



## Legislation Text

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**File #:** 2021-0597, **Version:** 1

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**To:** Board of Supervisors

**Department or Agency Name(s):** Permit Sonoma

**Staff Name and Phone Number:** Cecily Condon, (707) 565-1958

**Vote Requirement:** Majority

**Supervisorial District(s):** Fourth

### **Title:**

ITEM OF SIGNIFICANT INTEREST - 1:30 P.M. - 2021-0597 UPC18-0055 Appeal of a Use Permit Approval to Allow Medley Farms Centralized Commercial Cannabis Processing Facility at 2599 Laughlin Road in Windsor.

### **Recommended Action:**

Hold a public hearing and adopt a Resolution denying the appeal, finding the project Categorically Exempt from CEQA, and upholding the Board of Zoning Adjustment's decision to approve the 4,200 square feet of centralized cannabis processing and allow distributor-transport only for the applicant to transport off site all processed cannabis product. (Fourth District)

### **Executive Summary:**

This report presents an appeal of a Board of Zoning Adjustment's decision to approve a Use Permit to allow a centralized commercial cannabis processing operation at 2599 Laughlin Road in Windsor, APN 059-190-025. The Use Permit was approved unanimously (4-0-0 vote) on November 19, 2020. An appeal of the approval was filed by Beverly Schenck, Jean McMullen, Susan Nystrom, Rebecca Nystrom Broto, Jeff LaDow, and Donald Fletcher (appellants) on November 30, 2020.

The project proposes a centralized commercial cannabis processing operation within an existing 4,200 square feet barn on a 28.20-acre parcel zoned Land Intensive Agriculture in unincorporated Sonoma County.

The appeal cites concerns that the proposed project will create a public nuisance or adversely affect the health and safety of residents, specifically noise, odor, traffic and unsafe conditions, referenced in Adopted Ordinance 6245 and Section 26-88-250 (f). During the November 19, 2020 hearing, the BZA heard concerns from the public including all of the appeal-cited concerns and discussed odor, traffic, and public safety/site security. The Commission also raised a concern over protection of the Stream Conservation Area. After considering the public comment and record before it, the Commission added one new Condition of Approval at the hearing that explicitly prohibits any and all project related improvements, parking, and storage within the Stream Conservation Area (Condition of Approval 31) and also determined that the existing conditions were sufficient to address the concerns raised in public comments. The project was approved as proposed consistent with the staff recommendation to the BZA.

### **Discussion:**

#### Project Description Summary

The project would involve the conversion of an existing 4,200-square foot barn on an agricultural property to

process cannabis trucked in from off-site. No on-site cultivation is proposed. Operations would occur seven days a week, 24 hours per day. Shipping and deliveries would be limited to Monday through Friday from 8:00 a.m. to 5:00 p.m. There will be a maximum of three full-time employees associated with the use, all of whom will be 21 years of age or older. The proposal complies with the limitations of use defined in Sonoma County Section 26-88-250(c). The project site will be closed to the public. The proposed project facility would have a security system installed, including security lighting, cameras, locking doors and alarm system protection.

Per the applicant's proposal statement, Medley Farm would process flower from the off-site sister farm operated by Gas Hill Cannabis Solutions Cooperative, Inc (File Number UPC18-0021) and other licensed operations. The transport-only permit would allow the applicant to only transport flower from the sister farm but not transport product from other cultivators, until after processing has been completed. Once processed, the applicant would transport the processed product off-site. Deliveries are expected to use Airport Boulevard or River Road, which provide direct access from Highway 101 to the project site.

The applicant proposes a rainwater capture system on the barn as part of the Water Management Plan so that the project would not increase groundwater use. The project is estimated to use 15,000 gallons of water each year, and the rainwater catchment system is proposed to offset additional water use from the existing on-site well. The proposed rainwater capture plan is anticipated to recover an estimated 86,400 gallons in an average rainfall year from the existing 4,200 square feet of barn roof area. This will be used to irrigate the existing onsite vineyard or existing landscaping associated with the residence, at a rate that surpasses the associated water use of the proposed project, resulting in a net zero increase in groundwater use. The proposed project will connect to the existing septic system.

The existing 4,200 square-foot agricultural barn would be converted to include a hanging drying system, installed from the barn ceiling, to allow the cannabis to dry above the barn floor. The barn will also include approximately 140 square feet of secured storage area and an employee restroom. Loading and unloading will occur from the exterior of the barn with access from two 14-foot-wide roll-up doors along the west side of the building. Approximately 1,220 square feet of the existing graveled area located directly west of the existing structure outside of the roll-up doors will be used for loading and unloading. Four parking spaces will be designated in the existing gravel area north of the loading and unloading area.

Per the Trip Generation Form that the applicant submitted as part of the application materials (Attachment X), the proposed cannabis use is anticipated to generate 180 truck trips from January to December. This equates to an Average Daily Trip (ADT) of 0.5. However, during the applicant's hearing presentation at the BZA, the applicant and representative, clarified that truck traffic would occur primarily following cannabis harvest, generally between September and October.

Per Section 26-88-254 (g) (2), the applicant is required to equip the facility with odor control filtration and ventilation system(s) to control odors, humidity, and mold. The applicant is proposing to install a carbon filtration system into the existing barn. The standard odor mitigation and control condition for cannabis activities, Condition of Approval 19 also requires a negative air pressure/exhaust system, and doors are to remain closed except for loading and unloading of the product to control odor during processing. Additionally, the site is surrounded by planted grape vines and existing vegetation along Mark West Creek, which according to the U.S. Department of Agriculture studies, surrounding an odor-generating land use with a natural buffer or windbreak has been a successful strategy to reduce odor impacts. This is further discussed in Issue #1 Odor.

### Site Characteristics

The 28.20-acre subject site is generally a square shape except approximately 2.2 acres of the southeast corner that are separate parcels (as shown in Attachment 5: Board of Zoning Adjustments Staff Report and Attachments, November 19, 2020). The site is generally flat, and the centerline of Mark West Creek forms the northern property boundary. Sonoma County Airport is located to the northwest (See Attachment 5 Staff Report: Attachment 2: Vicinity Map). The site is located on a publicly maintained through road and is approximately 1,750 feet east from a one-lane bridge across Mark West Creek.

Approximately 25 of the 28 acres are planted with grape vines and is a current operating vineyard. In addition, the subject site contains two single-family residences, including one that serves as farmworker housing for the existing vineyard operation located northwest of the primary residence, two barns, and compacted gravel off-street parking, circulation, and loading areas. The structures are set back at least 650 feet from Laughlin Road. The property is fully fenced and screened from the public right-of-way by the vineyard (See Attachment 5 Staff Report: Attachment 3: Aerial).

As shown on the Existing Site Plan, all of the existing structures are either wholly or partially located within the Riparian Corridor Combining District (RC). The existing barn for the proposed centralized processing operation is bisected by the Riparian Corridor, where most of the north, east, and west sides of the barn are within the setback (See Attachment 5 Staff Report: Attachment 7: Site Plan).

The site has a private driveway, which intersects with Laughlin Road and is solely used by the on-site residences, the property owner, the applicant/operator, and employees. The driveway is approximately 650 feet long and approximately 15 feet wide. At the terminus, the road splits with the project site located to the right and surrounded by compact gravel.

### General Plan Land Use and Zoning

The General Plan Land Use Designation on the parcel is Land Intensive Agriculture 40-acre density. The site is also zoned as Land Intensive Agriculture, Floodplain (F1), Riparian Corridor with 100-foot setback and 50-foot setback (RC100/50), Scenic Resources (SR), and Valley Oak Habitat (VOH).

### Surrounding Land Use and Zoning

The surrounding uses are of similar rural characteristics, with vineyards to the east and west of the site, rural residential to the south, zoned Land Intensive Agricultural (LIA) and the riparian corridor of Mark West Creek extending along the northern and western boundaries of the site. Parcels to the north of the subject site, across Mark West Creek, are zoned Industrial Park (MP) and Heavy Industrial (M2).

There are no sensitive uses in close proximity to the site. The nearest off-site residential structures are located approximately 500 feet south from the proposed project area with rows of vineyard separating the two uses. The Sonoma County Day School is located 0.88 miles to the northeast, across Mark West Creek. Maddux Ranch Regional Park is the closest public park and is located 1.5 miles east of the subject site. Residential districts are located approximately one mile southeast (Rural Residential District) and southwest (Agricultural and Residential District) of the subject site.

### Environmental Determination

The project was found to be categorically exempt from the provisions of the CEQA Guidelines pursuant to the Provisions of Title 14 of the California Administrative Code, Section 15301 (Existing Facilities) in that the project involves the operation, repair, permitting, and minor alteration of an existing private structure and facility. The existing barn currently supports agricultural operations, and the allowance of the permit would result in negligible changes because the existing facility will be converted to a similar use, the storage and processing of cannabis materials. There are no applicable exceptions to the application of that exemption under Section 15300.2, and specifically there are no unusual circumstances that would cause the proposed use or activity to have a significant effect on the environment. The project consists of interior alterations of an existing barn, and no additional land disturbance would take place on-site. Conversion of the barn building interior with processing racks and other improvements will not alter existing site conditions. As required by Sonoma County Zoning Regulations Article 65 - Riparian Corridor Combining Zone, the proposed rainwater capture system would be placed outside of the riparian corridor and would ensure no impact to existing water resources. Conditions of approval would ensure the required 15,000-gallon water storage tank and associated equipment would be located within the barn or on previously developed area, south of the barn and out of the riparian conservation area. Furthermore, the project would not result in an overall increase in impervious surface on site, and conditions of approval specify that any remodeling of the barn does not expand its footprint nor further intrude into the Riparian Corridor. The project would not involve any tree removal and the use would be authorized on a limited-term basis.

#### Issues Discussed at the Board of Zoning Adjustments Hearing and Raised in the Appeal Letter

The appellants contend that the project is inconsistent with Section 26-88-250 (f).

*“Health and Safety. Commercial cannabis activity shall not create a public nuisance or adversely affect the health or safety of the nearby residents or businesses by creating dust, light, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, unsafe conditions or other impacts, or be hazardous due to the use or storage of materials, processes, products, runoff or wastes.”*

Specifically, the appeal form cited the project is inconsistent due to odor, noise, traffic and site security.

#### 1. Odor

In adopting the Cannabis Ordinance, the Board of Supervisors found that air quality and odor issues could be addressed through compliance with operating standards described in Section 26-88-254(g)(2).

*“Air Quality and Odor. All indoor and mixed light cultivation operations and any drying, aging, trimming and packing facilities shall be equipped with odor control filtration and ventilation system(s) to control odors, humidity, and mold. All cultivation sites shall utilize dust control measures on access roads and all ground disturbing activities.”*

Generally, odor can be reduced by implementing required setbacks. According to a 2007 U.S. Department of Agriculture Natural Resources Conservation Service (USDA NRCS) study, surrounding an odor-generating land use with a natural buffer or windbreak has been a successful strategy to reduce odor impacts. The buffer/windbreak strategy is most effective when parcels are large (at least 10 acres) and land uses are far apart, maximizing odor dissipation with distance between uses. Odor plumes generally travel along the ground in the direction of the prevailing winds. However, tree and shrub buffers have been found to deflect the odor plume above the vegetation layer where it is diffused into the atmosphere. Additionally, the cannabis

ordinance states that cannabis operations must be 300 feet from residences and businesses and 1,000 feet from schools, parks, and other sensitive uses, which the project is consistent with. The Board of Supervisors found that the required minimum parcel size, setbacks and indoor operations with odor control ventilation systems are sufficient in controlling odor.

#### Staff Analysis

The proposed site is located on 28.20 acres, where much of the land is covered with grape vines and it is buffered to the north by dense vegetation and Mark West Creek. The project would implement odor control systems and be conditioned to ensure that off-site odor, originating from the operation, would not be detectable in the surrounding areas. Odor control and management measures would meet all requirements outlined in Section 26-88-254(g)(2) of the Cannabis Ordinance. The existing barn will be installed with a carbon filtration and the condition of approval requires a negative air pressure/exhaust system and doors are to remain closed except for loading and unloading of the product to control odor during processing. The processing facility meets and exceeds the required 300-foot setback from adjacent homes, where the closest residential structure is located approximately 500 feet to the south of the project site. From aerials of the surrounding areas, a covered structure that could be a barn or accessory dwelling unit is located approximately 430 feet on one of parcels. Additionally, the processing facility is located greater than 1,000-feet required from sensitive uses, defined as schools with K-12 programming, childcare centers, public parks and alcohol and drug rehabilitation facilities.

As a condition of approval, the applicant is required to keep a log of odor incidents, odor control equipment inspection results and actions take to resolve any odor issues and submit to Permit Sonoma annually. If verified odor complaints are received, staff may bring this matter back to the Board of Zoning Adjustments for review of additional measures to reduce odor generation, such as daily inspections and reporting (Condition of Approval 19). The project would also be subject to odor inspections through conditions of approval (Condition of Approval 9.c).

#### 2. Noise

Section 26-88-254 (g)(6) requires that cannabis:

*"shall not exceed the general plan noise standards Table NE-2, measured in accordance with the Sonoma County noise guidelines."*

#### Staff Analysis

The subject site is a working vineyard, and the proposed project would be co-locating with the existing operations. The Permit Review Health Specialist reviewed the project and found that it would comply with the general plan noise standards for maximum allowable exterior noise exposures (Table NE-2) and General Plan policy NE-1c - Control Non-Transportation Related Noise from New Projects. Condition 87 has been added to enforce and verify compliance with the general plan noise standards in Table NE-2. In addition, to further reduce potential noise, Condition 88 has been added to require that grinding, chipping, and shredding of green waste is required to be done within or behind the barn. Though not expected, if verified noise complaints are received, Condition 89 requires the applicant conduct a noise study and submit to the Project Review Division within 60 days of the notification from Permit Sonoma that a noise complaint has been received to identify additional noise control measures.

### 3. Traffic

Appellants have stated concern that the proposed use along Laughlin Road will worsen traffic conditions on Laughlin Road for local residents and bicyclists, in particular the one lane bridge over Mark West Creek.

#### Staff Analysis

Due to the scope of the operation and anticipated 9.5 Average Daily Trips (ADT) generated by operations, as stated on the submitted Cannabis Trip Generation Form (Attachment 10), the project is not anticipated to be detrimental to public roads or traffic. The site's location on Laughlin Road, a publicly maintained "connective" road, can be most directly accessed via River Road and Airport Road from Highway 101. This is defined as a local road that connects to other roads.

According to the Department of Transportation and Public Works Traffic Volume mapping tool, past its intersection with River Road, Laughlin Road has recorded approximately 2,500 ADTs. At the one-lane bridge that crosses Mark West Creek, the mapping tool recorded approximately 2,600 ADTs. Therefore, the estimated 9.5 ADT from the proposal would be not greatly increase the use of the public facilities to reach the project site.

The project proposes to use three full-time employees to support processing operations. Although the proposed use would occur 7 days a week, 24 hours a day, deliveries are limited to Monday to Friday 8:00 a.m.-5:00 p.m., thereby not resulting in traffic impacts during non-work hours or weekends.

The Department of Transportation and Public Works reviewed the project and did not find that it presented traffic issues that required further study of modifications to the project, surrounding roads, or bridge. There would be adequate parking available to employees on site, including an ADA parking space next to the indoor facility. The project would not significantly increase the use, or degrade the condition, of Laughlin Road.

### 4. Security

The appellants assert in their appeal documentation that cannabis operations as proposed here "creates a public nuisance or adversely affects the...safety of the nearby residents by creating ... unsafe conditions".

Because cannabis crops have cash value that may attract criminal interest, the Cannabis Ordinance includes a requirement that the operator create and implement a Security Plan to address safety concerns. The proposed project includes a Security Plan that complies with County Code. For security reasons, the security plan is confidential, but it includes requirements for security cameras, motion-sensor lighting and alarms, screening, and fencing, with locking gates, consistent with the Municipal Code.

In adopting Ordinance No. 6189 and No. 6245, the Board of Supervisors found that security issues related to Cannabis Projects could be addressed through compliance with the Zoning Code Security and Fencing requirements, set forth in Section 26-88-254(f)(21):

*"A Site Security Plan shall be required. All Site Security Plans shall be held in a confidential file, exempt from disclosure as a public record pursuant to Government Code Section 6255(a). Security cameras shall be motion-sensor and be installed with capability to record activity beneath the canopy but shall not be visible from surrounding parcels and shall not be pointed at or recording activity on surrounding parcels. Surveillance video shall be kept for a minimum of 30 days. Video must use standard industry format to support criminal*

*investigations. Lighting and alarms shall be installed to insure the safety of persons and to protect the premises from theft... Razor wire and similar fencing shall not be permitted. Weapons and firearms at the cultivation site are prohibited. Security measures shall be designed to ensure emergency access in compliance with fire safe standards. All structures used for cultivation shall have locking doors to prevent free access."*

#### Staff Analysis

The applicant has supplied the required security plan. Because security plans are not subject to public disclosure, the following summary of the security plan is provided to show that all elements of a security plan required under the Cannabis Ordinance have been met for this project. In summary, under the plan, the proposed use would have no external evidence of cannabis operations as the existing barn has no windows. Additionally, the plan provides that public access is limited with a gate that visitors or employees would need a code to access. The plan provides for fully screening the site from public view due to the facilities being located internal to the lot. Mature perimeter vegetation screens the site to the north, and when in season, vineyards would detract views from south and the public right-of-way. The applicant proposes security measures to address the continued presence of employees of the vineyards in addition to the employees of the processing facility. Under the security plan: (1) motion sensing security cameras with capability to record activity beneath the canopy will be installed; (2) security cameras will not be visible from surrounding parcels; (3) security cameras will not be pointed at or record activity on surrounding parcels; (4) surveillance video will use standard industry format to support criminal investigations and be kept for a minimum of 30 days; (5) installed security surveillance cameras will be maintained to provide coverage on a twenty-four hour basis of all exterior and internal areas; (6) lighting and alarms will be installed to ensure the safety of persons and to protect the premises from theft; (7) all structures used for cultivation will have locking doors to prevent free access; (8) locks and other security measures will ensure emergency access in compliance with fire safe standards; (9) cashless operations; (10) on-site security; (11) access control mechanisms (key cards or access codes); and (12) safety and security staff training. Additionally, weapons and firearms at the cultivation site are prohibited. The plan does not provide for razor wire or similar fencing. All exterior lighting would be downward casting and not project on to neighboring properties or the night sky. The submitted security plan, as summarized above, meets all required elements of the code and applicant is required to follow it under the terms of the use permit and ordinance requirements.

The security section of the Cannabis ordinance was developed with the coordination of law enforcement within Sonoma County. The Sonoma County Sheriff's office provided a Cannabis Security Workshop on April 5, 2018 which included the best practices for business crime prevention. In the presentation, the Sheriff's Office highlighted best practices for cannabis business safety security standards which included security lighting, visibility, access control, alarm systems and security cameras, all of which are also described in the Cannabis Ordinance. The Sonoma County Sheriff's office also provided expertise in helping shape the Cannabis Ordinance security sections, as features in the Sheriff's best management practices and minimum-security standards being incorporated into the security section of the ordinance. Applicants who comply with the security section are complying with Law Enforcement's best management practices and the Ordinance. For these reasons, the required measures are adequate to deter crime and address public safety and security.

#### Staff Recommendation

Staff recommends the Board deny the appeal and uphold the Board of Zoning Adjustment's decision to approve the request, subject to the attached Conditions of Approval

**Prior Board Actions:**

None

**FISCAL SUMMARY**

**Narrative Explanation of Fiscal Impacts:**

N/A

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

N/A

**Attachments:**

ATT 1: Conditions of Approval, November 19, 2020

ATT 2: Appeal Submitted by Appellants, November 30, 2020

ATT 3: Site Map

ATT 4: Board of Zoning Adjustments Minutes, November 19, 2020

ATT 5: Board of Zoning Adjustments Staff Report and Attachments, November 19, 2020

ATT 6: Board of Zoning Adjustments Public Comments

ATT 7: Board of Zoning Adjustments Resolution

ATT 8: CEQA Notice of Exemption

ATT 9: Trip Generation Form, January 4, 2019

ATT 10: Draft Board of Supervisors Resolution

ATT 11: Security and Traffic Memo

ATT 12: Shipping and Receiving Plan

**Related Items "On File" with the Clerk of the Board:**

None