



COUNTY OF HUMBOLDT

For the meeting of: 8/16/2022

File #: 22-998

To: The Humboldt County Board of Supervisors

From: Planning and Building Department

Agenda Section: Public Hearing

SUBJECT:

11:30 AM - Lost Coast Elixirs, LLC's appeal of the Planning Commission denial of a Conditional Use Permit for 16,144 Square Feet of existing outdoor and 7,710 Square Feet of existing Mixed-Light Commercial Cannabis Cultivation in the Whitethorn Area.

RECOMMENDATION:

That the Board of Supervisors:

1. Open the public hearing and receive the staff report, testimony by the appellant (applicant), and public; and
2. Close the public hearing; and
3. Adopt the resolution (Resolution 22-___). (Attachment 1) which does the following:
 - a. Finds that the Board of Supervisors has considered the Addendum to the Mitigated Negative Declaration for the Commercial Medical Marijuana Land Use Ordinance prepared for the Lost Coast Elixirs, LLC project; and
 - b. Finds that the proposed project complies with the General Plan and Zoning Ordinance; and
 - c. Approves the Appeal submitted by Lost Coast Elixirs, LLC; and
 - d. Approves the Conditional Use Permit subject to the recommended conditions of approval.
4. Direct the Clerk of the Board to give notice of the decision to the appellant, the Planning and Building Department, and any other interested party.

SOURCE OF FUNDING:

Cannabis Planning, Professional Services (1100268-2118), reimbursable through applicant cost recovery.

DISCUSSION:

Executive Summary

This item is an appeal of the Humboldt County Planning Commission's June 16, 2022 denial of a Conditional Use Permit for Lost Coast Elixirs, LLC, by a 4-2 vote (Yes: McCavour, Bongio, Mitchell, O'Neill; No: Mulder, Newman). The appellant argues that the Planning Commission made an error in their decision and exercised an overreach of their power (abuse of discretion). The Planning and Building Department supports the appeal.

Project Description

Application PLN-11247-CUP is a Conditional Use Permit application for an existing operation with 16,144 square feet (sf) of outdoor and 7,710 sf of mixed light cannabis cultivation with 2,746 sf of ancillary propagation. Water for irrigation is sourced from a permitted well and the applicant has obtained a well assessment by a licensed geologist demonstrating that the well is unlikely to be connected to nearby surface waters and is suitable for the proposed use. Anticipated annual water usage is 383,472 gallons (14.4 gal/sf/yr). There is a total of 411,500 gallons of existing hard tank water storage on-site designated for irrigation and the applicant is able to forgo the use of the well completely during the dry season. Drying and curing will occur on-site and trimming will occur off-site at a licensed processing facility. The applicant will be hiring between 3-10 employees for the cultivation operation. The site is equipped with two permitted septic systems, and additional portable toilets and hand washing stations will be used. Power is currently sourced by two (2) diesel generators housed within block structures with secondary containment, and the project is proposed to be conditioned to transition to 100% renewable energy source by 2026.

The Cultivation Area Verification (CAV) for the project site found that there was a total of 22,514 square feet of outdoor cultivation and 5,551 square feet of mixed-light cultivation in existence prior to January 1, 2016, on the site and the applicant was able to demonstrate that the reconfiguration of the site to 16,144 square feet of outdoor and 7,710 square feet of mixed-light would result in less water use and no increase in energy use. The reconfiguration results in an overall decrease of 4,211 square feet of cultivation on the site. The calculations and analysis are more fully described in the Planning Commission staff report attached to this staff report (Attachment 3).

Planning Commission Hearing

At the Planning Commission hearing of June 16, 2022, the Planning Commission heard a number of public comments in opposition to the project. Many of the comments raised concerns regarding the use of water during the drought which are commonly raised concerns from members of the public on nearly all cannabis projects. Many of the public comments regarding the history of violations of County ordinance and CDFW standards by the applicant were based on a different property. Some comments from the public were specifically about the individual who owns the operation and not specifically about the project. It is not possible to know how this affected the Planning Commission decision.

Below is a brief discussion of the specific concerns discussed during the public hearing:

- a) Water storage. Concerns were raised that there is not enough water storage on the

property for the cannabis cultivation or fire suppression. However, as noted in the staff report and the project description herein, there is a total of 411,500 gallons of water storage on the property which is more than what is needed annually for irrigation. Some members of the Commission expressed concern that there was no substantial rainwater catchment proposed and a commissioner stated that the operation would need to have at least 200,000 gallons of rainwater catchment on the site in order for her to support approval.

- b) The use of trucked water for the site. As discussed in the Planning Commission staff report, the applicant was found to have trucked water in October of 2021. According to the applicant the trucked water was for fire suppression purposes and utilized to fill the tanks adjacent to the access road at the request of the local fire department and was ultimately used for dust suppression on the road.
- c) Potential well connection to the Mattole River. Concerns were raised that the wells may not be useable and/or may be drawing from aquifers that would feed into the Mattole River. However, as noted in the staff report a licensed professional geologist has prepared a well assessment which identified no likely hydraulic connectivity of the well and identified a sustainable pumping rate for the well which was below that needed for the annual irrigation needs. The wellhead is located on a ridgetop at approximately 1,440 feet above sea level and the bottom of the well is approximately 1,180 feet above sea level which is roughly 120 feet higher than the elevation of the nearest watercourse (Eubanks Creek).
- d) Inadequate roads. Members of the public raised concerns regarding the lack of adequate vehicular and emergency vehicle access to the site on Eubanks Road. While no engineered analysis of the road has been submitted, a report showing adequate width and turnouts was prepared by the applicant. Additionally, as noted during the hearing a number of other cannabis applications have been approved on the road. Numerous County staff have traversed this road and concluded that it is a generally well-maintained roadway that is in equivalent or better condition than most rural roads in Humboldt County.
- e) Lighting violations. The comments from the public, and much of the Planning Commission discussion was very heavily focused on the fact that the applicants were notified to remove string-lights from the outdoor cultivation during a previous inspection in December of 2020 and that during the November 30, 2021 inspection the lights were still found in the outdoor greenhouses. What was not clear at the time and not presented to the Planning Commission by staff is that there was no written notification given to the applicant after the December 2020 inspection to remove the string lights, and during the November 30, 2021 inspection the outdoor greenhouses that contained the string lights were non-operational greenhouses. Additionally, the County failed to provide the applicant written notification to remove the lights after the November 30, 2021 inspection. At no point prior to the June 16, 2022 hearing had the applicant received any written direction from the County to remove the lights from the outdoor cultivation areas.

After a substantial discussion by the Commission regarding adding additional conditions such as rainwater catchment, more expedient timber restocking and enhanced inspections, a motion was made to approve the project with the added condition to develop 200,000 gallons of rainwater catchment on the site within two years and to complete the timber restocking within 12 months. This motion failed 2-4 (Yes: Mulder, Newman; No: Bongio, McCavour, Mitchell, O'Neill). A motion was then made to deny the application based on the finding that the public testimony had demonstrated that the operation would be detrimental to the public health, safety and welfare or materially injurious to properties or improvements in the vicinity. To support this finding the Planning Commission specifically referenced that the applicant is a repeat offender of violations with the County, CDFW and Cal Cannabis, and that complaints regarding trucking of water and light pollution had been received. This motion passed 4-2 (Yes: Bongio, McCavour, O'Neill, Mitchell; No: Mulder, Newman).

June 16, 2022 Night Sky Enforcement

Coincidentally, as the Planning Commission was meeting to discuss this application County staff was patrolling southern Humboldt with the intent to identify potential violations of the cannabis night sky ordinance requirements. As a result of complaints received regarding this site, County staff turned west onto Eubanks Road and identified light emanating from the Lost Coast Elixirs property. County staff conducting the night sky enforcement inspection believed that the lighting was security lighting and stated that it appeared to be from flood lights. During a site visit on July 26, 2022 to the property, County staff determined that the light would have been originating from motion-sensing flood lights associated with the on-site residence and not from the commercial cannabis operation. Accordingly, the June 16th lighting witnessed by County staff would not have been a violation of the County cannabis night sky regulations. There are no County restrictions on lighting from residences.

Appeal

The appellant filed a timely appeal of the Planning Commission decision on June 23, 2022. The appellant argues that the Commission failed to consider all the facts prior to making a decision and that the reasons for the denial were not warranted by the information they were given. Additionally, the appellant argues that the Planning Commission disregarded the County ordinance (CMMLUO) and exercised an overreach of their power.

Appeal Argument 1:

The appellant states in the appeal that one of the primary reasons cited by the Planning Commission for denial was the November 30, 2021 inspection report and that the history of ongoing violations of County ordinance, CDFW and CalCannabis but that the November 30, 2021 inspection report was never shared or discussed with them and that there are no current violations on file from any agency.

Staff Response to Appeal Argument 1:

This is correct. The primary basis for the Planning Commission's decision was the November 30, 2021 inspection report that documented a number of violations identified during the November 30, 2021 inspection. This inspection report was included as part of the Planning Commission staff report and relied on very heavily during the discussions at the hearing. County staff presenting this project at

the Planning Commission had assumed that this inspection report had been shared with the applicant shortly after the inspection had occurred; however, after the appeal was filed, a review of all County records shows that the planner who conducted the inspection and wrote the report had not provided this information to the applicant.

Staff agrees that it was unfair to the applicant for the Planning Commission to rely on an inspection report that the applicant had never before seen or had an opportunity to respond to. Further, one of the primary points of discussion at the Planning Commission hearing was that there were repeated lighting violations because the applicant had been notified in December 2020 to remove the string lights from the outdoor cultivation and that there were still string lights in outdoor cultivation areas found during the November 30, 2021 inspection. Upon further review, no written notification to remove the string lights was sent to the applicant after the December 2020 inspection. Additionally, no written notification to remove the lights was sent to the applicant after the November 2021 inspection. During a meeting with the Planning Director in January of 2022, the applicant was verbally advised to remove the lighting and did in fact send photo documentation of the removal of the lights the following day.

Additionally, County staff is unaware of any current CalCannabis, CDFW or Water Board violations that are applicable to the site. During a site inspection by County staff on July 26, 2022, the site was found to be in full compliance and all issues identified in the November 2021 inspection had been addressed.

Appeal Argument 2 (Note that appeal arguments 2-4 are irrelevant to the Planning Commission's stated reasons for denial but are discussed nonetheless in this staff report):

The CMMLUO does not require rain catchment as a water source and the lack of rainwater catchment is not grounds for denial.

Staff Response to Appeal Argument 2:

The appellant is correct that the CMMLUO does not require rainwater catchment and there is more water storage on the property than is needed for the entire annual irrigation needs of the project. The lack of rainwater catchment was not stated as an official reason by the Planning Commission to deny the application.

Appeal Argument 3:

The CMMLUO allows the use of a well as a water source and this is not grounds for denial of the application. Further, a licensed engineer concluded that the use of the well is sustainable and would not adversely affect the aquifer.

Staff response to Appeal Argument 3:

The appellant is correct that the CMMLUO allow the use of a well as a water source. Additionally, a licensed engineer has prepared a well analysis which demonstrates that the well is sustainable and

would not adversely affect the aquifer. However, the use of the well was not cited by the Planning Commission as an official reason for denial of the application.

Appeal Argument 4:

The applicant has satisfied the requirements of the CMMLUO regarding the road and there are no grounds for denial based on the road evaluation or the condition of the road.

Staff response to Appeal Argument 4:

Photo documentation included in the application does indicate that the road is sufficient width and includes sufficient turnouts for safe travel to and from the site. There are no specific requirements in the CMMLUO for roads to be a certain standard; however, the County is required to find that the operation would not endanger the public safety or welfare. County staff has travelled this roadway and determined that it is an appropriate width and design for the level of traffic that is found on the road, and to date at least 8 commercial cannabis applications have been approved that utilize this roadway including one approved earlier this year by the Planning Commission which is further down the private roadway. However, the condition of the road was not cited by the Planning Commission as an official reason for denial of the application.

Summary and Recommendation

The intent of the Commercial Medical Marijuana Land Use Ordinance is to bring existing cannabis operations into compliance with County and State regulations. This has been a process for all pre-existing cannabis operations, and it is not uncommon for sites to be found out of compliance while they are engaged in the permit process. The typical process is for the County to notify the applicant and to work with the applicant to resolve and correct any instances of non-compliance. The instances of non-compliance (violations) found on this site in inspections that occurred in 2020 and 2021 are not at all unusual to pre-existing cannabis operations engaged in the permit process and there is nothing that has been found on the site that is uniquely egregious. What is unique to this operation is that County staff failed to provide the operator with any written notification of the areas of non-compliance prior to the Planning Commission hearing. The applicant correctly states that the Planning Commission hearing was the first opportunity that they had had to review any inspection results. A little more than one month after the Planning Commission hearing County staff visited the site (July 26, 2022) and found that all the areas of non-compliance cited in the November 2021 inspection report had been corrected (Attachment 6) and that the site was in compliance with applicable standards. For these reasons, the County Planning Department recommends that the Board of Supervisors approve the appeal and approve the Conditional Use Permit subject to the recommended conditions of approval.

FINANCIAL IMPACT:

There will be no impact on the General Fund. The applicant has paid all costs associated with the appeal.

STRATEGIC FRAMEWORK:

This action supports your Board's Strategic Framework by its support of the Goals and Policies of

of stabilizing and supporting a successful cannabis industry.

OTHER AGENCY INVOLVEMENT:

None

ALTERNATIVES TO STAFF RECOMMENDATIONS:

The Board could choose to deny the appeal, find the project exempt from environmental review pursuant to Section 15270 of the CEQA Guidelines, and deny the Conditional Use Permit.

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 for Record No. PLN-2022-17820
 - B. Cultivation Operations Plan
 - C. Site Plan
2. Grounds for Appeal filed by Lost Coast Elixirs, LLC
3. Planning Commission Staff Report for PLN-11247-CUP
4. Planning Commission Resolution No. 22-078
5. November 30, 2022, Site Inspection
6. July 26, 2022, Site Inspection
7. Hydrogeologic Well Analysis
8. Supporting Documents

PREVIOUS ACTION/REFERRAL:

Board Order No.: F-5

Meeting of: Planning Commission 6/16/2022

File No.:22-787