

Big River Farm, LLC
PLN-11892-CUP
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October 3, 2023

Justification for Appeal of Planning Commission Denial

On behalf of Big River Farm, LLC we contend that the planning commission's denial of Big River Farm, LLC Conditional use Permit 11892 was arbitrary and capricious. The relevant factors were not considered and that only hearsay and speculation rather than substantial evidence was the basis of the to deny the project by the planning commission.

The denial of the project as outlined in the planning commission resolution was based on the following findings findings:

1. Public comments have been received indicating criminal and dangerous activity activity have occurred and continue to occur on the site including a gun fight on the subject property on or around November 2018
2. There is no evidence presented that the approval of this use would not be detrimental to the public welfare.
3. The manner in which the the site had been graded had potential for sedimentation and the construction of greenhouse over the property line onto BLM property shows a past practice of not complying with regulations.
4. The Bureau of Land Management (BLM) property to the South is a potential habitat for Northern Spotted Owl (NSO). The General Plan calls for protection of listed species

Regarding finding 1, no evidence other than hearsay has been presented to date with respect to the alleged shooting. No police reports have been provided and submitted into the public record. Public comment regarding this issue has been submitted only by two parties: Rod Silva and Mark Hilovsky. The applicant is not aware of any shootings or gun violence that occurred in the vicinity of his property on the alleged date.

The public testimony provided by Mr. Mark Hilovsky at the planning commission hearing stated that a gunfight broke out in November of 2018 on the driveway of the subject parcel (9320 Wilder Ridge Road) and that his tenants were frightened. This verbal testimony is in direct conflict with Mr. Silva and Mr. Hilovsky's written public comment dated April 25, 2019 where they purport that the gun violence occurred on Mr. Hilovsky's property and that from his property he or his tenants witnessed vehicles parked at the gate of the property and on the road side. With respect to this allegation, please see appended aerial imagery showing the location of the residence on Mr. Hilovsky's property relative to the driveway to the subject parcel as well as photos looking from the driveway of the subject parcel in the direction of Mr. Hilovsky's property. Due to the heavily wooded nature of the area, it is not feasible to have a clear view of the Big River Farm, LLC driveway from Mr. Hilovsky's property to witness the alleged activity nor the vehicles purportedly parked on the side of the road much less the subject driveway. Given these discrepancies, the public comment testimony provided regarding this incident does not appear reliable.

The applicant was a potential target of a crime as publicized in a North Coast Journal article submitted as part of public record. We thank law enforcement for their actions that prevented the circumstance from escalating into a more serious situation. This attempted robbery is one of the principal reasons the applicant has entered this process to become a legal business. The business maintains a bank account as a licensed cannabis business and can provide statements if requested to demonstrate mitigation of the need to have cash on the property.

With respect to the other allegations in the article, Mr. Iliev has never been accused, indicted, or interviewed regarding these allegations. In fact, he has never been arrested in his life. The applicant has been fully transparent through this entire process and has owned this business the entire time. He has undergone all required background checks as part of state licensing which includes notification and review by both the California Department of Justice and the Federal Bureau of Investigation.

The applicant does not use firearms or guns as part of this operation nor recreationally. This is a rural area and gunfire is not uncommon and the source is from other properties and not this subject parcel. The discussion regarding this matter by the planning commission centered on the risk of “one bullet” as brought up and discussed by two commissioners that voted to deny which was purely speculative and has no basis in fact .

Regarding finding 2, the applicant has collected and provided all possible evidence that his operation is in conformance with all state and local laws including providing METRC transaction records as well as maintaining a state license which requires the background checks outlined previously.

With respect to the hearsay and speculation outlined in findings 1 and 2, we request that the board consider the appended guidance document prepared for government jurisdictions for quasi-judicial hearings such as Planning Commissions by the League of California Cities. Page 7 outlines that the findings “must be relevant to adopted, applicable criteria in statutes or policies”. None of the issues brought up under findings 1 nor 2 appear to be rooted in the matter at hand which is a land use decision. The applicant should not be expected to provide evidence on impacts to the public welfare that is not clearly defined in statute and that other applicants to date have not been required to submit.

Regarding finding 3, County Planner Devin Suftin and Planning Director Ford both noted at the planning commission hearing that this is a 1.0 permit and the intent of the ordinance was to allow farms to come into compliance. As part of the exhibits, a stamped survey letter from a licensed surveyor indicated that the greenhouse and grading occurred in 2015 prior to the effective date of the ordinance. The greenhouse was abated and has not been part of the cultivation operation since 2016. As there was no legal pathway to cultivate cannabis prior to the passage of the ordinance, all 1.0 pre-existing applications would demonstrate a past practice of not complying with regulations. This farm has operated under an interim permit until the interim permit expiration at the end of 2022 and has not been subject of any other violations that would indicate a past practice of non-compliance.

The grading and encroachment to BLM would have been addressed as part of post-approval conditions as well as the agreed mitigation re-stocking plan that was presented and accepted by both the BLM and California Department of Fish and Wildlife (CDFW) staff.

Sedimentation would also not be an issue site is conditioned to operate under a site management plan as required under the Waterboard Cannabis General Order to minimize erosion. Furthermore, the site is located over 1,000 feet from the nearest stream course with a substantial forested buffer.

Based on the items above, there is no basis in fact to deny the permit under finding 3.

Regarding finding 4, as noted by Planner Devin Suftin at the hearing, both the BLM and CDFW staff (biologists, foresters, and other personnel) met with county planning staff and identified an acceptable mitigation for proximity to the nearby BLM property. Furthermore, a neighboring parcel (8500 Wilder Ridge Road) in proximity to BLM managed land was issued a permit (SP-11035). The agent is also aware of CUP-12601 as an example of a 1.0 cultivation permit approved in proximity of Northern Spotted Owl habitat with mitigation in consultation with CDFW. Additional examples of permits issued in proximity to NSO habitat will be provided pending a response to a Public Records Act request submitted by the applicant's agent.

Furthermore, in reviewing of the planning commission discussions for making findings #3 and #4 as part of the hearing, these were considered only after deep discussion on the unsubstantiated alleged criminal activity discussed in findings #1 and #2 and after Director Ford indicated that making the finding of fact to deny on items #1 and #2 required "evidence to make that statement".

The motion to seek denial based on findings #3 and #4 singled out this applicant when other projects have been approved under similar circumstances and does not appear to have been made in good faith as part of the decision making process.