



COUNTY OF HUMBOLDT

For the meeting of: 4/18/2023

File #: 23-477

To: The Humboldt County Board of Supervisors

From: Planning and Building Department

Agenda Section: Public Hearing

SUBJECT:

An Appeal of the Zoning Administrator's Denial of a Conditional Use Permit for 15,236 Square Feet of Existing Outdoor Commercial Cannabis Cultivation for Abbey Road Farming LLC

RECOMMENDATION:

That the Board of Supervisors:

1. Open the public hearing and receive the staff report, testimony by appellant, and testimony from the public; and
2. Close the public hearing; and
3. Adopt the attached resolution (Attachment 1) which does the following:
 - a. Finds that the denial is exempt from CEQA;
 - b. Makes findings to deny the Conditional Use Permit and deny the appeal;
 - c. Denies the appeal;
 - d. Denies the Conditional Use Permit for Abbey Road Farming, LLC; and
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:

The appellant has paid the fee associated with filing this appeal. (1100268-608420). The cost of the appeal does not cover the cost of processing the appeal and thus this is an unbudgeted cost to the General Fund.

DISCUSSION:

Executive Summary

This is an appeal of the Zoning Administrator's decision to deny a Conditional Use Permit for 15,236 square feet of existing outdoor commercial cannabis cultivation, based upon the applicant's unresponsiveness to repeated requests to supply information needed to complete review of the application. This information is still lacking and findings for approval of the application cannot be

made, thus the application cannot be approved.

The standard for an appeal is whether the Hearing Officer's decision was in accord with the standards and regulations of the zoning ordinance, or whether there was an error or an abuse of discretion by the Hearing Officer. The Zoning Administrator's denial was consistent with the zoning regulations and the CMMLUO and there were no errors nor abuse of discretion. Therefore, the appeal should be denied. The appeal is exempt from environmental review pursuant to State CEQA Guidelines Section 15270. This is a *de novo* hearing, and the Board of Supervisors is not limited to the evidence in the existing record and may receive new evidence at the appeal hearing.

Background

The Planning and Building Department has systematically started to move applications forward for denial when the applicant has not been responsive in addressing information needed to support approval of the application. The final letter sent to an applicant gives them 60 days to provide the needed information or the application will be scheduled for denial. As of March 22, 2023, a total of 58 applications for cannabis permits have been denied.

On Feb. 16, 2023, the Zoning Administrator denied the Abbey Road, LLC, Conditional Use Permit (PLN-12861-CUP) for 15,236 square feet of existing outdoor commercial cannabis cultivation. The project was scheduled for decision because the applicant had been unresponsive and additional information had been requested since Feb. 9, 2017. As detailed below, there were nine communications with the applicant asking for additional information or informing the applicant that the application would be scheduled for denial due to the needed information not being provided. At the end of 2019, the Interim Permit issued for the property was not extended because the applicant had not attempted to provide the necessary information. The following year the applicant cultivated without permits and was fined. The department had not received requested items nor received any communication from the applicant or applicant's representatives since Aug. 19, 2021. Several attempts were made to contact the applicant with no response. Neither the applicant nor applicant's representatives attended the public hearing on Feb. 16, 2023.

Project Chronology

The chronology below is not exhaustive of all events and interactions, only those major milestones germane to the scheduling of the project for denial and this appeal.

December 29, 2016 -	Project application received.
February 9, 2017 -	Incomplete letter sent to applicant.
August 16, 2017 -	Pending project withdrawal notice sent to applicant.
September 18, 2017 -	Partial information received.
December 12, 2017 -	Site plan received.
May 25, 2018 -	Request for additional prior cultivation evidence email sent to applicant.
August 16, 2018 -	Additional evidence of prior cultivation provided.
August 16, 2018 -	Interim permit issued.

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- September 28, 2018 - Deficiency letter sent to applicant (no response).
December 31, 2019 - Interim permit expired.
August 3, 2020 - Notice of unauthorized cultivation and fines sent.
September 1, 2020 - New property owner contacts department taking over application.
September 4, 2020 - Permit application transfer packet sent to new owner / applicant (no response).
September 10, 2020 - Revised deficiency letter sent to new owner / applicant (no response).
October 30, 2020 - Fines paid.
August 18, 2021 - An agent visits department, no missing items provided.
July 27, 2022 - Letter sent to applicant notifying 60 days to provide requested items (no response).
January 26, 2023 - Courtesy letter sent to applicant notifying project is being scheduled for denial.
January 31, 2023 - Notice of hearing published in Times Standard.
February 1, 2023 - Hearing notice mailed to applicant, agent, owner, and adjoining properties.
February 16, 2023 - Zoning Administrator public hearing.
March 15, 2023 - Appeal received.

The Zoning Administrator found that the proposed application was incomplete and therefore contained inadequate information to demonstrate consistency with the requirements of the CMMLUO for the following primary reasons:

- a) Lack of a geologic study to demonstrate the groundwater well is not drawing from subsurface flow of surface water prevents the determination that this is not a diversionary water source, and a finding of an adequate water source cannot be made.
- b) Lack of information demonstrating that generator noise complies with the requirements of the CMMLUO which is critical given the proximity of documented northern spotted owl observations and activity centers.
- c) The project application does not contain a wetland delineation nor an environmental superiority analysis and restoration plan for onsite relocation. It is not possible to determine if the project will cause any significant impacts or require mitigation consistent with the measures in the adopted MND for the CMMLUO.
- d) The project description has never been fully addressed and as a result the project has not been placed in referrals. The lack of agency and tribal consultation results in an incomplete review.

Additionally, the Zoning Administrator found there was insufficient evidence to support a finding that the project will not be detrimental to the public health, safety, or welfare or materially injurious to properties or improvements in the vicinity.

Appeal

On March 15, 2023, the Planning and Building Department received an appeal listing the applicant Abbey Road Farming, LLC as the appellant. The appeal was signed by Kathy Moley, from Pacific Watershed Associates. Abbey Road Farming, LLC has been suspended from conducting business by the State of California since Oct. 1, 2020. Technically, there is not currently a legally recognized entity to hold the permit even if the Board of Supervisors chooses not to deny the permit.

The Zoning Ordinance (HCC 312-13.2) specifies the grounds for an appeal:

“...appellant shall state specifically why the decision of the Hearing Officer is not in accord with the standards and regulations of the zoning ordinances, or why it is believed that there was an error or an abuse of discretion by the Hearing Officer.”

The appeal filed by Pacific Watershed Associates submitted the appeal based on the following:

Appeal Issue #1 Groundwater Well

The Zoning Administrator found that lack of a hydrologic study of the proposed well prevented staff from determining if there is an adequate and eligible water source. The appellant states *“There is not a well on this property nor is there proposed to be a well.”*

Staff Response to Issue #1

The September, 2017 site plan prepared by Pacific Watershed Associates identifies a proposed well for the project. The operations plan provided with the application also identifies a proposed well as an irrigation source (See Attachments 5 and 6). The Sept. 10, 2020, revised deficiency letter also requests information about a well. Since the administrative record identifies a well as the water source and there is no analysis of that water source, the Zoning Administrator was correct to find that the requirements of the CMMLUO could not be demonstrated because there is not an adequate water source. The appeal indicates there is not a well and one is not proposed but does not identify the source of irrigation water. It should be clear that the resolution prepared for the Zoning Administrator action reference a hydrologic study, which should be understood as a study from a geologist or hydrogeologist. Denying the permit for lack of information which has been requested for 6 years does not constitute an error or abuse of discretion by the Hearing Officer. The Hearing Officer can only base decisions on what is in the record. There is not adequate information in the record and there has been no communication of intent by the applicant to make the record sufficient to support approval of the application.

Appeal Issue #2 Noise Management Plan

The Zoning Administrator found that a lack of a noise management plan prevents staff from determining if the energy source will comply with applicable standards given the proximity of northern spotted owl. The appellant states *“The Noise management Plan is currently in press and can be submitted with additional documentation. Due to the current economy regarding cannabis cultivation, there is no cultivation planned for this season and therefore, no generator is in use.”*

Staff Response to Issue #2

Appellant acknowledges that a noise management plan had not been provided, and one still has not been provided. The Sept. 10, 2020, revised deficiency letter asked for evidence that the generator will comply with performance standards when in use. The fact that the generator is not currently being used is not relevant because a generator is proposed to be used and evidence is required to evaluate whether use, even for emergency purposes, will comply with noise limits. Since the current project materials do not contain a noise management plan, the Zoning Administrator was correct to find that the necessary findings under the CMMLUO could not be made. This finding does not constitute an error or abuse of discretion by the Hearing Officer.

It is appreciated that the Noise Study is in production, but this information was not provided in response to any of the previous letters or in response to the July 27, 2022 letter indicating that the project would be scheduled for denial unless the information needed to support approval of the application is received.

Appeal Issue #3 Incomplete Project Description / Lack of referrals

Because the project was incomplete, a project description could not be generated, and the project had not been placed in referrals. The Zoning Administrator found that the lack of agency and tribal consultation prevented staff from proposing appropriate conditions. The appellant states *“Previous documentation for this project did not include a required archeological or tribal review until final complete submission of all documents. If at this time, the Humboldt County Planning Department is requiring a tribal consultation of this property, that will be submitted. County communications only asks for a replacement of a \$30 check.”*

Staff Response to Issue #3

Appellant acknowledges that the department had requested a check so a referral could be sent to tribes. Appellant does not address or respond to the other deficiencies and items that were previously requested such as updates and corrections to the site plan and operations plan. These documents are essential items to generate a complete project description. A project cannot be effectively referred to local and state agencies and tribes for review and comment without a complete project description and adequate project materials. The Zoning Administrator was correct to find that the lack of agency and tribal consultation prevented staff from proposing appropriate permit conditions. This finding does not constitute an error or abuse of discretion by the Hearing Officer.

Appeal Issue #4 Insufficient Evidence to Support Finding Project will not be Detrimental

The Zoning Administrator found that there was insufficient evidence to support a finding that the project will not be detrimental to the public health, safety, or welfare or materially injurious to properties or improvements in the vicinity. This was because the project application did not contain a wetland delineation nor an environmental superiority analysis and restoration plan for onsite relocation. Staff was unable to determine if the project will cause any significant impacts or provide mitigations consistent with the measures in the adopted MND for the CMMLUO.

The appellant states *“...there was an Aquatic Resource Delineation prepared by Kyle Wear, Botanical*

Consultant for this project in February of 2021. The results of this study concluded that what had previously been classified as a possible wetland, is indeed classified as a Class III ephemeral stream which would warrant a 50-foot setback from the edge... Appellant provided an Aquatic Resource Delineation with the appeal application. Appellant also states *"PWA is currently completing the Lake or Streambed Alteration Agreement for this property which will upgrade the access road, improve water transportation via properly sized culverts."* Appellant also states, *"As was submitted earlier, the previous cultivation location was a result of "Gorilla Grows within the woods. The current cultivation sites, in PWA's professional opinion are superior as they are closer to the residence, and within greenhouses as opposed to within the woods where they are more likely to impact wildlife. They are also more compactly located as opposed to being spread out across the hillside. See attached photos of previous cultivation areas. This relocation did take place after January 1, 2016 by a previous owner of the property based on advice they were given early on in the permitting process."*

Staff Response to Issue #4

Appellant acknowledges that a wetland delineation had not been provided to the department until after the Zoning Administrator denied the project. Appellant's application also includes an argument that the historic guerilla grow is environmentally inferior. However, this is further acknowledgement that the appellant had not provided requested information to the department in a reasonable timely manner. Additionally, the information provided by appellant with the appeal remain substantially incomplete. An environmental superiority analysis must also include why the proposed relocation site is superior and be accompanied by a restoration plan.

The Zoning Administrator was correct to find that the lack of a wetland delineation at the time of decision and the lack of an environmental superiority analysis and restoration plan represented a lack of sufficient evidence to make the necessary finding that the project would not be detrimental to the public health, safety, or welfare. This finding does not constitute an error or abuse of discretion by the Hearing Officer.

Appeal -- Noticing

The appeal claims the applicant/owner and agent did not receive the public notice sent on Feb. 1, 2023. Staff verified that notices were sent to the addresses on file (Attachment 4). The notices sent on Feb. 1, 2023, were sent to the same addresses as the Zoning Administrator decision packet, which was received. The department sent the Feb. 1, 2023, hearing notice to the correct addresses.

The appeal also states that July 27, 2022, and January 26, 2023, courtesy letters were not sent to the agent. These courtesy letters were not sent to an agent cross copy because it was unclear if there was an agent of record. The permit application transfer packet sent to applicant on Sept. 4, 2020, was not returned.

Additionally, the hearing notice for the Zoning Administrator action was sent to Pacific Watershed Associates as well as the current and previously named LLC manager. The appeal does not explain why there was no contact prior to the Zoning Administrator action or why the department had not received any requested items in response to the deficiency letters. Nor does the appeal explain why the application transfer packet was not returned nor why there had been no contact from the applicant

since October 2020 or an agent since August 2021.

Conclusion

This is an application for which a meaningful attempt to provide sufficient information to see the application approved has not been made. Here, the application has not even been put into referrals for other department and agency review. For most of the cannabis process, applications would be put into referrals even with missing information if the information provided was complete enough to meaningfully describe the application. Staff made reasonable attempts to reach the applicant using the address on file with the Secretary of State for the corporation. Notice of the public hearing was sent to the applicant, owner, and agent consistent with local and state noticing requirements. The appellant has not demonstrated that the Zoning Administrator was wrong in denying the application but has admitted that there is missing information. The appellant has not demonstrated that the Zoning Administrator erred or abused their discretion. The appeal of the Zoning Administrator denial of the Conditional Use Permit should be denied and the Conditional Use Permit should also be denied.

FINANCIAL IMPACT:

The Appellant has paid the fee associated with filing this appeal. (1100268-608420)

The appeal fee does not cover the cost of the appeal, and thus processing this appeal will cost the General Fund approximately \$2,000.

STRATEGIC FRAMEWORK:

This action supports your Board's Strategic Framework through its core roles to enforce laws and regulations to protect residents and encourage new local enterprise.

OTHER AGENCY INVOLVEMENT:

None

ALTERNATIVES TO STAFF RECOMMENDATIONS:

The Board could choose to sustain the appeal and direct staff to continue working with the applicant to process the application. Based on the amount of time that has passed since the application has been submitted, staff to does recommend this alternative.

ATTACHMENTS:

1. Resolution
2. Appeal
3. Zoning Administrator Staff Report and Resolution
4. Proof of Notice
5. Site Plan 2017
6. Operation Plan 2017

PREVIOUS ACTION/REFERRAL:

Board Order No.: N/A

Meeting of: N/A

File No.: N/A