



County of Sonoma

State of California

Date: January 24, 2023

Item Number: _____

Resolution Number: _____

☐ 4/5 Vote Required

**Resolution Of The Board Of Supervisors Of The County Of Sonoma, State Of California,
Exempting From the California Environmental Quality Act For Purposes of Denial, Denying a
Use Permit (with prejudice) to Thomas Planson, of Evergreen Acres For Property Located at
6699 Palmer Creek Road, Healdsburg, CA, APN: 069-040-026**

Be it Further Resolved, that the Board of Supervisors (the Board) of the County of Sonoma (the County) hereby finds and determines as follows:

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 the California Department of Fish and Wildlife (CDFW), California Department of Food and Agriculture (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 Prussiameritt 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 Proposed Project and by a unanimous straw vote, instructed staff to prepare a resolution and findings denying the Use Permit.
- 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 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 The Proposed Project is exempt from CEQA review pursuant to Public Resources Code section 21080(b)(5), which states that CEQA does not apply to projects that a public agency rejects or disapproves, as well as CEQA Guidelines section 15061(b)(4), which provides that a project is exempt from CEQA review if it is disapproved, and CEQA Guidelines section 15270(a), which provides that CEQA does not apply to projects that are rejected or disapproved.

Section 3. General Plan, Planning and Zoning Compliance

- 3.1 State Fire Safe Regulations Compliance

The project site is located within the State Responsibility Area for fire protection and designated a High Fire Hazard Severity Zone by the State Fire Marshall. The project parcel is located within the fire perimeter of the 2020 Wallbridge Fire. Access to the project site is via Palmer Creek Road, a private unpaved dead-end road, which varies in width from 9 to 22 feet.

Developments within the State Responsibility Area must adhere to the California Department of Forestry and Fire Protection Fire Safe Regulations (14 CCR §1270.00 et seq.) that require developments within the State Responsibility Area to provide for safe access for emergency wildfire equipment and civilian evacuation concurrently. The Board of Forestry authorizes the acceptance of alternative measures that provide for the same practical effect as the Fire Safe Regulations toward achieving wildfire protection, which can be achieved by applying accepted wildland fire suppression strategies and provisions for firefighting safety.

In this case, the applicant submitted a request for an exception to the Board of Forestry's width and dead-end road standards. The request included the following: two onsite hammerhead turnarounds to facilitate emergency equipment access and evacuation; ongoing fuel reduction maintenance of Palmer Creek Road; defensible space requirements for new structures; access to the onsite reservoir and 97,000 gallon storage tank for a minimum of 250,000 gallons of water to be available at all times for fire suppression; ongoing support to the community for maintenance of an existing Fire apparatus emergency vehicle access (EVA) located at the intersection of Palmer Creek Road and Mill Creek Road; and an additional secondary egress for the Project through the project site continuing on to a private road (Big Springs Road) on the adjoining property to the south and eventually connecting with Sweetwater Springs Road via Ridge Road and McCray Ridge Road, which traverses seven parcels.

Pursuant to 14 CCR §§ 1270.06 and 1271.00 and Sonoma County Code Section 26-92, the Sonoma County Board of Supervisors as the ultimate decision maker on the land use entitlement must determine that the applicant's request meets the requirements for an exception to the Fire Safe Standards. Based on the applicant's exception request and the particular nature and location of the Proposed Project, the Board finds that it cannot make the findings necessary to approve the exceptions to standards and that it does not meet the intent of the Fire Safe Regulations to provide safe emergency access and egress concurrently.

In particular, the applicant has not shown proof of legal access to either of the two secondary egress routes identified in the request. The first secondary egress route, also known as the existing fire apparatus emergency vehicle access (EVA), is located at the intersection of Palmer Creek Road and Mill Creek Road and traverses APN: 110-060-069. The property owner of APN 110-060-069 has stated that neither the applicant nor the community has legal access to this egress route and while the applicant has shown that the route is marked with signage, displayed on fire district maps, and that community members have maintained and used this route in the past, he has not produced evidence of a legal right to such access in the future. The additional proposed secondary egress route which traverses through the project parcel and continues to a private road (Big Springs Road) on the adjoining property to the south and eventually connects with Sweetwater Springs Road via Ridge Road and McCray Ridge Road traverses through the following parcels, APN: 069-030-025, 069-030-024, 068-030-009, 069-030-006, 069-030-036, 069-030-007, 069-030-008. Six of the seven property owners of the properties over which this egress would traverse, have submitted letters denying the applicant access to their properties. The applicant has demonstrated legal access to the route on some but not all of these parcels.

In addition to failing to show legal access, the first secondary egress is a considerable distance from the project site; Palmer Creek Road is accessed from Mill Creek Road, which itself is a dead-end road; and portions of Palmer Creek Road are very narrow and insufficiently addressed through turnouts or other such measures. Given these facts, the nature, scale, and intensity of the development, low water availability and potential infeasibility of the reservoir to capture sufficient emergency supplies, the high fire hazard of the area, and the parcel's recent fire history, the Board of Supervisors cannot make the findings necessary to support the applicant's exception to standards.

3.2 Water

The project site is located within a Groundwater Availability Class 4 – Groundwater scarce area and is located in the Mill Creek Watershed which is designated as a critical watershed area. Mill Creek is listed as a critical habitat for Coho and Steelhead. Mill Creek Watershed is a 'Core' recovery area as defined in the 2012 Coho Recovery Plan by the National Marine Fisheries Service.

The Cannabis Ordinance requires that if groundwater use by a project within a Class 4 Groundwater Availability area would be detrimental to the aquifer or nearby streams, it must be designed so that there would be no net increase in groundwater use. Given the project's location in a low groundwater availability area and critical watershed area and proximity to watercourses, the project proposed to rely on rainwater catchment for irrigation and fire suppression. Due to the project's reliance on rainwater, Conditions of approval required annual reporting of the amount of water available for irrigation prior to operation for that year and required the applicant to adjust that year's cultivation canopy accordingly, if necessary. Conditions of approval required the project's infrastructure to be built with a phased approach to confirm the amount of water needed for fire suppression was onsite prior to full build out and operation of the site. Due to recent and forecasted drought conditions, there is a strong potential that the reservoir and rainwater catchment system will fail to capture enough water for irrigation and fire suppression, rendering the project nonoperational and infeasible despite extensive permanent site modification.

3.3 Environmental Constraints

The project site is characterized by dense forest and steep rugged terrain typical of the west county mountainous areas. The project required the permanent conversion of 1.8 acres of timberland within the development footprint of the reservoir and outdoor cultivation area. In addition, the steep slopes present onsite would require terracing for outdoor cultivation and extensive grading for greenhouse construction, resulting in substantial earthwork and permanent site modification.

The project site is located within the Mill Creek Watershed which is designated as a 'Core' recovery area by the 2012 Coho Recovery Plan by the National Marine Fisheries Service. Several watercourses traverse the site, all of which are subject to both County and Regional Water

Quality Control Board development setbacks to protect riparian resources, which severely constrains available development areas.

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. Setbacks for these watercourses are the following, a Class I feature requires a 150 foot setback, a Class II features requires a 100 foot setback and a Class III feature requires a 50 foot setback. As the project parcel is bound by several watercourses, the required setbacks constrain the site's suitable and available area for development.

The waterways discussed above drive the extensive site modifications and increase the potential for negative environmental consequences. In order to comply with setbacks, the project proposed extensive grading to locate the greenhouses and for outdoor cultivation terracing. The grading and adding of impervious surfaces could impact drainage courses on the project site. The grading and truck trips associated with construction of the required infrastructure could lead to erosion and discharge from the project site and access roads that could negatively impact the nearby streams and habitat. Because the site is so constrained, development is planned to abut the watercourse setbacks, meaning staging and associated work may occur within the setback, further increasing the risk of negative impacts associated with development. Overall, the terrain and setbacks leave a site that is severely constrained and the proposed development that attempts to address such constraints requires substantial site modification that poses risks to several nearby watercourses.

3.4 General Plan Inconsistency

LAND USE ELEMENT

The project conflicts with the purpose and policies for the Resources and Rural Development Land Use category specifically:

(5) 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; and

(7) 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.

The project site is located within a High Fire Severity Zone, Class 4 Groundwater Area, Biotic Habitat Combining Zone and contains several watercourses with designated riparian protection setbacks. The lower project area with the barn, proposed pond, parking, and cultivation areas has slope grades ranging from 5 – 20% and the upper, terraced cultivation area has slope grades between 20 and 30%. The higher reaches of the site, outside of the project areas, have slope grades in excess of 50%.

The project itself proposed land intensive development to support the commercial use including but not limited to, terraced pads required to facilitate the outdoor cultivation area due to the cultivation area being located within slope grades ranging from 20-30%, 14,000 square feet of greenhouse structures and a 2.3 acre-foot reservoir within slope grades ranging from 5-20%, as well as access improvements, a residential dwelling unit and ancillary utility structures. Based on the site's steep slopes, low groundwater availability, high fire severity zone, environmental constraints, and lack of public services and infrastructure, the proposed development would be inconsistent with the purpose and policies of the Resources and Rural Development Land Use category.

PUBLIC SAFETY ELEMENT

The project is not consistent with Sonoma County General Plan Public Safety Element goals or policies protecting people and structures from unnecessary exposure to wildland fires. The project parcel is located within the fire perimeter of the Wallbridge Fire and has all the characteristics associated with a High Wildland Fire Hazard area, including steep or mixed topography, vegetation characterized by densely forested land, and hot, dry summers. The General Plan Public Safety Element recommends limiting the types and intensities of land uses in wildfire-prone areas, stating 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.

The project would increase land use intensity by installing extensive new infrastructure, including the removal of 1.8 acres of timberland to facilitate the development of a 2.3 acre-foot reservoir, ±13,000 square feet of greenhouses, and terraced pads required for outdoor cultivation due to the slope of the project site, and by bringing employees, new commercial uses and building construction to an area with a high risk of natural fire hazard and highly constrained long dead-end road access, thereby exposing people and structures to a potentially significant risk of loss, injury or death involving wildland fires, inconsistent with General Plan Goal PS-3 and Objective PS-3.2 to prevent unnecessary exposure of people and property to risks of damage or injury from wildland and structural fires and to regulate new development to reduce the risks of damage and injury from known fire hazards to acceptable levels.

OPEN SPACE AND RESOURCE CONSERVATION ELEMENT

The project conflicts with the purpose and policies for the Open Space and Resource Conservation Element specifically:

Protect and enhance the County's natural habitats and diverse plant and animal communities.

The project is not consistent with the Sonoma County General Plan Open Space and Resource Conservation Element to protect and enhance the County's natural habitats. The project proposes intensive development on a parcel which is characterized by dense forest, steep rugged terrain and bound by several watercourses designated by the County and the Water Board that traverse the project site. The project site contains a Biotic Habitat combining zone overlay due to a belt of serpentine soils which generally contain diverse and protected plant communities. The project site is located within the Mill Creek Watershed which is designated as a 'Core' recovery area as defined in the 2012 Coho Recovery Plan by the National Marine Fisheries Service. The project required 1.8 acres of timberland to be permanently converted in the area of the reservoir and outdoor cultivation area. The environmental constraints of the project site drive the suitable areas for project infrastructure to abut the designated watercourses, which would increase the potential for negative environmental consequences on a site where development is bound by protected natural communities. The extent of proposed development on a site with such environmental sensitivities is inconsistent with the purpose of the Open Space and Resource Conservation Element.

3.5 Neighborhood Compatibility

The establishment, maintenance or operation of the cannabis cultivation operation at this location will, 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 the Project, and will be detrimental to the general welfare of the area.

Substantial written and oral evidence was introduced in the record at the BZA public hearing and at the Board hearing on the Project and the appeal which demonstrates that the intensity of development in light of the environmental constraints which exist on the Project Site is out of character with existing development in the neighborhood and immediate area and may be detrimental to the safety and general welfare of the community as a result of introducing a new commercial use of this nature and scale to an area of high fire hazard and limited emergency access and egress.

Be It Further Resolved, that the findings and determinations set forth in this resolution are based on the full 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 information contained in the full record of proceedings, including but not limited to the findings and determinations set forth in this resolution, the Board hereby denies Use Permit application UPC18-0046.

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Be It Further Resolved, that the Board of Supervisors designates the County Clerk as the custodian of the documents and other material which constitute the record of proceedings on which the Board's decision herein is based.

Supervisors:

Gorin:

Rabbitt:

Gore:

Hopkins:

Coursey:

Ayes:

Noes:

Absent:

Abstain:

So Ordered.