



Legislation Text

File #: 24-979, Version: 1

Memorandum

Date: September 17, 2024

To: The Honorable Lake County Board of Supervisors

From: Mireya G. Turner, Community Development Director

Subject: 11:00 A.M. - Consideration of 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)

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 violations of the permit's Conditions of Approval.

An appeal (AB 23-03) of the Planning Commission's decisions was filed in a timely manner. The appeal included the Planning Commission's decision to find Justin Smith and Melissa Smith as Responsible Persons for High Severity Violations. The Planning Commission's identification of Justin and Melissa Smith as Persons Responsible for High Severity Violations was reversed by the Board on August 27, 2024. Today's hearing is to consider the appeal of the Planning Commission's revocation of Major Use Permit (UP 19-15).

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 of revocation of Major Use Permit (UP 19-15), located at 2290 Soda Bay Road. 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 the property owners, and to all 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.

After 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 cannabis processing activities taking place within the two unpermitted structures, are violations of the Conditions of Approval of Major Use Permit (UP 19-15).

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 Planning Commission meeting on September 28, 2023, 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. Justin Smith, property owner, was notified via direct mail.

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. The Conditions of Approval list Legendary Farms, LLC as Permittee. According to the Secretary of State records, Melissa Patricia Smith is the listed Manager or Member of Legendary Farms, LLC (Exhibit C). 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. Additional transfers of ownership of the parcel are listed in Table 1 below, but remain limited to Justin Smith and Melissa Smith, their trusts and United Investment Ventures, LLC. (Exhibit D) Justin Smith is listed as the single manager of United Investment Ventures, LLC. (Exhibit E) Communications regarding UP 19-15 have been with Melissa Smith, Justin Smith, Michael Wegner, and Ms. Smith’s attorney.

Table 1. Parcel ownership history

Date	Grantor	Grantee
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<i>July 21, 2021</i>	<i>Frank Perez</i>	<i>Justin and Melissa Smith, as Joint Tenants</i>
<i>September 7, 2021</i>	<i>Justin and Melissa Smith, as Joint Tenants</i>	<i>United Investment Ventures, LLC</i>
<i>November 3, 2023</i>	<i>Justin and Melissa Smith, owners and managing members of United Investment Ventures, LLC</i>	<i>Justin Rabin Smith and Melissa Pat Smith, as co-Trustees of the Justin and Melissa Smith Living Trust, U/A dated 10-31-23</i>
<i>July 11, 2024</i>	<i>Justin Rabin Smith and Melissa Pat Smith, as co-Trustees of the Justin and Melissa Smith Living Trust, U/A dated 10-31-23</i>	<i>United Investment Ventures, LLC</i>
<i>July 11, 2024</i>	<i>United Investment Ventures, LLC</i>	<i>Justin Rabin Smith and Melissa Pat Smith, co-Trustees of the Justin and Melissa Smith Living Trust, UA dated 10-31-2023</i>

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 unpermitted cannabis cultivation taking place approximately 780 feet from the permitted cultivation area.

Figure 1. Aerial view of 2290 Soda Bay Road



Source: Lake County GIS Portal

Figure 2. Unpermitted cultivation site



Source: Site inspection

Figure 3. Unpermitted structures aerial view and structures interiors



Source: Lake County GIS Portal



Source: Site inspection

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 Code Enforcement record identified as CMP 22-000215 (Exhibit F).

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, nor was Staff able to contact Mr. Tirado. 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 must 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 Code Enforcement Record 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 G). Staff is waiting for the outcome of this appeal to guide further actions on ENF23-01124. The Planning Commission revoked UP 19-15 based on the findings in the Staff Report dated September 28, 2023, and listed above.

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, Planning Commission hearing. Additionally, timely filing of the appeal allowed the stay of UP 19-15 and Legendary Farms permitted cultivation activity, as described in the Conditions of Approval.

Staff recommends the Board of Supervisors deny appeal (AB 23-03); Melissa Smith, Justin Smith, United Investment Ventures LLC, Legendary Farms LLC, uphold the Planning Commission's decision, and revoke Major Use Permit (UP 19-15), 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 Statement of Information Limited Liability Company, dated 3/31/2023
- D Grant Deeds for 2290 Soda Bay Road, from July 2, 2021 to July 11, 2024
- E Articles of Organization of a Limited Liability Company (LLC), dated July 27, 2015
- F Tirado Declaration
- G Appeal of Violation (ENF23-01124) by Request of Administrative Hearing before the Board of Supervisors, dated September 1, 2023
- H Appeal Request for AB 23-03 (Melissa Smith and Justin Smith)

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.lakecountyca.gov/Government/Directory/Administration/Visioning/Vision2028.htm>>

(check all that apply):

- | | | |
|---|--|--|
| <input checked="" type="checkbox"/> Well-being of Residents | <input checked="" type="checkbox"/> Public Safety | <input type="checkbox"/> Disaster Prevention, Preparedness, Recovery |
| <input checked="" type="checkbox"/> Economic Development | <input type="checkbox"/> Infrastructure | <input type="checkbox"/> County Workforce |
| <input type="checkbox"/> Community Collaboration | <input type="checkbox"/> Business Process Efficiency | <input type="checkbox"/> Clear Lake |

Recommended Action: Deny appeal (AB 23-03); Melissa Smith, Justin Smith, United Investment Ventures LLC, Legendary Farms LLC, uphold the Planning Commission's decision, and revoke Major Use Permit (UP 19-15), in concept, and direct Staff to prepare the Findings of Fact.