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Title: 10:00 A.M. - Public Hearing - Appeal of Planning Commission Denial of Major Use Permit Resubmittal 20-22 and IS/MND 20-25 "WeGrow, LLC", Middletown. APN's 013-060-40 (cultivation site) and 013-014-03 and 11 (clustering sites). Otchikova Zarina (Appellant) (AB 22-01).

Sponsors: Community Development

Indexes:

Code sections:

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Date	Ver.	Action By	Action	Result
5/17/2022	1	BOARD OF SUPERVISORS		

Memorandum

Date: May 17, 2022

To: The Honorable Lake County Board of Supervisors

From: Michael McGinnis, Principal Planner

Subject: **Appeal of Planning Commission Denial of Major Use Permit Resubmittal 20-22 and IS/MND 20-25 “WeGrow, LLC”, Middletown.** APN’s 013-060-40 (cultivation site) and 013-014-03 and 11 (clustering sites).

Executive Summary:

EXHIBITS:

- A1 - APPEAL
- A2a - 02-24-2022 STAFF REPORT
- A2b - PUBLIC AGENCY COMMENTS 1
- A2c - PUBLIC AGENCY COMMENTS 2
- A2d - PUBLIC AGENCY COMMENTS 3
- A2e - PUBLIC AGENCY COMMENTS 4
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- A10 - INITIAL STUDY ADDENDUM
- A11 - BIOLOGICAL ASSESSMENT
- A12 - TREE REMOVAL AND REVEGETATION PLAN WITH BOTANICAL INITIAL STUDY
- A13 - TREE REMOVAL AND REVEGETATION PLAN MITIGATION ADDENDUM
- A14 - MITIGATION GEOLOGY AND SOILS
- A15 - CULTURAL RESOURCES
- A16 - APPLICANTS LETTER IN SUPPORT OF THE PROJECT
- A17 -- PC MINUTES

I. BACKGROUND

The appellant-applicant is appealing the Planning Commission’s February 24, 2022 4-0 denial (four Planning Commissioners present) of a Major Use Permit Resubmittal (UP-22) to permit a Commercial Cannabis Cultivation Major Use Permit and Mitigated Negative Declaration of the following uses located at 16750 Herrington Road, Hidden Valley Lake (cultivation site); 17610 Sandy Road and 19678 Stinson Road, Middletown (cluster sites), APN’s 013-060-40 (cultivation site); 013-014-03 and 11 (cluster sites).

Fifteen (15): A - Type 3B: “Medium Mixed Light” Licenses: Greenhouse cultivation for adult use cannabis using light deprivation and/or artificial lighting in the canopy area of 22,000 square feet of total canopy size on one premise per license.

- *The total proposed mixed light (greenhouse) canopy is estimated to be 332,160 square feet and will be cultivated in 32 mature greenhouses, 10,380 sq. ft. of canopy area within each mature greenhouse.*
- *Thirty-four (34) 90' x 120' greenhouses (two of which will be used for immature plants, not counted toward mature canopy area)*
- *Four (4) 5,000 sq. ft. drying buildings*
- *Two (2) 200 sq. ft. sheds*
- *Twenty (20) 5,000 gallon water tanks*
- *Removal of 130 blue oak trees*

One (1): A - Type 13 “Self-Distribution License”

The combined parcel area is approximately 387,600 sq. ft. and is located at 16750 Herrington Road, Hidden Valley Lake (cultivation site); 17610 Sandy Road and 19678 Stinson Road, Middletown (cluster sites).

A Major Use Permit is required for this project pursuant to compliance with State regulations; the County of Lake General Plan; the Middletown Area Plans; Article 68, Article 27 Part 27.11 (at), and 51.4 of the County of Lake Zoning Ordinance.

Project Description

Applicant: Otchikova Zarina

Owner: WeGrow, LLC

Location: **16750 Herrington Road, Hidden Valley Lake (cultivation site); 17610 Sandy Road and 19678 Stinson Road, Middletown (cluster sites), CA 95461**

APN: 013-060-40 (cultivation site); 013-014-03 and 11 (cluster sites).

Parcel Size: 309 total combined acreage

General Plan: Rural Lands

Zoning: “RL-RR-WW”: Split: Rural Lands-Rural Residential-Waterway

Flood Zone: “D” Areas of undetermined

Cultivation Area: 387,600 sq. ft. (18.75 acres) in total.

Canopy Area: Estimated at 322,160 sq. ft. (15 acres) in total.



Surrounding Zoning and Land Use:

North, South: “RR” Rural Residential; parcels range between 5 and over 40 acres in size. Most are developed with dwellings.

West: “RR” Rural Residential and “R1” Single Family Residential; developed lots including lots within the Hidden Valley Lake development.

North-East: “RL” Rural Lands zoning; large undeveloped lots.

The subject site is within the Middletown Area Plan’s boundary, which includes Coyote Valley (located south of the subject site) and Hidden Valley Lake. The proposed cultivation site is not within a Community Growth Boundary, and is located about 2,300 feet southeast of the outer border of the Hidden Valley Lake development.

II. APPEAL DISCUSSION

SEC. 21-58.30 BOARD OF SUPERVISORS APPEALS. Decisions of the Planning Commission may be appealed.

Response: *The appellant-applicant submitted written concerns regarding this application on March 2, 2022.*

- (b) Timeliness, form, filing and fee: An appeal of a decision by the Planning Commission shall be filed with the Clerk of the Board of Supervisors within seven (7) calendar days of the decision on the prescribed form and accompanied by the applicable fee in the amount to be set by the Board of Supervisors. **(Ord. No. 1749, 7/7/1988)**

Response: *This appeal was filed on March 2, 2022 within the appeal period on the correct application form and with the correct application fee.*

- (c) Required documents: An appeal shall be accompanied by a written statement setting forth the grounds upon which the appellant asserts there was an error or abuse of discretion by the Planning Commission. **(Ord. No. 1897, 12/7/1989)**

Response: *The appellant-applicant submitted a written description of why the appellant believes the Planning Commission erred in its decision to deny this land use permit and CEQA review (IS/MND). The appellant-applicant cited several specific aspects of the PC's decision as being deficient. The appellant-applicant notes that the project was approved previously (on April 22, 2021 and by a 4 to 1 vote) by the Planning Commission. The appellant-applicant maintains that all of the requirements for issuance of a major use permit were filed in 2020. The appellant-applicant maintains that the Planning Commission's denial of the project is based on "vocal opposition members" of the community rather than the substantial evidence of a significant environmental impact. The appellant-applicant notes that the Planning Commission decision was "arbitrary within the meaning of California law". Please refer to EXHIBIT A1 - APPEAL.*

58.32 Effect of filing the appeal: An appeal shall stay the proceedings and effective date of the decision of the Planning Commission until such time as the appeal has been acted on as hereinafter set forth.

Response: *The Planning Commission denied file no. UP 20-22 on February 24, 2022. The appeal was filed on the 8th day of the appeal period for this action (March 2, 2022).*

58.33 Forwarding of record: Prior to the hearing on said appeal, the Planning Department shall transmit to the Board of Supervisors pertinent permit materials including all maps and data and a staff report setting forth the reasons for the decision by the Planning Commission.

Response: *All applicable documents, maps, Planning Commission staff report, hearing minutes and public testimony received by staff have been included with this Memorandum as EXHIBITS A1 through A17.*

58.34 Public hearing and notice: Following the filing of an appeal, the Board of Supervisors shall hold a public hearing on the matter scheduled and noticed as required in Section 57.3. The public hearing shall be de novo and all interested persons may appear and present evidence.

Response: *A Public Hearing notice will be sent upon submission of this Memo and Exhibits to the Board of Supervisors for Review. Notice will be sent to all known property owners within 750 feet, and persons filing written and emailed comments prior to the Board of Supervisors hearing.*

III. Project Analysis

1. Article 51.4, Major Use Permits, Findings Required for Approval

The Board of Supervisors may approve or deny this appeal. A denial of the appeal would cause the Use Permit and IS/MND to be denied. A denial of the appeal would result in the denial of the Major Use Permit and Mitigated Negative Declaration. The Planning Commission's decision on February 24, 2022 was based on the following required findings:

1. That the establishment, maintenance, or operation of the use applied for will, under the circumstances of the particular case, be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use, and will be detrimental to property and improvements in the neighborhood or the general welfare of the County.

Response: *Commercial Cannabis Cultivation Operation is a permitted use in the "RL" Rural Lands Zoning District upon issuance of a Major Use Permit pursuant to Article 27 of the Lake County Zoning Ordinance. Prior to the applicant constructing any type of structure(s), the applicant shall obtain the necessary permits from the appropriate Federal, State and/or Local government agencies.*

The environmental analysis (EXHIBIT A10 - INITIAL STUDY) determined that the use would be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood as all potential impacts have not been reduced to less than significant with the incorporated mitigation measures and Conditions of Approval. Potential impacts identified relate to air quality, biological resources, cultural/tribal/ geologic resources, energy, noise, transportation, soils and wildlife. The applicant proposes to remove 130 mature blue oak trees and natural habitat area for the development of the proposed cannabis cultivation site, as discussed in detail in the Planning Commission report dated February 24, 2022. Large-scale removal of oak forest ecosystems for cannabis cultivation can cause wide-ranging and significant impacts on terrestrial and aquatic ecosystems. These impacts include loss and fragmentation of sensitive native habitat. The existing status of oak ecosystems in the region is influenced by the impacts and stressors associated with the impacts of fire, disease, storms, drought, land-use, habitat loss, and the introduction of non-native species. Native tree and vegetation removal reduce habitat availability to wildlife, and can have significant impacts on a range of ecosystems services that are provided by oak ecosystems, such as the storage of carbon and water, the protection of soil composition, nutrient cycling and moisture retention. In addition, removal of native oak trees and roots structures destabilizes surrounding soil, increasing the likelihood of landslides and sedimentation. This is especially the case in areas that have a steep slope density. In the case of WeGrow, the scale of proposed native oak tree removal cannot be reduced by mitigation measures to a less than significant level. The applicant has not attempted to "minimize" the proposed removal of native oak trees associated with the project. The environmental impacts associated with large-scale tree removal may have significant impacts on wildlife, and may have potential impacts that contribute to impacts on the site from soil loss and erosion, and other environmental effects. While mitigation measures are proposed, large-scale oak tree removal remains a significant impact that cannot be mitigated to a less than significant impact. Article 27.11.iii is very specific on how tree removal should be considered for this proposed project. Moreover, the scale of oak tree removal requires a State commercial forestry license. The scale of oak tree removal is also inconsistent with the State guidelines under 2009 CA Fish and Game Code Section 1360-1372: Article 3.5 Oak Woodlands Conservation Act. Please refer to Exhibit A2a - 02-24-2022 STAFF REPORT.

2. That the site for the project is adequate in size, shape, location, and physical characteristics to accommodate the type of use and level of development proposed.

Response: *Existing development on the project site consists of a 4000 sq. ft. barn, two permitted groundwater wells, a septic system, and an existing 12' to 14' wide interior gravel driveway. The site for the proposed project is +309 acres in combined size. The applicant needs 300 acres for fifteen (15) A - Type 3B licenses for 300 acres, and five acres is required for the A-Type 1C license. The proposed canopy area is estimated to be about 332,160 sq. ft. of canopy area, and 387,600 square*

feet of mixed light cultivation area. The proposed project meets the lot size requirement. The cultivation site is set back a minimum of 100 feet from the nearest property line. The nearest dwelling is about 1100 feet away from the proposed cultivation area. However, the proposed cultivation area would include a plan to remove 130 mature oak trees.

3. That the streets, highways and pedestrian facilities are reasonably adequate to safely accommodate the specific proposed use.

Response: *The site is served by Herrington Road, a private roadway that terminates onto the subject site. The employees would also access Tinilyn Road and Spruce Grove Road. The applicant is proposing improvements to the private interior driveway to make it compliant with Public Resources Code (PRC) 4290 / 4291 (CalFire) road standards, which is a requisite whenever a project requires building permits such as this one. The interior access road is also required to meet PRC 4290 and 4291 road standards prior to final building inspection and consequently the start of cultivation under this permit.*

The applicant has also submitted a Traffic Study, prepared by DTN Engineering, Consulting and Permitting, undated but received on August 21, 2021 by the County. The study concludes that the road system serving the property has a capacity of 336 daily vehicle trips, and even with this project and its projected 40 average daily trips, the road system will remain well below capacity. The study recommended no additional road improvements as the result of this project. Please refer to EXHIBIT A7 - TRAFFIC ANALYSIS.

4. That there are adequate public or private services, including but not limited to fire protection, water supply, sewage disposal, and police protection to serve the project.

Response: *This application was routed to all of the affected public and private service providers including Public Works, CalTrans, CalFire, Special Districts, Environmental Health, PG&E, and to all area Tribes. Relevant comments may be found in EXHIBIT A2b-f - PUBLIC AGENCY COMMENTS. Comments were received that would affect a substantial adverse impact determination.*

Pursuant to Article 27 (Table B) of the Lake County Zoning Ordinance, the cultivation of cannabis is an allowable use within the "RL" Rural Lands land use designation upon securing a Minor/Major Use Permit. However, this particular project is near Hidden Valley Lakes Development, although the cultivation area is outside the 1000 foot setback required under Article 27. Staff has received multiple verbal, written and emailed comments for this project, including residents from Hidden Valley Lake area who are opposed to the project. Several adverse comments were received by the California Highway Patrol, the Audubon Society, the Coast Oak Society, and from the Middletown Area Town Hall (MATH) in Middletown.

Staff contacted PG&E on August 15, 2021 to discuss the existing constraints associated with the energy availability and needs for the commercial project (see EXHIBIT A8 - POWER AVAILABILITY AND ANALYSIS and EXHIBIT A9 - POWER REQUIREMENTS AND RESPONSES). PG&E stated that the applicant would need to upgrade the grid at the applicant's cost. PG&E also noted that an energy grid upgrade could take up to four years or longer. The applicant was made aware of this following the August 15, 2021 discussion with PG&E. Based on the PG&E requirement for upgrades to the power grid for the site, the applicant proposed that limited power be provided to the greenhouses on an interim basis until the grid gets upgraded.

The appellant-applicant submitted a written description of why the appellant believes the Planning Commission erred in its decision to approve this land use permit and CEQA review (IS/MND). The appellant-applicant cited several specific aspects of the PC's decision as being deficient. The appellant-applicant notes that the project was approved previously in 2021 by the County Planning Commission by a 4-0 vote. The appellant maintains that all of the requirements for issuance of a major use permit were filed in 2020. The appellant argues the County Planning Commission denied the project based on "vocal opposition members" of the community rather than the substantial evidence of a significant environmental impact. The appellant-applicant notes that the Planning Commission decision was "arbitrary within the meaning of California law". Please refer to EXHIBIT A1 - APPEAL.

5. That the project is in conformance with the applicable provisions and policies of this Code, the General Plan and any approved zoning or land use plan.

Response: The project does not meet all requirements and development standards of the Commercial Cannabis ordinance Article 27(at)1.iii(a) prohibits tree removal for cultivation of cannabis. The removal of any commercial tree species as defined by the California Code of Regulations section 895.1, Commercial Species for the Coast Forest District and Northern Forest District, and the removal of any true oak species (*Quercus* species) or Tan Oak (*Notholithocarpus* species) for the purpose of developing a cannabis cultivation site should be avoided and minimized. This shall not include the pruning of any such tree species for the health of the tree or the removal of such trees if necessary for safety or disease concerns.

The General Plan does not have any provisions for commercial cannabis, but does have provisions for economic development and related policies that the project is consistent with (Please refer to the Staff Report in EXHIBIT A2a - 02-24-2022 STAFF REPORT).

6. That no violation of Chapters 5, 17, 21, 23 or 26 of the Lake County Code currently exists on the property, unless the purpose of the permit is to correct the violation, or the permit relates to a portion of the property which is sufficiently separate and apart from the portion of the property in violation so as not to be affected by the violation from a public health, safety or general welfare basis.

Response: The Community Development Department has no record of violations of Chapters 5, 17, 21, 23 or 26 of the Lake County Code for this property.

Article 27, sub. (at); Three Required Findings for Commercial Cannabis Approval

In addition to the findings required for a Major Use Permit, the following findings are required for approval of a cannabis-specific Major Use Permit:

1. The proposed use complies with all development standards described in Chapter 21, Article 27, Section 1.i.

Response: The Planning Commission did not find that the project was in compliance with all applicable standards and criteria (Please refer to the Staff Report in EXHIBIT A2a. Article 27(at)1.iii(a) prohibits tree removal for cultivation of cannabis.

2. The applicant is qualified to make the application described in Chapter 21, Article 27, Section 1.ii.(g).

Response: The applicant has passed 'live scan', and is the owner of the property. The applicant is qualified to make this

application.

3. The application complies with the qualifications for a permit described in Chapter 21, Article 27, Section 1.ii.(i).

Response: The Planning Commission did not find that the project was in compliance with all applicable criteria for a Major Use Permit (Please refer to the Staff Report in EXHIBIT A2a -- STAFF REPORT and A17 -PC MINUTES. Article 27(at)1.iii(a) prohibits tree removal for cultivation of cannabis, and the removal of 130 blue oak trees proposed by the applicant cannot be reduced to a level of significant by the applicant's proposed mitigation measures.

If not budgeted, fill in the blanks below only:

Estimated Cost: _____ Amount Budgeted: _____ Additional Requested: _____ Future Annual Cost: _____

Consistency with Vision 2028 (check all that apply):

Not applicable

- Well-being of Residents
- Economic Development
- Community Collaboration
- Public Safety
- Infrastructure
- Business Process Efficiency
- Disaster Prevention, Preparedness, Recovery
- County Workforce
- Clear Lake

Recommended Action:

CONCLUSION/RECOMMENDATION.

Staff recommends that the Board of Supervisors:

Deny the Appeal (AB 22-01); uphold the Planning Commission's decision to deny the Major Use Permit Resubmittal (UP 20-22) and Initial Study/Mitigated Negative Declaration Revision (IS 20-25).

Appeal Denial

I move that the Board of Supervisors make an intended decision to **deny the Appeal AB 22-01.**

Initial Study (IS 21-10)

I move that the Board of Supervisors find that the Major Use Permit Resubmittal (UP 20-22) applied for by **WeGrow, LLC** on a property located at **16750 Herrington Road, Hidden Valley Lake (cultivation site); 17610 Sandy Road and 19678 Stinson Road, Middletown (cluster sites), CA** further described as **APN: 013-060-40 (cultivation site); 103-014-03 and 11 (clustering sites)** will have a significant effect on the environment and therefore a mitigated negative declaration shall not be adopted per the findings for denial listed in the Planning Commission staff report dated **February 24, 2021.**

Major Use Permit Denial

I move that the Board of Supervisors find that the Major Use Permit (UP 20-22) applied for by **WeGrow, LLC** on a property located at **16750 Herrington Road, Hidden Valley Lake (cultivation site); 17610 Sandy Road and 19678 Stinson Road, Middletown (cluster sites), CA** further described as **APN: 013-060-40 (cultivation site); 103-014-03 and 11 (clustering sites)** does not meet the requirements of Sections 27(at) and 51.4 of the Lake County Zoning Ordinance and that the Board of Supervisors has reviewed and considered the Mitigated Negative Declaration which was denied for this project and the Major Use Permit not be granted subject to the conditions and with the findings listed in the Planning Commission staff report dated **February 24, 2021.**