



To: Humboldt County Board of Supervisors

From: Green Road Consulting
on behalf of MDRV Realty, LLC

RE: APPEAL - PLN-11212-CUP and PLN-11214-SP (MDRV Realty, LLC)

The purpose of this appeal is to modify a single condition of approval which was applied to commercial cannabis applications PLN-11212-CUP and PLN-11214-SP (MDRV Realty, LLC) at the May 5th, 2022 Planning Commission hearing. The condition (#15) currently reads:

“The applicant shall have a Road Evaluation Report prepared by a licensed Civil Engineer, in order to assess the access roads and recommend improvements for the roads, and shall submit to Planning Division. The applicant shall be required to complete 100% of the improvements recommended within the RER prior to being able to continue cultivating at the site.”

This condition is not consistent with the requirements applied to other similar applications approved by the commission the ability of the applicant to perform work on easement roads independent of the community road association is not assured, and the requirement to complete 100% of the improvements on an 8-mile stretch of road, the majority of which is used by 24 separate cannabis farms, prior to cultivating represents an insurmountable barrier to operation of this business. It is therefore proposed that this condition be replaced with the following:

“The applicant and associated Road Maintenance Association for shared roads shall adhere to and implement the recommendations for road improvements included in the engineered road evaluations prepared by David Nicoletti. In the event the applicant is unable to coordinate road improvements through the Road Maintenance Association, the applicant shall pay fair-share cost for maintenance of the road to any road user engaged in maintaining the road. A letter or similar communication indicating these recommendations have been implemented by a certified engineer shall satisfy this condition.”

and:

“Within 90 days of execution, the applicant will submit an engineer’s road evaluation prepared by a certified engineer for the portion of the access road leading to the site (Eight Mile Ridge Road) not previously evaluated by a certified engineer. Within two years of execution, the applicant shall implement all road improvements recommended in this evaluation including but not limited to constructing turnouts and maintaining drainage structures

and vegetation. A letter from a qualified engineer stating the work has been completed shall satisfy this condition.”

The language in these conditions was adapted from similar, approved cannabis applications in the area.

Background

Originally, PLN-11214-SP and PLN-11212-CUP were scheduled for a Zoning Administrator hearing and a Planning Commission hearing, respectively, on April 21, 2022 with a recommendation for approval by the Humboldt County Planning and Building Department. A typo in the Zoom link listed in the Zoning Administrator agenda unfortunately forced the special permit to be continued. That evening, the Planning Commission was brought the Use Permit.

The majority of the discussion during this hearing revolved around the use of a stretch of Eight Mile Ridge Road that connects the two subject parcels by passing through portions of neighboring parcels (easement road):



The easement road between subject properties which served as topic of discussion at the original hearing

The commissioners became concerned about the shared infrastructure on these parcels and the use of this road for transporting employees back and forth between the

sites. A neighbor had complained about heavy traffic and it was concluded that the project should not be decided on until both projects were brought to hearing concurrently.

Following this first hearing, the applicant contacted the planning department with responses to the commissioner's concerns, indicating that the easement road was used only for convenience in order to transport employees as the internal connection between the properties was a steep ATV trail. The applicant offered to reduce the use of this road in the future, and the planning department brought the projects back to the commission with a recommendation for approval on May 5th, 2022.

At no time since the applications were submitted in September 2016 did a member of the planning staff or the planning commission request an engineer's road evaluation for the access roads leading to the parcel.

When the projects were brought to the commission to be heard concurrently, the staff report presented by the assigned planner did not cover the relevant history of the project or include a recap of the previous hearing. It was eventually heard at 9:30PM, after three and a half hours of contentious hearing* of other cannabis projects.

During the public comment period for the projects, the self-certification of the *access roads* was brought up for the first time, and Commissioner Bongio engaged in sarcastic banter with a public speaker to the effect that he did not support the road assessment standards passed into law with the Commercial Medical Marijuana Land Use Ordinance by the Humboldt County Board of Supervisors, against which these projects were evaluated during the five and a half years it was being processed by the Planning Department. When the applicant's representative from Green Road Consulting spoke, he was asked if the access roads were evaluated by an engineer. The representative responded that they had not, but his firm did employ a licensed engineer and such an evaluation could be prepared.

When the public comment period ended, the commission entered the discussion period, which centered around the access roads leading to the parcel as opposed to the easement road previously discussed. None of the commissioners appeared to identify this crucial distinction, and the members of the planning staff, who unlike the public maintain the ability to interject, failed to call attention to the fact that neither the commission nor the planning department ever made a request for an engineered road evaluation. Instead, Mr. Bongio referred to the fact that the projects were brought before him without an engineer's evaluation as "a slap in the face" and voted to deny the application.

*At this time, to our knowledge, at least two other projects from the May 5th hearing have been appealed to the BOS

After a tied vote, the commission eventually approved the project under the condition that the entire road leading to the parcel be assessed by a licensed engineer and that 100% of the improvements be completed prior to commencement of cultivation on the parcel. Commissioner Mulder aptly declared “I don’t see how this project will ever have the financial resources to move forward, but it’ll move along” and the motion passed. The applicant, their consultant, and the planning staff were surprised by the outcome (see attached)

Road Evaluations

The current owner/applicant purchased the property in 2021, with a previous landowner having submitted a road evaluation self-certifying category 4 equivalency of the access roads in 2018. As previously stated, at no time did a representative of the Planning Department request an engineer’s road evaluation of the access roads or indicate any deficiency of the road evaluation that was provided. Given that (1) the majority of the access roads to the subject parcels had already been evaluated by an engineer for other projects, (2) many of the neighboring projects share an existing evaluation, and (3) nearby parcels were approved for identical uses without need for or reference to further professional evaluation of the roads, it seemed quite reasonable for this project to have been brought to a hearing without the need for an engineered road evaluation. As soon as a desire was expressed for such an evaluation (during the May 5th hearing) the applicant entered into a contract to have one completed.



The full extent of access road to the subject parcel, which is currently required to be upgraded in its entirety prior to cultivation on the subject properties alone.

The southern subject parcel (APN 208-241-007) is located 7.1 miles from Highway 36, the nearest category 4 highway, with an additional 0.8 miles leading to the northern parcel (APN 208-241-006). What the commission failed to take into account was that the first 5.5 mile leg of this road (Salyer-Mad River Rd.) is used by a total of 26 commercial cannabis cultivation parcels, 12 of which have been approved. Of the remaining 2.4 miles (Eight Mile Ridge Rd.), 1.8 miles are shared with other commercial cannabis cultivation properties. In fact, at the time of the hearing, only 1.2 miles of the 7.9 miles of access road had not been evaluated by a licensed engineer with the results submitted to the Planning Department and Public Works. Now that it has been requested, the applicant has contracted Green Road Consulting to prepare an engineer's evaluation for this 1.2 mile section (report pending).

Of the 24 other active cannabis applications that share access roads with these sites and are operating, 12 have been approved. Nine of these twelve approved applications rely on the same road evaluation made on October 8th, 2018 by David Nicoletti, PE. **The remaining three applications relied on self-certifications by the applicants and were approved.** No requirement was placed on any of these projects that required 100% completion of the road work prior to cultivating, despite using the same roads for the same uses. The *average* distance to the 24 other cannabis parcels accessed by the same road is roughly equal to the distance to the furthest subject parcel (7.9 miles).

The conditions regarding access roads applied to the 12 approved projects vary greatly, despite similar commercial uses along the same access road. One project was approved with the condition only that an "experienced licensed professional ensure Best Management Practices are implemented" with no reference to engineers, road associations, or category 4 standards. Many projects require that "all road improvements recommended within the Engineers Road Evaluation Report" be completed with no deadline (2-year completion date implied). A few projects require the applicants to "take steps to form a Road Maintenance Association" for the shared portion. One of the projects which relied on a self-certification of the access roads, PLN-13138-SP, was approved without any conditions to join a road maintenance association, further evaluate the roads, or completion of access road upgrades whatsoever. This last referenced project is located further from state Highway 36 and allows a larger cultivation footprint than the smaller of the two subject projects.

The proposed conditions of approval (above) were created by applying the strictest language found in these existing approved conditions of approval for neighboring farms.

Conclusion

As the engineered evaluations have been contracted, the real issue with the current condition is the requirement that 100% of the work be completed prior to cultivating. Given the circumstances detailed above, the only conclusion to be drawn is that this condition is unprecedented and wholly unfair, and appears to be a punitive action in response to a perceived slight against or misunderstanding by the planning commission. It should be noted that cannabis projects are typically brought to the planning commission when planning staff determine that the applications have satisfied the requirements of the ordinance, not at the request of applicants. When an assigned planner schedules a project for a hearing with the recommendation of the Planning Department for approval, there cannot be a reasonable expectation for an applicant to refute this decision. This is especially true after many years of application processing that involves seemingly endless lists of requests for additional professional reports, plans, or evaluations, all of which represent significant costs.

As Mr. Mulder expressed before the previous vote, the condition as written is financially insurmountable. Alternatively, the proposed conditions not only meet the requirements of the ordinance and match those applied to neighboring cannabis farms by calling for the applicant to join and contribute to a road association on shared roads, but exceeds those requirements by necessitating the applicant's acceptance of full responsibility for the portion of the road used only by his farm and strictly non-commercial neighboring parcels. Importantly, the proposed conditions allow the farmer to comply with these requirements over a reasonable period of time while generating the revenue required to do so.

We hope that this explanation is well received and that it accurately conveys the respect with which we hold the honorable institutions of our county including the planning and building department, the planning commission, and the board of supervisors. Please approve this appeal and save this small business.

Sincerely,

Green Road Consulting Staff



Steve Breitenstein

From: Johnson, Cliff <CJohnson@co.humboldt.ca.us>
Sent: Friday, May 6, 2022 3:41 PM
To: Steve Breitenstein; Acevedo, Megan
Subject: Re: MDRV PLN-11212-CUP & PLN-11214-SP

Hi Steve,

We were a little surprised as well on the direction and tone the Commission took. We also did not believe they had any concerns about the entire road before but this is where they decided to go. We definitely won't be able to amend the condition administratively. They were pretty clear about it. Because of the RMA requirements we can assist in ensuring that all the other cannabis applications share the cost of whatever road improvements he needs to do before he can cultivate, but if you want to have him cultivate before the improvements are complete an appeal would be necessary and its hard to say what the Board would do but it would allow a more focused discussion of the condition the PC added and whether it is fair or not. I'm out of the office until at least Tuesday. Perhaps Megan can assist you in what is needed in filing an appeal otherwise I can help later next week.

Cliff

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From: Steve Breitenstein <Steve@greenroadconsulting.com>
Sent: Friday, May 6, 2022 2:48:05 PM
To: Johnson, Cliff <CJohnson@co.humboldt.ca.us>
Subject: MDRV PLN-11212-CUP & PLN-11214-SP

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Hi Cliff,

I wanted to chat with you about the MDRV applications that went to a hearing last night. I felt that the conversation of the commission took a turn after the public comment section ended and I was not able to jump in again to try and rectify the situation. At the previous hearing where the project was continued, the conversation of the commissioners focused on the level of connectedness between the two proposed properties, and the use of the easement road that connected them for ferrying employees between the properties. There was no discussion about the access road leading from Highway 36 to the parcel. I felt that the shared road issue was addressed by the applicant, who agreed to use the road between the parcels less in favor of transporting employees on a trail located within parcel boundaries. Neither the commission, nor our planner ever requested an engineer's road evaluation, which is why I was shocked that Mr. Bongio referred to the project as a "slap in the face" for not including one. Maybe it was because the hearing was deep into its third hour, but it seemed like the commissioners were misremembering the discussion at the first hearing and which road was being referenced.

Please correct me if your interpretation is the conversation at this point, I expected the planning staff to jump in to remind the commission that (1) there are 24 other cannabis permit applications located on this shared road (12 of which that have been approved) and (2) that Megan had already discussed membership in a road maintenance association as a condition. It turns out that engineered road assessments have been prepared and submitted for the roads to a point 1,350 feet short of the subject parcel as part of previous cultivation applications. I think it is reasonable for the applicant to pay for an engineered assessment of the still-unassessed portion, and even to improve it without aid

from a road association, but a requirement to take responsibility for the entire road or even for his ability to cultivate to be left in the hands of a road association of which he is only one member seems unreasonable.

My questions to you are:

- What was your take on the proceedings at the hearing last night and my interpretation above?
- Can you provide a draft of the condition that was discussed?
- Given that the request to perform upgrades on other peoples land independently of a road association is not feasible, can the condition be modified administratively?
- Otherwise, do you think that an appeal is warranted and how should be go about filing one?

Please let me know your thought. Happy to jump on a call.

Steve Breitenstein
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