



County of Sonoma

State of California

Date: August 12, 2020

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, and Granting
a Use Permit to Misty Mountain Services, LLC, for Property Location at 885 Montgomery
Road, Sebastopol, CA 95472, APN 077-130-095**

Resolved, that the Board of Supervisors (“Board”) of the County of Sonoma (“County”) finds and determines as follows:

Section 1. Proposed Project and Procedural History

- 1.1 On January 5, 2018, the applicant, Misty Mountain Services, LLC, filed an application for a limited term Conditional Use Permit for a commercial cannabis cultivation operation including 26,845 square feet of outdoor cultivation, 1,414 square feet of indoor cultivation, 1,546 square feet of indoor propagation and associated processing of site-grown cannabis, including, trimming, drying, curing, weighing and packaging, on a 10-acre parcel located at 885 Montgomery Road in Sebastopol; APN 077-130-095; Zoned DA (Diverse Agriculture), B6-20 acre density, RC 100/50 (Riparian Corridor Combining Zone) (“the Proposed Project”).
- 1.2 On March 31, 2018, the applicant submitted a revised project description to increase the outdoor cultivation from 28,560 square feet to 38,484 square feet of outdoor cultivation.
- 1.3 On May 31, 2018, the application was deemed complete for processing.
- 1.4 On December 3, 2018, following the Board’s adoption of Ordinance No. 6245 amending the Cannabis Land Use Ordinance, the application was amended to request a 5-year permit term and production of adult use cannabis in addition to medical cannabis.
- 1.5 On December 17, 2019, the Board approved the Cannabis Ad Hoc Committee’s request for the Board of Supervisors to exercise original jurisdiction for nineteen permit applications, including the Proposed Project.

- 1.6 A Mitigated Negative Declaration (“MND”) was prepared for the Project, and on or about June 19, 2020, 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.
- 1.7 On August 12, 2020, 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 4/5 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.
- 1.8 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 makes the following further specific findings regarding environmental impacts of the Project:

A. Odor

In adopting the Cannabis Ordinance, the Board of Supervisors found that air quality and odor issues could be addressed through compliance with operating standards described in the Cannabis Ordinance. The proposed cannabis cultivation operation meets all odor-control requirements, meets the minimum parcel size requirement, meets the required setbacks and is determined to be compatible with surrounding agricultural and residential land uses. As such, the Board finds there is substantial evidence that the Proposed Project will not create objectionable odors to a substantial number of people.

As a result, the Board finds that there is no fair argument that the impacts may be significant.

B. Biological Resources

Two Biotic Assessments were 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 (Wiemeyer, August 22, 2017 and O'Donnell Consulting, December 6, 2019). The Biotic Assessments concluded that the site lacks suitable habitat for special status plant and animal species.

As a result, the Board finds that with the addition of mitigation measures, there is no fair argument that the Proposed Project may cause a significant effect to biological resources.

C. Hydrology

The site is located in a Groundwater Availability Class 2 – Major Natural Recharge Area, and is not within a Medium or High Priority basin defined under the Sustainable Groundwater Management Act (SGMA).

Still, a water use report was prepared to address potential groundwater impacts under CEQA (Sebastian Bertsch, February 19, 2019). The net zero water use report, as reviewed by the County's Geologist and discussed in the MND, determined that the Proposed Project would conservatively use 528,000 gallons (1.62 acre-feet of water per year. The net zero report proposes two large water storage tanks with a total capacity of 183,700 gallons. The design calculations indicate that the rainwater storage tanks could be filled with roof runoff from existing structures in most years, including dry water years. The rainwater harvesting system is proposed to provide 183,700 gallons. The net zero water use report found that the proposed use of vegetated swales can enhance groundwater recharge. The report estimated that the vegetated swales would fill with sheet flow during rainfall events and the stored water would then seep into the soil and infiltrate the groundwater. The water use report estimates that the vegetated swales are expected to enhance groundwater recharge by 610,000 gallons (1.87-acre feet).

As a result, the Board finds there is no fair argument that the Proposed Project may cause a significant effect to groundwater 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 Diverse

Agriculture, and the goals, objectives, policies, and programs of the General Plan. The proposed Project is consistent with policies for managing and conserving agricultural areas and preserving areas of agricultural character. The project will comply with policies seeking to protect the character of the project area, support ongoing agricultural activities, conserve the majority of the site for future agriculture and is consistent with General Plan objectives LU-1, -5.2, -7.1, -8.1, -8.3, -9.2, -9.3, -9.4, -11b, and the policies for the Diverse Agriculture Areas.

The definition of “agricultural crop” listed in the Sonoma County Zoning Code expressly excludes cannabis. However, Zoning Code (Sec. 26-02-140) and state law (Cal. Bus. § Prof. Code Section 26069(a)) both define cannabis as an “agricultural product.” Similarly, while cannabis cultivation does not qualify for “agricultural use” under the County’s Uniform Rules for Agricultural Preserves and Farmland Security Zones, it is a “compatible use.” The Board finds that, though cannabis cultivation is regulated differently from traditional agricultural crops and uses due to its classification as a controlled substance, it is uniquely compatible with traditional agricultural cultivation and production in that it employs similar farming practices and infrastructure such as crop cultivating techniques, the use of greenhouses, barns and water storage tanks, and has the potential to support traditional agricultural production, and does not prevent present and future agricultural uses and production.

The Proposed Project is consistent with the General Plan land use designation in that it proposed outdoor cultivation and indoor cultivation that is similar to traditional agricultural cultivation. The processing of cannabis grown onsite will include drying, curing, trimming, storing, and packaging, which is similar to the basic processing activities of traditional agricultural farms.

The Proposed Project is consistent with General Plan Policy AR-4A in that agricultural production will remain the primary use of the parcel. The proposed operation will total approximately 9% of the 10-acre property. Existing agricultural uses on the property consist of one, 10,890 square foot vegetable garden, one, 1,200 square foot apple orchard and one, 1,000 square foot lime orchard. The proposed project would not require the removal of existing agricultural uses. The General Plan recognizes that Diverse Agricultural Areas typically result in lands that are used for small acreage intensive farming or where part time farming activities are predominant. The circumstances of the Proposed Project are that it will be a small acreage farming activity that will allow for future agricultural uses. Further, the proposed water tanks which will be used for agricultural development of the present, can also be repurposed for future agricultural development and will help the property look and feel agricultural in nature.

As a result, the Board finds that the proposed project is consistent with the General Plan.

3.2 Zoning Consistency.

The Proposed Project is consistent with the Diverse Agriculture (DA) Zoning District, in that the proposed cannabis cultivation operation is allowed with approval of a Conditional Use Permit. The purpose of the DA District is to protect and enhance areas that support small acreage farming or part time farming activities. The proposal maintains the existing agricultural uses and does not propose residential uses or the need for additional utilities.

The proposed project is consistent with the operating standards and development criteria of the Cannabis Ordinance, Sonoma County Code Sections 26-88-250 and 254, because it complies with the minimum parcel size, cultivation limits, setbacks, lighting standards, security and fencing requirements, odor control, 100% renewable energy use, hours of operation, noise standards,

and groundwater monitoring.

The setbacks to outdoor cultivation areas meet the code requirements. The Code requires that outdoor cultivation be setback 100 feet from property lines and 300 feet from residences. The proposed outdoor cultivation is setback at least 300 feet from all property lines and residences?.

A Site Security Plan was reviewed by County staff and found to meet ordinance requirements. The operation shall maintain all aspects of the approved site security plan including security cameras, lighting, and alarms. The site is screened from public view due to the topography and mature perimeter vegetation facing the street. The entire property perimeter is fenced, and a locked gate prohibits unauthorized vehicular/pedestrian access. All lighting will either be fully contained within existing structures or will be downward-casting and will not project on to neighboring properties or the night sky. All structures will have locking doors for security. Proposed on-site security measures are robust and go above and beyond the security and fencing requirements detailed in the Zoning Code above.

As a result, the Board finds that the proposed project is consistent with the Zoning code.

3.3 General Use Permit Finding.

The design, location, size, and operating characteristics of the use are considered compatible with the existing and future resource conserving, agricultural, and residential land uses within the vicinity. As modified by conditions of approval to eliminate indoor cultivation, 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 neighborhood of such use, nor will it be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the area. The particular circumstances that support this finding are set forth above and include, but are not limited to the following facts which support this finding: (1) The cannabis operation would not involve more than one acre (43,560 square feet) of cannabis cultivation area; (2) Deliveries and shipping activities shall be limited to 8:00 a.m. to 5:00 p.m.; (3) All cannabis-related operations will be screened from public view from Montgomery Road through existing intervening vegetation and construction of a visually compatible privacy screen; (4) The nearest sensitive use is Spring Hill School which is located over 4,000 feet to the southeast of the project site. The nearest public park, Rangle Ranch Park is located approximately 1.55 miles to the east. The nearest treatment facility, Acura Acres Treatment Center is located approximately 1.39 miles to the northwest; (5) all cannabis cultivation areas meet the required setbacks from property boundaries and off-site residences; (6) The project parcel meets the minimum parcel size of 10 acres (10-acre parcel); (7) Exterior lighting will be downward-casting, fully-shielded, and motion-activated; (8) Security measures will be implemented to uphold the health, safety, peace, comfort, and general welfare of persons residing or working in the neighborhood of the use; (9) The project complies with the required setbacks listed in the ordinance to help reduce odor (10) The project will include windbreaks to separate outdoor cannabis operations from surrounding properties; (11) No public access or retail sales are permitted on the site; (12) No hazardous materials will be stored on site; (13) All equipment shall be in compliance with the General Plan Noise Standard; (14) All energy will be 100% renewably sourced from Evergreen clean power and future solar power installations.

Section 4. Additional Finding

4.1 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.

NOW, THEREFORE, Be It Further 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 January 5, 2018, and updated materials submitted March 31, 2018, 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 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: Zane: Gore: Hopkins: Rabbitt:

Ayes: Noes: Absent: Abstain:

So Ordered.