



## Legislation Details (With Text)

**File #:** 2022-1440  
**Type:** Regular Calendar Item **Status:** Passed  
**File created:** 12/7/2022 **In control:** Permit and Resource Management  
**On agenda:** 3/14/2023 **Final action:** 3/14/2023  
**Title:** 8:30 AM -Pool Creek Subdivision Modification to the Conditions, Covenants & Restrictions, ZPE22-0150  
**Sponsors:** Permit and Resource Management  
**Indexes:**  
**Attachments:** 1. Summary Report.pdf, 2. Att 1 ZPE22-0150 Resolution.pdf, 3. Att 2 ZPE22-0150 Exhibit A , Pool Creek CC & R Language.pdf, 4. Att 3 ZPE22-0150 Proposed Pool Creek CCRs Strikethrough with Comments

Date	Ver.	Action By	Action	Result
3/14/2023	1	Board of Supervisors	Approved as recommended	Pass

**To:** Sonoma County Board of Supervisors  
**Department or Agency Name(s):** Permit Sonoma  
**Staff Name and Phone Number:** Cecily Condon, (707) 565-1958  
**Vote Requirement:** Majority  
**Supervisory District(s):** Fourth

**Title:**  
**8:30 AM** -Pool Creek Subdivision Modification to the Conditions, Covenants & Restrictions, ZPE22-0150

### Recommended Action:

To conduct a Public Hearing to adopt a resolution approving changes to the Conditions, Covenants & Restrictions requested by the Pool Creek Subdivision Home Owners Association to a) modify language for review of future modifications to the Conditions, Covenants & Restrictions, providing review to issues related to the conditions of approval by the Board of Supervisors or its designee, and (b) reestablish the County as a limited third party beneficiary involving eight parcels created by the Pool Creek Subdivision Assessors book 342, pages 1-7, Leslie Road, Healdsburg. (Fourth District)

### Executive Summary:

The Pool Creek Homeowners Association HOA has filed a request for a Zoning Permit to modify language for the Pool Creek Covenants, Conditions and Restrictions (CC&Rs). The Pool Creek CC&Rs involve 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 CC&Rs is that certain amendments to the CC&Rs require the Board of Supervisor's approval. Current practice in processing subdivisions is to have limited requirement of the Board of Supervisors, or other County entity, to approve of changes to private CC&R's.

On March 9, 2019, the membership of the Pool Creek HOA voted in favor of amending the CC&Rs to include a provision removing certain County obligations as a third party beneficiary including that the County Board of Supervisors to consent to certain changes approved by the membership. To align with current County practice,

the County will remain as a third party beneficiary that has the right but not the obligation to enforce the Declaration of the CC&R's. The requirement for consent of the Board of Supervisors does apply to these amendments.

**Discussion:**

**Subject Parcels and Zoning:**

The following Assessor Parcel Numbers (APNs) originated from the Pool Creek Subdivision and are subject to the CC&Rs: Assessor Parcel Numbers (APNs) 079-200-003, 079-200-005, 079-200-007, 079-200-008, 079-200-009, 079-200-010, 079-200-011, and 079-200-012. Parcels of the Pool Creek Subdivision are zoned Land Intensive Agriculture (LIA), with parcels -011, and 012, designated as split zoned with Rural Residential (RR) and Agricultural Residential (AR), parcel 010 is split by Leslie Road as LIA in the north and Aron the southern portion.

**Background:**

Current processing of Subdivisions does not result in a requirement for any County entity to approve of changes related to CC&R's nor does the County maintain a practice of enforcing CC&R's unless related to mitigation measures. At the time of the Pool Creek subdivision the County practice was to require that the applicant make the County a third party beneficiary of the CC&Rs and to require County approval of changes to the CC&R in order to ensure compliance with Conditions of Approval for the Subdivision and required mitigation measures. Mitigation measures were established through environmental review of the project and will continue to be enforced by the County. The proposed action will limit the requirement for County approval of modifications to the CC&Rs, but would reaffirm through reestablishment the County as a third party beneficiary with the right but not the obligation to enforce the CC&R's. Additionally, the amendment remains consistent with the approved Conditions of Approval for the original subdivision.

**Proposed Amendments:**

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 61 1, 8, 9; Article VI Section 2; Article VIII; and Article X must be approved by resolution of the Sonoma County Board of Supervisors.

On March 9, 2019, the membership of the Pool Creek HOA voted in favour of amending the CC&Rs. The proposed amendments included changes to the Use Restrictions, and Assessment Procedures related to liability insurance. When these changes were brought before your Board for approval the item was continued to include an amendment to remove the County obligation to approve of all modifications to certain provisions. Current proposed amendments include removal of the requirement that the Sonoma County Board of Supervisors approve amendments to the CC&R's that are not related to the conditions of approval while retaining the County as a third party beneficiary. More specifically the following changes are proposed:

Article I is proposed to include:

*Notwithstanding anything in this Declaration to the contrary, prior to terminating this Declaration or rescinding, amending, adding, deleting, or otherwise modifying any provision of this Declaration in a manner that would affect any condition of approval imposed upon the Development by the Board of Supervisors in Resolution Number 73325, the written consent of the Board of Supervisors or its designee shall first be had.*

*Certificates of amendment to this Declaration recorded in Sonoma County Recorder's Office evidencing any such alteration shall have attached the document in which such consent is manifest. Failure to secure the consent required by this section shall render any rescission, termination, amendment, addition, or deletion null, void, and of no force or effect.*

#### **COUNTY AS THIRD-PARTY BENEFICIARY**

*In consideration of the County's approval of the Development, Declarants hereby covenant and agree and each Owner of any Lot subject to this Declaration by the acceptance of any deed thereto, whether or not this covenant and agreement shall be so expressed in said deed, and all heirs, executors, administrators, assigns, and successors in interest of each such Owner are deemed to covenant and agree that the County shall be a third party beneficiary within the meaning of Civil Code § 1559 of this Declaration and the provisions hereof relating to the conditions of approval imposed upon the Development the Board of Supervisors in Resolution Number 73325, and that the County shall have all rights attendant thereto. Such rights shall include, but not limited to, the right, but not the obligation, to enforce this Declaration and the provisions hereof relating the conditions of approval imposed upon the Development by the Board of Supervisors in Resolution Number 73325. Should the County elect to exercise its right to enforce this Declaration and the provisions hereof relating to the conditions of approval imposed upon the Development, the County shall be entitled to recover any costs and expenses it incurs in so doing.*

*The prevailing party in any action brought to enforce the terms of this agreement or arising out of this agreement, with the exception of an action involving the County of Sonoma in its capacity as third-party beneficiary or otherwise, may recover its reasonable costs and expenses including witness, expert, and attorney fees expended in connection with such action(s) from the other party.*

#### **Requirement for Board of Supervisors Approval of Changes to Conditions, Covenants & Restrictions:**

The original Conditions, Covenants & Restrictions contain a provision that no amendments can be made to certain provisions unless approved by the Board of Supervisors. The specific wording is as follows:

*"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."*

Conditions, Covenants & Restrictions typically include Board review and approval of specific parts of the Conditions, Covenants & Restrictions, usually those specified by conditions of approval or which arose as mitigation measures for the project. In these cases, and as will be modified in the CC&Rs, the Conditions, Covenants & Restrictions read as follows:

*"Notwithstanding anything in this Declaration to the contrary, prior to terminating this Declaration or rescinding, amending, adding, deleting, or otherwise modifying any provision of this Declaration in a manner that would affect any condition of approval imposed upon the Development by the Board of Supervisors in Resolution Number 73325, the written consent of the Board of Supervisors or its*

*designee shall first be had. Certificates of amendment to this Declaration recorded in Sonoma County Recorder's Office evidencing any such alteration shall have attached the document in which such consent is manifest. Failure to secure the consent required by this section shall render any rescission, termination, amendment, addition, or deletion null, void, and of no force or effect."*

Staff recommends that the Conditions, Covenants & Restrictions for the Pool Creek Subdivision be modified to include the above language. This addition clarifies that the HOA cannot modify a CC&R provision if it is related to the Conditions of approval of the subdivision, including Mitigation Measures, without the consent and approval of the County. In other words, no change to the CC&Rs that would affect a condition of approval imposed by the County is effective unless it is approved by the Board of Supervisors or designee.

**County as Third Party Beneficiary:**

To ensure the County's ability to enforce conditions of approval, the County requires that, if Conditions, Covenants & Restrictions are required for a project, those Conditions, Covenants & Restrictions include the County as a third party beneficiary. This gives the County the right, but not the obligation, to enforce the provisions of the Conditions, Covenants & Restrictions. Staff recommends that the County's standard provision for third party beneficiary rights be modified such that the County has the right but not obligation for enforcement.

The proposed resolution seeks the following: (a) requires modified language for review of future modifications to the Conditions, Covenants & Restrictions, providing review to issues related to the conditions of approval by the Board of Supervisors or its designee, and (b) requires reestablishment of the County as a limited third-party beneficiary not requiring review and approval of changes to the CC&R's.

**Environmental Review:**

The project is exempt from the California Environmental Quality Act (CEQA) under Section 15061(b)(3) of Title 14 of the California Code of Regulations (CEQA Guidelines) the general rule that where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

**Staff Recommendation:**

Adopt a resolution approving changes to the Conditions, Covenants & Restrictions requested by the Pool Creek Subdivision Home Owners Association to a) provide that review and approval by the Board of Supervisors of future modifications to the Conditions, Covenants & Restrictions is required when the changes are related to the conditions of approval on which the county's subdivision approval was based; and (b) re-establish the County as a limited third party beneficiary involving eight parcels created by the Pool Creek Subdivision Assessors book 342, pages 1-7, Leslie Road, Healdsburg.

**Strategic Plan:**

Not Applicable

**Prior Board Actions:**

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

March 16, 2021: the Board of Supervisors continued a consent item off calendar, directing staff to return with amendments to the CC&R's which would include provisions removing the County's obligation to approve of future amendments.

**FISCAL SUMMARY**

Not Applicable

**Narrative Explanation of Fiscal Impacts:**

Not Applicable

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

Not Applicable

**Attachments:**

Att 1 ZPE22-0150 Resolution

Att 2 ZPE22-0150 Exhibit A, Pool Creek CC&R Language

Att 3 ZPE22-0150 Proposed Pool Creek CCRs Strikethrough with Comments

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

Not Applicable