

August 21, 2020

Sonoma County Board of Supervisors
Attn: Katrina Braehmer

RE: Appeal of BZA award of use permit for file no. UPC17-0013, Poole Ridge Farms, LLC cannabis cultivation permit

Dear Sonoma County Board of Supervisors,

We are appealing the Board of Zoning Adjustment's decision to grant a use permit to Poole Ridge Farms, LLC (UPC17-0013) for cannabis cultivation. In granting this permit, the BZA failed to consider timely submitted evidence in public comments that shows how the project fails to meet the requirements of Ordinance No. 6245, is based on erroneous information, is adversely impacting neighbor water supplies, and subverts the purpose of CEQA.

Specifically, the BZA failed to consider:

- Analysis of the applicant's hydro-geology report that demonstrates the conclusion that the project has an adequate, sustainable water supply is based on false assumptions. That in fact, the water supply is failing or has already failed.
- Expert review of the applicant's pump test analysis that demonstrates that the conclusion that the project's water use will not impact neighboring wells neglects geological factors that the analysis itself acknowledges exist. Neighboring wells and springs are in fact being impacted, and are currently dry or exhibiting unprecedented low flows.
- The impact of significant commercial traffic in the form of regular water delivery on the road that serves the neighborhood.
- The removal of at least two stands of mature trees for the purpose of expanding the cultivation site in 2017.
- The expansion of the cultivation site after applying for the penalty relief program.
- The determination that the project merited a Notice of Categorical Exemption from CEQA review, without public notice and comment, despite unauthorized tree removal, extensive grading, paving, and the expansion of the site.

Water Supply

The County cannabis ordinance requires that applicants demonstrate an on-site water supply source adequate to meet all onsite uses on a sustainable basis. With respect to groundwater wells in zone 4, applicants must have a qualified professional prepare a hydro-geologic report providing supporting data and analysis and certifying that the

onsite groundwater supply is adequate to meet the proposed uses and cumulative projected land uses in the area on a sustained basis, and that the operation will not result in or exacerbate an overdraft condition in basin or aquifer or result in well interference at offsite wells. (Sec. 26-88-254(g)(10) of Ordinance No. 6245.)

While Poole Ridge Farms did provide such a report (UPC 17-0013 ATT 12 EBA Engineering Hydro-Geological Report), we contracted with an independent geologist to evaluate that report because of our concerns that the project could impact our groundwater wells. We submitted that report, with an explanatory coverletter, as public comments (See Cleath-Harris Geologists, Inc. report; UPC 17-0013 Public Comment 20200813 Leimkuhler). The Cleath-Harris Report identifies several significant flaws with the EBA Engineering report, and concludes that the EBA Engineering report does not establish that the existing well (Well 2425) provides a sustainable water supply for the project as required under the Ordinance. It does not appear that the BZA reviewed the Cleath-Harris Report or otherwise included it in their considerations before granting the use permit.

Dry Well

The Cleath-Harris Report, looking at EBA's own data, suggested that Well 2425 might already be dry or failing. In fact, this appears to be the case. Only two weeks ago on August 4th, Poole Ridge Farms manager Mo Allali, called neighbor Leroy Robinson, who previously had a business hauling water, and told him that the well was running very low and he needed water. In the last few weeks, the neighbors have observed multiple truck loads of water being delivered to Poole Ridge Farms, including six 1,000 gallon deliveries and at least four 3,400 gallon deliveries. At the BZA hearing, Mr. Murad's attorney claimed that these deliveries were intended to fill the fire protection tanks, but the amounts being delivered, which are continuing daily, along with Mr. Allali's admission that his well is running low, suggest that this is not the case. Rather, it appears that Poole Ridge Farms is depending on trucked water for its operations in violation of the Ordinance and against the requirements of policy WR-2e in the General Plan.

Water Truck Impacts to Road

In addition to demonstrating that the operations do not have the required adequate, sustainable water source, the multiple trips by water delivery trucks are severely impacting the gravel road that serves the neighborhood. The Cannabis Trip Generation Form submitted with the application listed that the project would have 15 average daily trips associated with the project (UPC17-0013 ATT 14 Trip Generation Memo; for some reason, the Staff Report misstates this figure as 9). The form states that road use consists of employee traffic to and from work using passenger vehicles. The form does not take into account the use of commercial water trucks on a road that was not engineered for that kind of regular high intensity impact. The road is gravel (blue rock

that is hauled in) and brown shale - about a 2-mile stretch between the paved road at the bottom and 2425 Pool Ridge. There are over 20 culverts that must be regularly cleaned out and maintained. This significant additional use was not included in the Staff Report and not included in the BZA's consideration of the project's impacts.

Well Interference

Our primary concern is the potential impact to our water supply. All neighbors are currently experiencing novel impacts to their wells. In our case, we have never had water supply issues until this year. Our well is currently dry and our spring is exhibiting unprecedented low flow rates. Therefore Cleath-Harris also evaluated the O'Connor Environmental, Inc, well pumping analysis (UPC17-0013 Analysis Report). As with the EBA Engineering report, Cleath-Harris found significant problems with the OEI Analysis (p 3-4). Specifically, the OEI Analysis did not take into consideration the potential impacts of a geological fault that it identifies as proximate to Well 2425, which would create a barrier to pumping, causing pumping drawdown to be more extensive in the area not impacted by the fault. It also failed to consider the impacts of the pumping on a confined aquifer, which are much more extensive than in an unconfined aquifer, despite their own transmissivity data indicating that this is a confined aquifer. Finally, inhomogenous geologic conditions were not considered in the OEI Analysis. Cleath-Harris concludes that, at the very least, pumping interference over longer terms than 24 hours should be considered in order to thoroughly evaluate potential interference. The BZA did not address the issues raised with the OEI Analysis, and did not respond to public comment concerning the current water supply crisis in the neighborhood.

Our interest in a more thorough analysis of well interference is not merely an academic exercise on our part. We are currently facing a dire water situation, something that has not occurred in the past.

The water situation is further exacerbated by the BZA's last minute decision, at Poole Ridge Farm's request, to expand the proposed canopy size of the project by an extra 2,000 square feet (nearly 15%). Presumably this expansion would represent a proportionate increase in water demand, and therefore adverse impacts to our water supply and road. The potential impacts of this expansion were not included in the water supply studies and demonstrate a lack of concern on the part of the BZA for the concerns of the neighbors.

Mature Tree Removal

Sec. 26-88-254(f)(12) provides that "there shall be no tree removal or timber conversions to accommodate cultivation sites, unless a use permit is obtained." Review of google earth imagery from 2015 to 2020 as provided in UPC17-0013 Public Comment 20200813 and elsewhere, shows the removal of two large stands of mature trees to enable expansion of the cultivation area in 2016, in violation of the terms of the

Ordinance. This issue was also raised during public comments by Linda Lucey, who asked the planners to refer to satellite photos of the site from 2017 to see evidence of timber harvest and clearing without permits (UPC17-0013 ATT 9 Public Comments, p. 19.).



Cultivation site, 2015. Note small cultivation size and mature tree stands. Compare to image from June 2017, below. Note removal of trees and cultivation expansion.



The image below demonstrates further build out of the cultivation in September, 2018.



Expansion of Cultivation Size Beyond Penalty Relief Levels

The tree removal in 2017 expanded the existing cultivation site. Again Linda Lucey addressed this expansion in comments to the planners (UPC17-0013 ATT 9 Public Comments, p. 18.). Kristin Leimkuhler also commented on this expansion and provided photographic evidence in UPC17-0013 Public Comment 20200813 Leimkuhler. Reviewing the imagery from 2016 to 2017 demonstrates the removal of significant numbers of mature redwoods to expand the cultivation area. Reviewing the imagery from 2017 to 2018 demonstrates the significant expansion in the number of plants and size of the cultivation, in violation of the terms of the Penalty Relief program, which expressly states that there is to be no increase in cultivation area. The BZA did not address these concerns, respond to these comments, or acknowledge these violations.

Categorical Exemption under CEQA

Despite consistent and repeated requests for environmental review under CEQA by neighbors (see e.g. UPC17-0013 ATT9 Public Comments, p. 6-8), and a commitment on the part of planner Alberto Santos-Davidson that an initial study would be conducted and the neighbors would have the opportunity to participate in any CEQA hearing (*Id.*), PRMD issued a categorical exemption (undated), with no public notice.

PRMD cites two categorical exemptions for the project, both are inapplicable based on information provided in public comments and available for PRMD review before the exemption was granted.

The categorical exemption for existing facilities (CCR Title 14 Section 15301) applies when a project will involve negligible or no expansion of the use existing at the time the exemption is granted. In this instance, PRMD relies on the assumption that the application for 15,000 sq. ft. of canopy represents existing operations that are “in substantially the same manner and the proposed cannabis cultivation.” As described above and shown in the included satellite imagery taken from the public comments, significant expansion of the outdoor operations occurred between 2016 and 2018. The categorical exemption for existing conditions ignores this expansion and subverts the entire point of having a law that protects environmental quality.

The second categorical exemption cited by PRMD is for minor alterations to land. (CCR Title 14 Section 15304(b).) PRMD states that “the project involves limited changes to the physical environment, including minimal grading, no tree removal and no encroachment into environmentally sensitive areas.” As described above and as cited in the public comments, the project did in fact cause these very changes to the physical environment, including extensive grading and tree removal (redwoods).

An applicant cannot be permitted to make unauthorized, illegal changes, then get CEQA exemption by applying a baseline that uses the changed conditions. While it is the general practice under CEQA to evaluate environmental impacts based on the environment as it exists when a project is approved, nevertheless “prior illegal activity cannot be entirely ignored.” (*Riverwatch v. County of San Diego*, 76 Cal.App.4th 1428, 1453 (1999).) The “prudent method of dealing with alleged prior illegality is to rely in the first instance on direct enforcement by the agencies charged with the responsibility of doing so, and second, to rely on such enforcing agencies to comment in the EIR process...”. (*Id.*).

In this case, the responsible agencies having failed to perform direct enforcement for the violations described in the public comments and demonstrated by the satellite imagery, were deprived of the opportunity to comment on the CEQA process because of the unnoticed categorical exemption. In essence, the categorical exemption has provided the applicant with legal protection for his illegal activities, interfering with potential enforcement actions.

Conclusion

The BZA failed to take into account significant amounts of evidence timely provided through public comment that demonstrates serious issues with the Poole Ridge Farms application. We therefore request that the Board of Supervisors suspend the use permit for cultivation pending a more thorough and detailed review of the application file by BZA, and request that BZA respond appropriately and publically to the serious issues raised therein and as described in this letter.