



Legislation Text

File #: 20-142, Version: 2

Memorandum

Date: March 10, 2020

To: The Honorable Moke Simon, Chair, Lake County Board of Supervisors

From: Scott DeLeon, Eric Porter - Community Development

Subject: Appeal to Board of Supervisors, AB 19-05 for Major Use Permit UP 18-39 (Smith/Hosfelt Appeal)

Exhibits:

- A - AB 19-05 Appeal Packet
- B - Planning Commission Staff Report Packet and Attachments (May 13, 2019)
- C - Planning Commission Minutes (May 23, 2019)
- D - Public Resource Code 4290 and 4291 Report
- E - Conditions of Approval
- F - Site Plans
- G - Water Permit
- H - Water Projections
- I - Erosion Control Plan

Executive Summary: (include fiscal and staffing impact narrative):

The appellant, Todd Hosfelt represented by attorney Andre Ross, is appealing the Planning Commission's May 23, 2019 decision to adopt a Mitigated Negative Declaration and approve a Major Use Permit (Files No. UP 18-39 and IS 18-52), which if approved would allow an A-Type 3B (medium mixed light) commercial cannabis cultivation site at 10544 Bachelor Valley Road, Witter Springs; APN number 003-018-10. Approval would allow up to 29,880 square feet (s.f.) of cultivation area and up to 19,920 s.f. of canopy inside six greenhouses.

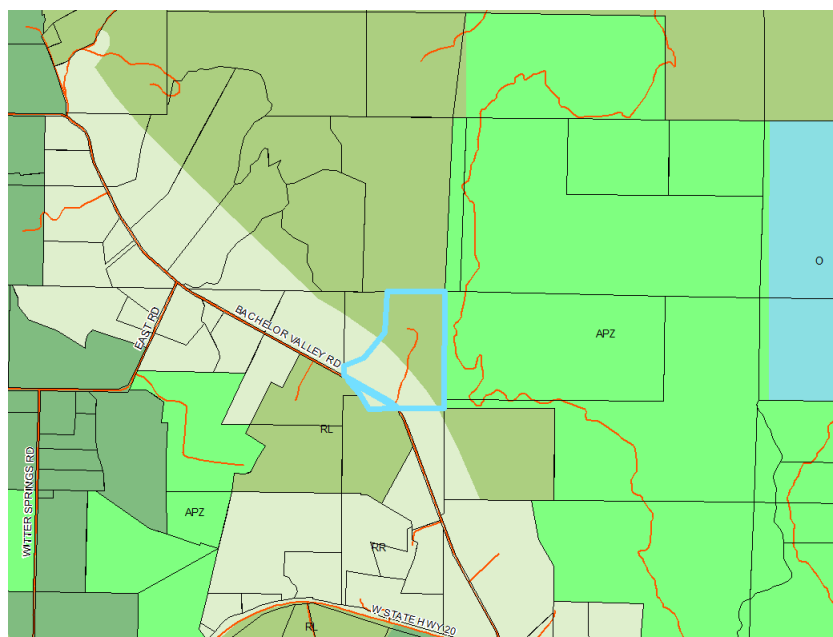
The use permit applicant, Vivian Smith, and owner Michael Smith, applied for an A-Type 3B (medium mixed light) commercial cannabis application. The cultivation area would use water diverted from an existing on-site pond, and would use (6) 41.5' x 120' greenhouses and a 3,000 s.f. processing (drying) building. The applicant also seeks an A-Type 13 'Self Distribution' license; this was not available as an option when the applicant originally applied for the Use Permit in 2018. The ± 33.4 acre property is split-zoned RL-WW-SC Rural Lands-Waterway-Scenic Corridor, and RR-WW-SC Rural Residential-Waterway-Scenic Corridor, both of which allow commercial adult-use cannabis cultivation subject to approval of a use permit.

On May 23, 2019, the Planning Commission held the public hearing for the major use permit; took

testimony, deliberated, then voted to approve Major Use Permit UP 18-39 and adopt initial study IS 18-52. This appeal followed.

Points of the Appeal. The appellant has raised five points of concern within his appeal documentation as follows:

1. Dark skies concerns
2. Dredging/excavating/grading concerns
3. Water availability analysis
4. Storm water discharge
5. Failure to create proper record (alleged omission of appellant's email, May 20, 2019)



Zoning of the Site and Vicinity

Discussion.

Point of Appeal #1 - 'Dark skies'. The appellant is concerned that light pollution will occur due to interior lighting in the greenhouses, and refers to greenhouse lighting as 'high intensity lighting'. The Conditions of Approval approved by the Planning Commission include Conditions No. B2 and B3 that address lighting inside the greenhouses. These conditions are as follows:

B. AESTHETICS

2. Prior to a building permit being issued, a lighting plan shall be required that adheres to darkskies.org standards for outdoor lighting. This applies to indoor (greenhouse) lighting and outdoor (security and other outdoor) lighting.
3. Prior to a building permit being issued, the applicant shall use darkening screening inside the greenhouses to prevent light escaping to other parts of the site, neighboring sites, or public roads. This shall be shown on the building elevations for the greenhouse (s).

Mixed light greenhouse cultivations have wattage limits on interior lighting. By definition, 'mixed light' greenhouse cultivation means "(t)he cultivation of cannabis in a greenhouse, glasshouse, conservatory, hothouse, or other similar structure using light deprivation and/or artificial lighting below a rate of 25 watts per square foot."

The Appellant's reference to 'high-intensity lighting' does not match the definition for 'mixed light' wattage maximums found in the Lake County Zoning Ordinance, Article 27, subsection (at)(v).

Further, the Applicant is required to provide a lighting plan, including the type, location and wattage of all fixtures to be used in each greenhouse as well as outdoor security lighting. All lighting must comply with the recommendations of darkskies.org as a condition of approval prior to cultivation, or the final occupancy will not be issued, and cultivation will not legally be allowed to occur. Also, the Applicant is required to use 'darkening screening' to suppress lighting and to prevent light leakage onto larger areas of the site as well as onto (visible from) neighboring properties.

Point of Appeal #2 - Dredging, Excavating and Grading Concerns. The appellant states that excavation/grading/dredging may have been completed quite recently in conjunction with the Applicant's planned Project. The appellant attached pertinent sections of the Lake County Code regarding grading regulations.

On September 17, 2019, the Smiths applied for a Grading Permit to remove sediment from the existing pond. The permit however was not directly linked to the cannabis cultivation project according to the application material received by the County, and was finalised on November 6, 2019.

Point of Appeal #3 - Water Availability Analysis. The appellant states that they had requested from the CDD, but had not received, a true and correct copy of the "Water Availability Analysis", prepared by a qualified professional" that is specifically referenced in Par. I, Sub. Par I-1 of the Project's recently approved Conditions of Approval.

The County had sought verification of the on-site water source required from each cultivator, and had received a copy of the original License for Diversion and Use of Water from the application (permit no. 12117, license no. 7242; attached as Exhibit F). The Permit authorizes 300 gallons per day, and up to 2.3 acre feet of extraction per year from the above-ground water source.

The applicant Smith further provided water data within the Property Management Plan, page 283, that projects monthly and annual water usage, and provides methodology used in computing average water usage by month (please see Exhibit G). The projected usage of this cultivation site is 1.43 acre feet per year, well below the 2.3 acre feet allowed by permit no. 12117.

Point 4 - Stormwater Discharge. The appellant states that the Stormwater Management Plan supplied by the Applicant to the County indicates that stormwater runoff ... will discharge a stormwater detention pond, and that the stormwater runoff will not increase the volume of stormwater discharges from the Project Property onto adjacent properties or flood elevations downstream.

The applicant has provided a 'Stormwater Management Plan' section within the Property Management Plan (beginning on page 195), and a Sediment and Erosion Control Plan (sheet 7) prepared by Realm Engineering, Redding office. Please see Exhibit H.

The applicant has met their obligation for satisfying the requirements for providing engineered Grading and Drainage Plans.

Point 5 - Failure to create proper record. The appellant states that the County failed to provide a copy of an email from the appellant Todd Hosfelt dated May 20, 2019.

In fact, this email was included in the material provided to the Planning Commission via 'greensheet' on the day of the hearing as Attachment 7 - Public Comments. It was received by staff too late to include in the regular Planning Commission packet.



View of the Site from Bachelor Valley Road

Commercial Cannabis Applications. A commercial cannabis license can be obtained through a major or a minor use permit depending on the type of cannabis cultivation license that is sought. Approval of a commercial cannabis use permit changes the nature of a residential property into a commercial use.

Project Description

Applicant: Vivian Smith

Owner: Michael Smith

Location: 10544 Bachelor Valley Road, Witter Springs

A.P.N.: 003-018-10

Parcel Size: 33.4 acres

General Plan: Rural Lands, Rural Residential, Resource Conservation

Zoning: "RL/RR-SC-WW"; Rural Lands - Rural Residential - Scenic Combining - Waterway

Flood Zone: X (portion)

II. **PROJECT ANALYSIS**

The Lake County Zoning Ordinance has three articles that contain relevant requirements to this appeal; Chapter 27, subsection (at); Chapter 51.4, Major Use Permits, and Chapter 58, 'Appeals'.

1. **Article 27, subsection (at), Commercial Cannabis Cultivation**

The following subsections within Article 27 relate to water usage:

(d) Minor and Major Use Permits for Commercial cannabis cultivation

(5) Responses to the following performance standards questions:

(iv) Does the applicant have a legal, on-site source of water?

(v) Does the applicant agree to monitor water use and share the data with the County?

(vi) Does the applicant agree to make water source available to Cal Fire for firefighting?

(8) A complete list of every owner of the applicant entity. Each individual owner shall submit the following information:

(xv) Identification of all water sources used for cultivation activities and the estimated volume of water used on a monthly basis.

The Applicant has provided proof of water rights within her application package. She is required to provide a Water Availability Analysis as a condition of approval (although there is no 'threshold' established for what might constitute a weak aquifer or water source, like the pond in this instance).

2. **Article 51.4, Major Use Permits, 'Findings Required for Approval'**

The Board of Supervisors may approve or conditionally approve a Major Use Permit if all of the following findings are made:

1. That the establishment, maintenance, or operation of the use applied for will not 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, or be detrimental to property and improvements in the neighborhood or the general welfare of the County.

Response: *The Planning Commission found that this project met the terms of Lake County Zoning Ordinance, Article 51, subsection 4.1.*

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: *The subject site is ±33.39 acres in size, large enough to accommodate the proposed 29,880 square feet of proposed cultivation area; this total cultivation area represents about 2% of the*

site thereby meeting the terms of Lake County Zoning Ordinance, Article 51, subsection 4.2.

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

Response: *Bachelor Valley Road, a County paved road, is adequate for purposes of providing traffic to this site thereby meeting the terms of Lake County Zoning Ordinance, Article 51, subsection 4.3.*

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: *The site has adequate services for the cannabis cultivation use thereby meeting the terms of Lake County Zoning Ordinance, Article 51, subsection 4.4.*

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 was in compliance with the Lake County General Plan, Upper Lake - Nice Area Plan, and Lake County Zoning Ordinance thereby meeting the terms of Lake County Zoning Ordinance, Article 51, subsection 4.5.*

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 current violations of Chapters 5, 17, 21, 23 or 26 of the Lake County Code thereby meeting the terms of Lake County Zoning Ordinance, Article 51, subsection 4.6.*

3. Article 27, section (au)7.i; 'Findings Required for Approval':

1. The proposed use complies with all development standards described in Section 1.i

This report identifies the development standards that apply to cannabis cultivation in Lake County. The applicant is fully compliant with most of the development standards, and can be made to comply through conditions of approval of the development standards that are not yet met (primarily building permits for the greenhouse and confirmation of turn-out spacing on site needed in order to comply with Public Resource Codes 4290 and 4291).

2. The applicant is qualified to make the application described in Section 1.ii.(g)

The applicant and his employees have passed a 'live scan' background check, and are qualified to undertake a commercial cannabis cultivation activity subject to approval of this use permit.

3. The application complies with the qualifications for a permit described in Section 1.ii.(i)

This application complies with all qualifications for a permit described in Section 3.ii.(f). The applicant is proposing (1) A-Type 3B license for 29,880 square feet of cultivation area and 19,920 square feet of canopy area within (6) 41.5' x 120' greenhouses. Also proposed is a 3,000 s.f. 'drying building'. The subject site is 33.4 acres in size, large enough to support the three cultivation licenses. The applicant also qualifies for the Type 13 'Self Distribution' license which should be added to this decision now that it is an available option.

III. APPEAL SUBMITTAL. The appellant submitted an application for Appeal to the Board, along with the required fee and appellant's Exhibits A, B and C.

If not budgeted, fill in the blanks below only:

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

Consistency with Vision 2028 and/or Fiscal Crisis Management Plan (check all that apply):

☒ Not applicable

- | | | | |
|--|--|---|--|
| <input type="checkbox"/> Well-being of Residents | <input type="checkbox"/> Public Safety | <input type="checkbox"/> Infrastructure | <input type="checkbox"/> Technology Upgrades |
| <input type="checkbox"/> Economic Development | <input type="checkbox"/> Disaster Recovery | <input type="checkbox"/> County Workforce | <input type="checkbox"/> Revenue Generation |
| <input type="checkbox"/> Community Collaboration | <input type="checkbox"/> Business Process Efficiency | <input type="checkbox"/> Clear Lake | <input type="checkbox"/> Cost Savings |

If request for exemption from competitive bid in accordance with County Code Chapter 2 Sec. 2-38, fill in blanks below:

Which exemption is being requested?

How long has Agreement been in place?

When was purchase last rebid?

Reason for request to waive bid?

Recommended Action:

Deny the Appeal (AB 19-05); uphold Planning Commission's decision to adopt the Mitigated Negative Declaration (IS 18-52), and approve the Use Permit (UP 18-39).

Sample motion:

Appeal Denial

I move that the Board of Supervisors make an intended decision to deny the Appeal AB 19-05 and uphold the Planning Commission's decision to adopt Initial Study IS 18-52 and approve Major Use Permit 18-39 as applied for by Vivian Smith for property located at 10544 Bachelor Valley Road, Witter Springs; APN number 003-018-10, and direct County Counsel to prepare findings of fact including amended conditions allowing a Type 13 Self Distribution license.