



Legislation Text

File #: 21-469, Version: 2

Memorandum

Date: June 8, 2021

To: The Honorable Bruno Sabatier, Chair, Lake County Board of Supervisors

From: Scott De Leon, Interim Community Development Director
Eric Porter, Associate Planner

Subject: Discussion and Consideration of Appeal to Board of Supervisors, AB 21-01 for Major Use Permit, UP 20-22 and IS / MND 20-25, "We Grow LLC"

Exhibits: A1 - Vicinity Map
A2 - Appeal AB 21-01 Application Packet Submitted by Shadow Hills Subdivision
A3 - Planning Commission Material (April 22, 2021), Including Agency and Original Public Comments
A4 - Planning Commission Minutes (April 22, 2021)
A5 - CEQA Initial Study/Mitigated Negative Declaration (IS 20-25)
A6 - Proposed Conditions of Approval
A7 - New Public Comments

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

I. Executive Summary

The appellants are appealing the decision to approve a commercial cannabis cultivation use permit and mitigated negative declaration approved by the Planning Commission at a hearing that occurred on April 22, 2021. This appeal is regarding the approval of Major Use Permit, UP 20-22 and an Initial Study / Mitigated Negative Declaration, IS 20-25 to allow 400,405 sq. ft. commercial cannabis cultivation in 35 greenhouses on three parcels in the Hidden Valley Lake area.

II. Project Background

The project site is located on a small hill above Hidden Valley Lake development. The site takes access from Herrington Road, a small private road that terminates onto the subject site.

A Major Use Permit is required for this project pursuant to compliance with the General Plan, the Middletown Area Plan, and Articles 7, 27(at), and 51.4 of the Lake County Zoning Ordinance. The Review authority may only approve or conditionally approve a major use permit if all of the findings for approval listed in these Articles within the Zoning Ordinance and Plans are made.

Project Description

Applicant/Owner: "We Grow LLC"; Zarina Otchkova

Location: (Primary) 16750 Herrington Road, Hidden Valley Lake
(Secondary) 17610 Sandy Road and 19678 Stinson Road, Middletown

A.P.N.s: 013-060-40 (cultivation site); 013-014-03 and 11

Parcel Sizes: 309 acres (combined)



VICINITY MAP

General Plan: Rural Lands and Resource Conservation

Zoning: "RL-RR-WW": Split: Rural Lands - Rural Residential - Waterway

Topography: Varied; the affected portion of the parcel has slopes less than 10%

Flood Designation: X

Project Details: The applicant is proposing the construction of the following:

1. Thirty (30) 90' x 125' greenhouses
2. One (1) 90' x 112' greenhouse

3. Four (4) 90' x 125' nursery greenhouses
4. Four (4) 50' x 100' drying buildings
5. One (1) 200 sq. ft. shed
6. Four (4) 2,500 gallon water tanks.
7. One (1) 8-foot tall galvanized woven wire fence covered with privacy mesh to screen the greenhouses from public view.
8. Removal of 20 to 30 mature oak trees native to Lake County, all of which are greater than 5" diameter measured at 4.5" measured at breast height

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 actual cultivation site is not within a Community Growth Boundary, but is about 2,300 feet to the southeast of the Hidden Valley Lake Development based on GIS mapping measurements. The park shown in blue below is more than 1000 feet from the proposed cultivation site.

Soils: The project area contains the following soil type:

- Type 219, however the soil to be used on site will be in fabric pots located inside of greenhouses, and will be imported onto the site to ensure quality control of soil.

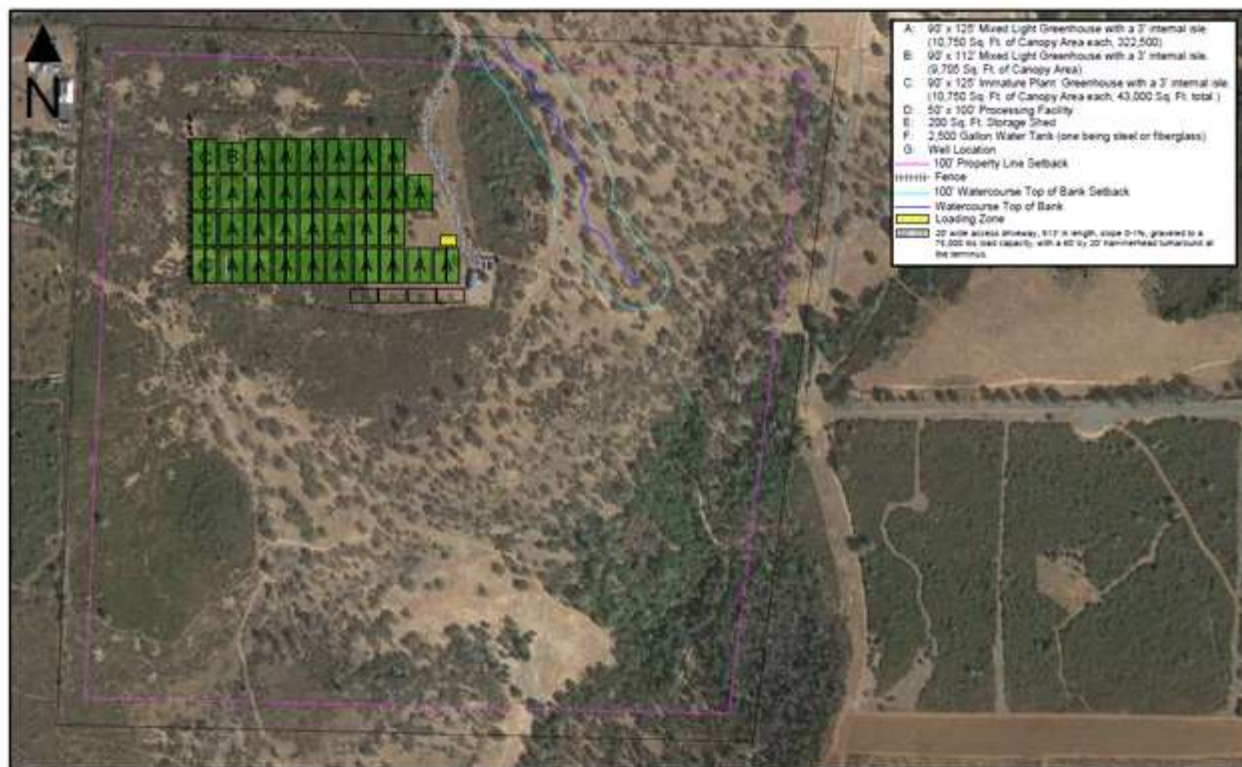
Water Supply: Existing Well

Sewage Disposal: Existing and future on-site septic systems

Fire Protection: South Lake Protection District

Vegetation: Scattered oaks, manzanita shrubs and grasses

Water Courses: Several unnamed seasonal streams



PROPOSED SITE PLAN

III. Appeal Analysis - Article 58 of the Lake County Zoning Ordinance

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

58.31 Application: Decisions of the Planning Commission may be appealed as follows:

(a) Persons eligible:

1. A person having an interest in the property that is subject of the decision being appealed.
2. Any interested person not satisfied with the decision of the Review Authority.
3. The Board of Supervisors

Response: *The appellants had submitted written concerns regarding this application prior to the public hearing which are 'of record'. The appellants testified during the hearing, and received the public hearing notice and a Zoom meeting invitation that allowed them to participate in the public hearing proceedings. The appellants have standing to appeal the Planning Commission's decision.*

(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 Wednesday April 28, 2021 at 3:30 pm, 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 appellants submitted a written description of why they believe the Planning Commission erred in their decision to approve this land use permit and CEQA review (IS/MND).*

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: *No cultivation activity or site disturbance is allowed until this appeal is either upheld or denied.*

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 prior to the Planning Commission hearing have been included within this Memorandum as Exhibits A1 through A7.*

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 was sent out for this appeal hearing on May 29, 2021. Notice was sent to all known participants and persons filing written and emailed comments prior to the Planning Commission hearing.*

IV. Project Analysis

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

The Board of Supervisors may approve or deny this appeal based on the concurrence with the basis for the appeal. Upholding the appeal would cause the Use Permit and IS/MND to be denied. Denying the appeal would result in the approval or conditional approval of the Major Use Permit and Mitigated Negative Declaration if the Board of Supervisors agree with the Planning Commission's decision that allow the following required findings are met:

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 “We Grow” site is located in an area that is heavily treed. Portions of the 309 acre property are visible from some roads and lots inside of Hidden Valley Lake, however the tree coverage between the HVL development and the proposed cultivation area is significant. There are several upscale homes that are elevated above the ‘We Grow’ property, however the greenhouses proposed are shielded enough by the existing tree coverage and positioning of these homes will likely not be significantly impactful to these neighboring houses if screening and blackout material is used around and inside the greenhouses, as was required by the Planning Commission. The applicant will need to remove between 20 and 30 mature oak trees to accommodate the greenhouses; the Planning Commission required a Tree Replacement Plan and an 8’ tall screening fence around the entire cultivation site to help alleviate the visual impacts associated with this cultivation project.*

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 three lots associated with this project are 309 acres in total area. The cultivation portion of the site will occupy just over 9 acres. The property is large enough to accommodate the intended use.*

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 dirt / gravel road. The interior driveway would need to be upgraded to meet CalFire road standards (Public Resource Code [PRC] sections 4290 and 4291). This upgrade to the interior driveway is required through Conditions #K1, K3, K5 and K7 within the Conditions of Approval for this application.*

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 comments received from all public and private services have been supportive of this facility at this location. The Redwood Valley Band of Pomo expressed concerns over water usage associated with this project due to drought conditions.*

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 Planning Commission reviewed this file on April 22, 2021 and determined that the project met all applicable goals, policies, standards and criteria found within the General Plan, the applicable Area Plan (Middletown Area Plan in this case), and the applicable Articles and subsections within the Zoning Ordinance.*

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: *There are no violations on the subject site. There had been violations on the property at the time the applicant / owner purchased the property. It is unclear who created the violations, which involved stolen heavy equipment, however the California Highway Patrol (lead investigating agency); the Lake County Sheriff's Department, and the Lake County Code Enforcement Department have indicated that there are no longer any open violations on this site.*

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

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

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

Response: *The purpose of this report is to evaluate the levels of compliance with the standards and criteria found in Article 27, section 1.i, as well as other portions of the Zoning Ordinance, General Plan and applicable Area Plan. The Planning Commission found that the project was in full compliance with all applicable standards and criteria, or could be brought to fully compliance with applicable conditions of approval. (Exhibit A7)*

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: *With the exception of projected energy usage and supply which can be mitigated through conditions of approval, the application was determined to be complete after a thorough review to verify that all submittal requirements set out in Article 27, Section 1.ii.(i) are met.*

V. APPEAL SUBMITTAL. The appellant submitted an application for Appeal to the Board, along with the required fee and appellant's attachment. **(Exhibit 2)**

If not budgeted, fill in the blanks below only:

Estimated Cost: n/a Amount Budgeted: n/a Additional Requested: n/a Future Annual Cost: n/a

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

- ☐ Well-being of Residents
- ☐ Economic Development
- ☐ Community Collaboration

- ☐ Public Safety
- ☐ Disaster Recovery
- ☐ Business Process Efficiency

- ☐ Infrastructure
- ☐ County Workforce
- ☐ Clear Lake

☒ Not applicable

- ☐ Technology Upgrades
- ☐ Revenue Generation
- ☐ 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 21-01); uphold the Planning Commission's decision to approve the Use Permit (UP 20-22) and adopt Initial Study/Mitigated Negative Declaration (IS 20-25).

Sample Motions:

Appeal Denial

I move that the Board of Supervisors make an intended decision to deny the Appeal AB 21-01.

Initial Study (IS 20-25)

I move that the Board of Supervisors find that the Major Use Permit (UP 20-22) applied for by WeGrow LLC on property located at 16750 Herrington Road, Hidden Valley Lake, and further described as APNs 013-060-40, 013-014-03 and 11 will not have a significant effect on the environment and therefore a mitigated negative declaration shall be adopted with the findings for approval listed in the Planning Commission staff report dated April 22, 2021.

Use Permit Approval

I move that the Board of Supervisors find that the Use Permit (UP 20-22) applied for by WeGrow LLC on property located at 16750 Herrington Road, Hidden Valley Lake, and further described as APNs 013-060-40, 013-014-03 and 11 does 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 EIR and Addendum which was adopted for this project and the Use Permit be granted subject to the conditions and with the findings listed in the Planning Commission staff report dated April 22, 2021.