



Sonoma County Board of Zoning Adjustments STAFF REPORT

FILE: UPC17-0092
DATE: June 27, 2019
TIME: 2:45 PM
STAFF: Scott Davidson, Contract Project Planner

Appeal Period: 10 calendar days

SUMMARY

Applicant: Nicholas R. Dinan, Russian River Cultivation Company

Owner: Nicholas R. Dinan, Russian River Cultivation Company

Property Owner: Sinda Dinan, Fuller, Shaw, and Zopfi Partnership

Location: 2705 Alton Lane, Santa Rosa

APN: 034-030-039

Supervisorial District No.: 4

Subject: Cannabis Use Permit for Outdoor Cultivation

PROPOSAL: Deny the request for a limited-term Use Permit for 10,000 square feet of outdoor cannabis cultivation and processing on a 27.50-acre parcel.

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

General Plan

Land Use: Diverse Agriculture, 10 acres per dwelling unit

Specific/Area Plan: None

Land Use: Not Applicable



Zoning: Diverse Agriculture (DA), B6 10 acre density (B6 10), Riparian Corridor 100 feet/25 feet (RC100/25), Scenic Resources (SR), Valley Oak Habitat (VOH).

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

Land Conservation

Contract: Not applicable

Application

Complete for

Processing: July 24, 2018

RECOMMENDATION: Recommend that the Board of Zoning Adjustments deny the request for a limited-term Use Permit for a 10,000-square-foot outdoor cannabis cultivation and processing operation on 27.50-acre parcel.

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

The applicant cannot obtain the necessary federal permits for the project. The project site is located within designated Critical Habitat for the California Tiger Salamander, a federal-listed Endangered and state-listed Threatened species for which Incidental Take Permits are required from all state and federal agencies with jurisdiction over California Tiger Salamander. The applicant does not have and cannot obtain the required permits due to Federal policy preventing Take Permit issuance for cannabis (a controlled substance) operations.

The project has been analyzed pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines and staff has determined that it would be categorically exempt under Section 15061(b)(4), in that it will be rejected or disapproved by a public agency.

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 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.

Application Processing. On October 2, 2017, an application was submitted for outdoor cannabis cultivation. The applicant was enrolled in the Penalty Relief Program.

The application was deemed complete on July 24, 2018. The last referral response from other agencies was received on September 17, 2018, with responses from interested Tribes continuing later into the fall. One referral is still outstanding regarding hydrogeology.

The applicant ceased operations on the site in late fall 2018 and the project was removed from the Penalty Relief Program on February 14, 2019.

On January 30, 2019, the applicant was sent a letter stating that the project would be denied unless the applicant withdrew the application within 90 days from the date of the letter (refer to Exhibit F: Letter to Applicant). Ninety days from January 30, 2019 was April 30, 2019. The applicant did not request the application be withdrawn within the required time frame.

Property and Business Ownership:

The applicant for the project is Nicholas R. Dinan, acting on behalf of the Russian River Cultivation Company. Sinda Dinan is also an owner of the Russian River Cultivation Company. The Land owner is Sinda Dinan, Fuller, Shaw, and Zopfi partnership.

Project Description

The applicant requests a limited-term Use Permit for 10,000 square feet of outdoor cannabis cultivation and associated processing. No buildings or structures are proposed as part of this project. Processing would be done with mobile processing equipment and/or done outdoors. The applicant anticipates that processing would eventually occur off-site. The project would not hire any additional employees beyond the three members of the Dinan family (Nicholas Dinan, Sinda Dinan, and Ronald Dinan), all of whom are 21 years of age or older. The project would operate 8:00 a.m. to 5:00 p.m. seven days a week most of the year and from 8:00 a.m. to 7:00

p.m. during harvest. Delivery and shipping activities would be limited to the hours of 8:00 a.m. to 5:00 p.m. seven days a week.

The applicant is not currently operating under the Penalty Relief Program.

Description of Cultivation/Size: The applicant proposes outdoor cannabis cultivation in a total area of 10,000 square feet within a fenced off area totaling between 11,000 to 12,000 square feet near the center of the property. Cultivation would occur within containers placed upon the ground.

Processing: The applicant proposes to use mobile processing equipment under an open-air barn that exists on the property. Processing would be limited to the minimum needed for drying and trimming. The applicant has expressed that they would like to switch to an operation where all processing was done off-site.

Water and Sewer Service: Water would be provided from an on-site well. Waste water would be dealt with on-site with a septic system.

Construction: No construction would be necessary as part of this application. The applicant does not propose to construct any new structures.

Hours of Operation: The applicant proposes operating hours of 8:00 a.m. to 5:00 p.m. seven days a week most of the year and from 8:00 a.m. to 7:00 p.m. during harvest. Delivery and shipping activities would be limited to the hours of 8:00 a.m. to 5:00 p.m. seven days a week.

Waste Management: All garbage and refuse generated by 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: The outdoor cultivation would comply with the 300-foot residence setback as well as the 100-foot property line setback for outdoor cannabis cultivation. The cultivation area would be approximately 500 feet away from the nearest residence. No other odor control methods are proposed by the applicant.

Site Characteristics:

Location: The parcel is located to the northwest of the City of Santa Rosa and the southeast of the Sonoma County Airport, on the north side of Alton Lane to the west of Fulton Road.

Description: The site is primarily flat with a slight downward slope towards a seasonal creek which runs across the southern portion of the property from the northeast to the southwest. The site is 27.50 acres in size and is primarily composed of grassland divided into different

sections with wire fencing. There is a long drive extending north from Alton Lane to a cluster of agriculture-related buildings near the center of the property, including an equipment barn, a hay barn, and a residence the family is in the process of rebuilding after demolishing the previous residence. There are trees and bushes scattered throughout the site but primarily concentrated along the driveway and near the structures.

Natural Resources: The site is within the Santa Rosa Plain Conservation Study Area, within California Tiger Salamander Critical Habitat Area, and within the Santa Rosa Valley Priority Groundwater Basin. The creek that runs through the southern portion of the site is designated as a Riparian Corridor.

Surrounding Land Use and Zoning: Land uses directly abutting the subject parcel and on the same side of Alton Lane (north side) are also zoned Diverse Agriculture (DA). On the other (south) side of Alton Lane the parcels are zoned Land Intensive Agriculture (LIA). Incorporated City of Santa Rosa is approximately 1,300 feet to the east of the subject site.

Other properties in the vicinity are similar in character in that they are either grassland or planted in some crops and contain some residential and agriculture-related structures on-site as well. The area is rural in character and generally there is low density. To the east of the site the densities tend to be higher and densities tend to be lower to the west.

DISCUSSION OF ISSUES

Issue #1: Location of the Project Site in Adopted Federal Critical Habitat. The project is located within designated Critical Habitat for the California Tiger Salamander, a federal-listed Endangered and state-listed Threatened species (refer to Exhibit E: CTS Map). Incidental Take Permits are required from all state and federal agencies with jurisdiction over California Tiger Salamander. Applicable agencies and processes include:

California Department of Fish and Wildlife

Incidental Take Permit under Section 2081(b) of the state Fish and Game Code; and

U.S. Department of Fish and Wildlife

Incidental Take Permit under the federal Endangered Species Act, either the Section 10a(1)(B) Habitat Conservation Plan process or the Section 7(a)(2) federal agency consultation process.

Staff Comments:

The incidental take permits are critical for the approval of the application due to the ground-disturbing activities. To date, the U.S. Department of Fish and Wildlife will not issue Take Permits to cannabis operators nor does it seem likely that they will do so in the near future. Permit Sonoma cannot approve a project if a Take Permit is required and the applicant does not

have such a permit. As the applicant cannot obtain a take permit, there is no path forward for this project.

STAFF RECOMMENDATION

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

FINDINGS FOR RECOMMENDED ACTION

1. Applicant cannot obtain the federal permits necessary for the project.
2. The proposed project has been reviewed for compliance with the California Environmental Quality Act (CEQA) and it has been determined that the project is categorically exempt from the provisions of the CEQA Guidelines pursuant to Section 15061(b)(4), in that the project will be rejected or disapproved by a public agency.

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: Detailed Site Plan
- EXHIBIT G: California Tiger Salamander Map
- EXHIBIT H: 90-day Denial Letter to applicant, dated 1-28-2019
- EXHIBIT I: Biological Assessment - 2017
- EXHIBIT J: Cannabis Trip Generation Form
- EXHIBIT K: Groundwater Use Evaluation - 2017
- EXHIBIT L: Noise Assessment - 2018
- EXHIBIT M: Water Resources Protection Plan - 2017
- EXHIBIT N: Draft Resolution