



# COUNTY OF HUMBOLDT

For the meeting of: 7/13/2021

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File #: 21-943

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**To:** The Humboldt County Board of Supervisors

**From:** Planning and Building Department

**Agenda Section:** Time Certain Matter

SUBJECT:

1:30 p.m. - Appeal of the Planning Commission actions to Approve the Arcata Land Company, LLC, Conditional Use Permit and to Adopt a Mitigated Negative Declaration to allow for commercial cannabis cultivation. The application is for the operation of a combination of outdoor light-deprivation cultivation (2.3 acres) and mixed-light cultivation (5.7 acres) in new enclosed gutter-connected greenhouses, and 30,000 square feet of existing hoop houses dedicated to ancillary propagation activities on APNs 506-231-021 and 505-151-011 (one separate legal parcel). The Project will also include ancillary support features, such as an administrative building, propagation and office building, utility building, new onsite wastewater treatment system, unpaved parking areas, security fencing, and storm water management features (e.g., retention basins).

RECOMMENDATION:

That the Board of Supervisors adopt the attached resolution to do the following:

1. Adopt Findings relative to CEQA Compliance and findings to support denial of the appeal and approval of the Conditional Use Permit; and
2. Adopt the Initial Study and Mitigated Negative Declaration, State Clearinghouse No. 2021010337; and
3. Specifies the custodian of the record of proceedings upon which the decision is based is the Planning Department, located at 3015 H Street, Eureka, California; and
4. Denies the Appeal submitted by James Cotton, Kim Puckett, Paula Proctor, Michael Proctor, Joan Edwards, Lee Torrence, Rebecca Crow, Carol McFarland, Don Nielsen, Terrence McNally, Kerry McNally, Tamara Spivey, Mona Mazzotti, Abraham Moshekh, Duane E Smith, Pamela J Smith, Victor Howard, Lydia Butyrin, Lisa Pelletier, Kathryn Melia, Julie Hochfeld, Nancy Blinn, Warren Blinn, Peggy Bell-Hans, Todd Casebolt, Deni Devine, Jose Mendoca and Leonor Mendoca; and
5. Approves the Conditional Use Permit for 5.7 acres of new mixed light cannabis cultivation and 2.7 acres of new outdoor light-deprivation cannabis cultivation, with 30,000 square feet of appurtenant propagation area, and associated infrastructure and support facilities, subject to the conditions of approval contained in Attachment 1A of this Resolution; and
6. Adopts the Mitigation, Monitoring, and Reporting Program in Attachment 1B of this Resolution.

SOURCE OF FUNDING:

The Appellant has paid the appeal fee associated with filing this appeal.

DISCUSSION:

Executive Summary

This appeal hearing was continued from the June 22, 2021 Board of Supervisors hearing to allow staff to research the effectiveness of odor control technology and to look at potential conditions related to phasing, an organic easement over the non-cultivation area, possibility of an easement for a bicycle/pedestrian path along Foster Avenue and the potential for use of solar power. Based upon discussions with Santa Barbara County staff, the odor control technology is effective and recommended conditions have been included. The discussion below includes potential additional conditions which could be added to the project if it is the decision of the Board of Supervisors to approve the project and add those conditions. The resolution prepared for the Board's consideration finds that odor control does work, and that the project can be approved. Additional public comments have been addressed in the resolution.

Phasing

Staff and the applicant discussed potential phasing plans, and while the applicant remains open to phasing, the lack of uncertainty regarding the amount of cultivation area that might be able to be supported by the Board results in the applicant being unwilling to agree to any particular phasing plan. In general, the applicant is willing to conduct a first phase of the 5.7 acres of mixed-light and then to have the 2.3 acres of outdoor cultivation to be developed as the second phase. The phasing concept was brought up to determine if the site could be operated in compliance with the conditions, primarily related to odor control. The project has been conditioned to ensure odor control is maintained.

Odor Control

The applicant has been proposing the use of Ecosorb odor control technologies. This has been consistent during the environmental review of the application, the Planning Commission review, and the Board of Supervisors hearing at June 22, 2021. However, at the June 22, 2021 hearing the applicant identified that the Ecosorb technology is being developed by Byers Scientific Technology Corporation. This technology is a waterless vapor-phase system which utilizes a proprietary odor-neutralizing agent to mix with the cannabis terpenes to neutralize the cannabis odor before it leaves the greenhouse. At the hearing the applicant and the representative of Byers Scientific testified that this technology is being effectively utilized in Santa Barbara County to address odor concerns from sensitive receptors.

Subsequent to the June 22, 2021 meeting, Planning Staff contacted Santa Barbara County Planning and Development staff regarding the Byers Technology. Santa Barbara County Planning staff identified that the Byers Technology is being utilized widely in their jurisdiction, often in combination with carbon scrubbers and other measures to address odor-control from cannabis projects. Many commercial cannabis operations in Santa Barbara County are within close proximity to sensitive receptors, in some

cases as close as 30 feet to residences.

Santa Barbara County staff made it clear that most of their cultivation operations are still operating under provisional permits and therefore do not have odor-control measures or have not had them inspected by staff. There are only two approved permits with odor control. The struggle is there are many other provisional cultivation sites without odor control located around these approved sites, so the actual odor complaints have not subsided. It is worth noting that those provisional permits who voluntarily use the Byer Scientific technology are not subject to enforcement action for odor-related complaints.

While discussions with Santa Barbara County staff did not show that all odor issues there have been addressed, the discussion did identify a sophisticated understanding of addressing odor. Santa Barbara County's odor-control provisions are increasingly utilizing both the Byers vapor-phase technology and carbon filters/scrubbers. They have also required odor-control measures to be developed in consultation with a certified industrial hygienist. The combination of use of both the Byers Scientific Technology and activated carbon scrubbers designed by an industrial hygienist would be using the Best Available Control Technology (BACT) and ensuring it is designed appropriately. The staff did indicate they had been in greenhouses with odor control and while the odor was very strong inside the greenhouse, it was not evident outside the greenhouse.

Santa Barbara County also has addressed the health effect concerns associated with the use of Ecosorb. Their Air Pollution Control District has reviewed the constituents of Ecosorb and has determined there is no constituent that is hazardous to human health.

The idea of adaptive odor control was also discussed whereby the standard for the project is no odor at the property line. In the event that the measures do not achieve the desired results, additional BACT strategies will be employed. This could involve venting all air from the greenhouses into an enclosed room for secondary or tertiary treatment prior to release.

Based on the experience of Santa Barbara County there is high confidence that a properly designed, implemented and maintained odor control system will protect the surrounding area from cannabis odor. The important element is ensuring that the odor control system is appropriately designed and maintained. To address this staff is recommending a modification to condition 10 and the addition of conditions of approval (COA #22 - 25 in Attachment 1 to the proposed Resolution) as follows:

Modified Condition:

10. The approved building plans shall address odor management by incorporating a ventilation/air filtration system that limits potential adverse odor emission impacts to employees and/or properties located in the vicinity. The system shall be designed, signed, and stamped by a mechanical engineer for review and approval by the Building Official. There shall be a description of the odor control system and procedures for ongoing maintenance of the system. [Prior to issuance of any clearances or permits the operator shall submit a Neighborhood Odor Complaint Response Plan to the Planning and Building Department for review and approval.](#)

The plan shall designate a staff member to receive, document, and follow-up on odor complaints. [Records of complaints](#) The plan shall include include procedures to document and respond to any odor complaints that include: a contact name and phone number to report odor complaint of [the complainant \(if available\)](#)s, the source or cause of any odor complaints, and actions taken to mitigate the odors. Complaint records shall be maintained for a minimum of five years from the date the complaint is received and be provided to the county [Planning and Building Department within 10 days of the complaint](#) or NCUAQMD upon request (ongoing condition of approval).

New Conditions:

- 22) All cannabis cultivation shall be enclosed in greenhouses designed and constructed such that all cannabis cultivation is within an enclosed space that does not open directly outside the greenhouse. Entry into the greenhouse shall be through a vestibule. Odor control measures shall be utilized in both the cannabis cultivation area and the vestibule so that cannabis odor shall be neutralized before leaving the greenhouse. This greenhouse design shall ensure that all ingress and egress to the cultivation space can occur while the exterior entrances are closed and sealed.
- 23) Prior to issuance of the building permits or other clearances for the proposed greenhouses, the applicant shall submit an odor-control plan prepared by a certified industrial hygienist that implements the following odor-control measures:
  - a) The use of appropriately sized activated carbon filters/scrubbers within the greenhouses.
  - b) The use of vapor-phase odor-neutralizing technology with real-time computer-monitoring to provide for appropriate mixing of the odor-neutralizing agent.
- 24) The Applicant shall maintain the odor-control system in good operating order throughout the duration of the cannabis cultivation activities. This shall include frequent inspection and replacement as necessary of carbon filters/scrubbers. Additionally, the applicant shall deploy, or re-deploy the best available control technology or methods as necessary, or as determined by the County.
- 25) The operational odor control standard is no odor at the edge of the Arcata Land Company holdings. In the event there is repeated or sustained odor from the cultivation, the Odor Control Plan shall be modified to address the source of the odor. The operator shall have 15 calendar days from notice by County to develop a solution and 30 days from approval to implement the necessary changes. In the event the odor constitutes a significant and persistent nuisance to residents in the area the County shall require cultivation to cease until the source of the odor has been addressed.

Additional Conditions of Approval

At the June 22, 2021 hearing the Board considered applying additional conditions of approval for the project to address public concerns regarding open space, energy use, and pedestrian safety. The following draft conditions of approval are intended to capture the sentiment expressed by some members of the Board at the June 22, 2021 hearing. These are not currently in the recommended

conditions of approval as the Board was unclear regarding the support for these conditions and the timing of these relative to potential phases of the project. Additionally, the applicant has not been willing to commit to these conditions of approval given the uncertainty of the scope of the project that may be approved by the Board.

- 1) The Applicant shall dedicate through an easement or fee ownership a strip of land running parallel to Foster Avenue along APN's 506-131-011, 505-151-005, 505-161-009 to the County of Humboldt and/or City of Arcata for the creation of a public trail for pedestrian and bicycle traffic. The strip of land shall be a minimum of 20 feet in width running the entire length of these APN's from the project site to Alliance Road.
- 2) The Applicant shall record a conservation and open space easement and/or organic farming easement over the entirety of APN's 506-231-022 and 505-151-012.
- 3) The Applicant shall develop a solar power system to provide the entirety of the power needed to support all activities approved as part of this permit. Prior to issuance of any permits the applicant shall submit an energy budget for all activities to demonstrate that the solar array will provide sufficient power.

These conditions of approval may be added or modified as determined by the Board of Supervisors either for the entirety of the project or at specific phases of the project should the Board approve a phased development approach.

Staff's recommendation remains unchanged from the June 22, 2021 Board of Supervisors Hearing. The Recommendation is that the Board of Supervisors uphold the Planning Commission decision.

FINANCIAL IMPACT:

There will be no additional effect on the General Fund. The Appellant has paid in full the appeal fee associated with this appeal.

STRATEGIC FRAMEWORK:

This action supports your Board's Strategic Framework by enforcing laws and regulations to protect residents.

OTHER AGENCY INVOLVEMENT:

N/A

ALTERNATIVES TO STAFF RECOMMENDATIONS:

The Board may consider the following alternatives:

1. Uphold the appeal, overturn the Planning Commission approval, and require preparation of an EIR. The Board may find that it would be desirable to prepare and EIR for the project. The Board should give direction as to why an EIR should be prepared and continue the hearing to a date uncertain to allow an EIR to be prepared.

2. Uphold the appeal, overturn the Planning Commission approval, and deny the project. The Board may decide that the Project in its present form would adversely harm the existing physical, aesthetic and environmental character of the community and would therefore be detrimental to the public welfare. Under this alternative the Board would find the Project exempt from environmental review pursuant to Section 15270 of the CEQA Guidelines (Projects which are disapproved) and deny the Arcata Land Company, LLC Project because the findings for approval under Section 312-17.1 of the Humboldt County Code cannot be made. In this case staff recommends the Board give direction on the rationale for denial and continue the project to a date certain to allow staff to prepare adequate findings.
3. Deny the Appeal and Approve a Revised Project. The Board could choose to approve a modified project to address concerns and issues raised and could choose to apply additional conditions of approval to the Project.

ATTACHMENTS:

NOTE: The attachments supporting this report have been provided to the Board of Supervisors; copies are available for review in the Clerk of the Board's Office.

1. Draft Board Resolution and Findings
2. Board of Supervisors Staff Report for June 22, 2021
3. Appeal filed by James Cotton et.al., dated May 4, 2021.
4. Resolution of the Planning Commission
5. Planning Commission Staff Report March 18, 2021
6. Planning Commission Staff Report (Reduced Scale Alterative) April 22, 2021
7. Mitigated Negative Declaration
8. Revised Operations Plan
9. SHN Response to Appeal Letter Regarding Bio Assessment
10. GrowSpan Series 1000 Greenhouse Spec Sheet
11. Historical Water Use Information for the Arcata Land Company Site
12. SCS Odor Panel Results for Carprinteria
13. Agency/Public Comment
14. Byers-Scientific-Vapor-System-Spec-Sheet-CNB-C3

PREVIOUS ACTION/REFERRAL:

Board Order No.: N/A

Meeting of: N/A

File No.: N/A