



Legislation Text

File #: 21-975, Version: 2

Memorandum

Date: October 19, 2021

To: The Honorable Lake County Board of Supervisors

From: Mary Darby, Community Development Director
Katherine Schaefer, Assistant Planner

Subject: Discussion and Consideration of Appeal (AB 21-04) of the Planning Commission Approval of Major Use Permit (UP 21-10) and Adoption of Initial Study (IS/MND 21-10) for a Commercial Cannabis Cultivation License (Sourz HVR, Clearlake Oaks); APN's 006-004-07 (Project Location) and Contiguous Parcels 006-002-04, 006-004-06, 006-002-09, 006-004-24, 006-004-25 and 006-009-36

Exhibits:

- A1 - Appeal
- A2 - Staff Report (July 8, 2021), PC Minutes, Agency and Public Commentary
- A3 - Staff Report (July 22, 2021), PC Minutes, Agency and Public Commentary
- A4 - Vicinity Map
- A5 - Site Plans
- A6 - Property Management Plan
- A7 - Biological Assessment
- A8 - Conditions of Approval
- A9 - Initial Study
- A10 - Cultural Resources Memorandum
- A11 - Traffic Memorandum
- A12 - Original Water Analysis and Hydrology Memorandum
- A13 - Brassfield Pipeline Encroachment Permit
- A14 - Brassfield Pipeline Water Usage Site Map
- A15 - Brassfield Pipeline Additional Materials
- A16 - Lake County Water Inventory and Analysis 2006
- A17 - Groundwater Definitions
- A18 - Violations and Remediation
- A19 - CDFW LSA
- A20 - EA Conditions of Approval

Executive Summary:

I. BACKGROUND

The appellant is appealing the Planning Commission's July 22, 2021 unanimous approval of a Major Use Permit (UP 21-10) to permit a commercial cannabis cultivation use permit and mitigated negative declaration of the following uses located at 11650 High Valley Rd., Clearlake Oaks, CA 95423, APN 006-004-07:

- (80) A-Type 3 "outdoor" licenses totaling 3,484,800 sq. ft. (80 acres) of outdoor commercial cannabis cultivation
- (1) A-Type 4 "nursery" license for 217,800 sq. ft. (5 acres)
- (1) Type 11 "distribution" license to transport cannabis goods
- The construction of 11 buildings for drying and storage totaling 111,000 ft², including one refrigeration building
- The use of an existing 13,000 sf conference center for packing, distribution (shipping and receiving), and other ancillary uses such as office space.

The appellants are also appealing a Zoning Administrator decision to approve an Early Activation Permit granted on June 7, 2021 for (80) A-Type 3 "outdoor" licenses totaling 3,484,800 sq. ft. (80 acres) of outdoor commercial cannabis cultivation. However, as provided by the Zoning Ordinance Section 21-58.10, an appeal of an EA permit would be filed with the Planning Commission, and the appeal period in which to do so is 7 days from the decision granting the permit. As the date of issuance was June 7, 2021, the appeal period for the EA permit has passed. The EA permit is not the subject of this appeal.

The approximately 649 acre project site is located on High Valley Road in Clearlake Oaks. The appellants, neighboring property owners Don and Margie Van Pelt, filed this appeal citing various deficiencies in the Planning Commission's decision.

A Major Use Permit is required for this project pursuant to compliance with the General Plan, the Shoreline Community Area Plan, and Articles 7, 27(at), and 51.4 of the Lake County Zoning Ordinance.

Project Description:

Applicant: SourzHVR Inc / Elli Hagoel / Avi Pollack

Owner: Aviona, LLC

Location: **11650 High Valley Rd, Clearlake Oaks, CA 95423**

APN: 006-004-07 [Project location]

4919 New Long Valley Rd, Clearlake Oaks, CA 95423

APN: 006-002-09 [Clustered parcel]

4963 New Long Valley Rd, Clearlake Oaks, CA 95423

APN: 006-002-04 [Clustered parcel]

10788 High Valley Rd, Clearlake Oaks, CA 95423

APN: 006-004-25 [Clustered parcel]

10750 High Valley Rd, Clearlake Oaks, CA 95423

APN: 006-004-24 [Clustered parcel]

10945 High Valley Rd, Clearlake Oaks, CA 95423

APN: 006-004-06 [Clustered parcel]

4491 New Long Valley Rd, Clearlake Oaks, CA 95423

APN: 006-009-36 [Clustered parcel]

Parcel Size: 1639.96 total combined acreage

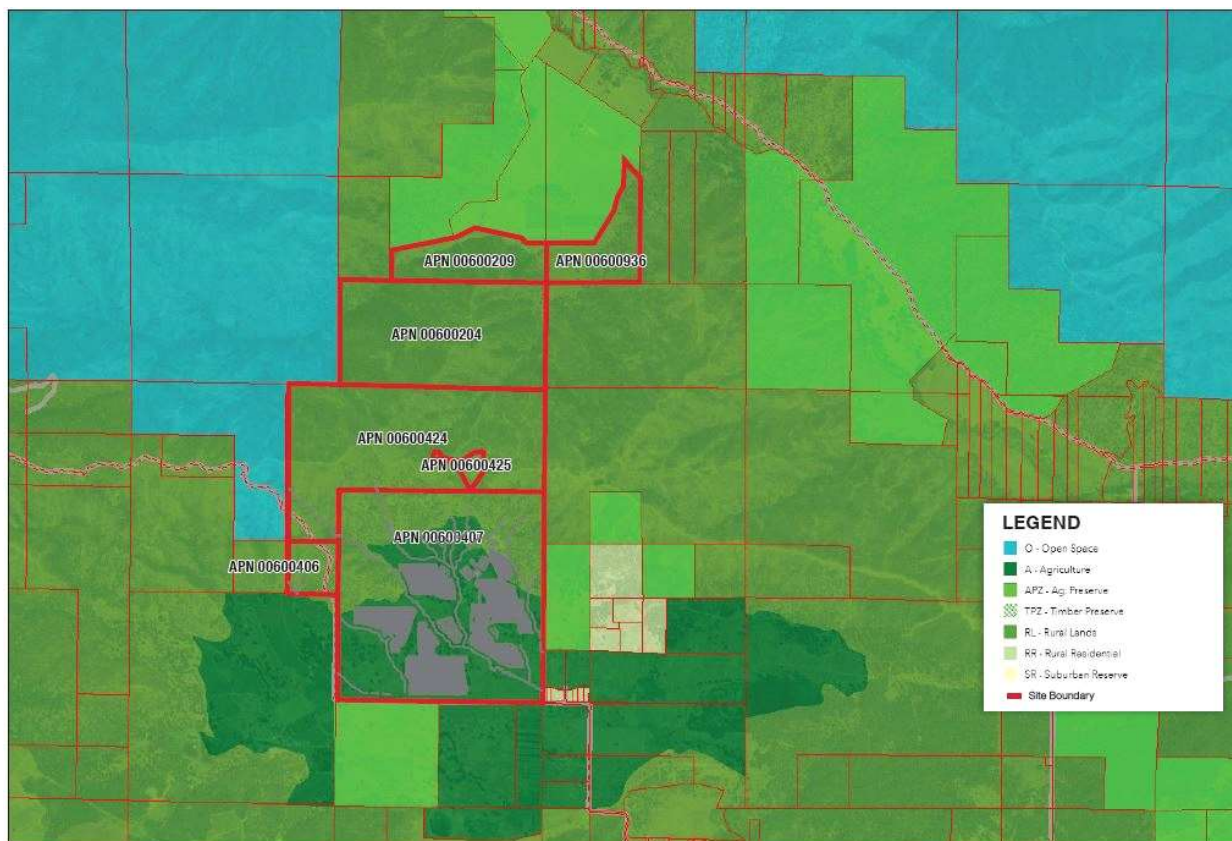
General Plan: Agricultural and Rural Lands

Zoning: Split RL "Rural Lands" WW "Waterway Combining" SC "Scenic Combining" B5
"Special Lot Density Combining District"

Flood Zone: "D" Areas of undetermined, but possible, flooding

Cultivation Area: Phase I (Early Activation): 3,595,000 sq. ft
Phase II (Use Permit): 6,098,400 sq. ft. in total.

Canopy Area: Estimated at 3,485,000 sq. ft (Phase I/II)



Surrounding Zoning and Land Use:

North: "A" Agricultural and "RL" Rural Lands

South: "RL" Rural Lands

East: "A" Agricultural and "RL" Rural Lands

West: Vineyard, "A" Agriculture, and "RL" Rural Lands.

II. APPEAL DISCUSSION

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

Response: *The appellants submitted written concerns regarding this application prior to the July 8th public hearing, which are 'of record' via letters dated May 19, 2021, and July 1, 2021. The appellants also submitted written concerns prior to the July 22nd public hearing, which are 'of record' via letters dated July 8, 2021, and July 21, 2021, and testified during both hearings.*

(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 July 28, 2021 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 its decision to approve this land use permit and CEQA review (IS/MND). The appellants cited several specific aspects of the PC's decision as being deficient. Their arguments in their entirety may be found as EXHIBIT 1 - 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 approved file no. UP 21-10 on July 22, 2021. The appeal was filed on the 6th day of the appeal period for this action (July 28, 2021). The applicant had been approved for Early Activation on June 7, 2021 by the Zoning Administrator, which remains valid.*

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 A20.

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. 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. The Planning Commission's decision was based on its making the following required findings:

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: *Commercial Cannabis Cultivation Operation is a permitted use in the "RL" Rural Lands Zoning District as well as the "A" Agricultural 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 9 - INITIAL STUDY) determined that the use would not 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 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, noise and wildfire. Additionally, the Community Development Department would conduct Annual Compliance Monitoring Inspections during the cultivation season to ensure compliance with the approved Property Management Plan and Conditions of Approval, as discussed in detail in the planning commission report dated July 22nd 2021.

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 canopy area is 3,484,800 ft²; this area represents 4.9% of the 1639.96-acre site. The project complies with the 20 acres of land to 1 acre of canopy stipulation. Additionally, the project conforms with the Clustering requirements of Article 27, section (at), sub-section (j). A deed*

restriction on each parcel will be required if the permit SourzHVR Inc- UP 21-10 is approved.

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

Response: *The project takes access via High Valley Ranch Road to a private drive. The access driveway and interior private drives would be improved to meet all applicable safety standard including Cal Fire and Caltrans as shown on the project site plans.*

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, Special Districts, Environmental Health, and PG&E, and to all area Tribes. Relevant comments may be found in EXHIBIT 2 - 7.8.21 STAFF REPORT, PC MINUTES, AGENCY AND PUBLIC COMMENTARY. No comments were received that would affect a substantial adverse impact determination. There are adequate public services to accommodate the project.*

During the request for review period of the Initial Study, as part of the CEQA State Clearinghouse public participation process, a letter was received by a neighboring parcel raising concern in regards to odor, security, and water usage. The letter has been provided in EXHIBIT 2 - 7.8.21 STAFF REPORT, PC MINUTES, AGENCY AND PUBLIC COMMENTARY. A water availability plan and the identification/location of Well #4 as the supplier of this project in the Site Plans and Property Management Plan has been provided by the applicant. The security and odor concerns have been addressed with mitigation measures and conditions of approval.

During the request for review period of the Initial Study, comment was also received from the Department of Toxic Substances, and the California Highway Patrol (EXHIBIT 2 - 7.8.21 STAFF REPORT, PC MINUTES, AGENCY AND PUBLIC COMMENTARY). The concerns of the Department of Toxic Substances have been addressed and mitigated in the Initial Study under section III. Air Quality. The concern regarding an increase in traffic collisions has been discussed in the Initial Study under section XVII. Transportation, and found to be less than significant (EXHIBIT 9 - INITIAL STUDY). An expanded Traffic Study was requested of the applicant after the July 8th Planning Commission and was provided for the Commissioners' review prior to the July 22nd hearing (EXHIBIT 11- TRAFFIC MEMORANDUM).

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: *Since commercial cannabis cultivation is named as a permitted use in the Rural Lands zoning district within the Commercial Cannabis ordinance, this proposal is consistent with the governing ordinance for cannabis cultivation in Lake County. The proposal, as conditioned, meets all requirements and development standards of the Zoning Ordinance. The General Plan and the Shoreline Community Area Plan do not have any provisions for commercial cannabis, but both plans do have provisions for economic development and related policies that the project is consistent with (Please refer to the Staff Report from 7.8.21, section VI Project Analysis).*

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: *Violations of the County of Lake and the CDFW regulations were remediated as of July 20th, 2021. Please refer to EXHIBIT 18 - VIOLATIONS AND REMEDIATION and EXHIBIT 18 CDFW LSA for full details on violation remediation. The Community Development Department has no record of current 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 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 Planning Commission found that the project was in compliance with all applicable standards and criteria, or could be brought to full compliance with conditions of approval (Please refer to the Staff Report from 7.8.21, section IX Approval Criteria).*

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 application was determined to be complete and in compliance with the requirements set out in Article 27, Section 1.ii.(i) are met.*

IV. CONCLUSION/RECOMMENDATION

Staff recommends that the Board of Supervisors:

Deny the Appeal (AB 21-04); uphold the Planning Commission's decision to approve the Use Permit (UP 21-10) and adopt Initial Study / Mitigated Negative Declaration (IS 21-10).

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:

Sample Motions:

Appeal Denial

I move that the Board of Supervisors make an intended decision to **deny the Appeal AB 21-04.**

Initial Study (IS 21-10)

I move that the Board of Supervisors find that the Major Use Permit (UP 21-10) applied for by **SourzHVR Inc** on a property located at **11650 High Valley Rd. Clearlake Oaks, CA**, further described as **APN: 006-004-06; 006-004-07; 006-004-25; 006-002-04; 006-009-36; 006-004-24; 006-002-09** 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 **July 22, 2021**.

Use Permit Approval

I move that the Board of Supervisors find that the Major Use Permit (UP 21-10) applied for by **SourzHVR Inc** on a property located at **11650 High Valley Rd. Clearlake Oaks, CA**, further described as **APN: 006-004-06; 006-004-07; 006-004-25; 006-002-04; 006-009-36; 006-004-24; 006-002-09** 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 Mitigated Negative Declaration 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 **July 22, 2021**.