within the “public interest” as required by California Government Code. Consequently, staff also recommends denying the Cannabis Use Permit because cannabis cultivation is not allowed on the existing Limited Commercial zoning and the property does not meet the 10 acre minimum parcel size required for cannabis cultivation.

The proposed project is exempt from the California Environmental Quality Act (“CEQA”) pursuant to Public Resources Code Section 21080(b)(5) and 14 California Code of Regulations, Chapter 3 (CEQA Guidelines), Section 15270(a), which exempts projects that are rejected or disapproved.

Site Characteristics:

Location: The parcel is located in Sonoma Valley south of the City of Sonoma, near the intersection of Hwy 12 and Ramal Rd.

Description: The site is developed with a 10,800 sq ft industrial building surrounded on three sides by paved drive way/parking areas. The remainder of the site is undeveloped.

Surrounding Land Uses and Zoning: The site is surrounded by properties all zoned Land Extensive Agriculture, except for the parcel to the south which is zoned Land Intensive Agriculture. Surrounding land uses include vineyards, grazing, and agricultural support uses and single family homes.

Most of the parcels on Westach Way are between 3 and 7 acres in size. The surrounding sites are larger parcels between 50 and 300 acres, planted with vineyards or grasslands used for grazing.

ANALYSIS

BACKGROUND

Regulatory History

In October 2015, the Governor signed three bills into law collectively known as the Medical Cannabis Regulations and Safety Act establishing the State’s first licensing system for commercial medical cannabis activity. In November 2016, California voters approved Proposition 64, legalizing the adult use and possession of cannabis.

On December 20, 2016, the Sonoma County Board of Supervisors adopted the Cannabis Ordinance (No. 6189) to establish a comprehensive local program to permit and regulate medical cannabis to align with State Regulations. The ordinance was intended to preserve environmental resources, protect the health and safety of communities, and ensure the industry contributes positively to the economic vitality of the County.

In June 2017, the Governor signed a bill creating a single regulatory scheme for both medical and adult use cannabis businesses.
On October 16, 2018, the Sonoma County Board of Supervisors adopted an amendment to the Cannabis Ordinance (Ordinance No. 6245), extending the maximum term of cannabis use permit from one year to five years, authorizing adult use in addition to medical with a use permit, and clarifying a number of additional items.

Project History

On September 15, 2017 Mr. Schwartz submitted a Penalty Relief Program application for indoor, outdoor, and mixed light cultivation at 3428 Westach Way.

On March 8, 2018 Mr. Schwartz submitted an application for a General Plan Amendment and Zone Change from Limited Commercial (LC) to Land Extensive Agriculture (LEA) and a Use Permit for 2,500 square feet of indoor and 2,500 square feet of mixed light cultivation.

On April 9, 2018 a letter was sent to Mr. Schwartz determining that the application could not be processed as the General Plan Amendment did not conform to the goals and policies of the County General Plan, and Permit Sonoma could not make the necessary finding that the General Plan Amendment was in the public interest, consistent with California Government Code Section 65358. The applicant was advised the project would be brought forward to the Planning Commission for denial if the application was not withdrawn.

On April 23, 2018 an email was sent to Mr. Schwartz notifying him that his property is not “permit eligible” and that no cannabis operations can occur on the property and all cultivation operations must cease.

On May 8, 2018 Permit Sonoma Code Enforcement verified that all cannabis operations had ceased.

On May 10, 2018 Mr. Schwartz withdrew his planning application.

On November 15, 2018 Mr. Schwartz submitted a new planning application for a General Plan Amendment, Zone Change, and Cannabis Use Permit. There was no substantial difference between the new application and the application submitted on March 8, 2018. Permit Sonoma had no legal reason not to accept the November 2018 application.

On December 15, 2018 a letter was sent to Mr. Schwartz determining that the application could not be processed due to the same fatal flaws related to the General Plan designation criteria and findings of public interest and that the project would be brought forward to the Planning Commission for denial if the application was not withdrawn.

Project Description
The applicant is requesting:

- a General Plan Amendment from Limited Commercial to either Land Extensive Agriculture, Land Intensive Agriculture, or General Industrial;
- a Zone Change from Limited Commercial to either Land Extensive Agriculture, Land Intensive Agriculture, or Limited Rural Industrial; and
- a Use Permit to allow for 3,802 square feet of commercial cannabis cultivation within an existing 10,800 square foot warehouse, along with associated processing.
DISCUSSION OF ISSUES

ISSUE #1: General Plan Amendment- Designation Criteria
The subject property’s land use is Limited Commercial in recognition of a historic commercial use present at the time of original General Plan adoption 1978. The commercial use has ceased and the applicant is requesting an amendment to one of three new land uses; Land Extensive Agricultural (LEA), Diverse Agriculture (DA), or Limited Rural Industrial (M3). General Plan Amendments must meet the General Plan designation criteria for the requested land use. The designation criteria for the land use options are listed below.

Land Extensive Agriculture
Designation Criteria. Amendments to add this designation must meet one or more of the following, in addition to any applicable Land Use Policies for the Planning Areas. The proximity of clustered units to existing adjacent agricultural operations and residences will be considered:
1. Most lot sizes in the area are 60 acres or larger,
2. The existing or historic use of land is for livestock grazing, dairy ranching, hay or similar forage crop,
3. Adjacent parcels of similar use, and
4. Williamson Act Contract (Type 2).

Diverse Agriculture
Designation Criteria. Amendments to add this designation must meet one or more of the following, in addition to any applicable Land Use Policies for the Planning Areas:
1. An existing pattern of small lots or a mixture of small and large parcels,
2. Soils suitable for crop production and adequate water for irrigation,
3. Historic or existing use for farming, and
4. Williamson Act contract, Type 1 or 2.

General Industrial
1. Lands shall be located within an Urban Service Area,
2. Adequate public services shall be available or shall be planned to be available,
3. Lands shall be located with convenient access to an arterial or collector highway,
4. The amount of land so designated shall be consistent with the projected employment within the planning area,
5. Lands shall not be located in areas subject to flood, fire, and geologic hazards or in areas constrained by groundwater availability or septic suitability, and
6. Any applicable Land Use Policies for the Planning Area.

The subject parcel is 4.65 acres in size and is considered to be incompatible with the requested designation criteria due to its size and use. The existing development of the property includes an industrial structure with no agricultural use. With no agricultural use proposed there is no compelling reason requiring designation of agricultural land. Furthermore, an amendment to industrial zoning would be incompatible with the surrounding agricultural uses.

ISSUE #2: General Plan Amendment Findings
Government Code Section 65358 requires that the Board of Supervisors make findings that the General Plan Amendment is within the public interest. The application proposes to 1) correct “improper zoning” referring to the spot zoning that occurred on the property 2) donate a 10-panel solar system to a non-profit organization as the community benefit for the General Plan amendment; and 3) provide 5% of company profits to a drug awareness program or any other program of choice for 10 years. In general, applications for general plan amendments can only be considered when the General Plan Amendment itself provides a long-term benefit to the community. Traditionally, the Board of Supervisors has found General Plan Amendments to be within the public interest when irrevocable offers of land dedication, long term agricultural or open space easements, or affordable housing is provided. The proposed solar system dedication and profit-sharing require monetize the public benefit, setting a precedent that could open the General Plan to any desired land use change in exchange for funding other charitable interests, programs or services.

**ISSUE #3: Zone Change Request**

The applicant is requesting a zone change from Limited Commercial to either Land Extensive Agriculture, Land Intensive Agriculture, or Limited Rural Industrial. The current Limited Commercial land use is considered a “spot zone” because it is the only commercially zoned property in an area of agricultural properties. The property is zoned commercially based on the recognition of a previous commercial use. That commercial use ceased and the commercial land use and zoning remains. A zone change to an industrial land use designation would be similar to spot zoning, exacerbating the existing land use inconsistencies and therefore would not be desirable.

**ISSUE #4: Ordinance Requirements- Minimum Lot Size**

The cannabis ordinance was amended by the Board of Supervisors on October 16, 2018. The amended ordinance became effective 30 days from the date of passage on November 15, 2018. The amendments included a change to the minimum lot size requirements for cultivation to 10 acres. The cannabis ordinance included the following pipeline provision allowing existing projects under 10 acres to continue to be processed.

*Section III. Pipeline Projects. Notwithstanding the minimum lot size requirement, applications for commercial cannabis cultivation operations that were approved or determined complete for processing prior to the effective date of this ordinance may continue to be processed and reviewed under the minimum lot size in effect at the time their applications were deemed complete or approved. Any of these applications for commercial cannabis cultivation may continue to be renewed as a legal, nonconforming use under limited term use permits in compliance with the provisions of Article 94 (Nonconforming Uses), except that the cultivation area shall not be increased in size.*

To qualify as a pipeline project, the application must have been determined to be “complete for processing” prior to the effective date of the ordinance. The application could not have been deemed complete for processing as the application was not submitted prior to the effective date. Instead it was submitted November 15, 2018, the same day the ordinance became effective. As a result, the application is not a pipeline project and is subject to the minimum lot size currently in effect.
STAFF RECOMMENDATION

That the Planning Commission adopt a resolution recommending that the Board of Supervisors deny the request for a General Plan Amendment, Zone Change and Cannabis Use Permit.

FINDINGS FOR RECOMMENDED ACTION

1. The proposed project does not meet the General Plan designation criteria for agricultural lands because the small parcel size of 4.65 acres, with an existing industrial structure, would not be suitable or available for agricultural production.

2. The proposed zone change would exacerbate the existing commercial spot zoning and the existing land use inconsistencies as it is surrounded by agricultural land.

3. The proposed project has an insufficient public benefit that would not satisfy the requirements of Government Section 65358 which requires the General Plan Amendment to be in the “public interest.”

4. The proposed project is inconsistent with the Cannabis Land Use Ordinance because it does not meet the minimum parcel size of 10 acres for cultivation and is not subject to the pipeline provision of the Ordinance.

5. The proposed project is exempt from the California Environmental Quality Act (“CEQA”) pursuant to Public Resources Code Section 21080(b)(5) and 14 California Code of Regulations, Chapter 3 (CEQA Guidelines), Section 15270(a), which exempts projects that are rejected or disapproved.

LIST OF ATTACHMENTS

EXHIBIT A: General Plan Amendment, Zone Change and Use Application and Proposal Statement Site Plan, November 15, 2018
EXHIBIT B: Vicinity Map
EXHIBIT C: General Plan Land Use Map
EXHIBIT D: PLP18-0018 Summary Denial Letter to Application, dated April 9, 2018
EXHIBIT E: PLP18-0018 Email Withdrawing the Application
EXHIBIT F: Summary Denial Letter to Applicant, dated December 14, 2018
EXHIBIT G: Draft Planning Commission Resolution