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COMMUNITY DEVELOPMENT AGENCY
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NEVADA COUNTY BOARD OF SUPERVISORS
Board Agenda Memorandum

MEETING DATE: February 27, 2024

TO: Board of Supervisors

FROM: **Kyle Smith, Senior Planner**
Brian Foss, Director of Planning

SUBJECT: Public Hearing to consider the appeal filed by Court and Megan Worden regarding the decision to approve a Petition for Exceptions to Driveway Standards and Management Plan to allow for the permitting of an existing residential structure and existing accessory structures at 14120 Thoroughbred Loop in Grass Valley.

RECOMMENDATION:

- I. Project Action: Adopt the attached Resolution to deny the appeal and to uphold the decision to approve a Petition for Exceptions to Driveway Standards and Management Plan to allow for the permitting of an existing residential structure and existing accessory structures at 14120 Thoroughbred Loop in Grass Valley, CA.

FUNDING:

No budget amendments are required.

ATTACHMENTS:

1. Resolution to Deny the Appeal
 2. Appeal to the Board of Supervisors
 3. Planning Department Memorandum to Rescind ADP
 4. Amended Conditional Approval Letter
 5. Public Notice and Vicinity Map
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This staff report intends to provide a discussion of a brief background of the project, permit processing and authority, the relevant issues identified in the appeal, and staff's responses to the relevant issues raised in the appeal to support the decision on the project.

PROJECT BACKGROUND:

On March 9, 2020, the applicant submitted an application to the Planning Department for an Administrative Development Permit (ADP20-0012), with subsequent resubmittals for a Petition for Exceptions to Driveway Standards (PFX22-0037) and Management Plan (MGT23-0023) to permit a commercial cannabis operation and associated residential development at 14120 Thoroughbred Loop in Grass Valley, CA. The project originally included an ADP to allow for cannabis cultivation, however as discussed in this staff report, the ADP has been rescinded and is considered null and void.

Between March 9, 2020 and September 29, 2023 the project application and materials were reviewed multiple times by County staff, and state and local agencies to ensure compliance with relevant standards. In addition, numerous photographs, comment letters from neighbors and previous landowners, and other historical information were submitted and reviewed by staff together with the application materials to verify compliance with relevant standards. Reviewing agencies compared historical records with applicant materials and other information submitted to the County to determine specific activities, including permitting all existing unpermitted development. Each iteration of review resulted in revisions to the project description, including requesting a Petition for Exception to Driveway Standards to provide all vegetation management on the subject parcel. In addition, project revisions resulted in revisions to compliance requirements and conditions of approval applied by regulatory agencies, including requiring a new septic system for the proposed residence and requiring all structures and associated development be permitted and inspected, among other conditions of approval. Following at least eight (8) iterations of project redesign and review, County staff and all relevant local and state agencies included conditions of approval necessary to bring the project into compliance with the standards defined in the LUDC and all applicable State laws. As a result, the project as conditioned is consistent with the LUDC and all applicable code requirements.

On September 29, 2023, the Planning Department approved an Administrative Development Permit, Petition for Exceptions to Driveway Standards, and Management Plan to permit a commercial cannabis operation at 14120 Thoroughbred Loop in Grass Valley, CA 95949. On October 10, 2023, an appeal was filed by Court and Megan Worden on those actions for the Board of Supervisors' consideration, and the Board of Supervisors scheduled a hearing for December 5, 2023.

On November 17, 2023, the appellants requested an extension of the public hearing for at least 30 days, and on November 20, 2023, the Nevada County Clerk of the Board administratively approved the request for extension and rescheduled the hearing for January 23, 2024.

On January 9, 2024, the project applicant submitted a request to the Nevada County Planning Department to abandon Administrative Development Permit (ADP) entitlement number ADP20-0012, approved on September 29, 2023. The applicant requested to retain the Petition for Exceptions to Driveway Standards (PFX) and Management Plan (MGT) approvals in order to permit as-built residential improvements and other unpermitted development on the subject property.

On January 12, 2024, the Planning Department granted the request and rescinded ADP20-0012 including all land use allowances, approvals, and authorizations associated therewith. As a result, the ADP is considered null and void, and no commercial cannabis activities are allowed on the subject property located at 14120 Thoroughbred Loop (APNs 053- 320-044; 053-260-019; 053-210-024; 053-320-043; 053-260-029). The applicant requested to retain the Petition for Exceptions to Driveway Standards (PFX) and Management Plan (MGT) approvals in order to permit as-built residential improvements and other unpermitted development on the subject property.

On January 18, 2024, the appellants requested an extension of the public hearing, and on that same day, the Nevada County Clerk of the Board administratively approved the request for extension and rescheduled the hearing for February 27, 2024 to consider the appeal of the PFX and MGT entitlement approvals.

Project Setting:

The project site is located at 14120 Thoroughbred Loop in Grass Valley, California at the corner of Thoroughbred Loop and McCourtney Road. The project is located on a rural, approximately 59.08-acre parcel in a General Agricultural Zoning District with a Subdivision Limitation Combining District (AG-X). The subject parcel is developed with horse barns, a horse arena, and other accessory structures. No permitted residence exists on the subject parcel, although unpermitted improvements have occurred which resulted in an unpermitted residence on the subject property. In addition, County staff were unable to determine that the barns and other accessory structures were developed with the benefit of building permits.

Surrounding properties include the 6-B Ranch Estates subdivision located to the South, and rural residential and agricultural parcels surround the project on the remaining Northern and Western boundaries. The subject parcel and all surrounding parcels have a General Agricultural (AG) Base District zoning designation.

Project Description:

The project originally included an ADP to allow for cannabis cultivation, however as discussed in this staff report, the ADP has been rescinded and is considered null and void. The project now only includes two (2) land use entitlements required to permit existing

residential improvements on the subject property and bring the development into compliance with the Land Use and Development Code at 14120 Thoroughbred Loop in Grass Valley, CA 95949. This approval is for an existing gravel driveway which will be improved as required by the approval of this Petition for Exception to Road Standards (PFX22-0037) pursuant to the Department of Public Works conditions of approval, and a proposed septic system for sewage disposal. The project proposes to impact a protected watercourse which will be mitigated pursuant to the approved Management Plan (MGT23-0023) developed by a Nevada County prequalified biologist.

Zoning Consistency:

The subject parcel is approximately 59.08-acres and has a Zoning Designation of General Agricultural-Subdivision Limitation Combining District (AG-X). Single-family residential dwellings and accessory structures are allowable uses in the AG-X, and pursuant to LUDC Section L-II 3.30.

The as-built residence will be supported by a new septic system and existing well on the subject parcel. As required by the conditions of project approval, all existing and proposed structures will be required to be issued permits, receive inspections, and be issued certificates of occupancy as applicable. Therefore, all structures and associated development will be required to comply with building codes, fire safety standards, and other public health and safety requirements within three (3) years of entitlement approval as described in LUDC Section L-II 5.10. It is standard process to include conditions of approval on land use entitlement approvals that must be completed within prescribed timeframes.

The biological resource inventory and Management Plan prepared by a prequalified biologist includes mitigation measures and development standards to minimize any impacts to the seasonal watercourse that may arise due to the installation of a new septic system to support the proposed residence and associated disturbance within the setback to the seasonal watercourse.

The project proposes to improve the existing driveway and provide the entire vegetation management buffer on the subject parcel to provide the same practical effect of the County's Private Driveway Construction Standards by providing all required vegetation management zones on the subject property. As a result, the project as conditioned is consistent with the LUDC, and all applicable local and state codes.

PERMIT PROCESSING AND AUTHORITY:

The project includes two (2) administrative land use entitlements to permit existing residential development on the subject property and bring the development into compliance with the Land Use and Development Code. As a result, the project includes a Petition for Exceptions to Driveway Standards entitlement (PFX22-0037) to allow for the development

of a residence and Management Plan entitlement (MGT23-0023) to allow for a proposed septic system to serve the residence. The PFX and MGT, respectively associated with the existing driveway and proposed septic system, are required in order to permit the as-built residential improvements on the subject parcel and resolve the existing code violations.

Land use entitlements on their face generally do not permit development or ground disturbance, but rather provide a process for a landowner to obtain governmental approval for proposed development plans. A landowner must secure any required land use entitlements before they can begin to build the development proposed in land use entitlement applications.

Administrative land use entitlements differ from discretionary land use entitlements wherein the latter require the exercise of judgement or deliberation by a public agency at a public hearing in determining whether the project will be approved, or if a permit will be issued. Administrative land use entitlements provide a review process for low intensity land uses and development wherein projects shall be approved when the application achieves the standards and requirements defined by the LUDC. Administrative land use entitlement approvals include all conditions of approval necessary to bring a project into compliance with applicable laws. The conditions of approval applied by regulatory agencies on land use entitlement approvals is part of the standard development process and all conditions of project approval must be completed and inspected within the time limits described in LUDC Section L-II 5.10 and before operations associated with the land use entitlement begin.

Petitions for Exception to Driveway Standards:

Pursuant to LUDC Section L-XVI 3.4, all exceptions or modifications to the Driveway Standards shall be considered by the Planning Director in consultation with the Fire Marshal. The Planning Director shall consider all the facts associated with the requested exception and request mitigations as deemed appropriate by the Planning Department, Public Works Department, and Fire Marshal. In order to approve a Petition for Exception to Driveway Standards, those entities shall find that the mitigations provide the same overall practical effect as strict compliance with the Driveway Standards. Petitions for Exception to Driveway Standards associated with an allowed use are reviewed and approved through a ministerial process and does not allow for the use of discretion or subjective judgement on the part of the approving authority.

Management Plans:

Pursuant to LUDC Section L-II 4.3.3 and 4.3.17, if resource protection standards defined in the LUDC effectively preclude development of the project or a revised project, or adversely affects another environmentally sensitive resource, a Management Plan, prepared by a qualified biologist or botanist, shall be prepared that avoids or minimizes impacts to the resource. Management Plans associated with an allowed use are reviewed

and approved through a ministerial process and does not allow for the use of discretion or subjective judgement on the part of the approving authority. Management Plan conclusions and recommendations for provisions to minimize or compensate for impacts, and the time frame for implementation of such provisions, shall be reviewed by the Planning Department for compliance with the provision of the LUDC and other applicable laws, and incorporated into the conditions of approval of the project.

THE APPEAL:

The appeal letter of the decision to approve an Administrative Development Permit, Petition for Exceptions to Driveway Standards, and Management Plan was submitted to the Clerk of the Board on October 10, 2023. The appellants request the Board of Supervisors deny the project approval and not allow any future commercial cannabis cultivation on the subject parcel.

As discussed above, after the appeal was filed, the Project Applicant provided a written request to the Planning Department to abandon the approved Administrative Development Permit to conduct commercial cannabis activities (ADP20-0012), which was stayed by this appeal. Pursuant to the Applicant's request, the Planning Department subsequently rescinded the ADP entitlement approval and all land use allowances, approvals, and authorizations are considered null and void. As a result, the ADP and associated cannabis cultivation is no longer a subject of this appeal and no commercial cannabis cultivation is allowed on the subject property.

The appeal letter includes twelve (12) specific provisions which are being appealed, nine (9) of which relate to the rescinded ADP and no longer a subject of this appeal. No additional provisions were submitted with either hearing postponement request. Each of the specific provisions related to the PFX and MGT approvals noted in this Appeal are provided below in summary (for the complete text please see the Appeal in Attachment #4) shown in ***bold italic text*** followed by staff's responses to each of appeal points.

- ***Chapter XIII: California Environmental Quality Act:***
“[I]t appears ... staff has approved plans for the septic system to be laid over a perennial creek so applicants can facilitate cannabis cultivation over the top of the old septic lines that will remain in place. This management plan is insufficient and appears as an exercise in administrative approval authority. This project is in clear contrast to responsible, environmentally-friendly cannabis cultivation and requires an extensive, in-person investigation and deserves a full review under the California Environmental Quality Act (CEQA).”

The appellants indicate the existing unpermitted septic system, and the location of the proposed new septic system are inadequately addressed. The project application includes a proposal for a new septic system to support a future residential dwelling as required by project conditions of approval. The proposed septic system would result in disturbance

within the setback to an intermittent watercourse as defined by the United States Geological Service quadrangle maps and the Management Plan prepared by a Nevada County prequalified biologist.

An existing unpermitted septic system exists on the subject parcel, and the Nevada County Department of Environmental Health determined that the existing system could not be utilized to support the proposed residence and must be abandoned consistent with Environmental Health Department requirements. In order to comply with Nevada County Department of Environmental Health regulations, a new septic system needs to be permitted. In order to avoid contamination of surface and groundwater and to not interfere with other existing structures, the project septic contractor, and the project applicant proposed the location of the new leach field set across the intermittent watercourse. The sewage will be piped from the existing tank through an enclosed 2" pipe with a septic pump which will cross the intermittent watercourse adjacent to an existing footbridge and leached into the pasturage previously located on a sloping hillside. The enclosed 2" pipe crossing is designed to comply with the Nevada Irrigation District standard drawing for footbridge crossings. Environmental Health conditions of approval C.1 and C.4 address the requirements for the proposed new septic system. The proposed septic system is designed and installed by a septic system contractor licensed by the State of California, and the system will require a permit from Environmental Health and will be installed per the contractor's design. The location of the proposed septic system (including the leach fields) complies with County regulations which take into account the location of watercourses, structures, and neighboring wells.

As described in the Permit Processing and Authority section, Management Plans associated with an allowed use are reviewed and approved through a ministerial process. The Management Plan and site plan submitted with the application materials identify the centerline of an intermittent watercourse on the subject property and a 100-foot setback thereto. Although the LUDC requires a 50-foot setback to intermittent watercourses, the Planning Department applied the more stringent 100-foot setback for perennial watercourses based off information from neighboring property owners that the watercourse in fact runs year-round. As required by LUDC Section L-II 4.3.17, the application materials included a Management Plan to minimize impacts to the watercourse.

The Management Plan included in the project application (MGT23-0023) was prepared by Edward C. Beedy, Ph.D. of Beedy Environmental Consulting, a Nevada County prequalified biologist. The Management Plan describes the vegetation and wildlife resources of the area immediately surrounding the site and seasonal drainage, it addresses the potential impacts of the project, and it makes recommendations to mitigate any impacts to biological resources. The project biologist determined accidental introduction of sediment, washwater, solvents, oil, chemical wastes, cement, or other pollutants into this drainage could adversely affect water quality during construction. These potential impacts will be minimized by implementation of Best Management Practices (BMPs), discussed in the Management Plan and included as Conditions of Approval A.2. Therefore, the project

as conditioned is consistent with code requirements related to minimizing impacts to sensitive watercourses.

- ***Section L-II 2. 7.9 Subdivision Limitation Combining District***
“Adding residences and/or building sites not only would be inconsistent with previous precedents but also set a poor precedent for other X zoned parcels in the county.”

Pursuant to LUDC Section L-II 2.7.9, when property is zoned with the X Combining District, there shall be no changes to the parcels shown on the final or parcel map which would increase overall density or create additional building sites. The subject parcel was created by an approved Parcel Map (PM79-65) to retain an operational horse ranch as a single parcel. No project conditions of approval or recorded notes on the parcel map restrict land uses on the subject parcel or preclude the development of a residence on the subject parcel. As a result, the AG-X zoning does not preclude residential development on the subject parcel, similar to all other parcels created through the same subdivision. The proposed project does not increase overall density or create additional building sites because the parcel has adequate density to support single-family residential development pursuant to the allowable land uses described in LUDC Section L-II 2.3.

- ***Section G-IV 4.A Regulating Roadway Encroachments***
“It is unclear the details of the exception to driveway standards because the document is not available on the county's website ... If this project continues forward, a new (and permitted) driveway should be added for primary access from Thoroughbred Loop in an attempt to uphold neighbors property rights and reduce the traffic danger by allowing this blind driveway to be approved without meeting county standards.”

The application and materials for a Petition for Exceptions to Driveway Standards has been available on the Nevada County Citizens Access Portal since the Planning Department received it on December 1, 2022. In addition, the conditionally approved Petition for Exceptions to Driveway Standards and conditions of approval are also available on the Nevada County Citizens Access Portal and included in the project approval which was distributed to the appellant at the time of project approval (Attachment #2). The driveway as shown on the Site Plan and Petition for Exception to Driveway Standards has been reviewed by the Nevada County Fire Marshall, Public Works Department, and Planning Department who determined that the proposed driveway and vegetation management provide the same overall practical effect as strict compliance with the Driveway Standards and serves as adequate access for a proposed residence. Conditions of approval D.1, E.4, and F.1 address the requirement for the entire driveway be located on the subject parcel which may require improvements to the existing driveway including moving portions of the driveway to ensure the entire travel way and vegetation management zones are located on the subject parcel. As a result, no additional access is required to comply with the standards defined in the LUDC or state law.

APPEAL CONCLUSION:

The project as proposed is consistent with the standards defined in the LUDC. Pursuant to LUDC Section L-II 5.5.1, the project application was carefully reviewed by multiple County departments and outside entities for conformance with County guidelines and regulations. Review conducted by the Nevada County Consolidated Fire District and Nevada County Fire Marshall concluded the project, as conditioned by the PFX conditions of approval, would provide the same practical effect as strict adherence to driveway standards as required by LUDC Section L-XVI 3.4. A review of biological resources was conducted, and a Management Plan was prepared by a Nevada County prequalified biologist in order to minimize and mitigate any potential impacts to watercourses due to the installation and operation of a septic system to support the as built residential structure, as required by LUDC Section L-II 4.3.17. The Nevada County Planning Department approved the PFX and MGT consistent with the standards and requirements defined in the LUDC. The conditions of approval applied by regulatory agencies on land use entitlement approvals is part of the standard development process and all conditions of project approval must be completed and inspected before operations associated with the land use entitlement begin.

The project application and materials were reviewed multiple times by County staff, and state and local agencies to ensure compliance with relevant standards. In addition, numerous photographs, comment letters from neighbors and previous landowners, and other historical information were submitted and reviewed by staff together with the application materials to verify compliance with relevant standards. Reviewing agencies compared historical records with applicant materials and other information submitted to the County to determine specific activities, including permitting all existing unpermitted development. Each iteration of review resulted in revisions to the project description, including requesting a Petition for Exception to Driveway Standards to provide all vegetation management on the subject parcel. Project revisions also resulted in revisions to compliance requirements and conditions of approval applied by regulatory agencies, including requiring all structures and associated development be permitted and inspected within three years of project approval.

With the incorporation of the conditions of approval defined by the respective entities, the subject parcel and all appurtenant development will comply with the LUDC and all applicable state and local laws prior. Notwithstanding, the project will result in essentially no change of the current land use at this site, as most of the development currently exists. This residential development proposed under this project was found to be compatible with the allowed land uses for the AG-X zoning district and with the other surrounding agricultural and residential uses. The Nevada County Planning Department approved the PFX and MGT consistent with the standards and requirements defined in the LUDC, and Planning Department staff recommend the Board of Supervisors take action to deny the appeal and to uphold the decision to approve a Petition for Exceptions to Driveway

Standards and Management Plan to allow for the permitting of an existing residential structure and existing accessory structures at 14120 Thoroughbred Loop in Grass Valley, CA.

SUMMARY:

Staff believes all of the issues raised in the appeal have been considered and were adequately addressed by project conditions of approval or were outside the scope of land use entitlement review and approvals. The proposed project as conditioned meets all the requirements to obtain a Management Plan and Petition for Exception to Driveway Standards, and all existing and proposed development on the subject parcel is required to obtain necessary permits and comply with LUDC requirements and applicable state and local laws within the time limits described in LUDC Section L-II 5.10.

The Nevada County Planning Department approved the PFX and MGT consistent with the standards and requirements defined in the LUDC, and Planning Department staff recommend the Board of Supervisors take action to deny the appeal and to uphold the decision to approve a Petition for Exceptions to Driveway Standards and Management Plan to allow for the permitting of an existing residential structure and existing accessory structures. Attachment 4 includes an Amended Conditional Approval letter reflecting the removal of the ADP entitlement consistent with the Memorandum to Rescind ADP20-0012 dated January 12, 2024, and adjusting the timing of proposed conditions of approval to reflect the ADP entitlement removal. Should the Board take the recommended action, the draft Conditional Approval letter would be implemented, as amended during the hearing.

RECOMMENDATION:

Staff recommends the Board of Supervisors take the following action:

- I. Project Action: Adopt the attached Resolution to deny the appeal and to uphold the decision to approve a Petition for Exceptions to Driveway Standards and Management Plan to allow for the permitting of an existing residential structure and existing accessory structures at 14120 Thoroughbred Loop in Grass Valley, CA.

Item Initiated by: Kyle Smith, Senior Planner

Approved by: Brian Foss, Planning Director