

# Appeal of Special Use Permit No. PSP 19-040

## Planning Commission Resolution No. 9681 (Willardt/Cannarozzi)

### Sunshine Paradise Guest Ranch



Board of Supervisors  
December 17, 2019

Presented by the  
Tulare County Resource Management Agency



# Overview

- Request: The proposed use is to create an eco-friendly, luxury, low key, solar/off grid, Guest Ranch specifically for wellness and mindfulness for a maximum of 15 people.
- Two (2) single story rental cabins with bathrooms and kitchen facilities, and a bathroom structure for the 5 tipis.
- The largest single structure, the bathhouse, measures 10 feet by 20 feet.
- Two (2) residences are allowed by right and are not a part of the Guest Ranch. Property caretaker will live in one, owner will vacation in the second. Tents used temporarily by family members on vacation are also allowed by right.
- Location: South side of South Fork Drive, approximately 9.5 miles east of Three Rivers Urban Development Boundary.
- Appellants:
  - (1) First Appellants (Applicants) Mike Cannarozzi / Kenneth Willardt. Appealing Conditions #2, 25, & 30
  - (2) Second Appellants (Opposition) Mathias Herriges (et al) appealing the Planning Commission's Decision to Approve.

# Planning Commission Decision

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- July 31, 2019. Appellants appeared before the Planning Commission. Discussion revolved around fire and conditions of South Fork Drive. After an hour of discussion, matter was continued to date uncertain.
- October 16, 2019. After more discussion, the Commission continued the item again for two weeks for staff to meet with the representative of the interested parties.
- October 28, 2019. Staff met with the agents for the parties. Recommended conditions were added to the resolution.
- October 30, 2019. Planning Commission added conditions of approval requiring relocation of tipis 50 feet further from river and limiting parking to 15 spaces maximum. Later added conditions 2 and 25 (requiring minor modifications) and 30 (disallowing short term rentals).
- October 30, 2019. Approved PSP 19-040 through Resolution 9681, by a vote of 4 (McElroy, Millies, Elliott, Aguilar) to 2 (Dias, Whitlatch).

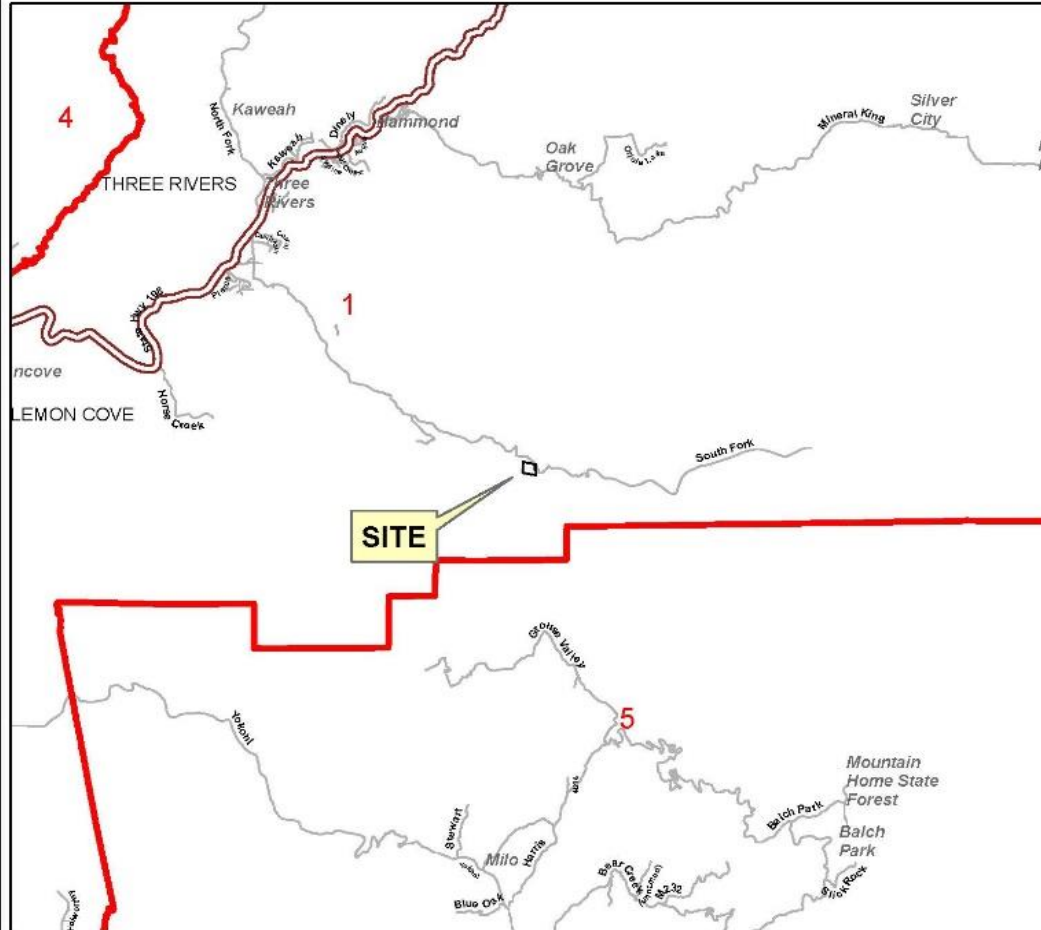
# Vicinity Map



## Vicinity Map for PSP 19-040



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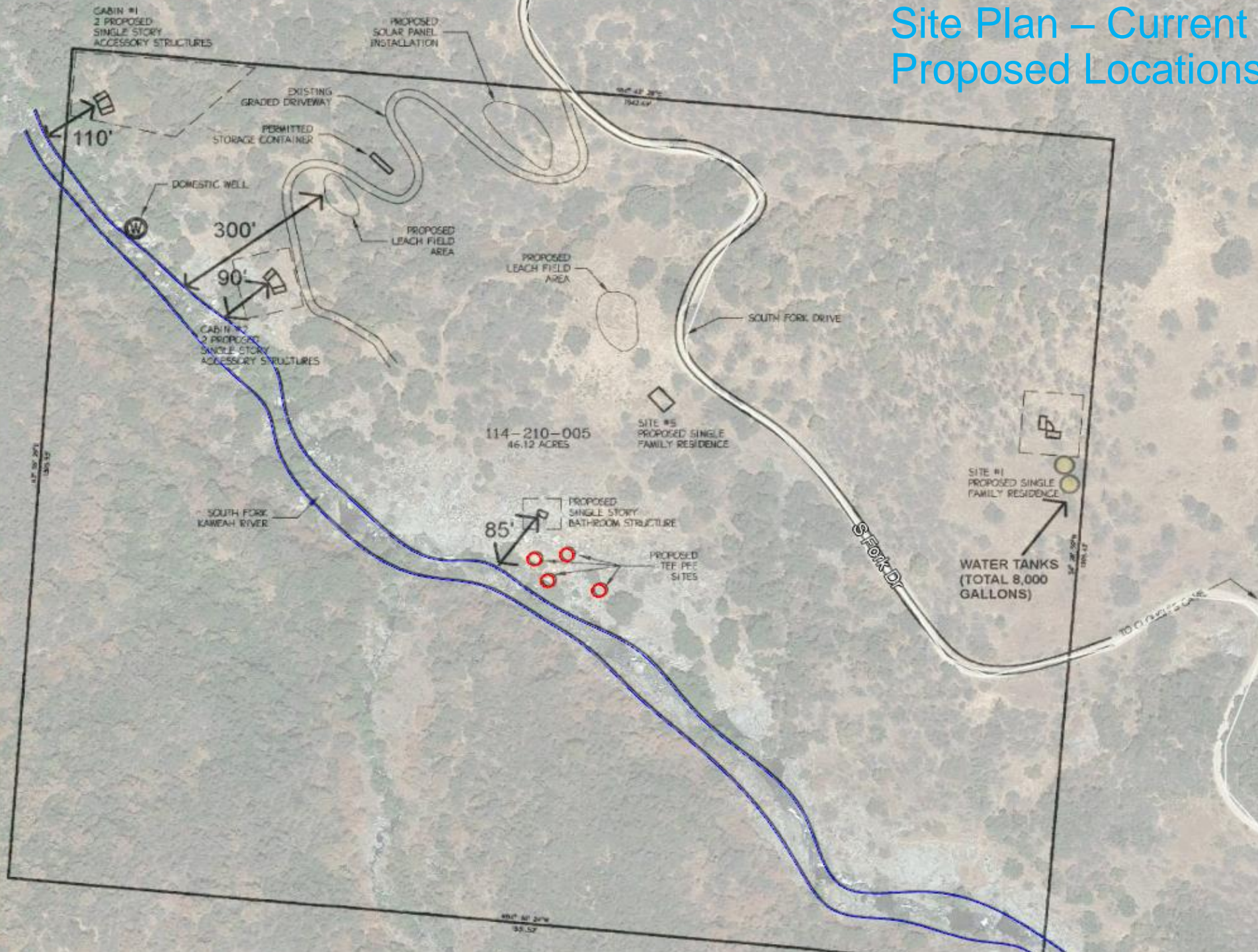
Supervisory District: 2

- SITE
- Supervisory Districts





# Site Plan – Current Proposed Locations





Picture of Tipis located on flat ground with minimal soil disturbance – COA will allow a 5<sup>th</sup> Tent

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## Site Pictures





Picture of Tipis showing placement looking down from above ledge, and bear resistant garbage and food storage containers

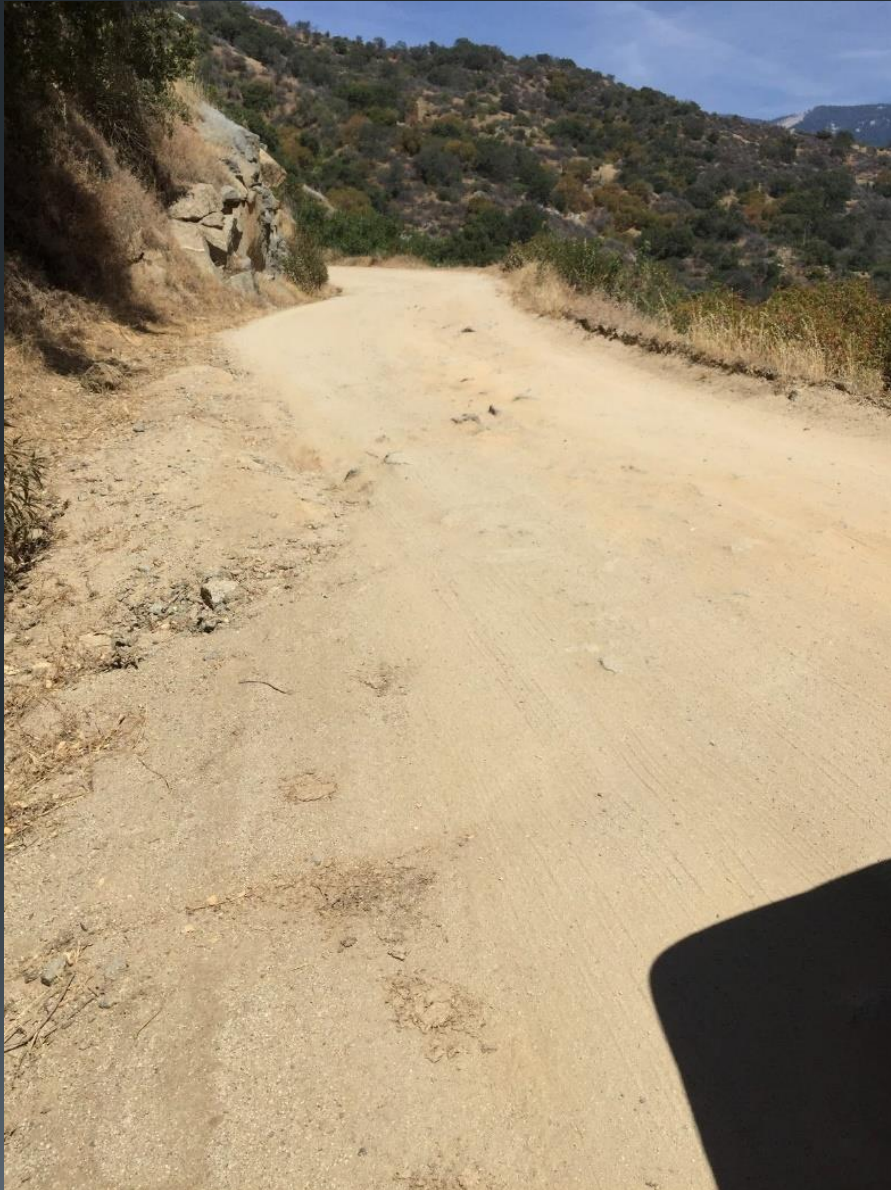
# Site Pictures





# S. Fork Dr. and regrading of existing driveways

## Site Pictures





## Proposed Cabin Locations



Cabin #1



## Site Pictures



Cabin #2



# General Plan, Zoning Consistency

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- 1981 Foothill Growth Management Plan (FGMP) - changed boundaries for Corridor Development from the 1977 Plan to what they are in the 2012 General Plan. Concurrently, adopted Foothill Agricultural (AF - Zone).
- FGMP intentionally divides Corridor Development for PDFM (Planned Development - Foothill - Mobile Home Overlay Zone is applied). Allowing development for subdivision and retail commercial development but only in Development Corridors.
- Development Corridor projects require first and second criteria for creation and requires PD's, Master Development Plans (like Yokohl Ranch), or "new towns", which require development standards.
- The Board did not change the AF Zone (in '81 or '12) under Section 10.3, where use permits allow "guest ranches", less intensive camping and lodging and more intensive asphalt batch plants (excluding commercial, heavy industry and subdivision development).



# Guest Ranch Definitions

- The FGMP development inside and outside the development corridors will be controlled on a site-specific basis. (FGMP Part II-Area Plans pages 3-4 to 3-5). Staff still used development standards as guidelines to make this a better project (i.e. setbacks from water way), but would not unduly use these standards as 2<sup>nd</sup> appellant suggests for 15 min. response time that no project could meet.
- Under AF Zone, Section 10.3, Section D, Use Permits, it states “because of considerations... the following uses are permitted in this zone, if a use permit is secured”.
- Section 10.3.D.8 “guest ranch or summer camp” are permitted “less intensive” uses. More intensive permitted uses are listed under Section D.
- Section 2 defines guest ranches as “buildings and premises offering recreational facilities for such pursuits as horseback riding, swimming, and hiking with living and dining accommodations.”
- County met its burden in addressing Section 16 requirements for General Plan and Zoning Consistency and for Health Safety and Welfare Considerations.

# Opposition Concerns (68 Conditions of Approval)

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- Riparian Setback
  - Septic Setback from the River (Env. Health approved CTL's – a qualified geotechnical engineer's) septic design of two septic tanks which will be located 300' uphill, consistent with LAMP requirements.
  - Bathrooms / tipis being located within 100 feet (85 feet) from perennial water way, even though in flood zone X, under the FGMP development standard guidelines, was recommended for exception by staff and the bathroom was approved by PC, but Tipis were moved 50 feet uphill by condition of approval, which applicant is not appealing.
- Fire
  - Fire Dept. Requirements: No open/recreational fires will be allowed except in fire pits during low risk times (and outside “spare the air” times) – caretaker oversight
  - The Fire Department recommended fire suppression water storage tanks.
  - Vegetation cleared 100 feet minimum from all structures, ten (10) feet from each side of driveway, and 15 feet vertical clearance.
  - The structures are required to have fire sprinkler systems and carbon monoxide/smoke detectors. Tipis are not structures under Building Code.
  - All tipi/tents shall be State Fire Marshall-approved.
- Cultural:
  - The applicant has hired a consultant to conduct a field survey of ground disturbance to avoid cultural resources.



# Appeal # 1

First Appellant appealed on November 12, 2019 citing:

- (1) Conditions of Approval (COA) No.(s) 2 and 25 related to Minor Modifications requiring a Planning Commission Hearing. They feel this would cause future, needless delays.
- (2) COA No. 30 prohibits Mr. Willardt from using his and his caretaker's residence(s) as short-term rentals. They feel this condition violates their legal rights.

Staff's findings show COA's No.(s) 2 and 25 consistent with other use permits' conditions of approval increasing the County's ability to protect the health, safety and welfare in allowing the public to comment on future minor modifications, but that COA No. 30 was inconsistent with Resource Management Agency's (RMA) original recommendation and could be appealed.

# Summary Appeal # 2

Mathias Herriges, et al, (Second Appellant) filed his appeal in opposition to this project on November 12, 2019, citing:

- (1) Inconsistency with Foothills Growth Management Plan (FGMP),
- (2) Insufficient emergency response access and egress,
- (3) Not meeting minimum criteria and findings for Special Use Permits,
- (4) Insufficient monitoring and compliance plans, and
- (5) Project is not categorically exempt under CEQA.

Staff addressed these concerns during the PC. Argument(s) turn on staff finding the Project consistent with the Foothill Growth Management Plan. Staff further finds the reasons for appeal to be (1) incorrect, (2) inapplicable, (3) without merit, (4) presumptuous and overreaching, and (5) speculative and baseless, because of the evidence presented within the operational statement, staff reports, conditions of approval in the resolution, and by and through discussions with the Planning Commission that are recorded in the minutes of the record (Exhibits “A-1 through A-4” in the agenda item).



# Appeal # 2

(1) The appeal regarding the FGMP is incorrect because:

- a) The AF Zone and PSP 19-040 is vertically consistent with the updated (2012) FGMP (as stated above).
- b) “Guest Ranches” are an allowed use outside Development Corridors.
- c) FGMP Exceptions are allowed when there are limited or no impacts to the environment and to the welfare of its citizens, and where there are no offsite requirements.
- d) Language quoted from Section 18.5 including Planned Development is irrelevant to this Project.
- e) Foothill Agriculture Land Use Designation allows the AF Zone and specifically a guest ranch with a use permit as “guest ranch or summer camp” where buildings and premises offering recreational facilities for such pursuits as horseback riding, swimming, and hiking with living and dining accommodations.
- f) Development Standards named are incorrectly attributed to a “Guest Ranch”, as they were intended for new subdivision development.

# Appeal # 2

(2) The FGMP requirement for “new development” response times is inapplicable to a “guest ranch” because:

- a) Section 3.12 of the FGMP Response Times is not applicable. Offsite road widths, fire and medical response times apply to “new development,” not Guest Ranch Uses.
- b) The Tulare County Fire Department (County Fire) only required sprinklers, fire water storage tanks, access, and Fire Marshal approved tipis.
- c) County Fire did not require an emergency evacuation plan. RMA included a condition of approval, based on suggestions by the opposition that the applicants consult with the County Fire and create an emergency evacuation plan.
- d) The “shelter in place until otherwise instructed” statement was made by the County Fire Department related to a different, unrelated project and not this project.
- e) Adjacent helicopter pad is not a recommendation, but merely pointing out a fact.
- f) County Fire and Cal Fire did not respond negatively to this project, and found there to be a sufficient response times and access and egress and did not suggest denial.



# Appeal # 2

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(3) Use Permit does meet Section 16 requirements - through the admin record. Appellant's "alleged" 5 use permit requirements are without merit because:

- a) The only standard required for a Section 16 Use Permit is under the Zoning Code, requiring General Plan, health, safety and welfare consistency.
- b) Again, the project is consistent with the FGMP.
- c) Parcel existed before the 1956 Zoning Code Adoption and before size requirements from the 1981 addition of the AF Zone to the Zoning Code. It also complies with the County Subdivision Code that was in force in 1950, which made an exception for gift deeds, and therefore the parcel allows two residences by right on 40 acres.
- d) Williamson Act allows for a guest ranch with an approved use permit per County Uniform Rules for Agricultural Preserves, adopted by Board Resolution No. 89-1275.
- e) The California Condor does not appear in the vicinity on the California Natural Diversity Database of June 2019.
- f) Staff again affirms that the FGMP Level 1 Criteria is not applicable to Guest Ranch Use Permits, but for "new development"/Development Corridors Creation projects.

# Appeal # 2

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(4) The Board finds the evidence provided by opposition of County non-enforcement regarding a different, unrelated project, Redwood Ranch, is presumptuous and overreaching in placing their opinions of the County's enforcement policies above our own because:

- a) Per County Ordinance No. 3493, the Planning Director has the discretion to immediately abate a violation that creates an immediate danger to the health and safety of persons or property. However, the Fire Department has inspected the site and the Sheriff's Office has been called to the Redwood Ranch no less than six (6) times since 2018 and has not verified or documented a single violation.
- b) The evidence provided consists of no expert evidence (an attorney is not an expert in regards to noise or traffic) and the evidence is supported mostly by downloaded individuals' / users of the facilities Facebook posts.
- c) There is a temporary permit (PSP 19-065 [AA]) for Redwood Ranch that County staff has been monitoring, and has not been found to be in violation of any of its conditions.
- d) Monitoring and compliance plan for subject Sunshine Paradise Ranch, with monthly logs and quarterly inspections, once in place by recorded resolution, then the adequacy of the performance of the conditions can be monitored for their sufficiency.

# Appeal # 2

(5) Project is Categorical Exempt from CEQA because:

- a) The Planning Commission found, “the project is Categorical Exempt pursuant to Section 15061(b)(3) “the Common Sense Rule”, the environmental determination included a CHRIS Report and CNDDDB mapping, and the limited nature of project’s impacts with 68 COA’s.
- b) The “guest ranch” use is consistent with the Land Use and Zoning, and the Land Use and Zoning is vertically consistent.
- c) There are no significant effect exceptions that are applicable (the “Common Sense Rule” not the Class 3 Exemption). There is no substantial evidence put in the record, except for testimony without evidence, as to the potential impacts to cultural aspects. Without verification of proof of expertise or verification of any of the allegations received in testimony, the record shows that staff did not have an obligation to report this project to the Native American Historic Commission or to prepare tribal consultations.
- d) There are no cumulative impacts from two use permits, as there is no evidence of any CEQA significant impacts being generated by the two projects. Just because there is a second project does not require a cumulative analysis.



## Affirmative Statement of Due Process of Law, Not Abridging Constitutional Property Rights, Concurrence of the use of the Planning Commission's Police Powers, and Procedural Adequacy.

“The Board affirmatively states that the Project is compliant with the County's General Plan. The Board states that the Board's and Planning Commission's Land Use Authority and Responsibilities were fully utilized and that both Tulare County Land Use Authority's Discretionary Bodies found that staff carefully and methodically brought the Project into compliance, presented and analyzed the Project thoroughly. The Board states that the Project is in compliance with all of the General Plan and Zoning Code and Procedural policies, as stated in the Staff Report, Planning Commission Resolution, and this Board's Findings. These include all policies under the (2012) Tulare County 2030 General Plan, the Special Use Permit for Guest Ranches, as provided in Sections 10.3 and 16 of said Ordinance No. 352, and as provided in Section 65905 of the Government Code of the State of California, and the Code Enforcement Procedures of Tulare County.”

## That the Board of Supervisors

- (1) Hold a Public Hearing at 9:30 a.m. or shortly thereafter.
- (2) Based on the findings set forth in “Exhibit A”, the Board denies Item 1 of the Cannarozzi/ Willardt appeal and grants Item 2 overturning the Planning Commission’s decision regarding Short-Term Rentals. The Board denies the appeal of Herriges.