

March 17, 2021

File Number: 57AZ-257998

VIA ELECTRONIC MAIL

Honorable Planning Commissioners
City of Santa Rosa Planning Commission
Santa Rosa City Hall
100 Santa Rosa Avenue
Santa Rosa, California 95404

RECEIVED

By Andrew Trippel at 6:41 pm, Mar 17, 2021

Re: The Santa Rosa Farm Group – Entitlement Term

Dear Honorable Planning Commissioners:

On November 1, 2017, the Santa Rosa Farm Group (“Applicant”) filed an application with the City of Santa Rosa (“City”) for Conditional Use Permits (“CUP”) to redevelop an industrially-zoned parcel with an approximately 120,000-square-foot cannabis facility (“Project”) located at the southwest corner of the intersection at Yolanda Avenue and Petaluma Hill Road (“Project Site”). The Project is now before you for approval and the Applicant has an important request for the Planning Commission to consider. The Applicant must have sufficient time to exercise its entitlements. Accordingly, the Applicant respectfully requests that the City approve a 48-month term for the CUPs associated with the Project. This request is clearly justified for several reasons.

First, it is critical that the Applicant have sufficient time, between entitlement approvals and building permit issuance, to exercise the CUPs. Section 20-54.050.A.1 of the Santa Rosa City Code (“Code”) allows the City to grant the Applicant any time limit it determines necessary by including such time limits in the conditions of approval for the Project. Precisely, the Code states “***unless conditions of approval*** or other provisions of this Zoning Code ***establish a different time limit***, any permit or approval not exercised within 24 months following the date on which the permit or approval was granted shall automatically expire and shall be void, except when associated with an approved Tentative Map in compliance with Subsection (A)(2), or where an extension of time is approved in compliance with Subsection B. (*Emphasis Added*).” In other words, even though the Code provides a 24-month lifespan for the CUPs in normal circumstances, the City is free to change that lifespan if circumstances warrant. See Exhibit 1: Section 20-54.050.

Here, the Applicant, the City, and in fact the World, have been operating under the very abnormal circumstances of a global pandemic. The pandemic will continue to adversely impact real estate markets, the ability to secure project financing, workforce availability, and building material supply chains for the foreseeable future. This fact alone justifies the City providing the Applicant with more than 24 months to exercise the CUPs.

Second, the characteristics of the Project are important to understand within the relatively short timeframe the Code provides to exercise a CUP. The Project requires minimal entitlements (a minor and major CUP) because it is consistent with the land use designations and zoning that apply to the Site. However, it is a time consuming and complex process to fully design and permit a cannabis facility of this scale. The City's design review board action is still forthcoming. Detailed construction drawings will be time intensive for a large facility. Navigating covid and post-covid financial lending markets is onerous. And, the City staffing is likely stretched thin, which typically further delays the ability to timely process permits. These issues also make it unreasonable to assume that the Applicant can commence construction within 24 months.

Third, the Applicant has been working with the City for approximately three and a half years simply to get to a Planning Commission hearing. See Exhibit 2: Application Receipt. The Applicant steadfastly weathered the elongated process to prepare a Mitigated Negative Declaration ("MND") for the Project, and patiently endured several lengthy delays as the City battled fire seasons and covid emergencies. It is plainly inequitable to demand that the Applicant now exercise their entitlements in far less time than it took the City to grant such entitlements. This is especially true considering the unprecedented situation the pandemic has thrust upon all of us.

Fourth, the Applicant has discussed the need for a 48-month CUP lifespan with City staff. The staff recognizes that the Code allows the City to grant this requested timeframe by simply stating it in the conditions of approval for the Project. Also, our understanding is that the staff does not oppose the requested term. To implement the Applicant's request, the Planning Commission merely needs to direct staff to adjust the "expiration and extension" condition of approval to state that "The Conditional Use Permits shall be valid for a four-year period. If construction has not begun or if an approved use has not commenced within four (4) years from date of approval, this approval shall automatically expire and shall be invalid unless an application for extension is filed prior to expiration." Doing so would provide the Applicant the time necessary to exercise the CUPs.

Finally, we recognize that the Code allows the City to grant extensions. However, the Applicant needs the certainty of an initial four year term on the CUPs. An extension is a discretionary act that subjects the Project to undue risk and more delay. And there is no guarantee that the City could or would grant the extension if requested. That uncertainty hinders the Project at best, or makes it infeasible at worst. The bottom line is that the circumstances associated with the Project, and the unprecedented impact of the pandemic, surely warrant a longer term for the Applicant to exercise its entitlements.

Therefore, based on all of the points above, we respectfully request that the Planning Commission approve a 48-month term for the CUPs associated with Project.

In closing, we appreciate the Planning Commission's consideration of this important request, and urge you to grant it.



Honorable Planning Commissioners
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Sincerely,

A handwritten signature in blue ink that reads "James E. Pugh".

James E. Pugh
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

SMRH:4816-3388-1565.1

cc:

Mr. William Rose
Mr. Andrew Trippel

EXHIBIT 1

Section 20-54.050

[Title 20 ZONING](#)[Division 5 Land Use and Development Permit Procedures](#)[Chapter 20-54 PERMIT IMPLEMENTATION, TIME LIMITS, AND EXTENSIONS](#)**20-54.050 Time limits and extensions.****A. Time limits.**

1. Unless conditions of approval or other provisions of this Zoning Code establish a different time limit, any permit or approval not exercised within 24 months following the date on which the permit or approval was granted shall automatically expire and shall be void, except when associated with an approved Tentative Map in compliance with Subsection (A)(2), or where an extension of time is approved in compliance with Subsection B.
2. All approved project entitlements, such as a Conditional Use Permit or Hillside Development Permit, associated with an approved Tentative Map shall remain effective concurrent with the period of time the Tentative Map is in effect. If an extension of time is requested for the associated Tentative Map, a similar extension of time for all associated entitlements shall be required and shall be processed concurrently with the Tentative Map extension request.
3. The permit or approval shall not be deemed “exercised” until the permittee has substantially commenced the approved use on the site in compliance with the conditions of approval or a Building Permit has been issued involving the permit or approval and construction under the permit has commenced and is diligently pursued toward completion on the subject property.
4. The permit or approval shall remain valid after it has been exercised as long as a Building Permit is active for the project, or a final building inspection or Certificate of Occupancy has been granted.
5. If a project is to be developed in approved phases, each subsequent phase shall be exercised within 24 months from the date that the previous phase was exercised, unless otherwise specified in the permit or approval, or the permit or approval shall automatically expire and shall be void, except where an extension of time is approved in compliance with Subsection B.
6. If a land use that was established in compliance with a Conditional Use Permit ceases operation for six months or more, the Conditional Use Permit shall expire.

B. Extensions of time. Upon written request by the applicant, the Director may extend the time limit established by Subsection A for a permit or approval to be exercised.

1. The applicant shall file a written request for an extension of time with the Department at least 30 days before the expiration of the permit or approval, together with the filing fee required by the Council's Fee Schedule. Expiration of the permit or approval will be stayed until the decision on the extension request if the request is filed 30 days before the original expiration.
2. The Director shall determine whether the applicant has made a good faith effort to exercise the permit or approval. The burden of proof is on the applicant to establish, with substantial evidence beyond the control of the applicant (e.g., demonstration of financial hardship, legal problems with the closure of the sale of the parcel, poor weather conditions in which to complete construction activities, etc.), why the permit or approval should be extended.
3. The Director may grant up to four 12-month extensions to the expiration date of the original approval only upon the Director's determination that conditions of the site and in the vicinity are substantially the same as when the permit or approval was originally granted.

C. Effect of expiration. After the expiration of a permit or approval in compliance with Subsection A (Time limits), above, no further work shall be done on the site until a new permit or approval is first obtained.

(Ord. 3995 §§ 13, 14, 2012; Ord. 3677 § 1, 2004)

EXHIBIT 2

Application Receipt



Planning and Economic Development
100 Santa Rosa Avenue Room 3
Santa Rosa, CA 95404
(707) 543-3200 Fax (707) 543-3269

PAYMENT RECEIPT: 148960
CASHIER: CS19
DATE: 11/01/2017

Receipt

Record Information

Record Number	Record Name	Site Address	APN
PRJ17-068	SANTA ROSA FARMS CULTIVATION FACILITY	800 YOLANDA AVE	044091063

Fee Information

Description	Account Code	Invoice#	Amount
Conditional Use Permit	001100-4603	119478	\$16,213.00
Design Review	001100-4603	119478	\$15,811.00
Public Hearing	001100-4603	119478	\$3,919.00
Total Fee Amount:			\$35,943.00

Payment Information

Method	Reference No	Comments	Transaction Amount
Credit Card	0610 047240		\$359.43
Credit Card	0610 047240		\$35,583.57

Payor

DANNY ABDELMALAK COMPLETE AUTOMOTIVE

Total Amount: \$35,943.00