



## Legislation Details (With Text)

**File #:** 2021-0131  
**Type:** Consent Calendar Item **Status:** Agenda Ready  
**File created:** 2/8/2021 **In control:** Permit and Resource Management  
**On agenda:** 3/16/2021 **Final action:**  
**Title:** Amendments to the Pool Creek Homeowners Association Declaration of Restrictions: CMO19-0009.  
**Sponsors:** Permit and Resource Management  
**Indexes:**  
**Attachments:** 1. CMO19-0009 Summary Final, 2. Attachment 1 Draft Resolution, 3. Attachment 2 Vicinity Map, 4. Attachment 3 Site Map, 5. Attachment 4 Project Description, 6. Attachment 5 Covenants-Conditions-Restrictions, 7. Attachment 6 Project Application, 8. Attachment 7 Public Comment

Date	Ver.	Action By	Action	Result
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**To:** Board of Supervisors  
**Department or Agency Name(s):** Permit Sonoma County  
**Staff Name and Phone Number:** Cecily Condon, 565-1958  
**Vote Requirement:** Majority  
**Supervisory District(s):** Fourth

**Title:**  
Amendments to the Pool Creek Homeowners Association Declaration of Restrictions: CMO19-0009.

### Recommended Action:

Staff recommends adoption of a Resolution acknowledging the amendments to the Pool Creek Covenants, Conditions & Restrictions to add use restrictions, and modify insurance requirements, involving eight parcels created by the Pool Creek Subdivision (Bk. 342, pgs. 1-7) consistent with the membership approval as of March 9, 2019. (County File No. CMO19-0009).(Fourth District)

### Executive Summary:

The Pool Creek Homeowners Association HOA has filed a request for a Certificate of Modification to add use restrictions, and modify insurance requirements for the Pool Creek CC&Rs, involving eight parcels created by the Pool Creek Subdivision (Bk. 342, pgs. 1-7). When the subdivision was originally approved by the Board of Supervisors in 1982, the Pool Creek (HOA) named the County as a third-party beneficiary. Included as a provision in the Covenants, Conditions & Restrictions (CC&Rs) is that certain amendments to the CC&Rs require the Board of Supervisor's approval. On March 9, 2019, the membership of the Pool Creek HOA voted in favor of amending the CC&Rs to add provisions prohibiting commercial cannabis and vacation rentals on any lots within the HOA, and to institute liability insurance against any liability incident to occupation or use of its Common Area and lots. The provision requiring the County Board of Supervisors to consent to certain changes applies to the amendments approved by the membership. The language from the CC&R's, at Article I, Section 2, states in relevant part:

"Each of the Declarant's successors in interest, legal, or equitable agrees by taking an interest in any

portion of this Subdivision after the Restrictions are recorded that the Restrictions shall be effective without the written consent by resolution of the Board of Supervisors of the County of Sonoma; and *notwithstanding any other paragraph herein any attempted amendment of Article III Sections 6, 7, 8, 9; Article VI Section 2; Article VIII; and Article X without that consent is void.*" (italics added for emphasis.)

## Discussion:

### Project Background & Application Information

By Resolution No. 73325, the Board of Supervisors accepted and approved the final map for the Pool Creek subdivision, tract number 613, file number 160-867, on December 21, 1982. The original Pool Creek Covenants, Conditions & Restrictions state that amendments to Article III Sections 6, 7, 8, 9; Article VI Section 2; Article VIII; and Article X must be approved by resolution of the Sonoma County Board of Supervisors.

The inclusion of the provision requiring Board approval for certain amendments to CC&R's is not common practice in subdivisions.

In September 2019, the Pool Creek HOA filed an application with the Permit & Resource Management Department (Permit Sonoma) for a Certificate of Modification to fulfill the requirements of receiving Board approval to amend its CC&R's consistent with its membership vote in March 2019 (file number CMO19-0009).

On March 9, 2019, the membership of the Pool Creek HOA voted in favor of amending the CC&Rs as follows:

1. Article X was approved by membership to add the following provision: (y) Commercial Cannabis. No Lot, Common Area, or any other portion of the subject property, or building or other structure constructed, erected, altered, or maintained thereon, may be used for or in connection with commercial cannabis cultivation, processing, or operations of any kind. Any use within the Subdivision for such purposes shall be deemed a nuisance. Membership Vote (7-1)
2. Article X was approved by membership to add the following provision: (x) Vacation Rentals. No building or other structure, whether temporary or permanent, located upon any portion of the subject property may be used as a "Vacation Rental." The term Vacation Rental, as used herein, shall mean rental to a tenant or subtenant of all, or any portion of, a building or structure for a period of thirty (30) days or less. In the event of a use that is in violation of this paragraph, the Association shall have all right and authority to take all action necessary to evict the tenant, and the owner shall be deemed to have conferred said right and authority upon the Association.
3. Article VI, Paragraph 1.D. was approved by membership to read as follows: Liability insurance insuring the Association and owners against any liability to the public or to any owner, their invitees or tenants incident to their occupation or use of the Common Area and the lots in a combined personal injury and property damage coverage of liability not less than one million dollars (\$1,000,000.00) for each occurrence and two million dollars (\$2,000,000.00) in the aggregate. Coverage to be reviewed at least annually by the Association and increased in its discretion.

The membership voted in favor of commercial cannabis prohibition (7-1), in favor of vacation rentals (6-2), and

in favor of liability insurance (8-0).

As a result of the neighborhood notification of pending application Permit Sonoma received the attached public comment.

The proposed amendments are consistent with the conditions of approval for the Pool Creek Subdivision. Furthermore, HOA's have the authority to restrict uses such as cannabis cultivation and short term rentals though these restrictions remain a private agreement which is not enforced by Permit Sonoma. As noted above, the Pool Creek CC&R's designate the County of Sonoma as third party beneficiary with the right but not the duty to enforce any of the obligations of the HOA.

The County code applies in areas with CC&Rs regardless of whether CC&Rs restrict a property owner's rights more than the County code. Regardless of CC&Rs, the County may accept and approve permits for uses or structures that are contrary to private CC&Rs, and enforcement of CC&Rs remains a civil matter.

#### Assessor Parcel Numbers

The addresses and Assessor Parcel Numbers (APNs) for properties subject to the CC&Rs are as follows:

Address	Assessor Parcel Numbers (APNs)
835 Leslie Rd	079-200-003
833 Leslie Rd	079-200-005
841 Leslie Rd	079-200-007
1501 Leslie Rd	079-200-008
825 Leslie Rd	079-200-009
1100 Leslie Rd	079-200-010
1200 Leslie Rd	079-200-011
1415 Leslie Rd	079-200-012

#### General Background

A homeowner association (or homeowners' association, abbreviated HOA) is a nonprofit corporation or unincorporated association created for the purpose of managing a common interest development. The Davis-Stirling Act governs HOAs in California. It contains provisions respecting the creation and essential attributes of common interest developments, including community projects, condominium projects, planned developments, and stock cooperatives.

The rights and remedies of members of the HOA are controlled by governing instruments which generally include CC&R's, Articles of Incorporation (or association) and bylaws. The provisions of these documents are generally enforceable as private agreements to which the County is not usually party except in specific cases as designated by state law (e.g. The Sea Ranch). In the case of the Pool Creek subdivision the County was

named as a beneficiary and has limited approval authority over the CC&R's.

Restrictions described in the Pool Creek CC&R's govern the Pool Creek Subdivision and each parcel in it, for the benefit of each parcel, the HOA, and the County of Sonoma. The contract runs in favor of the County of Sonoma as third-party beneficiary, under California Civil Code Sec. 1559, which states that a contract, made expressly for the benefit of a third party, may be enforced by the third party at any time before the parties rescind it. According to the Pool Creek CC&R's, the County of Sonoma as third party beneficiary of these restrictions shall have the right, but not the duty, to enforce any of the obligations of the HOA set forth in the CC&R's.

Associations may choose to formally amend and restate their CC&Rs to reflect changes in the law, to address circumstances in the CID that may not have existed when it was developed, or to modify the rights and responsibilities of the association and its members. The Pool Creek CC&R's may be amended by affirmative vote or written consent of members representing a majority of the total voting power of the HOA. Any amendment of Article III Sections 6, 7, 8, 9 governing property rights; Article VI Section 2 governing assessments; Article VIII governing maintenance of common areas; and Article X governing use restrictions, shall be effective with the consent of the Board of Supervisors of the County of Sonoma.

#### **Staff Recommendation**

Staff recommends adoption of a Resolution consenting to the amendments to the Pool Creek Covenants, Conditions & Restrictions to add use restrictions, and modify insurance requirements, involving eight parcels created by the Pool Creek Subdivision (Bk. 342, pgs. 1-7) consistent with the membership approval as of March 9, 2019. The amendments listed here have been approved by a majority of the HOA members, certified in writing, and recorded in the County.

#### **Prior Board Actions:**

December 21, 1982: the Board of Supervisors approved the final map for the Pool Creek Subdivision, tract no. 613

#### **FISCAL SUMMARY**

##### **Narrative Explanation of Fiscal Impacts:**

No fiscal impact.

##### **Narrative Explanation of Staffing Impacts (If Required):**

N/A

#### **Attachments:**

Attachment 1: Draft Resolution

Attachment 2: Vicinity Map

Attachment 3: Site Map

Attachment 4: Project Description

Attachment 5: Covenants, Conditions & Restrictions

Attachment 6: Project Application

Attachment 7: Public Comment

**Related Items “On File” with the Clerk of the Board:**

N/A