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Title: 1:30 P.M. - HEARING - Consideration of a) Appeal (AB 23-03) of Planning Commission’s Decision to Revoke a Major Use Permit (UP19-15) for Legendary Farms, at 2290 Soda Bay Road, Lakeport (APN 008-010-29) for High Severity Violations and Deem Justin Smith and Melissa Smith Responsible Persons; and b) Appeals (AB 23-02 Roberto Estrada; and AB 23-04 Michael Wegner) of the Planning Commission’s Decision to Deem These Persons as Responsible Persons for the High Severity Violations at Legendary Farms (UP 19-15)

Sponsors: Community Development

Indexes:

Code sections:

Attachments: 1. A - Planning Commission Staff Report and Attachments, 2. B - Planning Commission Minutes_20230928, 3. C - Grant Deeds, 4. D - Tirado Declaration, 5. E - Request for Administrative Hearing, 6. F - Appeal 23-02_Estrada, 7. G - Appeal AB 23-03_Smith, 8. H - Appeal AB 23-04_Wegner, 9. Letter_Emerald Law_20240617, 10. Letter_Emerald Law_20240702, 11. Kali Perkins_Soda Bay Objections for submission with Exhibits, 12. Joe Rogoway_20240711- UP 19-15 Revocation Appeal- Planning Commission Ultra Vires- Demand to Set Aside - Mandamus

| Date | Ver. | Action By | Action | Result |
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Memorandum

Date: July 16, 2024

To: The Honorable Lake County Board of Supervisors

From: Mireya G. Turner, Community Development Director

Subject: 1:30 P.M. - Consideration of a) Appeal (AB 23-03) of Planning Commission's Decision to Revoke Major Use Permit (UP 19-15) for Legendary Farms, at 2290 Soda Bay Road, Lakeport (APN 008-010-29) for High Severity Violations; and b) Appeals (AB 23-02, 23-03, and 23-04) of the Planning Commission's Decision to Deem These Persons as Responsible Persons for the High Severity Violations at Legendary Farms (UP 19-15)

Executive Summary: On September 28, 2023, the Planning Commission unanimously approved the revocation of the major use permit (UP 19-15) for one acre of outdoor cannabis cultivation for Legendary Farms, located at 2290 Soda Bay Road, Lakeport (APN 008-010-29), a parcel within the Farmland Protection Zone “FPZ”, due to unpermitted cannabis cultivation, and processing cannabis in two unpermitted buildings, both high severity violations in the Lake County Code. Additionally, they

deemed the following persons as Responsible Persons for the violations: Legendary Farms Permittee Melissa Smith, Former Legendary Farms Agent Michael Wegner, Property Owner United Investment Ventures, LLC Manager Justin Smith, Neighboring Property Owner Roberto Estrada, Neighboring Property Joint Tenants Karl and Leilani Kohlruss, and Robert Luis Tirado.

Multiple appeals of the Planning Commission’s decision were filed in a timely manner. These appeals include both the revocation of UP 19-15, and the naming of responsible persons. For clarity, the following memorandum will cover the appeal by topic, rather than address each appeal individually. The appeals are summarized in Table 1, below.

Table 1. *Appeals Received*

| | | |
|----------|--------------------------|--|
| AB 23-02 | Roberto Estrada | Appeal Responsible Person Designation |
| AB 23-03 | Justin and Melissa Smith | Appeal Revocation and Responsible Person Designation |
| AB 23-04 | Michael Wegner | Appeal Responsible Person Designation |

The staff report and supporting documents considered by the Planning Commission are included as Exhibit A. The minutes for the September 28, 2023, Planning Commission meeting are included as Exhibit B. The video of the meeting is available at the Planning Commission section of the Advisory Board and Commissions Agenda, Minutes, and Video page on the County website.

Revocation of UP 19-15

On September 28, 2023, the Planning Commission held a public hearing to consider the Community Development Department Director’s recommendation for revocation of UP 19-15, for outdoor cultivation of up to one acre located at 2290 Soda Bay Road, due to high severity violations. This noticed public hearing had been scheduled on September 14, 2023, but the Planning Commission did not have quorum on that date. The item was subsequently rescheduled for September 28, 2023, and a second notification was sent out to property owners within a 725-foot radius of the site and published in the local newspaper no less than 10 days prior to the meeting.

During the public hearing, the following people spoke: Edie Lerman, Joe Rogoway, Esq., Michael Wegner, Frank Perez, Gordy Roberts, Joe Fernandez, Brian Castro, and Valerie Peng.

After holding the public hearing, the Planning Commission revoked UP 19-15 based on the following findings:

1. Based on Article 60.12 (Attachment 10) of the Lake County Zoning Code, a hearing to revoke a use permit may be initiated by request of the Planning (Community Development) Director.
2. Engaging in cannabis operations beyond the scope of an existing county permit creates the possibility of substantial jeopardy to the environment and impacts the safety of all County residents.
3. Failure to obtain the necessary permits to engage in cannabis cultivation legally in Lake County is a fraud against the County, depriving the County of the tax to which it is lawfully due, and constitutes an unlawful business practice which puts those engaged in permitted cannabis cultivation operations at a distinct and significant disadvantage.

4. The approximately 3,340 cannabis plants found outside the approved canopy area, and the cultivation activities taking place within the two unpermitted structures, are high severity violations of the Lake County Code.
5. Unpermitted cannabis processing taking place in the unpermitted structures was supported by electrical power via extension cords coming from the adjacent parcel, owned by Roberto Estrada, with Joint Tenants Karl and Lelani Kohlruss.

(a) Appeal of Revocation

On October 4, 2023, an application for an appeal (AB 23-03) of the Planning Commission's decision was received by the department, from Joe Rogoway, Esq, on behalf of Legendary Farms LLC, United Investment Ventures LLC, Justin Smith, and Melissa Smith. The appeal included nine points, which are listed below, with the department's response following in italics.

1. The Planning Director violated Appellants' due process rights by failing to provide proper notice of the Hearing.

The hearing notice for the September 28, 2023 Planning Commission meeting was posted in the Lake County Record-Bee Legals Section on September 16, 2023, and was mailed to the listed property owners of parcels within 725 feet of the Legendary Farms property.

2. The Community Development Department, in the Staff Memorandum, conflated the Appellants with each other and with third parties, and improperly identified Melissa Smith as the permittee of UP 19-15.

Melissa Smith is listed as the Applicant for UP 19-15, with Michael Wegner as Agent. At the time of the application for the Legendary Farms major use permit (UP 19-15), Frank Perez was listed as property owner, but the property was sold to Justin and Melissa Smith as Joint Tenants on July 21, 2021. Another grant deed was recorded on September 7, 2021, transferring title from Justin and Melissa Smith to United Investment Ventures LLC, and on November 23, 2023, listing Justin and Melissa Smith as owners and managing members of United Investment Ventures LLC, transferring title to the Justin and Melissa Smith Living Trust (Exhibit C). Communications regarding UP 19-15 have been with Melissa Smith, Michael Wegner, and Ms. Smith's attorney.

3. Robert Luis Tirado ("Mr. Tirado") was not an agent, representative or responsible person of any of the Appellants, but the Planning Commission improperly attributed conduct of Mr. Tirado to the Appellants.

It is the position of the department that Permittees and Property Owners are responsible for their property and ensuring that no activity takes place which could violate the approved conditions of their permit. This would include illegal cannabis cultivation taking place approximately 780 feet from the permitted cultivation area.

4. It was an error for the Planning Commission to determine there was a failure of anyone to take responsibilities for high-severity violations that purportedly occurred at the Subject Property, when Mr. Tirado provided the Community Development Department with a notarized declaration, under penalty of perjury, accepting sole responsibility for the conduct resulting in CMP 22-000215 (the "Declaration") (Exhibit D).

During discussions between Staff and the Permittee, we were provided with the declaration from Mr. Tirado. At no time did Mr. Tirado contact the department regarding the illegal cannabis cultivation taking place at the Legendary Farms property. The Department's position remains as described above, in Response #3.

5. It was an error for the Planning Commission to selectively utilize the Declaration as the basis for attributing fault to all of the Appellants.

The Planning Commission revoked the Legendary Farms permit (UP 19-15) based on the findings listed in the Staff Report, dated September 28, 2023, and also listed above.

6. The Planning Commission erred in revoking UP 19-15 for violations that were promptly corrected one-year prior to the Hearing without any subsequent violations.

The timely filing of appeals of the Planning Commission's revocation of UP 19-15 stayed the revocation action and allowed Legendary Farms to continue to operate their cultivation business. During the latest annual inspection on September 27, 2023, Staff observed subsequent violations. The Legendary Farms site is within the Farmland Protection Zone. According to Ordinances 3101 and 3103, all cannabis cultivation within the Farmland Protection Zone was to be converted from outdoor to mixed light by May 21, 2023. Michael Wegner submitted the documents to transition to mixed light on April 7, 2022. However, at the site visit it was observed that the transition to mixed light had not occurred. Lake County Code, Section 27.13(at)(vi)(1)(iii)(b) states, "The use permit shall be revoked if the condition of approval for meeting requirements of the FPZ has not been met by the expiration. (iv) The applicable application shall be updated by the applicant to meet the new compliance requirements of the Farmland Protection Zone no later than May 21, 2022. (a) If no update to the applicable application has been received by the above referenced date, the eligibility for early activation and/or use permit shall be revoked."

Additionally, the framework and electrical wiring, as well as other appliances for cannabis processing, and cannabis plant material on the floor, were observed in the unpermitted structures where the unpermitted cannabis activities were noted the year before.

7. The Planning Commission erred in revoking UP 19-15 for violations that no longer continue to impact the environment.

The process for requesting revocation and holding a public hearing to consider the revocation, was in compliance with the Lake County Code. The Planning Commission revoked UP 19-15 based on the findings in the Staff Report dated September 28, 2023, and listed above.

8. Planning Commission erred in revoking UP 19-15 based on ENF23-01124, a separate alleged violation that has not been fully adjudicated, which alleged violation was attributed to United Investment Ventures LLC rather than to the holder of UP 19-15, and which is currently in the process of being abated.

Mr. Rogoway submitted a written appeal to ENF23-01124 on September 1, 2023, on behalf of United Investment Ventures LLC (Property Owner). Mr. Rogoway requested enforcement of the abatement order be stayed (Exhibit E). Staff is waiting for the outcome of this appeal to guide further abatement actions.

9. The Planning Director’s unreasonable delay in seeking revocation of UP 19-15 severely prejudiced Appellants ability to address the accusations in the Staff Memorandum.

The Appellants were notified of the public hearing in compliance with state law and were in attendance at the September 28, 2023 hearing.

(b) High Severity Violation - Responsible Persons

The Lake County Code, Chapter 13, Section 47(q) defines Responsible Person(s) as the following:

- i. A person who causes or materially contributes to the causation of an Administrative Violation;
- ii. A person who maintains or allows an Administrative Violation to continue by his or her action or inaction;
- iii. A person whose agent, employee, consultant, or independent contractor causes or materially contributes to the causation of an Administrative Violation
- iv. An on-site manager of a business who is responsible for the activities occurring at the premises where an Administrative Violation occurs;
- v. A trustee or other person who is given the legal authority to manage property on behalf of someone where an Administrative Violation occurs;
- vi. A person who is a parent or guardian having custody and control of a Minor who contributes to the causation of an Administrative Violation
- vii. A person who is the owner of, or who exercises control over, or any lessee or sub lessee with the current right of possession and control of real property where a property related Administrative Violation occurs.

Lake County Code Chapter 13, Section 50 regulates administrative penalties for failure to obtain required County permit(s) for cannabis operations and other “High Severity Violations.” In addition to administrative penalties, Section 50.3(b) states, *“Permit Ineligibility. Any Responsible Person(s) determined to have violated this section shall be deemed permanently ineligible to obtain any County permit(s) for cannabis operations in the unincorporated area of the County of Lake.”*

At the September 28, 2023 hearing, the Planning Commission deemed the following persons responsible for the high severity violation:

Table 2. *Persons deemed Responsible Persons for High Severity Violations*

| | |
|--------------------------|---|
| Melissa Smith | Legendary Farms Permittee |
| Justin Smith | United Investment Ventures LLC managing partner and landowner |
| Michael Wegner | Agent for Legendary Farms |
| Roberto Estrada | Neighboring property owner |
| Karl and Lelani Kohlruss | Joint Tenants at neighboring property |
| Robert Luis Tirado | Cultivator at unpermitted site on Legendary Farms property |

Appeals to the Planning Commission's decision were received in a timely manner, appealing the Planning Commission's Responsible Person designation for Roberto Estrada (AB 23-02), Melissa and Justin Smith (AB 23-03), and Michael Wegner (AB 23-04).

AB 23-02 Appeal of Roberto Estrada (Exhibit F)

During the site visit on September 14, 2022, Staff met Mr. Wegner on-site. In addition to the unpermitted cultivation, Staff identified two metal buildings. They requested entry to the buildings and Mr. Wegner told them he did not have the keys and that the structures were not part of the permit activity. The next day, when Staff was joined by Sheriff Deputies, access to the structures was granted at the Deputies' request. Staff found drying racks, lights, air conditioners and air circulation equipment, as well as cannabis shake on the floor and in a trail from the buildings to the adjacent property. The department found no record of electrical permits. Staff observed an extension cord connecting the metal structures with the adjacent property, owned by Mr. Estrada, with Karl and Leilani Kohlruss as Joint Tenants. Cannabis processing in the unpermitted structures is outside of the approved Legendary Farms project description. Because the electrical cord powering the equipment led to the adjacent parcel, Mr. Estrada was deemed a Responsible Person in the high severity violation.

The appeal application did not include a basis for the appeal, nor has the department received further documentation from Mr. Estrada or his representative.

AB 23-03 Appeal of Justin and Melissa Smith (Exhibit G)

Please refer to Section (a) regarding the Planning Commission's determination of Melissa Smith and Justin Smith as Responsible Persons for the high severity violations.

AB 23-04 Appeal of Michael Wegner (Exhibit H)

Mr. Wegner served as an agent for Legendary Farms through the permitting process. He also coordinated and attended the annual site visit in 2022. Mr. Wegner also attended the follow up site visit on December 15, 2023. After the site visit and abatement, Mr. Wegner and Ms. Smith met with Staff regarding the Legendary Farms violations. It was due to this ongoing representation of Mr. Wegner as agent to Legendary Farms, that the Planning Commission deemed Mr. Wegner a Responsible Person in the high severity violations.

The appeal application (AB 23-04) included the statement that Mr. Wegner presented to the Planning Commission at the September 28, 2023 meeting. It included the following reasons for the appeal:

1. Two days notice of the hearing

The public hearing was noticed by direct mail to property owners within a 725-foot radius of the Legendary Farms property; and by publication in the local newspaper of record. Mr. Wegner was not directly notified of the hearing. In his statement at the Planning Commission hearing, he noted that he found out when he looked at the agenda for the Planning Commission meeting.

2. His presence at the December 14 and 15, 2023, site visits do not make him a responsible party.

Due to Mr. Wegner's ongoing participation in the permit process, his coordination, attendance

and participation at both site visits, and continued participation in communications with Staff regarding the matter, the Planning Commission deemed Mr. Wegner a Responsible Person in the high severity violations at Legendary Farms.

Staff recommends the Board of Supervisors deny appeals AB 23-02 (Roberto Estrada), AB 23-03 (Melissa Smith, Justin Smith, United Investment Ventures LLC, Legendary Farms LLC), and AB 23-04 (Michael Wegner), in concept, and direct Staff to prepare the Findings of Fact.

Exhibits

- A Staff Report and Attachments for Revocation Request from the September 28, 2023 Planning Commission Hearing
- B Planning Commission Minutes from September 28, 2023
- C Grant Deeds for 2290 Soda Bay Road, from July 2, 2021 to November 3, 2023
- D Tirado Declaration
- E Appeal of Violation (ENF23-01124) by Request of Administrative Hearing before the Board of Supervisors, dated September 1, 2023
- F Appeal Request for AB 23-02 (Roberto Estrada)
- G Appeal Request for AB 23-03 (Melissa Smith and Justin Smith)
- H Appeal Request for AB 23-04 (Michael Wegner)

If not budgeted, fill in the blanks below only:

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

Purchasing Considerations (check all that apply): Not applicable

- Fully Article X. <https://library.municode.com/ca/lake_county/codes/code_of_ordinances?nodeId=COOR_CH2AD_ARTXPU_S2-38EXCOBI>- and/or Consultant Selection Policy <http://lcnet.co.lake.ca.us/Assets/Intranet/Policy/Policies+26+Procedures+Manual/Ch4_2021v2.pdf>-Compliant (describe process undertaken in "Executive Summary")
- Section 2-38 <https://library.municode.com/ca/lake_county/codes/code_of_ordinances?nodeId=COOR_CH2AD_ARTXPU_S2-38EXCOBI> Exemption from Competitive Bidding (rationale in "Executive Summary," attach documentation, as needed)
- For Technology Purchases: Vetted and Supported by the Technology Governance Committee <<http://lcnet.co.lake.ca.us/Assets/Intranet/Intranet+Forms/Information+Technology/AdvPlan.pdf>> ("Yes," if checked)
- Other (Please describe in Executive Summary)

Consistency with Vision 2028 <<http://www.lakecountycalifornia.gov/Government/Directory/Administration/Visioning/Vision2028.htm>>

- (check all that apply):
- Well-being of Residents
 - Economic Development
 - Community Collaboration
 - Not applicable
 - Public Safety
 - Infrastructure
 - Business Process Efficiency
 - Disaster Prevention, Preparedness, Recovery
 - County Workforce
 - Clear Lake

Recommended Action: (a) Deny Appeal (AB 23-02), and uphold the Planning Commission's determination of Roberto Estrada as a Responsible Person in the high severity violations of Major Use Permit (UP 19-15); Legendary Farms cannabis cultivation permit, at 2290 Soda Bay Road (APN 008-010-29), in concept; and

(b) Deny Appeal (AB 23-03), and uphold the Planning Commission's revocation of Major Use Permit (UP19-15); Legendary Farms cannabis cultivation permit, at 2290 Soda Bay Road (APN 008-010-29), and the Planning Commission's determination that Justin Smith and Melissa Smith are Responsible Persons in the high severity violations, in concept; and

(c) Deny Appeal (AB 23-04), and uphold the Planning Commission's determination of Michael Wegner as a Responsible Person in the high severity violations of Major Use Permit (UP 19-15); Legendary Farms cannabis cultivation permit, at 2290 Soda Bay Road (APN 008-010-29), in concept; and

(d) Direct Staff to prepare draft Findings of Fact for the above actions.