

June 13, 2019

Eagle County Board of County Commissioners
Bryan R. Treu,
Andrew McGregor

Dear Eagle County Board of County Commissioners,

We, the neighbors and owners at Ten Peaks Mesa Homeowners Association, are writing in response to the Special Use Application, Permit for Marijuana Cultivation Facility, from RFSCG-1, LLC. We are adjacent property owners and homeowners to the subject property and access our homes on the shared Ten Peaks Mesa Road which bisects the cultivation operation.

Since the time of the original approval, we have seen the quiet rural character of the neighborhood compromised. We believe the original application was approved on misrepresentations that the marijuana cultivation facility would be capable of complying with the Eagle County Land Use Regulations (“ECLUC”), the Comprehensive Plan, and the Mid-Valley Area Community Plan.

We understand the Applicant wishes to expand their growing acreage by 200% as well as seek approval for 4 additional shipping containers on the parcel. We respectfully oppose the proposed application based on the fact that the current facility is in violation of the current Special Use Approvals, Resolution Nos. 2016-075 and 2015- 009, as well as the fact that the request for expansion does not comply with the required standards and requirements in Sec. 5-250: Special Use Standards.

The following list outlines the applicable standards in the Eagle County Land Use Regulations (“ECLUR”), the Comprehensive Plan, the Mid Valley Master Plan, and the Conditions of Resolution Nos. 2016-075 and 2015- 009 of which the marijuana cultivation facility must comply, as well as how these requirements are not met.

Resolution No. 2015-009, File No. ZS.4960: Resolution Approving Special Use Permit For RFSC G1 LLC. Marijuana Cultivation Facility Conditions of Approval:

1. *Except as otherwise modified by this development permit, all material representations made by the Applicant in this application and in public meeting shall be adhered to and considered conditions of approval.*
 - The existing shipping containers are not buried as represented in the original application.
 - The rendering of the barn structure, dedicated organized parking area, and greenhouses suggested a very different quality and aesthetic than we are now experiencing. Hoop houses were not represented in the original application.
 - The parking of vehicles is not contained in the designated parking area as represented.
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.*
 - The property radiates a green glow from night lighting that can be seen at distant properties long into the night.

Resolution No. 2016-075, File No. ZS.6082: Resolution Approving Special Use Permit For RFSC LLC. Marijuana Cultivation Facility Conditions of Approval:

1. *Upon annual renewal of the Cultivation License, the Applicant shall provide Eagle County Marijuana Licensing Authority (“the Authority”) with reports focusing on off-site parking (based on a review of previous license 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 Facility during planting and harvesting operations that may need to be shuttled to and from the subject Property). Such plan shall provide information related to the anticipated locations and capacities of off-site parking areas associated with shuttle pickups and dropoffs 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 associated with the Facility and mitigation that may have occurred during the previous license term, as well as any issued related to security at the site.*
 - Pursuant to Sec. SECTION 4-120 (A)(4), “The number of required off-street parking spaces for any use not specifically listed in Table 4-120, "Minimum Off-Street Parking Standards For Each Use", shall be determined by the Planning Commission, considering a report and recommendation by the Planning Director. The report shall identify the standards for any similar uses listed in Table 4-120, "Minimum Off-Street Parking Standards For Each Use", and shall also identify other potentially applicable standards contained in recognized publications or used in communities similar to Eagle County.” It is not clear if this was done during the original review for the Special Use. Regardless, no other residential or agricultural property in the greater surrounding area has the need for a parking lot or has the vehicle activity anywhere close to the amount generated by the approved operation. This activity is not consistent with the rural character.
 - Neither a “carpool” operation nor a shuttle van in action has not been witnessed as originally represented.
 - Organized parking per previous approvals implied a single organized parking area however numerous individual vehicles come and go at all times of the day and park in no one designated area, but are instead dispersed throughout the three parcels serving the operation.
 - Numerous vehicles appear to be “stored” on the site.
 - Road impacts are not contained to the lower road. Employees in cars, trucks, and 4 wheelers travel to upper Ten Peaks Road often at excessive speeds to make phone calls, look at the view etc. This has resulted in much more traffic on our once quiet road where we walk, have horses, dogs, children, etc. Safely walking the road was not a previous concern. Other impacts due the increased traffic include increased noise, dust, and disturbance to the wildlife.
2. *The Applicant shall provide an updated landscape plan for the site concurrent with building permit application associated with the Facility specifically showing screening for temporary wastewater facilities (porta-lets) to be used within the Facility. Landscape plantings and/or fencing shall be included in any screening mitigation.*
 - Surprisingly there are no facilities on site for the employees other than porta-potties which have only been partially screen – recently. They have been exposed until a couple weeks ago.

3. *The Applicant shall work with the Ten Peaks Mesa Homeowners Association to ensure installation of a security gate across and limiting access to Pleasant Valley Ranch Road/Ten Peaks Mesa Road prior to commencement any cultivation activities on the Property.*
 - The applicant commenced cultivation activity two years prior to installing a security gate and did not work with Ten Peaks Mesa Home Owners Association. Currently the gate is substandard in both quality and aesthetics with its “prison gate” appearance. It has often been non-operational. The area next to the gate is blocked with an industrial concrete barrier and construction trash.

ECLUR Section 5-250:

1. *Conformance with the Comprehensive Plan: 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.*
 - A. *Applicable Eagle County Comprehensive Plan Policies and Recommendations:*
 1. *Ensure that development does not adversely affect the recharge of groundwater resources.*
 2. *Protect individual and community wells from new sources of pollution.*
 3. *Promote the appropriate best management practices for the control of stormwater runoff, and work to identify and treat other non-point sources of pollution.*
 4. *Require an effective water quality management plan be implemented with new development.*
 - It is unclear if it has been examined whether the development and land use activities adversely affect water resources. Runoff from pesticides, fertilizers, and vehicle contaminates into groundwater, Upper Cattle Creek, the Ten Peaks Mesa Community Well located adjacent to the operation, and the greater Upper Cattle Creek Watershed may potentially be significantly negatively affected.
 5. *Enforce lighting standards that minimize fugitive light and protect the quality of the night sky.*
 - The operation radiates a green glow around the security fencing that can from distant properties. The glow in the hoop-house greenhouses emit long into the night.
 - B. *Applicable Mid Valley Master Plan: Missouri Heights Character Area Policies and Recommendations:*
 1. *Strive to preclude new uses that would interfere with the quiet enjoyment of residential neighborhoods in the area.*
 2. *Discourage zone changes or special use permits which negatively impact the rural character of Upper Cattle Creek Road.*
 - It is questionable that a finding could be made that the marijuana cultivation facility is “compatible with the surrounding low impact agriculture and rural residential character and uses”. Quiet enjoyment of Ten Peaks Mesa Neighborhood has undoubtedly been compromised due to, but not limited to the operation’s excessive light pollution, un-

ignorable odors, increased traffic, constant human activity unparalleled with any other uses in the area, as well as direct impacts to significant wildlife patterns as noted by CPW.

- Recent State Requirements call for an 8' perimeter fence with a 20' wide swath of illumination. This would undoubtedly negatively impact the rural character of Upper Cattle Creek Road and is not consistent with the ECLUR on lighting standards.
3. *Employ best technologies and practices, where available opportunities exist, during the review of onsite wastewater treatment systems (OWTS).*
 - It is difficult to understand why engineered OWTS systems are required on nearly every single-family residence but porta-potties serving large numbers of employees on a daily basis each day of the year is acceptable.
 4. *Encourage best management practices on agricultural lands to minimize compatibility concerns.*
 - Neither a “carpool” operation nor a shuttle van in action has not been witnessed as originally represented.
 5. *Discourage new land uses that would negatively impact the rural character of the area, or that would negatively impact the quiet enjoyment of residential neighborhoods or agricultural uses.*
 - Employees living in RV's and campers on the property negatively impact the quality of the rural neighborhood.
 - Odor from the facility on adjoining properties and the greater neighborhood is overwhelming at certain times of the year.
 - Use of the road for passive recreation has been compromised due to additional traffic from employees accessing the upper residential areas of Ten Peaks Mesa Road to make phone calls and take breaks.
 6. *Promote architecture and landscaping improvements that are complementary to the area. Support the efforts of homeowner associations to establish, manage and enforce appropriate architectural and landscaping standards within their subdivision boundaries.*
 - The applicant has requested that we do not do any weed mitigation along the road next to the property despite the presence of noxious weeds.
 7. *Encourage the screening of outdoor storage, utility and work areas that detract from the character and appearance of the area.*
 - Large amounts of trash are piled between the entry road and the RV serving as someone's dwelling. Large piles of a variety of materials are spread across the property in an uncontained manner without screening. Other passive agricultural operations in the area do not have these issues or detract from the natural character and appearance.

8. *Promote the development and enforcement of dark sky lighting codes, utilizing International Dark-Sky Association (IDA) or similar lighting guidelines.*
9. *Work to minimize the impacts of fugitive light on natural areas and the night sky.*
 - The operation radiates a green glow around the security fencing that can be seen from distant properties.
10. *Strive to protect the quality and quantity of ground aquifers. Refer to existing Source Water Protection Plans and implement applicable best management strategies. Support efforts to increase awareness of domestic source water protection issues, and encourage the development of additional Source Water Protection Plans with assistance from the Colorado Department of Public Health and Environment.*
 - Runoff from pesticides, fertilizers, and vehicle contaminates into groundwater, Upper Cattle Creek, the Ten Peaks Mesa Community Well located adjacent to the operation, and the greater Upper Cattle Creek Watershed are highly possible and have not been addressed by the Applicant.
11. *Minimize ground disturbances and require the prompt reclamation of disturbed areas.*
 - Mounds of exposed dirt from are covered with noxious weeds as Best Management Practices were not applied.
12. *Discourage development and minimize human activities in areas deemed critical by the Division of Wildlife to the wellbeing of wildlife populations.*
 - The parcel is mapped within Mule Deer Winter Range, Elk Severe Winter Range, Elk Winter Range, bald eagle winter forage range, and 1/4 Mile of Mule Deer Migration Patterns. The Applicant states within the application that the parcel is not within a significant wildlife area and does not address any impacts to wildlife.
 - Perry Will, CPW Wildlife Manager, in review of the original application states, “*Based on the type of development being proposed, impacts to wildlife will occur in two ways. Direct loss of habitat will occur through removal or manipulation of vegetation used as forage, shelter or cover from predators. Wildlife will not be able to adapt to areas of direct habitat loss. Indirect habitat loss will be suffered through the effects of increased human related activity and the construction of movement barriers such as fences or walls. Wildlife may demonstrate limited resilience and adaptation to the impacts of habitat loss, however reduction in native vegetation and introduced human activity will result in stressors and negative effects on wildlife. The proposed development will result in increased vehicle traffic, noise and light pollution, overall human presence and other related stressors throughout the area and will likely affect areas of critical habitat not explicitly encompassed within the project boundaries.*” Colorado Parks and Wildlife rarely includes such strong referral comments and rarely make the finding that direct impacts from development will occur.
 - CPW recommended a winter prohibition on all construction activities from November 30th to April 1st due to the location the significant wildlife present including being within 1/4 Mile of Mule Deer Migration Patterns, and is within documented Mule Deer and Elk Winter Range, Elk Severe Winter Range, and bald eagle winter forage range. For all

practical purposes, the year round operation and the associated human activity, vehicle traffic, noise and lights is as impactful as construction activities and therefore should be prohibited November 30th to April 1st.

13. *Encourage carpooling, a local transit collector and other strategies that help reduce reliance on the personal automobile.*
 - We have never witnessed a carpool shuttle. We see employees driving in single vehicles to and from the property throughout the day.
2. *Compatibility: 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.*
 - It is questionable that a finding can be made that the marijuana cultivation facility is “compatible with the surrounding low impact agriculture and rural residential character and uses” due to the numerous reasons discussed.
3. *Design Minimizes Adverse Impact. 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.*
4. *Design Minimizes Environmental Impact. 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.*
 - Per the Colorado Parks and Wildlife review of the original application, significant wildlife habit is directly impacted by the operation. Additional environmental impacts as previously discussed include night lighting impacts, water quality concerns, odor impacts, and general scenic and visual impacts.

ECLUR Section 3-310, F.f: Marijuana Cultivation, Manufacturing or Testing Standards:

1. *Parking and Storage: ... Employee parking shall be effectively screened. ... Any heavy equipment, work vehicles, or machinery stored on the property may require demonstrated storage space inside a garage, shed, or other enclosure.*
 - There is not screening for these items and the current shipping containers are not buried.
2. *Visual Screening. A fencing and/or landscaping plan may be required depending on the proximity of the proposed cultivation, manufacturing or testing uses to neighboring properties or public rights of way. Such plan shall demonstrate adequate visual screening of outdoor storage areas, cultivation, manufacturing or testing operations, from adjacent properties, applicable view corridors, and/or public roads and rights of way.*
3. *Scale. The use and layout of the subject property shall be at a scale that retains a rural character of the immediate vicinity, and which maximizes open space on the subject property. This shall be clearly reflected in the amount and size of structures proposed on the subject property, as well as the number of employees accessing the property.*

4. *Access. ... A plan for employees accessing the property and delivery of any materials onto the property must be included, including maximum number of deliveries allowed per month, time of deliveries, and vehicles making such deliveries to the subject property.*
5. *Odor Mitigation Plan. The applicant shall demonstrate compliance with Eagle County Marijuana Business license, as may be amended from time to time. Specifically, the applicant may be required to provide an Odor Mitigation Plan and/or report detailing the effective mitigation of any odors of the proposed use(s) or the mitigation and rectification of any past odors reported from cultivation, manufacturing or testing activities on the subject property. Such report shall include proof that the design for the purification of air and odor shall have been either prepared or approved by a professional licensed mechanical engineer to the standards contained in the Local Regulations requiring proper ventilation systems so that odors are filtered and do not materially interfere with adjoining properties.*
 - *Issues regarding these topics have been mentioned above.*
6. *Security. The special use permit shall comply with any and all applicable State rules and regulations for on-site security.*
 - *Recent State legislation requires an 8' perimeter fence with a 20' wide area of illumination along the fence. Full installation of these requirements will undoubtedly negatively impact the rural character of Upper Cattle Creek Road. The HOA questions how the Applicant can comply with State Requirements, and with the governing conditions of approval regarding lighting at the same time.*

Section 7-110. Revocation or Suspension of Special Use Permit, Variance Permit, PUD or Subdivision:

Revocation or suspension of a Special Use Permit, Variance Permit, Preliminary Plan for PUD, or Subdivision (Preliminary Plan or Final Plat for Subdivision) issued pursuant to these Land Use Regulations shall be made under the procedures and standards of this Section, upon a finding that the Special Use Permit, Variance Permit, Preliminary Plan for PUD, or Subdivision (Preliminary Plan or Final Plat for Subdivision) was issued on the basis of erroneous or misleading information or representation, the development violates the terms or conditions of any permit issued pursuant to these Land Use Regulations, the terms or conditions of the Special Use Permit, Variance Permit, PUD, or Subdivision, or these Land Use Regulations.

B. Standards. *A Special Use Permit, Variance Permit, Preliminary Plan for PUD, or Subdivision (Preliminary Plan or Final Plat for Subdivision) shall be revoked or suspended if any one (1) of the following findings is made by the Board of County Commissioners.*

- 1. Based on misleading information or misrepresentation.*** *The permit was issued on the basis of erroneous or misleading information or misrepresentation; or*
- 2. Violation of conditions of permit.*** *The development violates the terms or conditions of the Special Use Permit, Variance Permit, Preliminary Plan for PUD), or Subdivision (Preliminary Plan or Final Plat for Subdivision) issued pursuant to these Land Use Regulations.*

The thought of the operation expanding when the original conditions of Special Review approval have not been met is confusing and of great concern. It is important for our HOA to understand what the plan is for the parcels supporting the marijuana cultivation operation, and what the recourse is for non-compliance.

Sadly both marijuana cultivation operations have had a negative impact on the area and are not operating as portrayed in their applications. They detract greatly from the natural, rural character of the area and interfere with the quiet enjoyment of surrounding residential neighborhoods. The evening glow from lighting negatively impacts the night sky. The smell of marijuana at certain times is overwhelming, and unignorable at all of the properties in the neighborhood. The traffic generation and human activity is unparalleled with any of the nearby passive agricultural operations or residential neighbors and directly impacts wildlife. Access to our residential properties is now through a security gate and corridor of security cameras.

We might feel differently about an expansion had the experience to date been more positive in regards to the execution of the original plan and the compliance with agreements and representations that were made. In general, residents in the area are quiet people who do not pursue confrontation with a neighbor or pursue reporting violations to the County, and who greatly respect private property rights. For those reasons, the Ten Peaks Mesa neighbors accepted the original Special Use development despite legitimate reasons for apprehension. Our neighborhood has patiently waited for the Applicant to follow through with commitments, and has felt since the time of the original approval that there was little that could be done but to accept the condition of the property and impact on the neighborhood.

Even still we are reluctant to be the cause of impacting the economic viability of a neighbor's business, but do feel that it is unquestionably time to speak up and bring to light the misrepresentations of the application and make clear to the Board that by approving the proposal the Board would be violating the Eagle County Land Use Regulations which no citizen or operation is exempt.

We are happy to discuss and answer questions you may have regarding our experience as neighbors and thank you for taking the time to consider our concerns and comments as they relate to the goals and values codified in the Eagle County Land Use Regulations.

Sincerely,

TEN PEAKS MESA HOA