

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

Certified copy of portion of proceedings; Meeting on December 8, 2020

Resolution No. ____ - ____ Resolution of the Board of Supervisors of the County of Humboldt CONSIDERING AN ADDENDUM TO THE FINAL ENVIRONMENTAL IMPACT REPORT FOR THE COMMERCIAL CANNABIS LAND USE ORDINANCE, ADOPTING FINDINGS OF FACT, GRANTING THE APPEAL FOR RECORD NO. PLN-2020-16608 AND APPROVING THE MAPLE CREEK INVESTMENTS, LLC SPECIAL PERMIT, RECORD NO. PLN-2018-15197.

WHEREAS, Maple Creek Investments, LLC applied for a Special Permit for 27,025 square feet of new commercial cannabis cultivation under the County's Commercial Cannabis Land Use Ordinance (CCLUO) on December 14, 2018; and

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

WHEREAS, on August 6, 2020 the Planning Commission:

1. Denied the Special Permit Application by a vote of 4-2.

WHEREAS, Maple Creek Investments, LLC ("Appellant") on August 20, 2020, 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, *de-novo*, on October 20, 2020, November 17, 2020 and December 8, 2020, and reviewed, considered, and discussed the application and appeal for the Special 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. FINDING:** **Project Description:** The application is a Special Permit to allow 27,025 square feet (sf) of new outdoor commercial cannabis cultivation which can be relocated to another site but cannot be cultivated at the subject property.
EVIDENCE: a) Project File: PLN 2020-16608 and PLN-2018-15197
- 2. FINDING:** Substantial information has been submitted demonstrating that the site can support 27,025 square feet of cultivation area, but the site is visible from Butler Valley Road raising neighbor concerns and it is preferable to transfer the cultivation rights to another property.

EVIDENCE: See Findings and Evidence 3-8

Relocation of Cultivation is an authorized method of addressing community concerns. This application is being approved for relocation to address those concerns.

3. FINDING: **CEQA.** The requirements of the California Environmental Quality Act have been complied with. The Humboldt County Board of Supervisors has considered the Addendum to and the Final Environmental Impact Report (EIR) prepared for the Commercial Cannabis Land Use Ordinance (CCLUO) adopted by the Humboldt County Board of Supervisors on May 8, 2018.

EVIDENCE:

- a) Addendum Prepared for the proposed project.
- b) The proposed project does not present substantial changes that would require major revisions to the previous EIR. No new information of substantial importance that was not known and could not be known at the time was presented as described by §15162(c) of CEQA Guidelines
- c) A Noise Source Assessment was carried out by Six Rivers Development LLC in August 2019. Using a REED Instruments R8080 sound level meter, an average dBA of 37.5 was recorded based on three recordings in different parts of the parcel at different times of the day. The CCLUO requires that noise from the operation be no more than 3 decibels above ambient at the property lines. This will be an ongoing condition of approval.
- d) A Preliminary Biological Assessment Report was carried out by TransTerra Consulting and Mother Earth Engineering in November of 2018. The Assessment methods included a search of the California Natural Diversity Database (CNDDDB) and California Native Plant Society (CNPS) database. A habitat assessment was conducted in the project area. No Special Status species were observed during the assessment. The Report recommends the use of natural fibers for cultivation netting and to avoid sediment transport into jurisdictional waters to avoid impacts to aquatic life.
- e) Northern Spotted Owl activity centers have been recorded in the area of the subject parcel although there is not an activity center within 2,300 feet of the cultivation site. There is an NSO siting in the northwest corner of the parcel, this dates back to the year 2000 but no additional siting's have been recorded at this location since that time. The project will not produce noise above 50dB at 100' from noise sources or at the edge of habitat, whichever is nearest. The operation is outdoor cultivation and the source of power will be PG&E. Generators will be used for backup power only
- f) A Cultural Resources Investigation Report was carried out by Roscoe and Associates Cultural Resource Consultants in November 2018. The Report identified previously conducted investigations which found artifacts in the

project area. No known cultural resources fall in direct proximity to the project site with the nearest known artifact being 75 meters away. Field surveys did not identify historic or pre-historic artifacts on the project site. The Report recommends that Inadvertent Archaeological Discovery protocols be included as ongoing conditions of approval.

FINDINGS FOR SPECIAL PERMIT

4. FINDING The proposed development is in conformance with the County General Plan, Open Space Plan, and the Open Space Action Program.

EVIDENCE a) General agriculture is a use type permitted in the Residential Agriculture (RA) land use designation. General agriculture is also a principal permitted use in the Forestry Recreation (FR) zoning district. The proposed cannabis cultivation, an agricultural product, is within land planned and zoned for agricultural purposes, consistent with the use of Open Space land for managed production of resources. The use of an agricultural parcel for commercial agriculture is consistent with the Open Space Plan and Open Space Action Program. Therefore, the project is consistent with and complimentary to the Open Space Plan and its Open Space Action Program.

5. FINDING The proposed development is consistent with the purposes of the existing FR zone in which the site is located.

EVIDENCE a) The Forestry Recreation or FR Zone is intended to be applied to forested areas of the County in which timber production and recreation are the desirable predominant uses and agriculture is the secondary use, and in which protection of the timber and recreational lands is essential to the general welfare.

b) All general agricultural uses are principally permitted in the FR zone.

c) Humboldt County Code section 314-55.4.6.1 allows cultivation of up to 43,560 square feet of cannabis on a parcel over 10 acres subject to approval of a Special Permit. The application for 27,025 square feet of outdoor cultivation on a 42 acre parcel is consistent with this.

6. FINDING The proposed development is consistent with the requirements of the CCLUO Provisions of the Zoning Ordinance.

EVIDENCE a) The CCLUO allows cannabis cultivation in areas zoned FR (HCC 314-55.4.6.1).

b) The project will obtain water from a non-diversionary water source.

- c) The site is accessed from a paved County road and complies with the Road Performance Standards contained in 314-4.12.1.8. A Road Evaluation Report was completed by Six Rivers Developments in September 2018. The Evaluation addressed Butler Valley Road from Maple Creek Road to Kneeland Road, Maple Creek from Blue Lake Blvd to Butler Valley Road, and Kneeland Road from Freshwater Road to Butler Valley Road. All road segments evaluated were found to be Category 4 equivalent. The short driveway to the project site is rocked and gated.
- d) The slope of the land where cannabis will be cultivated is less than 15%
- e) The cultivation of cannabis will not result in the conversion of timberland. A Timber Conversion Investigation was completed by Blair Forestry Consulting in June 2019. The Report found the site had been a homestead since approximately 1953 and no commercial tree species were cleared from the historic homestead site. Instead, fruit trees and other overgrown brush were cleared to allow use of the site.
- f) The location of the cultivation complies with all setbacks required in Section 314-55.4.66.4.4. It is more than 30 feet from any property line, more than 300 feet from any off site residence, more than 600 feet from any school, church, public park or Tribal Cultural Resource

7. FINDING

The cultivation of 27,025 square feet of cannabis cultivation and the conditions under which it may be operated or maintained will not be detrimental to the public health, safety, or welfare or materially injurious to properties or improvements in the vicinity.

EVIDENCE

- a) The site is located on a paved County Road which can accommodate the amount of traffic generated by the proposed cannabis cultivation.
- b) The site is in a rural part of the County where the typical parcel size is over 40 acres and many of the land holdings are very large. The proposed cannabis will not be in a location where there is an established neighborhood or other sensitive receptor such as a school, church, park or other use which may be sensitive to cannabis cultivation. Approving cultivation on this site and the other sites which have been approved or are in the application process will not change the character of the area due to the large parcel sized in the area.
- c) The location of the proposed cannabis cultivation is more than 800 feet from the nearest off site residence.
- d) Irrigation water will come from rainwater catchment thus the cultivation will not affect water quantity in the aquifer.

- e) Provisions have been made in the applicant’s proposal to protect water quality and thus runoff to adjacent property and infiltration of water to groundwater resources will not be affected.
- f) The water used for cultivation will be rainwater catchment and will not conflict with any proposed or future Groundwater Sustainability Plan or Groundwater Sustainability Agency associated with the Mad River.
- g) The project has been modified to ensure there is a 30 foot setback along Butler Valley Road with planting to reflect the forested environment in the area. This will minimize any visual impact upon the area.

8. FINDING

The proposed development does not reduce the residential density for any parcel below that utilized by the Department of Housing and Community Development in determining compliance with housing element law.

EVIDENCE

- a) APN 315-011-009 was included in the housing inventory of Humboldt County’s 2019 Housing Element and has the potential to support one housing unit. The approval of cannabis cultivation on this parcel will not conflict with the ability for a residence to be constructed on this parcel.

FINDINGS FOR APPEAL

9. FINDING:

The Planning Commission is required by law to state the reasons for denial and provide an itemized resolution for the reason of denial of a project and failed to do so. The Planning Commission erred in not providing written findings supporting their decision.

EVIDENCE:

- a) Humboldt County Code section 312-6.5.1 states: *Following public review, the Hearing Officer shall approve, conditionally approve, or deny the proposed project in accordance with the particular requirements of this Code as they apply to the project, and in accordance with the required findings of this Code. (See, Sections 312-17, Required Findings, and Sections 312-18 through 312-49, Supplemental Findings.) The Hearing Officer’s decision shall be expressed in writing.*
- b) The Planning Commission did not adopt written findings supporting the decision to deny the Application.

10. FINDING

The Planning and Building Department is not obligated to support the denial of an application by the Planning Commission when providing stall analysis to the Board of Supervisors.

EVIDENCE

- a) The Humboldt County Code does not require the Planning and Building Department to support a Planning Commission decision in an appeal.
- b) An appeal is a de novo hearing, meaning the application it is completely reconsidered. It is not a recommendation from the Planning Commission.

- c) The Board of Supervisors has authority to approve, conditionally approve or deny an appeal.

11. FINDING

The Commission failed to discharge its duty to conduct a hearing free of bias and be fair under constitutional due process principles. The appellant sights statements by members of the Commission that the appellant feels exhibit bias based on personal experiences, and in turn influenced the action of the commission.

- EVIDENCE** a) Bias apart from a resolution is difficult to determine. Since the Planning Commission did not adopt written findings, they did fail to discharge their duties and it is not possible to reject the possibility of bias.

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

- 1 Adopts the findings set forth in this Resolution; and
- 2 Declares it has considered the Addendum to the Final EIR for the Commercial Cannabis Land Use Ordinance; and
- 3 Grants the Appeal submitted by Maple Creek Investments, LLC identified as Record Number PLN-2020-16608; and
- 4 Approves the requested Special Permit for Record Number PLN-2018-15197 subject to the provision that the cultivation be relocated to another site; and
- 5 Directs Planning Staff to prepare and file the Notice of Determination in compliance with the California Environmental Quality Act.

The foregoing Resolution is hereby passed and adopted by the Board of Supervisors on October 20, 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