

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

Certified copy of portion of proceedings; Meeting on _____, 2023

Resolution No. 23-_____

RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF HUMBOLDT DENYING THE ABBEY ROAD FARMING, LLC, APPEAL OF THE FEBRUARY 16, 2023, ZONING ADMINISTRATOR DECISION (PLN-2023-18132) AND DENIAL OF THE ABBEY ROAD FARMING, LLC, CONDITIONAL USE PERMIT (PLN-12861-CUP) ON APN 220-221-023.

WHEREAS, the Zoning Administrator held a duly-noticed public hearing on February 16, 2023, and reviewed, considered, and discussed the application for a Conditional Use Permit and reviewed and considered all evidence and testimony presented at the hearing.

WHEREAS, On February 16, 2023, the Zoning Administrator denied the Abbey Road, LLC, Conditional Use Permit (PLN-12861-CUP) for 15,236 square feet of existing outdoor commercial cannabis cultivation; and

WHEREAS, On March 15, 2023, the Planning and Building Department received an appeal of the Zoning Administrator's decision (PLN-2023-18132); and

WHEREAS, HCC 312-13.2 requires an appellant state specifically why the decision of the Hearing Officer is not in accord with the standards and regulations of the zoning ordinances, or why it is believed that there was an error or an abuse of discretion by the Hearing Officer.

NOW, THEREFORE, BE IT RESOLVED by the Humboldt County Board of Supervisors that the following findings are hereby made:

FINDINGS FOR APPEAL

- 1. FINDING** **CEQA:** The project is statutorily exempt from the California Environmental Quality Act.
EVIDENCE a) Section 15270 of the CEQA Guidelines (Projects Which Are Disapproved).
- 2. FINDING** The decision of the Zoning Administrator was in accord with the standards and regulations of the zoning ordinances.
EVIDENCE a) The Appellant argues that the Zoning Administrator decision was not in accord with standards and regulations of the zoning ordinances because the project does not contain a well. This

argument is inconsistent with the administrative record. The September 2017 site plan prepared by Pacific Watershed Associates identifies a proposed well for the project. The operations plan provided with the application also identifies a proposed well as an irrigation source. The September 10, 2020, revised deficiency letter also requested information about the well. Since the current project materials identified a well as a water source, the Zoning Administrator was correct to find that the lack of a hydrologic study prevented a determination of an adequate and eligible source of water. The hydrologic study is required to determine if the well is connected to surface waters and subject to forbearance per the CMMLUO 314-55.4.11(c) and (l) and whether the use of the well would be detrimental to the public health, safety, or welfare or materially injurious to properties or improvements in the vicinity.

- b) The Appellant argues that the Zoning Administrator decision was not in accord with standards and regulations of the zoning ordinances because a generator is not currently being used because there is not cultivation occurring at present. This argument is inconsistent with the administrative record because the project as proposed includes a generator. The September 10, 2020, revised deficiency letter asked for evidence that the generator will comply with performance standards when in use. This information is required to evaluate whether generator use will comply with noise limits. Since the current project materials did not contain a noise management plan, the Zoning Administrator was correct to find that the necessary findings could not be made in accordance with CMMLUO 314-55.4.11(o) and Department Policy Statement 16-005.
- c) Appellant does not address or respond to most of the deficiencies and items that were previously requested and not submitted, including necessary corrections to the site plan and operations plan. A project cannot be effectively referred to local and state agencies and tribes for review and comment without a complete project description and adequate project materials. Additionally, the appellant acknowledges that the department had requested a check so that a referral could be sent to local tribes and this had not been provided. The Zoning Administrator was correct to find that the lack of agency and tribal consultation prevented staff from properly analyzing the project and proposing appropriate

permit conditions and that the application was incomplete in accordance with the CMMLUO 314-55.4.10.

- d) The Appellant argues that the Zoning Administrator decision was not in accord with standards and regulations of the zoning ordinances because the wetland delineation provided with the appeal shows there is no wetland. By providing the 2021 wetland delineation with the appeal, the Appellant demonstrated that this documentation had not been provided to the county prior to the decision by the Hearing Officer and could therefore not have been considered. Additionally, the Appellant still has not provided an environmental superiority analysis or restoration plan. Therefore, the Zoning Administrator was correct to find that the lack of a wetland delineation at the time of decision and the lack of an environmental superiority analysis and restoration plan represented a lack of sufficient evidence to make the necessary finding that the project would not be detrimental to the public health, safety, or welfare in accordance with HCC 312-17.1.

2. FINDING

There was no error or an abuse of discretion by the Hearing Officer.

EVIDENCE

- a) The Zoning Administrator opened the public hearing and reviewed all the projects on the consent calendar including the Abbey Road Farming, LLC, Conditional Use Permit.
- b) The Zoning Administrator asked if anyone wished to comment on the Abbey Road Farming LLC, project and no one spoke.
- c) The Zoning Administrator considered all the evidence that was provided by Abbey Road Farming, LLC before making a decision.

3. FINDING

The Zoning Administrator hearing was properly noticed in compliance with local and state regulations.

- a) The hearing notice for the Zoning Administrator hearing was sent to Pacific Watershed Associates, as well as the current and previously named LLC manager using the address on file with the Secretary of State for the corporation. The notices sent on February 1, 2023, were sent to the same addresses as the Zoning Administrator decision packet, which was received as evidenced by the filing of the appeal.

FINDINGS FOR CONDITIONAL USE PERMIT

4. FINDING

The proposed development is not consistent with the requirements of the CMMLUO Provisions of the Zoning Ordinance.

- EVIDENCE**
- a) The 2017 site plan and operations plan identify a well as an irrigation water source. No hydrologic study for the groundwater well prevents staff from determining if there is an adequate and eligible water source. The study is required to determine if the well is connected to surface waters and subject to forbearance per the CMMLUO 314-55.4.11(c) and (l).
 - b) CMMLUO 314-55.4.11(o) requires that generators shall not be audible from neighboring residence and where applicable sounds levels must also show that they will not result in the harassment of Marbled Murrelet or Spotted Owl Species. Given the project's proximity to mapped Northern Spotted Owl habitat, lack of a noise management plan for the generator prevents staff from determining if the energy source will comply with applicable standards in the CMMLUO and Department Policy Statement 16-005.
 - c) The 2018 and 2020 deficiency letters described incomplete items including needed information and clarifications in the site plan and operations plan. Because the incomplete materials prevented the creation of a complete project description, the project has not been placed in referrals. The lack of agency and tribal consultation prevents staff from properly analyzing the project and proposing appropriate conditions.

5. FINDING

There is insufficient evidence to support a finding that the project will not be detrimental to the public health, safety, or welfare or materially injurious to properties or improvements in the vicinity.

- EVIDENCE**
- a) The original project application identified wetlands and did not contain a wetland delineation. The project application also identifies onsite relation but does not include an environmental superiority analysis and restoration plan to support the relocation. Although a wetland delineation was provided with the appeal, the project still does not include an environmental superiority analysis and restoration plan. Staff is unable to determine if the project will cause any significant impacts or provide mitigations

consistent with the measures in the adopted MND for the CMMLUO.

6. FINDING

There is insufficient evidence to support a finding that the project is in conformance with the County General Plan, Open Space Plan, and the Open Space Action Program.

- a) Areas designated Streamside Management Areas are part of the Open Space Action Program. The September 2017 site plan for the project depicts placement of a generator within the streamside management area which is inconsistent with the Streamside Management Area regulations and therefore with the County Open Space Plan.

BE IT FURTHER RESOLVED that based on the above findings, the findings in the staff report, evidence in the file for the project, and public testimony received on the project, the Board of Supervisors denies the appeal of the Zoning Administrator’s February 16, 2023, denial of the Abbey Road Farming, LLC Conditional Use Permit.

BE IT FURTHER RESOLVED that the Clerk of the Board is directed to provide notice of this decision to all interested parties.

Steve Madrone, Chair
 Chair of the Board, Humboldt County Board of Supervisors

Adopted on motion by Supervisor seconded by Supervisor and the following vote:

AYES: Supervisors
 NOES: Supervisors
 ABSENT: Supervisors
 ABSTAIN: Supervisors

STATE OF CALIFORNIA)
) ss.
 County of Humboldt)

I, KATHY HAYES, Clerk of the Board of Supervisors, County of Humboldt, State of California, do hereby certify the foregoing to be a full, true and correct copy of the original made in the above-entitled matter by said Board of Supervisors at a meeting held in Eureka, California as the same now appears of record in my office.

IN WITNESS WHEREOF, I have
hereunto set my hand and affixed the Seal of
said Board of Supervisors

NIKKI TURNER

Deputy Clerk of the Board of Supervisors of
the County of Humboldt, State of California
