



# COUNTY OF HUMBOLDT

For the meeting of: 6/13/2022

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File #: 22-753

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**To:** The Humboldt County Board of Supervisors

**From:** Planning and Building Department

**Agenda Section:** Public Hearing

SUBJECT:

Appeal of the Planning Commission actions to Approve the Blocksburg Family Farms, LLC (PLN-12265-CUP) Conditional Use Permit and to Adopt a Mitigated Negative Declaration, for 6.39 acres of outdoor cultivation including 16,800 sf of existing cannabis cultivation authorized under interim permit, on a parcel of approximately 1,221 acres

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. Adopts the Initial Study and Mitigated Negative Declaration, State Clearinghouse No. 2021110058;
  - b. Makes the findings required to deny the appeal and approve the Conditional Use Permits;
  - c. Denies the Appeal;
  - d. Adopts the mitigation monitoring and reporting plan; and
  - e. Approves the Conditional Use Permits subject to the conditions of approval (Attachment 1A); and
4. Direct the Clerk of the Board to give notice of the decision to the appellant, the project applicant, the property owner, the Planning and Building Department, and any other interested party; and
5. Direct the Planning and Building Department to file a Notice of Determination with the Humboldt County Recorder's Office, pursuant to the California Environmental Quality Act.

SOURCE OF FUNDING:

The appellant has paid the appeal fee associated with filing this appeal.

DISCUSSION:

Executive Summary

This is an appeal of the Humboldt County Planning Commission's May 5, 2022, approval of the Blocksburg Family Farms, LLC, Conditional Use Permit application (PLN-12665-CUP) to allow for 6.39 acres of outdoor cultivation including 16,800 sf of existing cannabis authorized under interim permit. The proposed six acres of new cultivation will comprise of three acres full term outdoor and three acres of Light Deprivation, and with ancillary facilities, will be developed in four phases over four years. Water would be provided by an onsite well, a 2.2-million-gallon rain catchment pond, and a one-million-gallon rainwater catchment tank. Total irrigation demand by Phase IV is anticipated to be approximately 3.1 million gallons per year, with the rain catchment pond being the primary source of water by Phases II and III. The project includes 8,000 sf of proposed and 2,000 sf of existing ancillary nursery space. Processing would occur onsite in a proposed 7,200 sf multi-use building in the footprint of a burned down barn. Power is proposed to be provided principally by a generator for Phase I and Phase II). By Phase III, a solar array would provide the power, with generators retained for backup use only. Phase I of the project would require approximately six employees. Phases II & III would require a maximum of twenty-five employees and incorporates a vanpool.

The proposed cannabis operation will be located on APN 217-471-001, a 1,221-acre parcel that is part of a larger ranch under single ownership. The Planning Commission approved the Blocksburg Family Farms, LLC, project and associated Mitigated Negative Declaration by a vote of 4-1.

Robie Tenorio has submitted an appeal application and letter on behalf of Citizens for a Sustainable Humboldt and the Northcoast Environmental Center ("Appellant") appealing the decision and stating why they believe that the Planning Commission's approval does not comply with the California Environmental Quality Act (CEQA) and "the Humboldt County Code and other applicable laws." The appeal application includes as attachments letters of opposition previously submitted by attorney Jason Holder (see Attachment 2). The primary concerns can be summarized as potentially inadequate environmental review.

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. Staff is recommending that the Board deny the appeal and approve the project with conditions (uphold the Planning Commission decision).

Background and Planning Commission Action

A CEQA IS/MND was prepared and circulated in November-December 2021, concluding there are no project impacts that could not be mitigated, and nine (9) mitigation measures were included addressing areas of biological resources, transportation, and cultural and tribal cultural resources. Comments were received from two agencies - the California Department of Cannabis Control, and California Department of Fish and Wildlife. One late comment was received from a member of the public. The comment letters are attached to the Planning Commission staff report and are summarized and addressed in the Findings.

Following closure of the 30-day CEQA review period on the Nov-Dec 2021 IS/MND, and after

noticing of the Commission hearing and preparation of the staff report, the day before the noticed March 3, 2022 Commission hearing, an 18-page comment letter with 38 pages of attachments on the draft MND was received from an attorney, Jason Holder, on behalf of Citizens for a Sustainable Humboldt and the Northcoast Environmental Center. One of the attorney's comments focused on an item of the CDFW comment letter in relation to the special-status plant, *Danthonia glaberrima*, a native prairie grass. The CDFW comment did not identify the loss of *Danthonia* as a significant impact, but suggested that "an argument could be made" that it is. CDFW further stated that they did not desire for the IS/MND to be recirculated on this basis, only that mitigation already proposed be modified to include restoration of the area of *Danthonia* that would be affected. Based on the CDFW comment, a plan was prepared by the project biologist in consultation with CDFW staff, the *Sensitive Natural Community Mitigation and Monitoring Plan: Blocksburg Family Farms, December 2021*. Implementation of the plan had been incorporated into an existing biological resources mitigation measure presented in the March 3, 2022 staff report to the Commission.

While CDFW staff expressed appreciation for the applicant's cooperation in postponing taking the application to hearing while a comprehensive plan for restoration of *Danthonia* could be prepared, the attorney's late comment asserted that the disturbance to *Danthonia* is a significant impact cumulatively, and that it must be described as such in the analysis. Out of caution, County staff, the CEQA document preparer, and the applicant agreed that the draft IS/MND should identify the loss of *Danthonia* prairie grass as potentially significant at a cumulative level, and to recirculate the IS/MND with the proposed restoration plan as a separate mitigation measure. The restoration plan is referenced in the project's Mitigation Monitoring and Reporting Program (MMRP) as Biological Resources MM # 7, and the complete plan is included in the IS/MND appendices as Appendix "O."

Therefore the Blocksburg Family Farm, LLC application could not be heard at the March 3, 2022 Commission hearing until the IS/MND was revised and recirculated. The IS/MND was revised as described above with the additional mitigation measure (ten total mitigation measures) and recirculated March 17, 2022 through April 18, 2022. During the CEQA comment period, only one comment was received, from the Regional Water Quality Control Board (RWQCB). The RWQCB noted that the increase in cultivation over one acre will increase that department's level of monitoring, and they stated concurrence with the wetland buffers and water quality compliance assuming wetland delineations were adequate. CDFW reviewed the delineations and found them acceptable.

On April 20, 2022, after the close of the CEQA comment period and one day before the re-scheduled Planning Commission public hearing of April 21, 2022, Jason Holder, on behalf of Citizens for a Sustainable Humboldt and the North Coast Environmental Center submitted a follow up comment. In this comment Mr. Holder states that staff is ignoring his previous comments on the adequacy of the water supply and the adequacy of the access road. These comments are not being ignored as these issues are well addressed in the IS/MND and the staff report. As noted in the IS/MND and further in the staff report, the well will be used only for the first year at which point rainwater catchment will be the primary irrigation source, and the well has had two pump tests completed. One upon drilling of the well, and then during May of 2020 a drawdown pump test was completed that showed that a static water level of 100 feet was obtained at 28 gallons per minute which is more than sufficient for the irrigation needs. Mr. Holder asserted that the pump tests are not consistent with County regulations and

guidance documents for well pump tests however those regulations and guidance documents are not applicable to agricultural wells (see Attachment 10 of the Commission staff report). Mr. Holder also asserted that the long-term sustainability of the well may be questionable, however this comment ignores the fact that the long-term primary irrigation needs will be met through rainwater catchment ponds. Also as noted and discussed in the staff report and the IS/MND the access road is a county-maintained road category 4. The driveway off of the county road serves only the subject parcel and is not required to meet standards applicable to roads, however it has been determined by a licensed engineer to be functionally appropriate for the proposed agricultural activities. While this access driveway is not a road, it should be noted that even if it were the State Fire Safe regulations exempt roads used solely for agriculture (see Attachment 11 of the Commission staff report, attached).

At the May 5, 2022 Planning Commission meeting, the Commission voted to modify two conditions of approval as follows:

22. The applicant may use generator power through Year 2025, after which all ~~All~~ electrical needs ~~for the proposed new propagation facilities and proposed new drying and processing facilities~~ shall be sourced exclusively from renewable energy systems. Prior to operation the applicant shall submit an energy budget detailing the power needs and capacity of the renewable energy system.
23. There will be no use of the well beyond Phase 1. The Project shall not proceed past Phase 1 of development until after the rainwater catchment pond is built and operational, and the additional 1-million-gallon rainwater storage tank completed within two years of full cultivation buildout.

The Planning Commission approved the project and its Mitigated Negative Declaration by a vote of 4-1, with Commissioner Bongio the nay vote.

### Appeal

The basis of the appeal is set forth in the appeal letter submitted by Robie Tenorio on behalf of the Northcoast Environmental Center and Citizens for a Sustainable Humboldt, received by the Planning and Building Department on May 19, 2022 (Attachment 2). The following discussion addresses issues raised in the appeal letter:

**Appeal Issue 1:** The Appellant asserts that the Project's roads do not satisfy the minimum standards of the County's SRA Fire Safety Regulations. These regulations require that "road and street networks, whether public or private, shall provide for safe access for emergency wildland fire equipment and civilian evacuation concurrently and shall provide unobstructed traffic circulation during a wildfire emergency," that it is inappropriate and dangerous to site an operation of this size in a remote wildland area with access roads that do not even currently meet a Category 2 standard.

**Staff Response:** The access driveway, as a privately owned agricultural road, is not required to meet

Road Category 4 standards. However, a Road Evaluation/Access Assessment prepared by a registered civil engineer with Omsberg & Preston in February 2020 nonetheless concluded that the private access road is equivalent to and functions as a Road Category 4 with adequate turnouts. According to Humboldt County Department of Public Works, the access road is developed to an adequate functional capacity for the proposed use. The concept of functional capacity comes out of the fire safe standards to take into account the volume of the road relative to road capacity. A road with adequate functional capacity can accommodate the volume demands of the road and emergency response vehicles. Additionally, early project referrals and the draft IS/MND were circulated by staff to CalFire who did not indicate concern for a lack of safe access to the project site.

**Appeal Issue 2:** The Appellant asserts that because the initial phases (2-3 years) of the project will rely upon gasoline generators for all electricity needs, and that generators can be a source of accidental wildfire ignition, it is even more imperative that the access road meet the county's fire safe standards. And that since the IS/MND indicates that employees will refuel the Project's generators with 5-gallon containers, this is an inappropriate, small-scale system applied to an industrial, large-scale project, without adequate safety measures.

**Staff Response:** The project will continue to use gas generators temporarily during Phases 1 and 2 (the first and second years) for lights and fans for propagation and processing only, and will transition to solar during Phase 3, the third year. Per conditions of approval (Nos. 6 and 26) the project will be required to meet all applicable fire codes including fire suppression infrastructure requirements with training for employees, and a secondary containment area for fuel storage. As stated above, the access road meets County fire safe standards even though not required.

**Appeal Issue 3:** The Appellant asserts that there are too many employees who will be traveling to the remote work site, that it is of an industrial scale and without adequate infrastructure for fire and medical safety.

**Staff Response:** Employees will travel to and from the site by van operated by the Permittee which will reduce the number of vehicles on the County road leading to, and the private driveway accessing, the project.

**Appeal Issue 4:** The Appellant asserts that Humboldt County's Climate Action Plan points to transportation as a major source of greenhouse emissions, that permitting the project in a remote area with a large number of employees is in contravention of the plan, that the mitigation via a vanpool is unrealistic and unenforceable, and that personal safety is compromised in the event of an emergency if evacuation is dependent upon gathering up and transporting many employees in one vehicle.

**Staff Response:** The project is not in contravention of the County's Climate Action Plan. The employee vanpool is part of the proposal as well as a mitigation measure identified in the IS/MND, and is therefore now required and enforceable under the Project's Mitigation Monitoring and Reporting Program; concerns for GMG emissions on this basis are unfounded. The project will generate fewer GHGs than many smaller cannabis farms dispersed which are unable to coordinate and combine trips. Use of the van in a potential emergency will be coordinated under the emergency evacuation plan

described in the Cultivation and Operations Plan. Monitoring will take place during initial and subsequent annual inspections.

**Appeal Issue 5:** The Appellant asserts that new cultivation causes new impacts and that according to the February 2022 Watershed Map prepared for this project, the majority of cannabis projects approved in the county are for new cultivation operations, not existing operations; and that for new and expanded operations the cost (impacts on County Roads, danger from wildfire, air pollution and irreversible impacts to the environment) of business ventures should be borne by the business not forced upon the Humboldt County taxpayer and the natural environment.

**Staff Response:** New cultivation may or may not cause new impacts, and determining whether there are new impacts from this project is the purpose of the CEQA IS/MND which found that there will be no impacts that cannot be reduced to a less than significant level with appropriate mitigation. While the Appellant believes that only new projects should bear the costs of possible long-term effects, many believe that all projects should share in ongoing costs including those that began illegally and were later legalized, which is a policy matter beyond the scope of this application.

**Appeal Issue 6:** The Appellant asserts that the allowance of groundwater for the cultivation of two acres of new cannabis before adequate water storage is developed may cause significant impacts to any hydrologically connected surface waters, and that well tests prepared for this application did not test the Project's well in the dry period, as required by Humboldt County regulations.

**Staff Response:** The well production test that was performed was voluntary - it was not required or requested by the County Planning & Building Department nor by the County Department of Environmental Health (DEH), nor by CDFW nor the RWQCB; DEH requires production tests for wells only when subdividing a parcel, when creating new and smaller parcels to ensure water supply for multiple users, which is not a factor with this project. The well production test would not need a certain duration of time nor to occur during any specific season (i.e. dry season). Additionally, the site's groundwater hydrology was assessed by a qualified geologist and determined unlikely to be hydrologically connected to surface waters.

**Appeal Issue 7:** The Appellant asserts that this project would contribute to cumulative impacts to rare grassland prairie habitat, that when the CMMLUO was adopted, the stated intent was to discourage cannabis cultivation in undeveloped remote areas and encourage cultivation on agricultural land close to existing infrastructure, and that this project is not consistent with the intent of the CMMLUO.

**Staff Response:** Potential cumulative effects to special-status prairie grasses or habitat are fully mitigated through the mitigation plan that was prepared for the project; there will be no direct or cumulative impacts to special-status prairie grassland or related habitat.

**Appeal Issue 8:** The Appellant asserts that the IS/MND states that approval of the Project violates the County Ordinance, Fire Safe Regulations, and codified requirements for well testing during the dry season, to ensure adequate resources and mitigated impacts to surface waters.

**Staff Response:** The IS/MND does not state that approval of the Project violates the County

Ordinance, nor Fire Safe Regulations, nor codified requirements for well testing during the dry season, and there will be no such violation by the Project.

### CONCLUSION

The CDFW requested that provisions be made for protection of the native prairie grass *Danthonia glaberrima*, and this has been incorporated into the project. There have been no complaints or other concerns raised by anyone other than the Appellant and Appellant's attorney. The proposed Project is consistent with the Humboldt County Zoning Ordinance and General Plan, and the environmental review conducted for the project has found no significant impacts that cannot be mitigated to a level of less than significance. The project is planned and zoned appropriately for the proposed activity.

### FINANCIAL IMPACT:

There will be no additional impact on the General Fund. The appellant has paid in full the appeal fee associated with this appeal.

### STRATEGIC FRAMEWORK:

This action supports your Board's Strategic Framework by enforcing laws and regulations to protect residents.

### OTHER AGENCY INVOLVEMENT:

California Department of Fish and Wildlife, Division of Environmental Health; Department of Public Works, Land Use Division; Regional Water Quality Control Board; California Department of Cannabis Control.

### ALTERNATIVES TO STAFF RECOMMENDATIONS:

The Board may consider the following alternatives:

1. Uphold the appeal, overturn the Planning Commission approval, and require preparation of an EIR.
2. Approve the Appeal and Deny the Conditional Use Permits. The Board may decide that the project in its present form would adversely harm the existing physical, aesthetic, and environmental character of the community and would therefore be detrimental to the public welfare. Under this alternative the Board would find the project exempt from environmental review pursuant to Section 15270 of the CEQA Guidelines (projects which are disapproved) and deny the Blocksburg Family Farms, LLC project because the findings for approval under Section 312-17.1 of the Humboldt County Code cannot be made.
3. Deny the Appeal and Approve a Revised Project. The Board could choose to approve a modified project to address concerns and issues raised and could choose to apply additional conditions of approval to the project.

**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 Resolutions and Findings
2. Appeal filed by Citizens for a Sustainable Humboldt and Northcoast Environmental Center, dated May 19, 2022.
3. Resolution of the Planning Commission
4. Planning Commission Staff Report
- 5a. Mitigated Negative Declaration
- 5b. Appendixes A to O
6. Watershed Map
7. Project Site Plans
8. Public Comments submitted to Planning Commission on 5-05-22
9. Mitigation Monitoring and Reporting Plan

**PREVIOUS ACTION/REFERRAL:**

Board Order No.: N/A

Meeting of: N/A

File No.: N/A