

Roaring Fork Valley Regional Planning Commission

June 20, 2019

Project Name: Cannabis Cultivation Facility
File No./Process: ZS-8009 - RFSCG-1 Special Use Permit
Location: 100 Ten Peaks Mesa Rd (El Jebel Area) - Parcel Number 239104401002
Owner: X Bar Ranch LLC
Applicant: Rob Holmes RFSCC 1, LLC
Representative: Chris Green - Ago Studios, Inc.
Staff Planner: Morgan Landers, AICP - Associate Planner
Staff Engineer: Nicole Mosby - Staff Engineer

Recommendation: *Approval with Conditions*

I. EXECUTIVE SUMMARY:

The applicant is requesting to expand an approved retail marijuana cultivation operation at 100 Ten Peaks Mesa Road located approximately eight miles north of the El Jebel area (See Figure 1). The property consists of 44 acres split between Garfield and Eagle Counties. The Eagle County portion of the property is 30 acres and zoned Resource.

The current cultivation operations were approved under Special Use Permit (SUP) ZS-6082 in 2016 and consists of 5 acres of outdoor cultivation area, two 4,000 square foot greenhouses, two 10x40 foot shipping containers used for storage and processing, portable restroom facilities, and on-site parking. The property also contains a 3 million gallon water holding pond that serves the property's irrigation and fire mitigation requirements. In addition to the existing uses, the existing SUP allows for an additional 6,000 square feet of storage space for processing, drying, and packaging that has not yet been constructed.

The requested expansion includes two components, 1) an additional 10.5 acres of outdoor cultivation; and 2) four additional 10x40 shipping containers. If approved, the SUP would allow for a total of 15.5 acres of outdoor cultivation, six shipping containers for processing, 14,000 square feet of storage (including the greenhouses), portable restrooms, and on-site parking. Please see site development plan included in the application materials in Attachment 3.

The surrounding properties are zoned Resource, consistent with the zoning of the property (See Figure 2). Uses on the adjacent properties include a pumice mine to the southeast, a cattle ranch to the south,

Figure 1: Overview of Parcel Location



hay fields to the north, east, and west, and two single family residences to the northeast. There is also an approved and active retail marijuana cultivation operation on the adjacent property to the north (ZS-4799).

During review of the SUP application, staff focused on compliance with the standards for SUP approval, and more specifically, three key areas that may be impacted by the requested increase in cultivation and storage containers. The three key areas included compliance with existing SUP conditions, potential increases to traffic, and potential increases to odor concerns.

The existing SUP included 11 conditions (see Attachment 4). Two of the conditions represent annual licensing requirements that staff is recommending to continue (see Conditions 5 & 6 of existing approval). Three of the conditions pertained to one-time mitigation measures for security, pond construction, and wildlife fencing (see Conditions 4, 9, and 11 of existing approval). The project is in compliance with annual requirements and has satisfied the one-time conditions for the existing operations.

Traffic impacts are anticipated to increase primarily during the harvest period which is approximately four weeks beginning in September. The applicant proposes to continue the use of carpooling coordination to minimize the number of vehicle trips to the site, and number of cars that require on-site parking. Data provided by the applicant for 2017 and 2018 seasons demonstrate numbers less than what was projected in the SUP application for the existing operations. See Attachment 3 for further detail.

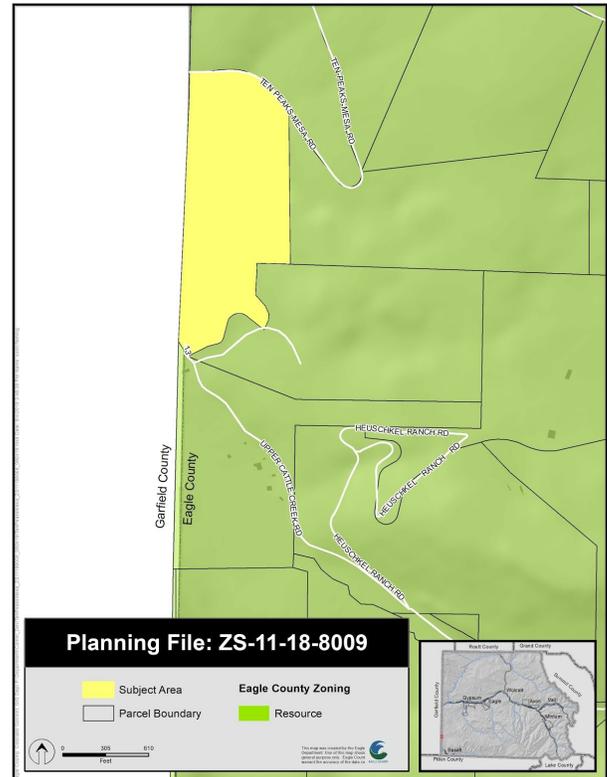
The current SUP required that an annual report be provided to the County documenting any complaints or issues filed by adjacent property owners related to odor. Annual reporting indicates that no complaints were filed since operations began in 2017. Odors are primarily present during the few weeks leading up to the harvest period and dissipate quickly in outdoor settings than in indoor settings where robust ventilation is required. Staff believes that the increase in acreage of outdoor cultivation will not result in higher concentrations of odors leading to an impact on surrounding properties.

Staff has conducted an extensive analysis of the standards for SUP and reviewed the proposal against those standards. Based on this analysis, staff recommends approval with conditions.

II. BACKGROUND:

The property has received two SUPs for marijuana cultivation from Eagle County. The first was in 2015 (File No. ZS-4960) and included one 4,000 SF indoor cultivation area and 6,000 SF of storage, drying, curing, and packaging. In 2016, a subsequent SUP was approved (File No. ZS-6082) which allowed for

Figure 2: Zoning Map



all of the initially approved uses plus all of the uses that exist today as described above in the Executive Summary.

“Marijuana Cultivation Facilities” in the Resource Zone District require a SUP in addition to local and state licensing. Although the applicant has already received approval for marijuana cultivation on the property, the process to “amend” an existing SUP necessitates review of modifications against the same standards originally considered. Thus, the applicant’s proposal to modify the existing SUP to add additional outdoor cultivation requires a complete SUP review. Importantly, if this request were to be denied, the existing SUP (ZS-6082) and respective conditions will remain in effect. If approved, ZS-8009 would replace the previous SUP in its entirety.

The current Special Use Permit was approved with eleven (11) conditions. Staff has reviewed the project’s compliance with the conditions of the existing approval to date. See the table below for an overview of compliance.

ZS-6082 Conditions of Approval	Compliance
1 - Standard condition of approval for representations made by applicant	In compliance
2 - Requirement for all lighting to be down cast and dark sky compliant	Complied - applies to future buildout
3 - Requirement for Construction Management Plan	Complied - applies to future buildout
4 - Requirement for wildlife mitigation measures to be incorporated	Complied - applies to future buildout
5 - Requirement for state and local licensing	In compliance - ongoing requirement
6 - Requirement to remain in good standing with the County through annual licensing verification and SUP compliance reporting	In compliance - ongoing requirement
7 - Requirement to provide annual report of off-site parking management strategies and odor complaints and mitigation measures if applicable	In compliance - ongoing requirement
8 - Requirement for grading, drainage, erosion and sediment control plans for construction	Complied - applies to future construction
9 - Requirements for pond construction and dry-hydrants related to fire-fighting infrastructure	Complied - no further requirements
10 - Requirements for landscape plan to demonstrate screening of ports-lets	Complied - applies to future buildout
11 - Requirements for security improvements related to access of Pleasant Valley Rd/Ten Peaks Mesa Rd	Complied - no further requirements

As part of this application review, staff evaluated the relevancy of each condition and is proposing to carry forward conditions that are still relevant to the project while eliminating or revising conditions that are no longer applicable. More details of this analysis and recommended conditions are contained below in Section III of this report.

III. STANDARDS AND FINDINGS:

Pursuant to Eagle County Land Use Regulations (ECLUR) Section 5-250, **Special Uses** are those uses that are not necessarily compatible with the other uses allowed in a zone district, but which may be determined compatible with the other uses allowed in the zone district based upon individual review of their location, design, configuration, density and intensity of use, and the imposition of appropriate conditions to ensure the compatibility of the use at a particular location with surrounding land uses.

All Special Uses shall meet the standards set forth in this Section, as follows:

Standard	Conformance
<p>#1 - Consistent with Comprehensive Plan: <i>The proposed Special Use shall be in substantial conformance with the Eagle County Comprehensive Plan, Area Community Plans and any applicable ancillary County adopted documents pertaining to natural resource protection, affordable housing, or infrastructure management.</i></p> <p><u>Response:</u> The Eagle County Comprehensive Plan lays out a variety of policies and strategies to guide the future growth and development of the county. These strategies also serve to support the implementation of the Future Land Use Map and the vision for the unincorporated areas of the county. The expansion of the cultivation operations at the property will forward the goals and strategies of the comprehensive plan by preserving rural quality of life (Policy 3.2.6) and preserving agricultural uses for future generations (Policy 3.3.5). The project also forwards the goals and strategies of water conservation and wildlife resources. The project utilizes senior water rights for irrigation and fire mitigation needs of the property, preserving the rights for agriculture use rather than residential or commercial use. The proposal has a minimal amount of impervious surface attributed to the greenhouses and shipping containers, a very small portion of the site as a whole. Best practices for wildlife impact mitigation has been recommended by Colorado Parks and Wildlife (CPW) and have been implemented on the site. Of the 44 acres of available land, only 37.2% of the property will be utilized. The fencing in place will only enclose the cultivation and greenhouse areas, not the property as a whole, leaving a large area for wildlife to migrate effectively.</p> <p>The property lies within the boundaries of the Mid-Valley Area Community Plan, more specifically the Missouri Heights Character Area, and is designated as Rural Agricultural (RA) on the Future Land Use Map. The RA land use designation is described as lands where agriculture and low density residential uses exist or would be appropriate. The policies laid out in the Mid-Valley Community Plan reiterate many of the overarching goals and strategies of the Eagle County Comprehensive Plan focusing on the preservation of agricultural uses (Policy 1.1.2), compatibility of uses within an area (Policy 1.1.4), and preservation of</p>	<p>Yes</p>

<p>natural resources and rural character (Policies 3.2.1, 4.2.1, and 4.2.3). As will be discussed in more detail below, the agricultural nature of the project and the design of the project reinforces the policies of the Mid-Valley Community Plan.</p> <p>Based on this analysis, staff believes the proposal is in substantial compliance with the Eagle County Comprehensive Plan.</p>	
<p>#2 - Compatibility: <i>The Special Use is generally compatible with the existing and currently permissible future uses of adjacent land and other substantially impacted land, services, or infrastructure improvements.</i></p> <p><u>Response:</u> Although a regulated substance, the cultivation and harvesting of marijuana is consistent with practices for cultivation and harvesting of other types of crops that have existed in this area of Eagle County over the years. The growing seasons and resources necessary to produce a healthy crop are similar. As mentioned in the Executive Summary, the subject property, and all surrounding properties are zoned Resource. Existing uses surrounding the property have not changed since the previous approval which include large hay field areas, a pumice mine, two residential units, and a cattle ranch. These uses are all consistent with permitted uses in the zone district and are consistent with the proposed use on the property. Of the properties that are occupied with residential uses, numerous agricultural and accessory storage structures are present on the properties as well as water infrastructure and outdoor storage of vehicles and equipment (see site photos included in application).</p> <p>Marijuana cultivation requires similar accessory uses and infrastructure to traditional farming and ranching operations including storage buildings, water infrastructure, and areas of outdoor staging of materials and equipment. The proposed use will not substantially impact other lands than the property, nor will it substantially impact services or infrastructure improvements above and beyond what exists to support the use today.</p> <p>Staff believes the use to be compatible with existing and permissible future uses as described above.</p>	<p>Yes</p>
<p>#3 - Zone District Standards: <i>The proposed Special Use shall comply with the standards of the zone district in which it is located and any standards applicable to the particular use, as identified in Section 3-310, <u>Review Standards Applicable to Particular Residential, Agricultural and Resource Uses</u> and Section 3-330, <u>Review Standards Applicable to Particular Commercial and Industrial Uses</u>.</i></p> <p><u>Response:</u> Marijuana cultivation facilities are subject to the requirements of Section 3-310.F.f in the ECLUR. Staff has reviewed the requirements of this section and has found the application to be in compliance with the requirements for separation, lot size, signs/illumination, sales, scale, adequate water, wildfire hazard, access, and security. The existing SUP includes a condition related to the</p>	<p>Yes</p> <p>Conditions #2, #7, & #9</p>

type and use of lighting at the site. Staff is recommending this condition remain in order to ensure minimal impact to adjacent property owners. The remaining three requirements pertaining to parking and storage, visual screening, and odor mitigation can be met with the continuation of conditions required in the previously approved SUP.

Parking: Parking needs at the site were evaluated extensively during the review for the previous approval. Due to the seasonal nature of the use, projections for daily trips and on-site parking needs are fluid. The previous approval identified 16 parking spaces to accommodate the needs of the project considering that the majority of the employees would be transported by company sponsored shuttles or carpooling with colleagues. The approval included a condition requiring an annual report be filed with the Eagle County planning division that outlines the actual utilization of carpooling and shuttles. Data provided by the applicant shows that during the harvest period, the period requiring the most staff, no more than 10 vehicles were parked at the site (see Attachment 3). The expanded cultivation operations anticipate an increase in workforce and vehicle trips; however, staff believes that the additional vehicles can be accommodated with the existing on-site parking and shuttle/carpool opportunities in place. To further monitor the effectiveness of the parking plan, staff proposes carrying forward the previous condition that requires annual reporting for a period of five years, at such time an administrative review will be conducted by the Community Development Director and the requirement may be lifted until future expansions of the use is requested (see Condition 7).

Odors: Odor mitigation was not required for the previously approved SUP; however, the annual reporting mentioned above also included a requirement to report complaints filed with either the property owner or Eagle County. This mechanism is used to gauge the impact of odors on surrounding property owners or users. Since operations began in 2017, there have been no complaints filed. Odors from the marijuana plant are generally noticeable during the few weeks leading up to the harvest period, but not sustained throughout the growing life of the plant. Staff believes that the expansion of cultivation will not increase odors above and beyond the current operations, but is recommending that the annual reporting condition remain as stated above.

Screening: Visual screening measures were implemented in 2017 prior to the start of cultivation under the previously approved SUP in accordance with an approved landscape plan. Such measures included berming around the porta-lets and fencing in areas throughout the project. Staff believes that the implemented screening measures are sufficient to screen the operations. The applicant anticipates adding a few additional porta-lets during the harvest period that will be removed once the period is over. Staff does not believe that additional screening is necessary for the temporary porta-lets; however, staff is recommending that an updated landscape plan be submitted at the time of building permit application for the 6,000 square foot storage building that has not been constructed (see Condition 9).

<p>Based on this analysis and the recommended conditions, staff believes the proposal to be in conformance with this standard.</p>	
<p>#4 - Design Minimizes Adverse Impact: <i>The design of the proposed Special Use shall reasonably avoid adverse impacts, including visual impacts of the proposed use on adjacent lands including trash, traffic, service delivery, parking and loading, odors, noise, glare, and vibration, or otherwise create a nuisance.</i></p> <p><u>Response:</u> The supplemental requirements for marijuana cultivation as outlined in the Zone District Requirements in standard #4 above address many of the potential adverse impacts for these types of uses. Potential adverse impacts of concern include traffic, parking and loading management, and odors. In review of the proposed operations, staff does not believe that the use will generate levels of noise, glare, trash, or vibration at a level that would impact adjacent property owners. Daily activities include planting, irrigating, and monitoring the crop during the growing season. During the harvest period, activities include picking, drying, and processing of the cultivated plants. All activities for cultivation and harvest are achieved through hand labor and do not include the use of heavy equipment or processing equipment that would produce loud sustained noise, glare, or vibration. The trash generated by the operations are anticipated to be minimal and have been managed adequately to date.</p> <p>The majority of traffic generated by the project is due to employee travel in personal vehicles or passenger vans. Deliveries are anticipated to be a maximum of one to two per week, with most materials being delivered by employees during their normal route of travel. Upon conclusion of the harvest period, processed materials will be shipped in one box truck in one trip.</p> <p>Staff believes that the potential adverse impacts of the project have been mitigated and have suggested conditions of approval to ensure that mitigation measures implemented continue to be effective. Specifically, staff will continue to monitor traffic, parking, and odors through annual reporting requirements until it is deemed unnecessary (see Condition 7) and will review additional landscape and screening requirements at the time of building permit review for the additional construction of facilities on the property.</p> <p>Staff believes that the proposal will minimize any adverse impacts if it is compliant with conditions number 7 and 9.</p>	<p>Yes Conditions #7 & #9</p>
<p>#5 - Design Minimizes Environmental Impact: <i>The proposed Special Use shall minimize environmental impacts and shall not cause significant deterioration of water and air resources, wildlife habitat, scenic resources, and other natural resources.</i></p> <p><u>Response:</u> Wildlife migration and wildfire mitigation are two areas of concern regarding environmental impact of the project. During the review of the previous SUP, CPW proposed recommendations for the type of fencing that should be used on the perimeter of the cultivation area. Incorporation of these recommendations</p>	<p>Yes Condition #4</p>

<p>was a condition of approval and the fencing has been installed per those recommendations. Although staff received no comments from CPW during the review of this application, staff is recommending that the same fencing recommendations be adhered to for the expansion area of the cultivation operations (see Condition 4).</p> <p>A wildfire rating of “moderate” was determined during the review of the previous approval. In response to wildfire concerns, the project has constructed a 3 million gallon water holding pond and dry hydrants on the property that may be used in the event of fire.</p> <p>Staff believes that the proposal is sufficiently minimizing the environmental impact of the project.</p>	
<p>#6 - Impact on Public Facilities: <i>The proposed Special Use shall be adequately served by public facilities and services, including roads, pedestrian paths, potable water, and wastewater facilities, parks, schools, police and fire protection, and emergency medical services.</i></p> <p><u>Response:</u> The expansion of the cultivation facility will have minimal impact on public facilities. The property is accessed from Pleasant Valley Ranch Road within Garfield County, which is privately maintained. Traffic impacts are anticipated to be minimal. Staff did not receive any comments from Garfield County regarding road impact concerns.</p> <p>The project is served by a 3 million gallon water holding pond. The purpose of the pond is to provide for any fire suppression as needed and to provide water for the irrigation requirements of the cultivation operation. The applicant has provided on-site porta-lets that are serviced on a weekly basis. Due to the seasonal nature of the use, staff believes this to be sufficient.</p> <p>The proposal was referred to various public safety agencies for comment. Roaring Fork Fire Rescue Authority identified outstanding items required to ensure adequate access and infrastructure necessary to successfully respond to an emergency. As of the date of this report, all items have been addressed. No comments were received from law enforcement referral agencies.</p> <p>Staff believes that the proposal is adequately served by public facilities and services.</p>	<p>Yes</p>
<p>#7 - Site Development Standards: <i>The proposed Special Use shall comply with the appropriate standards in Article 4, <u>Site Development Standards</u>.</i></p> <p><u>Response:</u> The site development standards that apply to the proposed use were vetted thoroughly during review of the previous application, and have been re-evaluated during the review of the current expansion request. The project is in compliance with the site development standards for grading, drainage, erosion control, landscaping, and lighting improvements. No signs are proposed and</p>	<p>Yes</p> <p>Conditions #3 & #8</p>

<p>lighting is limited. The parking standards have been addressed in the review of standard #3 - Zone District Regulations and a condition has been included to address this element. Staff is also recommending that the conditions requiring a grading plan and Construction Management Plan from the previously approved SUP be retained and carried forward in this approval to ensure requirements are met at the time of construction.</p> <p>Staff has confirmed that the proposal can meet all site development standards by meeting conditions number 3 and 8.</p>	
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IV. REFERRAL RESPONSES:

Referral copies of this application were sent to eleven (11) agencies for review on March 14, 2019. The following section lists the agencies that submitted an official referral response to Eagle County prior to the date of this report. Please see attached referral agency responses for the full text of each response:

Eagle County Engineering Department - Referral comments included a request for as-built drawings for the access road and compliance reports on off-site parking and odors as required by the existing SUP.

Roaring Fork Fire Rescue Authority - Referral comments included requested revisions to access, posting of address, and testing of hydrants.

As of the date of this report, all referral comments have been addressed to the satisfaction of the referral agencies.

V. STAFF FINDINGS AND RECOMMENDATION:

Based upon a thorough analysis of the standards for a SUP; staff recommends **approval with conditions** of this application because the proposed use, as conditioned, meets all standards for approval of a SUP.

Recommendation: Approval with Conditions

As such, Section 5-250, E – Conditions and Restrictions on a Special Use Permit (ECLURs, p. 5-55) is pertinent to any consideration of conditional approval, wherein:

The Planning Commission may recommend and the Board of County Commissioners may, in approving any Special Use Permit, impose such restrictions and conditions on such approval, the proposed use, and the premises to be developed or used pursuant to such approval, as it determines are required by the general purposes, goals, objectives, and policies of the Comprehensive Plan, the FLUM of the Comprehensive Plan, and these Land Use Regulations, to prevent or minimize adverse effects from the proposed development on surrounding land uses and on the general health, safety, and welfare of the County. The County shall be authorized to set limits on the length of any Final or Consolidated Special Use Permit that it issues and to obtain assurances that the

ongoing operation of the use will comply with all of the applicant's representations and all conditions of approval, including, but not limited to, requiring an annual compliance review. All conditions imposed in any Special Use Permit, with the exception of conditions made applicable to such approval by the express terms of these Land Use Regulations, shall be expressly set forth in the Special Use Permit.

PROPOSED MOTION: To recommend approval of the SUP.

*I hereby move to recommend **approval** of File No. ZS-8009 to the Eagle County Board of County Commissioners, incorporating staff's findings and recommended conditions, because this application, as conditioned, meets the standards for approval of a Special Use Permit.*

VI. RECOMMENDED CONDITIONS OF APPROVAL:

1. Except as otherwise modified by this SUP, all material representations made by the Applicant in this application and in public meeting shall be adhered to and considered conditions of approval.
2. Any lighting associated with the site shall be downcast in accordance with dark/night-sky compliant lighting standards; specifically, any on-site lighting shall be designed and installed so as not to direct glare onto adjacent properties.
3. The Applicant shall provide a Construction Management Plan with any building or grading permit application.
4. The Applicant shall continue all wildlife mitigation and management measures conducted to date to all areas of the cultivation operation as directed and approved by CPW in its letters dated August 12, 2014 and May 3, 2016 as required in the previous SUP.
5. The Applicant shall successfully apply for and obtain any and all state and local licensing required for the cultivation of marijuana for the cultivation facility prior to commencing any cultivation activities.
6. Pursuant to local and state licensing requirements specific to renewal of licensing and annual verification of 'good standing', the Applicant shall provide a brief report or other evidence to Eagle County Planning Department on an annual basis, demonstrating that the license for cultivation is valid at both the state and local levels, and, therefore, that the SUP remains in compliance with local regulations as well as applicable conditions of approval for the special use.
7. Upon annual renewal of local marijuana business license(s), the Applicant shall provide Eagle County Marijuana Licensing Authority with reports focusing on off-site parking (based on a review of previous licensed terms of operation as well as forecasting future needed off-site parking for future license terms and based upon the estimated number of seasonal employees to be employed at the property during planting and harvesting operations that may need to be shuttled to and from the property). Such plan shall provide information related to the anticipated locations and capacities of off-site parking areas associated with shuttle pick-ups and drop-offs for such seasonal operations, as well as any agreements secured with public or private property owners allowing for such off-site, temporary parking uses. Reporting shall also include any information related to odor complaints and

mitigation that may have occurred during the previous license term, as well as any issues related to security at the site. This annual reporting shall be required for a period of 5 years from the date of Special Use Permit approval, at such time, the Community Development Director may conduct a review of the condition, at the request of the applicant, and may waive the reporting requirement until future improvements on the property are requested.

8. The Applicant shall provide a detailed grading plan, showing existing and proposed grades, as well as proposed limits of disturbance, drainage and erosion control measures for the site prior to or concurrent with any grading and/or building permit application.
9. The Applicant shall provide an updated landscape plan for the site concurrent with building permit application for the unbuilt storage space. Landscape plantings and/or fencing shall be included in any screening mitigation required.

ALTERNATIVE MOTION: To recommend denial of the SUP.

*I hereby move to recommend **denial** of File No. ZS-8009 to the Eagle County Board of County Commissioners, because the application does not meet the standards for approval of a Special Use Permit.*

VII. ATTACHMENTS/EXHIBITS:

1. Application
2. Referral Comments:
 - i. Roaring Fork Fire Rescue Authority
 - ii. Eagle County Engineering Department
3. Applicant Response to Referral Comments
4. ZS-6082 Approval Resolution (Existing approval)