



Sonoma County Board of Zoning Adjustments STAFF REPORT

FILE: UPC17-0089
DATE: December 12, 2019
TIME: 1:50 PM
STAFF: Scott Davidson, Project Planner

Appeal Period: 10 calendar days

SUMMARY

Applicant: David Bowers

Owner: Sammy Bonner and Elizabeth Brubeck

Location: 7955 St. Helena Road, Santa Rosa

APN: 028-260-029

Supervisory District No.: 1

Subject: Cannabis Use Permit for Outdoor, Mixed-Light, and Indoor Cultivation

PROPOSAL: Deny the request for a limited-term Conditional Use Permit for 39,040 square feet of outdoor cannabis cultivation and 4,520 square feet of mixed-light cannabis cultivation on an 80-acre parcel.

Environmental Determination: Exempt Under CEQA Guidelines Section 15061(b)(4), as a project will be rejected or disapproved by a public agency.

General Plan: Resources and Rural Development (RRD)

Specific/Area Plan: Franz Valley Area Plan

Land Use: Resources and Rural Development

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



Zoning: Resources and Rural Development (RRD), B6 100-acre density (B6 100),
Riparian Corridor 200 feet/50 feet (RC200/50)

Land Conservation

Contract: N/A

Application Complete

for Processing: June 3, 2018

RECOMMENDATION: Recommend that the Board of Zoning Adjustments deny the request for a limited-term Use Permit for 39,040 square feet of outdoor cannabis cultivation and 4,520 square feet of mixed-light cannabis cultivation, on an 80-acre parcel.

EXECUTIVE SUMMARY: Staff is recommending denial of the limited-term cannabis Use Permit application because:

- The project is inconsistent with Sonoma County General Plan Water Resources Element Policy WR-2e which requires discretionary applications in Groundwater Availability Class 3 (marginal groundwater) and Class 4 (areas with low or highly variable water yield) areas to be denied unless a hydrogeologic report establishes the groundwater quality and quantity are adequate and will not be adversely impacted by the cumulative amount of development and uses allowed in the area, so that the proposed use will not cause or exacerbate an overdraft condition in a groundwater basin or sub-basin.
- The project is not consistent with Sonoma County Code Section 26-92-080(a) which requires a project to not be detrimental to the health, safety, peace, comfort and general welfare of persons residing or working in the neighborhood, nor be detrimental or injurious to property and improvements in the neighborhood or the general welfare of the area. The project is located within a Very High Fire Hazard Severity Zone and has significant water supply constraints and limited access. The project is not consistent with General Plan policies and goals related to public safety or restricting intensive development in areas with excessive environmental risk.
- The surrounding region consists of rural residential uses in a largely undeveloped area that is characterized by steeply sloped hills and ridges. In order to provide an adequate water supply and access to the site, the level of improvement required is not compatible with the designated land use or surrounding neighborhood.

The project has been analyzed pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines and staff has determined that the project is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(4), as a project that will be rejected or disapproved by the County.

ANALYSIS

Background:

Regulations: 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 medicinal 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, the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA).

On October 16, 2018, the Sonoma County Board of Supervisors adopted an amendment to the Cannabis Ordinance, 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.

Application Processing: On August 29, 2017, the applicant applied for 2,448 square feet of indoor specialty cottage cannabis cultivation, 10,000 square feet of mixed-light cannabis cultivation, and 31,112 square feet of outdoor cannabis cultivation. The applicant was enrolled in the Penalty Relief Program.

The application was amended to include 2,236 square feet of indoor cannabis cultivation, 4,520 square feet of mixed-light cannabis cultivation, and 32,501 square feet of outdoor cannabis cultivation, and associated processing.

On June 3, 2018, Permit Sonoma deemed the application complete for processing.

On October 11, 2018, the Sonoma County Natural Resources Geologist sent a referral response (EXHIBIT J) stating that the hydrogeologic report submitted with the application did not contain adequate information or analysis to determine whether project-specific and cumulative impacts are significant in terms of stream depletion. The referral response recommended the project be denied unless information is provided demonstrating that the project will have no significant impacts to interconnected surface waters including summertime baseflow of Mark

West Creek or a mitigative or engineered solution is developed that demonstrates there will be no net increase in groundwater use during the dry season.

On January 23, 2019, the applicant was sent a letter (EXHIBIT G) communicating that the hydrogeologic study submitted with the application had several issues as noted in the October 11, 2018 referral response from the County's Natural Resources Geologist.

A revised hydrogeologic report (EXHIBIT F), dated March 20, 2019, was submitted. On May 16, 2019 the Natural Resources Geologist provided a second referral response that stated the revised hydrogeologic report did not adequately consider potential impacts of groundwater pumping on the onsite spring, wetland, and streamflow that is expected to support baseflow in the main stem of Mark West Creek and therefore recommended the project for denial (EXHIBIT J).

On June 12, 2019, the applicant was sent a letter (EXHIBIT H) recommending the project be withdrawn as based on the second referral response, adverse impacts to the Mark West Creek watershed cannot be reduced to a level that is less than significant and therefore staff was unable to make the required findings for approval.

On August 26, 2019, the applicant was sent a letter stating that the project would be denied unless the applicant withdrew the application within 60 days from the date of the letter (EXHIBIT I). Sixty days from August 26, 2019 was October 25, 2019. The applicant did not request the application be withdrawn within the required time frame.

On November 22, 2019 the applicant submitted a revised proposal to amend the application to 4,520 square feet of mixed-light cultivation and 39,040 square feet of outdoor cultivation. The revised proposal also eliminated onsite processing. The revised proposal did not include revised site plans or technical reports.

The applicant is currently operating under the Penalty Relief Program and is authorized for 2,448 square feet of indoor specialty cottage cannabis cultivation, 10,000 square feet of mixed-light cannabis cultivation, and 31,112 square feet of outdoor cannabis cultivation

Property and Business Ownership:

The applicants for this project are David Bowers and Martin Obrien, acting on behalf of Foxworthy Red, LLC. The landowners are Sammy Bonner and Elizabeth Brubeck. Barrie Eves is also an owner of Foxworthy Red, LLC.

Project Description:

Based on the latest application materials, the project requests a limited-term Use Permit for 4,520 square feet of mixed-light cannabis cultivation and 39,040 square feet of outdoor cannabis cultivation.

Description of Cultivation: Mixed-light cultivation will occur within two greenhouses and one hoop house that are existing. 800 square feet of mixed light cultivation will occur in the hoop house, 1,560 square feet of cultivation in the first greenhouse, and 2,160 square feet of cultivation in the second greenhouse. The project also includes two areas of fenced outdoor cultivation totaling 39,040 square feet.

Processing: The application was revised on November 22, 2019 and no longer includes onsite processing.

Water and Sewer Service: Water would be provided via an on-site well. Wastewater will be disposed of via an on-site septic system.

Construction: The project does not include the construction of any additional structures.

Hours of Operation: The applicant proposes to operate 6:30 am to 5:30 pm, seven days a week. Deliveries and shipping would be limited to the hours of 8:00 am to 5:00 pm seven days a week.

Waste Management: All garbage and refuse generated by the applicant at the project site would be dealt with appropriately as described in the applicant's waste management plan. All waste will be disposed of in accordance with local and state codes, laws, and regulations.

Odor Control: Structures used for indoor and mixed-light cannabis cultivation will be equipped with odor control filtration and ventilation systems.

Site Characteristics:

Location: The parcel is located northeast of the City of Santa Rosa and southwest of Calistoga on the north side of St. Helena Road. The project parcel lies adjacent to the Bothe-Napa Valley State Park. The project site is within the Porter Creek-Mark West Creek watershed, a designated critical watershed in Sonoma County.

Description: The project site is on an 80-acre lot characterized by several large hills and ridges. Slopes on the parcel range from 2 to 20%. A one-mile access road connects the project site to St. Helena Road. Development on the parcel is clustered in the center and consists of two occupied residences, three small buildings, two greenhouses used for cultivation, and several hoop houses. A large majority of the site is forested or chaparral. Most of the parcel is designated Grazing Land with a small portion designated as Other Land under the Farmland Mapping and Monitoring Program. The project parcel is not subject to the Williamson Act.

Natural Resources: The site has a designated riparian corridor with a setback of 200 feet on the southeast portion of the project parcel. The project site is within the Porter Creek- Mark West Creek watershed, a designated critical watershed in Sonoma County.

Surrounding Land Use and Zoning:

Land uses directly abutting the subject parcel are all designated Resources and Rural Development with a mix of undeveloped properties and properties that are developed with single residences.

The area around the project site is characterized by dense woodlands and chaparral with dispersed residential uses. The topography is varied with moderate to steep slopes on some of the hills.

DISCUSSION OF ISSUES

Issue #1: Inadequate Water Supply

The project is located within a Groundwater Availability Class 3 (marginal groundwater) and Class 4 (areas with low or highly variable water yield), and the Porter Creek- Mark West Watershed. When a project requiring a Use Permit is located within a Class 3 or 4 Groundwater Area, the Sonoma County Zoning Code Section 26-88-254(g)(10)(d)(2)(c) requires:

“A qualified professional prepares a hydro-geologic report providing supporting data and analysis and certifying that the onsite groundwater supply is adequate to meet the proposed uses and cumulative land uses in the area on a sustained basis, and that the operation will not: (1) result or exacerbate an overdraft condition in the basin or aquifer; (2) result in reduction of critical flow in nearby streams; or (3) result in well interference at offsite wells.”

The Hydrogeologic Report (dated 5/23/2018) submitted with the Use Permit application concluded that the project is unlikely to impact groundwater resources in the cumulative impact area or the onsite spring. However, the study did not clearly identify and address potential impacts to streamflow. County staff requested more information and analysis in a response dated 10/11/2018. In response, a revised Hydrogeologic Report was submitted (dated 3/20/2019), which concluded that based on further analysis, pumping the project well would not directly influence streamflow in Mark West Creek. County staff reviewed the revised report and found that it did not adequately consider potential impacts of groundwater pumping on the onsite spring, wetland, and streamflow that is expected to support baseflow in the main stem of Mark West Creek. Specifically, the revised report is insufficient along the following grounds:

1. The report does not provide a quantitative analysis of potential impacts of groundwater pumping over the length of the growing season on the spring, wetland, and downstream channel. The report concluded that the pumping of groundwater is not expected to impact the onsite spring. Spring flow was measured before and after an 8-hour well pump test conducted on February 2, 2019. Recorded springs yield of 0.45 and 0.44 gallons per minute were measured. The report also stated that there was no observed impact to spring flow as a result of groundwater pumping through the summer of 2018 and growing season; however, the report did not provide any supporting evidence.
2. The report does not identify whether an 8-hour pump test would impact the spring given the spatial and hydraulic characteristics of the aquifer. It is unclear of an 8-hour

pump test was a sufficient test length to assess the potential hydraulic connection between the project well and the spring. The report also did not consider that during the pump test extracted groundwater was discharged to the land surface and allowed to run through drainage ditches in the general direction of the onsite spring.

3. The report does not discuss if the tributary channel to which the on-site spring flows is also perennial and provides baseflow to Mark West Creek through the dry season. This information is critical to evaluate impact to the creek. Without such information the required findings cannot be made to approve the project. In other words, without evidence to the contrary, that the County cannot rule out the possibility that the tributary channel is a perennial stream and a source of baseflow to Mark West Creek. Mark West Creek is a valuable resource with multiple special resource designations. It is designated as critical habitat for Steelhead and Coho Salmon and provides high quality habitat for anadromous fish species in Sonoma County. Mark West Creek is listed in the State Water Board's 2014 Emergency Order restricting ground water and surface water use for the protection of aquatic habitat. Mark West Creek Watershed is also one of only five watersheds within the state identified through the California Water Action Plan for flow enhancement to support anadromous fish. Recent studies suggest that ground water extraction in the watershed is having a negative impact on dry season stream flow in Mark West Creek.¹ As such, clearly identifying and addressing potential impacts to streamflow is required to determine whether this project would have a significant negative environmental effect and/or whether that effect can be mitigated.

General Plan Policy WR-2e states that the County shall:

“Require proof of groundwater with a sufficient yield and quality to support proposed uses in Class 3 and 4 water areas. Require test wells or the establishment of community water systems in Class 4 water areas. Test wells may be required in Class 3 areas. Deny discretionary applications in Class 3 and 4 areas unless a hydrogeologic report establishes that groundwater quality and quantity are adequate and will not be adversely impacted by the cumulative amount of development and uses allowed in the area, so that the proposed use will not cause or exacerbate an overdraft condition in a groundwater basin or subbasin.”

The application and associated hydrogeologic reports do not establish that the project will not cause or exacerbate the overdraft condition, thus Permit Sonoma is not able to support approval of the project.

Issue #2: Fire Safety

¹ Center for Ecosystem Management and Restoration (CEMAR), 2015, Report on the Hydrologic Characteristics of Mark West Creek, <http://www.cemar.org/pdf/Report%20on%20the%20Hydrologic%20Characteristics%20of%20Mark%20West%20Creek.pdf>

The project site is located within a Very High Fire Hazard Severity Zone in a State Responsibility Area. The Very High Fire Hazard Severity Zone, as defined in the Sonoma County General Plan Public Safety Element, includes:

“Wildland areas supporting high to extreme fire behavior resulting from by well developed surface fuels and forests where fire in tree crowns (portions of trees above the trunks) is likely; and b) developed/urbanized areas with high vegetation density and fuel continuity, allowing flame to spread over much of the area with little impediment from non-burnable surfaces. Additional site elements include steep and mixed topography and seasonally extreme conditions of strong winds and dry fuel moistures. The highest fire hazard is found in mountainous areas with dry summer, plenty of fuel, and steep slopes” (Page PS-14)

Access to the site is provided by a winding, private, one-mile unpaved road (Puff Lane) that is approximately 10 feet wide in locations and dead-ends at the project site. The nearest fire station is the Mountain Volunteer Fire Department, approximately 10 miles away from the site. Over a dozen parcels have access to St Helena Road, the nearest public road, via Puff Lane. The site is developed with two residences, three accessory structures, two greenhouses, and one hoop house. The proposed project includes a maximum of 8 employees.

General Plan Goal PS-3 seeks to “Prevent unnecessary exposure of people and property to risks of damage or injury from wildland and structural fires.” Approval of the project would authorize additional people and structures in an area with dense vegetation, varied topography, steep slopes, narrow and unpaved roads, inadequate water supply, and an overall lack of public infrastructure and services. The Public Safety element further states “Rural development should be most restricted where natural fire hazards are high, fire protection is limited, and road access prevents timely response by firefighting personnel and rapid evacuation by residents” (Page PS-15). Due to the location of the project site and the very high fire hazard designation, Permit Sonoma is unable to support a conditional use that would increase the potential for conflagration or put additional structures and people at risk of fire hazard.

Issue #3: Resources and Rural Development Compatibility

One of the policies for land designated resources and rural development is to “Protect against intensive development of lands constrained by geologic hazards, steep slopes, poor soils or water, fire and flood prone areas, biotic and scenic areas, and other constraints” (Page LU-67). The project site is constrained by a low groundwater supply, high fire risk, and moderate to steep slopes. To address site conditions, the applicant would need to improve access (e.g. straighten turns and widen road width) and install water storage for up to 435,000 gallons that would result in grading and vegetation removal that is more typical of urban infrastructure. The level of improvements needed for an adequate water supply (reservoir or water storage tanks) and safe access to the site are not compatible with this land use designation or the surrounding area. The level of infrastructure improvements, in addition to causing environmental impacts, may also indirectly increase growth in an area that lacks adequate

infrastructure and services (i.e. improving or upgrading the access road). Another goal of the resources and rural development land use designation is the “Protection of county residents from proliferation of growth in areas where there are inadequate public services and infrastructure, including water supply and safe wastewater disposal” (Page LU-68).

In order for the project to be consistent with the Public Safety element policies and water supply requirements, the overall level of improvements required is not consistent with the land use designation, which intends to keep overall growth and development at a minimum to avoid adverse impacts to the environment.

STAFF RECOMMENDATION

Staff recommends denial of the Use Permit for the proposed Limited-Term Cannabis Cultivation operation.

FINDINGS FOR RECOMMENDED ACTION

1. The project site is located in Zone 3 and Zone 4 for Groundwater Availability. An adequate water supply source has not been proposed for the project and the application and associated hydrogeologic reports do not establish that the project will not cause or exacerbate the overdraft condition. Specifically, the report failed to provide a quantitative analysis of potential impacts of groundwater pumping over the length of the growing season or provide supporting evidence for the conclusion that the pumping of groundwater is not expected to impact the onsite spring; did not identify whether an 8-hour pump test would impact the spring given the spatial and hydraulic characteristics of the aquifer, whether an 8-hour pump test was sufficient in length to assess the potential hydraulic connection between the project well and spring, or that the pump test groundwater was discharged on the land surface and allowed to run through drainage ditches in the general direction of the onsite spring; or discuss if the tributary channel to which the onsite spring flows is also perennial and provides base flow to Mark West Creek, a highly valuable resource that provides habitat to listed species and is identified in the State Water Board’s 2014 Emergency Order and California Water Action Plan for protection of aquatic habitat and flow enhancement, though the dry season. An adequate water supply is required per Sonoma County Code Section 26-88-254(g)(10)(d) and General Plan Policy WR-2e. Therefore, Permit Sonoma is not able to support approval of the project.
2. The project site is located in an area with a very high fire hazard severity designation. The project site and surrounding area is constrained with narrow, unpaved access roads, dense vegetation, varied topography, and a lack of public services and infrastructure. The project is not consistent with Sonoma County General Plan Public Safety goals or policies protecting people and structures from unnecessary exposure and therefore Permit Sonoma cannot support approval of the project.

3. The project site is designated Resources and Rural Development, which is intended to protect against development and growth on land that is environmentally constrained or lacks public infrastructure and services. The project site is in a rural area, accessed by a private narrow road, and contains dense vegetation and varied topography. The Sonoma County General Plan also requires rural development to occur where public services and infrastructure, public safety, access and response times, and roads are available to serve the projected development. The level of improvements necessary to reduce fire risk to an acceptable level and provide an adequate water supply are not compatible with this land use designation or policies for rural growth and therefore Permit Sonoma cannot approve the project.
4. The proposed project has been reviewed for compliance with the California Environmental Quality Act (CEQA) and it has been determined that the project is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(4), in that the project will be rejected or disapproved by the County.

LIST OF ATTACHMENTS

- EXHIBIT A: Use Permit Application and Proposal Statement
- EXHIBIT B: Vicinity Map
- EXHIBIT C: General Plan Land Use Map
- EXHIBIT D: Zoning Map
- EXHIBIT E: Site Plan
- EXHIBIT F: Hydrogeologic Report
- EXHIBIT G: January 23, 2019 Permit Sonoma Letter
- EXHIBIT H: June 12, 2019 Permit Sonoma Letter
- EXHIBIT I: August 26, 2019 Permit Sonoma Letter
- EXHIBIT J: Natural Resources Geologist Referral Response – October 11, 2018
- EXHIBIT K: Natural Resources Geologist Referral Response – May 16, 2018
- EXHIBIT L: Public Comment
- EXHIBIT M: Draft Resolution