

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

Certified copy of portion of proceedings; Meeting on January 14, 2020

Resolution No. ____ - ____ Resolution of the Board of Supervisors of the County of Humboldt CERTIFYING COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, ADOPTING FINDINGS OF FACT, DENYING THE APPEAL FOR RECORD NO. PLN-2019-15648 AND DENYING THE HAWK VALLEY FARMS, LLC PERMIT FOR RECORD NO. PLN-11141-CUP; ASSESSOR PARCEL NO. 204-091-012.

WHEREAS, Humboldt County adopted the Commercial Medical Marijuana Land Use (CMMLUO) Ordinance on September 13, 2016, after adopting a Mitigated Negative Declaration finding that all impacts associated with implementation of the ordinance could be reduced to a less than significant level; and

WHEREAS, an application for a Conditional Use Permit has been submitted to the Humboldt County Planning and Building Department for an existing cultivation operation consisting of 43,560 square feet of outdoor cultivation and appurtenant propagation and processing activities on parcel 204-091-012; and

WHEREAS, the Planning and Building Department reviewed the submitted application and supporting substantial evidence and has referred the application and evidence to involved reviewing agencies for site inspections, comments and recommendations; and

WHEREAS, On June 6, 2019 the Planning Commission denied the Conditional Use Permit application because the project could not be found consistent with Sections 314-55.4.8.2.2, 314-55.4.11.v, and 314-55.4.11w of the CMMLUO due to an unauthorized expansion of the cultivation site and failure to timely resolve lighting violations, and because the applicant violated the terms of the executed Compliance Agreement per Section 314-55.4.8.11 of the CMMLUO; and

WHEREAS, Hawk Valley Farms, LLC (“Appellant”) on June 17, 2019, filed an appeal in accordance with the Appeal Procedures specified in Humboldt County Code Section 312-13 et seq.; and

WHEREAS, The Board of Supervisors held a duly-noticed public hearing on November 19, 2019, and reviewed, considered, and discussed *de novo* the application and appeal for the Conditional Use Permit; reviewed and considered all public testimony and evidence presented at the hearing.

WHEREAS, The Board of Supervisors held a duly-noticed public hearing, *de-novo*, on November 19, 2019, and reviewed, considered, and discussed application and appeal for

the Conditional Use Permit; and reviewed and considered all public testimony and evidence presented at the hearing.

Now, THEREFORE BE IT RESOLVED, that the Board of Supervisors makes all the following findings:

1 **CEQA.** The action to deny the Appeal and Conditional Use Permit is not subject to CEQA.

CEQA Guidelines Section 15270 Statutorily exempts projects which Are disapproved from compliance with the California Environmental Quality Act (“CEQA”).

2 **CONSISTENCY WITH ZONING ORDINANCE.** Approval of a Conditional Use Permit requires that the application comply with the provisions of the Zoning Ordinance. The Conditional Use Permit being requested do not comply with the Zoning Ordinance and cannot be approved.

- a. The project is not consistent with §314-55.4.8.2.2 of the Humboldt County Code because expansion over the amount of cultivation existing prior to January 1, 2016 has occurred multiple times;
- b. The project is not consistent with §314-55.11.v of the Humboldt County Code because light from greenhouses has continued to escape at a level that is visible from neighboring properties between sunset and sunrise;
- c. The project is not consistent with §314-55.11.w of the Humboldt County Code because the applicant did not submit written verification that the lights’ shielding and alignment has been repaired, inspected and corrected within ten (10) working days of receiving written notification that a complaint has been filed;
- d. Hawk Valley Farms, LLC has violated the terms of the executed Compliance Agreement and is subject to permit cancellation per Section 314-55.4.8.11 of the Humboldt County Code;

3 **GROUND FOR APPEAL.** The grounds for appeal are not adequate to warrant granting the appeal.

- a. The applicant/appellant claims that no expansion of cultivation area occurred and that the County approved a full acre of cannabis cultivation.
 - i. The affidavit signed by the applicant/appellant did not constitute an approval from the Planning and Building Department. At no point did the County ever approve an acre of cultivation for this site.
 - ii. The applicant/appellant constructed 53,720 square feet of industrial greenhouses for cannabis cultivation after 2016 without County review or permitting.
 - iii. The figure of 28,000 square feet was the result of numerous meetings between the applicant/appellant and the Director of Planning and Building. The

applicant/appellant signed an agreement to allow issuance of an Interim Permit for this amount.

- iv. The applicant/appellant has never submitted substantial evidence in support of 43,560 square feet of cannabis, nor has the County ever found it plausible that 43,560 square feet existed on the site prior to January 1, 2016. There is no evidence on the record that cultivation actually occurred on this site.
 - v. The Commercial Medical Marijuana Land Use Ordinance (CMMLUO) specifies that cultivation area within hoop structures and greenhouses are to be measured by the exterior dimensions. The appellant's argument regarding internal hoop houses within larger greenhouses is not consistent with cultivation area as defined by the CMMLUO.
 - vi. A March 7, 2019 site inspection by County staff confirmed 36,720 square feet of dedicated flowering space and 17,000 square feet of dedicated nursery space on site, which is in excess of the 28,000 square feet granted in the Interim Permit.
- b. The applicant/appellant claims that he made a good faith effort to install a system to comply with the lighting requirements of the CMMLUO and that temporary tarps were ordered and implemented while he was waiting on installation of an automatic curtain system.
- i. Humboldt County Code §314-55.4.11.w provides ten working days for an applicant to submit written verification that the light shielding and alignment has been repaired, inspected and corrected as necessary. The applicant/appellant did not submit written verification that the light shielding had been corrected within the codified timeframe. The appeal includes a receipt for the temporary tarps that the appellant claims shows a good faith effort to comply. However, the receipt is dated April 10, 2019, which is 24 working days after the notice to correct the violation and is after the Interim Permit had already been revoked for non-compliance. Further, the County received another complaint of unshielded lighting on May 1, 2019 indicating that the lighting violation had not been corrected nearly 2 months after the notice to correct the violation, and well after the Interim Permit had been revoked and the applicant had been ordered to remove all cannabis from the property.
- c. The applicant/appellant claims that there is no evidence that the Applicant engaged in a course of action throughout the permit process in violation of Humboldt County Code, that there are only two alleged violations in the entire four year application process and that the revocation of the Interim Permit within a few days of non-response is without precedent.
- i. The applicant/appellant graded the site and constructed 53,270 square feet of industrial greenhouses for cannabis cultivation after 2016 without any county review or permitting. The grading and greenhouse construction without County permits are violations of Humboldt County Code.

- ii. The expansion of the cultivation area that was brought to Humboldt County's attention in 2017 was a violation of Humboldt County Code. This violation was resolved through a settlement meeting with the Planning Director which led to the issuance of an Interim Permit for 28,000 square feet of outdoor cultivation area. A March 7, 2019 site inspection by County staff determined that the applicant/appellant had expanded the cultivation area again, with 36,720 square feet of dedicated flowering space and 17,000 square feet of dedicated nursery space on site. This expansion was also a violation of Humboldt County Code.
- iii. The Planning Department received a complaint of failure to shield lights, which is a violation of Humboldt County Code. H.C.C. §314-55.4.11.w requires applicants to demonstrate that the lighting violation has been corrected and repaired as necessary within ten working days of receiving notice from the County. The applicant/appellant did not demonstrate that the lighting had been corrected within the required window. The failure to demonstrate a correction is a violation of Humboldt County Code.
- iv. The County's correspondence with the applicant was very clear that the Interim Permit would be revoked if the applicant/appellant did not comply with the required deadline to remove the expansion and to provide documentation of a correction of the lighting violation. The revocation of the Interim Permit a few days after a non-response is not unprecedented. The applicant/appellant's repeated violations and failure to correct violations within the required timeframe is somewhat unprecedented and demonstrates that the applicant/appellant is unable to operate the site in compliance with applicable requirements.

4 VIOLATION OF COMPLIANCE AGREEMENT. The applicant/appellant violated the terms of an executed Compliance Agreement which renders the application subject to denial.

- a. Section 314-55.4.8.11 of the CMMLUO allows for applicants with pre-existing cultivation sites to obtain an Interim Permit by entering into a Compliance Agreement with the County. This section states that violations of the Compliance Agreement shall be grounds for permit cancellation and disqualification of the property from future permitting.
- b. Cory Nunes, for Hawk Valley Farms, LLC. entered into a Compliance Agreement with Humboldt County on July 18, 2018 in which he acknowledged that expansion or relocation of the cultivation area beyond the 28,000 square feet would result in revocation of the Interim Permit and denial of the Conditional Use Permit.
- c. On March 7, 2019 Planning staff documented that 36,720 square feet of dedicated flowering space and 17,000 square feet of dedicated nursery space were on site. This is an expansion of the cultivation area beyond the 28,000 square feet specified in the Interim Permit.
- d. Despite the language of the Compliance Agreement that the Conditional Use Permit would

be denied for expansion, the County gave the applicant/appellant another opportunity to bring the site into compliance by removing all cultivation from the site within 10 days after the revocation of the Interim Permit. The applicant/appellant failed to take advantage of this opportunity and continued to commercial cultivate cannabis on the site after the revocation of the Interim Permit and after the ten day deadline to remove all commercial cannabis from the site.

NOW, THEREFORE, be it resolved that the Board of Supervisors hereby:

- 1 Denies the Appeal submitted by Hawk Valley Farms, LLC; and
- 2 Denies the Conditional Use Permit.

The foregoing Resolution is hereby passed and adopted by the Board of Supervisors on January 14, 2020, by the following vote:

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

AYES: Supervisors:

NOES: Supervisors:

ABSENT: Supervisors:

Chair

Humboldt County Board of Supervisors

STATE OF CALIFORNIA)) SS. County of Humboldt)

I, Kathy Hayes, Clerk of the Board of Supervisors of the 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-titled 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.

KATHY HAYES Clerk of the Board of Supervisors of the County of Humboldt, State of California

By: KATHY HAYES

Date: _____, 2020

By _____ Deputy