



COUNTY OF HUMBOLDT

For the meeting of: 6/13/2022

File #: 22-776

To: The Humboldt County Board of Supervisors

From: Planning and Building Department

Agenda Section: Public Hearing

SUBJECT:

Appeal 1: MDRV Realty Holdings, LLC appeal of the Planning Commission's conditional approval of a Conditional Use Permit to allow 14,450 square feet of existing outdoor and 3,600 square feet of existing mixed-light commercial cannabis cultivation.

Appeal 2: MDRV Realty Holdings, LLC appeal of the Planning Commission's conditional approval of a Special Permit to allow 2,000 square feet of existing outdoor and 4,850 square feet of existing mixed-light commercial cannabis cultivation.

RECOMMENDATION:

That the Board of Supervisors:

1. Open the public hearing and receive the staff report, testimony by the appellant (applicant), and public; and
2. Close the public hearing; and
3. Adopt the resolution (Resolution 22-__). (Attachment 1) which does the following:
 - a. Finds that the Board of Supervisors has considered the Addendum to the Environmental Impact Report for the Commercial Cannabis Land Use Ordinance that was prepared for the MDRV Realty Holdings, LLC project; and
 - b. Finds that the proposed project complies with the General Plan and Zoning Ordinance; and
 - c. Approves the Appeal submitted by MDRV Realty Holdings, LLC; and
 - d. Approves the Conditional Use Permit and Special Permit subject to the recommended conditions of approval.
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.

DISCUSSION:

Executive Summary

This item is two appeals of the Humboldt County Planning Commission's May 5, 2022, approval of a Conditional Use Permit for MDRV Realty Holdings and a Special Permit for MDRV Realty Holdings, LLC, by a majority vote (YES: McCavour, Mulder, Levy, Newman; NO: Bongio, Mitchell). While these applications are separate projects, both projects were heard as a single item at the request of the Planning Commission. MDRV Realty Holdings, LLC is appealing the decision to add a condition of approval to both projects for the requirement of obtaining a Road Evaluation Report prepared by a licensed Civil Engineer in order to assess the access roads and for all recommend improvements for the roads to be completed prior to being able to continue cultivating at the site. The Planning and Building Department supports the appeal.

Project Descriptions

Application PLN-11212-CUP is a Conditional Use Permit for 14,450 square feet (sf) of existing outdoor and 3,600 sf of existing mixed-light cannabis cultivation, a Special Permit for the continued use and maintenance of a spring diversion, a Special Permit for the relocation of a historic cultivation area outside of a streamside management area, and a Special Permit to approve a setback reduction to public lands (the Six Rivers National Forest) to approximately 497 feet. Total permitted cultivation would be 18,050 sf, with appurtenant propagation and drying activities. The source of water for irrigation is provided by a spring diversion (POD 2 under Water Right Certificate H100730). Total estimated annual water use is 150,000 gallons (7.68 gal/sf/yr). There is a total of 110,000 gallons of existing water storage on-site and 43,000 additional water storage is proposed for a total of 153,000 gallons. Drying and curing will occur on-site and trimming will occur off-site at a licensed processing facility. Up to two (2) employees will be used on-site. Power is provided by one generator, and future solar is proposed. The applicant will transition to 100% renewable energy by 2026. The project site is 1655 Eight Mile Ridge Road, in Mad River.

Application PLN-11214-SP is a Special Permit for 2,000 sf of existing outdoor and 4,850 sf of existing mixed-light cannabis cultivation, a Special Permit for the continued use and maintenance of a stream diversion, and a Special Permit to allow a setback reduction from public lands (the Six Rivers National Forest) to approximately 320 feet. Total permitted cultivation would be 6,850 sf, with appurtenant propagation and drying activities. The source of water for irrigation is provided by a stream diversion (POD 1 under Water Right Certificate H100730). Total estimated annual water use is 50,000 gallons (6.6 gal/sf/yr). There is a total of 50,000 gallons of existing water storage on-site for irrigation. Drying and curing will occur on-site and trimming will occur off-site at a licensed processing facility. Up to two (2) employees are used for on-site operations. Power is sourced from an on-site generator, and future solar is proposed. The project site is 24758 Eight Mile Ridge Road, in Mad River.

Project History

Application PLN-11212-CUP was scheduled for the March 3rd, 2022 Planning Commission meeting and in response to the public notice comments were received from the public comment raising concerns about the constant use and road damage of up to a 1 mile section of Eight Mile Ridge Road used by employees between the two adjacent projects (PLN-11212-CUP and PLN-11214-SP) owned and operated by the applicant). Concerns were also raised about unsafe traffic on the access roads, theft issues with applicant's employees, concerns about the reported annual water usage being

underestimated, concerns about the use of a spring located on Six Rivers National Forest for cannabis irrigation, safety concerns regarding fire hazard with generator usage, gates being left unlocked, and light and noise pollution complaints.

Application PLN-11212-CUP was heard at the March 3rd, 2022, Planning Commission hearing, and after receiving public comment at the hearing and mainly discussing the use of Eight Mile Ridge Road from one property to the other, a request was made by the Planning Commission to continue the project and bring both adjacent projects back to the Planning Commission to be heard together.

Access to the site is from Eight Mile Ridge Road, from County Line Creek Road, from State Hwy 36. Both Eight Mile Ridge Road and County Line Creek Road are non-county maintained roads off of Hwy 36. The applicant submitted a Road Evaluation Report (RER) form for the access route from Hwy 36 which included photos and a route map showing photo locations taken at pinch point areas on the road. The RER designates the private access roads as being developed to the equivalent of a category 4 standard, and states that the roads are adequate for the proposed use without further review from the applicant.

Both projects were heard by the Planning Commission on May 5, 2022. At the May 5th hearing the focus of the Planning Commission was that the applicant did not submit a Road Evaluation Report prepared by a licensed engineer for the access roads. After deliberation about the access roads, the projects were approved with a majority vote. In addition to the conditions of approval recommended by county staff, the Planning Commission imposed the following condition:

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 sites.

Appeal

The appellant filed a timely appeal of the Planning Commission decision on May 5, 2022. The appellant believes that the requirement for obtaining a Road Evaluation Report by a licensed engineer and to complete 100% of the improvements recommended in the Report prior to being able to cultivate at the sites is excessive and not justified under the county ordinance. The appeal argument made by the appellant in support of their appeal is listed below, followed by a staff response.

Appeal Argument:

The appellant states that the added condition to the projects 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.

Further, during the processing of the applications, at no time did planning staff request an engineer's road evaluation for the access roads leading to the parcel. During the public comment period of the May 5th hearing, the applicant's self-certification of the access roads was brought up for the first time, and the Commission did not support the road assessment standards passed into law with the Commercial Medical Marijuana Land Use Ordinance (CMMLUO) by the Humboldt County Board of Supervisors, against which these projects were evaluated.

The applicant and appellant proposes that the condition be replaced with the following alternative conditions of approval: **“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 that 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 executing a compliance agreement, 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 year of executing a compliance agreement, the applicant shall implement all road improvements recommended in the 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.”

Staff Response:

This is correct. The CMMLUO does not have any specific ordinance language requiring a Road Evaluation Report to be prepared by a licensed engineer for access roads. However, it is not outside of the authority of the Planning Commission to require a Road Evaluation Report to be prepared by a licensed engineer, or to require that the applicant complete 100% of the recommendations within the engineer's Road Evaluation Report. In order to approve a discretionary permit the decision-maker must find that the project will not be detrimental to the public health, safety, or welfare or materially injurious to properties or improvements in the vicinity. Presumably, increased traffic from the commercial businesses and damage to the road could be detrimental to the public welfare and/or injurious to properties or improvements in the vicinity.

There are a total of 24 cannabis projects that utilize the same access roads, some of which have been approved and others are pending applications. Most if not all of these applications have been permitted under the CMMLUO to continue to operate while seeking permit entitlements. The CMMLUO also has provisions where existing cannabis farms may continue to operate for up to two years after obtaining permit entitlements under a compliance agreement for conditions of approval to be completed.

Additionally, the Commercial Cannabis Land Use Ordinance (CCLUO section 55.4.12.1.8 (d)) states that “Where three or more permit applications have been filed for Commercial Cannabis Activities on parcels served by the same shared private road system, the owner of each property must consent to join or establish the appropriate Road Maintenance Association (RMA) prior to operations or provisional permit approval. This requirement shall also apply to **existing permittees seeking to renew their permit**. When one or more applicants in a defined roadshed have prepared and submitted a Professional Private Road Evaluation called for by this section, all contemporaneous applicants served by the same roadshed shall be required to contribute to the cost of preparation of the report. The cost allocation shall be determined by any RMA(s) within the roadshed that includes the road segments providing access to the cultivation site of each applicant.”

In this instance, it does appear that the requirement for the MDRV Holdings LLC projects to complete all engineer recommended improvements *prior* to cultivating is not consistent with requirements placed on similar projects by the Planning Commission, including other approved projects utilizing this road.

In the event that the appeal is granted to remove the condition that “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 be required to complete 100% of the improvements recommended within the RER prior to being able to continue cultivating at the sites,” planning staff is recommending the addition of the following conditions of approval for both applications which will ensure that the burden of improving the road is shared equally among all cannabis permits that utilize the road:

“The applicant shall enter into a Road Maintenance Association and evidence shall be provided to the Planning Division at the satisfaction of the County. The associated Road Maintenance Association for shared roads shall adhere to and implement the recommendations for road improvements included in all engineered road evaluations prepared for the access roads. In the event that 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 executing a compliance agreement, 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 year of executing a compliance agreement, the applicant shall implement all road improvements recommended in the 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.”

FINANCIAL IMPACT:

There will be no additional effect on the General Fund.

STRATEGIC FRAMEWORK:

This action supports your Board's Strategic Framework by its support of the Goals and Policies of stabilizing and supporting a successful cannabis industry.

OTHER AGENCY INVOLVEMENT:

None

ALTERNATIVES TO STAFF RECOMMENDATIONS:

The Board could choose to deny the appeal and approve the Conditional Use Permit & Special Permit subject to all of the conditions imposed on them by the Planning Commission.

ATTACHMENTS:

NOTE: The attachments supporting this report have been provided to the Board of Supervisors; copies are available for review in the Clerk of the Board's Office.

1. Draft Board Resolution and Findings for Record No. PLN-11212-CUP
2. Draft Board Resolution and Findings for Record No. PLN-11214-SP
3. Grounds for Appeal filed by MDRV Realty Holdings, LLC
4. Planning Commission Staff Report, Resolution No. 22-056 and Revised COA's for Record No. PLN-11212-CUP
5. Planning Commission Resolution No. 22-056 for Record No. PLN-11212-CUP
6. Planning Commission Staff Report, Resolution No. 22-057 and Revised COA's for Record No. PLN-11214-SP
7. Planning Commission Resolution No. 22-057 for Record No. PLN-11214-SP
8. Self-Certified Road Evaluation Report Form
9. Public Comments submitted to the Planning Commission
10. Applicant's Response to Public Comment Submitted to the Planning Commission

PREVIOUS ACTION/REFERRAL:

Board Order No.: N/A

Meeting of: N/A

File No.: N/A