

## STAFF REPORT

**BOARD MEETING DATE:** October 3, 2023

**CATEGORY:** Scheduled Hearings 7

**SUBJECT:** Take the following actions: (1) Conduct a public hearing; (2) adopt the California Environmental Quality Act determination of a Negative Declaration; (3) adopt the recommended findings listed in Planning Commission Resolution 2023-017; and (4) introduce, waive the reading of, and enact two ordinances related to the Hawes Farms agritourism/agritainment proposal to rezone an existing Planned Development (PD) zone district to a revised PD zone district for an approximately 8.25-acre parcel and to change the zoning of four parcels totaling approximately 137.09 acres from the PD and Limited Agriculture (A-1) zone districts to the Commercial Recreation (C-R) zone district identified as Zone Amendment 21-0002. The approximately 145.34-acre project site is located at 6171 Deschutes Road, 6465 Deschutes Road, and 21945 Dersch Road, Anderson, CA 96007 (Assessor's Parcel Numbers (APNs) 057-190-031, 057-190-036, 057-190-037, 057-190-041, and 057-190-040 as those APNs are assigned for purposes of the 2023 Regular Assessment Roll). No changes are proposed to the Designated Flood (F-1) and Restrictive Flood (F-2) combining zone districts within the southern portion of the project site, the Building Site (B) combining districts applicable to APNs 057-190-037 and 057-190-041, and the Interim Mineral Resource (IMR) combining district applicable to APN 057-190-041.

**DEPARTMENT:** Resource Management

**SUPERVISORIAL DISTRICT #:** 3

**DEPARTMENT CONTACT:** Lio Salazar, Planning Division Manager, (530) 225-5532

**STAFF REPORT APPROVED BY:** Paul A. Hellman, Director of Resource Management

<u>Vote Required?</u>	<u>General Fund Impact?</u>
Simple Majority Vote	No Additional General Fund Impact

### RECOMMENDATION

Take the following actions: (1) Conduct a public hearing; (2) adopt the California Environmental Quality Act determination of a Negative Declaration; (3) adopt the recommended findings listed in Planning Commission Resolution 2023-017; and (4) introduce, waive the reading of, and enact two ordinances related to the Hawes Farms agritourism/agritainment proposal to rezone an existing Planned Development (PD) zone district to a revised PD zone district for an approximately 8.25-acre parcel and to change the zoning of four parcels totaling approximately 137.09 acres from the PD and Limited Agriculture (A-1) zone districts to the Commercial Recreation (C-R) zone district identified as Zone Amendment 21-0002. The approximately 145.34-acre project site is located at 6171 Deschutes Road, 6465 Deschutes Road, and 21945 Dersch Road, Anderson, CA 96007 (Assessor's Parcel Numbers (APNs) 057-190-031, 057-190-036, 057-190-037, 057-190-041, and 057-190-040 as those APNs are assigned for purposes of the 2023 Regular Assessment Roll). No changes are proposed to the Designated Flood (F-1) and Restrictive Flood (F-2) combining zone districts within the southern portion of the project site, the Building Site (B) combining districts applicable to APNs 057-190-037 and 057-190-041, and the Interim Mineral Resource (IMR) combining district applicable to APN 057-190-041.

### DISCUSSION

The Planning Commission considered this item on August 24, 2023, and by a 3-0 vote recommended that the Board of Supervisors approve Zone Amendment 21-0002; the adopted Planning Commission resolution is attached.

General Plan & Zoning – The project site is in the Mixed Use (MU) and Limited Agriculture (Ac-g) general plan land use

designations and the Planned Development (PD), Limited Agriculture combined with Building Site 10-Acre Minimum Lot Area (A-1-BA-10), Limited Agriculture combined with Building Site 20-Acre Minimum Lot Area, Interim Mineral Resource, Restrictive Flood, and Designated Floodway (A-1-BA-20-IMR-F-2-F-1), and Limited Agriculture combined with Restrictive Flood (A-1-F-2) zone districts. The purpose of the PD zone district is to provide flexibility in the application of zoning standards to proposed developments that incorporate an innovative mix of building types, land uses, open space, or residential densities. The PD zone district is consistent with the MU general plan land use designation provided the proposed primary uses are consistent with the general plan land use designation within which the project is located and are reasonably compatible with surrounding land uses. The purpose of the C-R zone district is to provide opportunities for the development of privately owned land for commercial recreational activities which need or utilize, and provide for the enjoyment of, the natural environment. The C-R zone district is consistent with all general plan land use designations, if the proposed use blends harmoniously with the natural features of the surrounding area.

**Access & Services** – The project site is accessed from Dersch Road and Deschutes Road. Potable water is provided by on-site wells. The applicant would be limited to serving no more than 25 persons per day for up to 60 days per year without an approved small public water system. A new onsite wastewater treatment system capable of serving up to 500 persons per day is proposed and portable restroom facilities would be used for larger events. Electric utility service is provided by the Pacific Gas & Electric Company. Liquid propane gas is available from local vendors. Waste Management provides solid waste disposal service to the area. Police protection is provided by the Shasta County Sheriff's Office and fire protection services are provided by the Shasta County Fire Department.

**Project Analysis** – The project site is situated in a flat alluvial plain that extends northward from the Sacramento River, which flows along the southern extent of the project site, and westward from Cow Creek which is situated approximately 0.45 miles to the east of the project site. The topography of the area rises sharply upward to a western plateau that is situated approximately 0.01 miles west of the project site. Lands in close proximity to the project site include a mix of large undeveloped and full-time agricultural lands, smaller parcels developed with rural residential uses, and a veterinary clinic.

The proposal would revise the 2006 PD zone district text and conceptual development plan (CDP) as it relates to APN 057-190-031. The proposed changes would allow a proposed electronic reader board type sign and future parking area and eliminate PD zone district provisions applicable to APN 057-190-036 which is designated for agriculture-related recreational/amusement activities but is proposed to be rezoned to the C-R zone district. The revised PD zone district would allow for the continuation of parking for agritourism/agritainment uses carried out on adjoining parcels to the south. The proposed PD zone district and revised CDP would show the PD zone district for APN 058-190-031 in greater detail and include an existing retail building that was built without a permit, the electronic reader board sign, onsite wastewater treatment system improvements to serve the existing retail building, fire hydrant system, and agricultural well as shown on CDP Exhibit C2.0.

The proposal would change the principal zone districts of APNs 057-190-036, 057-190-037, 057-190-041, and 057-190-040 from the PD and A-1 zone districts to the C-R zone district. This change would define, clarify, recognize, and establish allowable agritourism/agritainment uses, allowable improvements, and applicable regulations and standards within the proposed C-R zone district and show related improvements in detail on the proposed C-R zone district CDP. In doing so, the proposed C-R zone district would allow existing uses and improvements that are consistent with the current PD zoning text and CDP; legalize existing commercial recreational uses and improvements that were established in violation of the zoning ordinance; allow new agritourism/agritainment uses that are similar in character and impact to such uses that have been carried out at the project site; and allow overnight lodging. The proposed C-R zone district would also expand the existing agritourism/agritainment activity area as shown on as shown on CDP Exhibit C1.0 and limit agritourism/agritainment activities on the southern portion of the project site to those that can be conducted in orchard or field, or within existing disturbed riparian areas of the ranch without new permanent improvements (within blue areas shown on CDP Exhibit C1.0 south of areas depicted on CDP Exhibit C2.0); increase the maximum structural height limit for amusement rides; clarify and modify hours of operation; provide for overflow parking; and clarify lighting standards, driveway access requirements, safety standards, and food facilities standards. The proposed C-R zone district CDP details activity areas, buildings, structures and/or other improvements that are known to exist at the project site and those proposed for the future, including a roller coaster and paintball area; fire hydrant system; electrical system upgrades; ADA path; onsite wastewater treatment system; and agricultural well.

If the requested zone amendment is approved, compliance with the associated development standards would bring the existing operation into compliance with zoning related land use requirements, establish the standards under which current and future uses and development may be conducted going forward, and allow for various permits and approvals, such as building permits, to be issued for improvements and/or uses that have been made and/or initiated without permits. All of which would allow the applicant

to rectify all existing land use, building, and other violations at the property. The applicant has filed building permit applications for several improvements that have been constructed without permits including the retail building on APN 057-190-031.

Many of the activities proposed to be defined as agritourism and agritainment for the purposes of the proposed C-R zone district have been previously carried out within the project site. With the exception of overnight lodging, those activities that have not been previously carried out are similar in character and impact to activities previously carried out. Activities that have been previously carried out include those that attract guests to the property throughout the day/night during normal operational hours, such as during the Fall Harvest Festival, and those that involve an exclusive event that attracts a large group of guests that may arrive near the approximate starting time and leave at the end of the event such as a fundraiser, concert, or wedding. At times, the property has been open to both a general admission event and an exclusive group event on the same day during normal operating hours. Typical event days have attracted approximately 3,000 guests with the largest single day attendance being 10,000 persons which occurred on a day that involved a general admission event and an exclusive concert special event. Events have typically occurred over one to four days, primarily Thursday through Sunday, from one to four times per month from spring through Christmas, with the fall season being the busiest.

Like the existing PD zone district that currently governs agritourism/agritainment activities on APN 057-190-036, the proposed C-R zone district includes conditions and standards for hours of operation, outdoor storage, building design, signage, parking, noise, lighting, traffic, etc. The proposed C-R zone district carries forward, modifies, and/or adds conditions and standards that would be applicable to existing and future uses within the C-R zone district as shown on the proposed CDP. Some key modifications include changes to hours of operation, outdoor storage, agritainment/agritourism uses (including allowing overnight lodging), signage, and parking. The current PD zone district does not limit the number of days of operation. It does limit hours of operation to 8 a.m. to sunset with an allowance for extended hours during the holiday season up to 10 p.m. Sunday through Thursday and midnight on Friday and Saturday. The C-R zone district proposes revised hours of operation from 7 a.m. to 12 a.m. with guest activities not to extend beyond 10 p.m. Sunday through Thursday or 12 a.m. on Friday and Saturday, with the exception of overnight lodging while allowing Director approval on a limited and case by case basis during the holiday season and for special events. It would also be specified that activities confined to indoor areas would be restricted as to the day or time.

The current PD zone district requires that junk not be stored outdoors, and that outdoor storage be screened from view. The applicant has requested the C-R zone district clarify that items that are used in haunt attractions but may otherwise have the appearance of junk are not prohibited from being stored outdoors and that items stored outdoors not be required to be screened from view. The current PD zone district includes a list of agritourism/agritainment uses. The applicant proposes to modify that list and its format. Rather than a list of uses, the proposed C-R zone district includes specific definitions of agritourism/agritainment uses, many of which are included in the current PD zone district, have previously been conducted, and/or are similar to uses that have previously been conducted in so much as they involve members of the public visiting the property to carry out activities that rely upon the agricultural use and/or setting and various improvements. An exception is proposed overnight lodging. The proposed C-R zone district would limit overnight stays to 72 hours and would require observation of quiet hours from 10 p.m. to 8 a.m. The use of portable and/or on-board generators for or by lodgers would be prohibited. As proposed, camping would be limited to the use of recreational vehicles parked at the property and/or tents or other temporary facilities. Any proposed overnight lodging that would require permanent improvements that are not shown on the CDP would require approval of a use permit for modification of the CDP. The proposed C-R zone district would recognize amusement rides as allowable uses/improvements as shown on the CDP with a maximum height of 75 feet. Amusement rides greater than 45 feet in height would not be allowed within 100 feet of a county road right-of-way. The applicant also proposes that the C-R zone district allow the use of sea van/cargo containers, mobile utility trailers, and/or similar containers for storage or other purposes, additional signage, and overflow parking. The proposed C-R zone district carries forward, clarifies, and/or adds several standards and conditions including but not limited to those regarding aesthetics, noise, lighting, air quality, traffic, fire safety, and food facilities, including a requirement to prepare and implement a landscaping and/or agricultural plan that provides full or partial screening and/or a composition of elements that greater harmonizes areas developed with permanent agritourism/agritainment buildings, structures, and amusements with the natural features of the surrounding area.

The applicant's proposal is generally to continue operations that have been established in violation of the current PD zone district. To date, the Department of Resource Management has not received a significant number of formal complaints regarding the use of the property, but some persons have informally expressed concerns about aesthetics, noise, and/or traffic generated by agritourism/agritainment uses. Any use of the property that would require new permanent improvements not shown on the proposed CDP or expansion of uses involving permanent improvements to the southern portion of the project site would require approval of a use permit by the Planning Commission and would be subject to environmental review in accordance with the California Environmental Quality Act (CEQA). Based on the history of the operations since 2006 and the proposed C-R zone district

development conditions and standards, the proposed C-R zone district uses would not be incompatible with uses in the vicinity and would be limited by the proposed C-R zone district text and CDP.

Environmental Determination - In *Fat v. County of Sacramento* (2002), 97 Cal.App.4th 1270, (citing *Riverwatch v. County of San Diego* (1999) 76 Cal.App.4th 1428) the court found that the County's preparation of a negative declaration was not erroneous because it was based on the existing environmental setting that included previously- constructed unlawful uses. The court in *Riverwatch* stated that "in general preparation of an EIR is not the appropriate forum for determining the nature and consequences of prior conduct of a project applicant." *Riverwatch* at 1452. In other words, the level of activity and associated environmental impacts resulting from the illegal establishment of a land use may be considered baseline conditions against which the significance of project impacts should be considered.

Therefore, the baseline conditions for this project include the level of activity and associated environmental impacts in existence on March 1, 2023, at which time an early consultation project referral was sent to potential trustee, responsible, and interested agencies to inform them of the proposed use permit application and solicit responses regarding potential CEQA related concerns. Additionally, any past physical changes to the environment that have resulted from continued expansion of operations since March 1, 2023, that are not recommended to be rectified in a manner that would result in new physical impacts to the environment are also considered baseline conditions for the analysis contained herein (i.e. an area disturbed by grading activity or vegetation removal that is not proposed to be corrected, rehabilitated, or restored in a manner that would result in physical changes to the environment as part of the project such as from corrective grading or revegetation activities). Finally, physical changes to the environment that have resulted from continued expansion of operations in conflict with the requirements of the Shasta County Zoning Plan since March 1, 2023, that could result in cumulative or indirect impacts on the environment are not considered part of the baseline conditions and for the purposes of this project and analysis have been considered in analyzing and determining the significance of environmental impacts from the project. Additionally, a Mitigated Negative Declaration was adopted for the PD zone district approved in 2006 for APNs 057-190-031 and 057-190-036.

Project activities and proposed zoning changes that would result in new or increased physical impacts on the environment include construction, installation, and initiation of the improvements and activities described above as future or proposed, improvement of driveway encroachments, landscaping and screening, and maintenance activities.

An Initial Study and Negative Declaration (IS/ND) were prepared for the project and circulated for public review. A CEQA determination of a Negative Declaration is recommended for this project. If the zone amendment is denied, the physical environmental impacts of the ongoing illegal use of the property for agritourism/agritainment activities would be eliminated and those associated with agritourism/agritainment activities permissible under the current PD zone district would continue at a level based on the level of permissible activities conducted by the property owner.

Comment letters from David Ledger and the California Department of Fish and Wildlife were received in response to the IS/ND. These comment letters have been incorporated into the revised IS/ND in conjunction with a biological survey letter report and a memorandum containing responses to these comment letters prepared by the applicant's biologist. In response to these comment letters, revisions have been made to the Project Description, section IV. Biological Resources, and Initial Study Comments section. Pursuant to State CEQA Guidelines sections 15073.5 and 15074.1, recirculation of the IS/ND is not required since the revisions are not substantial.

Issues – Many members of the public submitted comments in opposition to the proposal. Comments in support were also received. Comments in opposition express concerns regarding impacts associated with the current use of the property for agritourism/agritainment which includes those that have occurred as a result of the applicant having initiated activities and improvements outside the scope of the current PD ordinance uses and would be permitted to continue if the proposed ordinances are approved. Some commenters are concerned that the proposed definitions of agritourism/agritainment which include a broader scope of uses would increase the intensity of the use of the property and associated impacts. Some commenters further assert that agritainment uses, particularly the proposed amusement rides and associated ride height limit, concerts, overnight lodging, etc., are incompatible with the rural character of the area and with residential uses in the vicinity, particularly with respect to hours of operation, noise, fire safety, traffic, and aesthetics. Some commenters expressed concerns regarding the adequacy of the IS/ND, including assertions that it does not adequately describe elements of the project such as overnight lodging and uses of the southern portion of the property, does not adequately describe current baseline conditions, and draws conclusions regarding the significance of the project's environmental impacts based on an erroneous baseline. Some commenters requested that the IS/ND be revisited for additional specificity with respect to the project description, further consideration of environmental concerns and impacts, including preparation of traffic, noise, and biological studies, and/or for consideration of changes to the project described in their comment

letters. Finally, some expressed concern that if the proposal is approved the applicant may exceed the scope of the proposed ordinance as has occurred under the current PD ordinance and/or that the provisions of the proposed ordinance will not be enforced.

As noted in the IS/ND and staff report, agritourism/agritainment uses that are both within and outside the scope of the current PD ordinance have been carried out at the property, including areas within the southern portion of the property not currently zoned PD. The current PD ordinance does not limit days of operation or attendance and typical event days have attracted approximately 3,000 guests with the largest single day attendance being 10,000 persons, which consisted of a general admission event and an exclusive concert special event which occurred on the same day. The standards contained in the proposed ordinances and CDP are the primary control with respect to intensity of uses. Of the improvements shown on the proposed CDP, the majority have been in operation, and all are located within the area approved for similar uses allowed by the current PD ordinance. Permanent improvements for agritourism/agritainment uses would be limited to those shown on the CDP.

Agritourism/agritainment uses that do not involve the use of permanent improvements or temporary improvements that are removed within 5 days of the event would be permissible. Tent or dry recreational vehicle camping within the area shown on Exhibit C2.0 only and no other overnight lodging would be allowed without a use permit. Exhibit C1.0, which has been revised based on the biological survey letter report, prepared by the applicant's biologist shows that agritourism/agritainment activities are proposed only within areas shaded blue which avoid the majority of riparian areas within the project site and those nearest waterways as well as wetland features. While the amusement rides, tent, and dry RV camping, and other agritourism/agritainment activities that have not been previously conducted would offer visitors opportunities to participate in additional activities while at the property, these uses would not be expected to create a significant increase in overall visitation during general admission and/or special event days and would occur within areas that have been used for similar activities and farming. Commercial recreational uses need or utilize, and provide for the enjoyment of, the natural environment which in this case involves a farm setting. The proposed C-R ordinance includes standards that address noise, fire safety, traffic, and aesthetics, including access/ingress improvements intended to improve traffic circulation over existing conditions and a potential center turn lane to address significant issues should they arise in the future, and that require an agricultural/landscaping plan to provide screening and that would create greater aesthetic harmony with the natural features of the surrounding area.

The IS/ND and staff report explain that existing conditions are considered baseline for the purposes of environmental review in accordance with CEQA. One commenter questioned why the date of application was not used to establish baseline conditions as the date of application was used in case law regarding whether illegal activity is appropriately included in baseline conditions for the purpose of evaluating environmental impacts. In that case, the court determined that it was not inappropriate to determine that illegal activity as of the date of application represented baseline conditions. Normally baseline conditions are those that exist at the time a Notice of Preparation (NOP) is prepared for an EIR. An NOP is prepared immediately upon determining that an EIR is necessary for a project which occurs after an application is filed and determined to be complete and typically after an Initial Study has been prepared. The IS/ND prepared for this project uses baseline conditions that existed at the time the application was determined to be complete and the County began preparation of the IS/ND. The IS/ND appropriately analyzes impacts from physical changes in the environment that have not occurred, not those that have occurred in the past or are ongoing. This is consistent with the approach the County has taken for prior projects that involved ongoing illegal activity. Additionally, commenters have requested that this item be continued for additional information including biological, traffic, and noise studies that further characterize baseline conditions and additional analysis of the potential impacts of the project. While the IS/ND concludes that impacts resulting from physical changes in the environment that are not part of the baseline are less-than-significant, this does not prohibit the Board of Supervisors from considering ongoing impacts that are part of the baseline conditions when determining whether or not to recommend the project be approved and/or to recommend changes to the project that may address concerns about baseline conditions. Neither does it prohibit the Board of Supervisors from seeking additional information regarding baseline conditions or further evaluation of impacts resulting from physical changes in the environment that are not part of the baseline conditions.

### **ALTERNATIVES**

The following alternatives are available: (1) Approve the zone amendment with modifications; (2) deny the zone amendment; or (3) continue review of the proposal for additional information.

### **OTHER AGENCY INVOLVEMENT**

County Counsel has approved the draft ordinances as to form. The County Administrative Office has reviewed this recommendation.

### **FISCAL IMPACT**

No fiscal impact would result from the approval of this project.

**ATTACHMENTS:**

- 1: Draft PD Ordinance and Exhibits
- 2: Draft C-R Ordinance and Exhibits
- 3: Planning Commission Resolution 2023-017
- 4: Location Map
- 5: Project Aerial
- 6: General Plan Map
- 7: Existing Zone District Map
- 8: Revised Initial Study/Negative Declaration
- 9: Public Comment Letters