



County of Sonoma

State of California

Date: September 30, 2019

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 No Pot On Purvine, Phoebe Lang, Ayn Garvisch, and Britt Jensen from a Decision of the Sonoma County Board of Zoning Adjustments, Adopting a Mitigated Negative Declaration and Mitigation Monitoring Program, and Granting a Use Permit to Petaluma Hills Farm, LLC, for Property Location at 334 Purvine Road, Petaluma, CA 94952, APN 022-230-020

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 August 16, 2017, the applicant, Petaluma Hills Farm, LLC, filed an application for a limited term Conditional Use Permit for a commercial cannabis cultivation operation including 8,096 square feet of mixed light cultivation; 2,880 square feet of indoor cultivation; 28,560 square feet of outdoor cultivation, and associated processing of site-grown cannabis, including trimming, drying, curing, weighing, and packaging, on a 37-acre parcel located at 334 Purvine Road, Petaluma; APN 022-230-020; Zoned LEA (Land Extensive Agriculture), B6-100 acre density, Z (Second Dwelling Unit Exclusion) (“the Proposed Project”).
- 1.2 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, production of adult use cannabis in addition to medical cannabis, and 4,080 square feet of indoor propagation area to produce plants for onsite cultivation, in accordance with the new ordinance.
- 1.3 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.

- 1.4 On April 11, 2019, the Board of Zoning Adjustments (“BZA”) held a duly noticed public hearing on the MND and the Proposed Project at which time the BZA heard and received all relevant testimony and evidence presented orally or in writing regarding the MND and the Proposed Project and all interested persons were given an opportunity to hear and be heard regarding the MND and the Proposed Project.
- 1.5 On April 11, 2019, the BZA voted 5-0-0 to adopt the MND and Mitigation Monitoring and Reporting Program and approve the Use Permit for the Proposed Project with changes to the MND (as discussed in Section 2 below) and the following changes to Conditions of Approval:
- a. Prohibit farm stays, vacation rentals, hosted rentals, and other transient occupancies;
 - b. Prohibit tents, yurts, and other temporary structures designed for human habitation;
 - c. Prohibit parking on Purvine Road;
 - d. Require a manager to reside on-site; and
 - e. Require a two-year review of the outdoor cultivation and consider whether use permit modification is necessary.
- 1.6 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 BZA to the Board, 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.
- 1.7 On September 30, 2019, the Board conducted a duly noticed public hearing on the MND, the Proposed 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 Proposed Project and the appeal, and by a _____ vote, found the MND had been prepared in conformance with CEQA, approved the MND, denied the appeal 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, the Appeal 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 Following public review, the County received comments from the California Department of Food and Agriculture (“CDFA”) and the California Department of Fish and Wildlife (“CDFW”). In response, the BZA directed staff to make the following changes to the MND. No recirculation of the MND was required pursuant CEQA Guidelines Sections 15073.5 and 15074.1 because the changes include new information to clarify and amplify the MND and substituted mitigation measures that are equivalent or more effective at avoiding or reducing potentially significant effects:

- a. New Mitigation Measure BIO-1 to require, in addition to pre-construction surveys, avoidance of small mammal burrows by at least 30 feet and placing exclusion fencing around the construction site to further minimize impacts to special-status amphibians that may be underground.
- b. New Mitigation Measure BIO-2 to require night-time surveys immediately prior to construction, in addition to night-time surveys if suitable habitat is found, which will increase the probability of detecting roosting bats.
- c. New Mitigation Measure BIO-3 to clarify that Nesting Bird Pre-Construction Survey(s) must also include surveys for the burrowing owl.
- d. New Mitigation Measure BIO-5 to require additional field surveys for the historic congested-headed hayfield tarplant to update the 2017 field survey and verify whether the species is present on the project site during construction, since annual plants may bloom at different times and have different distributions from year to year.
- e. Addition of CDFW as a responsible agency and the requirement that the applicant obtain either a Lake and Streambed Alteration Agreement (LSAA) or written verification that one is not required.
- f. Addition of regulations for commercial cannabis cultivation promulgated by CDFA pursuant to the Medicinal and Adult Use Cannabis Regulation and Safety Act, including environmental protection measures related to aesthetics, cultural resources, pesticide use and handling, use of generators, energy restrictions, requirements to conduct Envirostor database searches, and water supply requirements.
- g. Addition of a separate discussion of Energy and Wildfire topics in order to conform to the new CEQA Guidelines Appendix G checklist. Analysis of these topics was already included in the MND in a different format.

2.2 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, including the abovementioned amendments, the prior proceedings at the BZA, 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 information presented in the Appeal and post-appeal comments, the technical reports, information and responses submitted prior to and after the BZA hearing, staff responses addressing those reports and comments, 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.

2.3 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. These changes or alterations have been agreed to by

the applicant.

2.4 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.

2.5 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

Greenhouse/mixed-light cultivation, indoor cultivation, and indoor processing are not considered odor-generating uses in the BAAQMD California Environmental Quality Act Air Quality Guidelines (May 2017). Still, the County imposes a standard condition that all indoor and mixed-light cultivation and processing activities be equipped with odor control filtration and ventilation systems. The Proposed Project includes closed-loop climate control systems, including carbon filtration to clean the air and control odor, for all cultivation and processing structures. Additionally, mitigation measures and conditions of approval require daily inspections to ensure all filtration equipment is operating properly and that off-site odor is controlled.

The outdoor cultivation operation would generate odors during the last 4-8 weeks of the growing season prior to harvest (September-October). Studies referenced in the MND show that odor dissipates with distance from the source and opposite the primary direction of the odor flow. Additionally, studies show that surrounding an odor-generating land use with a natural buffer or windbreak has been a successful strategy to reduce odor impacts as the odor is deflected upward where it is diffused into the atmosphere. Further, the impacts of an odor generating use may be masked by other odor generators.

The location of residences in relation to the outdoor cultivation site include one single-family residence 620 feet to the southwest, one single-family residence 850 feet to the east/north-east, and three single-family residences approximately 1,250, 1,500, and 2,300 feet away. There are only 10 residences within a 0.5 mile radius, as identified by aerial imagery. The prevailing wind direction during September-October is west to east, in the opposite direction of the nearest residence. The Proposed Project includes fencing and screening around the property and cultivation site, which are expected to deflect and diffuse the cannabis odors. Additionally, the nearby McClelland Dairy spreads manure to dry in the late summer to early fall. These activities are located to the west of the Proposed Project and are expected to be carried with the prevailing wind toward the Proposed Project and mix with and mask cannabis odors. Mitigation measures and conditions of approval require daily inspections of the outdoor cultivation site, a log of any odor complaints, and that the applicant take action to rectify any identified issues. Further, if the County receives verified odor complaints, it may amend the conditions of approval to require additional odor reduction measures. As such, the Board finds there is substantial evidence that the Proposed Project will not create objectionable odors to a substantial number of people.

The property owners of one neighboring property have commented that odor from a smaller personal outdoor grow on the property in prior years was detectable and objectionable. However, there has been no corroborating evidence presented to establish the origin or strength of those odors, or that other sources did not contribute. Further, there has been no evidence to indicate that the addition of filtration and ventilation equipment, multiple layers of fencing and

landscaping, and monitoring of all odor mitigation measures would not mitigate potential odor impacts from the Proposed Project. As a result, the Board finds that there is no fair argument that the impacts may be significant.

B. Biological Resources

A Biotic Assessment 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 (Pinecrest Environmental Consulting, June 7, 2017). The study identified and evaluated 16 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. CDFW provided comment that there is a historic congested-headed hayfield tarplant record within one mile of the property, and that more recent records are within five miles of the property. Because the plant is an annual, and population size and location can vary from year to year, CDFW recommended additional pre-construction surveys to verify whether the species is present. Mitigation Measure BIO-5 was added to more effectively reduce effects to less than significant. The Biotic Assessment and MND found that no streams or wetlands exist on or adjacent to the Project site; therefore, no impacts to breeding amphibians or amphibian breeding habitat would occur. The upland estivation habitat was determined to be marginally suitable. Mitigation Measure BIO-1 required pre-construction surveys for special status amphibians. CDFW commented that because the California tiger salamander may not be detected underground, the mitigation measure should be amended to include avoidance of small mammal burrows by at least 30 feet and placing exclusion fencing around the construction sites. The mitigation measure was amended accordingly to more effectively reduce effects to less than significant.

The Biotic Assessment and MND found that while no bats or signs of bats were observed during a site survey in May, certain special status bats may move throughout the region. Mitigation Measure BIO-2 requires an assessment of roosting habitat if initial ground disturbance occurs during the maternal roosting season and additional night-time surveys if suitable habitat is found. CDFW commented that night-time surveys do not necessarily determine absence as bats may move from one roosting site to another, and recommended an additional night-time survey immediately prior to construction. The mitigation measure was amended accordingly to more effectively reduce effects to less than significant.

The Biotic Assessment and MND found that no special status birds or burrows appropriate for burrowing owl were observed, but that eucalyptus trees along the property line provide suitable nesting habitat, while other trees provide only marginally suitable nesting habitat. To reduce potential impacts from construction noise on nesting birds, Mitigation Measure BIO-3 requires additional pre-construction breeding surveys if initial ground disturbance occurs during the breeding season. CDFW commented that burrowing owls had been detected within five miles of the property and may nest in ground squirrel burrows, or American badger, coyote, and gray fox dens. The mitigation measure was thus amended to clarify that Nesting Bird Pre-Construction Survey(s) must also include surveys for the burrowing owl.

With the addition and substitution of mitigation measures as recommended by CDFW, 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 Hydrogeologic Assessment Report was prepared to address potential groundwater impacts under CEQA (Hurvitz Environmental Services, May 1, 2018). The hydrogeologic report, as reviewed by the County’s Geologist and discussed in the MND, determined that the Proposed Project would conservatively use 2.93 acre-feet of water per year (not taking into account the applicant’s plans to employ dry farming techniques). The rainwater harvesting system is proposed to provide 0.85 acre-feet per year. Greywater for landscaping will additionally offset groundwater usage. The total site groundwater use was determined to be 5.09 acre-feet per year. The hydrogeologic report studied cumulative impacts in a 500 acre circular area around the Proposed Project and found, based on the total current and future water demand, total Project water use, and maximum daily water use, that 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.

Commenters have stated that permit applications in the area have been denied as a result of inadequate water supply and that residences in the area have experienced inadequate water supply. No specific permit application was identified and staff was not able to locate any failed water yield or well test permits in the vicinity. To the contrary, a search of permit approvals in the vicinity shows approved residential development that required demonstration of adequate water supply and an approved use permit for a dairy with a tasting room, tours, and retail sales. Evidence in the record does not support allegations of low water supply. 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 Land Extensive 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. A majority of the subject parcel is used for cattle grazing and a commercial organic vegetable garden and primary use of the parcel is and will remain in agricultural production. The Project does not increase residential density or urban development, and would preserve the natural, visual, and scenic resources of the site, and would result in the use of existing property consistent with General Plan Objectives LU-9.1, -9.3, -9.4, and AR-4.1, as well as the policies for Land Extensive Agricultural Areas.

While the definition of “agricultural crop” in the Zoning Code expressly excludes cannabis, it is defined as an “agricultural product” by the Zoning Code (Sec. 26-02-140) and state law (Cal. Bus. & Prof. Code Section 26069(a)). Similarly, while cannabis cultivation is not a qualifying or “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 agriculture 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, has the potential to support traditional agricultural production, and does not interfere with such production.

The Proposed Project is consistent with the General Plan land use designation in that it proposes outdoor and mixed-light cultivation that is managed similarly to traditional agricultural cultivation. Additionally, the Proposed Project includes limited indoor cultivation that will occur in structures that occupy the same footprint as previous farm development and utilizes the reclaimed materials to create a similar appearance. 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 as determined by reviewing facts related to the relative sizes of the operations, compatibility of the proposed use with traditional agriculture, and current and future viability of agricultural production in light of the proposed use. The proposed operation will total approximately 2.7 acres of the 37-acre property. The remainder of the property will continue to include a 25-acre grazing operation and an organic garden operation that currently has 1 acre in production, and conditions of approval require that the parcel maintain a primary agricultural use. This condition provides more protection for continued agricultural production on the property than would exist without the Proposed Project. The cannabis cultivation use will likely produce more income than the traditional agricultural uses; however, the primary use is not determined strictly by relative income. The General Plan recognizes that Land Extensive Agricultural Areas typically result in relatively low production per acre of land. The circumstances of the Proposed Project are as expected in that a higher valued compatible use is critical in supporting the lower production agricultural uses of grazing and vegetable production. The traditional agricultural uses supported by the Proposed Project are viable commercial operations and not merely incidental to the Proposed Project. Further, the Proposed Project repurposes existing building materials and uses a substantially similar development footprint so that the look and feel of the property will continue to be agricultural in nature.

3.2 Area Plan Consistency.

The Proposed Project is consistent with the Petaluma Dairy Belt Area Plan land use designation of Land Extensive Agriculture and Area Plan policies because there would be no increase in residential density, agricultural uses including cattle grazing and a commercial organic garden would be supported on the site, and the project would not conflict with surrounding agricultural uses.

3.3 Zoning Consistency.

The Proposed Project is consistent with the Land Extensive Agriculture (LEA) Zoning District, in that the proposed cannabis cultivation operation is allowed with approval of a Conditional Use Permit. The purpose of the LEA District is to enhance and protect lands best suited for permanent agricultural use but capable of relatively low production per acre of land. The proposal maintains the agricultural grazing use of the majority of the land (25 acres; 68% of the total land area) and does not facilitate residential use.

The proposed project is consistent with the operating standards and development criteria of the Cannabis Ordinance, Sonoma County Code Sections 2688-250 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 area greatly exceed code requirements. The Code requires that outdoor cultivation areas be setback 100 feet from property lines and 300 feet from residences. The outdoor cultivation area for the Proposed Project is setback at least 250 feet from all property lines and 620 feet and 850 feet from the two closest residences. The placement of the outdoor grow maximizes the distance to neighboring property lines and residences and the increased setback minimizes potential impacts to those neighboring properties.

The site security plan is adequate to address any increased risk of crime or security associated with the Proposed Project. As required by the Zoning Code, the site security plan includes security cameras, lighting, alarms, fencing, and allows emergency vehicle access. Additionally, the entire site is secured and all staff, vendors, and visitors will be required to check in 24-hour security staff. Each separate area of the Proposed Project will require individualized key card access. Staff and vendors will be trained on security protocol. The Sonoma County Sheriff has reviewed and confirmed that the site security plan addresses any public safety concerns.

3.4 General Use Permit Finding.

The establishment, maintenance, or operation of the use for which 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 that support this finding are set forth above and include, but are not limited to, the following facts: 1) The cannabis operation would not involve more than one acre of cannabis cultivation area, less than 3% of the project parcel; 2) All cannabis cultivation areas are greater than 100 feet from property boundaries and greater than 300 feet from adjacent off-site residences; 3) The project parcel is greater than 10 acres (37.02-acres); 4) All cannabis cultivation areas will be screened from public view from Purvine Road and Spring Hill Road; 5) 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; 6) All equipment shall be in compliance with the General Plan Noise Standard; 7) Outdoor cultivation activities (except for harvest) will be limited to daylight hours. Deliveries and shipping operations will be limited to the hours of 8:00 am to 5:00 pm Monday through Friday; 8) All cultivation lighting will be contained within the mixed light structure; exterior lighting downward casting and fully-shielded; 9) Hazardous materials will be stored in accordance with local, state and federal regulations; 10) All energy will be 100% renewably sourced; 11) No public access or retail sales are permitted; and 11) The Project parcel is predominantly surrounded by large parcels with agricultural uses.

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 Mitigated Negative Declaration and the Mitigation Monitoring and Reporting Program are adopted.
3. The Appeal of the Board of Zoning Adjustments approval of the Proposed Project use permit is denied.
4. The use permit is granted for the Proposed Project as presented in the application package submitted on August 16, 2017, and updated materials submitted December 3, 2018, and as described in the Conditions of Approval attached hereto as Exhibit A and incorporated herein, subject to design review as required by conditions of approval.
5. 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.