

**COUNTY OF CALAVERAS, STATE OF CALIFORNIA
PLANNING COMMISSION**

RESOLUTION NO. 2022-008

>>A RESOLUTION OF THE PLANNING COMMISSION RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT NEGATIVE DECLARATION 2021-055, FIND THE PROPOSED PROJECT TO BE A LATER ACTIVITY WITHIN THE SCOPE OF THE OCTOBER 22, 2019 CANNABIS PROGRAM EIR, AND APPROVE ZONING AMENDMENT 2021-055 TO CHANGE THE ZONING DESIGNATION OF A 41-ACRE PARCEL FROM RA-20 (RESIDENTIAL AGRICULTURE, 20-ACRE MINIMUM) TO A-1 (GENERAL AGRICULTURE, 20-ACRE MINIMUM FOR WHISKEY SLIDE FARMS.

WHEREAS, the Planning Department of the County of Calaveras received application 2021-055 from Whiskey Slide Farms, LLC, to amend the zoning of three contiguous parcels from RA (Residential Agriculture 20-acre minimum) to A1 (General Agriculture 20-acre minimum) to facilitate cultivation of cannabis; and

WHEREAS, on May 27, 2022 the applicant merged the three parcels into a single parcel of approximately 41 acres; and

WHEREAS, the proposed project is located on real property in the unincorporated portion of the County of Calaveras, more particularly described as APNs 016-027-043, 016-027-044, and 016-027-045 located at 15369, 15499, and 15469 Jesus Maria Road in Mokelumne Hill, in a portion of Section 12, Township 05 North, Range 12 East, MDM; and

WHEREAS, an Initial Study/Negative Declaration was prepared and available for public review for 30 days, pursuant to the requirements of the California Environmental Quality Act (CEQA), which adequately addressed any potentially significant environmental impacts associated with the proposed project; and

WHEREAS, the cannabis impacts related to proposed project were fully addressed by the program Environmental Impact Report (EIR) and Addendum approved by the County on October 22, 2019, in conjunction with an amendment to Chapter 17.95 of the County Code allowing commercial cannabis cultivation under a regulatory permit scheme; and

WHEREAS, during a duly noticed public hearing on September 8, 2022, the Planning Commission considered all the information presented to it, including its staff report, information presented by the project proponent, and public testimony presented in writing and at the meeting; therefore

BE IT RESOLVED that the Planning Commission recommends adoption of the Negative Declaration and the Zoning Amendment as shown on Exhibit A, based on the following findings:

1. The project was processed consistent with the requirements of the California Environmental Quality Act (CEQA), California Public Resources Code §21000 et seq. Pursuant to Subsection (c)(1) of CEQA Guideline 15168 (14 C.C.R. §15168), the proposed zoning amendment is a later activity within the scope of the programmatic Environmental Impact Report (EIR) and addendum certified on October 22, 2019 to approve the cannabis regulatory program codified as Chapter 17.95 of the Calaveras County Code. In accordance with CEQA Guidelines section 15168(c)(2), none of the circumstances listed in CEQA Guidelines section 15162 are present. Based on the whole record, there is no substantial evidence that the proposed zoning amendment to facilitate a commercial cannabis cultivation site could have a significant effect on the environment that was not already addressed in the previously approved programmatic EIR. Also, based on the whole record, there is no substantial evidence that the proposed zoning amendment will substantially worsen any significant and unavoidable programmatic impact identified in the programmatic EIR. All significant environmental impacts are mitigated to the extent feasible through the mitigation measures adopted by the Board of Supervisors in connection with its approval of the cannabis regulatory program codified as Chapter 17.95 of the Calaveras County Code. Remaining significant and unavoidable environmental impacts of the project continue to be acceptable for to the reasons set forth in the Findings and Statements of Overriding Consideration adopted by the County in connection with its approval of the cannabis regulatory program. This finding incorporates by reference in their entirety the Initial Study/Negative Declaration, the supplemental cannabis-related environmental analysis provided by Planning Staff, the staff report, the Final EIR and Addendum certified and adopted on October 22, 2019, and the Findings and Statements of Overriding Consideration previously certified and/or adopted by the County.

Evidence: The project is a zoning amendment to allow for commercial cannabis cultivation as anticipated by the adoption of County Code 17.95 (Cannabis) and the programmatic EIR certified for this program. Cannabis cultivation is allowed in both the original and requested zone, but the zoning amendment would make the applicant eligible to apply under Chapter 17.95 to co-locate one additional acre of canopy on the same parcel. While the applicant's contiguous parcels were originally too small for A1 zoning, they have now been merged into a single 41 acre parcel. Under Chapter 17.95, one acre of cannabis may already be cultivated without need of a discretionary permit on the applicant's existing RA-zoned parcel. Cannabis can also be cultivated without need of a discretionary permit on any neighboring parcels of at least twenty (20) acres in size. With A1 zoning, Chapter 17.95 permits one acre of cannabis to be cultivated for each twenty (20) acres of

land contained within the parcel. Since the parcel at issue is 41 acres in size, the rezone would authorize only a single additional acre of cannabis to be cultivated on the applicant's existing parcel.

The program EIR and Addendum for Chapter 17.95 were adopted on October 22, 2019, and, while the program limits the number of cannabis cultivation permits that could be issued in the county to certain land use zones, it also allows flexibility with respect to the potential location of permitted sites within the County—and it expressly allows for zoning amendment applications to be processed for the purpose of qualifying a particular site to apply for a cannabis permit. It also expressly allows for cultivation sites to be transferred from one location to another. Allowing an additional acre of cannabis to be grown on the applicant's parcel through a rezone will not increase the total amount of cannabis grown in the County under the regulatory program.

The rezone will not impact the overall planned density and building intensity in the County, as the rezone is a "down zone" for these purposes: The A1 zone does not allow for as much density or building intensity as the RA zone. The project, if approved, will utilize the existing easement access serving the existing cultivation site on the parcel.

The preparation of an Initial Study is an appropriate tool under CEQA to determine whether the proposed project is a later activity within the scope of the programmatic EIR as required by CEQA Guideline 15168 (14 C.C.R. §15168). An Initial Study was conducted to analyze whether there were potentially significant impacts of the zoning amendment that were not addressed in the EIR. No impacts related to the proposed cannabis cultivation were identified through the Initial Study that had not already been addressed in the EIR. Although not required under CEQA, a Negative Declaration was prepared and was available for public review from April 26, 2022, to May 26, 2022. During the comment period, comments were received objecting to the adequacy of the negative declaration, but the comments did not introduce facts or issues that would invalidate the Negative Declaration under CEQA. The comments also did not introduce facts or issues that would invalidate the determination that the proposed zoning amendment is a later activity within the scope of prior approved EIR. The Negative Declaration reflects the independent judgment and analysis of the County.

As discussed in the Initial Study/Negative Declaration, there is nothing unique about this particular project, its location, or the proposed zone that would result in new significant impacts or substantially worsen any of the significant impacts identified in the program EIR and Addendum. Odors and traffic generated at the proposed site through the approval of an additional acre of cannabis canopy on the parcel will not significantly worsen these significant and unavoidable programmatic impacts across the program area (the entire county). The approval

of an additional acre of cannabis on this parcel means that one less acre of cannabis can be grown elsewhere in the County under the existing program.

The approval of a zoning amendment for the purpose of growing cannabis does not guarantee that a cannabis cultivation permit will be issued. The permit application is vetted by the County to ensure eligibility under the cannabis regulatory program, and any resulting permitted cultivation premises will be subject to all of the requirements of both Chapter 17.95 of the County Code and the permittee's state-issued commercial cannabis license.

2. The proposed Zoning Amendment is consistent with the land use map and applicable policies of the County's General Plan and the standards of the Calaveras County Zoning Code, Title 17, for the General Agriculture (A1) Zone.

Evidence: The subject parcel is designated as Working Lands and the A1 zoning classification is consistent in this land use designation. The proposed A1 zoning is intended to be a district in which an equal emphasis is assigned to residential and agricultural uses. The A1 zone is to provide lands for small-scale and personal-scale farming and ranching, as well as larger residential parcels. The subject parcel meets the minimum parcel size requirement of 20 acres for the Working Lands land use designation.

One of the goals of the General Plan (LU-2) is to provide a land use pattern that allows those who own, operate, or manage the productive resources in the county, to maintain open space, wildlife habitat, agricultural lands, mineral resources, and forests. Utilizing a parcel for agricultural production helps maintain the open space; therefore, encouraging larger parcels to have agricultural uses allows more opportunity to both use the and maintain open space. This project is also consistent with Policy LU 3.6, adhering to the density, land use intensity, and water and sewage disposal standards set forth in Table LU-1 in the Land Use Element. Another goal of the General Plan (LU-5) is for the county to have a strong and diversified economic base through the creation, retention, expansion and attraction of business, agriculture, and industry. Rezoning to A1 (a resource zone) will increase the parcel's economic viability beyond that of a parcel with an RA zone, which provides less economic benefit to the county due its more limited agricultural uses.

3. The proposed Zoning Amendment is consistent with neighboring and adjacent land uses and zoning.

Evidence: Land uses surrounding the subject parcels include a mix of residential and personal ranches on parcels ranging in size from 5 acres to 170 acres. Parcels in the immediate vicinity of the subject parcel are zoned U, RA, and RR. Agricultural land is interspersed with rural residential land throughout the county and rural

residential land often serves as a transition between higher density and intensity uses and agricultural pursuits. The proposed use which is the purpose of this zoning amendment is to cultivate an additional acre of cannabis. The parcel is of sufficient size and its cultivation area is located far enough away to allow an additional one acre of canopy to be sufficiently separated from neighboring residences to minimize conflicts. In addition, two adjacent landowners within the Oak Ridge Subdivision were approved to rezone two parcels within the subdivision from RR to RA to reactivate their previous commercial cannabis cultivation sites. Therefore, the proposed zoning amendment is consistent with the neighboring rural residential and agricultural uses, and the RR, U, and A1 zoned parcels in the vicinity.

Approved by the Planning Commission of the County of Calaveras, at a regular meeting of the Planning Commission held on September 8, 2022, on a motion by Commissioner _____ and seconded by Commissioner _____.

AYES:

NOES:

ABSTAIN:

ABSENT:

Chair, Planning Commission ATTEST:

Gabriel Elliott, Director of Planning

The project files are available for public review in the Planning Department, County of Calaveras, Government Center, 891 Mountain Ranch Road, San Andreas, CA. 95249, between the hours of 8:00 a.m. and 4:00 p.m.

Exhibit "A"

Zoning Amendment from RA-20
(Rural Residential 20-acre
minimum) to A1-20 (General
Agriculture 20-acre minimum)

