



County of Sonoma

State of California

Date: July 19, 2022

Item Number: _____

Resolution Number: _____

4/5 Vote Required

**Resolution Of The Board Of Supervisors Of The County Of Sonoma, State Of California,
Denying an Appeal by Sanjay Bagai of a Decision of the Sonoma County Board of Zoning
Adjustments, and Granting Successful Completion of a Two-Year Review of Outdoor Cannabis
Cultivation under UPC17-0020 for The Highland Canopy, LLC for Property Located at 334
Purvine Road, Petaluma, CA 94952, APN 022-230-020**

Whereas, the applicant, The Highland Canopy, LLC (formerly Petaluma Hills Farm, LLC) c/o Samuel Magruder, filed a Use Permit application (UPC17-0020) with the Sonoma County Permit and Resource Management Department for a commercial cannabis operation including 8,096 square feet of mixed light cultivation, 2,880 square feet of indoor cultivation, 28,560 square feet of outdoor cultivation (total cultivation area of 39,536 square feet), 4,080 square feet of indoor propagation, and associated processing of site-grown cannabis located at 334 Purvine Road Petaluma, CA 94952; APN 022-230-020; Zoned Land Extensive Agriculture (LEA), B6 100, Accessory Dwelling Unit Exclusion (Z); Supervisorial District No 2 (UPC17-0020) (the "Project"); and

Whereas, a Mitigated Negative Declaration ("MND") was prepared for the Project, and on or about March 11, 2019, 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; and

Whereas, on April 11, 2019, the Board of Zoning Adjustments held a duly noticed public

hearing on the MND and the Project at which time the Board of Zoning Adjustments heard and received all relevant testimony and evidence presented orally or in writing regarding the MND and the Project and all interested persons were given an opportunity to hear and be heard regarding the MND and the Project; and

Whereas, on April 11, 2019, the Board of Zoning Adjustments voted 5-0-0 to adopt the MND and Mitigation Monitoring and Reporting Program and approve the Use Permit for the Project subject to conditions of approval; and

Whereas, on April 19, 2019, Kevin Block on behalf of No Pot On Purvine, Phoebe Lang, Ayn Garvisch, and Britt Jensen appealed the decision of the Board of Zoning Adjustments to the Board of Supervisors, pursuant to County Code (“Appeal”), raising issues related to General Plan consistency, code violations by the applicant, odor impacts, public safety and site security, special events and public access, and neighborhood compatibility; and

Whereas, on September 30, 2019, the Board of Supervisors (“Board”) conducted a duly noticed public hearing on the MND, the Project, and the Appeal. 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, the Project, and the appeal, and by a majority vote, found the MND had been prepared in conformance with CEQA, approved the MND, denied the appeal, and approved the Project, subject to conditions of approval; and

Whereas, Condition of Approval 17 requires that a review of outdoor cultivation activities shall be undertaken by the Permit Sonoma Director two years after commencement of the first outdoor harvest to determine compliance with the conditions of approval applicable to the outdoor cultivation operation, including but not limited to landscape screening, odor control, security, and water use, and to determine whether the outdoor cultivation use constitutes a nuisance, consistent with the authority granted pursuant to Sonoma County Code Section 26-92-120 (Revocation generally); and

Whereas, the scope of the Two-Year Review is narrow and must not include any aspects of UPC17-0020 that do not relate to outdoor cultivation, unless Conditions of Approval have not been met, violations have occurred, or the use constitutes a public nuisance; and

Whereas, on May 15, 2020; Phase I Authorization was granted for up to 28,560 square feet of outdoor cultivation, and the operation of the outdoor cultivation area commenced in 2020 and continued through 2021; and

Whereas, on March 29, 2022, public notification of the opportunity to provide comment on two years of outdoor cultivation activities at 334 Purvine Road and express any concerns was sent to all property owners within 1,000 feet of the project parcel and to all persons requesting notification as an Interested Party; and

Whereas, on April 22, 2022, public notification that the Permit Sonoma Director had determined that there was no credible evidence of non-compliance with the conditions of approval applicable to outdoor cultivation, and that outdoor cultivation activities at the site do not constitute a public nuisance was sent to all property owners within 1,000 feet of the project parcel and to all persons requesting notification as an Interested Party. The notice further stated that the Two-Year Review would be approved and the outdoor cultivation operation would be allowed to continue for the full five-year permit term, unless a written request for a hearing was received by the Director prior to May 3, 2022; and

Whereas, a hearing was requested on or about April 26, 2022; and

Whereas, the Two-Year Review is consistent with the previous adopted MND, none of the conditions under Section 15162 of the CEQA Guidelines are met, and no additional environmental review is required for the Two-Year Review; and

Whereas, on June 9, 2022, the Board of Zoning Adjustments held a duly noticed public hearing on the Two-Year Review at which time the Board of Zoning Adjustments heard and received all relevant testimony and evidence presented orally or in writing regarding the Two-Year Review and all interested persons were given an opportunity to

hear and be heard; and

Whereas, on June 9, 2022, the Board of Zoning Adjustments voted 4-0-1 to grant successful completion of the Two-Year Review and allow continuation of outdoor cannabis cultivation activities for the remaining permit term through May 15, 2025, subject to previously adopted conditions of approval; and

Whereas, On June 20, 2022, Sanjay Bagai appealed the decision of the BZA to the Board, pursuant to County Code (“Appeal”), raising issues related to special events, water use, and unpermitted signage; and

Whereas, On July 19, 2022, the Board conducted a duly noticed public hearing on the Two-Year Review. 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 Two-Year Review, and by a majority vote, granted successful completion of the Two-Year Review, thereby allowing continuation of outdoor cannabis cultivation activities for the remaining permit term through May 15, 2025, subject to the conditions of approval imposed herein; and

Whereas, 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 Appeal, and the Two-Year Review. 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.

Now, Therefore, Be It Resolved that the Board of Zoning Adjustments makes the following findings:

1. Environmental Determination: A Mitigated Negative Declaration was prepared for the complete project, including the outdoor cultivation operation, which

determined that all potential impacts can be mitigated to a less than significant level, and all mitigation measures were incorporated into the project conditions of approval. The project was approved with conditions, and the MND was adopted by the Board of Supervisors on September 30, 2019. The Two-Year Review is consistent with the previous adopted MND, none of the conditions under Section 15162 of the CEQA Guidelines are met, and no additional environmental review is required for the Two-Year Review.

2. Compliance with Zoning Code: The outdoor cultivation area has been operating in compliance with the operating standards and development criteria of the Cannabis Ordinance, Sonoma County Code Sections 26-88-250 and 254, including state licensing, cultivation limits, property setbacks, lighting standards, security and fencing requirements, hours of operation, noise standards, hazardous materials use, waste management, erosion control, groundwater monitoring, and prohibition on importing trucked potable water for cannabis cultivation.
 - a. Inspections of the outdoor cultivation area conducted by the Sonoma County Department of Agriculture/Weights & Measures verified the following operating standards were met for both 2020 and 2021 cultivation seasons:
 - i. Valid State License.
 - ii. Outdoor canopy at 28,560 square feet, consistent with the permitted canopy area of 28,560 square feet.
 - iii. Property setbacks from the outdoor cultivation greater than 100 feet from property boundaries and greater than 300 feet from off-site residences.
 - iv. Security cameras in operation, and security lighting at the cultivation site motion-sensor activated and downward

casting.

- v. Fencing, locked gates, and screening present at the cultivation site.
 - vi. Waste containers closed and secured, cannabis waste secured, and agricultural chemical/pesticide storage secured at the cultivation site.
 - vii. Erosion control measures present (straw) and no soil erosion observed at the cultivation site.
 - viii. Groundwater well meter present and operational at the cultivation site.
- b. The cannabis ordinance (Sec. 26-88-254(g)(10)) prohibits trucked potable water for cannabis cultivation purposes. However, there is neither a prohibition nor any regulatory requirements in the Zoning Code related to trucked water for non-cultivation purposes. The applicant imported trucked water for construction purposes, and there is no evidence that the trucked water was used for cannabis cultivation purposes.
3. Compliance with Conditions of Approval: The outdoor cultivation area has been operating in compliance with the conditions of approval, including payment of required fees and taxes, maintenance of an on-site agricultural use, submission of annual monitoring reports, installation of landscaping, biological resource protection, groundwater pumping limits, and the prohibition of visitor-serving uses.
- a. Payment of inspection and permitting fees and payment of taxes for fiscal year 2020-2021 was verified by Permit Sonoma and the Auditor-Controller-Treasurer-Tax Collector Department (Conditions of Approval 1, 2, 4, 5, 28 and 51).

- b. On-site agricultural uses include 25 acres of grazing, a 5-acre commercial vegetable garden and a half acre hemp garden (Condition of Approval 26).
- c. All annual monitoring reports have been submitted or are not applicable, including Security Incident Logs (not applicable, as no incidents have occurred), Odor Monitoring Logs, and Groundwater Well Monitoring and Reporting Forms (Conditions of Approval 23, 24 and 50).
- d. The outdoor cultivation site is surrounded by a screening fence. Landscaping was planted in 2020 around the exterior sides of the cultivation fence (facing Purvine Road & neighbors to the southwest), and includes native oaks, madrone, pines, ceanothus and blackberry. The property also has a wildflower field for bee-keeping, a 5-acre vegetable garden, a half-acre hemp planting, and a row of eucalyptus trees along a portion of the Purvine Road property frontage, which provide additional screening (Conditions of Approval 23 and 29).
- e. Pre-construction surveys for amphibians, ground-nesting birds, and American badger were conducted on March 3, 2020, in the cultivation area prior to initial disking. Surveys were negative and the area was cleared for disking and planting on March 12, 2020. Pre-construction surveys in the cultivation area were only required prior to the first cultivation season and do not need to be repeated annually before planting (Conditions of Approval 110, 112 and 113).
- f. Groundwater use for cultivation is limited to 2.08 acre-feet per year. In 2020, the property used 1.2 acre-feet (399,280 gallons). In 2021, the property used 1.1 acre-feet (338,841 gallons) from May

through October, which included the outdoor cultivation operation. Both years are well below the compliance threshold (Condition of Approval 52).

- g. Visitor-serving uses are not allowed associated with the cultivation area. A complaint submitted to Code Enforcement on the parcel - VCM21-1194 – for an occupied travel trailer was closed and no violation was issued as the trailer was a refrigerated unit for temporary storage of cannabis during harvest. The trailer was not being occupied and was removed after harvest was completed. There has been “public” access associated with non-cannabis agricultural operations on the parcel, such as the chefs garden, hemp garden, and livestock lease areas, and there is no evidence of any public access to the cannabis cultivation area. All access to the cultivation area has been by licensed cannabis supply chain businesses (Conditions of Approval 11, 12.13 and 50).
- h. The operator must install and maintain odor control air filtration and ventilation systems for all permanent structures used for cannabis cultivation and processing, must perform and keep a log of daily odor monitoring inspections, and must log complaints and their resolutions. Odor complaints were received from one residence on Purvine Road during the 2020 harvest; none were received during the 2021 cultivation season. The applicant has conducted daily odor monitoring during outdoor cultivation to provide information on whether outdoor odors are detectable at property boundaries. Although the daily odor monitoring log conducted by employees does not provide a measurement of odor quantity or intensity, it does provide qualitative data on how far from the source the odor typically travels and in which

direction. The submitted Odor Monitoring Log provides a daily record of whether cannabis odors are detectable at eight different locations on the project parcel. Odor was primarily detected at three locations adjacent to the outdoor cultivation area: B - located east of the grow, C – located northeast of the grow, and to a lesser extent, D – located southwest of the grow. Odor was rarely detected at any of the three locations along the Purvine Road property boundary to the west (maximum of three recorded odor days in 2020; none in 2021), or at the northeast property corner (maximum of 7 recorded odor days in 2020; none in 2021) or at the southeast property corner (maximum of 12 recorded odor days in 2020; 1 in 2021). Location B is adjacent to the eastern property boundary, but there are no residences nearby in an easterly direction (the nearest is approximately 1,250 feet away). The outdoor cultivation area was sited where it is near the eastern boundary in consideration of this fact. The submitted monitoring log's low number of occurrences of detectable odor at property boundaries to the north, west, and south, and the distance between the eastern property boundary and nearby residences supports the determination that, although outdoor odor may occur, it does not create a public nuisance or adversely affect the health or safety of the nearby residents (Condition of Approval 24).

Be It Further Resolved that the findings and determinations set forth in this Resolution are based on the entire record of these proceedings. References to specific statutes, ordinances, regulations, standards, reports, or documents in a finding or determination are not intended to identify those sources as the exclusive basis for the finding or determination.

Be It Further Resolved that based on the foregoing findings and determinations

and the full record of these proceedings, the Board of Supervisors 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 set forth above.
2. The Two-Year Review is appropriately limited to the outdoor cultivation activities because there is no evidence that Conditions of Approval have not been met or have been violated during the review period, or that the use constitutes a public nuisance.
3. No modification to the Use Permit is warranted.
4. The Appeal of the Board of Zoning Adjustments approval of the Two-Year Review is denied.
5. Successful completion of the Two-Year Review is granted and outdoor cannabis cultivation activities may continue for the remaining permit term through May 15, 2025, subject to the adopted Conditions of Approval in Exhibit "A", attached hereto.

Be It Further Resolved that the Board of Supervisors designates the Clerk of the Board as the custodian of the documents and other material 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:

Gorin: Rabbitt: Coursey: Hopkins: Gore:

Ayes: Noes: Absent: Abstain:

So Ordered.