



County of Sonoma

State of California

Date: December 6, 2022

Item Number: _____

Resolution Number: _____

4/5 Vote Required

**Resolution Of The Board Of Supervisors Of The County Of Sonoma, State Of California,
Adopting a Mitigated Negative Declaration and Mitigation Monitoring Program, Granting a
Use Permit to Evergreen Acres, LLC, on a 34.04 acre parcel located at 6699 Palmer Creek
Road, Healdsburg, CA, APN: 069-040-026**

Section 1. Proposed Project and Procedural History

- 1.1 On November 7, 2018, an application for a conditional use permit was submitted for 10,000 square feet of mixed-light and 33,560 square feet of outdoor cannabis cultivation on a 34.04 acre site, located at AP: 069-040-026; Supervisorial District 4. The applicant did not enroll in the penalty relief program and no commercial cannabis is currently grown on site.
- 1.2 On July 8, 2019, revised site plans amending the cultivation area to 29,400 square feet of outdoor cannabis cultivation were submitted.
- 1.3 From April 16th to May 17th of 2021, the IS/MND was circulated at the State Clearinghouse for public comment and review. Comments were received from CDFW, CDFA and the members of the public. SCH# 2021040407
- 1.4 On June 14, 2021, Public Notice was circulated for the June 24th, 2021, Board of Zoning Adjustments Hearing.
- 1.5 On June 24, 2021, the Board of Zoning Adjustments conducted a Public Hearing on the project. The project was approved on a 3-2-0 vote.
- 1.6 On July 6, 2021, an appeal of the approval was filed by Toney Prussiamerritt on behalf of the Palmer Creek Association (appellant).
- 1.7 On June 6, 2022, revised project documents were submitted including the redesignations of onsite watercourses and an amended project proposal that included moving the mixed-light greenhouses and reducing the outdoor cultivation area to 17,825 square feet to conform to new stream setbacks, in addition to an amendment to the applicant's request for exceptions to certain State Board of Forestry regulations. As a result of the project modifications the BZA decision was vacated and the appeal moot.
- 1.8 On October 18, 2022, the Board of Supervisors assumed Original Jurisdiction over the modified project.

- 1.9 A Mitigated Negative Declaration (“MND”) was prepared for the Project, and on October 28, 2022, the MND was posted and made available for agency and public review in accordance with the California Environmental Quality Act (“CEQA”), 14 California Code of Regulations, §§15000 et seq. (“CEQA Guidelines”) and County CEQA guidelines.
- 1.10 On December 6, 2022, the Board of Supervisors conducted a duly noticed public hearing on the MND and the Proposed Project. The Board received all relevant oral and written testimony and evidence filed or presented at or before the close of the hearing. All interested persons were given the opportunity to hear and be heard. At the conclusion of public testimony, the Board closed the hearing, considered and discussed the MND, and the Proposed Project and by a majority vote, found the MND had been prepared in conformance with CEQA, approved the MND, and approved the Proposed Project with modifications (“the Project”), subject to the conditions of approval imposed herein.
- 1.11 The Board has had an adequate opportunity to review this Resolution and the findings and determinations contained herein and finds that this Resolution accurately sets forth the Board’s intentions regarding the MND and the Project. The Board’s decisions herein are based upon the testimony and evidence presented to the County orally or in writing prior to the close of the Board’s hearing, including the full record of proceedings. By Board Rule, information submitted after the close of the Board hearing is deemed late and not considered by the Board.

Section 2. CEQA Compliance

- 2.1 In making its determinations, the Board has gained a well-rounded understanding of the range of the environmental issues related to the Project by its review of the MND, all comments, testimony, letters and reports regarding the MND, and its own experience and expertise in these environmental issues. Prior to making the following findings, the Board has reviewed and considered the evidence and analysis presented in the MND, the technical reports, and all public comments and information submitted at or before the Board hearing. The Board’s findings are based on full appraisal of all viewpoints, all evidence and all information in the record of these proceedings. The Board further finds that the MND reflects the Board’s independent judgment and analysis.
- 2.2 Based upon the entire record, there is no substantial evidence of a fair argument that the Project will have a significant environmental effect. Changes or alterations have been required in, or incorporated into, the Project through the mitigation measures and conditions of approval imposed herein that avoid or substantially lessen all potentially significant environmental effects of the Project.
- 2.3 The Board finds that the MND has been completed in compliance with CEQA and that the MND adequately and fully describes and evaluates the changes or alterations to the Proposed Project that have been requested as part of the Project.
- 2.4 Without in any way limiting the Board’s general findings set forth in this Resolution, the Board further makes the following specific findings regarding environmental impacts of the Project:
 - A. Biological Resources

A Biological Resources Report was prepared for the Project site to identify special status plant and wildlife species and sensitive habitats (including wetlands) that have the potential to occur on or in the vicinity of the project site. The study identified and evaluated – special status plants species in the region, all of which were determined to have no or low potential for occurrence on the project site due to the lack of suitable habitat. No special status plant species were observed during surveys.

The project site does contain two primary drainages onsite, which are further discussed in Section 3.3 of this Resolution. Mitigation Measure BIO-1 requires pre-construction surveys for special status herptile species; Mitigation Measure BIO-2 requires nesting bird avoidance on or near the project site as a result of construction related activities; Mitigation Measure BIO-3 requires pre-construction surveys for the American Badger, American Porcupine and bat species; Mitigation Measure BIO-4 requires the implementation of the invasive species management plan in relation to the onsite reservoir. These mitigation measures would reduce the effects to less than significant.

B. Hydrology

The site is located in a Groundwater Availability Class 4 – Areas with low or highly variable water yield and is located in the Palmer Creek watershed, a tributary to the Mill Creek watershed which is designated as a critical watershed area for Coho Salmon.

Hydrogeologic and water use assessments were prepared for the project. The project proposes to utilize only rain catchment as its source for irrigation, in the form of a 2.3 acre-feet capacity reservoir and a 97,000 gallon storage tank. The hydrogeologic report, as reviewed by the County's Geologist and discussed in the MND, determined that the Proposed Project would use 1.42 acre-feet or 464,000 gallons annually. It is proposed that groundwater will be used only for domestic needs of employees and the future residence, with an estimated annual use of 0.34 acre-feet. Groundwater use for the project is considered to be de minimus. Water use associated with employees is less than the typical water use of a single family home of 0.5 acre feet per year. Based on the total current and future water demand, total Project water use, reliance on rainwater catchment, and minimal use of groundwater the Proposed Project would not result in a net deficit in aquifer volume or a lowering of the local groundwater table. Impacts to groundwater resources are further mitigated by conditions of approval.

The Palmer Creek Association ("Association") has submitted a number of public comments on the project and MND, which are discussed below.

Groundwater Recharge

The Association states that the analysis is inadequate in regards to the projects impacts on groundwater recharge. The project proposes to use groundwater for domestic and employee uses only. Projected annual groundwater use is anticipated to be 0.34 acre feet which is considered to be a de minimus increase in groundwater use. Water use associated with domestic and employees onsite is less than the typical water use of a single family home of 0.5 acre feet

per year. Furthermore, the Association contends an inadequate analysis of how project induced changes in land cover and drainage will impact recharge at the site, and contend that reduced groundwater recharge could result in reduced discharge of groundwater to Palmer Creek. The conversion of timberland to a cannabis use is unlikely to substantially change groundwater recharge rates or discharge of groundwater to Palmer Creek. Clearing of timberland is generally associated with increased groundwater recharge and increased stream baseflow due largely to reduced interception of precipitation and reduced evapotranspiration. Thus, groundwater recharge and stream baseflow generally increase in association with timberland conversion. Drainage features may alter and either increase or decrease runoff rates and groundwater recharge. The cultivation area will be subject to a grading plan, erosion control, and stormwater control measures. In consideration of the conversion from timberland to cannabis cultivation and requirements for grading and stormwater plans, change in total runoff and groundwater recharge from the cultivation area is expected to be negligible due to the small scale of the project. The reservoir area will be lined with an impermeable material which will inhibit groundwater recharge. However, the surface area of the reservoir is less than 0.5 acres, which is small area in comparison to the recharge area of the local aquifer of roughly 500 acres, as delineated in the hydrogeologic study for the project. Using the average estimated recharge rate from the hydrogeologic study, the reduction in pervious area would result in a reduction in annual groundwater recharge of less than 0.1 acre feet. This potential reduction is small compared with the estimated annual recharge of 110 acre feet to the local aquifer.

As discussed above, reduction in groundwater recharge is expected be minimal; thus, reduction in discharge of groundwater to Palmer Creek is also expected to be minimal and no impact on stream baseflow is expected.

Impacts on Flow and Aquatic Habitat in Palmer Creek

The Association states that the analysis is inadequate in regards to impacts of flow and aquatic habitat in Palmer Creek. Runoff and streamflow are both functions of watershed area, precipitation, and other hydrologic factors. Collection of surface runoff from a 1.27 acre area that drains to the proposed 2.3 acre foot proposed reservoir will reduce the contributing watershed area to Palmer Creek. For sense of scale and potential impact, the contributing area to the reservoir is 1.27 acres, while the total contributing watershed area to the nearest point on Palmer Creek is 2.3 square miles or 1472 acres. The relative change in contributing area from 1472 acres to 1470.7 acres is expected to have a negligible impact on streamflow. Furthermore, reductions in flow will occur during periods of rainfall when creek flow will be relatively high.

Water Supply Analysis

The Association states that the project fails to provide an analysis of drought conditions of water supply and project feasibility. Memo (Mathew Machi, September 21, 2021) prepared for the project, was reviewed by staff and found to be sufficiently conservative in regards to assumptions of rainfall, runoff, evaporation and irrigation water use. The Memo assumes two years of drought year rainfall of 26.25 inches, 50% of the average rainfall for the site, this rainfall depth is considered appropriate for simulating drought year conditions. The Memo assumed a

runoff coefficient of 0.45, which is appropriate given the moderate slope and high runoff characteristics of the onsite soils. The contributing watershed of the proposed pond is 55,393 square feet (1.27 acres). The contributing area is considered reasonable and representative of the existing contributing catchment to the proposed reservoir. Under the above assumptions, annual runoff to the reservoir under drought year conditions is estimated to be 2.8 acre feet.

The Association states that an incomplete analysis of stormwater impacts on dam stability and water quality was provided for the project. The reservoir is subject to the County's Grading Ordinance, engineered grading plan, project Conditions of Approval, site inspections and Best Management Practices aimed to manage runoff and control erosion. Furthermore, the development of a spillway for the reservoir is subject to County Code Section 11-14-030 that requires spillways be designed to accommodate the 100 year design discharge.

Impact of Storage Reservoir Releases on Water Quality

The Association states that an incomplete analysis is provided for the reservoirs impact on water quality. The cultivation area is subject to Stormwater Best Management Practices and the State Water Resource Control Board's Cannabis General Order which is designed to protect water quality. Furthermore, runoff will be routed to the reservoir which will act as a sediment detention basin and is expected to improve water quality of runoff. Most sediment that is routed into the reservoir with storm runoff will settle and be captured in the reservoir. If not for the reservoir, this sediment would otherwise flow into onsite watercourses and into Palmer Creek. The reservoir is not designed specifically for nutrient management; however, the reservoir is not expected to produce or increase nutrient concentrations. Best Management Practices within the cultivation area will reduce nutrient loads to the reservoir. The reservoir will largely retain water onsite. Discharge of reservoir water will only occur when the reservoir is full, which will generally only occur later in the rainy season when stream flows are elevated. In the absence of the reservoir, runoff and entrained nutrients and sediment, would flow directly into onsite watercourses.

Stormwater Runoff

The Association states that an analysis of runoff to adjacent properties is not provided for the project. Project design, specifically the reservoir is subject to the County's Grading Ordinance, engineered grading plan, project Conditions of Approval, site inspections and Best Management Practices aimed to reduce runoff. Additionally, the project is subject to the Regional Water Quality Control Board's Cannabis General Order which is aimed to protect water quality.

As a result, the Board finds there is no fair argument that the Proposed Project may cause a significant effect to groundwater and surface water resources.

Section 3. General Plan, Planning and Zoning Compliance

3.1 General Plan Consistency

The Proposed Project is consistent with the General Plan land use designation of Resources and Rural Development, which is intended to manage and conserve the natural resource areas and existing areas of rural character.

The proposed cannabis operation will be adequately setback from the onsite drainage courses which provides protection of biotic habitat. The project will result in a minimal use of groundwater as the project's irrigation source relies on rainwater catchment and storage. The project does not result in a change of the parcel's residential density. The proposed cannabis operation would be fully screened by proposed fencing and landscaping from the private road (Palmer Creek Road). The project would not be visible from any public location or vantage point and would not represent a visually distinctive or substantial change from the current project site.

3.2 Zoning Consistency

The proposed project is consistent with the Resources and Rural Development Zoning District, in that the proposed cannabis cultivation operation is allowed with approval of a Use Permit.

The Proposed Project is consistent with the operating standards and development criteria of the Cannabis Ordinance, Sonoma County Code Sections 26-88-250 and 26-88-254 because the project complies with minimum parcel size requirements, cultivation limits, setbacks from property lines and sensitive uses, security and fencing requirements, 100% renewable energy, hours of operation, noise standards and water supply.

The proposed project is consistent with the purpose of the Biotic Habitat Combining Zone (BH), to protect and enhance Biotic Habitat areas for their natural habitat and environmental values because the Biological Assessment for the project determined that the BH outcrop on the parcel refers to the underlying geology and soils in this portion of the property. The outdoor cultivation area is setback a minimum of 500 feet from this vegetative community. Therefore, the project complies with the requirements of the Biotic Habitat combining zone.

3.3 Watercourse Re-Classifications

The North Coast Regional Water Quality Control Board conducted a site visit on March 11, 2022, and provided a subsequent final inspection report on May 11, 2022. This report reclassified the onsite watercourse designations from Class III (ephemeral) to Class II (intermittent) and imposed a requirement for greater stream setbacks to protect onsite and downstream biological resources. This resulted in an amended project description and a reduction in the outdoor cultivation area to comply with the larger setbacks.

The project site contains two primary drainages. One drainage is composed of a single primarily Class II (intermittent) stream channel that flows north along the west property boundary and contains several small branches. A perennial spring is located along this drainage channel, which qualifies as a Class I (perennial) feature. A second north flowing stream is located in the center of the property, which qualifies as a Class II (intermittent) stream channel. The eastern most drainage channel has been classified as a Class III (ephemeral) stream and is a tributary to the

north flowing stream system that flows across the center portion of the property. Where these two streams intersect is classified as a Class II stream. A short easterly flowing Class III drainage was also identified near the northern portion of the site, as the drainage flows easterly across the site it transitions to steeper terrain before merging with the Class II stream. Furthermore, Palmer Creek is located adjacent to the northern property line while the creek is not located onsite, the Class I (perennial) watercourse setback does overlap with the project site in the most northwestern corner.

The project was revised to meet the increased watercourse setbacks on June 6, 2022. The outdoor cultivation area was reduced from 29,400 square feet to 17,825 square feet to accommodate the Class II watercourse setback of 100 feet which was increased from its previous designation as a Class I watercourse requiring a 50-foot setback. The greenhouse and water storage tank were moved to the southwest to accommodate the Class II watercourse setback of 100 feet which was increased from its previous designation as a Class I watercourse requiring a 50 foot setback. Therefore, the project meets the increased watercourse setbacks.

3.4 State Fire Safe Regulations Compliance

- a. The project is located in the State Responsibility Area (SRA) and subject to the Board of Forestry's State Fire Safe Regulations that establish minimum wildfire protection standards. The Fire Safe Regulations authorize an applicant to request an exception to Standards. Exceptions to Standards are authorized by the Board of Forestry regulations as an alternative to a specific standard due to health, safety, environmental conditions, physical site limitations or other limiting conditions that provides mitigation of the problem. 14 CCR §1271.00. Upon request by the applicant, the Inspection Authority may grant an Exception to Standards where the exceptions provide the same practical effect as the Board of Forestry regulations towards providing defensible space. 14 CCR §1270.06. Same practical effect means an exception or alternative with the capability of applying accepted wildland fire suppression strategies and tactics, and provisions for fire fighter safety, including: (a) access for emergency wildland fire equipment; (b) safe civilian evacuation; (c) signing that avoids delays in emergency equipment response; (d) available and accessible water to effectively attack a wildfire or defend a structure from wildfire; and (e) fuel modification sufficient for civilian and fire fighter safety. 14 CCR §1271.00.
- b. The Project applicant requested an exception to the Board of Forestry regulations for the width and dead-end road standards (14 CCR §1273.01 and §1273.08). The applicant included material facts and proposed alternatives, documented with site maps.
- c. The Sonoma County Fire Marshal considered the applicant's request, including the following:
 - i. If the applicant were required to widen and upgrade the existing Palmer Creek Road, it would constitute a physical site limitation and result in environmental conditions from the significant amount of grading, paving, and roadwork to improve the road outside of parcel boundaries.
 - ii. Applicant has proposed to continue to support the community second Fire Apparatus emergency vehicle access (EVA) at the intersection of Palmer Creek Road and Mill Creek

- Road, ensuring access does not function as a dead-end road in the event of an emergency.
- iii. The project includes available and accessible water in the irrigation reservoir and the 97,000 gallon storage tank for a minimum of 250,000 gallons reserved throughout the year for fire suppression to effectively attack or defend a structure from a wildfire.
 - iv. Applicant will continue to work with neighbors on clearing vegetation along Palmer Creek Road.
 - v. The project will comply with defensible space and vegetation management for new and existing structures to provide additional fire safety.
 - vi. Applicant will provide an area of safe refuge in a location approved by the fire code official.
 - vii. Applicant will provide a map of the EVA to local fire officials for emergency response planning.
 - viii. Applicant will develop and maintain two hammerhead turnarounds onsite, one at the northern portion of the site adjacent to the greenhouse and the second on the southern portion of the site adjacent to the outdoor cultivation area.
 - ix. Applicant shall meet all the measures included in its exceptions to standards application prior to beginning operations.
 - x. Conditions of approval require a Fire Prevention Plan prepared by the applicant, employee training in the use of regulated materials to meet Fire Code requirements, and vegetation management to ensure defensible space.
- d. The County' Fire Marshal, acting as the Inspection Authority as officially designated by CAL FIRE, has determined those conditions of approval, considered with all aspects of the proposed project, have the same practical effect as the State Board of Forestry Fire Safe Regulations toward providing defensible space, thereby ensuring that the Project meets state law requirements.

3.5 General Use Permit Finding

The establishment, maintenance, or operation of the use for which the application is made will not, under the circumstances of this particular case, be detrimental to the health, safety, peace, comfort, and general welfare of persons residing or working in the area of such use, nor be detrimental or injurious to property and improvements in the neighborhood or the general welfare of the area. The particular circumstances of this case are: 1) The cannabis cultivation is greater than 100 feet from property boundaries and greater than 300 feet from adjacent off-site residences; 2) The project parcel is greater than 10 acres (34.04 acres); 3) All cannabis cultivation areas will be screened from public view on Palmer Creek Road; 4) Security measures will be implemented to uphold the health, safety, peace, comfort, and general welfare of persons residing or working in the neighborhood of such use; 5) All equipment used for construction or operation of the Project will be in compliance with the General Plan Noise Standard; 6) Delivery and shipping operations will be limited to the hours of 8:00 am to 5:00 pm Monday through Friday; 7) The project includes shuttling of employees on and offsite by an electric vehicle which further reduces traffic impacts associated with the project; 8) All lighting

will be downward casting and fully-shielded; 9) Hazardous materials will be stored in accordance with local, state, and federal regulations; 10) All energy for the operation will be 100% renewably sourced; 11) No public access or retail sales are permitted; 12) The project will preserve a minimum of 250,000 gallons of water onsite for fire suppression purposes within the irrigation reservoir and the 97,0000 gallon storage tank; 13) Project shall provide an area of safe refuge in a location approved by the Fire Code Official; and 14) The Project will not unnecessarily expose additional people or structures from damage or injury from wildland or structural fires due timber and vegetation clearing, maintenance of defensible space, and compliance with California Department of Forestry and Fire Protection Fire Safe Regulations, 14 California Code of Regulations §§1273 et seq., and the California Fire Code with local amendments adopted in Sonoma County Chapter 13 and project conditions of approval.

Now, Therefore, Be It Resolved that based on the foregoing findings and determinations and the full record of these proceedings, the Board hereby declares and orders as follows:

1. The foregoing findings and determinations are true and correct, are supported by substantial evidence in the record, and are adopted as hereinabove set forth.
2. The Board certifies that the Mitigation Negative Declaration has been completed, reviewed, and considered, together with comments received during the public review process, in compliance with CEQA and State and County CEQA Guidelines, and finds that the Mitigated Negative Declaration reflects the independent judgement and analysis of the Board.
3. The use permit is granted for the Proposed Project as presented in the application package submitted on November 7, 2018, and updated materials submitted June 6, 2022, and as described in the Conditions of Approval attached hereto as Exhibit A and incorporated herein.
4. Staff is directed to file and post a Notice of Determination of this action pursuant to the California Environmental Quality Act within five (5) days of the date of this resolution.

Be It Further Resolved that the Board of Supervisors designates the Clerk of the Board as the custodian of the documents and other materials which constitute the record of proceedings upon which the decision herein is based. These documents may be found at the office of the Clerk of the Board, 575 Administration Drive, Room 100-A, Santa Rosa, California 95403.

Supervisors:

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Date:

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Gorin:

Rabbitt:

Coursey:

Hopkins:

Gore:

Ayes:

Noes:

Absent:

Abstain:

So Ordered.